



Southern Renewable Energy Association

P.O. Box 14858, Haltom City, TX 76117

November 25, 2019

Mr. Walter L. Thomas, Jr.
Executive Secretary
Alabama Public Service Commission
100 North Union Street
P.O. Box 304260
Montgomery, AL 36130

Re: Alabama Power Company Petition for a Certificate of Convenience and Necessity, Docket 32953

Dear Mr. Thomas,

Please find enclosed the Southern Renewable Energy Association's Petition for Reconsideration regarding our Motion to Intervene in the referenced docket. This filing will be accompanied by requisite number of physical copies to the above address.

Sincerely,

Simon Mahan
Executive Director
Southern Renewable Energy Association
PO Box 14858
Haltom City, TX 76117
simon@southernwind.org
(337) 303-3723

BEFORE THE

ALABAMA PUBLIC SERVICE COMMISSION

For a certificate of convenience and necessity for: (i) the construction and installation of combined cycle generating capacity at the site of Petitioner’s Barry Steam Plant located in Mobile County, Alabama; (ii) the acquisition of existing combined cycle generating capacity in Autauga County, Alabama; (iii) the acquisition of rights and the assumption of payment obligations under a purchased power agreement for the output of combined cycle generating capacity operated in Mobile County, Alabama; and (iv) the acquisition of rights and the assumption of payment obligations under purchased power agreements for the output from five solar photovoltaic and battery energy storage systems, located in Calhoun, Chambers, Dallas, Houston and Talladega Counties; together with all transmission arrangements, structures, substations, and facilities, environmental control measures, facilities or arrangements for the handling, treatment, transportation, delivery and processing of fuel, and any and all other appliances, appurtenances, facilities, rights, equipment, acquisitions, commitments and accounting authorizations necessary for or incident thereto.

Docket No. 32953

PETITION FOR RECONSIDERATION REGARDING THE PROCEDURAL RULING DENYING APPLICATION OF SOUTHERN RENEWABLE ENERGY ASSOCIATION FOR LEAVE TO INTERVENE

COMES NOW, the Southern Renewable Energy Association (“SREA”), pursuant to Rule 21 of the Rules of Practice of the Alabama Public Service Commission (“APSC”), hereby

files this Petition for Reconsideration Regarding the Procedural Ruling Denying Application of SREA for Leave to Intervene (“Application”) in the above-referenced docket. This petition for reconsideration is timely filed.

SREA timely filed its Motion to Intervene on September 27, 2019 in Docket No. 32953. Alabama Power Company (“APC” or “the Company”) filed its objection on October 2, 2019. A procedural schedule for this docket was set on October 9, 2019. SREA filed its response to APC’s objection on October 10, 2019. APC filed a response to SREA’s response on October 10, 2019. Chief Administrative Law Judge John Garner ruled on November 13, 2019, denying SREA’s motion to intervene. APC’s response to SREA’s response and Judge Garner’s denial of SREA’s application to intervene contain a number of deficiencies, and as such, we request an appeal to allow SREA to intervene in this docket.

APC’s initial objection to SREA’s intervention stated that, “...reliance on customer status is not the only way to demonstrate standing...”. However, in its response to SREA’s response, the Company called its own statement into question, and reiterated a need for SREA to name a specific customer of Alabama Power. Specifically, APC stated, “However, if SREA identified a member in Alabama, the question would remain, *in the absence of customer status*, whether that member’s interest remained too attenuated to support intervention” (emphasis added). This narrow interpretation of needing to name a specific customer (or customers) of Alabama Power is not supported by the Company’s primary legal precedent, *M.W. Smith Lumber Co. v. APSC*, 24 So. 2d 409, 411 (Ala. 1946).

In that case, MW Smith Lumber Co. was denied intervention in a *residential* rate case, because the intervening party was a *commercial* rate customer. As such, MW Smith Lumber Co.

would not have been affected by the Commission's decision, despite customer status. From *M.W. Smith Lumber Co. v. APSC*,

“The Alabama Public Service Commission, on December 29, 1944, found that the gross revenues of the Alabama Power Company for 1944 were excessive by approximately \$600,000, and that a reduction therein should be effected by refunding the December, 1944 bill of every customer in its residential and street lighting classifications.... The denial of relief to petitioners before the Commission was rested upon the theory that as *commercial* users of electric power they were unaffected by the order of December 29, 1944, and therefore were not entitled to intervene or otherwise question said order. As to the question of intervention, Sec. 65, Title 48, Code 1940, provides as follows: ‘Every person, firm, corporation, co-partnership, association, or organization affected thereby may by petition and become a party to any proceeding before the commission.’” (emphasis added)

This CCN docket is neither a rate case, nor affecting only residential customers. Further, the APSC rejected MW Smith Lumber Co.'s motion to intervene because there was no “actual controversy”. In this CCN docket, the application of the actual controversy principle is adequate. As a like principle, the APSC cited *City of Birmingham v. Southern Bell Tel. Tel. Co.*, 234 Ala. 526, 176 So. 301, 303, stating:

“It may be stated as a well settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction. * * * Since an actual controversy is necessary, it is not within the province of appellate courts to decide abstract, hypothetical, or moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. * * * Ordinarily an appellate court will not entertain appeal from the results of its action when its decision will not affect any substantial right of a party in the pending matter.”

The narrow interpretation of *M.W. Smith Lumber Co. v. APSC* in this case is improper. Because the ruling to deny SREA entry into this docket included no citation, analysis, or reference to any legal precedent other than deferring to Alabama Power Company's complaint, SREA asserts APC's legal basis is flawed. Further, to establish an interest in *M.W. Smith Lumber Co. v. APSC*, the plaintiff was directed a specific test:

“Finally, in answer to the following inquiry ‘How could your client be affected if the Commission were to hold this order invalid?’ counsel answered: ‘He would have to give

back \$27 he actually got,' referring, of course, to the amounts his clients received as *residential* consumers rather than as *commercial* consumers.” (emphasis added)

SREA requests that the “actual controversy” principle, and the same question applied in *M.W. Smith Lumber Co. v. APSC* be applied in this docket regarding our motion to intervene: “How would SREA’s members be affected if the Commission were to hold this order invalid?” This question has been answered by SREA’s previous filings in this docket. This docket solidifies Alabama Power’s ten-year power plan with an anticipated expenditure of at least \$1 billion for natural gas power plant assets. If the Commission allowed SREA to intervene, we would be able to show that our members would provide services at a lower cost, and our members would then have access to an otherwise \$1 billion market. If the loss of a potential \$1 billion opportunity does not represent an “actual controversy” or a “personal interest”, then no intervening party would ever be allowed to intervene.

APC notes that it “does not object because SREA failed to state an interest”, noting that SREA did emphatically state multiple specific interests in this docket. In *M.W. Smith Lumber Co. v. APSC*, there was no real interest. APC explained that, “Alabama Power's objection, an interested party may only intervene in a proceeding before the Commission upon an affirmative showing that it is ‘affected thereby.’” However, SREA did affirmatively show that its members are negatively, and significantly, affected by this docket. SREA noted in its response to APC’s objection that,

“Approximately 40 individual renewable energy and energy storage resource projects, representing approximately 4,000 megawatts (MW) of new nameplate capacity are in Southern Company’s Generator Interconnection Queue, specifically in Alabama. Each project represents the potential for millions of dollars of private investment. IPP’s may spend hundreds of thousands of dollars, if not millions of dollars, in the beginning phases of project development, including the interconnection process.”

The Company’s decision to exclude renewable energy from its integrated resource plan (Exhibit JBK-1), which is the single most foundational analysis used by the Company to show a need for

its proposed natural gas resources, excluded resources that could have been provided by SREA's members, resources that could be provided at lower cost and at significant benefit to the Company's ratepayers. As noted in Alabama Power's IRP, "Intermittent resources, such as solar and wind, were not included as selectable technologies for the expansion planning model, but instead are evaluated pursuant to a separate analysis."¹ The renewable energy industry is making significant investments in Alabama today, in anticipation of being able to sell energy or projects specifically to Alabama Power. The exclusion of SREA as a representative of these renewable energy companies could potentially cost those companies millions of dollars of investment made in Alabama to date. Additionally, each individual renewable energy project may ultimately provide tens of millions of dollars in new economic development in the state, including hundreds of well-paying jobs, so both citizens and ratepayers stand to benefit from SREA's participation as a stakeholder. SREA's application to intervene is the *only* one that provides *any* direct monetary value at stake. As such, SREA's members are arguably the *most* affected and *highest* impacted party, on a financial basis, to this docket.

Because independent power producers are not necessarily customers of Alabama Power Company, but rather suppliers to the Company, applying an identified-customer standard would potentially exclude all supplier interests in APSC dockets. A comparison would be for a telecommunications company to issue plans to self-develop \$1 billion in telephone wires, while explicitly excluding 5G technology as an alternative option, and then the APSC rejecting the 5G companies from intervening in the case. Alabama Power's efforts to exclude independent power producers from even the opportunity to represent their own interests is a clear abuse of monopoly power and an affront to market competition.

¹ See Exhibit JBK-1, Footnote #9, Page 31.

In the ruling against SREA's motion to intervene, no legal statute is cited. The only information provided is that Alabama Power objected, that SREA did not satisfy the Company's objection, and therefore SREA's motion would not be approved. SREA cited several APSC Rules regarding its Motion to Intervene. SREA's application to intervene would be covered under Rule 5 and/or Rule 8.² The Company did not dispute that SREA's rights and interests cannot be adequately represented by any other party. The Company did not dispute that SREA has intervened, and our interventions have been approved, in other utility proceedings in other states including in Georgia³, Louisiana⁴ and Mississippi.⁵ Some of those proceedings affect Georgia Power Company and Mississippi Power Company, sister-companies to Alabama Power. The Company did not dispute that SREA is an IRS designated 501(c)6 trade association with a business interest in the state. The Company did not dispute that there are nearly 4,000 megawatts of renewable energy projects that are proposed and being evaluated in Alabama, and that none of those projects or business interests are adequately represented in this docket. None of these issues were ever addressed by APC, nor by the ruling against SREA's motion to intervene.

The standards being required of SREA were not applied to all interveners. The Georgia-based American Senior Alliance nonprofit organization filed a one-paragraph request to intervene

² SREA's response to APC Objection, "According to the Rules of Practice, Rule 5(A) shows that, "Any person or party may appear before the Commission on his, her, or its own behalf in any matter pending before the Commission." Because Docket Number 32953 is a matter pending before the commission, Simon Mahan, Executive Director of the SREA, has the ability to appear before the Commission. Rule 5(A) further states that, "Any member of a partnership which is party to any proceeding may appear for the partnership and any bona fide officer or full-time employee of a corporation, association, or of an individual may appear for such corporation, association or individual." Rule 8(A) reiterates that, "Any individual may appear for himself and any member of a partnership which is a party to any proceeding may appear for the partnership. A bona fide officer or a full-time employee of a corporation, association, or an individual may appear for such corporation, association, or individual." Simon Mahan is a full-time employee of SREA, and SREA is an approved Internal Revenue Service (IRS) 501(c)6 non-profit trade association. As an individual, Simon Mahan has the right to appear on his own behalf, and the SREA has a right to appear as an official association."

³ See Georgia PSC Docket #42310

⁴ See Louisiana PSC Docket I-34694

⁵ See Mississippi PSC Docket #2018-AD-64

stating, “American Senior Alliance is a not-for-profit organization representing senior citizens across the southeast by protecting their hard earned dollars and financial resources. In accordance with Rule 8 of the Rules of Practice of the Alabama Public Service Commission, we would like to intervene in Docket No. 32953.”⁶ This out-of-state nonprofit, with no listed Alabama Power customers, was allowed to intervene. Energy Fairness, an IRS designated 501(c)4 nonprofit organization filed a brief motion to intervene. Energy Fairness’ motion states, “By this letter, Energy Fairness expresses its desire to intervene in Docket No. 32953, pursuant to Rule 8 of the Rules of Practice of the Alabama Public Service Commission, as permitted by Statute. In past dockets, the Commission has recognized Energy Fairness, formerly known as the Partnership for Affordable Clean Energy (PACE), as a not—for— profit organization that represents consumer interests with regard to energy policy and that merits standing in matters such as these.”⁷ Energy Fairness did not did not “identify any ongoing projects, specific interests or a member of its association in Alabama Power’s service territory” in its intervention filing. Manufacture Alabama filed a motion to intervene.⁸ Like SREA, Manufacture Alabama identifies itself as a non-profit industry group. Manufacture Alabama did not “identify any ongoing projects, specific interests or a member of its association in Alabama Power’s service territory” in its intervention filing. APSC’s approval of those other intervening parties without holding them to the same standard as SREA is unjust. To be clear, SREA is not opposing the intervention of these other organizations; we are opposed to being singled-out and held to an entirely different standard from other intervening parties.

⁶ <https://www.pscpublicaccess.alabama.gov/pscpublicaccess/ViewFile.aspx?Id=5c4d60e4-9a95-4231-b801-b166550df9bb>

⁷ <https://www.pscpublicaccess.alabama.gov/pscpublicaccess/ViewFile.aspx?Id=c6d7ccf6-6897-49e0-9734-e77815287639>

⁸ <https://www.pscpublicaccess.alabama.gov/pscpublicaccess/ViewFile.aspx?Id=83721665-968e-4227-af1b-4b8a9c2e5d9c>

SREA successfully participated in a Georgia Power docket earlier this year which included several of Alabama Power's witnesses in this docket; because SREA was singled-out by Alabama Power's objection to our intervention, we are concerned about potential retaliatory behavior by Alabama Power. While SREA members could name specific projects in the Southern Company queue to further justify SREA's claims in filing for intervention, member companies have a reasonable expectation of confidentiality from their own competition. Southern Company's queue is intentionally anonymized to protect business interests. As such, the practical business interests of the member companies precludes the level of detail that Alabama Power is requesting in their objection to SREA's motion to intervene.

Denying SREA's intervention reduces the Commission's ability to fulfill its statutory responsibility to "keep itself informed" (AL Code § 37-1-32). Because many of the same issues raised by the Company in its filing are virtually the same as issues raised by its sister company in Georgia, and SREA was involved in that process in Georgia, SREA has extensive and pertinent knowledge and information to share with the Commission. That information will not be available to the Commission in its decision-making process, if we are not allowed to intervene. It appears that Alabama Power intentionally wants that information excluded. Precluding SREA's involvement in this docket eliminates the Commission's ability to review, and make their own determination on, pertinent information.

While SREA's rights and interests are being harmed by Alabama Power's actions, no negative effect would come to Alabama Power's customers by allowing SREA to intervene. Indeed, Alabama Power obstruction of SREA's involvement could actually be harmful to its ratepayers. Additionally, the Company adds a de facto fee to the process by requiring intervening parties to show a bill paid to Alabama Power in order to be involved in what should be otherwise

a public process. This stealth fee restricts the freedom of speech of interested parties and harms Alabama Power's customers. No other public service commission in the south requires this same standard for intervention and/or participation.

The APSC has set a procedural schedule in this docket. If SREA were allowed to intervene at this point, we would accede to the schedule, even though we have effectively lost the ability to file testimony by the required deadline. Allowing SREA to intervene in this docket at this point would still enable us to participate in the public hearing, and to file post-hearing briefs. Because SREA's rights and interests cannot be adequately represented by any other party to this docket, we respectfully request to be included in the process.

CERTIFICATE OF SERVICE

I, Simon Mahan, hereby certify that I have on this day filed with the Alabama Public Service Commission the original of the Southern Renewable Energy Association's Response Regarding a Motion to Intervene and that in compliance with the Alabama Public Service Commission's Rules of Practice and Procedure, I have served a copy via electronic mail or via United States Postal Service, to all parties of Docket No. 32953. I have caused an original and one (1) copies of the Motion to Intervene to be filed with:

Walter L. Thomas
Executive Secretary
Alabama Public Service Commission
100 North Union Street
P.O. Box 304260
Montgomery, AL 36130

and that I have transmitted on this day one copy of the above Motion to Intervene Response to:

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Respectfully submitted this 21st day of November, 2019


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