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June 25, 2020

Via electronic and regular mail

Mike Godfrey
Environmental Affairs General Manager
Alabama Power
600 18th St. N.
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Re: **Public Meetings Concerning Alabama Power's Assessment for Corrective Measures**

Dear Mr. Godfrey:

The Southern Environmental Law Center, on behalf of the Alabama Rivers Alliance, Black Warrior Riverkeeper, Coosa Riverkeeper, Mobile Baykeeper and Sierra Club ("Conservation Groups"), submits this letter in response to Alabama Power's plan for public meetings concerning groundwater contamination at the Greene County, Barry, Gorgas, Gaston and Miller coal-fired power plants. We urge Alabama Power to postpone these public meetings because of the COVID-19 pandemic. The current pandemic renders these meetings too dangerous to conduct in a "town hall" style, which is what is contemplated by a "discussion" in the federal and Alabama regulations pursuant to which the meetings are being held. Going forward with meetings now will force concerned citizens to choose between attendance and participation and protecting their own health. Citizens should not have to assume such serious and avoidable risks. Convening public meetings now is also contrary to the advice and instructions of state public health officials, and Alabama Power should not place the public in this untenable position.

Even if the Company insists on going forward, it is critical that it expressly require and implement basic safety measures required for any public gathering in an enclosed space, such as wearing masks and adequate distancing. As it currently stands, the public has no assurances that any safety precautions will be implemented if they do choose to attend one of these meetings.

If the meetings go forward, Alabama Power should also establish procedures for the public to ask questions and provide comments in an interactive manner, in addition to leaving written comments. A discussion is required to adequately address these important issues. The Company should also follow up these meetings with virtual meetings to ensure that interested members of the public who are afraid to attend in person will have a meaningful opportunity to participate in this process. As proposed, these meetings ensure limited public involvement.

Purpose of the Public Meetings Concerning Groundwater Contamination Caused by Coal Ash Ponds

Alabama Power has drafted Assessments of Corrective Measures (“ACM”) and Closure Plans for its coal ash ponds in an effort to adhere to requirements set forth by federal regulations, Alabama regulations, and administrative orders penalizing Alabama Power for contamination of groundwater with coal ash.¹ These regulations require that “[t]he owner or operator must discuss the results of the corrective measures assessment at least 30 days prior to the selection of remedy, in a public meeting with interested and affected parties.”² The intent of these meetings is to solicit public input regarding its plans *before* selecting a remedy. “As part of evaluating potential remedies, the owner or operator must hold a public meeting to discuss the remedies under consideration (prior to selecting a final remedy).”³ Alabama Power’s remedy of choice, cap-in-place, was clearly decided some time ago. Accordingly, these meetings are an indispensable and required opportunity for the public to provide feedback on the utility’s plans for these ash ponds and the groundwater contamination that they have caused. Historical and ongoing contamination of groundwater and surface waters at Alabama Power’s unlined and leaking wet-storage coal ash impoundments is of utmost public concern, so meaningful public notice and public participation options must be provided. These meetings should not just be a box for Alabama Power to check. However, as the meetings are currently noticed and scheduled, Alabama Power has virtually ensured that the meaningful public input contemplated by the federal and state regulations will not happen.

These Meetings Should not be Held at the Height of a Global Pandemic

First, since the notice of these meetings, Alabama has documented 12 of its 13 highest single day case counts of COVID-19.⁴ Recent calculations show Alabama’s current seven-day average to be nearly 15 deaths and over 500 new cases per day; both numbers are rising.⁵ Recently, the Associated Press reported that Alabama had the second highest rate of new cases per capita in the nation over a two week stretch in June.⁶ This data clearly shows that Alabama Power should not place the public at risk by holding a public meeting at this time when communities are also struggling to contend with the virus.

¹ See, e.g., Alabama Power Company, *Assessment of Corrective Measures at Barry Ash Pond*, Jul. 11, 2019, at 1 (stating that the Assessment of Corrective Measures is produced “[p]ursuant to 40 CFR § 257.96, rule 335-13-15-06(7) of the regulations of the Alabama Department of Environmental Management (ADEM), and Paragraph C of ADEM Administrative Order No. 18-094-GW”).

² 40 C.F.R. § 257.96(e); Ala. Admin. Code r. § 335-13-15-.06(7)(e).

³ Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities, 80 Fed. Reg. 21,302, 21,407 (Apr. 17, 2015).

⁴ Ramsey Archibald, *Alabama adds 639 new coronavirus cases Tuesday, 23 deaths*, AL.com, June 23, 2020, available at <https://www.al.com/news/2020/06/alabama-adds-639-new-coronavirus-cases-tuesday-23-deaths.html>; Ramsey Archibald, *Alabama sees second highest total for daily coronavirus cases, records 25 more deaths*, AL.com, June 24, 2020, available at <https://www.al.com/news/2020/06/alabama-sees-second-highest-total-for-daily-coronavirus-cases-records-25-more-deaths.html>.

⁵ New York Times, *Alabama Coronavirus Map and Case Count*, June 25, 2020, available at <https://www.nytimes.com/interactive/2020/us/alabama-coronavirus-cases.html>.

⁶ Kim Chandler, *Rise in coronavirus cases brings new concerns in Alabama*, Associated Press, June 21, 2020, available at <https://apnews.com/894beaff53b7e7a30b7de989d960a198>.

Second, the limited, skeletal public notices Alabama Power placed on its website and in local papers did little to assuage any public safety concerns about these meetings. The Company states that “Alabama Power is carefully monitoring current public health developments. We will take advantage of the best available information as of the date of the meeting. As of now, it is anticipated that precautions such as social distancing, cleaning and the supplying of masks will be in place.”⁷ If all attendees are not required to wear a mask and physically distance, then people will unnecessarily be put at risk. These general recitations do little to encourage attendance to a public meeting when cases in Alabama are at current highs. Without more detail, (1) attendance will be curtailed and (2) the people who do attend the public meetings will be put at unnecessary risk. Indeed, on a web page discussing its response to COVID-19, Alabama Power notes that the Company itself is suspending all walk-in services for its customers, has canceled all classes at its HVAC training center, and is implementing telecommuting and “using technology for meetings.”⁸ The Company believes these practices are important for the health of its staff, customers, and the public, so it should utilize those same measures to protect public health in the public meetings.

In light of these concerns, the Conservation Groups respectfully request that the meetings be postponed to a later date when the meetings can fulfill the intended purpose of providing the public with a meaningful opportunity to learn about, and provide an avenue for comments on, the Groundwater Assessment Monitoring Program and Closure Plans by the Company.

Recommendations for Public Meetings

The Conservation Groups recommend that Alabama Power postpone the current public meetings and implement the measures below for maximum participation by the public.

1. Provide More Notice and Days Between Meetings

The Conservation Groups strongly object to the timing and inadequacy of the notices of these meetings. Many concerned citizens and organizations who have been working on coal ash issues for years were not made aware of these meetings until a few days ago and, based on the extremely tight time frame between the published notices and the hearings, these concerned groups and individuals will not have adequate time to prepare and respond appropriately, especially during a public health crisis. Even if this was unintentional on the Company’s part, the lack of timely notice and the unnecessarily compressed time frame will have a profound negative impact on public participation in this process.

Additionally, Alabama Power has scheduled these meetings all within a little over two weeks, simultaneously with another utility and around a holiday. Currently, the ACM meetings for Greene County and Lowman (PowerSouth) are scheduled on the same night, June 29. Plant

⁷ See, e.g., Alabama Power Company, *Notice of Public Meeting Plant Barry Assessment of Corrective Measures*, May 31, 2020, available at https://www.alabamapower.com/content/dam/alabamapower/Our%20Company/The%20Environment/CCR%20Rule%20Compliance%20Data%20and%20Information/public-notices/Plant-Barry-Mobile_Press-Register.pdf.

⁸ COVID-19, Alabama Power, available at <https://www.alabamapower.com/our-company/outages-and-storm-center/coronavirus.html>.

Barry is scheduled for the next night. Plants Gaston and Miller are both scheduled for July 6 and 7. July 4 is on a Saturday; therefore, many people likely will not be able to prepare for and attend meetings on the Monday and Tuesday after this holiday. This current scheduling, whether intentional or not, ensures that members of the public are less likely to attend. The public would have a greater opportunity to participate if the meetings were given more notice, spread out sensibly, and held at a time when the COVID-19 numbers in Alabama were not at an all-time high.

2. Provide for Virtual Attendance

Virtual attendance at public meetings is now ubiquitous. In Alabama and neighboring states, environmental public meetings have been broadcast and shared virtually via technologies such as Zoom and the telephone. For example, ADEM participated in an EMC meeting on June 12, and members of the public were able view the proceedings online via YouTube. Alabama Power has conducted public meetings remotely in fulfilling its public meeting requirements for dam relicensing as governed by the Federal Energy Regulatory Commission. There is no reason that Alabama Power cannot make virtual accommodations now. Given the late and inadequate notice for upcoming meetings, whether or not they are held, Alabama Power should also provide virtual and phone options for those who cannot attend, to ensure maximum participation.

3. Use a Town Hall Format and Provide Clear Procedures to Accept Comments

While the notices are not clear as to the format of the meetings, it appears that the Company does not intend to allow a robust discussion or an opportunity for questions and public comments. If this is the Company's intention, it should alter the format to a "town hall" style meeting at which the public can voice concerns and receive replies directly from the Company. We believe that such a format is what is contemplated by the regulations, which require the Company to "discuss" its proposed corrective measures at the meetings. We request that you advise us immediately of the intended format of the meetings.

There is also currently no clear mechanism articulated for people to submit comments if they are unable to attend in person. Interested persons must be permitted to submit comments electronically and by letter as this would ensure more public participation and is done for public meetings on a consistent basis.

4. Provide RSVPs in Order to Ensure Social Distancing

As discussed above, the public meeting notices are too vague and lacking details regarding the steps to be taken to limit public risk of COVID-19 spread. Alabama is currently under a "Safer at Home" order that advises individuals to "minimiz[e] travel outside the home." The order also requires "the operator of any business, government office, or other establishment open to the public" to "take reasonable steps, where practicable, to protect their customers, constituents, or other guests" by "maintaining six feet of separation" and "regularly disinfecting" surfaces.⁹ Alabama Power should provide RSVPs for people to share their intent to attend these

⁹ Order of the State Health Officer Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19, amended May 21, 2020, available at <https://governor.alabama.gov/assets/2020/05/Safer-at-Home-Order-FINAL-5.21.2020.pdf>, ¶¶ 1, 5.

meetings. That would allow meeting organizers to take steps necessary to ensure the meeting spaces are set up to allow social distancing and disinfection of the venue. Alabama Power should also consider holding its meeting outdoors or take other measures to ensure ventilation. Finally, Alabama Power should establish, communicate, and require what are now common safety measures, such as mask-wearing and maintaining distance.

5. Record Meeting and Make Available to the Public

The public meetings provide members of the public a chance to learn about and discuss the Company's ACMs. Accordingly, the meetings should be recorded and made readily available for viewing so that people who are unable to attend may watch or listen at a later time.

6. Provide for Remote Speaking and Questions

Alabama Power should also provide for remote speaking and questioning in order to facilitate public involvement. By allowing for questions and comments to be delivered via email, phone, or videoconference, Alabama Power would allow people to be heard and to get answers while minimizing the risk of spreading COVID-19 to themselves and others.

7. Provide for a Follow-up Virtual Meeting

Finally, if the Company moves forward with public meetings in the midst of a global pandemic and height of state infections, which should not happen, it should supplement those meetings, which are likely to be sparsely attended, by providing virtual meetings following these meetings, where the public can learn about Alabama Power's plans and provide feedback and comments. Alabama Power, with its extensive technological and outreach capabilities, certainly has the ability to provide the public with meaningful opportunities to learn about and discuss how it plans to clean up the pollution caused by its coal ash waste.

Conclusion

Alabama Power coal ash ponds have contaminated water across the state at every site where they are located. The Company is required by federal and state regulations to provide the public with meaningful opportunities to weigh in on its plans to clean up this pollution. To have public meetings now, at the height of the COVID-19 pandemic, would be irresponsible at best. These meetings should be postponed. However, if the Company insists on going ahead, it should provide every opportunity for the public to participate in these meetings. The Company has multiple ways to make this process more accessible to the public and safer, as detailed above, and it has the means and resources to facilitate public participation and should do so to comply in good faith with the regulatory requirements for these meetings.

If you have any questions or would like to discuss any of our recommendations, please contact the Southern Environmental Law Center at 205-745-3060.

Respectfully submitted,



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