UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

March 22, 2024

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: The Southern Company (the "Company")
Incoming letter dated March 21, 2024

Dear Elizabeth A. Ising:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Bright Start College Savings Trust (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its January 23, 2024 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Karen Kerschke
Illinois State Treasurer's Office

GIBSON DUNN

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January 23, 2024

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *The Southern Company*
Stockholder Proposal of Bright Start College Savings Trust
Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The Southern Company (the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Stockholders (collectively, the "2024 Proxy Materials") a stockholder proposal (the "Proposal") and statements in support thereof (the "Supporting Statement") received from the Treasurer for the State of Illinois as Trustee on behalf of the Bright Start College Savings Trust (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> **RESOLVED**: Shareholders of The Southern Company (the "Company") request that the Compensation Committee of the Board of Directors publish an analysis (at reasonable expense and omitting propriety information) assessing the implications of using absolute or relative changes in total greenhouse gas emissions ("GHG") as a component of senior executive compensation.

The Supporting Statement elaborates on the Proposal, requesting that the Company "report on the feasibility of more closely tying executive compensation to absolute or relative total GHG emission reductions, as well as how the current 'GHG reduction goal' award correlates with these absolute or relative total reductions." The Proposal, Supporting Statement and related correspondence with the Proponent are attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because It Has Been Substantially Implemented

A. Background

Rule 14a-8(i)(10) permits the exclusion of a stockholder proposal "[i]f the company has already substantially implemented the proposal." The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief for the exclusion of proposals on this basis only when proposals were "'fully' effected" by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the "previous formalistic application of [the Rule] defeated its purpose" because proponents were successfully convincing the Staff to deny no-action relief by submitting proposals that differed from existing company policy in minor respects. Exchange Act Release No. 20091 at § II.E.6 (Aug. 16, 1983). Therefore, in 1983, the Commission adopted a revised

interpretation of the rule to permit the omission of proposals that had been "substantially implemented." *Id.* The 1998 amendments to Rule 14a-8 codified this position. *See* Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"), at n.30 and accompanying text.

Under this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a stockholder proposal, the Staff has concurred that the proposal has been "substantially implemented" and may be excluded from the company's proxy materials as moot. The Staff has noted that "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Walgreen Co.* (avail. Sept. 26, 2013); *Texaco, Inc.* (avail. Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner as set forth by the proponent. *See* 1998 Release at n.30 and accompanying text. The Staff has not required that a company implement the action requested in a proposal exactly in all details but has been willing to issue no-action relief under the predecessor of Rule 14a-8(i)(10) in situations where the "essential objective" of the proposal had been satisfied. *See General Motors Corp.* (avail. Mar. 4, 1996) (concurring with the exclusion of a proposal where the company argued, "[i]f the mootness requirement of paragraph (c)(10) [of the predecessor rule] were applied too strictly, the intention of [the rule]—permitting exclusion of 'substantially implemented' proposals—could be evaded merely by including some element in the proposal that differs from the registrant's policy or practice"). Thus, differences between a company's actions and a stockholder proposal are permitted as long as the company's actions satisfactorily address the proposal's essential objectives.

For example, in *Bank of America Corp.* (avail. Dec. 15, 2010), the Staff concurred with the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company amend its bylaws to provide holders of 10% of the company's common stock the power to call a special meeting, including that the governing documents "will not have any exception or exclusion conditions . . . that apply only to shareowners but not to management and/or the board." The company argued that it had substantially implemented the proposal by providing holders of 10% of the company's stock the power to call a special meeting and the company's bylaws only contained basic informational requirements that were reasonable and necessary for the administration of special meetings. *See also The Dow Chemical Co.* (avail. Mar. 18, 2014, *recon. denied* Mar. 25, 2014) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal that requested a report on the company's evaluation of a particular issue, where the proponents disputed statements made in the company's report); *Walgreen Co.* (avail. Sept. 26, 2013) (concurring with the exclusion of a proposal requesting elimination of supermajority voting requirements in the company's governing documents

where the company had eliminated all but one supermajority voting requirement); *The Boeing Co.* (avail. Feb. 17, 2011) (concurring with the exclusion of a proposal requesting that the company "review its policies related to human rights" and report its findings, where the company had already adopted human rights policies and provided an annual report on corporate citizenship); *Hewlett-Packard Co.* (avail. Dec. 11, 2007) (concurring with the exclusion of a proposal requesting that the board permit stockholders to call special meetings where the proposal was substantially implemented by a proposed bylaw amendment to permit stockholders to call a special meeting unless the board determined that the special business to be addressed had been addressed recently or would soon be addressed at an annual meeting); *Johnson & Johnson* (avail. Feb. 17, 2006) (concurring with the exclusion of a proposal requesting the company to confirm the legitimacy of all current and future U.S. employees where the company had verified the legitimacy of over 91% of its domestic workforce).

B. The Company's Disclosures Substantially Implement The Proposal

The Proposal and Supporting Statement request that the Compensation and Talent Development Committee (the "Committee") of the Company's Board of Directors (the "Board") prepare (1) an assessment of the implications of using absolute or relative changes in total greenhouse gas ("GHG") emissions as a component of senior executive compensation, including (2) the feasibility of tying executive compensation with absolute or relative GHG emissions reductions, and how the Company's current GHG emissions reduction goal award correlates with the Company's absolute or relative total GHG emissions reductions. As discussed below, the Company has already addressed these requests by reporting on the requested information in the Company's Compensation Discussion and Analysis (the "CD&A"), contained in the Company's annual proxy statement for each of the three preceding fiscal years (the "2021 Proxy Statement,"[1] the "2022 Proxy Statement,"[2] and the "2023 Proxy Statement,"[3] and together the "Prior Disclosures"). Moreover, we understand that the Company intends to include similar, updated disclosure in the 2024 Proxy Materials.

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1 Notice and Proxy Statement for the 2021 Annual Meeting of Shareholders (the "2021 Proxy Statement"), at p. 46, *available at* https://www.sec.gov/Archives/edgar/data/92122/000120677421001083/so3828771-def14a.htm.

2 Notice and Proxy Statement for the 2022 Annual Meeting of Shareholders (the "2022 Proxy Statement"), at p. 50, *available at* https://www.sec.gov/Archives/edgar/data/92122/000120677422001105/so3978871_def14a.htm.

3 Notice and Proxy Statement for the 2023 Annual Meeting of Shareholders (the "2023 Proxy Statement"), at p. 58, *available at* https://www.sec.gov/ix?doc=/Archives/edgar/data/92122/000130817923000671/so4109301-def14a.htm.

By addressing the Proposal's essential objective of having a board-level assessment and report to shareholders on the implications of using absolute or relative changes in GHG emissions as a component of executive compensation, the Company has substantially implemented the Proposal for purposes of Rule 14a-8(i)(10).

1. The Company's Prior Disclosures Already Report On The Implications Of Using Absolute Or Relative Changes In GHG Emissions As A Component Of Senior Executive Compensation As Requested By The Proposal

The Proposal requests that the "Compensation Committee of the Board of Directors publish an analysis . . . assessing the implications of using absolute or relative changes in total greenhouse gas emissions ('GHG') as a component of senior executive compensation." The Committee has implemented both elements of the Proposal's request.

As disclosed in the 2023 Proxy Statement CD&A, which was reviewed and recommended for inclusion in the Company's annual proxy statement by the Committee,[4] to demonstrate the Company's commitment to GHG reduction, including its net zero by 2050 goal, the Committee:

- included a GHG metric (the "GHG Metric") in the Company's Chief Executive Officer's 2022 long-term equity incentive ("LTI") compensation award, and

- approved the addition of the GHG Metric to the 2022 through 2024 LTI awards of both the Company's Chief Financial Officer and Executive Vice President of Operations.[5]

The Company initially disclosed the inclusion of the GHG Metric in the Company's 2019 Proxy Statement CD&A,[6] the description of which was subsequently updated and

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4 *See* 2023 Proxy Statement, at p. 62.

5 *Id.* at p. 77.

6 *See* Notice and Proxy Statement for the 2019 Annual Meeting of Shareholders (the "2019 Proxy Statement"), at p. 48, *available at* https://www.sec.gov/Archives/edgar/data/92122/000120677419001244/so3463381-def14a.htm.

enhanced in each of the Company's 2020,[7] 2021,[8] 2022[9] and 2023[10] Proxy Statement CD&As. These enhancements, included in response to stakeholder feedback, were intended to describe the Committee's assessment of other potential GHG-related metrics, including why tying compensation to absolute or relative GHG emissions reduction was not appropriate for the Company.

As further disclosed in the 2023 Proxy CD&A, the target performance for the GHG Metric over the 2022-through-2024 period is aligned with the trajectory necessary to reduce the Company's GHG emissions 50% by 2030, as compared to 2007, consistent with the Company's interim GHG emissions reduction goal.[11] For each of the Company's Chief Executive Officer, Chief Financial Officer and Executive Vice President of Operations, a meaningful portion of the 2022 LTI award is aligned with the Company's GHG emissions reduction goals. The GHG Metric utilized is cumulative megawatt ("MW") change, which is limited to adding zero-carbon and renewable energy MWs, including energy storage, and placing coal or gas steam generation units on retirement status or inactive reserve (which means no longer available for routine generation operations and dispatch, but available for resiliency and reliability). To achieve the Company's goal of reducing GHG emissions 50% by 2030, a significant change in the Company's generation fleet is required over a number of years. These generation changes are "lumpy," meaning that the MW transition does not follow a straight line. Rather, the MW change will be larger in some years than in other years due to the discrete size of individual generation units and the lead times to implement the changes. For the 2022-through-2024 performance period, the target cumulative MW change was set based on the 2021 projected MW change in 2022 through 2024 required to meet the Company's goal to reduce GHG emissions by 50% by 2030. The stretch goal was set to accelerate the timing of a 50% reduction in GHG emissions. The disclosure goes on to describe how wind MWs receive more credit than solar MWs in recognition of wind's greater capacity factor and associated greater GHG emissions reduction benefits per MW than solar.

The Company's GHG Metric has both quantitative and qualitative components, and

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[7] *See* Notice and Proxy Statement for the 2020 Annual Meeting of Shareholders (the "2020 Proxy Statement"), at p. 55, *available at* https://www.sec.gov/Archives/edgar/data/92122/000120677420001156/so3664831-def14a.htm.

[8] *See* 2021 Proxy Statement, at p. 65.

[9] *See* 2022 Proxy Statement, at p. 69.

[10] *See* 2023 Proxy Statement, at p. 77.

[11] *Id.*

the Company's discussion[12] of the quantitative metric s*pecifically analyzes the implications of using absolute or relative changes in total GHG emissions as a component of senior executive compensation*, as requested by the Proposal:

> **Quantitative Metric**: The Committee chose to express the quantitative measure in terms of cumulative change in MWs over the three-year performance period. Expressing the measure as the cumulative change in MWs reflects the transition in our overall generation fleet, as opposed to expressing the measure in the decrease in emissions. *If the measure had instead been expressed in terms of the decrease in emissions, results could be impacted by factors outside the Company's control such as annual changes to weather patterns, the strength or weakness of the economy, and fuel prices and availability, potentially resulting in an unwarranted increase or decrease in incentive compensation.* (emphasis added)

As further disclosed in the 2022 Proxy Statement CD&A, GHG emissions can fluctuate with electricity demand, fuel prices, and other variables outside of the Company's control. For example, the Company's 2022 Proxy Statement CD&A includes a chart showing the Company's "Annual Progress Toward 50% GHG Emission Reduction Goal," reflecting the "lumpy" nature of measuring absolute or relative changes in GHG emissions over a few short years.[13] The note to this chart explains that the above-target 52% result in 2020 was the result of lower electricity demand due to mild weather, COVID-19 macro-economic impacts, and lower natural gas prices, which led to more natural gas generation and less coal-related emissions. Had the GHG metric been tied solely to GHG emissions reductions, these factors outside of the Company's control would have resulted in above-target payouts. As explained above, the Compensation Committee, instead, has chosen to focus on a metric that incentivizes actions within the Company's control to sustainably meet its GHG emissions reduction goals.

The Committee has therefore already assessed and disclosed the implications of using changes in total GHG emissions as a component of senior executive compensation, disclosing that if the GHG Metric was expressed in terms of the decrease in GHG emissions, rather than the cumulative change in MWs over the three-year performance period, this could potentially result in unwarranted increases or decreases in incentive compensation due to factors outside the Company's control. Furthermore, this analysis was disclosed publicly in the Company's Prior Disclosures, each of which were reviewed and recommended for inclusion in the 2021, 2022, and 2023 Proxy Statements by the Committee. The Committee

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[12] *Id.*

[13] *See* 2022 Proxy Statement, at p. 73.

has thus implemented both elements of the Proposal's request by (A) publishing an analysis by the Committee, which (B) assesses the implications of using absolute or relative changes in total GHG emissions as a component of senior executive compensation.

2. The Company Already Reports On The Feasibility Of Tying Executive Compensation To Absolute Or Relative Total GHG Emissions Reductions And How The Company's Current GHG Emissions Reduction Goal Correlates With Absolute Or Relative Total GHG Emissions Reductions As Requested By The Supporting Statement

The Supporting Statement requests that the Company "report on the feasibility of more closely tying executive compensation to absolute or relative total GHG emission reductions, as well as how the current 'GHG reduction goal' award correlates with these absolute or relative total reductions." As discussed above, the Committee has already considered and reported on the feasibility of tying executive compensation to absolute or relative GHG emissions reductions and determined that, if it did so, "results could be *impacted by factors outside the Company's control* such as annual changes to weather patterns, the strength or weakness of the economy, and fuel prices and availability, *potentially resulting in an unwarranted increase or decrease in incentive compensation*." (emphasis added).

Furthermore, as disclosed in the 2023 Proxy Statement CD&A under "GHG Reduction Goal Cumulative MW Change Comparisons,"[14] the Company already reports on how the current payout target aligns with the Company's goal to reduce GHG emissions by 50% by 2030:

> As the Committee thoughtfully sets each three-year performance goal, it considers the target goal based on the trajectory upon which the 50% GHG reduction by 2030 goal was set and any updates in [integrated resource plans] that could advance the achievement of such goal. This helps ensure the goal's three-year cumulative MW change will maintain the trajectory necessary to achieve the Company's larger commitment of attaining a 50% GHG reduction by 2030. The stretch goal is set to a level that would drive even more acceleration of the 2030 goal achievement . . . .
>
> ►100% payout target goal: Set based on the 2021 projected MW change in 2022-2024 required to meet the Company's goal to reduce GHG emissions by 50% by 2030. Meeting the 100% payout level for 2022-2024 is projected to result in achieving our 50% GHG reduction goal approximately 5 years early due to

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[14] *See* 2023 Proxy Statement, at p. 78.

exceeding the MW change goal in 2019-2022 and the current projection of exceeding the MW change goal in 2023-2024.

►150% payout stretch goal: Set at a level about 84% greater than the target payout, to further accelerate timing of achieving the 50% GHG reduction goal. The threshold for the 2022-2024 goal has been set to a level equal to about 58% of the 2022-2024 cumulative MW target, preventing any payout if the 2022-2024 cumulative MW change threshold is not met over the course of the performance period.

The Company also discloses the net MW change goals for the 2022-through-2024 performance period, how the cumulative MW change implicates estimated actual reductions in GHG emissions and how those reductions track with the Company's 50% GHG emissions reduction goal:[15]

2022-2024 Cumulative MW Change (1)	**MW Change Implications (2)**	**Payout % of Target**
< 1,599 MW	Failure to accomplish enough fleet transition to realize achievement of the 50% GHG reduction goal approximately five-years early	0%
1,599 MW	Accomplishing enough fleet transition to achieve the 50% GHG reduction goal approximately five years early	50%
2,777 MW	Accomplishing enough fleet transition to exceed the 50% GHG reduction goal by three percentage points (53%) approximately five years early	100%
5,120 MW	Accomplishing enough fleet transition to exceed the 50% GHG reduction goal by six percentage points (56%) approximately five years early	150%

(1) Goal is expressed in cumulative MW change. Not all MWs have the same GHG emission impacts.

(2) Estimated actual reductions in GHG emissions assume average weather, moderate natural gas prices and trend economic growth. Deviations from average weather, natural gas prices or trend economic growth could result in greater or lesser GHG emissions than estimated.

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[15] *See* 2023 Proxy Statement, at p. 78.

C. Analysis

The Proposal and Supporting Statement request that the Committee prepare (1) an assessment of the implications of using absolute or relative changes in total GHG emissions as a component of senior executive compensation, including (2) the feasibility of tying executive compensation with absolute or relative changes in GHG emissions reductions, and how the Company's current GHG emissions reduction goal award correlates with the Company's absolute or relative total GHG emissions reductions. As discussed above, the Company has already addressed these requests by reporting on the requested information in the Company's Prior Disclosures. Moreover, the Company intends to include similar, updated information in the 2024 Proxy Materials.

Specifically, the Company's Prior Disclosures address the first element of the Proposal's request by providing detailed information on how the Company determined the Company's GHG Metric, including the alignment of the target performance for the GHG Metric over the performance period with the trajectory necessary to reduce the Company's GHG emissions 50% by 2030. This discussion includes an assessment and disclosure of the implications of using changes in total GHG emissions rather than cumulative change in MWs as a component of senior executive compensation, explaining that if the GHG Metric was expressed in terms of the decrease in GHG emissions, rather than the cumulative change in MWs over the three-year performance period, this could potentially result in unwarranted increases or decreases in incentive compensation due to factors outside the Company's control.

Additionally, the Committee has addressed the second element in the Supporting Statement by (1) already providing disclosure on the feasibility of more closely tying executive compensation to absolute or relative total GHG emission reductions, and (2) providing extensive disclosure on how the GHG Metric's payout target aligns with the Company's 50% GHG emissions reduction by 2030 goal, and how the cumulative MW change implicates estimated actual reductions in GHG emissions and tracks the Company's 50% GHG emissions reduction goal. As discussed above, the Committee considered and reported on the feasibility of tying executive compensation to absolute or relative GHG emissions and determined that, if it did so, results could be impacted by factors outside the Company's control, potentially resulting in unwarranted increases or decreases to the incentive compensation. Furthermore, the Prior Disclosures include extensive information on the GHG Metric's three-year performance goal, and how the Committee designed the target goal to help ensure that the goal's three-year cumulative MW change would maintain the trajectory necessary to achieve the Company's larger commitment of attaining a 50% GHG emissions reduction by 2030. This disclosure includes the net MW change goals for the three-year performance period, how the cumulative MW change implicates estimated

actual reductions in GHG emissions and how those reductions track with the Company's 50% GHG emissions reduction goal.

As discussed above, the Staff has on numerous occasions concurred with the exclusion of proposals under Rule 14a-8(i)(10) that pertained to executive compensation when a company's actions compared favorably to the actions requested in the proposal. Notably, in *Amazon.com, Inc. (Sisters of the Order of St. Dominic of Grand Rapids et al.)* (avail. Mar. 27, 2020), the company received a similar proposal which requested that the board's compensation committee report on "the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into performance measures or vesting conditions that may apply to senior executives under the [c]ompany's compensation plans or arrangements." Similar to the Company's Prior Disclosures here, the company had previously reported in its proxy statements why the company did not integrate specific performance measures or vesting conditions into its compensation arrangements and the bases for the board's recommendation that stockholders vote against the proposal. The Staff concurred that the proposal could be excluded from the company's proxy materials because the company had substantially implemented the proposal. Furthermore, in *Wal-Mart Stores, Inc.* (avail. Mar. 25, 2015), the Staff concurred with the exclusion of a proposal requesting inclusion of "employee engagement" as a metric in determining senior executives' incentive compensation. Like the Company's Prior Disclosures, the company's practices and procedures compared favorably with the guidelines of the proposal because the company already provided that each executive officer's compensation under its annual incentive plan could be reduced by up to 15% based on the extent to which he or she contributed to diversity and inclusion in a prior proxy statement. Thus, just as in *Amazon.com, Inc.* and *Wal-Mart Stores, Inc.*, the Company has substantially implemented the Proposal through its Prior Disclosures relating to the implications and feasibility of using absolute or relative changes in total GHG emissions as a component of senior executive compensation and extensive disclosures related to how the Company's current GHG emissions reduction goal award correlates with the Company's absolute or relative total GHG emissions reduction goal. *See also General Electric Co.* (avail. Jan. 23, 2010) (concurring with the exclusion of a proposal requesting that the board explore with certain executive officers the renunciation of certain stock option grants, where the board discussed the request in the proposal with the specified executives, who declined to renounce the awards); *AutoNation Inc.* (avail. Feb. 16, 2005) (concurring with the exclusion of a proposal requesting that the board seek shareholder approval for future "golden parachutes" with senior executives where, after receiving the proposal, the company adopted a policy to submit any such arrangements to shareholder vote); *Intel Corp.* (avail. Mar. 11, 2003) (concurring that a proposal requesting Intel's board submit to a shareholder vote all equity compensation plans and amendments to add shares to those plans that would result in

material potential dilution was substantially implemented by a board policy requiring a shareholder vote on most, but not all, forms of company stock plans).

For these reasons, and consistent with the precedents discussed above, we believe that through the Committee's reporting in the Company's Prior Disclosures, the Committee has already disclosed an analysis of (1) the implications of using absolute or relative changes in total GHG emissions as a component of senior executive compensation, including (2) the feasibility of tying executive compensation with absolute or relative changes in GHG emissions, and how the Company's current GHG emissions reduction goal award correlates with the Company's absolute or relative total GHG emissions reductions. Accordingly, consistent with the precedents discussed above, there is no further action required of the Committee to address the essential objective of the Proposal, and the Proposal may be excluded from the Company's 2024 Proxy Materials under Rule 14a-8(i)(10).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Laura O. Hewett, Vice President, Corporate Governance for the Company at (404) 506-0714.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Laura O. Hewett, The Southern Company
Karen Kerschke, Illinois State Treasurer's Office

EXHIBIT A

OFFICE OF THE ILLINOIS STATE TREASURER
MICHAEL W. FRERICHS

December 13, 2023

Corporate Secretary
Southern Company
30 Ivan Allen Jr. Boulevard NW
Atlanta, Georgia 30308

RE: Office of the Illinois Treasurer for the Bright Start College Savings Trust

To Whom It May Concern,

In my capacity as Treasurer for the State of Illinois and Trustee of the Bright Start College Savings Trust (the "Trust"), I write to give notice that pursuant to the 2023 proxy statement of Southern Company (the "Company"), the Trust intends to present the attached proposal (the "Proposal") at the 2024 annual meeting of shareholders (the "Annual Meeting").

The Trust requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting. Please note the Trust is the lead filer on this proposal.

A letter from the Fund's custodian documenting the Fund's continuous ownership of the requisite amount of the Company's stock is being sent separately. The Fund also intends to continue its ownership of at least the minimum number of shares required by the SEC regulations through the date of the Annual Meeting. I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the attached Proposal. I declare the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally.

The Trust is available to meet with the Company in person or via teleconference at 12:00 p.m. CT on Thursday, January 4, 2024, or 11:00 a.m. CT on Friday, January 5, 2024.

State Capitol
Room 219
Springfield, IL 62706

555 West Monroe Street
14th Floor
Chicago, IL 60661

Marine Bank Building
1 East Old State Capitol Plaza
Springfield, IL 62701

Please direct all questions or correspondence regarding the Proposal to the attention of:

Karen Kerschke
Deputy Director of Corporate Governance & Sustainable Investment
Illinois State Treasurer's Office
555 W. Monroe, 14th Floor
Chicago, IL 60661

Sincerely,

Michael Frerichs
Illinois State Treasurer

RESOLVED: Shareholders of The Southern Company (the "Company") request that the Compensation Committee of the Board of Directors publish an analysis (at reasonable expense and omitting propriety information) assessing the implications of using absolute or relative changes in total greenhouse gas emissions ("GHG") as a component of senior executive compensation.

Supporting Statement

Effective as of 2019, the CEO's performance share program award included a 10% weight for a "GHG reduction goal," up to $2 million of the total compensation award. While the term "GHG reduction goal" implies that the CEO gets paid for reductions of the Company's total emissions, the metric instead rewards a cumulative change in megawatts ("MW").

The cumulative change is driven by two items: (1) adding zero-carbon and renewable energy MWs that includes energy storage; and (2) placing coal or gas steam generation units in retirement status or inactive reserve. In addition to the cumulative MW metric, the Company uses a qualitative modifier that can increase the overall payout by 30%, which is based on the compensation committee's qualitative assessment of leadership in "advancing the energy portfolio of the future."[1]

The Company's 2023 proxy statement indicates then CEO Tom Fanning achieved a final payout of 165% on the "GHG reduction goal" (127% based on cumulative change plus an additional qualitatively driven 30% for leadership). The cumulative change in MWs was accomplished by two inputs: (1) new solar generation and (2) the 2022 retirement of Plan Wansley and the placement of Plant Gadsden Units 1 and 2 on inactive reserve status.[2]

Importantly, neither component of the "GHG reduction goal" penalizes pay when the Company's overall emissions increase or when new GHG emissions-generating activities are added by the Company. For example, in October 2023, Georgia Power, a subsidiary, filed an integrated resource plan requesting approval for a 30% increase of methane gas and oil to its projected energy generation.[3] It proposes the construction of three new fossil fuel gas and oil turbines at Plant Yates in Coweta County. Additionally, the most recent integrated resource plan of another subsidiary, Alabama Power, states that it plans to build approximately 5.6 GW of new gas capacity through 2041.[4]

Tying executive compensation more closely to total GHG reductions by incorporating emissions from all operational activities and providing additional disclosure on how total emission reductions correlate with executive pay would provide investors with a better understanding of whether and how the Company's executive compensation plan rewards

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[1] https://www.sec.gov/ix?doc=/Archives/edgar/data/92122/000130817923000671/so4109301-def14a.htm
[2] https://www.sec.gov/ix?doc=/Archives/edgar/data/92122/000130817923000671/so4109301-def14a.htm
[3] https://psc.ga.gov/search/facts-document/?documentId=216166; https://www.southernenvironment.org/press-release/georgia-power-asks-regulators-to-expand-fossil-fuel-use/
[4] https://energyandpolicy.org/southern-companys-updated-greenhouse-gas-bonus-still-pays-executives-as-company-invests-in-fossil-fuels/

progress towards its net zero emissions goal. The company should report on the feasibility of more closely tying executive compensation to absolute or relative total GHG emission reductions, as well as how the current "GHG reduction goal" award correlates with these absolute or relative total reductions.

OFFICE OF THE ILLINOIS STATE TREASURER
MICHAEL W. FRERICHS

February 22, 2024

Via https://www.sec.gov/forms/shareholder-proposal

Securities and Exchange Commission
Office of the Chief Counsel
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549

Re: The Southern Company's Request to Exclude a Shareholder Proposal Submitted by Michael Frerichs, as Treasurer for the State of Illinois and Trustee of the Bright Start College Savings Trust

Dear SEC Staff,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Michael Frerichs, as Treasurer for the State of Illinois and Trustee of the Bright Start College Savings Trust (the "Proponent") submitted a shareholder proposal (the "Proposal") to The Southern Company (the "Company").

The resolved clause of the Proposal states:

> ***RESOLVED:*** *Shareholders of The Southern Company (the "Company") request that the Compensation Committee of the Board of Directors publish an analysis (at reasonable expense and omitting propriety information) assessing the implications of using absolute or relative changes in total greenhouse gas emissions ("GHG") as a component of senior executive compensation.*

In a letter to the Division of Corporation Finance (the "Division Staff") dated January 23, 2024 (the "No-Action Request"), the Company's representatives stated that the Company intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2024 annual meeting of shareholders. The Company argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

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As discussed more fully below, the Company has not met its burden of proving its entitlement to exclude the Proposal and the Proponent respectfully requests that the Company's request for relief be denied.

I. The Proposal Has Not Been Substantially Implemented

The Company argues that it has substantially implemented the Proposal and points to previous disclosures in the Company's annual proxy statement for each of the three preceding years (the "2021 Proxy Statement," the "2022 Proxy Statement," and the "2023 Proxy Statement," together referenced as the "Prior Disclosures" by the Company in its No-Action Request). However, the Company's Prior Disclosures do not satisfy the essential objective of the Proposal, which, as the resolved clause and supporting statement of the Proposal make clear, is to provide shareholders with an *analysis* assessing the implications of using absolute or relative changes in GHG emissions as a component of executive compensation.

While the title of the Company's "GHG Reduction Goal" suggests that executives are rewarded for reductions in GHG emissions, the explanation of the Company's compensation metric leaves questions unanswered.[1] The Proponent would like to fully understand why the Company chooses to calculate the metric as is and if there are better options. In an effort to answer these questions, the Proposal seeks clarity on the implications and feasibility of substantively tying total GHG emissions reductions to executive pay and how the current "GHG Reduction Goal" award correlates with total GHG emission reductions. Although the Company argues that the Prior Disclosures were intended to describe the Compensation Committee's assessment of tying executive pay to changes in GHG emissions, the Prior Disclosures do not contain sufficient details to constitute an analysis, nor do they provide shareholders with sufficient information to understand the implications of tying total GHG emissions to executive pay, including the feasibility of more closely tying total GHG emissions to executive pay, and how the current "GHG Reduction Goal" award correlates with total GHG emission reductions, as requested in the Proposal.

In an effort to demonstrate that the Company has already substantially implemented the Proposal, the Company specifically calls attention to the following excerpt from the Company's 2023 Proxy Statement, included on page 7 of the Company's No-Action Request:

> **Quantitative Metric**: The Committee chose to express the quantitative measure in terms of cumulative change in MWs [megawatts] over the three-year performance period. Expressing the measure as the cumulative change in MWs reflects the

[1] For the Company to expressly call this compensation metric a "GHG Reduction Goal" is problematic. A remuneration mechanism with the label "GHG Reduction Goal" should be clearly tied to GHG emission reductions. Not only has the Company failed to provide shareholders with an analysis that assesses the implications of using GHG emissions as a component of executive compensation, but the Company has also not adequately informed investors how the current "GHG Reduction Goal" award correlates with total GHG emission reductions, as requested by the Proposal.

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> transition in our overall generation fleet, as opposed to expressing the measure in the decrease in emissions. *If the measure had instead been expressed in terms of the decrease in emissions, results could be impacted by factors outside the Company's control such as annual changes to weather patterns, the strength or weakness of the economy, and fuel prices and availability, potentially resulting in an unwarranted increase or decrease in incentive compensation.* (emphasis in original)

On page 7 of the No-Action Request, the Company argues that this brief excerpt "*specifically analyzes the implications of using absolute or relative changes in total GHG emissions as a component of senior executive compensation*," as requested by the Proposal (emphasis in original).[2] The Company also argues on page 8 of the No-Action Request that this same excerpt demonstrates that the Company's Compensation Committee "has already considered and reported on the feasibility of tying executive compensation to absolute or relative GHG emissions reductions," as requested by the Proposal.

The Proposal's resolved clause and supporting statement make clear that the Proposal's essential objective is to provide investors with an analysis from the Company's Compensation Committee that assesses the implications of tying total GHG emissions to executive pay, including the feasibility of more closely tying total GHG emissions to executive pay, and how the current "GHG Reduction Goal" award correlates with total GHG emission reductions.

Rather than conveying the assessment and analysis that was sought, the explanation of the quantitative metric merely presents a broad claim – that a decrease in GHG emissions could be impacted by other factors outside the Company's control, which could result in an unwarranted increase or decrease in incentive compensation – and an implicit conclusion – that based on that claim the Company's Compensation Committee has rejected the notion of tying executive pay to a decrease in GHG emissions. The explanation of the metric also fails to provide investors with sufficient supporting data, example scenarios[3], or evidence to substantiate the claim and justify the decision of the Compensation Committee. Nor do the Company's other Prior Disclosures provide such information, which leaves investors uninformed as to whether, if at all, the Company's Compensation Committee addressed the essential objective of the Proposal.

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[2] The Company also references a chart from the Company's Proxy Statement CD&A, showing the Company's "Annual Progress Toward 50% GHG Emission Reduction Goal," to illustrate that it has analyzed the implications of using absolute or relative changes in GHG emissions as a component of executive compensation. The chart, however, only showcases the Company's progress towards its 50% GHG reduction goal and not how that progress is correlated with the MW changes, or the actual compensation paid.

[3] The Company references the chart from the Company's Proxy Statement CD&A, showing the Company's "Annual Progress Toward 50% GHG Emission Reduction Goal" and its footnote, which states that "GHG emissions can fluctuate with electricity demand, fuel prices, and other variables outside Southern Company's control. Electricity demand in 2020 was reduced by COVID-19 impacts and mild weather. In addition, low natural gas prices in 2020 gave the natural gas generating fleet favorable economics relative to most coal units, displacing additional coal generation and the associated higher coal GHG emissions." The chart does not detail how much these outside factors versus company actions contributed to the reduced emissions. Since the chart and footnote do not show how progress towards its 50% GHG reduction goal is correlated with the MW changes used in the Company's compensation plan, or the actual compensation paid each year, the disclosure does not sufficiently analyze what the implications of using absolute emission reductions would have been on executive compensation paid each year.

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Investors are eager to understand how executive pay incentives correlate with GHG emission numbers as impacted by weather patterns, economic conditions, fuel prices, and other factors. The lesson the Company is conveying to its investors is that they cannot take its "GHG Reduction Goal" at face value. While the Company speaks to its desire to tie executive pay to real world emissions performance, its choices here tell another story.

Are shareholders left to presume that the Company's Compensation Committee conducted an internal analysis (such as the one requested by the Proposal) and based on those results determined the "GHG Reduction Goal" should not measure actual GHG reductions? Or was the Committee's decision solely driven by a single sentence that explained why executives should be insulated from factors such as annual changes in weather patterns, the strength or weakness of the economy, and fuel prices and availability?

The Proposal's supporting statement illustrates the type of information that Proponents are seeking as part of the analysis of the implications of using absolute or relative changes in total GHG emissions as a component of senior executive compensation. The supporting statements requests reporting on the feasibility of more closely tying executive compensation to absolute or relative GHG reductions and how the Company's current GHG reduction goal correlates with these absolute or relative reductions. The Company's Prior Disclosures fail to adequately provide either type of information.

First, as discussed partly above, the Company's Prior Disclosures, principally the explanation of its quantitative metric, fail to explain in adequate detail whether it is *feasible* to tie executive compensation to GHG emission reductions. The discussion of the quantitative metric raises questions about the feasibility of tying executive compensation to an emissions outcome but does not provide concrete examples of why tying the executive pay to actual emissions reductions would not have been feasible in particular years, or assess whether there is a way to include actual emissions as part of the compensation metric even if emissions are influenced in some respects by external events. A substantive discussion of feasibility is substantially lacking, which leaves investors uninformed as to whether there is an operable way for the Company's Compensation Committee to tie overall GHG emissions more closely to executive pay.

Second, the Company's Prior Disclosures do not adequately address how the current GHG reduction goal correlates with absolute or relative total emissions reductions.

The Company argues that it "already reports on how the current payout target aligns with the Company's goal to reduce GHG emissions by 50% by 2030," citing in part, the following chart:

2022-2024 Cumulative MW Change [1]	MW Change Implications [2]	Payout % of Target
< 1,599 MW	Failure to accomplish enough fleet transition to realize achievement of the 50% GHG reduction goal approximately five-years early	0%
1,599 MW	Accomplishing enough fleet transition to achieve the 50% GHG reduction goal approximately five years early	50%
2,777 MW	Accomplishing enough fleet transition to exceed the 50% GHG reduction goal by three percentage points (53%) approximately five years early	100%
5,120 MW	Accomplishing enough fleet transition to exceed the 50% GHG reduction goal by six percentage points (56%) approximately five years early	150%

[1] Goal is expressed in cumulative MW change. Not all MWs have the same GHG emission impacts.

[2] Estimated actual reductions in GHG emissions assume average weather, moderate natural gas prices and trend economic growth. Deviations from average weather, natural gas prices or trend economic growth could result in greater or lesser GHG emissions than estimated.

While this chart suggests that the 2022-2024 Cumulative MW Change will have "implications" for achieving the Company's 2030 GHG emission reduction goal, the assumption that these cumulative MW changes will lead to achievement of the 2030 Goal is never substantiated. In fact, the two footnotes explicitly say that not all MW changes will have the same GHG emission impacts, and that emissions could be lesser or greater than suggested in this chart.

Notably, there are other factors aside from the weather, natural gas prices, or economic growth trends that influence the Company's absolute GHG emissions and could lead to the Company failing to meet its 2030 GHG reduction goal, even if the Company reaches its Cumulative MW targets. For example, the Company could add high GHG emission-generating sources to its energy generation mix, which could lead the Company's emissions to increase. Because the addition of high emitting energy sources is currently not factored into the Cumulative MW change calculation, the Company could reach its MW change goals even if its total emissions were to increase.

In sum, under the existing framework, Company executives could receive an award under the "GHG Reduction Goal" when in fact the Company's total GHG emission increase. The disclosures cited by the Company suggest that Cumulative MW changes are correlated with GHG emission reductions, while at the same time, the Company acknowledges that this correlation is not a given. This leaves investors uninformed as to whether or to what extent a measurable correlation exists.

II. The Company Cites Previous Division Staff Decisions that are Distinguishable from the Proponent's Request

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The Company cites as support for its exclusion request several previous Division Staff decisions that are distinguishable from the Proponent's request. *Amazon.com, Inc. (Sisters of the Order of St. Dominic of Grand Rapids et al.)* (avail. Mar. 27, 2020) involves a sustainability-related proposal; however, the type of information requested in the *Amazon.com, Inc.* proposal differs from the type of information requested in this Proposal. In *Amazon.com, Inc.* the proponents requested that the compensation committee "prepare a report assessing the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into performance measures or vesting conditions that may apply to senior executives under the Company's compensation plans or arrangements." Staff concurred with Amazon's decision to exclude the proposal because the company had already reported on why the company did not integrate any specific performance measures or vesting conditions into its compensation arrangements. In the present case, although the Company has provided an explanation of the basis for its "GHG Reduction Goal" award at a high level, this explanation falls short of the essential objective of the Proposal, which is to provide an *analysis* that could allow investors to determine whether the Company's decision to tie executive compensation to MW changes rather than actual or relative changes in emissions is appropriate. Further, the present Proposal differs from the proposal in *Amazon.com, Inc.* because here, the Proponent seeks specific detail to evaluate the Company's efforts to achieve its own explicit goal of making "CEO pay aligned with consistent progress toward reducing GHG emissions,"[4] whereas in *Amazon.com, Inc.*, the proponent sought a report on the feasibility of generally adding sustainability metrics, including diversity metrics, to Amazon's compensation plan, which the company satisfied by explaining the reasoning behind maintaining its existing compensation plan. Less detail was required to satisfy the essential objectives of the proposal at issue in *Amazon.com, Inc.*, which sought only a feasibility report; here a feasibility report is just one component of the analysis sought in the Proposal.

Likewise, the other decisions that the Company cites also differ substantively from the Proposal. In each of those cases, the steps the company had undertaken compared more favorably to the proposal than the actions the Company has implemented here. For example, in *Wal-Mart Stores, Inc.* (avail. Mar. 25, 2015), the proponent requested that Wal-Mart "include in the metrics used to determine senior executives' incentive compensation at least one metric related to Walmart's employee engagement."[5] The proposal left the choice of employee engagement metric to the company's discretion. The company achieved the essential objective of this proposal by tying a portion of incentive compensation to contributions to diversity and inclusion, which the company argued strongly correlate with employee engagement. In *General Electric Co.* (avail. Jan. 23, 2010), the company was asked to "explore" the renunciation of stock option grants with certain officers. The company satisfied this proposal by presenting the proposal to the board and authorizing legal counsel to contact each of the specified officers to explore whether they would renounce the stock options. In each of these cases, the companies actions aligned with the essential

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[4] The Southern Company, "Notice and Proxy Statement for the 2023 Annual Meeting of Shareholders," at p. 64, available at https://www.sec.gov/ix?doc=/Archives/edgar/data/92122/000130817923000671/so4109301-def14a.htm.

[5] Wal-Mart Stores, Inc. (avail. Mar 25, 2015), U.S. Securities and Exchange Commission, Division of Corporation Finance, 2015 No-Action Letters Issued Under Exchange Act Rule 14a-8, available at https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2015/connecticutretirement032515-14a8.pdf.

objectives of the proposal, whereas in this case, the Company points to disclosures that do not rise to the level of the analysis called for in the Proposal.

* * *

For the reasons set forth above, the Company has not satisfied its burden of showing that it is entitled to omit the Proposal. The Proponent thus respectfully requests that the Company's request for relief be denied. The Proponent appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact Joe Aguilar, Chief Investment Officer, Illinois State Treasurer Michael W. Frerichs, at (312) 814-1529 or jaguilar@illinoistreasurer.gov.

Sincerely,

Michael W. Frerichs
Illinois State Treasurer

cc: Laura O. Hewett, The Southern Company
Elizabeth A. Ising, Gibson, Dunn & Crutcher LLP

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March 21, 2024

VIA ONLINE PORTAL SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
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Re: *The Southern Company*
Stockholder Proposal of Bright Start College Savings Trust
Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8

Ladies and Gentlemen:

In a letter dated January 23, 2024 (the "No-Action Request"), we requested that the staff of the Division of Corporation Finance concur that our client, The Southern Company (the "Company"), could exclude from its proxy statement and form of proxy for its 2024 Annual Meeting of Stockholders a stockholder proposal (the "Proposal") and statement in support thereof submitted by the Treasurer for the State of Illinois as Trustee on behalf of the Bright Start College Savings Trust (the "Proponent"). Enclosed as Exhibit A is an email from a representative of the Treasurer for the State of Illinois notifying the Company of its withdrawal of the Proposal on behalf of the Bright Start College Savings Trust. In reliance thereon, we hereby withdraw the No-Action Request.

Please do not hesitate to call me at (202) 955-8287 or Laura O. Hewett, Vice President, Corporate Governance for the Company at (404) 506-0714 if you have any questions.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Laura O. Hewett, The Southern Company
Karen Kerschke, Illinois State Treasurer's Office

EXHIBIT A

From: Kerschke, Karen [redacted]
Sent: Thursday, March 21, 2024 10:30 AM
To: Hewett, Laura Oleck [redacted]
Cc: Hillegass, Sarah [redacted]
Subject: RE: Withdrawal of Shareholder Proposal

Hi Laura,

This email provides notice of the withdrawal of our shareholder proposal.

Karen