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VIA ELECTRONIC MAIL

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Re: DOE Draft Guidance to Inform Section 247 of the Energy Policy Act of 2005 (EPAct 2005) – Maintaining and Enhancing Hydroelectric Incentives

Southern Company Services, Inc., on behalf of itself and its operating affiliates, Alabama Power Company and Georgia Power Company (collectively, "Southern"), is pleased to have this opportunity to provide responses to the Department of Energy's ("DOE's") draft Section 247 Guidance. Southern recognizes the opportunity available through Section 247 to enhance the effectiveness of hydroelectric investments, and the importance to DOE and the industry in structuring a program that will best implement these goals and maximize the effectiveness of these federal funding opportunities.

Southern Company is an investor-owned utility that, through its subsidiaries, operates 32 FERC-licensed hydropower developments in the southeastern United States. Combined, it has over 2,600 MWs of hydro generation, which consists of storage reservoirs, run-of-river sites, and pumped storage hydroelectric power. Five of its developments are over 100 years old, with its newest plants coming online in 1984. Southern Company's hydropower organization oversees dam safety, licensing, O&M, security, hydrological modeling, and system schedule/dispatch. Alabama Power Company, Georgia Power Company and Southern Company Services, Inc. are all direct subsidiaries of Southern Company.

Southern supports the joint comments being filed contemporaneously by the National Hydropower Association, American Public Power Association, and Edison Electric Institute. In addition, Southern wishes to provide supplemental comments on the issues detailed below, which are organized, as requested by the draft guidance, according to the template structure provided by the draft guidance.

Comments on DOE Preliminary Five Questions.

1) **DOE proposes to use a scoring criteria rubric to prioritize which capital improvement applications are awarded funding in the event the program is oversubscribed (i.e., more**

eligible applications than available funding). DOE seeks feedback on this approach (see Section IX of the Draft Guidance).
As detailed further in its comments below, Southern suggests that, in the event of oversubscription, that awards be prorated instead of scored or ranked based on criteria. For example, if there are $1.107 billion in qualified projects ($553.6 million multiplied by two), then each project should receive half of their requested funding amount up to the statutory limitations.

2) **DOE proposes to distribute funds in an equitable manner in the event the program is oversubscribed. To do so, DOE plans to fund applications in all three of the categories of capital improvements (*i.e.*, improving grid resiliency, improving dam safety, and environmental improvements) by selecting the top scoring application in each category for small projects and remaining eligible projects. DOE seeks feedback on this approach (see Section XI of the Draft Guidance).**

   Southern prefers that the appropriated funds be made available in one round of funding. It also agrees with DOE that, if adequate funds are available, then all qualified improvements should be funded up to their limits with equal importance given to the three categories (grid resilience, dam safety, and environmental improvements). In the event of oversubscription, Southern would prefer prorating the award amounts as opposed to ranking/scoring.

3) **Recognizing that small hydropower facilities make up 75 percent of the nation's hydropower fleet, DOE intends to allocate up to 25 percent of the program funding to support capital improvements made at small hydropower projects (nameplate capacity of 10MW or less that is owned or operated by a small business, Indian tribe, municipality, or electric cooperative). DOE seeks feedback on this approach (see Section IV of the Draft Guidance).**

   Southern understands the rationale behind and supports the 25% set-aside of funds for small hydropower facilities. However, Southern suggests that small hydropower applications be limited to the 25% set-aside of funds. Additionally, in the event of undersubscription within the small power set-aside category, the remainder of the 25% should be released and added into the 75% of funds allocated for general applications.

4) **To balance risk while incentivizing hydropower owners and operators to make qualified capital improvements, DOE is proposing to provide portion of the funding (up to 10%) up front and the remainder upon completion of the capital improvement(s). DOE seeks feedback on this approach (see Section X of the Draft Guidance).**

   Southern agrees with and supports this proposal as a fair way of balancing the need to incentivize capital projects while also ensuring that federal funds are effectively used for projects that will be completed on schedule and in compliance. Southern also anticipates that the reporting requirements for the use of upfront federal payments could be more comprehensive and

burdensome, requiring detailed invoices and financial information, than might otherwise be required for a funding program that was 100% based on reimbursement upon project completion.

Therefore, Southern suggests that the 10% upfront payment could be an option selected by the applicant or negotiated between DOE and an awardee, such that a successful awardee could elect to forgo the 10% upfront payment in exchange for a more streamlined reporting requirement (i.e., either less detail or less frequency) during the ongoing completion of the project. Southern also recommends that DOE clarify in final guidance that it is proposing to provide 10% of the 30% up front with the remaining 20% due on completion, and that the split actually means a one-third payment up-front and a two-thirds payment upon completion. Moreover, Southern recommends that DOE clarify that the payments could be less depending on the award negotiations with the applicant.

5) **DOE estimates eight (8) hours of preparation time for the EPAct 2005 Section 247 application. DOE seeks comments on this estimate.**

Given the detailed information suggested by the draft guidance, from identifying risks to completion, to the 12-page community benefits plans, to detailing the project's scoring criteria and other narratives, Southern respectfully suggests that appropriately preparing a successful application should take significantly more time. While economies of scale and efficiency may be captured on subsequent applications for an applicant that is submitting multiple applications, Southern suggests that the time required to complete an initial application should take an estimated 40-60 hours. In an effort to reduce the requisite time to complete the application, Southern respectfully requests that DOE consider trying to streamline the application process through adoption of the proration approach in the event of oversubscription, and reconsider the scope of some of the specific information that it is requesting.

Additional Comments on Specific Draft Guidance Sections

Section I. Purpose and Scope.

Cost Thresholds and Fiscal Limitations. Section I of the draft guidance states that:

> *"Limitations for the incentive payments include:*
> *(1) Incentive payments shall not exceed 30% of the costs of the applicable capital improvement(s)*
> *(2) Not more than one incentive payment may be made to a single qualified hydroelectric facility in any fiscal year, the amount of which shall not exceed $5,000,000."*

With respect to the 30% cost threshold in (1), Southern recommends that DOE should evaluate what the 30% threshold is based on the costs included in the application, and not necessarily the costs of an entire capital improvement plan. For example, an applicant may be planning on

implementing 10 gate replacement plans, but it only applies for the costs of gate 1. In this case, DOE should determine the 30% cap based on the costs for gate 1 and not all 10 gates. (This could be important if there are future rounds of funding, as it could alleviate the possibility of a future project being disqualified from applying because it is considered the same project as an earlier application that sought funding for a portion of it.)

The intent of Number (2) should be clarified. Can this be interpreted to mean that projects could apply for payments over multiple fiscal years, should an individual project extend over that timeframe? Alternatively, could it be interpreted that facilities that have exceeded the cap on a prior project apply for additional funding for other projects that meet the Guidance requirements, provided that this funding request does not occur during the same fiscal year?

Incentive Payments Shall be Considered a Benefit. Southern supports DOE's statement in the draft guidance that determinations made under EPAct 2005 Section 247 with regards to an incentive payment are considered benefits, and are not considered financial assistance subject to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 C.F.R. Parts 200 and 910) or to the Financial Assistance Rules (10 C.F.R. Part 600).

Allocation to Small Projects. In this section, DOE proposes allocating a portion of the funds to small projects. DOE defines a small project as one that is 10 megawatts (MWs) or less nameplate capacity. Southern takes no position on the merits of this allocation or its methodology. However, Southern recommends that DOE clarify that applicants will have to indicate that they are either seeking funding for a small project or a large project and will be eligible only for the funding available for the particular size project they applied for (*i.e.*, they can't seek funding from both the 25% pool of funds allocated for small projects as well as from the remaining 75% pool of funds allocated for larger projects). See additional comments on the small projects allocation under Section VI below.

Solicitation Period. Although DOE does not indicate how long the solicitation period would be, DOE does indicate it would like to allocate the funds over a single solicitation period. DOE would prioritize based on criteria discussed later in the draft guidance. Southern recommends that DOE allocate the funds over a single solicitation period as this reduces the likelihood of oversubscription and also recommends a long open window (i.e. 90-120 days) based on the complexity of the proposed solicitation process, application requirements and scoring criteria. A 60-day window would be an appropriate period if DOE applied proration in the event of oversubscription and proposed a more streamlined solicitation process and reduced the level of detailed information required as proposed in its application requirements.

Section II. Authority - No comments.

Section III. List of Definitions.

Unless stated otherwise, Southern generally agrees with the definitions in Section III.

"Ancillary services" are defined by DOE through reference to the six services called out in Order 888 and subsequent guidance. Although DOE's reference is correct, the Infrastructure Investment and Jobs Act ("IIJA") specifically references "black start capabilities" as an ancillary service. Consistent with the statutory reference, Southern recommends that DOE also include black start as an ancillary service for the purposes of this program.

"Appurtenant structures" are defined as "ancillary features of a dam such as inlet and outlet works, spillways, tunnels, or power plants". Southern requests that DOE expand or clarify this definition to include construction of (or improvements to) the infrastructure required to provide safe access to these features listed above (e.g. include walkways and bridges)

"Hazard potential classification" is defined by reference to the system adopted by the Federal Emergency Management Agency (FEMA) and the Interagency Committee on Dam Safety (ICODS) that categorizes dams according to the degree of adverse incremental consequences of a failure or mis-operation of a dam. This system classifies dams as "high", "significant", or "low" hazard potential. However, the draft guidance also proposes to include an extra classification of "extremely high" created by the California Natural Resources Agency Division of Safety of Dams ("CNRADSD"). Not all states have a comparable agency, and even those that do may not have created an "extremely high" classification. Since the CNRADSD would not qualify dams located outside of California, dams in other states that might otherwise qualify as "extremely high" would not be afforded such a classification based merely on their location. Yet the scoring rubric for dam safety proposed by the draft guidance would award 6 points to those classified as "extremely high hazard" as compared to 5 points for those classified as "high hazard" under FEMA/ICODS system.

The logical presumption here is that similarly situated dams may be given an advantage simply because they are located in the state of California, and are thus subject to the classification system used only by a California agency. Southern therefore respectfully suggests that either: (a) the scoring rubric for dam safety only include the high/significant/low classifications used by the FEMA/ICODS system and/or (b) California dams classified by the California agency as "extremely high" be granted equivalent points as those rated "high" under the FEMA/ICODS system. This would ensure that dams with comparable hazard qualifications be considered using an even playing field in terms of their applications instead of granting extra points based on a particular state's regulatory structure. In sum, this should be revised and clarified. It may be best to remove the *Extremely High* category (and its 6-point weighting) and revise the *High* category to "*High or Extremely High*", and provide consistent weighting. DOE may consider utilizing the Low, Significant, and High classifications from the Federal Energy Regulatory Commission (FERC). See 18 C.F.R. § 12.3(b)(13).

Section IV. Who may apply? No comments.

Section V. What is a qualified hydroelectric facility? No comments.

Section VI. How will DOE allocate funding for eligible capital improvement projects?

Southern prefers that the appropriated funds be made available in one round of funding. Southern also agrees with DOE that if adequate funds are available then all qualified improvements should be funded up to their limits with equal importance given to the three categories (grid resilience, dam safety, and environmental improvements).

Small hydropower allocation. Assuming that all appropriated funds are made available in one round of funding, the draft guidance states that up to 25% of the appropriate funds will be set aside and allocated for small projects, as defined in Section III. While this is certainly understandable in theory, such a bright-line set aside does not address the possibility of under-subscription within the set-aside, which could potentially leave valuable federal funds stranded and unused. Southern respectfully suggests that should the 25% of funds set aside for small projects be undersubscribed, DOE should release the remainder of the 25% set-aside to the general fund for applications for qualified hydroelectric facilities that do not meet the criteria for small projects.

Prioritization in the event of oversubscription. Southern is concerned with VI(b) and believes that in the event of oversubscription, DOE should prorate the funding to each eligible qualified project. As an example, if there are $1.107 billion in qualified projects ($553.6 million multiplied by two), then each project should receive half of their requested funding amount up to the statutory limitations. As discussed in Section IX, DOE spent a significant amount of time trying to find the right balance to prioritize those projects that receive funding in the event of oversubscription. DOE's process, although thoughtful, does not capture the vast array of projects that could be eligible, and it places DOE's own value judgment on what is more or less important. As an example, DOE places more weight on 10.01-15% increase in capacity (3 points) compared to automation or advanced controls (e.g., Supervisory Control and Data Acquisition (SCADA) or remote start capability) (2 points). More megawatts could be important, especially if the system is short or to displace fossil generation. However, an argument could be made that flexibility and monitoring / control of systems to keep the grid reliable and resilient that improve SCADA or remote start installations is of equal importance. Fish passage is another example. If improvements to existing fish passage provide as much throughput as a new fish passage system, should they not be scored the same? Or if an existing fish passage improves the throughput of sensitive or important species, whereas new fish passage does not, should the existing fish passage investment be scored higher? These examples highlight the difficulty and complexity of applying a prioritization rubric to applications.

DOE's oversubscription scoring system is also at odds with Congressional intent with respect to Section 247. This scoring construct could eliminate some projects that would otherwise be eligible under one of the three categories. It could also discourage potential applicants from submitting eligible capital improvements if they fear their project will receive a low score. Finally, DOE will

have to analyze each application to ensure that it is at least eligible for funding. A second prioritization review (in the event of oversubscription) would unnecessarily delay disbursement of funds, potentially impacting capital budgeting as well as permitting.

Process in the event of multiple applications per facility. Hydropower owners likely have multiple capital investments at their facilities. DOE should clarify in the final guidance that hydropower owners and operators can apply for multiple projects at their facility even if these projects add up to more than $5 million per facility, recognizing DOE will prorate the funding up to the cap per facility.

Section VII. At what stage in the development process would a capital improvement project be eligible to apply for an incentive payment?

Permits and authorizations required at the time of application. The draft guidance states that to be eligible to apply for an incentive payment, a capital improvement project at a qualified hydroelectric facility must have already received all Federal, State, and/or Tribal authorizations and completed any required NEPA review processes. Southern recommends that DOE allow projects to be deemed eligible upon applicants' commitment in the application to obtain all required permits and that DOE make payment of all funding contingent upon applicants' completion of all necessary permits and Federal, State, and/or Tribal authorizations and completion of any required NEPA review processes.

Southern also requests clarification and/or confirmation from DOE that the permissions and license compliance, dam safety, and maintenance responsibilities that the applicant has received through the FERC licensing or relicensing process and the NEPA review processes completed therein, may satisfy this application eligibility requirement.

DOE's guidance further states that for projects determined by DOE to need additional NEPA review, the recipient must be prepared to complete the NEPA review process. During the public webinar on February 16, 2022, it was stated that DOE would review any NEPA reviews conducted as part of the FERC licensing or re-licensing process(es) for qualified projects, and if it deemed the NEPA review insufficient, it would conduct its own NEPA review.

While DOE certainly has the authority to conduct its own separate NEPA review, Southern respectfully requests more clarity and detail as to how that process would work, particularly for projects that have already been completed and approved through the FERC licensing or re-licensing process (but which have procured materials or incurred costs toward the project after November 15, 2021). Should a second DOE-initiated NEPA review result in findings that differ from the initial NEPA review conducted as part of the FERC licensing or re-licensing process, and should such findings require changes or revisions to the project, this could greatly complicate matters. A scenario could be envisioned where additional FERC submissions and approvals would be required based on changes to the project resulting from DOE's NEPA review. This possibility introduces complicated administrative burdens and costs, and the prospect of potentially dissuading otherwise eligible applicants from submitting applications for DOE funds because of the uncertainty it would introduce

into an already determined project. Southern therefore respectfully requests some additional clarity as to how DOE anticipates applying multiple NEPA reviews of the same capital improvement to provide helpful clarity and certainty to prospective applicants.

Section VIII. What are the general application requirements?

Funding/Application Restrictions and Definition of "Facility".

The draft guidance states that [a]pplicants may file one or more applications during the application period, but total funding per hydroelectric facility may not exceed $5,000,000. Capital improvements that occur across multiple categories or subcategories, for grid resilience or environmental improvements as detailed in Section VIII(b)(7), must be filed in separate applications, even if the improvements occur at the same facility. While the term "facility" is not a defined term in Section III of the draft guidance, Section V defines a "qualified hydroelectric facility" as one that:

(A) Is licensed by FERC or is a hydroelectric project constructed, operated, or maintained pursuant to a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Federal Power Act (16 USC 791a et seq.), or has a FERC-issued exemption;
(B) Was placed into service before November 15, 2021; and
(C) Is in compliance with all applicable Federal, State, and Tribal requirements, or would be brought into compliance with all applicable Federal, State, and Tribal requirements as a result of the capital improvement carried out using an incentive payment under this Section.

During the February 16 Public Meeting, it was indicated that it is the Grid Deployment Office's (GDO's) intent that funding through EPAct 2005 Section 247 is to be limited to $5 million per FERC *License* and not per *facility*. Language in EPAct 2005 Section 247 does not seem to agree with this intent and uses the term *facility* to describe hydroelectric sites that are eligible for the incentive. There are no references to limiting funding by FERC Project Number or License. Given that a number of FERC licenses incorporate multiple developments under one license number, this would negatively impact the number of eligible facilities. In order to maximize the benefit of this program, it may be beneficial to revise this limit from a per FERC *license* basis to a per *development* basis.

Southern respectfully requests clarity from DOE that all of the infrastructure (*e.g.*, powerhouses or dams) contained under a single FERC license may not necessarily constitute a single "facility". For example, Alabama Power currently operates five (5) hydroelectric developments on the Coosa River under a single FERC License P-2146.[1] Treating all of the developments under the single FERC

[1] An application with FERC is currently pending that would consolidate two other developments, each with their own respective licenses (i.e., FERC No. 82 and FERC No. 618) under FERC License P-2146, for a total of 7 total developments under a single license. This would further exacerbate the issues discussed above.

license as a single "facility" (thus subject to the $5,000,000 cap) would unnecessarily elevate form over function if there are separate capital improvements on each dam that would otherwise be eligible and worthy of an incentive payment. Therefore, for Southern and those similarly situated, Southern would respectfully request that DOE clarify that multiple powerhouses/dams/reservoirs under a single license may count as individual "facilities" for purposes of the application and funding restrictions, and thus be considered individually and separately.

Southern also recommends that DOE reconsider whether capital improvements that occur across multiple categories of subcategories, for grid resilience or environmental improvements as detailed in Section VIII(b)(7), **must be filed in separate applications**, even if the improvements occur at the same facility. In the interests of administrative efficiency for both DOE and applicants, Southern recommends that applications for improvements in multiple categories of subcategories occurring at the same facility be allowed to be filed in one application.

A. Scoring Criteria for Projects Fitting Multiple Categories.

Section VIII(b)(7) Category Designation. This section states that the applicant must designate "one category" (as well as a subcategory, if applicable) for which the applicant seeks funding for the capital improvement project. Obviously, the categories enumerated in the statute by Congress are each important priorities to the advancement of our nation's hydroelectric infrastructure. Southern understands the proposal to limit applications to a single category to streamline review and to prevent "gaming" of the system with multiple applications in separate categories for some capital improvements. However, capital improvements that offer benefits in more than one category also deserve recognition of the multiple benefits the improvement would have on these important Congressional priorities.

Therefore, Southern would suggest that the scoring rubrics be adjusted to award a certain number of points (perhaps "bonus points") for applications that, while submitted under a single category, can demonstrate in their narrative that the capital improvement also addresses additional issues under other categories.

Section VIII (b)(8)(i) Narrative Requirement. This subsection requires that applicants provide "[a] detailed, written narrative describing the capital improvement project at the hydrogeneration facility, the need or rationale for the project, and the expected outcomes or benefits of the project." Southern requests that DOE clarify whether applicants should provide a discussion, referenced in DOE's Purpose and Scope in Section I above, of how the project not only contributes to the country's energy technology and climate goals, but also promote the following goals: (1) create good paying, high quality, local jobs; (2) advance diversity, equity, inclusion, and accessibility for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, (3) support meaningful community and labor engagement; and (4) contribute to the goal that 40% of the overall benefits from certain federal investments flow to disadvantaged communities (the Justice40 Initiative).

Section VIII (b)(8) (iv) Project Timeline summarizing the major steps/milestones described in the capital improvement project work plan and Community Benefits Plan in Section VIII(b)(13). Southern respectfully requests that DOE clarify and/or provide an illustrative example of the types of major steps/milestones that it desires to receive from applicants with respect to the Community Benefits Plan. Further, Southern seeks clarification/confirmation that DOE will consider and give deference to reasonable timelines established by FERC or by applicants, and asks for clarification as to what level of follow-up reporting DOE will expect from the applicant during the construction period to the completion of the capital improvement project.

Section VIII (b)(8)(vi) A project budget summarizing the major cost categories of the capital improvement. Southern requests that DOE provide a list of the specific cost categories that applicants must include in the application.

Section VIII (b)(13) Community Benefits Plans. Among the general application requirements listed on pages 12–17 of the draft guidance, Section VIII(b)(13) includes on page 14 a requirement to include a Community Benefits Plan ("CBP") that demonstrates the applicant's approach to ensuring that the capital improvement advances the four goals of: (1) community and labor engagement; (2) investing in the American workforce; (3) advancing diversity, equity, inclusion, and accessibility ("DEIA"), and (4) contributing to the Justice40 initiative. The following three pages, pages 14-17 of the draft guidance, detail a list of sub-plans and items to be included in the 12-page CBP.

Southern applauds DOE for including these important goals in the funding opportunity, which are important strategic priorities for the company as a whole, independent of this funding opportunity. At the same time, Southern also recognizes that not every capital improvement will be the same. Southern's projects may also include generator upgrade projects, dam safety-related spillway gate upgrades, and deep grouting projects. Moreover, some of the capital improvements may already be completed at the time of application. It therefore could be difficult to quantitatively evaluate and compare CBPs consistently across vastly different projects. Because of this, Southern requests further guidance and clarity as to how DOE anticipates reviewing such plans. For instance:

a) Southern respectfully requests that DOE clarify that its review of the CBPs will be a qualitative, rather than a quantitative review. In other words, failure to meet a specific requirement listed in pages 12-17 would not automatically disqualify an applicant, but rather each application's CBP would be reviewed holistically and qualitatively in comparison to the CBPs in other applications, to ensure that successful applicants are making real and concrete efforts towards the identified goals.

b) While Southern is pursuing many of the CBP goals in a significant and concrete way at an enterprise level, and while some of them may be able to be tied to the particular project or capital improvement that is the subject of the application, other important enterprise-level efforts may not be visible in a particular capital improvement. This could be a challenge for the industry as a whole – for example, efforts to engage minority- and women-owned contractors can be a priority for the company, but such vendors may not be available (either because none responded to the RFP or perhaps responses would have resulted in significantly higher cost or lower quality) for a particular project. Southern respectfully requests that DOE clarify that it would be appropriate for an applicant to include descriptions and narratives of enterprise-wide efforts (*e.g.*, regarding supply chain and vendor selection), even if the results of those efforts may not be reflected in a discrete project that is the subject of an application. Therefore, describing efforts being undertaken at a higher level indicates a commitment to advance these goals that may simply not be reflected in a list of contractors or subcontractors for the capital improvement at hand.

c) Further, "records to substantiate" each and every requested item may not be available, particularly for completed projects that are otherwise eligible or incentive payments. Would this render an application ineligible? Southern would suggest that it should not, and requests that DOE clarify this in its final guidance.

d) In VIII(b)(13)(i.), DOE states that "[c]ommunity and labor engagement should lay the groundwork for a Community Benefits Agreement" and eventual negotiation of "Workforce and Community Agreements". Southern requests that DOE clarify that actual formal written agreements need not be submitted in the application to be determined eligible for funding or, in the alternative, confirm that an applicant may submit a discussion of its efforts to obtain Community Benefits Agreements and Workforce Agreements either at the enterprise level or project level to satisfy the eligibility requirements.

e) How would DOE suggest that an applicant demonstrate the timeline for a community benefits plan, if the project is already completed? How would DOE plan to apply community benefit plans and other requirements (e.g., Davis-Bacon, Build America, Buy America) to already completed projects? Absent additional clarification of these questions by DOE, Southern respectfully contends that it would be impracticable to require applicants to provide this information for already completed projects.

Section VIII(b)(13)(iv)b.(3) Environmental Impacts. Will applicants be required to use the EJSCREEN tool to "quantitatively" discuss environmental impacts in the project area? Or would alternative methods of describing environmental impacts be acceptable? Southern requests DOE to address these questions and/or provide clarification in its final guidance.

Section IX. What types of capital improvement projects qualify for incentive payments and what information does DOE need to determine whether a project is eligible?

FERC-licensed project boundary. In the draft guidance, DOE indicates, for the first time, that only investments at the FERC license level would be considered eligible for incentives. As discussed above under Section VIII, Southern recommends that DOE provide a more refined eligibility process. Within the FERC license could be multiple dams, multiple reservoirs, and multiple powerhouses. Multiple dams within the FERC license could benefit from dam safety investments. Southern requests that: (a) DOE make this clearer earlier in the document and in the FAQs and (b) that DOE allow for investments at the development level to allow for greater opportunities amongst the three categories within a FERC license.

Southern reiterates its support of the structure created by DOE meant to provide equal funding opportunities across the three different categories.

Inclusivity of Subcategories. Each of the three categories in section IX appear to only include the subcategories listed in 42 U.S.C § 15883(b)(1)-(3). Southern suggests that Congress's intent was not to limit the subcategories of investments, but instead to provide examples to guide the public in implementing the law. Southern requests that DOE revise the guidance to clarify that these subcategories are not exhaustive, but rather illustrative, and that DOE will allow for applicants to make the case that other capital improvements outside of those specific subcategories also meet the spirit and the verbiage in Section 247 of the three primary categories listed (*i.e.*, grid resiliency, dam safety, environmental improvements).

As to the question of funding rounds, as previously stated above, Southern supports a single round of funding as opposed to multiple rounds of funding. Southern would also suggest that with a larger single funding round of over $553 million, the chance of oversubscription of the program is mitigated. As such, Southern believes DOE should award funds to all eligible applications, consistent with the statutory limitations per facility, as opposed to prioritizing and ranking applications. Should the Section 247 program be oversubscribed, DOE could prorate awards. As discussed above, making the total funding available in a single round would reduce the chance and/or impact of proration.

In the event that DOE decides not to consider proration in the event of oversubscription, Southern recommends that DOE consider implementing a 2-stage application approach, where the number of applications and funding amount sought by applicants is determined in the first phase, and then, if oversubscription is determined, DOE could then seek additional scoring and ranking information in stage 2 of the process. But if not oversubscribed, the application content could be more tailored, resulting in more efficient administration of the application process and more expedient distribution of the funding thereby further advancing timely progress of the Administration's goals.

In the alternative, if DOE continues to determine that ranking and scoring is desired, Southern has the following concerns about some of the criteria and weights given to the scoring criteria contained in the draft guidance:

a. New infrastructure appears to receive more scoring weight than existing facilities, which appears inconsistent with the idea of incentives for "maintaining and enhancing" hydroelectricity facilities.
b. As discussed above, the use of the California "extremely high" hazard category in addition to the FEMA/ICODS system inequitably favors California project application requests.
c. As discussed, above, Southern requests that DOE allocate points or additional points to a capital improvement project applied for in a single category that can demonstrate it addresses issues in multiple categories, in order to maximize the positive impacts of funding.

Section IX Category 1: Improving Grid Resiliency. Southern requests that DOE specifically clarify that qualifying grid resiliency projects include capital improvements that result in the addition of energy storage, whether through increased reservoir capacity, pumped storage hydropower, or batteries, consistent with DOE's statement in Section I. (Purpose and Scope) of the draft guidance.

Section IX Category 2: Improving Dam Safety. Southern seeks DOE's clarification / confirmation as to whether DOE would consider a deep grouting project to be a potentially qualifying dam safety improvement project pursuant to (a) Subcategories (2) and (3). Southern also seeks clarification and elaboration by DOE of the meaning of the scoring criteria classification statement that the "project increases resiliency to future hydrologic conditions."

Section IX Category 2 (c). As discussed earlier in these comments, DOE should change its oversubscription procedures and allow for proration. The scoring criteria places a priority on non-compliant facilities and appears to inadvertently reward applicants that may not place a priority on or be committed to maintaining their facilities, to the detriment of applicants that do prioritize maintenance and dam safety.

Section IX Category 3: Environmental Improvements. Southern seeks DOE's clarification or confirmation as to whether DOE would consider projects to improve dissolved oxygen levels as potentially qualifying projects under (a) Subcategory (2) in that they improve the quality of the water retained or released by a qualified hydroelectric facility. Southern also seeks clarification by DOE of the "[p]rovides watershed-scale benefits" scoring criteria classification.

Section IX (d) (4) for all 3 Categories: Final payment documentation requirements - paid invoices that demonstrate project costs as requested in Section VIII (b)(8)(viii). Southern requests that DOE clarify whether it is requiring the applicant to submit copies of every paid invoice for all project-related expenses incurred that it is seeking funding for, or whether other, higher-level statements might be acceptable.

X. What is the timing of incentive payments?

10 Percent Upfront Payments. One question DOE included in the preface was its proposal to provide a portion (up to 10%) of the funding upfront and the remainder upon completion of the capital improvements. DOE states this proposal is intended "[t]o balance risk while incentivizing hydropower owners and operators to make qualified capital improvements…." Southern agrees with and supports this proposal as a fair way of balancing the need to incentivize capital projects while also ensuring that federal funds are effectively used for projects that will be completed on schedule and in compliance. Southern also anticipates that the reporting requirements for the use of upfront federal payments could be more comprehensive and burdensome -- requiring detailed invoices and financial information -- than might otherwise be required for a funding program that was 100% based on reimbursement upon project completion.

Southern suggests that the 10% upfront payment could be an option selected by the applicant or negotiated between DOE and an awardee, such that a successful awardee could elect to forgo the 10% upfront payment in exchange for a more streamlined reporting requirement (i.e., either less detail or less frequency) during the ongoing completion of the project. For instance, an awardee that forgoes the 10% upfront payment would still have to report on project schedules and milestone accomplishments, but could delay detailed financial reporting until project completion when submitting for reimbursement. This would give applicants the flexibility to preserve valuable human capital during the project period for completion of the project itself and adherence to the other project compliance requirements while still giving DOE the assurances it needs to ensure that an awarded project is making timely progress towards completion as an effective use of the Section 247 funds.

Southern also recommends that DOE clarify in final guidance that it is proposing to provide 10% of the 30% up front with the remaining 20% due on completion, and that the split actually means a one-third payment up-front and a two-thirds payment upon completion. Moreover, Southern recommends that DOE clarify that the payments could be less depending on the award negotiations with the applicant.

Section XI. What are the procedures for processing applications?

As discussed above, this section may require some changes depending on how DOE manages the window for applications and how DOE handles oversubscription. Currently, the guidance does not state in XI(a)(1) how long the window will be. This window will materially impact the population of potential applications as well as other issues discussed above, such as whether all permits and authorizations will be required up front. Also, Southern respectfully reiterates that, in the event of oversubscription, a simple proration of all eligible capital investments is the most equitable methodology in the spirit of the IIJA.

Section XII. FAQ. -- No comments.

Section XIII. Funding Restrictions.

BABA Requirements and Exemptions. Southern supports DOE's confirmation in the draft guidance that the Build America, Buy America Requirements would "not apply to DOE projects in which the recipient is a for-profit entity; the requirements only apply to projects whose recipient is a 'non-Federal entity' (e.g., a State, local government, Indian Tribe, institutions of Higher Education, or nonprofit organization)". As a for-profit, investor-owned utility, Southern respectfully requests confirmation that such exempt, for-profit entities would include investor-owned utilities.

Potential Overlap with Section 243 program. Southern requests clarification as to whether an applicant can apply to both the Section 247 and 243 programs if the improvement meets eligibility for both. Southern may have projects that qualify for both sections. Further, Southern respectfully requests that DOE take into consideration any of the aforementioned comments on DOE's Section 247 guidance that may applicable to Section 243 guidance that DOE may currently be contemplating and provide requested clarification of issues raised in its final guidance.

Conclusion

Maintaining and enhancing hydroelectric resources throughout our country is a crucial aspect of achieving the important policy goals of a clean, reliable, and affordable electric grid for our nation's citizens. Southern acknowledges the significant commitment and efforts by both Congress and DOE towards helping our nation's hydropower owners and operators achieve these goals, including through the Section 247 funding program. Southern appreciates the opportunity to provide these comments on the draft guidance and looks forward to participating further in the ongoing discussion of these important issues.

Respectfully submitted,

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