

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT**

Stanley Johnson, individually and on behalf of  
all others similarly situated,

Plaintiff,

vs.

Time Warner Entertainment-Advance/  
Newhouse Partnership d/b/a Time Warner  
Cable, and South Carolina Electric & Gas Co.,

Defendants.

C/A NO.: \_\_\_\_\_

**CLASS ACTION COMPLAINT  
[JURY TRIAL DEMANDED]**

RICHLAND COUNTY  
FILED  
2015 APR -2 AM 11:15  
CLERK OF COURT  
C. P. & C. S.

Plaintiff Stanley Johnson, individually and on behalf of a class of similarly situated land owners in fee brings this action to recover damages for trespass caused by Defendant Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time n Warner Cable and its unlawful entry onto Mr. Johnson's land and appropriation and exploitation of his personal property rights for its own commercial gain. Mr. Johnson seeks relief from this illegal trespass for himself and the Class in the form of a declaration of rights, ejectment, and money damages, and would respectfully show unto the Court as follows:

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this civil action pursuant to Article V, § 11 of the South Carolina Constitution and S.C. Code §§ 15-53-10, et seq.

2. This Court has personal jurisdiction over all of the parties. Plaintiff is a citizen and resident of this State. Defendant Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable is a foreign corporation that transacts business all across this State, including in Richland County. Defendant South Carolina Electric & Gas Co. (SCE&G) is a domestic corporation with its principal place of business in Lexington County.

3. Venue is proper pursuant to S.C. Code § 15-7-10(1), which requires an action for the recovery of real property or a determination of rights concerning real property to be tried in the county in which the subject of the action or some part of the property is situated.

### **PARTIES**

4. Plaintiff Stanley Johnson is a citizen and resident of Richland County, South Carolina. Mr. Johnson is an owner in fee of land located at 1061 Old Garners Ferry Road, Columbia, South Carolina 29209 (the "Subject Property"). The tax map I.D. for the Subject Property is R19011-02-01.

5. Defendant Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable (hereinafter, "Time Warner Cable") is a for-profit corporation organized under the laws of the State of Delaware with its principal place of business in New York. Time Warner Cable sells cable, telephone, and internet services to consumers in South Carolina.

6. Defendant South Carolina Electric & Gas Co. (SCE&G) is a for-profit corporation organized under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina. SCE&G's principal business is the sale of electricity to hundreds of thousands of customers located throughout South Carolina. In order to deliver electricity to its customers SCE&G has obtained easements to run electrical transmission lines above and below hundreds of miles of other people's land, including Plaintiff's land. SCE&G is joined here pursuant to Rule 19(a) of the South Carolina Rules of Civil Procedure.

### **CLASS ACTION ALLEGATIONS**

7. Plaintiff brings this class action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure on behalf of himself and all other similarly situated landowners who have suffered

a trespass of their rights on account of Time Warner Cable's conduct. The proposed Class is defined as:

All owners in fee of real property in South Carolina—other than owners of railroad rights-of-way, platted utility easements, and/or public rights-of-way, streets and/or highways—upon whose property Defendant Time Warner Cable has made non-permissive entry to install and maintain cable optic fiber or other communication transmission lines and related equipment above or below the land.

Excluded from the class are any federal, state, or local governmental agency and any judge who has decided some or all issues in the case and any persons related to the judge in a manner that would disqualify the judge from hearing the case.

8. This action may properly be maintained as a class action under state law and satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Rule 23(a) of South Carolina Rule of Civil Procedure.

9. Members of the Class are so numerous as to make joinder of all members impracticable. Plaintiff is informed and believes that the members of the proposed Class will exceed one hundred persons. Joinder of all of these individuals is impracticable because of the large number of potential class members who are dispersed over a large geographical area, throughout the entire State of South Carolina and beyond its borders.

10. All members of the Class are landowners whose rights to are being violated by Time Warner Cable's unlawful entry and continued presence on their land. Common questions of law and fact exist as to all class members, including, but not limited to:

- a. Whether a trespass has occurred and continues to occur;
- b. Whether Time Warner Cable's entry is authorized by any easement held by a third party;

- c. Whether Plaintiff and the Class are entitled to declaratory and injunctive relief ejecting Time Warner Cable from Plaintiff's land and the land of the Class; and
- d. Whether Plaintiff and the Class are entitled to actual and punitive damages to compensate them for the loss of enjoyment in and intentional interference with their right to exclusive possession and control of their land and to communicate to Defendant the seriousness of its unlawful conduct and deter recidivism of the same.

11. Plaintiff's claims are typical of the claims of all class members. Plaintiff and class members have all suffered an invasion of their property arising from Time Warner Cable's non-permissive entry onto their land, the installation of cable optic fiber or other communication transmission lines, and the maintenance of those lines. Consequently, all claims are premised on the same legal theories and an adjudication with respect to Plaintiff's claims will be dispositive of the interests of the members of the Class.

12. Plaintiff has the requisite personal interest in the outcome of this action such that he will fairly and adequately protect the interests of the Class because Plaintiff's interests coincide with and are not antagonistic to those of the Class and its members.

13. Plaintiff has retained the undersigned counsel who have substantial experience and success in the prosecution of class actions, real estate litigation, and complex litigation. Plaintiff's counsel also has the resources, expertise, and experience to successfully prosecute this action against Defendant. Counsel is unaware of any conflict among members of the Class or between counsel and members of the Class.

14. Plaintiff is informed and believes that the amount-in-controversy requirement of Rule 23(a)(5) of the South Carolina Rules of Civil Procedure is met as to each class member because the damages each class member is entitled will exceed \$100. This action also seeks declaratory and injunctive relief, to which the amount-in-controversy requirement of Rule 23(a)(5) does not apply.

15. The monetary, declaratory, and injunctive relief sought here will vindicate the rights of the Class if ordered by this Court and is the legally appropriate remedy for the injury at issue here. Granting the relief sought here will require Defendant to take uniform remedial action to end this controversy. Conversely, prosecution of separate actions by individual class members would create a risk of inconsistent adjudications and may establish incompatible standards of conduct for Defendant.

16. Additionally, the claims of Plaintiff and the Class raise identical questions of law, set forth above and below, that outweigh any legal or factual issues particular to any class member because the legal questions raised here, namely, whether Defendant has committed a trespass and whether compensation and ejectment is warranted, is outcome determinative to all claims.

17. As such, this class action is the most efficient and expeditious means by which to resolve this dispute and is superior to all other methods of doing so, including a multiplicity of individual claims filed in a variety of forums. Conversely, individual suits by each class member to redress this common wrong would be contrary to the spirit and intent of Rule 23.

#### **FACTUAL ALLEGATIONS**

18. On February 23, 1984, Mattie S. Brooks Caughman granted SCE&G a “Right of Way Grant” or easement on real property covering 69.4 acres in Richland County, South Carolina (attached as **Exhibit A**).

19. The easement granted SCE&G a right of entry and use to install and maintain “electric line or lines” and other improvements necessary to maintain those lines. See Ex. A.

20. On May 26, 1992, Mattie S. Brooks Caughman conveyed the property, including the Subject Property, to C. Douglas Caughman, Jr.

21. On March 29, 2010, John C. Gwinn, Jr. purchased C. Douglas Caughman, Jr.’s property. This purchase included the Subject Property. On March 7, 2012, Mr. Gwinn sold the property, including the Subject Property, to Caughman Pond, LLC, which Plaintiff is informed and believes to be a limited liability company owned by Mr. Gwinn.

22. On July 1, 2014, Mr. Johnson purchased the Subject Property, a 2.08 acre parcel of land located at 1061 Old Garners Ferry Road, Columbia, South Carolina 29209, from Caughman Pond, LLC. Mr. Johnson’s parcel was carved out of the larger parcel owned by Caughman Pond.

23. At all times relevant to this action, the easement granted to SCE&G by Mattie S. Brooks Caughman in 1984 ran with the Subject Property—land now owned by Mr. Johnson.

24. SCE&G’s electrical transmission lines cross over Mr. Johnson’s property and are secured in place by poles installed and maintained on Mr. Johnson’s land by SCE&G.

25. The Subject Property is secured by a fence which Mr. Johnson keeps locked.

26. On or around the second or third week of January 2015, Time Warner Cable contacted Mr. Johnson and solicited an easement permitting the company to make entry on Mr. Johnson’s land for the purpose of installing cable optic fiber or other communication transmission lines (hereinafter, “cable lines”) and other equipment on the pole used by SCE&G to secure its electrical transmission lines.

27. Mr. Johnson declined to grant the easement and refused entry onto his land.

28. On February 20, 2015, Time Warner Cable's contractor, Edwards Telecommunication, Inc., made forcible entry onto Mr. Johnson's property without permission and caused damage to the property when so doing. Mr. Johnson advised the personnel from Edwards Telecommunications they were trespassing and demanded they leave the property, whereupon they vacated the property.

29. Sometime after this exchange, and when Mr. Johnson was no longer present at the property, Time Warner Cable, or Edwards Telecommunications acting at Time Warner Cable's direction, returned to the property, illegally made reentry, and installed Time Warner Cable cable lines and other equipment to the SCE&G pole already present on Mr. Johnson's land. Time Warner Cable secured its cable lines to the pole used by SCE&G to secure its electrical transmission lines.

30. Time Warner Cable disturbed Mr. Johnson's property further by digging into the land and burying its cable underneath the land. Upon information and belief, Time Warner Cable tunneled under Mr. Johnson's land to the street for the purpose of running its cable lines underneath the public street.

31. Time Warner Cable's cable lines do not transmit electricity for SCE&G, but are instead part of a wholly separate commercial enterprise, namely, the sale of telephone, cable, and internet services to businesses and households.

32. Neither SCE&G nor Time Warner Cable obtained Mr. Johnson's permission for Time Warner Cable to make entry onto his land and install cable lines and other equipment necessary to transmit telephone, cable, and internet services.

33. Mr. Johnson received no remuneration in exchange for this entry on to and use of his land.

34. On or about March 2015, a representative of Time Warner Cable contacted Mr. Johnson and solicited purchase of a “CABLE COMMUNICATIONS EASEMENT” from Mr. Johnson in exchange for five (\$5) dollars (attached as **Exhibit B**). Specifically, Time Warner Cable sought an easement “for the attachment of an Aerial Cable to the existing SCE&G power poles situated on the herein referenced parcel[.]” See Ex. B. Mr. Johnson, again, declined to grant the easement.

35. Time Warner Cable’s lines and equipment remain on Mr. Johnson’s land secured to SCE&G’s pole and buried under his land.

**FIRST CAUSE OF ACTION**  
**(Declaratory Judgment as to all Defendants)**

36. The allegations of the preceding paragraphs above are incorporated herein by reference as if set forth herein verbatim.

37. At all times relevant to this action, Mr. Johnson had possession of and fee in the property located at 1061 Old Garners Ferry Road, Columbia, South Carolina 29209.

38. South Carolina common law entitles Mr. Johnson to the quiet enjoyment and exclusive possession of land he owns in fee.

39. Mr. Johnson’s predecessor in interest conveyed some of his property rights, in the form of an easement, to SCE&G for the limited, express, and bargained-for purpose set forth in that easement. SCE&G’s easement permits SCE&G to maintain electrical transmission lines above the property and poles necessary to secure those lines in place.

40. The easement does not permit third-party entry or installations unrelated to SCE&G electrical transmission wires.

41. Time Warner Cable forcibly entered onto Mr. Johnson’s property, without permission, and installed cable lines and other related equipment to SCE&G’s pole.



42. Time Warner Cable's initial and ongoing invasion was intentional, in that it had actual knowledge or negligent and/or reckless disregard of Mr. Johnson's legal rights, but nonetheless made entry.

43. This trespass resulted in harm to Mr. Johnson and his legal rights.

44. Mr. Johnson is informed and believes that Time Warner Cable has also made non-permissive entry onto the land of the Class and installed cable lines and other equipment onto SCE&G poles or other existing fixtures.

45. Mr. Johnson respectfully seeks a declaration that Time Warner Cable's entry and continued presence on his land and the land of the Class is an unlawful trespass.

**SECOND CAUSE OF ACTION**  
**(Injunction ordering ejectment of Time Warner Cable)**

46. The allegations of the preceding paragraphs above are incorporated herein by reference as if set forth herein verbatim.

47. Time Warner Cable continues to trespass on Mr. Johnson's land and the land of the Class through its continued, non-permissive maintenance of cable lines and other related equipment.

48. As a result of this trespass, Mr. Johnson and the Class have suffered and continue to suffer an irreparable and immediate harm and injury to their property rights arising from Time Warner Cable's unlawful entry onto and use of land for which Mr. Johnson and the Class are entitled to possess and control to the exclusion of all others.

49. Mr. Johnson and the Class are entitled to a preliminary and permanent injunction (a) ejecting Time Warner Cable from Mr. Johnson's land and the land of the class; (b) ordering Time Warner Cable to take all necessary steps to immediately remove its cable lines from Mr.

Johnson's land and the land of the Class; and (c) restraining Time Warner Cable for further illegal entry onto Mr. Johnson's land and the land of the Class.

50. Mr. Johnson and the Class have no adequate remedy at law because the only prospective remedy for this injustice is an order ejecting Time Warner Cable and restraining its reentry.

51. Accordingly, the balance of harms here favors granting injunctive relief in order to end Time Warner Cable's illegal conduct.

52. Granting the relief sought here poses no imminent threat to public health, safety, or welfare capable of justifying the status quo.

**THIRD CAUSE OF ACTION**  
**(Trespass claim for money damages against Time Warner Cable)**

53. The allegations of the preceding paragraphs above are incorporated herein by reference as if set forth herein verbatim.

54. South Carolina common law entitles Mr. Johnson and the Class, all owners in fee, to the exclusive possession and control of their property.

55. Time Warner Cable lacked a legal right of entry onto Mr. Johnson's land and the land of the Class.

56. Nevertheless, Time Warner Cable intentionally made entry and installed cable lines, equipment, and other fixtures necessary to maintain its cable lines above and below Mr. Johnson's land and the land of the Class.

57. This unlawful entry occurred with actual knowledge or negligent and/or reckless disregard for the rights of Mr. Johnson and the Class.

58. Mr. Johnson and the Class suffered actual and consequential damages arising from Time Warner Cable's unlawful entry, installation of cable lines, and maintenance of those lines.

59. Time Warner Cable's past and ongoing trespass is perpetrated for its own pecuniary gain, because its unlawful entry and continued presence facilitates the delivery of cable communications services to South Carolina consumers. Upon information and belief, Time Warner Cable profits considerably from providing these cable, telephone, and internet services, made available to consumers via its cable lines.

60. Mr. Johnson and the Class do not receive any of the profits generated by the illegal use of their land. Nor do they receive any rents in exchange for Time Warner Cable's presence on their land.

61. Mr. Johnson and the Class are entitled to actual and consequential damages to compensate them for their loss, and punitive damages in an amount sufficient to impress on Time Warner Cable the wrongfulness of its conduct and to deter future repetition.

**FOURTH CAUSE OF ACTION**  
**(Unjust Enrichment against Time Warner Cable)**

62. The allegations of the preceding paragraphs above are incorporated herein by reference as if set forth herein verbatim.

63. Time Warner Cable has received a considerable benefit from its illegal use of Mr. Johnson's land and the land of the Class.

64. This benefit has allowed Time Warner Cable to sell cable, telephone, and internet services to South Carolina consumers which it would not otherwise be able to offer without installing and maintaining its cable lines on other people's land.

65. Upon information and belief, Time Warner Cable's conduct has resulted in considerable pecuniary gain, none of which is shared with Mr. Johnson or the Class.

66. Mr. Johnson and the Class are entitled to recover the monies by which Time Warner Cable has been unjustly enriched on account of its illegal entry and use of Mr. Johnson's land and the land of the Class.

67. Accordingly, Mr. Johnson and the Class are entitled to restitution in the form of disgorgement of all Time Warner Cable's ill-gotten gains.

### **JURY DEMAND**

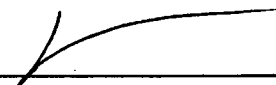
Plaintiff respectfully demands a trial by jury on all claims so triable.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiff prays, on behalf of himself and all other similarly situated, for relief in the form of:

- i. An order certifying this action as a class action pursuant to Rule 23 and appointing Plaintiff as class representative and the undersigned as class counsel;
- ii. A judicial declaration that Time Warner Cable's entry and continued presence, as set forth above, is a trespass;
- iii. An injunction (a) ejecting Time Warner Cable from Plaintiff's land and the land of the Class, (b) ordering Time Warner Cable to immediately remove its cable lines, and (c) restraining Time Warner Cable from making future entry;
- iv. A judgment for money damages to compensate Plaintiff and the Class and to impress upon Time Warner Cable the wrongfulness of its conduct;
- v. Restitution and disgorgement of all monies Time Warner Cable earned as a result of its illegal conduct;
- vi. An award of all costs, interest, and fees allowable by law;
- vii. This Court retaining jurisdiction over this matter to ensure compliance with its orders; and
- viii. Such further relief as the Court may deem just and proper.

Respectfully submitted,



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Richard A. Harpootlian (S.C. Bar No. 2725)  
Christopher P. Kenney (S.C. Bar No. 100147)  
RICHARD A. HARPOOTLIAN, P.A.  
1410 Laurel Street  
Post Office Box 1090  
Columbia, South Carolina 29202  
(803) 252-4848  
(803) 252-4810 (facsimile)  
rah@harpootlianlaw.com  
cpk@harpootlianlaw.com

Tobias G. Ward, Jr. (S.C. Bar No. 5826)  
Tobias G. Ward, Jr., PA  
534 Congaree Avenue  
Post Office Box 50124  
Columbia, South Carolina 29250  
(803) 708-4200  
(803) 403-8754 (facsimile)  
tw@tobywardlaw.com

ATTORNEYS FOR PLAINTIFF AND THE CLASS

April 2, 2015  
Columbia, South Carolina

# **Exhibit A**

**(Right of Way Grant to SCE&G from Caughman)**

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030556

INDENTURE, made this 33rd day of February, 1984, by and  
 between Mattie S. Brooks Caughman  
 REGISTER OF MORTGAGE CONVEYANCES CLARA L. BARTLETT

of the County of Richland and State of South  
 Carolina (hereinafter called Grantors), and the SOUTH CAROLINA ELECTRIC & GAS COMPANY, a South Carolina corporation,  
 having its principal office in Columbia, South Carolina (hereinafter called Grantee).

## WITNESSETH:

That, in consideration of the sum of One Dollar (\$1.00) received from Grantee, Grantors, being the owners of land situate in the  
 County of Richland, State of South Carolina, which said land abuts on the street or highway  
 known as Old Garners Ferry Road and is bounded

Northerly by lands of \_\_\_\_\_ Easterly by lands of \_\_\_\_\_  
 Southerly by lands of \_\_\_\_\_ Westerly by lands of \_\_\_\_\_

hereby grant and convey to Grantee, its successors and assigns, the right to construct, extend, replace, relocate, perpetually main-  
 tain and operate an electric line or lines consisting of any or all of the following: poles, conductors, overhead and underground  
 lightning protective wires, municipal, public, or private communication wires, guys, push braces, underground cables, or conduits,  
 transformer pads, and other accessory apparatus and equipment deemed by the Grantee to be necessary therefor, upon, over, across,  
 through, and under said land along the said street or highway and/or on, over, across, through and under my or our land described

as follows: Being a tract of land containing 69.4 acres, more or less, and being the same lands conveyed  
 to grantor by deed dated March 23, 1977 of Mattie S. B. Caughman, Augustus T. Graydon & C. Douglas Caughman, Jr.

dated March 23, 1977, and recorded in the R. M. C. Probate Judge's Office for  
Richland County in Deed Book #416, at Page #689.

Right-of-Way enters Grantor's land from the lands of Mill Creek Methodist Church; thence  
extends in a southerly direction along and parallel the easterly side of Old Garners  
Ferry Road to a pole to be located approximately 30' from the centerline of Old Garners  
Ferry Road. At this point right-of-way continues with two electrical lines, the first of  
which extends in generally a southerly direction along Old Garners Ferry Road for approxi-  
mately 285', to a point located approximately 32' from the centerline of Old Garners Ferry  
Road; thence turns to a westerly direction and crosses Old Garners Ferry Road. The second  
above mentioned electric line extends in generally a southerly direction along the east-  
erly side of the above described electric line for approximately 295', to a point located  
approximately 48' from the centerline of Old Garners Ferry Road; thence turns to a westerly  
direction and crosses Old Garners Ferry Road. Grantee also agrees to relocate guy wires  
one time to conform to Grantor's future development, provided Grantor gives a useable  
right-of-way said relocation will be done at Grantee's expense.  
 Together with the right from time to time to install on said line such additional apparatus and equipment as Grantee may deem  
 necessary and the right to remove said line or any part thereof.

Together also with the right from time to time to trim, cut or remove trees, underbrush and other obstructions that are over,  
 under, or through a strip of land extending Ten (10) feet on either side of the center  
 of said wires, cables, or conduits or any other wire strung on said line; provided, however, any damage to the property of Grantors  
 (other than that caused by said trimming, cutting or removing) caused by Grantee in maintaining or repairing said line, shall be  
 borne by Grantee. Together also with the right of entry upon the Grantors' said lands for all of the purposes aforesaid.

Grantee's rights shall be subject to the lien of the mortgage indenture dated January 1, 1945 and supplements thereto, entered  
 into between Grantee and Central Hanover Bank and Trust Company (now Manufacturers Hanover Trust Company) which mortgage  
 indenture is recorded in the office of the R. M. C. or Clerk of Court in the County and State aforesaid.

The words "Grantors" and "Grantee" shall include their heirs, executors, administrators, successors and assigns, as the case  
 may be.

IN WITNESS WHEREOF, Grantors have caused this indenture to be duly executed the day and year first above written.

## WITNESS:

W. A. Henth

H. Howard Ruff



Mattie S. Brooks Caughman (SEAL)  
 Mattie S. Brooks Caughman

(SEAL)

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(SEAL)

(SEAL)

RW-4-E-SC-7-68

State of South Carolina, }

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030556

County of Richland }

Personally appeared before me \_\_\_\_\_ W. A. Hentz  
and made oath that he saw the within named \_\_\_\_\_ Mattie S. Brooks Caughmansign, seal and  
as his act and deed deliver the within \_\_\_\_\_ easement \_\_\_\_\_ for the uses and purposes therein mentioned, and that he with  
H. Howard Ruff \_\_\_\_\_ in the presence of each other, witnessed the due execution thereof.Sworn to before me this 23rd  
day of February, 1984 }My Commission Expires January 26, 1989 Notary Public for S. C.  
STATE OF SOUTH CAROLINA, }

W. A. Hentz

County. }

Personally appeared before me \_\_\_\_\_  
and made oath that \_\_\_\_\_ saw the within named \_\_\_\_\_  
by the hand of \_\_\_\_\_ sign, affix the  
corporate seal, and as the act and deed of said corporation deliver the within written instrument for the uses and purposes therein  
mentioned and that \_\_\_\_\_ with \_\_\_\_\_ witnessed the execution thereof and  
subscribed \_\_\_\_\_ names as witnesses thereto.  
Sworn to and subscribed before me, this \_\_\_\_\_  
day of \_\_\_\_\_ A. D., 19 \_\_\_\_\_  
(L. S.)

Notary Public for S. C.

State of South Carolina, }

County of \_\_\_\_\_ }

I, \_\_\_\_\_ do hereby certify  
unto all whom it may concern that \_\_\_\_\_, the wife of the within named  
\_\_\_\_\_ did this day appear before me, and, upon being privately and  
separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or  
persons whomsoever, renounce, release and forever relinquish unto the within named South Carolina Electric & Gas Company  
its heirs and assigns, all her interests and estate, and also all her right and claim of dower of, in or to all and singular the premises  
within mentioned and released.Given under my hand and seal this \_\_\_\_\_  
day of \_\_\_\_\_ A. D., 19 \_\_\_\_\_

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Notary Public for S. C.

Line: Millcreek Substation Feeder

County: Richland

RIGHT OF WAY GRANT

R/W File No. 4650 Block No. 120, 3

Mattie S. Brooks Caughman

TO

South Carolina Electric & Gas  
Company

Dated: February 23, 1984

Received in the Clerk's Office of the County

of Richland

South Carolina, on the 7

day of March, A. D. 1984.

at 4:17 o'clock in the noon

and recorded in Book 1684 of Deeds

for said County on Page 846

Clara S. Bartlett



# **Exhibit B**

**(Unexecuted Cable Communication Easement)**

**Witness**