

of DEAN AGREEMENT, made and entered into this 15th day of Sept., 1926, by and between

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, hereinafter for convenience styled the Railway Company, party of the first part; and

THE TENNESSEE ELECTRIC POWER COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Maryland, hereinafter for convenience styled the Power Company, party of the second part;

in the event that in such case, there should not be sufficient room on the right of way or property of the Power Company, then and in such event, the W I T N E S S E T H: and for the relocation of the poles or other fixtures of the Power Company, then and in such event, THAT the RAILWAY COMPANY, for and in consideration of the covenants of the Power Company upon its part to be kept and performed, as hereinafter expressed, hereby gives and grants unto the Power Company the right or license, determinable as hereinafter expressed, to construct and maintain a line of power wires, with poles to support the same, to extend upon and along the property or right of way of the Railway Company for its main tracks running between Cincinnati and Chattanooga, at OAKDALE, in the State of Tennessee, substantially as shown colored red upon the blue print map dated December 12, 1918, revised July 8, 1919, hereunto annexed and made a part of this agreement.

AND the POWER COMPANY hereby covenants and agrees in consideration of said license: its said line of power wires, poles, or other appurtenances upon the right of way or property of the Railway Company,

1. That it will yield and pay unto the Railway Company, in advance, on the day of the date hereof in each year during the life of this agreement, a rental of ONE DOLLAR (\$1.00) per annum for each and every pole, anchor or guy (each pole in an "H" fixture or other multiple support to be counted one); TEN DOLLARS (\$10.00) per annum for each metal tower; connected with or forming a part of said power line of the Power Company located and constructed upon the right of way or property of the Railway Company; PROVIDED, however, that no rental shall be paid by the Power Company hereunder for any such poles, anchors, guys or metal towers as are located upon property or lands set apart by proper State, County or Municipal authority for public street or highway purposes; and PROVIDED FURTHER, that should a public street or highway within the limits of the right of way or property of the Railway Company be abandoned, and become the property of the Railway Company, then and in that event, the wires, poles, supports, anchors and guys located therein shall assume the same status as wires, poles, supports, anchors or guys constructed on right of way or property of the Railway Company, not in a public street or highway.

2. That the Power Company will construct said line of power wires, at its own cost and expense, and in strict accord with the SPECIFICATIONS, RULES AND REGULATIONS OF THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, NOW IN EFFECT; and will, at all times thereafter during the life of this agreement, maintain and renew said wires, and the supports for same, so far as they may be upon or near the right of way or property of the Railway Company, in all respects in accordance with the requirements of such specifications, rules and regulations, as the same may be modified from time to time hereafter; it being understood that the work of constructing and maintaining said wires and supports shall, at all times during its progress, be subject to the inspection and supervision, and upon its completion, to the approval, of the Assistant to Vice-President (Engineering) of the Railway Company.

of his duly authorized representative.

3. That it, the Power Company, will, at any time, and from time to time, hereafter, at its own cost and expense, change the location of its poles, anchors, guys, supports, or other fixtures appurtenant to its said line of power wires upon the right of way or property of the Railway Company to such other location or locations thereon as the Railway Company may reasonably require for the purpose of the development or use of its property for its own purposes, such as the relocation of existing tracks, communication or signal pole lines and wires, buildings or structures, or the construction of new or additional tracks, communication or signal pole lines and wires, buildings or structures. In the event that in such case, there should not be sufficient room on the right of way or property for its purposes and for the relocation of the poles or other fixtures of the Power Company, then and in such event, the Power Company shall remove from the right of way or property of the Railway Company entirely and itself provide such additional right of way as may be needed.

Vice-President.

4. That the Power Company will indemnify and save harmless the Railway Company against any and all loss or damage to property of the Railway Company, and against all claims, demands, suits, judgments and sums of money accruing against the Railway Company, for loss of life or injury or damage to person or property, which may be caused by cluttering or sagging of wires or falling of poles or otherwise, howsoever resulting, either to person or estate, and arising by reason of or in connection with the construction or maintenance or operation by the Power Company of its said line of power wires, poles, or other appurtenances upon the right of way or property of the Railway Company; PROVIDED, however, that when such claims, demands, suits, judgments and sums of money accrue to said Railway Company or some third person for loss of life, or injury or damage to person or property owing to the negligence of the Railway Company independent of any negligence on the part of the Power Company, the latter shall not be liable.

5. That in the event that the Power Company shall make default in the performance of any one or more of its covenants in this agreement contained, with respect to the construction or maintenance of its said poles and wires or other fixtures upon the right of way or property of the Railway Company, and such default shall continue for thirty (30) days after written notice thereof, shall have been given by the Railway Company to the Power Company, then and in such event, at the option of the Railway Company, the license hereby granted may be deemed to be forfeited, and the Power Company shall, at its own cost and expense, upon being notified by the Railway Company, in writing, so to do, remove its said poles and wires and other fixtures from the right of way or property of the Railway Company, and restore said right of way or property to its condition existing prior to the construction of said poles, wires and other fixtures thereupon; or, in default thereof, the Railway Company may itself remove the same, but at the expense of the Power Company.

IT IS FURTHER MUTUALLY COVENANTED AND AGREED BY AND BETWEEN THE PARTIES HERETO:

6. That the Power Company, for itself, its successors and assigns, by entering into this agreement, does not, in any way whatever, waive or renounce any rights it or they may now or hereafter have, under or by virtue of any present or future laws, to exercise the power of eminent domain or any other legal power it or they may have, to acquire the right

to construct, maintain and operate lines of power wires upon, along and across the right of way and property of the Railway Company, but all such rights are reserved by the said Power Company, in all respects as fully as if this agreement had not been made and executed. And it is also agreed by the parties hereto that no rights or defenses of the Railway Company in the premises are abridged or affected in any way by this article.

IN WITNESS WHEREOF, the parties hereto have executed these presents, in duplicate, each part being an original, the day and year first above written.

Duly witnessed.

THE CINCINNATI, NEW ORLEANS AND
TEXAS PACIFIC RAILWAY COMPANY,
By

F. S. Wynn,
Vice-President.

Duly witnessed.

THE TENNESSEE ELECTRIC POWER
COMPANY,
By

B. C. Edgar,
Vice-President.

J.A.J.

P.E.

23440.

A true copy-
tests:

Ray E. Warden

Washington, D. C.
October 15, 1926.-1.
1835-27.