

FILED

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MISS. PUBLIC SERVICE
COMMISSION

BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION

ENTERGY MISSISSIPPI, LLC
EC-123-0082-00

IN RE: ENTERGY MISSISSIPPI, LLC'S
RP 29 NOTICE FILING

2019-UA-232

ENTERGY MISSISSIPPI, LLC'S RESPONSE IN OPPOSITION TO
ADVANCED ENERGY MANAGEMENT ALLIANCE'S MOTION TO INTERVENE

Entergy Mississippi, LLC ("Entergy Mississippi," "EML," or the "Company") files this Response in Opposition to Advanced Energy Management Alliance's ("AEMA") Motion to Intervene. Based on past Commission rulings and policy, AEMA does not have a substantial interest in this proceeding and its generalized interest is not sufficient to merit intervenor status given that such general interests will be more than adequately represented by the Mississippi Public Service Commission ("Commission"), Public Utilities Staff ("Staff"), and the office of the Mississippi Attorney General. The Company respectfully urges the Commission to follow its past practice with respect to denying AEMA's intervention, as there are multiple additional entities that seek intervention based on similar grounds as AEMA. EML does not oppose the Commission allowing AEMA to participate in this docket as a public witness, which will provide them with ample opportunity to make the Commission aware of any concerns that AEMA has regarding EML's proposed IRP.

BACKGROUND

1. On November 22, 2019, the Commission adopted its Final Order Amending Rule 29 to Establish Integrated Resource Planning and Annual Energy Delivery Reporting Requirements in Docket 2018-AD-64. AEMA did not participate as a party in the rulemaking docket.

2. The new Rule 29 (“IRP Rule”) of the Public Utilities Rules of Practice and Procedure of the Mississippi Public Service Commission and Public Utilities Staff (“Procedural Rules”) defines the relationship of the Commission and utilities to IRP. The IRP process does not drive a specific outcome or produce specific utility investment decisions. Rather, it provides transparency

The periodic filing by electric utilities of an IRP report provides transparency for the Commission, Mississippi ratepayers, and other interested stakeholders.

The IRP reporting requirements embodied in this Rule are not intended to drive any specific outcome or dictate any specific utility investment decisions. To that end, these IRP reporting requirements do not supplant or equate with a prudence determination or otherwise replace the Commission’s existing regulatory processes for petition and approval of requisite certificates of convenience and necessity for new resources.

RP 29.102 (emphasis added).

3. The IRP Rule “establishes a workable framework for resource planning that can be tailored to the specific needs of **Mississippi** customers. . .” Final Order Amending Rule 29 to Establish Integrated Resource Planning and Annual Energy Delivery Reporting Requirements, p. 7, Docket 2018-AD-64 (emphasis added). The IRP Rule was written to place the interests of Mississippi customers at the forefront.

4. The IRP Rule requires each electric utility subject to the IRP provision of the IRP Rule to file a Notice of IRP Cycle in a new Commission docket. On December 23, 2019, EML filed its Notice of IRP Cycle in this docket. The Commission sent notice of EML’s filing to the Clarion Ledger, which published the notice on January 7, 2020. AEMA moved to intervene on January 21, 2020. AEMA is a trade association whose members

include national distributed energy resource companies and advanced energy management service and technology providers. *See* AEMA Motion to Intervene, p. 1. AEMA claims to have an interest in “collaborating with parties throughout Mississippi, including utilities, to create and expand demand response and distributed energy resource opportunities.” *Id.* According to its website, AEMA’s mission is to “advocate for policies that empower and compensate customers appropriately—to contribute energy or energy-related services or to manage their energy usage—in a manner which contributes to a more efficient, cost-effective, resilient, reliable, and environmentally sustainable grid.” *See* <https://aem-alliance.org/about/>. AEMA’s members are a collection of “providers and supporters of Distributed Energy Resources, including Demand Response and Advanced Energy Management...” *Id.*

5. Intervention should be denied because AEMA has not claimed nor shown that they have a substantial interest in the outcome of this docket.

LEGAL AUTHORITY

A. Intervenors Must have a Substantial Interest in the Proceeding

6. The Procedural Rules allow intervention only by parties with a substantial interest in a proceeding. *See* RP 6.121.1 (“any person may be permitted to intervene in a proceeding when the movant has a **substantial interest** relating to the property, transaction or outcome of the proceeding at issue *and* the movant is so situated that the disposition of the proceeding may as a practical matter impair or impede his or her ability to protect that interest.” (emphasis added))

7. RP 6.121 is similar to Mississippi Rule of Civil Procedure 24(a)(2), which states: “[U]pon timely application, anyone shall be permitted to intervene in an action . . .

when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.”

B. The Commission Recently Affirmed the Standards for Intervention

8. When comparing RP 6.121 to Miss. R. Civ. P. 24(a)(2), however, the Commission has affirmed that “[u]nlike civil courts, intervention [at the Commission] is not a matter of right but is only granted at the Commission’s discretion.” See “Order Consolidating Issue and Denying Intervention,” Notice of Intent of Entergy Mississippi, Inc. to Implement Net Metering Energy Rate, Docket No. 2016-UN-32 (May 13, 2016) (hereafter “2016 Order Denying Intervention”). The 2016 Order Denying Intervention confirms the long-standing principle that “[g]enerally, the grant or denial of a petition to intervene is within the sound discretion of the administrative agency involved.”¹

9. The Commission has looked to the Mississippi Supreme Court for guidance, as it is allowed to do, regarding the standard for intervention. “In order to intervene, a movant must assert a ‘direct, substantial, **legally protectable interest**’ in the proceedings... A movant found to be ‘a real party in interest’ generally establishes sufficient interest.’ . . . An “interest” is defined as “[a] legal share in something; all or part of a legal or equitable claim to or right in property.” See 2016 Order Denying Intervention, pp. 3-4 (citing

¹ 2 Am. Jur. 2d *Administrative Law* § 309 (citing *Cortland Glass Co., Inc. v. Angello*, 300 A.D.2d 891 (3d Dep’t 2002); *West Chester Area School Dist. v. Collegium Charter School*, 571 Pa. 503 (2002)).

Madison HMA, Inc. v. St. Dominic-Jackson Mem'l Hosp., 35 So. 3d 1209, 1216 (Miss. 2010) (citing *Black's Law Dictionary* 828 (8th ed. 2004) (emphasis added)).

10. The Commission also has clarified that it will balance the factors involved in the standard for intervention: timeliness, substantial interest, impairment of interest, and adequacy of representation. See 2016 Order Denying Intervention, p. 4. "In balancing the relevant factors, the Commission considers the availability of public witness status that allows non-parties to submit written comments and evidence for Commission consideration." *Id.* (citing RP 6.121.7) The IRP Rule does not automatically allow any interested party to participate as an intervenor; it requires that "interested parties" move to intervene under RP 6.121. See RP 29.105. RP 6.121 then categorizes parties as intervenors, other parties, or public witnesses. Rule 29.101.8 defines a "stakeholder" as "[a]ny interested party eligible to appear and/or intervene in Commission proceedings pursuant to Rule 6.121 of the [Procedural Rules]." Thus, the IRP Rule specifically requires interested parties to satisfy the requirements for intervention of Rule 6.121 and contemplates that, failing to qualify as an intervenor, a party could be given public witness status only.

11. "Additionally, the Commission considers its own duty, as delegated by the Legislature, to promote the public interest in its consideration of all matters before it, as well as the duty of the Public Utilities Staff to 'represent 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.'" *Id.* at pp. 4-5 (citing Miss. Code Ann. § 77-3-2, § 77-3-1).

C. The Commission's Precedent and Policy Demonstrate that a Generalized Interest in the Proceeding is Not Adequate to Merit Intervenor Status

12. In the 2016 Order Denying Intervention, the Commission exercised its discretion and denied the interventions of several parties that it found to have a generalized, but not substantial, interest in the proceeding. “Requiring the existence of a substantial interest promotes, among other things, efficiency and thoroughness because a party with a particular and significant interest will be motivated and can be expected to present evidence to protect that vested interest, drawing the Commission’s and Staff’s attention to a particularized matter that might have gone unnoticed or not been given sufficient consideration or evidentiary support. Interventions are a privilege that necessarily imposes costs on the utility, and of course, ratepayers ultimately bear the cost of a utility’s efforts to respond to data requests, engage in regulatory proceedings and defend appeals, among other things. The Rules are crafted to fairly judge the merits of the intervention.” 2016 Order Denying Intervention, p. 6.

D. The Public Witness Option Provides a Meaningful Alternative for Intervention in a Proceeding

13. When intervention is inappropriate, the Commission’s Procedural Rules provide for meaningful participation by “public witnesses,” (*see* RP 6.121.7) who may be allowed to introduce evidence at a hearing by either oral or written statements and exhibits.

14. The 2016 Order Denying Intervention noted that the Commission welcomed a party’s desire to participate and contribute to a proceeding: “it is the reason for the designation of public witnesses.” *Id.* at p. 7. A public witness can “monitor the proceedings, review the public evidence, file its own written evidence and comments, and be assured that the Commission will consider its filings.” *Id.*

DISCUSSION

15. Based upon the above law and the facts of this proceeding, EML respectfully asks the Commission to deny AEMA's request for intervenor status for the following reasons.

A. AEMA Does Not have a Substantial Interest in EML's IRP Docket

16. AEMA does not have a substantial interest in this docket. Again, AEMA is a trade association whose members include national distributed energy resource companies and advanced energy management service and technology providers. See AEMA Motion to Intervene, p. 1. AEMA claims to have an interest in "collaborating with parties throughout Mississippi, including utilities, to create and expand demand response and distributed energy resource opportunities." *Id.* This is the same generalized interest common to EML and its customers (assuming such options are economic and feasible), the Commission, the Staff, and the Mississippi Attorney General.

17. Again, the IRP Rule was created to protect the interests of *Mississippi* customers. Mississippians are the parties most likely to have a substantial interest in the various IRP dockets. Further, Entergy Mississippi's customers are the parties most likely to have a substantial interest in *this* docket.

18. An out-of-state special interest group, like AEMA, which is not a customer of EML, cannot satisfy the "substantial interest" standard set forth by the Commission. AEMA has not asserted any direct, substantial, legally protectable interest in the proceedings. It is not a real party in interest because it does not have a legal or equitable claim to any property that could be impacted by this proceeding.

B. AEMA's Ability to Protect its Purported Interests will not be Impeded or Impaired by the Commission's Denial of AEMA's Motion to Intervene

19. Further, the disposition of the proceeding will not as a practical matter impair or impede AEMA's ability to protect any substantial interest. As discussed above, AEMA does not have a specific, substantial interest in this proceeding. As to its general interests regarding demand response and distributed energy resource opportunities, AEMA had the full opportunity to advocate in the rule-making docket, but chose to not do so.

20. Further, as noted in Paragraph 2, above, Section 102 of the IRP Rule does not create a definitive plan for execution. Any substantial utility investment resulting from the IRP Rule (e.g. new generation, including distributed energy resources) must be approved by the Commission in a separate CCN proceeding. AEMA and other entities would have an opportunity to assert whether they have a substantial interest in the CCN proceedings.

C. The Commission and Staff will Adequately Represent the General Interests of AEMA

21. Finally, AEMA's intervention in this proceeding is unnecessary, because any interest it may have is already adequately represented by other parties. AEMA claims that "[n]o other party to this proceeding is suited to adequately represent AEMA's interests." See AEMA's Motion to Intervene, p. 1. Its general interests, however, are sufficiently protected by the Commission, the Staff, and the Mississippi Attorney General. The Commission is charged with the task of "promot[ing] adequate, reliable and economical service to all citizens and residents of the state" and promoting the provision of "just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term

management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy.”² In addition, the Staff has the statutory duty to “represent 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 department, and the public utilities.”³ Pursuant to Miss. Code Ann. § 77-2-9(3), the Staff has a list of fourteen duties and responsibilities aimed at protecting the public health and safety, promoting the general welfare, and ensuring just and reasonable rates for Mississippi ratepayers. Given the nature of the instant proceeding, the Commission and the Staff adequately represent the interests of EML customers, as well as organizations who advocate for expanded demand response and distributed energy rouse opportunities in Mississippi, making intervention unnecessary and unwarranted. Further, the Mississippi Attorney General “is charged with the duty to assist and advise the [Commission] [and]... protect the interest of the general public.” *See* Mississippi Attorney General’s Motion to Intervene at p. 1, Docket No. 2019-UA-232 (Jan. 22, 2020).

D. AEMA’s Presence as an Intervenor Would Result in Inefficiency and Risk of Increased Customer Costs in the EML IRP Process

22. In addition, granting intervenor status to third parties like AEMA in this docket would result in inefficiency and is likely to cause delays in the approval of EML’s IRP. In considering whether to grant motions to intervene, administrative agencies also

² Miss. Code Ann. § 77-3-2(1)(c)-(d).

³ Miss. Code Ann. §77-2-1.

consider whether allowing intervention would substantially change the nature of the proceeding and deny intervention in such circumstances.⁴

23. Parties like AEMA have only a generalized interest in the proceeding. Allowing these types of parties to intervene – propounding data requests, requesting and reviewing confidential information - would substantially change the nature of the proceeding because it would shift focus away from EML actually finalizing its IRP. Moreover, granting parties like AEMA intervenor status is likely to increase EML’s costs to finalize its IRP and would expose customers to increased risk that confidential information would be compromised – further exposing customers to the risk of substantially increased costs.

24. As the Commission found in its 2016 Order Denying Intervention, a proceeding will be more efficient when the intervening parties have a particular and significant interest because those types of parties will draw the Commission’s attention to particular matters that might otherwise have gone unnoticed. *See* 2016 Order Denying Intervention, p. 6. AEMA’s focus would be on generally creating and expanding demand response and distributed energy resource opportunities. *See* AEMA’s Motion to Intervene, p. 1. While that may be appropriate for a public witness (see below) it would only contribute to inefficiency were AEMA allowed to engage in discovery, request and review confidential documents, and examine EML’s witnesses.

E. Allowing AEMA to Participate Only as a Public Witness Honors the Intention of the IRP Rule while Simultaneously Honoring the Intervention Rule

⁴ *See, e.g.*, Code of Miss. Rules 60-015-001 (2014), Mississippi Fair Commission Rule 9 (“A petition to intervene in a proceeding will be denied if the inclusion of the Intervenor in the proceeding would cause unjustifiable delay or substantially change the nature of the proceeding”); Texas Administrative Code, Department of Agriculture Rule §1.10).

25. In developing the stakeholder process contained in the IRP Rule, the Commission affirmed its desire for “meaningful participation options for . . . stakeholders to provide input into the resource plan's development . . . Nevertheless, the Commission f[ound] that the ultimate responsibility for resource planning decisions must remain with the utility.” Final Order Amending Rule 29 to Establish Integrated Resource Planning and Annual Energy Delivery Reporting Requirements, p. 15, Docket 2018-AD-64. This means that access to the details of EML’s IRP, including confidential and sensitive information, should be limited to those parties who truly have a substantial interest. Allowing entities without a substantial interest to intervene in the docket and contain access to commercially sensitive information increases the risk that the confidential information could be inadvertently disclosed publicly – a harm that would be irreparable for customers. Given this risk, a weighing of interests balances in favor of limiting participation to public interest status.

26. As a public witness, AEMA will have access to all public filings that EML and other parties in the IRP docket submit, including comments and EML’s IRP. EML’s most recent voluntary IRP filing in 2018 (*see* Exhibit A to the Comments of Entergy Mississippi, Inc. in Docket 2018-AD-64, filed Aug. 1, 2018) included background, key considerations, primary planning objectives, resource adequacy and planning reserve requirements, current fleet and projected needs, assumptions and assessments, portfolio design and analytics, and the path forward. Providing a detailed public IRP honors the IRP Rule’s goal of transparency, while protecting confidential information that should not be disclosed to parties without a substantial interest in EML’s IRP. If the Commission determines that as a public witness AEMA should have additional opportunity to participate,

EML is willing to conduct a bifurcated technical conference under Rule 29.105.3, allowing public witnesses to participate in all portions that do not discuss confidential and sensitive information.

27. EML believes that the appropriate status of AEMA, and other parties who do not have a substantial interest in this docket, should be limited to a public witness, not an intervenor.

PRAYER FOR RELIEF

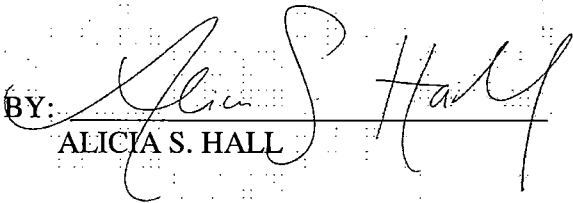
WHEREFORE, PREMISES CONSIDERED, Entergy Mississippi requests that the Commission:

- (a) deny AEMA's Request for Intervenor Status; and
- (b) if the Commission agrees and if AEMA desire to participate in this capacity, order that AEMA be granted public witness status pursuant to R.P. 121.7, with rights to file comments in this proceeding but without rights to issue written discovery in this proceeding, that EML shall be under no obligation to respond to written discovery from AEMA, that AEMA shall have no rights to access confidential information, and AEMA shall have no rights to examine witnesses.

Entergy Mississippi further prays for such other, further, and general relief as the Commission deems necessary, useful, or appropriate.

This the 28th of January 2020.

ENTERGY MISSISSIPPI, LLC

BY: 
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RP 6.111 CERTIFICATE OF SERVICE

I, ALICIA S. HALL, Attorney for Entergy Mississippi, LLC, hereby certify that on this day I have caused to be filed the original and twelve (12) copies of the foregoing with:

Katherine Collier
Executive Secretary
Mississippi Public Service Commission
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and that on this day I have caused to be provided one copy of the foregoing to:

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and that, in the filing of the same, I have complied with Rule 6 of the Commission's Public Utilities Rules of Practice and Procedure.

This, the 28th day of January, 2020.


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