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December 16, 2010

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 1st Street NE
Washington, DC 20426

Ms. Jennifer Adams
Project Coordinator
Federal Energy Regulatory Commission
888 1st Street NE
Washington, DC 20426

Re: Martin Hydroelectric Project (FERC No. 349-150) – Central Elmore Water & Sewer Authority Follow-up Comments to the Federal Energy Regulatory Commission

Dear Secretary Bose and Ms. Adams:

As previously noted in prior communications, I represent Central Elmore Water & Sewer Authority (CEW&SA) which is an Alabama Rural Water and Sewer Authority as organized and authorized by § 11-88-1, et seq., *Code of Alabama (1975)*, located in Elmore County, Alabama. CEW&SA has the responsibility to provide potable water to over 11,000 active meter connections directly, and distributes water to four (4) other municipal or cooperative water utilities in central Alabama. CEW&SA's primary mandate is to provide an adequate, consistent source of potable water at a reasonable and equitable price, to over 60,000 individuals and businesses to enhance the safety, health, convenience, and welfare of the citizens thereof.

On November 1, 2010, I filed on behalf of CEW&SA comments related to Alabama Power's Study Plan Report (see attached Exhibit "A"). In that correspondence I noted the following:

"Alabama Power has made an offer to meet in early November to further discuss a prospective water withdrawal agreement for the upcoming license period for Lake Martin."

Unfortunately, Alabama Power unilaterally cancelled the meeting following the filing of CEW&SA's comments contained in the above referenced letter. Apparently Alabama Power did not appreciate what CEW&SA had to say and decided to restrict communications with CEW&SA concerning these very pressing issues. Alabama Power has neither attempted to communicate its concerns to CEW&SA nor has it made any further effort to meet with CEW&SA to discuss the pending water withdrawal issue that is of vital importance to CEW&SA and its tens of thousands of customers that will be adversely affected in a significant way if this issue is not worked out in an equitable manner.

I again respectfully request that FERC meet with representatives of CEW&SA to further discuss the concerns outlined in my November 1, 2010 correspondence to FERC as well as any other concerns that may be raised. CEW&SA is concerned that Alabama Power has simply attempted to circumvent the goals of the Integrated Licensing Process (ILP) by performing all of the perfunctory duties of an ILP but not addressing substantive issues that have a significant impact on individuals and businesses affected by the hydroelectric licensing process. It appears that these are the kinds of issues that the ILP was designed to address.

I further respectfully request that FERC utilize its authority to regulate this process and call for Alabama Power to address in a substantive manner any significant outstanding issue that it has heretofore refused to grant a good-faith effort to resolve, prior to the filing of the Preliminary License Proposal or its License Application. A slight delay in the license process will not unduly prejudice Alabama Power in its relicensing efforts but may well resolve a number of outstanding and important issues that will otherwise have to be handled through a more expensive and formal complaint process following the filing of the License Application. Otherwise, FERC may want to consider holding Alabama Power responsible for legal fees and other costs incurred for any active stakeholder that is successful in filing a complaint for an issue raised during the Study Plan period that was not adequately addressed by Alabama Power prior to filing its license application for the Martin Hydroelectric Project (FERC No. 349-150).

As FERC is well aware, these hydroelectric license periods run for very significant periods of time (I have heard them referred to as "once-in-a-lifetime" licenses). It is imperative that these issues affecting the human environment that are not being addressed by Alabama Power be dealt with in a reasonable, equitable and timely manner. There are too many people that will be adversely affected by the lack of full consideration by Alabama Power or FERC of these important, life-enhancing issues.

In addition, CEW&SA has over the last several decades and specifically over the last decade made very significant infrastructure investments (into the tens of millions of dollars) and other business decisions based upon its ability to obtain water resources at a reasonable price based on FERC's previous ruling. These infrastructure investments and the operation of CEW&SA has been meticulously designed and structured to allow CEW&SA to charge its customers a reasonable and competitive price for potable water while extending service to numerous individuals that did not previously have access to treated, potable water. The short-sighted and inequitable compensation arrangement for water withdrawals proposed by Alabama Power will cause significant increases in the cost of potable water, place additional burden on

CEW&SA to meet its debt service ratio for its bond holders, and disable CEW&SA's long-standing goal of adding additional access to potable water in rural areas as the opportunity arises and funds are made available.

Again, CEW&SA appreciates FERC considering CEW&SA's concerns in the licensing process for the Martin Hydroelectric Project (FERC No. 349-150). CEW&SA reiterates the concerns it raised in its November 1, 2010 correspondence referenced above. I look forward to continuing to participate in the relicensing process as a representative of CEW&SA, working with Alabama Power in the negotiations for a new water withdrawal agreement, and working with FERC to ensure that the relicensing process is fair and stakeholders are treated in an equitable manner.

I look forward to hearing from you soon.

Yours Truly,



Robert J. Morris

RJM/bi

cc: Mr. Jeff Wright, Director of Office of Energy Projects, FERC (*via email*)
Mr. Mark Pawlowski, South Division Director, FERC (*via email*)
Mr. Charles Wagner, Regional Engineer, FERC (*via email*)
Mr. James H. Hancock, Esq. (*via email*)
Mr. Earl Reeves, Chairman, Elmore County Commission (*via email*)
Mr. Joe Faulk, Commissioner, Elmore County Commission (*via email*)
Mr. Patrick Pinkston, Esq. (*via email*)
Mr. Thomas C. Ingram, Chairman, CEW&SA
Mr. Kenneth Holt, Vice-Chairman, CEW&SA
Mr. H. Wade Johnson, Board Member, CEW&SA
Mr. Robert L. Prince, Jr., General Manager, CEW&SA (*via email*)
Mr. J. Theodore Jackson, Esq. (*via email*)
Mr. Chris Simmons, Esq. (*via email*)

EXHIBIT "A"

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November 1, 2010

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 1st Street NE
Washington, DC 20426

Re: Martin Hydroelectric Project (FERC No. 349-150) – Central Elmore Water & Sewer Authority Comments to the Federal Energy Regulatory Commission Regarding Alabama Power Study Plan Report

Dear Secretary Bose,

As stated in previous correspondence, I represent Central Elmore Water & Sewer Authority (CEW&SA) which is an Alabama Rural Water and Sewer Authority as organized and authorized by § 11-88, et seq., *Code of Alabama (1975)*, located in Elmore County, Alabama. CEW&SA has the responsibility to provide potable water to over 11,000 active meter connections directly, and distributes water to four (4) other municipal or cooperative water utilities in central Alabama. CEW&SA's primary mandate is to provide an adequate, consistent source of potable water at a reasonable and equitable price, to over 60,000 individuals and businesses to enhance the safety, health, convenience, and welfare of the citizens thereof.

I want to thank the Federal Energy Regulatory Commission (FERC) for allowing CEW&SA to provide comments on Alabama Power's Study Plan Report submitted on September 1, 2010. The Report contains an accumulation of individual Study Plans that have been prepared as of the date of the Report¹. The Report contains a rich variety of information and data covering numerous topics that have been researched and reported in relation to the relicensing of the Martin Hydroelectric Project (FERC No. 349-150). While all of the Study Plans prepared and compiled in the Report are important and the information and data accumulated is interesting as well as relevant to the relicensing process, the comments noted in this letter will be limited to the issues of particular importance and relevance to CEW&SA's

¹ As of the date for the Study Plan Report, September 1, 2010, a number of the Study Plans had not been finalized and/or released.

primary mission which is to provide adequate, consistent, and reasonably priced potable water to its customers.

The Study Plan that has a direct and substantial impact on CEW&SA and its customers is the *Water Quantity, Water Use and Water Withdrawals* White Paper (AP White Paper) that was produced by Alabama Power. The initial draft of the AP White Paper was released in late March (see attached Exhibit "A"). Following an initial review of the draft AP White Paper, CEW&SA developed some significant concerns with Alabama Power's overall approach to water withdrawals and the proposed pricing methodology for water withdrawals contained in the draft AP White Paper. In addition, CEW&SA experienced unease regarding the apparent inequitable treatment of the two material water withdrawers² for the prospective licensing period. On behalf of CEW&SA, I filed a response to the initial draft of the AP White Paper on April 16, 2010 (see attached Exhibit "B"). CEW&SA received no response from FERC or Alabama Power regarding the issues raised by CEW&SA in the April 16, 2010 letter.

On August 5, 2010, I sent to FERC correspondence (see attached Exhibit "C") requesting a (public) meeting to discuss CEW&SA's serious concerns regarding Alabama Power's efforts to relicense the Martin Hydroelectric Project (FERC No. 349-150). On August 20, 2010, a meeting between CEW&SA and FERC was scheduled to discuss the concerns of CEW&SA that directly affected many individuals and businesses in central Alabama. In addition, the Elmore County Commission was to be part of the meeting following its request to FERC due to similar concerns regarding the issues raised by CEW&SA. The joint public meeting between FERC, CEW&SA, and the Elmore County Commission was scheduled for September 14, 2010. On August 30, 2010, FERC unilaterally and inexplicably cancelled the scheduled joint public meeting. CEW&SA again requests a meeting with FERC to discuss its concerns with the relicensing of Martin Hydroelectric Project (FERC No. 349-150) by Alabama Power.

Following CEW&SA's request to FERC in August regarding scheduling a meeting to discuss CEW&SA's concerns, Alabama Power released its final version of the AP White Paper (see attached Exhibit "D"). The final AP White Paper, issued in August, 2010, and the draft AP White Paper, issued in late March, 2010, are virtually identical. No changes or recognition regarding the concerns held by CEW&SA were addressed in the final AP White Paper or in any other manner.

On September 14, 2010, representatives from CEW&SA attended the FERC required Study Plan Report Meeting hosted by Alabama Power in Alexander City, Alabama. A number of questions relating to the AP White Paper were proffered by representatives of CEW&SA. It was observed that many of the responses by Alabama Power to CEW&SA's inquires were incomplete, confusing, or simply not answered. Due to CEW&SA's perceived lack of response to its inquiries, on October 1, 2010, I, on behalf of CEW&SA, sent a letter to Alabama Power (see attached Exhibit "E") outlining CEW&SA's concerns in more detail, as well as requesting

² It is CEW&SA's understanding that the city of Alexander City, Alabama, under contract with Alabama Power, is currently allowed to withdraw from Lake Martin up to 24 million gallons per day at no cost and that this arrangement will be continued into the new proposed licensing period.

additional information to further evaluate Alabama Power's position and proposed water withdrawal policy. This correspondence was electronically filed with FERC. The letter to Alabama Power requested a response by October 20, 2010, to allow CEW&SA time to analyze the information and provide to FERC a more knowledgeable response to Alabama Power's Study Plan Report in anticipation of the November 1, 2010, Study Plan Report response deadline. To date, no additional information requested by CEW&SA has been provided by Alabama Power. However, Alabama Power has made an offer to meet in early November to further discuss a prospective water withdrawal agreement for the upcoming license period for Lake Martin. Therefore, the comments contained in this correspondence may well be incomplete based on lack of disclosure by Alabama Power. CEW&SA respectfully requests an opportunity to further comment to FERC on the Alabama Power Study Plan Report or any other related information as CEW&SA receives applicable information from Alabama Power or other relevant sources in its effort to further understand the issues of concern to CEW&SA noted in this and previous correspondence.

The entire constitution of Study Plan 11 was the AP White Paper prepared by Alabama Power. CEW&SA's initial comment is that Study Plan 11 is not a study plan at all but simply a general position paper outlining Alabama Power's proposed water withdrawal policy, a summary of its proposed water withdrawal compensation plan, and other general information regarding the operations of Martin Dam including minimum flow requirements. There is no way any organization could compute, calculate, or otherwise determine what impact Alabama Power's proposed water withdrawal policy will have in the upcoming licensing period based on the information contained in Study Plan 11. Other specific questions or comments that CEW&SA has regarding the Study Plan include the following (most of these are found in my October 1, 2010, correspondence with Alabama Power found in Exhibit "E"):

1. In Section 1.0 of the AP White Paper, it states "In preliminary consultation with various agencies and stakeholders, the following issues were identified: the amount of water being withdrawn from Lake Martin and the correlation with population; limiting future water withdrawals, especially for municipal users; and accommodating permitted withdrawals for riparian use." At Alabama Power's Study Plan Meeting on September 14, 2010, a question was posed as to who or what organizations were concerned with water withdrawals by municipalities out of Lake Martin. Essentially the response by Alabama Power was that someone had raised that concern at one of the earlier meetings but no one remembered who made the comment or what organization the person represented. While it may have been mentioned in a distant meeting years ago, the manner in which Alabama Power presents this issue in its policy statement creates the impression that the limitation of future water withdrawals is of consequential concern to stakeholders. There appears to be no evidence of any follow-up by Alabama Power to address this concern. However, Alabama Power continues to assert such concern in its Executive Summary of its withdrawal policy. In addition, there was no statement of concern or importance for residents, visitors, and businesses to have access to a plentiful water supply for consumption, health, and safety, or the reasonableness of the costs for such water. Alabama Power did not

respond to or address in any way in its AP White Paper (or in any other manner) CEW&SA's concerns raised in my letter dated April 16, 2010.

2. In Section 2.3 of the AP White Paper, it states, "All water withdrawals from project reservoirs require Alabama Power approval." This statement appears to be misleading based upon the "Order Approving Application for Non-Project Use of Project Lands and Waters..." (see attached Exhibit "F") issued by FERC on February 16, 1996, following prior litigation between CEW&SA and Alabama Power. The Order indicates that an entity may obtain approval directly from FERC for water withdrawals from Lake Martin in the event Alabama Power does not approve or opposes such withdrawal. This statement appears to be in direct contradiction to FERC's Order issued February 16, 1996, a contradiction that may be of relevance and real importance to FERC in its relicensing inquiry. This statement may be misleading for other potential water withdrawers as to their rights to utilize the public water contained in the Martin Dam reservoir for human consumption, health or safety.
3. In the first paragraph of Section 2.6 of the AP White Paper, it states, "The current compensation methodology was developed using a pricing method similar to that employed by the USACE [United States Army Corps of Engineers] and has been accepted by FERC." It is the understanding of CEW&SA that some of the types of charges noted may have similar names and possibly similar computation factors but Alabama Power's cumulative pricing methodology differs substantially with the USACE's pricing methodology to the point where calling the pricing methods similar could be construed as an inaccurate statement. In fact, CEW&SA believes that Alabama Power's methodology differs significantly from the accepted USACE approach, and respectfully insists that FERC address these differences with Alabama Power. CEW&SA further notes that neither the computation for pricing water withdrawals by Alabama Power or the referenced USACE compensation methodology are detailed in the AP White Paper.
4. Alabama Power states in paragraph two of Section 2.6 of the AP White Paper that the charges contained in its proposed water withdrawal compensation policy are designed to accomplish three basic purposes. The primary purpose of the AP White Paper should be to provide to Alabama Power and its electric customers fair compensation for the impacts caused by water withdrawals. This impetus for Alabama Power is to avoid a situation wherein its electric customers are in effect subsidizing water suppliers and their customers. This purpose was legitimized in the Order issued by FERC on February 16, 1996, noted above. FERC noted in its Order issued on February 16, 1996, that compensation for foregone generation may be required under joint use of the Martin Dam Project. CEW&SA believes that any compensation due Alabama Power for foregone generation should be identifiable and verifiable, as well as the calculation of the compensation itself. The AP White Paper does not outline a specific calculation for foregone generation compensation, contain any formula for making the calculations, or provide any example of a calculation using the formula

with current formula data inputs. It would seem that the study should include such an example to allow water withdrawers to understand the economic impact of the water withdrawal compensation policy being proposed.

5. CEW&SA is of the opinion that FERC stated in its February 16, 1996, Order that the manner in which Alabama Power is made whole from water withdrawals from Lake Martin is through monetary reimbursement by CEW&SA for Alabama Power's lost electrical generating capacity at Martin Dam. It appears that Alabama Power's current position is contradictory to that of FERC's February 16, 1996, Order. This contradiction should be relevant and of real meaning in FERC's licensing inquiry.
6. The second basic purpose for Alabama Power's water withdrawal compensation policy stated in paragraph two of Section 2.6 of the AP White Paper is to have the effect of causing withdrawers to conserve water use. Alabama Power has not cited any FERC authority requiring water conservation. Is conservation a FERC requirement or a policy Alabama Power has decided to impose on Lake Martin water withdrawals? Has Alabama Power implemented any water conservation actions of its own at Lake Martin or with respect to its operations elsewhere with respect to its electrical generation assets? Did Alabama Power evaluate or consider the efforts made by any or all of the water withdrawers to encourage conservation of water themselves by various means, including rate structure or adoption of water conservation plans? While Alabama Power's purpose may be notable, if current water withdrawers are making significant efforts to encourage conservation of water resources, this fact should be taken into account. In addition, how is the amount of water that is utilized by the current water withdrawers from Lake Martin compared to the water use and/or utilization by Alabama Power in its electricity generating efforts at Martin Dam and other utilizations of Lake Martin? Also, if water conservation is a FERC required purpose, it would be reasonable to require Alabama Power to perform a study to determine if such a purpose can be realized based on its proposed new license application, what manner would be the most equitable for the parties affected, and whether the purpose has already been met through the efforts of others subject to Alabama Power's proposed water withdrawal compensation arrangement. It is CEW&SA's belief that information found in such a study plan would be relevant and of real meaning to FERC in its licensing inquiry.
7. The third basic purpose for Alabama Power's water withdrawal compensation policy found in paragraph two of Section 2.6 of the AP White Paper states, "...the charges are intended to encourage others to develop additional storage capacity in this region of the country." No FERC requirement is cited showing that FERC requires encouragement of the development of additional water storage capacity. Alabama Power provides no evidence in its AP White Paper or otherwise that it has actively supported other organizations to build water storage capacity. In the case of CEW&SA, it is located between two large basins (Coosa and Tallapoosa) utilized by Alabama Power. It is difficult to conceive that Alabama Power would be supportive

of the construction of a water reservoir between these basins due to the fact that a water reservoir planned for this area would affect water inflows into the Martin Hydroelectric Project (FERC No. 349-150). If Alabama Power is proposing such projects should be considered, then it would make sense that a study plan be developed to determine the feasibility, as well as the impact of such a water reservoir project.

8. Alabama Power notes in the AP White Paper that there are three primary components for water withdrawals which include Replacement Energy Charge, Storage Value Charge and Reservation Charge. If FERC has previously noted in its February 16, 1996 Order, as noted above, that compensation for Replacement Energy Charge is adequate to make Alabama Power whole, it would seem that any additional charges, such as storage and reservation, as proposed by Alabama Power in its AP White Paper, would put CEW&SA's customers in a position of subsidizing Alabama Power and its shareholders. This situation is significant due to Alabama Power's position, as noted in the AP White Paper, that its customers not subsidize the customers of water withdrawers.
9. Alabama Power did not provide in the AP White Paper or otherwise a current estimate of what it is planning to charge water withdrawers, including CEW&SA, or a specific computation for each of the compensation components it has proposed. CEW&SA respectfully requests that FERC require Alabama Power to disclose in detail its formula and/or calculation for each compensation component and include data, information sources and computation examples.
10. In paragraph two of Section 2.6 of the AP White Paper, Alabama Power again notes its water withdrawal compensation methodology is based on a similar program administered by the USACE. CEW&SA does not find any water withdrawal compensation charge by the USACE similar to the Reservation Charge that is outlined in Section 2.6.3 in the AP White Paper. Again, this statement seems misleading with respect to the presentation of Alabama Power's current water withdrawal policy.
11. In Section 2.6.1 of the AP White Paper, it states, "Alabama Power encourages water users to return as much water as possible to the reservoirs by offering a credit against energy charges for any identifiable and verifiable amounts of water returned to our reservoirs." The AP White Paper does not describe any type of methodology for determining such amounts nor are the terms "identifiable" and "verifiable" defined. It would seem appropriate that a study plan be developed to determine what identifiable and verifiable waters are being returned to the Martin Hydroelectric Project (FERC No. 349-150), and to what organization should the credit for the water returns be given, if any.

12. In evaluating the current water withdrawal policy as it may affect Lake Martin, there are only two water withdrawers that take an average of at least 1 million gallons per day (MGD). Since Alabama Power's proposed water withdrawal policy does not currently apply to either of the larger water withdrawers on Lake Martin, it only makes sense that a detailed study plan and/or comprehensive evaluation would be performed to evaluate the impact the proposed water withdrawal policy may have upon the water withdrawers and their significant number of customers, including the socio-economic effect for the tens of thousands of individuals, businesses, and municipalities that rely upon the Lake Martin water withdrawals for potable water, including CEW&SA, a Rural Water Authority organized under Alabama Code § 11-88, et seq., *Code of Alabama (1975)*. CEW&SA believes such a study plan would yield valuable information for Alabama Power, FERC and many other stakeholders, including CEW&SA. In addition, the development of alternatives could be determined and evaluated to determine what appropriate, justifiable and equitable factors should be considered in balancing the consideration of Alabama Power, the water withdrawers and other various uses of the public waters under consideration by FERC.

13. While the AP White Paper notes the water withdrawals by various water withdrawers utilizing the Martin Hydroelectric Project (FERC No. 349-150) primarily for potable water for tens of thousands of citizens in central Alabama, the AP White Paper does not mention the water usage by Alabama Power in generating power, water unutilized due to spillage, or the amount of water lost to evaporation every year. It is CEW&SA's contention that this information would put into perspective the usage by CEW&SA and other water withdrawers. It is CEW&SA's belief that an objective evaluation of water usage from the Lake Martin by a well designed study plan would show that the effect of CEW&SA's water withdrawals on water utilization of Lake Martin or Alabama Power is quite negligible.

To summarize the specific comments regarding the AP White Paper prepared by Alabama Power for Study Plan 11, CEW&SA would state that the AP White Paper is much too vague and general to be a useful tool for FERC or interested stakeholders to use to evaluate the impact of Alabama Power's proposed water withdrawal policy on water withdrawals or use, individual water withdrawers, or users of such potable water including various individuals and businesses that may be sensitive to water price modifications. While the AP White Paper contains valuable general information regarding Alabama Power's proposed water withdrawal policy, CEW&SA respectfully requests FERC require additional studies and information to allow water users, water withdrawers and other stakeholders to gain more comprehensive information to evaluate prospective water withdrawals and usage. CEW&SA notes the following potential study plans:

- A. *An Economic Impact Study* – This study should be designed to evaluate the impact of Alabama Power's proposed water withdrawal policy on current water withdrawers and users as well as prospective water withdrawers and users. In addition, this study

should be designed to take into account the economic impacts the water withdrawers have on the economy around the lake as well as the areas they serve in central Alabama. It would also be reasonable to take into account the power usage the water withdrawers utilize in withdrawing and treating the water from Lake Martin. It would be CEW&SA's contention that Alabama Power makes more than adequate profits from selling power to the (quasi-government) water withdrawers and its customers that would otherwise be unable to develop but for the availability of potable water, to justify limiting the amount of compensation necessary to make Alabama Power "whole". The previously approved Study Plan 11 does not in any way address the socio-economic impact of Alabama Power's water withdrawal policy or the impact of the various water withdrawers as it may relate to the Martin Hydroelectric Project (FERC No. 349-150) or central Alabama.

- B. *A Water Usage and Utilization Study* – This study should be designed to evaluate the material water usage from Lake Martin, including the two primary water withdrawers, Alabama Power, and any other means by which water is used or disposed, including, but not limited to, electricity generation, dam spillage and evaporation. This will help FERC recognize the various utilizations of the public water held at Lake Martin and the impact such utilizations have on the operation and water volume held at the Martin Hydroelectric Project (FERC No. 349-150).
- C. *A Water Compensation Methodology Comparison Study* – The Study Plan could be designed to evaluate whether any factors other than lost power generation should be included in the water withdrawal formula. This will help to determine the equitable nature of the water withdrawal compensation methodologies and their application to existing water withdrawers. In addition, the study plan would allow future prospective water withdrawers a basis to determine costs of estimated water withdrawals from the Martin Hydroelectric Project (FERC No. 349-150) should such water withdrawals be approved by Alabama Power and/or FERC.
- D. *A Water Reservoir Feasibility Study* – This Study Plan could be designed to evaluate the feasibility of constructing water reservoirs in the Coosa and/or Tallapoosa Basin to provide water for treatment and potable water use by customers of current and prospective water withdrawers from Lake Martin. While it seems odd that Alabama Power would want to encourage these significant projects that likely would adversely affect its operation of the Martin Hydroelectric Project (FERC No. 349-150), if this is Alabama Power's stated goal in its AP White Paper then a study plan should be undertaken to determine the realistic achievability such a goal. Alabama Power should not base its water withdrawal policy on goals without ascertaining the feasibility of such goals. This study plan would help Alabama Power determine the feasibility of its stated goal and help FERC evaluate the position Alabama Power has taken with regard to this aspect in its proposed water withdrawal policy.

- E. *A Water Return Study* – This study plan would help Alabama Power determine the amount, frequency, and source of water being returned to the Lake Martin reservoir from its various utilizations from the reservoir. This would help Alabama Power to promote or enhance efforts with users and water withdrawers to determine ways to increase water returns to the Martin Hydroelectric Project (FERC No. 349-150). In addition, this would allow water withdrawers to receive monetary credit for its return of water that has been previously withdrawn for potable water provided to various citizens and businesses of Central Alabama.

The previously approved Study Plan 11 does not in any way address the socio-economic impact of Alabama Power’s proposed water withdrawal policy or the impact of the various water withdrawers as it may relate to the Martin Hydroelectric Project (FERC No. 349-150) or central Alabama. Alabama Power knew long ago that water withdrawals would be an issue in its proposed relicensing but choose not to incorporate any meaningful information or study plan to fully analyze the impact this issue would have in the relicensing of the Martin Hydroelectric Project (FERC No. 349-150) or the application of its proposed water withdrawal policy would have on current and prospective water withdrawers and their significant customer base. The request for these specific study plans was not made earlier because Alabama Power just released Study Plan 11 a few months ago. The new study plan requests would enable Alabama Power and FERC to fulfill its obligation to fully evaluate issues having a significant impact upon the human environment such as the utilization of water resources for human consumption, health, and safety, as well as the cost of water withdrawals out of the Martin Hydroelectric Project (FERC No. 349-150). CEW&SA believes the data is readily available to compile and perform the analysis that the above described study plans would require. As FERC is aware, and as Alabama Power well knows, 16 U.S.C. § 803(a)(1) states the following:

“That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, **water supply**, and recreational and other purposes ...” (Emphasis added)

This requires FERC to ensure that hydroelectric projects subject to its licensing oversight will seek to optimize the utilization of the waterway by balancing various uses, not just the ability to generate power by a licensee. These proposed study plans will greatly enhance this effort. In addition, CEW&SA recognizes Alabama Power’s desire to file various pre-license and license applications by certain dates to meet certain deadlines so temporary extensions to its current license will not have to be considered. However, CEW&SA would note that this hydroelectric license is for a 30 to 50 year period, which would indicate that the ability for stakeholders and FERC to obtain necessary information to evaluate or analyze issues material to the relicensing of the Martin Hydroelectric Project (FERC No. 349-150) should have priority and precedence over

pre-structured deadlines that may be set. Alabama Power had the opportunity to address water withdrawals in a much more substantive manner long ago, but chose to prepare and disclose the detail void Study Plan 11 “late in the game.”

CEW&SA has an interest in the proposed Rule Curve Change and Study Plan 12 and many of its component studies. CEW&SA is interested in the evaluation of an extended summer pool as proposed in a number of the alternatives in the Study Plan 12 series. This is based on CEW&SA’s experience with the drought of 2007. CEW&SA spent in excess of \$300,000 (excluding additional power costs) in 2007 to modify its water intake ability due to the drought conditions. Additional water in the reservoir during the late summer and early fall months could reduce the chances of costly modifications to CEW&SA’s water intake system in the event of an extreme drought. However, an extended summer pool may have additional water withdrawal cost factors that may, over a period of time, offset the benefits of an extended summer pool. Unfortunately, Alabama Power has not provided adequate information in its Study Plan 11 for CEW&SA to make any type of reasonable determination of projected cost to fully evaluate the costs and benefits of the various proposals noted in Study Plan 12. It also appears unfortunate that this analysis of the extension of the summer pool now appears to be a moot point based on observations at the recent October 26, 2010, meeting hosted by Alabama Power.

Representatives for CEW&SA attended the presentation on both October 13, 2010 and October 26, 2010, by Alabama Power of its Multi-Criteria Decision Analysis Tool which was apparently designed to take the data collected to-date from the Study Plans and organize said data into sub-criteria categories. Then the sub-criteria categories were organized into four (4) major criteria items. While the data units were represented in various measurements, somehow a spreadsheet was constructed to account for the data and also take into account the preferences of different stakeholder groups. Based on the Study Plan 12 results, twenty four (24) alternatives were evaluated regarding the proposed Rule Curve Change. Regardless of the stakeholder preferences, it happens that the underlying data somehow determined a very narrow set of alternatives (alternatives 2-6) were of preference in any scenario of preferences. While CEW&SA has not performed any type of extensive analysis of the Alabama Power produced spreadsheet that contains the underlying data or the effect of every possible combination of stakeholder preferences, I would observe that the results did not make intuitive sense. There were many great questions posed by stakeholders at Alabama Power’s most recent meeting on October 26, 2010, concerning the underlying assumptions and organization of data in the Multi-Criteria Decision Analysis Tool that seemed to drive the results. While Alabama Power has generated a great deal of data to be considered in the Rule Curve Change, it seems the culmination of data into the gigantic Multi-Criteria Decision Analysis Tool spreadsheet, with limited analysis time by stakeholders, may have provided “rushed” results that, with additional time, independent analysis and more flexibility in the data organization process, may otherwise produce. It should be noted that several significant Study Plans have not been finished or disclosed as of the date of Alabama Power’s “final” decision as to the alternatives to consider in its preparation of its Preliminary License Proposal.

In addition to CEW&SA’s recommendations for the various proposed study plans to enhance the needed critical data for water withdrawers, CEW&SA has developed a significant

concern regarding this entire relicensing process that has not been addressed in any way by any of the study plans. The issue involves dam safety. Regardless of any stakeholders interest in the Martin Hydroelectric Project (FERC No. 349-150), the integrity of the dam itself is of vital importance. It has occurred to CEW&SA that the typical design life of a large structure such as Martin Dam is normally 50 years. Martin Dam is over 80 years old. By the time the next relicensing term is over the dam will be well over 100 years old. While CEW&SA is unsure of previous remediation procedures taken by Alabama Power to enhance the integrity of Martin Dam, CEW&SA recommends FERC require a thorough, independent review of the dam structure to determine its integrity and make recommendations to FERC and Alabama Power of any actions that are required to ensure Martin Dam is operated in safe, secure and consistent manner. Failure of the Martin Dam structure would have catastrophic consequences for all stakeholders involved.

In CEW&SA's analysis of the situation, it is of the opinion that FERC should require and perform an Environmental Impact Study (EIS) to address the many concerns addressed in this correspondence much more fully and comprehensively, as well as other issues raised by various stakeholders. It is also the opinion of CEW&SA that due to the significance of the Lake Martin Reservoir and its considerable impact on the human environment for central Alabama and beyond, and the extreme length of the license itself, an EIS is very much warranted and perhaps required by NEPA. The relicensing of Lake Martin should be considered a major federal action, which under NEPA, requires an EIS. It seems inconceivable that a 30 to 50 year "once in a lifetime" hydroelectric license for a major body of public water with significant economic, social and environmental influence maintained by an 80+ year old dam does not warrant major federal action status. While CEW&SA understands the normal course of action is for FERC to perform an Environmental Assessment (EA) to determine if an EIS is necessary, it is CEW&SA opinion that due to the unique nature and substantial human environmental impact of this project, an EIS should be conducted.

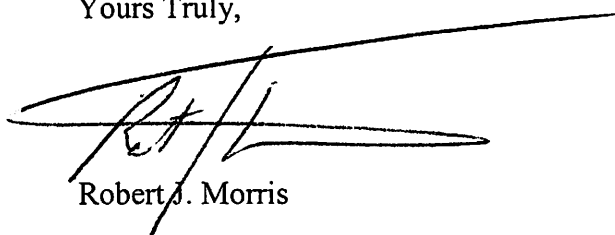
A number of years ago FERC developed the Integrated License Procedure (ILP) to merge the pre-filing consultation requirements and the initial National Environmental Policy Act (NEPA) process for the primary purpose of maximizing federal and state agency coordination with the licensing process, as well as bringing finality to study plan and stakeholder disputes. While Alabama Power has certainly generated lots of data and studies, it appears that the information generated to-date has not addressed many of the material outstanding issues that could have been addressed with additional study plans designed to provide critical information for FERC. Due to lack of information concerning its proposed water withdrawal compensation plan and the "late in the game" disclosure of Study Plan 11, CEW&SA is now at a significant disadvantage and potential risk in its ability to prepare for its customers' future needs. While CEW&SA certainly appreciates Alabama Power's efforts during the relicensing process, CEW&SA believes the information provided for the CEW&SA's primary issue of concern, water withdrawals, is woefully inadequate and asks for FERC's help in encouraging Alabama Power to provide to CEW&SA any reasonable information requested to allow the parties to negotiate with adequate knowledge in good faith. It is CEW&SA strong desire to enter into an equitable water withdrawal contract for the new license period as soon as possible. However,

CEW&SA shall assert its rights in its insistence to have its concerns with regard to the relicensing process addressed.

Again, CEW&SA appreciates FERC allowing for comments on Alabama Power's Study Plan Report for the Martin Hydroelectric Project (FERC No. 349-150). I look forward to continuing to participate in the relicensing process as a representative of CEW&SA, working with Alabama Power in the negotiations for a new water withdrawal agreement, and working with FERC to ensure that the relicensing process is fair and stakeholders are treated in an equitable manner.

I look forward to hearing from you soon.

Yours Truly,



Robert J. Morris

RJM/bi

cc: Mr. Jeff Wright, Director of Office of Energy Projects, FERC (*via email*)
Mr. Mark Pawlowski, South Division Director, FERC (*via email*)
Ms. Jennifer Adams, Project Coordinator, FERC (*via email*)
Mr. Charles Wagner, Regional Engineer, FERC (*via email*)
Mr. Charles D. McCrary, Alabama Power Company
Mr. James F. Crew, Alabama Power Company (*via email*)
Mr. Alan Peeples, Alabama Power (*via email*)
Mr. James H. Hancock, Esq. (*via email*)
Mr. Earl Reeves, Chairman, Elmore County Commission (*via email*)
Mr. Joe Faulk, Commissioner, Elmore County Commission (*via email*)
Mr. Patrick Pinkston, Esq. (*via email*)
Mr. Thomas C. Ingram, Chairman, CEW&SA
Mr. Kenneth Holt, Vice-Chairman, CEW&SA
Mr. H. Wade Johnson, Board Member, CEW&SA
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