Southern Company

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Attn: Docket ID EPA-HQ-OLEM-2020-0107

Re: Southern Company Comments on the Notice of Data Availability, Proposed Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments, 88 Fed. Reg. 77,941 (Nov. 14, 2023)

Ms. Michelle Lloyd,

The Southern Company[1] respectfully submits this comment letter in response to the U.S. Environmental Protection Agency's ("EPA") November 14, 2023, notice of data availability, "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments" ("NODA") (88 Fed. Reg. 77,941). The NODA seeks comment on new information and data pertaining to the Agency's proposed rule, "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments" ("Proposed Rule") (88 Fed. Reg. 31,982) (May 18, 2023).[2] The Company provides these comments on behalf of itself and its subsidiaries: Alabama Power Company, Georgia Power Company, and Mississippi Power Company.

EPA is specifically soliciting comments "on the location, presence, condition, history, and risk associated with any of the potential legacy CCR surface impoundments or any of the potential CCRMU within the docket" and "on the accuracy of the information that was submitted regarding

[1] The Southern Company is a holding company that conducts its business through its subsidiaries. Accordingly, unless the context otherwise requires, references in this letter to The Southern Company's operations, such as generating activities, refer to those operations conducted through its subsidiaries.
[2] Southern Company provided comments on the Proposed Rule (EPA-HQ-OLEM-2020-0107-0263). Southern Company's comments focused on ways in which EPA could finalize a rulemaking that facilitates regulatory certainty, coordinates with state programs, appropriately assesses risk, and establishes realistic compliance timeframes for the proposed facility evaluation process.

Southern Company

potential legacy CCR surface impoundments or potential CCRMU."[3] EPA's updated "universe" of potential legacy CCR surface impoundments and potential CCRMU is included in a spreadsheet in the docket in connection with publication of the NODA.[4] Southern Company respectfully submits that EPA's solicitation is premature for the following reasons.

First, the definitions that will govern which units are regulated as legacy CCR surface impoundments and CCRMU are not yet final and could change in response to the comments that EPA received on the Proposed Rule. Second, EPA proposes to require detailed facility evaluations to identify the presence of CCRMUs at regulated facilities.[5] Attempting to determine the location, presence, condition, history, and risk associated with potential CCRMUs, as well as the accuracy of what is currently in the docket, for purposes of responding to EPA's solicitation would essentially preempt the proposed facility evaluation process.

For these reasons, Southern Company respectfully reserves the opportunity to confirm or refute the accuracy of EPA's data after the underlying regulatory definitions are known and final, and our operating company subsidiaries have had the opportunity to conduct any required facility evaluations according to the schedule presented in a final rulemaking.

We look forward to engaging constructively with EPA on this NODA and the Proposed Rule. If you have any questions about this comment letter or need additional information, please do not hesitate to contact me.

Sincerely,

Jeff Burleson

[3] 88 Fed. Reg. at 77,944.
[4] EPA-HQ-OLEM-2020-0107-0892 Summary of Potential Universe Comments for Legacy CCRMU NODA, October 2023; *see also* 88 Fed Reg. at 77,944.
[5] 88 Fed. Reg. at 32,020.