

**BEFORE THE UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Alabama Power Company)	
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)	Project No. 349-150
Martin Dam Hydroelectric Project)	
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**COMMENTS ON PRE-APPLICATION DOCUMENTS, COMMENTS ON SCOPING
DOCUMENTS, AND STUDY REQUESTS**

On August 5, 2008, the Federal Energy Regulatory Commission (the “Commission”) filed a Notice of Intent to File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, and Scoping, Request for Comment on the PAD and Scoping Document, and Identification of Issues and Associated Requests for Alabama Power Company’s (“APC’s”) Martin Dam Hydrologic Project (the “Martin Project”). In response to that Notice and Request, the State of Georgia, in its individual capacity as trustee of its natural resources and in its representative capacity as *parens patriae* for the citizens of the State of Georgia, hereby respectfully submits the below comments and study requests. These comments and study requests are timely filed and, as required, a copy of the comments and requests will be served on the applicant, APC.

I. GEORGIA’S INTEREST

Georgia has a significant interest in APC’s operations at the Martin Project. The Tallapoosa River, on which the Martin Project is operated, originates in Georgia. So does the Coosa River, which joins the Tallapoosa River at Montgomery, Alabama, to form the Alabama River. Local governments in Georgia withdraw water from the Tallapoosa to meet municipal and industrial water supply needs, and future plans for northwest Georgia contemplate increasing

use of the Tallapoosa to meet reasonable needs within this growing area of the State. In evaluating APC's proposed future operations, the Commission should take into account Georgia's projected future uses of the Tallapoosa.

In addition, and perhaps more importantly, the manner in which APC operates the Martin Project could have a major impact on Georgia's substantial interests within the Coosa River Basin in Georgia. APC currently coordinates releases from its Coosa and Tallapoosa projects to meet certain flow requirements downstream in the Alabama River. The Martin Project is by far the largest APC reservoir within the Alabama-Coosa-Tallapoosa ("ACT") River Basin and comprises nearly 50% of all storage within the ACT Basin (including the federal reservoirs). Yet, at least in recent years, APC has drawn more water from its Coosa projects than from its Tallapoosa projects (including Martin) to meet the flow requirements in the Alabama River downstream. APC has then turned to the Corps of Engineers and asked it to increase releases from the federal reservoirs upstream in Georgia to replenish the APC reservoirs. In addition, if APC does not draw appropriately upon the Martin Project to meet its share of systemwide hydropower demands, those demands might be met with disproportionately high releases from the Coosa projects, with the same resulting pressure upon the Corps to bail out APC's Coosa projects.

The two federal reservoirs in Georgia, Lake Allatoona on the Etowah River and Carters Lake on the Coosawattee River, are major sources of water supply to northwestern Georgia. They also provide important recreational and other environmental benefits. The Corps of Engineers has an obligation to operate these reservoirs to meet project purposes, including water supply, and must do so in a manner that is prudent, taking into account that these projects are located at the headwaters of the basin and have very limited drainage areas in comparison with

the ACT Basin as a whole. Lake Allatoona impounds only 4.9% of the ACT Basin and provides only 11.4% of the storage within the ACT Basin. Carters Lake impounds only 1.6% of the ACT Basin and provides 5.7% of the total reservoir storage within the ACT Basin.

Given the relatively small drainage area and amount of storage available in the ACT Basin in Georgia, the Corps should not operate Lake Allatoona and Carters Lake to meet flow requirements far downstream, below the APC reservoirs. Nevertheless, this is precisely what APC has asked the Corps to do. In the spring and summer of 2007, for example, APC repeatedly pressured the Corps increase flows from the federal projects in Georgia to augment APC's own flow requirements. How APC operated the Martin Project had a major impact on APC's overall operations within the system, and therefore had a bearing on APC's demands for higher releases from the federal reservoirs in Georgia.

The Commission must ensure that the operations that APC proposes for Lake Martin are responsible and prudent and will not impose or imply any inappropriate burdens on the federal projects upstream. To determine this, the Commission first must require APC to properly study and demonstrate the impact of its proposed operations throughout the ACT Basin, including the impact within Georgia. To date, APC has not provided this degree of analysis in its licensing application for the APC's Coosa River Projects.

Georgia's more specific comments on the pre-application and scoping documents are set forth below.

II. COMMENTS ON PRE-APPLICATION DOCUMENTS

A. **Development Of The Re-licensing Application For The Martin Project Should Be Coordinated With The Corps' Development Of Water Control Manuals For The ACT River Basin and Should Be Dependent Upon Those Manuals**

Federal regulations require the Corps to revise water control plans for Corps projects as necessary to reflect changing requirements resulting from developments in the project area and downstream. 33 C.F.R. § 222.5(f)(3); *see also* 33 C.F.R. § 208.11(d)(10). In addition, the Federal Power Act provides that “no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures have been approved by the Chief of Engineers and the Secretary of the Army.” 16 U.S.C. § 797(e). The Corps is now in the process of updating its water control manuals for the ACT Basin. The Commission cannot adequately evaluate the impact of APC’s proposed operations on navigation and flood control within the ACT Basin until the Corps water control manual update is complete. The Corps’ flexibility must not be constrained in any way by the terms of APC’s FERC license. The license will be better informed if it comes after the water control manuals are completed. Among other things, the Commission could be assured that the computer models of the proposed APC operations make proper assumptions about flows from the upstream federal reservoirs.

As an example, part of the Corps’ manual update process will likely involve an evaluation of the required navigation release into the Alabama River near Montgomery. This flow target is met using the combined releases from projects on the Coosa and Tallapoosa Rivers. The Commission cannot adequately evaluate the impact of APC’s proposed operations on navigation and flood control within the ACT Basin until the Corps’ process of updating the

water control manuals is complete. The Corps' flexibility must not be constrained in any way by the terms of APC's hydropower license.

According to the current schedule for the update of the Corps' water control manuals, the Corps probably will not complete the manual update process before APC is required to submit its application for the Martin Project in June of 2011. However, APC should make every effort to coordinate the development of its application with the Corps' proposed manuals. APC should also update its application after the Corps' water control plan process is complete.

B. The Re-Licensing Of The Martin Project Should Be Coordinated With The Re-Licensing Of APC's Coosa Projects

The Coosa River Projects and the Martin Project constitute a single reservoir system. The required minimum flows in the Alabama River are met through the combined flows from the Coosa and Tallapoosa Rivers. Given the combined flow target, Martin's operations significantly impact APC's operations at its Coosa River Projects. It is impossible to separate the mutually dependent operations of the Martin Project and the Coosa River Projects. The Martin Project is the largest storage reservoir by far, private or federal, anywhere in the ACT Basin, comprising 49.2% of the total storage in the basin. It would make sense to consolidate the re-licensing process for the Martin Project with the re-licensing process for the Coosa River Projects.

C. The Commission Should Consider A More Equitable Balance Of Releases From The Martin Project As Compared To Projects On The Coosa River

APC has historically been overly protective of the Tallapoosa projects, placing an increased burden on projects on the Coosa River, including the federal projects located in Georgia. During periods of low flow, releases from the APC projects on the Tallapoosa River often account for less than 25% of the required navigation release (approximately 25% in 2007 but only 15% to date in 2008), even though the Tallapoosa projects contain more than half (57.5%) of the conservation storage for the entire ACT River Basin.

D. Changes In The Amount Of Conservation Storage Calculated To Be In The Martin Project Should Not Be Altered Without the Opportunity For Public Input

There are two issues related to the amount of conservation storage within the Martin Project that need to be clarified as part of the re-licensing process. In general, there appears to be a discrepancy between the amount of conservation storage at the Martin Project as estimated by APC and the amount of conservation storage used by the Corps in making storage calculations for the ACT Basin.

First, in Sections 4.1 and 4.2 of the PAD, APC discusses the top of conservation storage at the Martin Project and the appropriate method for measuring elevation at the Martin Project. APC states that the top of conservation is at 490 feet using the Martin Datum (“MD”) measuring point (APC explains that the Martin Datum is a locally-established point) and that this is equivalent to 491 feet above mean sea level (MSL). APC then proceeds to use 491 feet MSL as the top of conservation throughout the PAD. However, on its website, the Corps describes the top of conservation for the Martin Project a 490 feet MSL. This discrepancy has the potential to cause great confusion as to the proper rule curve elevation and the amount of conservation storage available in the Martin Project. Also, it is not clear whether this discrepancy reflects APC’s desire to increase conservation storage or whether this is just a matter of adjusting the relevant gages. This issue should be clarified. Of course, the need for clarification on this point would apply to all elevation measurements at the Martin Project, and not to just the top of the conservation pool.

The second issue is that APC has informally communicated to the Commission and to the Corps that APC wants to raise the bottom of conservation for the Martin Project by about 12 feet. This would reduce the amount of conservation storage in the ACT Basin by 257,554 acre feet, that is, it would take away over 10% of the total conservation storage in the basin. This would

presume to impose a greater burden on the other projects, possibly even the federal projects in Georgia, to maintain minimum flows downstream within the ACT system. Assuming that minimum flow requirements and other parameters remain the same, the Martin Project would draw down towards the bottom of conservation faster than is currently estimated, causing APC to artificially rely on other reservoirs sooner, and, ultimately, for APC to seek higher flows from the federal reservoirs upstream. This change, if proposed and implemented, would have a profound impact on all projects within the ACT River Basin.

APC's pre-application documents make no mention of this proposed change, and perhaps APC has decided against making such drastic alterations. However, should APC formalize its proposal to alter the amount of conservation storage in the Martin Project, a separate issue group should be established to evaluate this possible change and, as discussed below, such a change must be studied in great detail to determine the need for such a change and the effect of that change on the other projects throughout the basin.

E. APC Should Develop Specific Drought Operations for the Martin Project

In discussing potential drought operations as part of Section 4.4 of the PAD, APC does not provide any details as to how it intends to operate Lake Martin under low-flow conditions. APC uses "drought contingency curves" as a factor to determine whether drought conditions exist, but does not explain exactly what would happen under those conditions. Because operations at the Martin Project play such an important role in operations throughout the ACT Basin, it is imperative that APC develop a comprehensive drought operations plan that would encompass all of its ACT Basin projects.

F. APC Should Accurately Define Dependable Capacity Requirements

The PAD indicates that dependable capacity at the Martin Project is four consecutive hours of generation for five consecutive days. As it did in its application for projects on the Coosa River, APC does not adequately define dependable capacity or describe the reliability of its dependable capacity estimates under varying hydrological conditions. APC should give a workable definition for dependable capacity and provide a detailed method for computing dependable capacity. Any models used to demonstrate dependable capacity should be available for public review.

III. COMMENTS ON SCOPING DOCUMENTS

The National Environmental Policy Act (“NEPA”) requires a federal agency to perform an environmental impact statement (“EIS”) before it initiates any “major Federal action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C). An EIS is a detailed statement analyzing the environmental impact of the proposed action, adverse environmental impacts which cannot be avoided, and alternatives to the proposed action. Where an EIS is not statutorily required, an agency must prepare an environmental assessment, or EA, to determine whether it must prepare an EIS. 40 C.F.R. § 1501.4(c). To facilitate this process, Commission regulations permit a license applicant to prepare and submit an EA as part of its application. It is then the Commission’s responsibility to take the applicant-prepared EA and use it to “make its determination whether to prepare an environmental impact statement.” 40 C.F.R. 1501.4(c). Thus, ultimate responsibility for compliance with NEPA rests firmly with the Commission.

To comply with the requirements of NEPA, the Commission should prepare an EIS prior to issuing a new license for the Martin Project and should not rely solely on an EA prepared by APC because the issuance of such a license is a “major Federal action[] significantly affecting the quality of the human environment.” Due to the size of the Martin Project and the fact that it alone controls approximately half of the storage in the ACT Basin, operations at the Martin Project will have a significant impact on the environment. In addition, and as discussed below, operations at the Martin Project will impact the entire basin and not just flows directly downstream. To appropriately address impacts within the ACT Basin, the Commission should conduct an EIS that covers all of APC’s operations within the ACT basin, including project on both the Tallapoosa and Coosa Rivers.

In preparing environmental documents to assist the Commission in meeting the requirements of NEPA, APC should be required to expand the geographic scope of the review to include the entire ACT River Basin. Section 4.1.2 of the initial scoping document describes the geographic scope of the NEPA analysis as extending downstream to project-affected stream reaches affected by operational flow releases downstream from the Thurlow dam. While it is very important that the Commission consider the downstream impacts of releases from projects on the Tallapoosa River, it is also important that the Commission consider the impact of operations at the Martin Project on project operations upstream on the Coosa River, including operations at the upstream federal reservoirs in Georgia, and the resulting impacts of those operations on reservoir levels, flows within Georgia, available water supply, fish and wildlife propagation, water quality, and other conditions. As discussed above, APC is required to make a minimum navigation release based upon combined releases from the Coosa and Tallapoosa Rivers. Any reduction in flow from projects on the Tallapoosa River, or the continued policy of

favoring projects on the Tallapoosa River, will require APC to increase flows from the Coosa River. This increase in Coosa River flows will place an inequitable burden on all projects along the Coosa, including the federal projects located in Georgia.

Moreover, as previously noted, there appears to be a discrepancy between the amount of conservation storage in the Martin Project as estimated by APC versus the estimate currently used by the Corps. Therefore, any description of the existing project as discussed in Section 3.1.1 should include a storage-elevation curve that would accurately depict conservation storage within the Martin Project.

APC should also clarify the temporal scope of the NEPA evaluation, especially as that scope relates to past operations. The current unimpaired flow data for the ACT Basin are from 1939 through 2001. It is our understanding that the Corps is working on an update to that data set that would extend through 2007. In 2007, most of the ACT Basin experienced conditions resulting in a new drought of record for the region. Any evaluation of flows that does not include the 2007 data would be inaccurate and incomplete. Therefore, the period of record evaluated as part of the NEPA process should extend through at least 2007.

IV. STUDY REQUESTS

A. APC Should Analyze Its Operations Using Publicly Available Models

According to Section 3.1.3 of the initial scoping document, APC is already planning to “[d]evelop a model to determine the feasibility of revising the current rule curve used by the Project.” However, models developed by APC for the operation of its Coosa River Projects have, as pointed out repeatedly by Georgia, the Corps, and by the Commission itself, often failed to accurately evaluate current conditions and proposed operations for those projects. In addition, APC has used proprietary models that are not available for public review. In its study plans for

the Martin Project, APC once again states its intention to use so-called “Project Routing Models” that cannot be verified by interested stakeholders. APC should instead be required to redevelop models using either HEC-5 or HEC-ResSim that will accurately depict the current baseline conditions and demonstrate the full impact of any proposed operational changes. Both HEC-5 and HEC-ResSim are available in the public domain and have been tailored by the Corps to address operations specific to the ACT Basin.

B. The Scope of Study Should Be the Entire ACT Basin

Section 3.1.3 states that “Alabama Power would also review the current drought contingency curve as part of the study model and potential flood effects associated with a higher winter pool.” The scope of these studies appears to be limited to the area just downstream of the Tallapoosa River projects. As discussed above, this scope should be expanded to evaluate the impact of any proposed changes on projects throughout the entire ACT River Basin.

C. APC Should Study All Downstream Needs and Requirements and the Impacts of How It Meets Them

Although the title of APC’s Study Plan 3, Evaluation of Minimum Flows Downstream of Martin Lake, suggests that APC intends to study the effect of reduced flows on downstream needs, a review of the plan itself indicates that APC only intends to study the effects of changes to peaking power operations on the downstream reach. APC should instead study all of the current downstream needs, such as for navigation, water quality, and for wildlife protection, and then determine how those needs should be met during periods of drought. APC should also analyze how well these needs have been met historically, particularly during the drought of 2007.

APC should study balancing the way it meets its combined flow targets in the Alabama River near Montgomery. APC now meets the downstream target by releasing a greater percentage of that flow from the Coosa River (approximately 85% of the total flow to date in

2008), even though the APC projects on the Tallapoosa River contain more than half of the conservation storage in the ACT Basin. APC should develop a study to evaluate the impact of balancing flows from the various projects in order to meet downstream requirements in a manner that is based on available conservation storage.

D. If APC Proposes to Raise Bottom of Conservation, It Should Be Required to Study That Proposal

As mentioned previously, APC has informally proposed raising the bottom of the conservation pool at the Martin Project by approximately 12 feet. APC has not formally proposed this change and has not indicated an intent to study the effects of such a change. If APC truly wishes to make such a drastic change to its current operations, such a change must be studied in great detail. Such a drastic changes could have significant impacts on navigation flows, drought operations, and flood control operations throughout the ACT Basin.

E. Necessary Specifications for Models

Any study that involves an evaluation of the operational impacts of the Martin Project requires a comprehensive and detailed sequential simulation (HEC-5, HEC-ResSim, or other). More comprehensive models will refine existing models to integrate flood and conservation operating rules and apply detailed physical, hydrologic and water demand data throughout the Basin, in order to accurately predict the impact of APC's operations at the Martin Project on system operations on streamflows and reservoir levels. The comprehensive models should meet or exceed the following specifications:

- APC reservoir storage allocations (e.g., inactive, seasonal conservation, flood, rule and guide curve elevations) should be consistent in all respects with the existing and proposed operations described in the PAD.
- Models should include a detailed description and model of inputs from Lake Harris, which is located upstream of the Martin Project.
- APC's models should provide detailed and comprehensive APC conservation

operating rules prescribing system and at-site support of navigation and other instream flow requirements, reservoir storage-balancing criteria, and other priorities and constraints.

- Seasonal system and at-site firm energy requirements on APC reservoirs should be consistent with APC system load and hours use of capacity defined in the PAD.
- Models should have detailed and comprehensive operating rules for federal and APC projects on the Coosa River prescribing system and at-site support of navigation and other instream flow requirements, reservoir storage-balancing criteria, and other priorities and constraints, consistent with current and planned operational practice, based upon published and revised Water Control Manuals.
- Models should include operating rule provisions for APC and federal ACT reservoir over- and under-releases to accommodate hydrologic and demand uncertainties in meeting instream flow, reservoir stabilization, system power and non-power targets, and flood pre-release objectives.
- Alabama water demands should be reconciled to current conditions and (along with Georgia demands in the ACT Basin) increase over time to reflect demand levels over the time period that the license is to be in effect.
- Detailed operating rules, spillway and channel capacity data for flood and induced surcharge operation of federal ACT reservoirs, consistent with current and planned operational practice pursuant to published ACT Water Control Manuals and reservoir regulation manuals should be included.
- APC should model detailed operating rules, spillway and channel capacity data for flood and induced surcharge operation of APC Coosa system reservoirs, consistent with existing and proposed operations described in the application.
- APC should employ short-timestep (e.g. hourly or multi-hourly) flood event models for system operational simulation of APC reservoirs, incorporating flood and induced surcharge operating rules, spillway and channel capacity data previously described, channel routing criteria, and initial conditions determined by sequential simulation models of APC and federal system operation to meet all applicable system and at-site conservation and flood control requirements.

A HEC-ResSim model—the next-generation replacement for the HEC-5 model—could also be developed. The HEC-ResSim model potentially offers greater flexibility than HEC-5 for analysis of complex operating rules and external feedbacks to reservoir release decisions. The Corps has developed a HEC-ResSim model for the ACT River Basin, and that model should be available for use in preparing and analyzing APC’s application for the Martin Project.

V. MAILING LIST

Please add the following individuals to the mailing list to receive updates on the Martin

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Respectfully submitted this 10th day of October, 2008,

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CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing COMMENTS ON PRE-APPLICATION DOCUMENTS, COMMENTS ON SCOPING DOCUMENTS, AND STUDY REQUESTS, by first class mail or electronically, as appropriate, upon each person designated on the official service list compiled by the Commission in the above-captioned proceeding.

Dated the 10th day of October, 2008

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