

SOUTHERN CO
Form S-8
November 23, 2015

As filed with the Securities and Exchange Commission on November 23, 2015

Registration No. 333- .

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

The Southern Company
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	58-0690070 (I.R.S. Employer Identification No.)
30 Ivan Allen Jr. Boulevard, N.W. Atlanta, Georgia (Address of principal executive offices)	30308 (Zip Code)

THE SOUTHERN COMPANY EMPLOYEE SAVINGS PLAN
(Full title of the plan)

MELISSA K. CAEN, CORPORATE SECRETARY
THE SOUTHERN COMPANY
30 Ivan Allen Jr. Boulevard, N.W.
Atlanta, Georgia 30308
(Name and address of agent for service)
(404) 506-5000
(Telephone number, including area code, of agent for service)

The Commission is requested to mail signed copies of all orders, notices and communications to:

ART P. BEATTIE Executive Vice President and Chief Financial Officer THE SOUTHERN COMPANY 30 Ivan Allen Jr. Boulevard, N.W. Atlanta, Georgia 30308	ERIC A. KOONTZ TROUTMAN SANDERS LLP 600 Peachtree Street, N.E. Suite 5200 Atlanta, Georgia 30308-2216
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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer <input checked="" type="checkbox"/>	Accelerated filer <input type="checkbox"/>
Non-accelerated filer <input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company <input type="checkbox"/>

CALCULATION OF REGISTRATION FEE

Proposed	Proposed
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Title of Securities to be Registered	Amount to be Registered (1)	Maximum Offering Price Per Share	Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock, par value \$5 per share	35,000,000 shares	\$44.205	\$1,547,175,000	\$155,801

(1) In addition, pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also includes an indeterminate amount of additional shares that may be offered and issued to prevent dilution resulting from stock splits, stock dividends or similar transactions, and an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.

(2) Pursuant to Rule 457(h)(1) these figures are based upon the average of the high and low prices paid for a share of the Company's Common Stock on November 18, 2015, as reported in the New York Stock Exchange consolidated reporting system, and are used solely for the purpose of calculating the registration fee.

EXPLANATORY NOTE

The Southern Company (the “Company” or the “registrant”) filed a registration statement on February 28, 2012 (File No. 333-179779) (the “Prior Registration Statement”) to register under the Securities Act 30,000,000 shares of the Company’s Common Stock, par value \$5 per share (the “Common Stock”), related to The Southern Company Employee Savings Plan (the “Plan”). The Company is filing this registration statement on Form S-8 pursuant to and in accordance with General Instruction E of Form S-8 to register an additional 35,000,000 shares of Common Stock related to the Plan.

PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The contents of the Prior Registration Statement are incorporated by reference into this Registration Statement. In addition, the documents listed below are incorporated by reference in this registration statement; and all documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents; provided however, the registrant is not incorporating any information filed under Item 2.02 or 7.01 of any Current Report on Form 8-K unless specifically stated otherwise.

- (a) (1) The registrant’s Annual Report on Form 10 K for the year ended December 31, 2014.
- (2) The Plan’s Annual Report on Form 11-K for the year ended December 31, 2014.
- (b) (1) The registrant’s Current Reports on Form 8 K dated January 29, 2015, February 9, 2015, February 12, 2015, March 6, 2015, May 15, 2015, May 20, 2015, May 27, 2015, June 9, 2015, June 25, 2015, July 10, 2015, August 12, 2015, August 23, 2015, August 23, 2015, September 29, 2015, September 30, 2015, October 1, 2015, October 27, 2015, October 27, 2015 and November 17, 2015.
- (2) The registrant’s Quarterly Reports on Form 10-Q for the quarters ended March 31, 2015, June 30, 2015 and September 30, 2015.
- (c) The description of the registrant’s Common Stock contained in Registration No. 333-202413 filed under the Securities Act of 1933, as amended.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 8. Exhibits.

Exhibit
Number

- Composite Certificate of Incorporation of the Company, reflecting all amendments thereto through May 27, 2010. (Designated in Registration No. 33-3546 as Exhibit 4(a), in
- 4.1 - Certificate of Notification, File No. 70-7341, as Exhibit A, in Certificate of Notification, File No. 70-8181, as Exhibit A, and in Form 8-K dated May 26, 2010, File No. 1-3526, as Exhibit 3.1.)
- 4.2 - By-laws of the Company as amended effective May 27, 2015, and as presently in effect. (Designated in Form 8-K dated May 27, 2015, File No. 1-3526, as Exhibit 3.1.)
- 4.3(a) - The Southern Company Employee Savings Plan, Amended and Restated Effective January 1, 2010. (Designated in Form S-8 filed February 28, 2012, File No. 333-179779, as Exhibit 4.3)
- 4.3(b) - First Amendment to The Southern Company Employee Savings Plan, effective as of January 1, 2008.
- 5.1 - Opinion of Troutman Sanders LLP, counsel to the Company.
- 5.2(a) - Internal Revenue Service determination letters dated March 5, 1996, June 10, 1996, February 24, 2000 and January 31, 2003. (Designated in Form 11-K for the year ended December 31, 1995, File No. 1-3526, as Exhibit B, in Registration No. 333-96883 as Exhibit 5(c) and in Registration No. 333-110559 as Exhibit 5.3).
- 5.2(b) - Internal Revenue Service determination letter dated September 23, 2015.
- 23.1 - Consent of Troutman Sanders LLP (included in Exhibit 5.1 above).
- 23.2 - Consent of Deloitte & Touche LLP.
- 24.1 - Power of Attorney and Resolution.

Exhibits listed above which have previously been filed with the Securities and Exchange Commission and which were designated as noted above are incorporated herein by reference.

Item 9. Undertakings.

(a) Undertaking related to Rule 415 offering:

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in

the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) Undertaking related to filings incorporating subsequent Securities Exchange Act of 1934 documents by reference: The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant’s annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Undertaking relating to filing of registration statement on Form S-8:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, The Southern Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S 8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on November 23, 2015.

THE SOUTHERN COMPANY

By: Thomas A. Fanning
Chairman, President and
Chief Executive Officer

By: /s/Melissa K. Caen
Melissa K. Caen
Attorney-in-Fact

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

SIGNATURE	TITLE	DATE
Thomas A. Fanning	Chairman, President, Chief Executive Officer and Director (Principal Executive Officer)	
Art P. Beattie	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	
Ann P. Daiss	Comptroller and Chief Accounting Officer (Principal Accounting Officer)	
Juanita Powell Baranco		
Jon A. Boscia		
Henry A. Clark III		
David J. Grain		
Veronica M. Hagen		
Warren A. Hood, Jr.		
Linda P. Hudson		
Donald M. James	Directors	
John D. Johns		
Dale E. Klein		
William G. Smith, Jr.		
Steven R. Specker		
Larry D. Thompson		
E. Jenner Wood III		

By: /s/Melissa K. Caen
Melissa K. Caen
Attorney-in-Fact

November 23, 2015

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The Plan. Pursuant to the requirements of the Securities Act of 1933, the trustees (or other persons who administer the employee benefit plan) have duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on November 23, 2015.

THE SOUTHERN COMPANY EMPLOYEE
SAVINGS PLAN

By: /s/Stacy R. Kilcoyne
Stacy R. Kilcoyne, Chair of
The Southern Company Benefits
Administration Committee