ELECTRONICALLY FILED
9/22/2026 11:40 AM
58-CV-2026-900929.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

ALABAMA POWER COMPANY, Plaintiff, V. GRADY FENN CHURCH, GRADY FENN CHURCH AS PERSONAL REP OF THE ESTATE OF, GF CHURCH PROPERTIES II LLC, TIDMORE JASON PROPERTY TAX COMMISSION ET AL, Defendants.	)	Case No.: CV-2026-900929.00

ORDER ON PRELIMINARY INJUNCTION

THIS CAUSE comes before the Court on the Church Defendants' Motion for Preliminary Injunction [Doc. 9] filed by Grady Fenn Church (Mr. Church), individually and as a Personal Representative of the Estate of Earle Farley Moody, II, and GF Church Properties II, L.L.C. (collectively the Church Defendants), and Plaintiff's (APCO) Response in Opposition to Motion for Preliminary Injunction [Doc. 54]. On September 9 and 10, 2026, the Court conducted an evidentiary hearing, took testimony from numerous witnesses, admitted documents and other evidence, and heard arguments from counsel for the Church Defendants, Martin Evans, and APCO, James Byram and Louis Calligas. Based on the evidence presented, submissions and arguments from counsel, and the applicable law, it is hereby **ORDERED, ADJUDGED, and DECREED**:

APCO sought to condemn a portion of the Church Defendants' Property (Shelby County Tax Parcels # 34-3-05-0-000-005.001; # 34-3-06-0-000-008.000; # 34-3-06-0-000-006.003; 34-3-06-0-000-008.003; # 34-3-06-0-000-008.001; # 34-3-05-0-000-

005.002; # 34-3-08-0-000-003.000; # 34-3-07-0-000-001.000; # 34-3-07-0-000-001.001) to construct the Autaugaville-East Pelham 230kV transmission line. APCO first made an offer to purchase a portion of the Church Defendants' Property in January of 2025, for a total of eighty-thousand dollars ($80,000.00). A second offer was made in September of 2025, to include easements along access roads, for a total of one hundred and thirty-two thousand dollars ($132,000.00). APCO then mailed final approved offer letters dated May 19, 2026, to the Church Defendants, totaling one hundred ninety-four thousand dollars ($194,000.00). However, the Church Defendants did not receive the final approved offer letters until May 26, 2026, at 2:09 pm, *after* the Complaint for Condemnation had been filed in the Probate Court of Shelby County, Alabama. The final approved offer letters contained the first attempted breakdown of valuation for the property interests APCO sought to acquire. Mr. Church testified that he wanted time to consult with his attorney and an appraiser regarding APCO's final approved offer letters to formulate an appropriate response but did not have an opportunity to do so.

The Court heard testimony from Richard Maloy, an Alabama Certified General Real Estate Appraiser, regarding the elements of damage to the Church Defendants' Property as a result of this condemnation. Mr. Maloy highlighted that the final approved offer letters did not contain any damage for the diminution in value to the remainder, did not mention the presence, nature, or scope of advanced communications rights being acquired, and did not contain specific terms on the other rights sought by APCO or the specific areas which would be affected.

Further testimony was given by Joshua Phillips, a transmission line services supervisor for APCO, on how the route for the Autaugaville-East Pelham 230kV transmission line was determined. Mr. Phillips testified that a portion of the approximately seventy-four (74) mile line that would bisect the Church Defendants' Property is part of an approximately four and a half (4.5) mile straight tangent run. The Autaugaville-East Pelham 230kV transmission line contains approximately sixty (60) bends in the line. Mr. Phillips also testified that the determination of the route was based on access, existing transmission corridors, construction, maintenance, terrain, and existing structures, with no consideration to existing zoning, the Shelby County Comprehensive Plan, the Future Land Use Map contained in the Shelby County Comprehensive Plan, and the development potential or suitability of any property within the proposed project, including the Church Defendants' Property. Mr. Phillips testified that he has the discretion to create angle points or bends in the line but chose not to exercise any such discretion when routing the transmission line through the Church Defendants' Property.

David Gray, a real estate specialist for APCO, provided testimony regarding the acquisition process of the Church Defendants' Property prior to the Complaint for Condemnation. Mr. Gray admitted that the first offer APCO made to the Church Defendants was not based on appraisal. Additionally, as the author of the final approved offer letters, Mr. Gray testified that it was his understanding the provision of a final approved offer with a statement and summary of damages was a condition precedent

under the Alabama Eminent Domain Code to filing a condemnation action. When asked about the acquisition of advanced communications capabilities sought in the Complaint, Mr. Gray admitted that the final approved offer letter he authored did not contain any specific information about advanced communication capabilities, he did not know what was considered under "advanced communications capabilities" at the time the letter was drafted, and had never read Alabama statute defining the term.

APCO solicited testimony from Matt Hart, the Director of Grid Transformation and Project Management. Mr. Hart testified that the Autaugaville-East Pelham 230kV transmission line project is currently on schedule, barring any issues.

STANDARD OF REVIEW

The only determination before the Court at this stage is whether the Church Defendants have satisfied the four requirements of a preliminary injunction, where a court must be satisfied:

> (1) that without the injunction the [Church Defendants] will suffer immediate and irreparable injury; (2) that the [Church Defendants] ha[ve] no adequate remedy at law; (3) that the [Church Defendants] [are] likely to succeed on the merits of the case; and (4) that the hardship imposed upon [APCO] by the injunction would not unreasonably outweigh the benefit to the [Church Defendants].

Blount Recycling, LLC, v. City of Cullman, 884 So. 2d 850, 853 (Ala. 2003) (quoting *Perley v. Tapscan, Inc.*, 646 So. 2d 585, 587 (Ala. 1994).

I. Immediate and Irreparable Injury

The Church Defendants' Property contains Mr. Church's home. He expressed concerns about privacy, safety, and damage due to the scope of the rights sought by

APCO. As a part of those rights, APCO seeks to use Mr. Church's main driveway to his home for construction and maintenance of the transmission line. The Church Defendants' Property contains unique characteristics, including the rock bottom Buxahatchee Creek and original old growth trees. APCO clearing crews were approaching the Church Defendants' Property at the time this preliminary injunction was sought. Clearing, entry upon, and other disturbances of the Church Defendants' Property, inclusive of Mr. Church's home, would certainly result in immediate and irreparable injury absent a preliminary injunction. Therefore, the Court finds that the Church Defendants have satisfied their burden showing that without a preliminary injunction preventing APCO from entering the property, the Church Defendants would suffer immediate and irreparable harm.

II. No Adequate Remedy Available at Law

Absent a preliminary injunction, APCO has the right to access the Church Defendants' Property because of its deposit of the condemnation award and a bond in double the amount of compensation awarded by the commissioners in probate court. APCO contends that doing so deprives this Court of the authority to enter a preliminary injunction preventing APCO from accessing the Church Defendants' Property. This contention itself supports the Church Defendants' basis to be without an adequate remedy at law.

The Alabama Supreme Court explained in *Opinion of the Justices*, that the right of entry upon appeal was new to the Alabama Constitution of 1901 and "therefore, remedied

this defective procedure and provided that the condemnor **could** enter pending appeal if an adequate amount of damages were paid into court and a bond filed in double the amount of said damages." 67 So. 2d 417, 420 (Ala. 1953) (emphasis added). The Court further explained:

> The object of the amendments here involved was to provide means equitable and just to all parties, whereby a person or corporation entitled to exercise the rights of eminent domain could enter into possession of the property condemned and without being compelled to await the delay resulting from litigation **in cases of appeal from such award of commissioners**.

Id. at 420-21 (emphasis added). Based on the language above, it appears that the primary purpose of the "right of entry" upon appeal was to allow a condemning authority to enter property when the amount of just compensation was at issue, as opposed to the right to take which is also at issue here. Since an appeal alone is not sufficient to prevent a condemning authority from entering property, the Church Defendants lack an adequate remedy at law. Therefore, the Court's equitable authority to preliminarily restrain certain actions is the only remedy available to the Church Defendants.

III. Likelihood of Success on the Merits

The Church Defendants' object to APCO's taking on two fronts: (1) APCO failed to perform conditions precedent to maintaining an action for condemnation and (2) the location of the line is arbitrary and capricious or wantonly injurious. First, the policy governing the Alabama Eminent Domain Code is that:

> In order to encourage and expedite the acquisition of property by agreement, to avoid litigation and relieve congestion in the courts, to assure consistent treatment of owners, and to promote public confidence in

> practices and procedures relating to the acquisition of property for public use, a condemnor, when acquiring property, shall comply with the applicable provisions of Sections 18-1A-21 through 18-1A-30.

Ala. Code § 18-1A-20.

A. Conditions Precedent to Maintaining an Action for Condemnation

The Alabama Supreme Court has stated, "[t]he Constitution of the United States requires that the [condemning authority] deal with the landowner in a fair, honest and above-board manner." *Thomas v. State*, 410 So. 2d 3, 4 (Ala. 1981). Ala. Code § 18-1A-22(a)(1) requires a condemnor to submit an offer based on an appraisal to the landowner as a condition precedent to commencing a condemnation action. Under *State v. SouthTrust Bank*, a condemning authority "cannot offer less than the established amount of just compensation" at the pre-litigation stage of the condemnation process. 634 So. 2d 561, 565 (Ala. Civ. App. 1994).

Additionally, it appears from testimony provided by Richard Maloy, which was not rebutted by any witness for APCO, that diminution in value to the remainder should have been included in APCO's appraisal. However, the final offer letters fail to provide any diminution in value to the remainder, despite that such damages are required to be "separately stated" by Ala. Code § 18-1A-22(d). The final approved offer letters were also vague and failed to provide an adequate statement and summary of damages or sufficient information regarding the rights sought to be acquired, including failing to reasonably describe the specific area of property, the specific interests sought to be acquired, or anything about advanced communication capabilities under Ala. Code §37-

16-1, *et seq*., which were sought in the Complaint for Condemnation.

The Complaint for Condemnation was filed prior to the landowner receiving the final approved offer letters; a violation of Ala. Code § 18-1A-22(d). APCO highlighted that the final approved offer letters were emailed to counsel for the Church Defendants prior to the filing of the Complaint, but this did not relieve APCO of its statutory burden to "provide the owner with a written statement and summary, showing the basis for the amount it established as just compensation for the property." *Id*. APCO claims the shortened or nonexistent time between the final approved offer letters and commencement of the condemnation action did not violate the Alabama Eminent Domain Code because the Church Defendants could have accepted the final approved offers at any time prior to the entry of the Order of Condemnation by the Probate Court. However, that would be the case in every condemnation case. Moreover, such argument fails to consider the statutorily prescribed timeline of a condemnation action and flies in the face of the purpose of the Alabama Eminent Domain Code. The statutorily prescribed time limits following the filing of a complaint are not a substitute for APCO's statutory requirement to submit a code-compliant offer based on a proper appraisal and its requirement to negotiate in good faith.

This Court finds that such failures to perform conditions precedent to maintaining an action for condemnation would justify a conditional dismissal pursuant to Ala. Code § 18-1A-230. Therefore, the Church Defendants are likely to succeed on the merits of their claims set out in this section. This claim alone satisfies the likelihood of success on

merits prong. However, the Church Defendants' arbitrary and capricious and wantonly injurious claim set out below, also satisfy this element for issuance of a preliminary injunction.

B. Arbitrary and Capricious or Wantonly Injurious

The Church Defendants challenge APCO's taking on the basis that the location of the transmission line and access roads across the Church Defendants' Property are arbitrary and capricious and wantonly injurious. The Church Defendants need only show that the location of any one of these areas are either arbitrary and capricious or wantonly injurious to the property. *Alabama Power Co. v. Taunton*, 465 So. 2d 1105, 1108 (Ala. 1984).

The testimony provided demonstrates a likelihood of success on the merits that APCO's location selection was arbitrary and capricious for its failure to consider injury to the land, development potential, future land use planning, and failure to exercise any discretion to shift the location of the line or create angles to avoid injury. Therefore, the Church Defendants have demonstrated a likelihood of success on the merits of both their arbitrary and capricious and wantonly injurious claims.

IV. Hardship Imposed

Mr. Church has a protectable property right. In ordinary situations, a property owner should be afforded protection from interference with his or her property rights until final adjudication can occur. This matter is no different except for the claimed urgency due to APCO's own timeline to use the Church Defendants' Property for

construction of a transmission line. APCO's timeline was a product of its own doing. Also, given the fact that the project is otherwise on schedule, a temporary delay for entry upon the Church Defendants' Property to allow for adequate adjudication is warranted because other areas remain available for work in the interim. As such, the Court finds that the hardship to APCO by enjoining it from entering the Church Defendants' Property would not reasonably outweigh the benefit to the Church Defendants.

WHEREFORE, the Church Defendants have provided testimony and evidence sufficient to show that absent a preliminary injunction, the Church Defendants will suffer immediate and irreparable harm, have no adequate remedy at law, are likely to succeed on the merits, and the hardship imposed on APCO does not reasonably outweigh the benefit to the Church Defendants. The Church Defendants are hereby ordered to post a ten thousand and 00/100 dollars ($10,000.00) bond.

WHEREFORE, APCO is hereby restrained and enjoined from entering the Church Defendants' Property unless and until this Court orders otherwise.

DONE this 22nd day of September, 2026.

/s/ JONATHAN A. SPANN
CIRCUIT JUDGE