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October 13, 2021

VIA E-MAIL

Mr. Scott Ramsey
Industrial Section Chief
Alabama Department of Environmental Management
Water Division
P.O. Box 301463
Montgomery, AL 36130-1463

Re: **Notice of Planned Participation in the “Permanent Cessation of Coal Combustion” Compliance Subcategory for Units 1-5 of the Ernest C. Gaston Electric Generating Plant (NPDES Permit No. AL0003140)**

Dear Mr. Ramsey:

In accordance with 40 C.F.R. § 423.19(f), please allow this to serve as Alabama Power Company’s (Alabama Power or APC) “Notice of Planned Participation” (NOPP) indicating its intent to comply with EPA’s 2020 *Steam Electric Reconsideration Rule* by conforming with the Rule’s provisions relating to “unit[s] that will achieve permanent cessation of coal combustion by December 31, 2028”¹ for Units 1-5 of the Ernest C. Gaston Electric Generating Plant (“Plant Gaston”).²

I. Regulatory Background

On October 13, 2020, EPA published a new rule in the Federal Register entitled the *Steam Electric Reconsideration Rule* (hereinafter the “2020 ELG Rule”).³ The 2020 ELG Rule

¹ 40 C.F.R. § 423.19(f)(1).

² Plant Gaston Units 1-4 are owned by Southern Electric Generating Company (SEGCO), which itself is owned equally by Alabama Power and its affiliate Georgia Power Company (Georgia Power or GPC). The entire electric output of these units is sold to Alabama Power and Georgia Power pursuant to a wholesale purchase power agreement that is on file with the Federal Energy Regulatory Commission (FERC). Alabama Power owns Plant Gaston Unit 5. Alabama Power is the designated operator for all five units and serves as agent for SEGCO. Alabama Power submits this Notice of Planned Participation pertaining to Units 1-4 with explicit permission from and as agent for SEGCO.

³ EPA, *Steam Electric Reconsideration Rule*, 85 Fed. Reg. 64,650 (Oct. 13, 2020) (codified at 40 C.F.R. Part 423).

established new best available technology economically achievable (BAT) effluent limitations and associated compliance timelines for flue gas desulfurization (FGD) wastewater and bottom ash transport water (BATW) generated at existing steam-electric power plants.⁴ Instead of imposing a single, one-size-fits-all BAT for FGD wastewater and/or BATW, the 2020 ELG Rule established several alternative compliance options that regulated entities may opt into and transfer among, subject to specified requirements. More specifically, the 2020 ELG Rule allows regulated entities to choose to comply either with default, generally applicable limitations,⁵ or with the conditions and limitations applicable to one of the following three compliance options (hereinafter collectively referred to as “subcategories” or individually as a “subcategory”).⁶

- (1) Low utilization electric generating units (LUEGU);⁷
- (2) The Voluntary Incentives Program (VIP);⁸ or
- (3) Permanent cessation of coal combustion.⁹

If a facility wishes to comply with the permit conditions and effluent limitations associated with one of these subcategories, it may do so by submitting a NOPP to its permitting authority by October 13, 2021.¹⁰ Additionally, the 2020 ELG Rule allows facilities to automatically transfer among various compliance options by filing subsequent NOPPs, subject to various other deadlines and requirements.¹¹

On August 3, 2021, EPA published in the Federal Register a “Notice of Rulemaking Initiative” pertaining to the effluent limitation guidelines applicable to steam electric power generating facilities (including the 2020 ELG Rule).¹² In it, the agency announced its intent to evaluate whether limitations more stringent than those in the 2020 ELG Rule are required for BATW and/or FGD wastewater and whether changes should be made to any of the established

⁴ See generally *id.*

⁵ 40 C.F.R. §§ 423.13(g)(1)(i) (FGD wastewater), 423.13(k)(1)(i) (BATW).

⁶ Additional subcategories exist under the 2020 ELG Rule; however, these additional subcategories are inapplicable to Plant Gaston and are therefore not discussed in this correspondence.

⁷ 40 C.F.R. §§ 423.13(g)(2)(iii) (FGD wastewater), 423.13(k)(2)(iii) (BATW).

⁸ *Id.* § 423.13(g)(3)(i) (FGD wastewater). The voluntary incentives program applies only to FGD wastewater, not BATW.

⁹ *Id.* §§ 423.13(g)(2)(i) (FGD wastewater), 423.13(k)(2)(ii) (BATW).

¹⁰ See *id.* §§ 423.19(e)(1), (f)(1), and (h)(1).

¹¹ See *id.* §§ 423.13(o), 423.19(i).

¹² 86 Fed. Reg. 41,801 (Aug. 3, 2021).

subcategories with less stringent limitations.¹³ EPA expects this rulemaking to take multiple years to complete and explicitly provided that it “expects permitting authorities to continue to implement the current regulations while the Agency undertakes a new rulemaking.”¹⁴

II. Factual History

Plant Gaston is an electrical generating facility located near the town of Wilsonville in Shelby County, Alabama. The plant consists of five generating units. The four smaller units, Gaston Units 1-4, run primarily on natural gas, but have the ability to utilize coal as a fuel source. Units 1-4 do not utilize a flue gas desulfurization (FGD) “scrubber,” meaning FGD wastewater is not generated by their operation. Gaston Unit 5 runs primarily on coal but also has the ability to burn natural gas. Unit 5 utilizes a FGD scrubber.

The Alabama Department of Environmental Management (ADEM) issued the final version of Plant Gaston’s current NPDES permit on April 1, 2020 (Permit).¹⁵ At that time, EPA had initiated efforts to revisit its 2015 ELGs rulemaking, but the final 2020 ELG Rule did not become effective until December 14, 2020.¹⁶ As such, Plant Gaston’s Permit does not include conditions implementing the 2020 ELG Rule. ADEM recognized, however, that Plant Gaston’s Permit would eventually need to be revised.¹⁷ Accordingly, ADEM included a reopener provision in the final Permit, which allows the Permit to be modified in accordance with ADEM Admin. Code r. 335-6-6-.17 “when the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations[.]”¹⁸

On January 11, 2021, Alabama Power submitted a letter to ADEM requesting that Plant Gaston’s Permit be modified to incorporate the 2020 ELG Rule.¹⁹ More specifically, the letter

¹³ *Id.* at 41,802.

¹⁴ *Id.*

¹⁵ See generally NPDES Permit No. AL0003140, <http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104276466&dbid=0&cr=1>.

¹⁶ See 85 Fed. Reg. at 64,650 (“This final rule is effective on December 14, 2020.”).

¹⁷ ADEM, *Response to Comments Alabama Power Company E.C. Gaston Steam Electric Plant Proposed Draft NPDES Permit AL0003140* at 6 (Apr. 1, 2020), <http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104276462&dbid=0&cr=1> (“The Department recognizes that EPA is going back to rulemaking on the steam electric ELGs, and the permits contain a reopener provision that allow it to modify the terms of the permit based on new or different ELGs that are promulgated.”).

¹⁸ See NPDES Permit No. AL0003140 at Part II.E.4.b.(6) (p. 32 of 45).

¹⁹ See Letter from Mike Godfrey, General Manager of Environmental Affairs, Alabama Power, to Scott Ramsey, Chief of Industrial Section, ADEM, *Request for NPDES Permit Modification for the Ernest C. Gaston Electric Generating Plant (NPDES Permit No. AL0003140) to Incorporate 2020 Steam Electric*

requested²⁰ that the Permit be modified to include provisions corresponding to each of the following compliance options under the 2020 ELG Rule: the generally applicable effluent limitations with a compliance date of December 31, 2025;²¹ low utilization electric generating units;²² and permanent cessation of coal combustion.²³ Alabama Power requested provisions corresponding to each of these compliance options to “preserve[] the Reconsideration Rule’s flexibility while Alabama Power continues to analyze the best path forward for Plant Gaston . . . [and to allow] Alabama Power and Plant Gaston to utilize the automatic transfer provisions included in the 2020 Reconsideration Rule, should the need arise.”²⁴ In the January 11, 2021 letter, Alabama Power made clear that it was “not at this time selecting its compliance path for Plant Gaston.”²⁵ Rather, Alabama Power stated that it “intends to make that selection [by filing a NOPP] on or before October 13, 2021, in accordance with the construct of the 2020 Reconsideration Rule.”²⁶ ADEM has not yet modified Plant Gaston’s Permit to include provisions implementing the 2020 ELG Rule.

In accordance with the foregoing procedural history, Alabama Power submits this NOPP, pursuant to 40 C.F.R. § 423.19(f), to notify ADEM that the subcategory for “permanent

Reconsideration Rule (Jan. 11, 2021) (hereinafter “Modification Request Letter”), <http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104455018&dbid=0&cr=1>.

²⁰ See *id.* at 4-6.

²¹ 40 C.F.R. §§ 423.13(g)(1)(i) (FGD wastewater), 423.13(k)(1)(i) (BATW). EPA stated in the 2020 ELG Rule that permit writers can properly consider filed NOPPs in the “other factors” of 40 C.F.R. § 423.11(t)(4). See 85 Fed. Reg. at 64,708. This NOPP therefore provides additional support for the requested December 31, 2025 date for compliance with the Rule’s generally applicable effluent limitations, as well as a requested compliance date of December 31, 2023 for compliance with effluent limitations applicable to low utilization electric generating units. These compliance dates are also appropriate because they provide Alabama Power maximum flexibility to automatically transfer unencumbered to/from the various compliance options prior to the deadlines established in 40 C.F.R. §§ 423.13(o)(1).

EPA’s August 3, 2021 Notice of Rulemaking Initiative is an additional “other factor” that supports the requested dates for compliance with the effluent limitations for the generally applicable and low utilization electric generating unit compliance options. See 86 Fed. Reg. at 41,801. Alabama Power should not be required to install (or take meaningful steps to install) costly treatment technologies until there is certainty for the industry regarding what technologies will ultimately be necessary to comply.

²² 40 C.F.R. §§ 423.13(g)(2)(iii) (FGD wastewater), 423.13(k)(2)(iii) (BATW).

²³ *Id.* §§ 423.13(g)(2)(i) (FGD wastewater), 423.13(k)(2)(ii) (BATW).

²⁴ See Modification Request Letter at 6.

²⁵ *Id.* at 5.

²⁶ *Id.*

cessation of coal combustion by December 31, 2028”²⁷ has been selected for Units 1-5 at Plant Gaston with respect to both FGD wastewater and BATW.²⁸ Although the purpose of this NOPP is to select “permanent cessation of coal combustion” as the compliance path for Units 1-5 at Plant Gaston, Alabama Power respectfully requests that ADEM nonetheless modify the NPDES permit to also include conditions and limitations corresponding to low utilization electric generating units, as well as the generally applicable effluent limitations (with a compliance date of December 31, 2025), given that 40 C.F.R. § 423.13(o) allows Alabama Power to automatically transfer to and/or from various compliance options prior to established deadlines.²⁹ Alabama Power also respectfully requests the inclusion of permit provisions that afford Plant Gaston the relevant protections set forth in 40 C.F.R. §§ 423.18, 423.19(g), and 423.19(j).

III. NOPP for the “Permanent Cessation of Coal Combustion by December 31, 2028” Subcategory for FGD Wastewater and BATW

The 2020 ELG Rule specifies that a NOPP for the subcategory of “permanent cessation of coal combustion by December 31, 2028” must be submitted to the relevant permitting authority by “no later than October 13, 2021”³⁰ and must:

- (1) “[I]dentify the electric generating units intended to achieve the permanent cessation of coal combustion”;
- (2) “[I]nclude the expected date that each electric generating unit is projected to achieve permanent cessation of coal combustion”;
- (3) State “whether each [permanent cessation] date represents a retirement or a fuel conversion”;
- (4) State “whether each retirement or fuel conversion has been approved by a regulatory body, and what the relevant regulatory body is”;

²⁷ See 40 C.F.R. § 423.19(f)(1) (“For sources seeking to qualify as an electric generating unit that will achieve permanent cessation of coal combustion by December 31, 2028, under this part, a Notice of Planned Participation shall be made to the permitting authority, or to the control authority in the case of an indirect discharger, no later than October 13, 2021.”).

²⁸ See *id.* §§ 423.13(g)(2)(i) (FGD wastewater) (Unit 5 only), 423.13(k)(2)(ii) (BATW). Prior to its “permanent cessation of coal combustion[,]” Plant Gaston will comply with the total suspended solids (TSS) and oil and grease effluent limitations contained in 40 C.F.R. §§ 423.12(b)(11) (FGD wastewater) (Unit 5 only) and 423.12(b)(4) (BATW) (Units 1-5).

²⁹ See *id.* §§ 423.13(o), 423.19(i).

³⁰ *Id.* § 423.19(f)(1).

- (5) Provide "a copy of the most recent integrated resource plan for which the applicable state agency approved the retirement or repowering of the unit subject to the ELGs, certification of electric generating unit cessation under 40 CFR 257.103(b), or other documentation supporting that the electric generating unit will permanently cease the combustion of coal by December 31, 2028"; and
- (6) "[F]or each such electric generating unit, a timeline to achieve the permanent cessation of coal combustion . . . [which] shall include interim milestones and the projected dates of completion."³¹

Alabama Power provides information to address each of these requirements in the remaining subsections of this letter.

a. Identification of Units, Dates, and Whether each Unit will Retire or Convert its Fuel Source (Requirements (1) – (3))

Unit	Retirement/Fuel Conversion	Projected Date of Permanent Cessation
Gaston Unit 1	Retirement	12/31/2028 ^{††}
Gaston Unit 2	Retirement	12/31/2028 ^{††}
Gaston Unit 3	Retirement	12/31/2028 ^{††}
Gaston Unit 4	Retirement	12/31/2028 ^{††}
Gaston Unit 5	Fuel Conversion [†]	12/31/2028 ^{††}

[†] The unit is currently able to utilize both natural gas and coal as a fuel source. Reference to a "fuel conversion" means the use of coal as a fuel source will be discontinued.

^{††} These projected dates have been selected to maximize Alabama Power's ability to react and respond to inherent uncertainties and unexpected developments that can arise in the context of such decisions. To the extent Alabama Power is reasonably able (consistent with proper planning and system reliability) to implement these decisions in a more expedited manner, it will undertake to do so. Alabama Power will disclose any change in the projected date(s) by and through the Annual Progress Reports required by 40 C.F.R. § 423.19(f)(3) & (4).

b. Identification of Regulatory Body and whether Retirement or Fuel Conversion has been Approved (Requirement (4))

As noted above, Units 1-4 are owned by SEGCO. SEGCO itself is owned equally by Alabama Power and its affiliate Georgia Power; however, SEGCO is not subject to the same

³¹ *Id.* § 423.19(f)(2).

public utility regulatory oversight as those two retail electric suppliers. SEGCO sells the entire output of these generating units to Alabama Power and Georgia Power pursuant to a wholesale power purchase agreement that has been approved by and is on file with FERC. Formal authorization by FERC of the unit decisions described in part III.a. above is not required under law, nor is authorization required from either the Alabama Public Service Commission (APSC) or the Georgia Public Service Commission (GPSC).

The retail electric utility operations of Alabama Power are regulated by the APSC pursuant to Title 37 of the Alabama Code. Formal authorization by the APSC of the decision for Unit 5 described in part III.a. above is not required under Alabama law. Even so, the APSC is informed of such unit decisions, and the reasons for them, by virtue of its ongoing regulatory oversight and monitoring of Alabama Power's jurisdictional operations.

c. Additional Support that the Units will Permanently Cease Coal Combustion (Requirement (5))

Alabama Power updates its integrated resource plan (IRP) on an annual basis and typically submits a report to the APSC on a triennial basis³² that summarizes the results of its most recent IRP. The Company's 2021 IRP does not incorporate the unit decisions referenced in part III.a. because those decisions were finalized after that IRP was completed. The decisions reflected in this NOPP will be incorporated in the Company's 2022 IRP. When the next triennial report to the APSC becomes available, Alabama Power can provide it for ADEM's review.

In accordance with Georgia law, formal regulatory proceedings respecting Georgia Power's IRP are held at the GPSC on a triennial basis. The unit decisions referenced in part III.a. above were made following the completion of proceedings regarding Georgia Power's last IRP. Georgia Power is scheduled to submit its next IRP to the GPSC in 2022, and the decision to permanently cease coal combustion at Units 1-4 is expected to be referenced therein.

Because Alabama Power initiated closure of Plant Gaston's ash pond in April 2019, it was unnecessary for Alabama Power to submit to EPA a site-specific alternative closure request under 40 C.F.R. § 257.103(f)(2) (or self-certify pursuant to 40 C.F.R. § 257.103(b) (2015)) based on the permanent cessation of coal-fired boiler(s) by a date certain. The Company therefore cannot submit this documentation as additional support.

As for "other documentation supporting that the electric generating unit[s] will permanently cease the combustion of coal by December 31, 2028[,]" appropriate disclosures related to these decisions by SEGCO and by Alabama Power will be made in upcoming public submittals pursuant to the Securities Exchange Act of 1934, which can also be provided for ADEM's review. This submittal also concludes with the customary NPDES certification

³² The last such submittal to the APSC was the summary report for the 2019 IRP.

statement, signed by a responsible corporate official of Alabama Power. This statement provides further support by attesting to the intention to permanently cease coal combustion of the above-referenced Gaston units prior to December 31, 2028, as explained herein.

d. Unit-Specific Compliance Timelines with Interim Milestones (Requirement (6))

Set out below are the compliance timelines with interim milestones based on available information. Given the cessation of coal combustion at Units 1-5 is still several years away and unit decisions only recently were finalized regarding the selection of this 2020 ELG Rule compliance subcategory, Alabama Power reserves the right to update/supplement the timelines for each Gaston unit, including by and through the Annual Progress Report requirement for the permanent cessation subcategory.³³

i. Unit 1 Compliance Timeline with Interim Milestones

1st Quarter 2022: File Updated GPC Integrated Resource Plan with the GPSC
3rd/4th Quarter 2022: Submit the latest (2022) Integrated Resource Plan information to the APSC, typically as part of a triennial submission
December 31, 2028: Permanent cessation of coal combustion

ii. Unit 2 Compliance Timeline with Interim Milestones

1st Quarter 2022: File Updated GPC Integrated Resource Plan with the GPSC
3rd/4th Quarter 2022: Submit the latest (2022) Integrated Resource Plan information to the APSC, typically as part of a triennial submission
December 31, 2028: Permanent cessation of coal combustion

iii. Unit 3 Compliance Timeline with Interim Milestones

1st Quarter 2022: File Updated GPC Integrated Resource Plan to the GPSC
3rd/4th Quarter 2022: Submit the latest (2022) Integrated Resource Plan information to the APSC, typically as part of a triennial submission
December 31, 2028: Permanent cessation of coal combustion

³³ See 40 C.F.R. § 423.19(f)(3)-(4).

iv. Unit 4 Compliance Timeline with Interim Milestones

- 1st Quarter 2022: File Updated GPC Integrated Resource Plan with the GPSC
- 3rd/4th Quarter 2022: Submit the latest (2022) Integrated Resource Plan information to the APSC, typically as part of a triennial submission
- December 31, 2028: Permanent cessation of coal combustion

v. Unit 5 Compliance Timeline with Interim Milestones

- 3rd/4th Quarter 2022: Submit the latest (2022) Integrated Resource Plan information to the APSC, typically as part of a triennial submission
- December 31, 2028: Permanent cessation of coal combustion

IV. Conclusion

As set forth above, Alabama Power submits this NOPP to request that Plant Gaston's NPDES permit be modified to include conditions and limitations corresponding to the 2020 ELG Rule's compliance subcategory for "permanent cessation of coal combustion by December 31, 2028" for both FGD wastewater and BATW.³⁴ Alabama Power requests ultimate compliance dates of December 31, 2028 for the affected units (Units 1-4 and Unit 5), and will comply with the TSS and oil and grease limits contained in 40 C.F.R. §§ 423.12(b)(11) (FGD wastewater) (Unit 5 only) and 423.12(b)(4) (BATW) until such time as the units are either retired or repowered.

Alabama Power further requests that—despite the submission of today's NOPP—ADEM modify Plant Gaston's NPDES permit to include conditions and limitations corresponding to low utilization electric generating units, as well as the generally applicable effluent limitations (with a compliance date of December 31, 2025), given 40 C.F.R. § 423.13(o) allows Alabama Power to automatically transfer to and/or from various compliance options prior to established deadlines.³⁵ Lastly, Alabama Power requests the inclusion of permit provisions that afford Plant Gaston the related protections set forth in 40 C.F.R. §§ 423.18, 423.19(g), and 423.19(j).

Alabama Power appreciates this opportunity to provide ADEM with information relevant to its modification of Plant Gaston's NPDES permit. If ADEM requires any additional

³⁴ See *id.* §§ 423.11(w) (defining "permanent cessation of coal combustion"), 423.13(g)(2)(i) (limits applicable to FGD wastewater), 423.13(k)(2)(ii) (limits applicable to BATW), 423.19(f) (NOPP requirements).

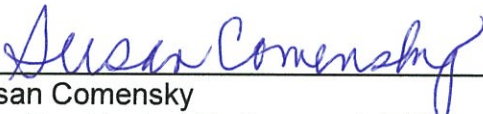
³⁵ See *id.* §§ 423.13(o), 423.19(i).

information, or if Alabama Power can assist in any other manner, please do not hesitate to contact us at your convenience.

Sincerely,

Mike Godfrey
Alabama Power - Environmental Affairs

I certify under penalty of law that this document and all enclosures were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.



Susan Comensky
Vice President of Environmental Affairs
Alabama Power Company