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February 7, 2020

VIA E-MAIL  
VIA U.S. MAIL

Katherine Collier, Esq.  
Executive Secretary  
Mississippi Public Service Commission  
501 North West Street, Suite 201A  
Jackson, MS 39201

**Re: Mississippi Power Company's Notice of IRP Cycle Pursuant to Commission Rule 29  
Docket No. 2019-UA-231**

Dear Katherine:

On behalf of Mississippi Power Company in the above-referenced docket, I have enclosed the original and twelve (12) copies of the Company's Reply in Support of its Objection to Motions to Intervene.

Also enclosed is a copy of this letter, which I will appreciate your file-stamping and returning to me. Please let me know if you have any questions regarding this matter.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Leo E. Manuel".

Leo E. Manuel

LEM:hr

Attachments

cc: Mr. Virden Jones  
Frank Farmer, Esq.  
David Tad Campbell, Esq.  
Mr. Jeff Stone  
Mr. Shawn Shurden  
Ricky Cox, Esq.  
Parties Requesting Intervention

**BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION**

**MISSISSIPPI POWER COMPANY  
EC-120-0097-00**

**DOCKET NO. 2019-UA-231**

**IN RE: MISSISSIPPI POWER COMPANY'S NOTICE OF IRP CYCLE  
PURSUANT TO COMMISSION RULE 29**

**MISSISSIPPI POWER COMPANY'S REPLY IN  
SUPPORT OF OBJECTION TO MOTIONS TO INTERVENE**

COMES NOW, Mississippi Power Company ("MPC" or the "Company") and, pursuant to RP 12 of the Mississippi Public Service Commission's ("Commission") Public Utilities Rules of Practice and Procedure ("Rules"), submits this its Reply in Support of its Objection to the Sierra Club, Southern Alliance for Clean Energy ("SACE"), Bigger Pie Forum, Advanced Energy Management Alliance ("AEMA"), Southern Renewable Energy Association's ("SREA"), and Pattern Energy Group 2 LP's ("Pattern Development" and collectively the "Intervenors") Motions to Intervene and would show as follows:

1. Rule 6.121 represents the sole legal grounds for participation in a utility IRP proceedings. This is clearly established by Rule 29 and is not disputed by any of the entities seeking party status in this proceeding. Rule 6 requires that the movant have a "substantial interest" in the outcome of the proceeding and that disposition of the proceeding without movant would "impair or impede" its ability to protect its substantial interest. Under the rule, a movant bears the burden of meeting both prongs before intervention is proper.

2. In responsive pleadings, the Intervenors weigh heavily the fact that they participated in the rulemaking proceeding to establish Rule 29, which prompted the creation of the present IRP docket. This participation, the Intervenors argue, is proof positive that a substantial interest in this proceeding exists and intervention is proper. None cite any legal precedent to support this position.

3. The establishment of Rule 29 was a legislative act by the Commission that resulted in the establishment of new policy for the State. This proceeding, however, is a utility-initiated docket designed to implement the policy that was debated and decided upon by the Commission, with the Intervenors' prior input and participation. A substantial interest in the rule-making proceeding does not as a matter of law automatically create a substantial interest in the subsequent implementation phase.

4. In *Coalition to Defend Affirmative v. Granholm*, the court denied intervention to several "special interest groups" because they had a general rather than substantial interest in the outcome of the case. *Coalition to Defend Affirmative v. Granholm*, 501 F. 3d 775, 780 (6<sup>th</sup> Cir. 2007). In *Granthom*, the movants argued that their participation in the creation of the policy being challenged by the lawsuit vested them with a substantial interest in the outcome.

The Sixth Circuit disagreed:

In affirming the denial of STTOP's motion to intervene, we held that an organization involved in the process leading to the adoption of a challenged law, does not have a substantial legal interest in the subject matter of a lawsuit challenging the legality of that already-enacted

law, unless the challenged law regulates the organization or its members. In so holding, we drew a distinction between cases involving challenges “to the *procedure* required to pass a particular rule, as opposed to the government's subsequent *enforcement* of the rule after its enactment.” In drawing this distinction, we explained that “the public at large—including public interest groups—has an interest in the procedure by which a given legal requirement is enacted as a matter of democratic legislative process.” “On the other hand,” we further explained, “in a challenge to the constitutionality of an already-enacted statute, as opposed to the process by which it is enacted, the public interest in its enforceability is entrusted for the most part to the government, and the public's legal interest in the legislative process becomes less relevant.”

*Id.* at 781 (emphasis added) (quoting *Northland Family Planning Clinic, Inc. v. Cox*, 487 F. 3d 323, 345 (6<sup>th</sup> Cir. 2007))

5. None of the Intervenor's argue that Rule 29 exists to regulate their activity or that of its members. The regulatory focus of Rule 29 is on MPC and its customers. Therefore, the outcomes of this IRP docket will impact MPC and its customers, the impact, if any, on the Intervenor's is ancillary at best. For example, SREA's members “include independent power producers interested in developing and/or delivering renewable energy resources in Mississippi.” SREA Response p. 7. Basically, SREA wants to help its members sell electricity to MPC at wholesale, a transaction the Commission does not directly regulate. And, SREA surely intends to maximize its members' market share irrespective of the benefit or harm to MPC's customers.

6. More to the point, if the Commission intended for the newly established IRP process in Mississippi to include Commission-governed requests for

proposals from independent power producers it would have done so.<sup>1</sup> Rule 29 has no formal RFP process and SREA's intervention is an attempt to write one in. Indeed, SREA's intentions are transparent: "In this IRP Docket, disputes between the utility and the stakeholders are assured . . . ." SREA Response p. 6 (emphasis added).

7. The other Intervenors' alleged substantial interests are no less generalized and deficient. AEMA represents companies seeking to "incentivize distributed energy resources, including demand response and advanced energy management solutions." AEMA Response p. 3. Thus, to AEMA's members the ultimate impact is whether or not they sell "advanced energy management solutions" to MPC or its customers under a Commission-mandated program. Again, the IRP process is not, and was not intended to be a government-mandated trade show and sales pitch.

8. While admittedly not pitching a product, the Sierra Club's and SACE's motives are no less contrived. SACE "advocates for utility resource decision that transition away from high cost, high risk fossil fuel generation" in favor of "cost-effective clean, renewable energy development." SACE Reply p. 4. The Sierra Club proudly touts its "Beyond Coal" and "Keeping Gas in the Ground" campaigns.<sup>2</sup> In fact, the Sierra Club openly advocates for the U.S. power sector to be 100% carbon

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<sup>1</sup> Commission-ordered RFPs for electric generation are not unprecedented. Phase Two of the Kemper certificate docket was created for the purpose of inviting third-party power bids to compete with the proposed Kemper Project.

<sup>2</sup> <https://www.sierraclub.org/dirty-fuels>

free by the year 2030.<sup>3</sup> These large, out-of-state special interest groups have a narrowly focused policy agenda that remains the same irrespective of the specific needs, resources and best interest of MPC or its customers.

9. The Sierra Club's attempt to champion its representation of the cause of low and middle income customers is in direct conflict with its own organizational policy statements. The Sierra Club's official policy on "Electric Utility Rate Structures" blatantly advocates for increases in electric rates as a means to reduce air emissions from electric generating facilities:

The Sierra Club believes that the price mechanism is a means available to bring demand for energy into line with present and future supply. Therefore, the Sierra Club endorses the promotion of energy conservation through appropriately designed electrical utility rate structures which, in conjunction with additional regulatory activity, minimize the emission of environmental pollutants.<sup>4</sup>

The Sierra Club's dedication to this general policy position is so complete that it readily admits it does not trust state regulatory agencies like this Commission to "do its job" and increase electric rates:

Because states will be reluctant, for political and economic reasons, to unilaterally adopt appropriate pricing principles and mechanisms to reduce energy consumption and pollution emissions, nationally applicable principles for utility regulation should be mandated by the federal government. The Sierra Club recommends that state and federal legislation and regulation should be designed to minimize the emissions of pollutants and the consumption of energy.

10. The Intervenors' attempts to distract from the important planning for electric resources to serve MPC's customers that is the subject of this docket is the exact reason that the "substantial interest" standard exists.

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<sup>3</sup> [https://www.sierraclub.org/sites/www.sierraclub.org/files/Energy-Resources-policy\\_0.pdf](https://www.sierraclub.org/sites/www.sierraclub.org/files/Energy-Resources-policy_0.pdf)

<sup>4</sup> <https://www.sierraclub.org/policy/energy/electric-utility-rate-structures>

11. The Commission's Rules differentiate between intervenor and public witness status for the same reason. The Commission's Rules provide intervenors with more procedural rights for the purpose of protecting their unique and substantial interests.

12. All of the Intervenors tout their unique perspective, experience, data and knowledge that would serve to inform the Commission's review of these proceedings. However, party intervenor status is not required to offer the Commission such perspective and assistance. Public witnesses are permitted to "introduce evidence at a hearing by written or oral statements and exhibits." Rule 6.121(7). Further, MPC is required to file public versions of its IRP, Mid-point Supply-side Update and Annual Energy Delivery Plans that will be available for inspection and review to the public, including the prospective Intervenors. Rule 29.103. The level of participation Intervenors seek is afforded through the public witness process.

13. Rule 6 indisputably governs the Intervenors' rights to intervention, and they have all failed to show the required substantial interest. MPC's position does not threaten to diminish the rights of participation afforded customers. Again, none of the Intervenors have established that they, themselves, are customers of MPC—only the Sierra Club has established through affidavits that a few of its members are MPC customers.

14. Nonetheless, the Commission's denial of intervention to the requesting parties that are the subject of this pleading will have no impact to Right 18 of the

Ratepayer Bill of Rights which provides: “Ratepayers shall have the right to intervene in any case before the Mississippi Public Service Commission affecting their rates or their utility service.” This Right does not say “ratepayers and their designated non-profit representative” have the right to intervene. This right is afforded to retail utility customers in Mississippi. Intervention is governed by the principles of Rule 6 and not the standing requirements protecting a person’s right to file a private lawsuit under Mississippi’s Constitution.

15. As previously briefed, the Commission is charged with promoting the public interest<sup>5</sup> and the Staff is charged with representing “the broad interests of the State of Mississippi by balancing the respective concerns of the residential, commercial or industrial ratepayers, and the state and its agencies and departments, and the public utilities.”<sup>6</sup> This leaves little room or necessity for the generalized intervention sought by the Intervenors in this matter. Intervention is not permitted by parties who, like Intervenors, are “merely advocates” asserting “no right ‘other than merely a general interest common to all members of the public.’”<sup>7</sup>

16. The Intervenors would not be prejudiced by denial of full intervenor status in this proceeding because their general rather than specific and protected interest is already adequately represented by the Commission and Staff by law.

WHEREFORE, PREMISES CONSIDERED, Mississippi Power Company requests that the Commission deny each Intervenor’s Motions to Intervene in this

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<sup>5</sup> RP 3.102(4).

<sup>6</sup> Miss. Code Ann. § 77-2-1.

<sup>7</sup> *Eastern Maine Elec. Coop. v. Maine Yankee Atom. P. Co.*, 225 A.2d 414 (Me. 1967) (citing *Nebraska Power Co. v. Omaha Ice & Cold Storage*, 147 Neb. 324, 23 N.W. 2d 312 (1946)).



proceeding because none of these Intervenors have adequately demonstrated a unique “substantial interest” in this proceeding.

RESPECTFULLY SUBMITTED, this the 7<sup>th</sup> day of February, 2020.

MISSISSIPPI POWER COMPANY  
BY: BALCH & BINGHAM LLP

BY:   
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Leo E. Manuel

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**CERTIFICATE OF SERVICE**

I, LEO E. MANUEL, counsel for Mississippi Power Company in the foregoing filing on even date herewith do hereby certify that in compliance with Rule 6.112 of the Mississippi Public Service Commission Public Utility Rules of Practice and Procedure:

(1) An original and twelve (12) copies of the filing have been filed with the Commission by U.S. Mail to:

Katherine Collier, Esq.  
Executive Secretary  
Mississippi Public Service Commission  
501 North West Street, Suite 201A  
Jackson, Mississippi 39201

(2) An electronic copy of the filing has been filed with the Commission via e-mail to the following address:

efile.psc@psc.state.ms.us

(3) A copy of the filing was served via U.S. Mail, postage prepaid, upon each of the following parties:

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(4) MPC has complied with all other requirements of the Mississippi Public Service Commission's Public Utility Rules of Practice and Procedure.

Dated this the 7<sup>th</sup> day of February, 2020.



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Leo E. Manuel