

April 14, 2010

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**FILED ELECTRONICALLY**

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

**RE: Farmers and Landowners Second Response to Alabama Power  
Company's Meetings and Lack of Studies on MIG 3 Martin Dam  
Hydroelectric Project (FERC No. 349-150)**

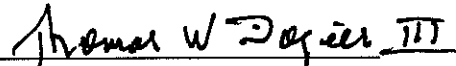
Dear Ms. Bose:

Pursuant to the FERC schedule, enclosed are additional comments of the Farmers-Landowners Responses to MIG 3 (Study Plans 12(A) to 12(H)) due on April 15, 2010.

Sincerely,



Euel A. Screws, Jr.



Thomas W. Dozier, III

Representatives of Respondents

Cc: Mr. Mark Pawlowski (via U.S. Mail)  
Mr. Lee Emery (via email – lee.emery@ferc.gov)

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Mr. James F. Crew (via email – [jfcrew@southernco.com](mailto:jfcrew@southernco.com))

Mr. Jeff C. Wright (via U.S. Mail)

Ms. Judy Takats (via email – [judy.takats@wwfus.org](mailto:judy.takats@wwfus.org))

Ms. Ann Miles (via U.S. Mail)

Ms. Viki Pate (via email – [vjpate@southernco.com](mailto:vjpate@southernco.com))

Congressman Bobby Bright (via U.S. Mail)

Congressman Mike Rogers (via U.S. Mail)

Mr. Matt Rice – American Rivers (via U.S. Mail)

**FARMERS & LANDWONERS  
RESPONSE TO ALABAMA POWER RESPONSE MIG 3**

On January 19, 2010, the 12 Farmers and Landowners filed a Preliminary Response to Alabama Power Company's Study Plan No. 12, MIG 3. In the conclusion of this preliminary report we stated in part:

“Respondents sincerely request that the FERC, in its re-licensure of Martin Dam, to:

1. Impose upon the Alabama Power Company the unequivocal duty to operate Martin Dam with flood control responsibilities for downriver owners and farmers.

2. Reject and not approve the Company's Study Plan 12(A)(G) and (H), called also MIG-3, which purports, among other things, to:

(a) revise the Martin rule curve and operating guidelines to increase the winter pool level by 5 feet;

(b) maintain the summer pool level for a longer period of time; and

(c) beginning to refill Lake Martin earlier in the winter.

These proposed modifications of the Martin rule curve and operating guidelines will not only increase the flooding potential for Respondents and other downstream owners and operators during the winter months when most floods occur but also in the spring, summer and fall months during the crop growing and harvesting seasons.”

**ADDITIONAL COMMENTS**

Thus, the central and critical question that must be resolved is whether or not the Power Company has a duty of flood control in the operation of Martin Dam. In the absence of the imposition of such a duty, Lake Martin becomes a potential flood hazard and the empirical data and historic facts conclusively establish the substantial harm occasioned upon land and crops when Martin Dam has been operated without regard to flood control obligations.

We submit that the FERC has the duty and responsibility to make this determination, as it has done in other hydroelectric dams operated by the Alabama Power Company.

**ALABAMA POWER COMPANY'S INACTION  
WITH RESPECT TO STUDY PLANS 12(a) (g) & (h), MIG 3**

On February 18, 2010 the Alabama Power Company filed with the FERC "Response to Comments on Initial Study Report and Meeting Summary". On page 25 of Exhibit A of this response, the Alabama Power Company recited the objections of the Farmers and Downstream Landowners, quoted above, and responded:

"FERC approved the Study Plans (12(a), (g), (h) on April 17, 2009. Alabama Power is proceeding with the FERC approved study plan for Study 12(a), 12(g) and 12(h)" (no further study plans were requested by FERC).

Other than this quote, there has been no written response by the Company to the urgent pleas of the Farmers-Landowners.

As of this date, the Alabama Power Company has not responded to the "missing information" outlined in Exhibit A to Mr. Mark Pawlowski's letter of January 15, 2010. This includes:

**"Rule Curve Change Modeling Analysis (Study Plan 12(A))"**

"Yet, in your December 18, 2009 filing of the Meeting Summary, you indicate that the final report for Study Plan 12(A) would be delivered on time by May 2010. The Integrated Licensing Process provides for an efficient and timely licensing process. Therefore, it is imperative that you develop whatever model is necessary for you to complete Study Plan 12(A) within the schedule approved in the Director's determination letter of April 17, 2009."

In the letter of March 22, 2010 from FERC to Alabama Power Company, it was noted on page 10 of Exhibit A:

**"Study Plan 12(A)-Rule Curve Change Modeling Analysis (Rule Curve Model)**

### Requested Modification

“The Farmers and Landowners state objections to Study Plans 12(A) through 12(H) because the proposed modifications approved for these plans do not take into consideration, obligations by Alabama Power to control floods. Farmers and Landowners state that the proposed operation of the Martin Dam Project under Study Plans 12(A) through 12(H) would increase downstream flooding potential in the spring, summer, fall, and winter months, causing damage and destruction to their crops. Specifically, Farmers and Landowners reject the proposed study plan modifications that would: (1) increase the winter pool level by 5 feet; (2) maintain the summer pool for a longer period of time, and (3) begin refilling Lake Martin earlier in the winter.

Alabama Power states they are proceeding with the studies for Study Plans 12(A), (G), and (H) which staff has approved and would study the potential for rule curve changes on downstream flooding, economic affects around Lake Martin, and effects on lake-related businesses, respectively.” (emphasis added).

The Farmers and downstream Landowners intend to respond and comment upon this “missing information” once it is produced by the Alabama Power Company.

### **THE MEETING OF MARCH 31, 2010**

On March 31, 2010, the parties met in the Company’s office in Birmingham. At that meeting, the Alabama Power Company:

A. handed out extensive and expensive engineering maps and studies on MIG 3 Study Plan 12(A) showing (1) downstream flooding impacts at different elevations at Martin Dam; (2) “APC Hydro Budget Model”; and (3) the effects of a 100 year flood event downstream at various pool elevations at Martin Dam.

The farmers-downstream owners respectively submit that the studies are purely “smokescreen” and are not responsive to farmer-landowners’ complaints, because:

1. A 100 year flood is an “Act of God” and will result in flooding irrespective of the level of Lake Martin, with no liability to the Company. The floods in October 1996 resulting from Hurricane Opal, the floods of record in 1990 and 1960 were all 50 to 100

year floods and flood control responsibility, if exercised, would not have averted flooding downstream.

B. At said March 31, 2010 meeting, representatives of the Power Company admitted and stated:

1. That the Company has no flood control responsibilities for a 2 year, 5 year, 10 year flood event.

2. Pre-evacuation of Martin for even a minor flood is not a part of its operating procedure, nor does the Company have the responsibility or authority to pre-evacuate under its "operating procedures" or "operating manual" on Lake Martin.

3. That the Company's FERC re-license process does not factor in pre-evacuation measure or any flood control measures for the Lake Martin Reservoir.

### CONCLUSION

Critical factors which we submit should be considered and resolved by the FERC in this re-license filing:

A. Lake Martin is one of the largest reservoirs in the nation for hydro-electric power generation.

B. We submit that the Alabama Power Company's operations on Lake Martin (one of the largest hydro-electric reservoirs in the United States) with no flood control responsibilities imposed either by the FERC or the U.S. Corps of Engineers (or jointly) are now immunized from downstream damages for negligent flooding.

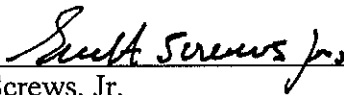
C. It is of interest to note that in April of this year the FERC relicensed Alabama Power Company's Smith Lake. This lake is one of several hydro-electric reservoirs on the Coosa River. The U.S. Corps of Engineers has flood control authority on the Coosa River.

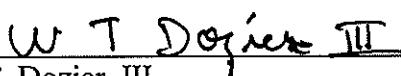
D. The legal and practical effect of an absence of flood control responsibilities at Lake Martin is to empower the Alabama Power Company to flood and destroy crops, farming operations and downstream landowner's property – all without compensation effectively bestowing upon Alabama Power Company the unconstitutional right to take property without just compensation.

E. Due Process of Law and fundamental fairness mandate that the Power Company operate Martin Dam for flood control such that two year and four year flood events, similar to those which occurred in 2003 and which cost the farmer-landowners over \$2,000,000.00, can be effectively minimized if not eliminated altogether.

F. The original license issued by FERC to the Alabama Power Company, some 60 years ago, contained flood control responsibilities of the company according to its operating guidelines, and according to an agreement with Farmers – landowners (many of whom were the ancestors of the present Respondents). Shortly after this license was approved, the flood control obligations imposed by the license were unilaterally voided by the company without notice to any party to the agreement. We submit that those flood control obligations are due to be clearly re-imposed on the Power Company in this license.

Respectfully submitted,

  
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Eucl A. Screws, Jr.

  
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W. T. Dozier, III

Representatives of Respondents