

600 North 18th Street
Post Office Box 2641
Birmingham, Alabama 35291

Tel 205.257.1000

August 11, 2010



VIA Electronic Filing

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Alabama Power Company Response to Comments on Martin Relicensing Study Plan 12(A) – FERC Project No. 349-150

Dear Secretary Bose:

In a June 7, 2010, letter to the Federal Energy Regulatory Commission (FERC), several property owners and farmers downstream of the Martin Dam Project responded to Alabama Power Company's Martin Relicensing Study Plan 12(A). Also, two prior letters from the same downstream stakeholders (the "Farmers") were submitted to FERC on January 18, 2010, and April 4, 2010. This letter addresses the Farmers' comments on the study plan.

Under the current license, Martin Dam operates in accordance with a flood control guideline and an operating guideline. The flood control guideline is at full pool, 490 Martin Datum (MD), from approximately May 1 to September 1, and is at winter pool, 480 MD, from January 1 to February 15, with gradual refill in the Spring and gradual drawdown in the Fall. In connection with the current relicensing, certain stakeholders interested in the recreational use of Lake Martin requested Alabama Power to study certain proposed changes in the flood control guideline for Martin Dam. In general, the stakeholder-proposed changes involve various proposals to raise the winter pool level, earlier re-fill of the reservoir in the spring, and later drawdown in the fall. The purpose of Study Plan 12(A) is to evaluate the impact of these proposed changes.

The Farmers' letters contain a number of claims and requests that generally fall into two categories. First, the Farmers contend that the study plan reflects an attempt by Alabama Power to avoid responsibility for flood control. Second, they contend that FERC should impose in the new Martin license flood control obligations for Martin Dam that are more protective of their interests. Although this letter will respond generally to each of these contentions, Alabama Power intends to address these issues in more detail later on in the relicensing process after a specific project operations proposal is developed for the Martin relicense application.

As an initial matter, it appears the Farmers misunderstand the purpose of Study Plan 12(A). This plan does not make any recommendations for flood control guideline changes. The purpose of the modeling and analysis described in Study Plan 12(A) is merely to evaluate impacts to flows and elevations, both on the reservoir and downstream of Martin Dam, resulting from changes to the Martin flood control guideline proposed by certain other

stakeholders in the Martin relicensing process. The result of Study Plan 12(A) is not to validate the proposed rule curve changes or to make any direct decision with respect to this proposal. Rather, the study provides information concerning impacts, which will be available for use by APC, FERC and all stakeholders to evaluate whether a proposed rule curve change can and should occur.¹ The downstream stakeholders' suggestion that their interests are not being considered as this Study Plan is being implemented is simply not accurate. To date, Alabama Power has expended significant resources identifying downstream flood impacts that could be expected for the range of flood control guideline changes being studied. Though the study is now complete, no final conclusions have been reached, and hence no recommendations for a change to the flood control guideline have been proposed by Alabama Power Company.

Perhaps because of this apparent misunderstanding, the Farmers suggest that Alabama Power is attempting to avoid responsibility for flood control in the operations of Martin Dam. As noted, Alabama Power has reached no conclusions with respect to a proposed flood control guideline change to be included in the Martin relicensing application. Consequently, there is no support for the suggestion that Alabama Power's relicensing proposal is an attempt to avoid flood control responsibility.

There is a long history on efforts to balance the interests of lake recreational users, downstream farmers and landowners and Alabama Power in the licensing and relicensing of Martin Dam and the downstream Yates and Thurlow Projects. The Farmers' lands are downriver of these projects in the flood plain of the Tallapoosa River, near the confluence with the Coosa River. The area is low, and prone to frequent flooding. The Federal Power Commission in connection with the licensing of Thurlow Dam issued orders in 1970 and 1975 providing that Alabama Power was not required to eliminate all risk of downstream flooding. The 1975 order stated: "It is not in the public interest nor is it the duty of Licensee to completely eliminate flooding to the detriment of power generation, recreation in the reservoir, and other project purposes."

The original Martin Dam license was set to expire in 1973, and Alabama Power's relicensing application was filed in 1970. In that relicensing, both the upstream recreational interests and the downstream farming interests filed interventions. The current operating zone, including the flood control and operating guidelines, resulted from a settlement between Alabama Power and the upstream and downstream stakeholders, as recognized by

¹ The study assumes that the Martin pool is at the current flood control guideline, as a baseline condition, and that any elevation changes to that flood control guideline are accurately accounted for with each elevation studied. The study thoroughly evaluates "design flood" impacts, both upstream and downstream of the Martin project for the current flood control guideline and all alternatives. In addition, day to day operations were evaluated for 67 years of record. Current operations at Harris were considered as well as the flood control operations at Martin contained in the 1978 amended Exhibit H of the current license. There have been three technical workshops held over the course of 2009 and 2010 that involved all MIG 3 stakeholders in order for Alabama Power to convey all models and methodologies that were used in Study Plan 12(A). The results from Study Plan 12(A) were presented to interested stakeholders, including the downstream stakeholders, during the final technical workshop held in March of this year. Alabama Power continues to study the impacts of any flood control guideline changes consistent with Study Plan 12(A), and consistent with the plan as approved by FERC.

the Commission in the 1978 license for the Martin Dam Project—“the parties reached an understanding concerning the drawdown and fluctuation of water level at Lake Martin” [Martin Dam Project License at p. 22-23]

The existing Martin license recognizes that the reservoir only provides “limited flood control when the reservoir is in a drawdown condition.” [Martin Dam Project License at p. 5] This mode of operation was also favorably commented on by the Corps of Engineers in 1973: “In view of the constraints imposed by existing structures, the seasonal operating plan for the Martin project ... is satisfactory with respect to flood control operation” Current flood control operating guidelines are outlined in amended Exhibit H filed by Alabama Power on November 16, 1978.

Following flood gate operations at Martin Dam in May and July 2003, when the reservoir was being operated near full summer pool as specified by the flood control guideline, several downstream farmers filed claims against Alabama Power for damages due to the flooding of their farming operations. These plaintiffs argued that Alabama Power had a duty to operate Martin Dam with “adequate” dedicated flood storage in order to “minimize” downstream flooding, or to pre-evacuate the reservoir based on weather reports. The Court rejected their arguments holding that “we are not persuaded that such a duty exists or that this Court is the suitable entity properly equipped to set standards applicable to such a duty.” Bryan v. Alabama Power Co., 20 So. 3d 108 (Ala. 2009).

In ruling for Alabama Power, the Court noted that the operations of the dams did mitigate flooding—“the rate of outflow ... was less than the concurrent rate of inflow.” The Court concluded that “we are mindful of the fact that operating Martin Dam to attain such storage would require APCo to maintain a lake level below the operating curve established by the FERC and approved by the Corps of Engineers. We are also mindful of the delicate balancing of interests between upstream and downstream landowners along the Tallapoosa River basin. The balancing of those interests is subject to federal regulations and has been challenged, negotiated, and agreed upon by various individuals and entities during the last several decades. The farmers have not presented adequate authority justifying this Court's interference with the regulation and previous balancing of such interests.”

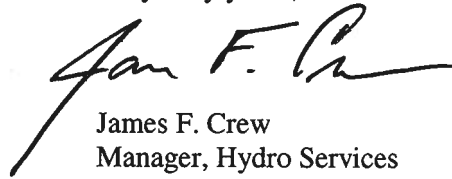
Notwithstanding these existing flood control purposes of Martin Dam and legal duties with respect to project operations, the Farmers’ claim that Alabama Power currently has “no flood control responsibilities” and they request that FERC either impose new flood control requirements or ask the Corps of Engineers to “take over flood control responsibilities” at Martin Dam. This request is based on the premise that Alabama Power has “unsupervised operation of Lake Martin” and operates its flood gates in a “haphazard” manner. Obviously, FERC has extensive supervisory authority over Alabama Power’s operation of Martin Dam pursuant to the existing license, which includes a flood control guideline and Exhibit H that contains specific flood operations procedures. The existing license does not require pre-evacuation of the reservoir based on weather reports. Obviously, weather reports are not that precise regarding either location or amount of predicted precipitation events. For that reason, pre-evacuation could exacerbate downstream flooding or waste the water, instead of holding for peak power generation and other uses. Further, Alabama Power does not agree that its operation of Martin Dam has been haphazard in any way and court rulings in the flood cases described above do not support that characterization.

As Alabama Power develops its license application, all stakeholders, including the downstream interests, will have an opportunity to provide information and comments on proposed operations including any changes to the flood control guideline and the existing Exhibit H. For this reason, the downstream stakeholders' request for new FERC flood control requirements is procedurally premature at this point in the integrated licensing process Alabama Power is following to relicense Martin Dam.

With respect to the Farmers' request that FERC ask the Corps of Engineers to assume flood control responsibilities for Martin Dam, Section 10 of the Federal Power Act does not give FERC the authority to cede responsibility for flood control operations to the Corps. Rather, Section 10 requires FERC to "consider" the recommendations of the Corps with respect to flood control operations at Martin Dam, and then issue a license that in its judgment adequately addresses flood control. The Corps therefore already has an important role concerning flood control operations at Martin Dam, and for this reason Alabama Power consulted closely with the Corps in the modeling process for Study Plan 12(A).

If you have any questions or would like additional information, please let me know. Thank you.

Very truly yours,



James F. Crew
Manager, Hydro Services
Alabama Power Company

Cc(by email): Mr. Mark Pawlowski, FERC
Ms. Jennifer Adams, FERC
Martin Stakeholder Distribution List