

DEFENDANT'S # /

The Court charges the jury that an easement or right-of-way for public utilities purposes is "property" for which, when taken, the owner is entitled to compensation under the Constitution of Alabama.

John
Jeffery Marshall

DEFENDANT'S # 2

The Court charges the jury that the landowner in this case is entitled to just compensation; and the term "just compensation" includes not only the value of the land actually taken and appropriated to the use of the Alabama Power Company, but also the injury to the remaining lands.

Given

Tilfair J. Maskebar

DEFENDANT'S # 3

The Court charges the jury that the owner of a tract of land, a part of which is condemned for public utility purposes is entitled to be put in as good a position from a pecuniary standpoint as he would have occupied had his property not been taken.

Given

Julian J. Madlener

ALABAMA POWER COMPANY,) IN THE CIRCUIT COURT OF
)
Applicant,)
)
v.) BALDWIN COUNTY, ALABAMA
)
WOODROW WRIGHT, ET. AL.)
)
Defendants.) CIVIL ACTION NO. _____

APPLICANT ALABAMA POWER COMPANY'S
WRITTEN REQUESTED CHARGES TO THE JURY

Comes now the applicant, Alabama Power Company, and
moves the Court to give the following written requested charges
to the jury:

1. I charge you, ladies and gentlemen of the jury, that the landowners in this case have the right to use the land involved in the right of way condemned in any manner which does not interfere with the use of such land by Alabama Power Company for the purposes for which such land is condemned.

J. J. Marshall
J. J. Marshall
Judge

2. The Court charges you that the measure of damages and compensation to be awarded the landowners in this case is the fair market value of the strip of land actually taken for the right of way as of October 20, 1975, the date when the original application was filed in this case, and, in addition, the depreciation, if any, in the fair market value of the remaining adjacent lands belonging to the landowners.

J. J. Marshall
J. J. Marshall
Judge

3. In arriving at the depreciation, if any, in the fair market value of such remaining lands belonging to the landowners, you may consider the right of the landowners to use the strip of land actually taken in any manner which does not interfere with the use of such strip by Alabama Power Company for the purposes for which such land is condemned.

J. J. Marshall
J. J. Marshall
Judge

4. The Court charges you that the term "market value" of lands, as used in this case, means the price that in all probability would result from fair negotiations where the seller is willing to sell and the buyer desires to buy.

*Given
Jefair J. Maslow
judge*

5. I charge you that the burden is on the landowners in this case not only to reasonably satisfy you that their lands adjacent to the right of way were damaged, but also to reasonably satisfy you as to the depreciation in the reasonable fair market value of such adjacent lands, and if the landowners fail to reasonably satisfy you as to the amount of such depreciation in value, then you must not award any damages for such adjacent lands.

*Given
Jefair J. Maslow
judge.*

6. I charge you, ladies and gentlemen of the jury, that in the proceedings of this kind, damages are recoverable only for the physical disturbance of a property right, and not for the mere fear of a remote and contingent injury which may possibly occur but the happening of which is altogether speculative and uncertain.

*Given
Jefair J. Maslow
judge*

7. I charge you that damages, if any, to lands not taken must be direct and certain, and not remote and speculative, before such damages can be made the basis of recovery in this case.

Given
Jeffery J. Maslowski
Judge

8. I charge you, ladies and gentlemen of the jury, that Alabama Power Company does not have the right to fence in the lands which are sought to be condemned for its transmission line.

Refused
Jeffery J. Maslowski
Judge

9. The Court charges you that all the evidence with respect to value which has gone before you in this case is opinion evidence and is not conclusive upon you, and that you have the right to look at such evidence in the light of your own common sense and may disregard it entirely if you find it not worthy of consideration.

Given
Jeffery J. Maslowski

10. The Court charges you that Alabama Power Company in this case acquires only the right to use the lands sought to be appropriated for the purposes of building, operating and maintaining a transmission line across the lands sought to be condemned, and that the title to such lands remains in the defendants.

Refused
Jefair J. Washburn
Judge

11. The Court charges you that the landowners are not entitled to recover any damages on account of any fears prospective purchasers of remaining property adjacent to the right of way may have as to possible, fanciful or imaginary dangers resulting from the use of the transmission line on the property sought to be condemned.

Refused
Jefair J. Washburn
Judge

12. I charge you, ladies and gentlemen of the jury, that the landowners in this case have the right to cultivate the right of way in this case; to go across it and to use it generally in any way which does not interfere with the transmission line of the applicant.

Sincer
Jefair J. Washburn
Judge

13. I charge you that you cannot take into consideration as an element of damages in this case any speculative injury which might result at some future time on account of negligence on the part of Alabama Power Company in the operation of its transmission line.

Given
J. J. Madison
Judge

14. I charge you that in estimating the damages to which the landowners in this case are entitled you must not speculate as to the value the land might have at some time in the future and must give only such damages as are ascertainable as of February 9, 1976 the date of the filing of the original application for condemnation by Alabama Power Company.

Given
J. J. Madison
Judge

15. I charge you ladies and gentlemen not to consider any element of value based upon those possible and imaginary uses of the landowners' land which are mere speculative claims.

Refused
J. J. Madison
Judge

16. I charge you that if you are reasonably satisfied from the evidence in this case that any witness has magnified or exaggerated the value of the land taken, or the damages to the land not taken, on account of his interest in the outcome of this action, or his prejudice, or want of knowledge or experience or truthfulness, then you have the right, and it is your duty, to disregard the evidence of such witness insofar as the same is unjustly magnified or unjustly increased, either as to the value of the land taken, or the damages to the property not taken.

~~Given~~
Jeffery J. Mathison
Judge

17. I charge you, ladies and gentlemen of the jury, that if after considering all the evidence in this case you are reasonably satisfied that the part of the land not taken, is of equal or greater value than it was before the right of way was appropriated, then you are not to allow any damages for such remaining lands, but must confine your verdict to the compensation for the land actually taken.

~~Given~~ Refused
Jeffery J. Mathison
Judge

18. The Court charges the jury that in assessing the damages to the property of the landowners, you should not take into consideration as an element of damages that which is remote or imaginary or uncertain or speculative, even though mentioned or testified about by witnesses, and unless you believe from the evidence that there has been some proximate and direct physical disturbance of a property right in excess of that sustained by the general public, then the landowners are not entitled to any damages for the property not taken.

~~Given~~
Jeffery J. Mathison

J. B. BLACKBURN

BALCH, BINGHAM, BAKER, HAWTHORNE,
WILLIAMS & WARD

Attorney for Applicant,
Alabama Power Company

BY Stanley M. Brock
Attorneys for Applicant,
Alabama Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing
Written Requested Charges to the Jury has been served upon the
attorney of record for the defendants by delivering the same to
said attorney in open court on this 15 day of April,
1976.

Stanley M. Brock
Of Counsel for Applicant,
Alabama Power Company