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November 2, 2011



By Electronic Filing

Walter L. Thomas, Jr., Secretary
Alabama Public Service Commission
RSA Union Building
100 North Union Street, Suite 850
Montgomery, Alabama 36130

Re: W. Lee McVey, P.E. v. Alabama Power Company
Docket No. 31726

Dear Mr. Thomas:

Enclosed for filing in the above-styled proceeding is Alabama Power Company's Motion to Dismiss the Complaint filed by W. Lee McVey, P.E. Consistent with the Commission's rules on e-filing, the original and one copy of this submission are being sent to your attention by overnight mail. Additionally, we have enclosed a confirmation copy, along with a self-addressed and stamped envelope for return to us.

Should you have any questions or if there is anything further we can do to assist, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in blue ink, appearing to be "SG", with a long horizontal flourish extending to the right.

Scott B. Grover
Attorney for Alabama Power Company

Enclosure

cc: Mr. W. Lee McVey, P.E.

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

W. LEE MCVEY, P.E.	)	
	)	
Complainant,	)	
	)	Docket Number: 31726
ALABAMA POWER COMPANY,	)	
	)	
Respondent.	)	

ALABAMA POWER COMPANY’S MOTION TO DISMISS COMPLAINT

Alabama Power Company (“Alabama Power”) submits this Motion to Dismiss the Complaint filed by W. Lee McVey, P.E. (“Mr. McVey”) in the above-referenced docket. Alabama Power submits this Motion pursuant to Rule 11 of the Commission’s Rules of Practice.¹ The Complaint fails to allege any action that violates a law, rule or regulation, upon which the requested relief can be granted, and is thus due to be dismissed. The events described in the Complaint, and the actions taken by the Company in response thereto, are governed by Rule 3(B) of the General Rules of this Commission, which provides that the “good faith judgment of the Utility shall be deemed conclusive on all parties”, when the utility takes action “in the event of an emergency threatening the integrity of its system.”² In further support of this Motion, Alabama Power submits the Affidavit of Gary Hearn, attached hereto as Exhibit 1, and states the following:

Background of Events Described in Complaint

1. As the Commission is aware, the State of Alabama has experienced two extreme weather events in 2011. The first was the virtually unprecedented and deadly wave of tornadoes and severe weather that struck on the morning and afternoon of April 27. These storms caused

¹ By letter dated October 6, 2011, the Company was directed to respond to the Complaint no later than November 7, 2011.

² General Rules of the Alabama Public Service Commission, Rule 3(B)(1) & (2) (emphasis added).

extensive damage to Alabama Power's transmission and distribution facilities, resulting in significant service outages. In Alabama Power's Birmingham Division (which includes Mr. McVey's residence), approximately 161,000 customers lost service due to the morning wave and approximately 182,000 lost service due to the afternoon wave. Over the course of the day, Alabama Power received more than 2,300 reports of wire down in the Birmingham division. System wide, the number of outages at any one time on April 27 peaked at 412,229 customers.

2. Although the April 27 storms produced fewer outages as compared to Hurricane Ivan or Hurricane Katrina, the damage to infrastructure was greater. The combined effects of the tornadoes, straight line winds and severe weather brought down nearly seven times as many transmission structures and broke almost twice as many distribution poles as Hurricane Ivan. Nevertheless, with the assistance of more than 10,000 personnel from 20 states, Alabama Power restored service to all customers capable of receiving service by midnight on May 4. As part of these restoration efforts, crews installed more than 5,000 distribution poles and more than 400 transmission structures, repaired or replaced eight damaged or destroyed substations, and replaced more than 4 million feet of wire.

3. The second event was the passage of Tropical Storm Lee through the state on September 5, 2011. During that day, many areas experienced periods of high winds as well as extensive rainfall and flooding. In the Birmingham Division alone, more than 169,000 customers lost service, and Alabama Power received nearly 2,400 reports of wire down. System wide, the number of outages at any one time due to Tropical Storm Lee peaked at 220,001 customers.

4. Fewer non-system personnel assisted with the restoration efforts in Alabama from Tropical Storm Lee, as compared to support received following the April 27 storms. Nevertheless, service was restored to all customers by September 9.

5. Approximately 1,000 customers, including Mr. McVey, are served off the Leeds feeder line, which is a primary distribution line in the Birmingham Division that runs from the Leeds substation in a southwesterly direction for a distance of approximately 10 miles. The Leeds feeder line ends in relative proximity to the Jefferson County and Shelby County line, where it meets the Double Oak Mountain feeder line.³ The Double Oak Mountain feeder line serves approximately 2,500 customers in northern Shelby County.

6. At the junction of the two feeder lines is certain supervisory control and data acquisition (*i.e.*, “SCADA”) equipment, specifically an automatic SCADA switch.⁴ Typically, the SCADA switch at the Leeds/Double Oak Mountain junction is “open”, meaning that electricity does not flow between the two feeder lines. The Leeds feeder line (and the branch lines off of it that serve subdivisions like Mr. McVey’s) is energized from the direction of the Leeds substation, while the Double Oak Mountain feeder line (and the branch lines off of it) is energized from the direction of the Double Oak Mountain substation. The switch can be “closed”, however, through either a remotely triggered automated operation or an on-site manual operation. Closing the switch allows electricity to flow between the two lines. This enables the Leeds feeder line to be energized from the direction of the Double Oak Mountain feeder line and vice versa. Thus, in the event a fault occurs on one of the lines, SCADA equipment can isolate the fault and redirect power flows, allowing for the restoration of power to customers outside of the area directly affected by the fault. To be sure, however, the Company will employ the SCADA equipment in this manner only when it is confident that doing so will not put individuals or property at risk or cause additional outages.

³ The Complaint refers to the Double Oak Mountain feeder line as the “Chelsea” line.

⁴ The Leeds feeder line also has a SCADA recloser situated near Highway 25 and approximately 2 miles from the Leeds substation.

Key Allegations in the Complaint

7. As the Complaint states, Mr. McVey lost power as a result of the April 27 storms (the morning wave) and Tropical Storm Lee. In both instances, his power was restored in a little over one day's time; *i.e.*, on April 28 and September 6. The thrust of Mr. McVey's claims is that Alabama Power did not use the SCADA equipment on the Leeds feeder line quickly enough to restore service in response to the outages caused by the April 27 storms and Tropical Storm Lee. He claims the Company should have restored his service within minutes using the equipment; or at most within a few hours if the Company had been unable to activate the equipment remotely and needed to send personnel out into the field to operate the equipment manually.

8. Based on these claims, Mr. McVey contends that the Company is not using its SCADA equipment properly, and should be penalized as a result. He also asks the Commission to fine the Company for every instance in which there is an outage on any distribution line equipped with SCADA devices and "on which no SCADA device is opened or closed to restore service within fifteen minutes of the initial outage time."⁵

Additional Facts Relating to the Allegations in the Complaint

9. The Complaint contains some discussion about the nature of SCADA equipment and systems, which the Company utilizes as part of its operation of the transmission and distribution system. Generally speaking, the equipment and systems do provide for the capabilities described (and others). With regard to the Alabama Power system, a limited number of SCADA devices possess the ability to communicate with each other and self diagnose. This

⁵ Compl. ¶ 31. Mr. McVey also complains about the presence of Company personnel at SCADA equipment near the 2011 Regions Tradition Senior PGA Tour golf tournament (formerly known as the Regions Charity Classic, when it was played at the Robert Trent Jones Trail at Ross Bridge). As the Complaint recites, the presence of such individuals at nationally televised events is standard practice. In this way, the Company has someone present at the event should something occur that could be quickly remedied through on-site personnel. Events that are staffed in this fashion include the Regions Tradition (and its predecessor the Regions Charity Classic), as well as Alabama or Auburn home football games. Also, the Regions Tradition took place the weekend of May 7, which was after the Company had restored service in the wake of the April 27 storms to all customers capable of receiving it.

functionality permits the remote identification and isolation of faults on individual line segments between communicating SCADA devices. Not all SCADA equipment, however, possesses the ability to communicate with each other. As relevant to the Complaint, the recloser device on the Leeds feeder at Highway 25 does not possess this functionality. Thus, the occurrence of a fault on the Leeds feeder line does not result in the Highway 25 recloser and the Leeds/Double Oak Mountain junction switch communicating with each other.

10. Where there is uncertainty as to the conditions on a line, the Company does not initiate remote operation of SCADA devices. Instead, the Company undertakes reasonable efforts to confirm the precise nature and location of the fault, to the extent such has not been revealed through data received from the SCADA devices. Such efforts include the use of personnel in the field to physically observe the status of a line and associated distribution facilities. The utilization of such techniques is particularly important when the fault is the result of severe weather events like the April 27 storms or Tropical Storm Lee where there is a greater possibility of multiple issues on the line.

11. For example, if in response to an outage of the Leeds feeder line the Company simply closed the SCADA switch at the Leeds/Double Oak Mountain junction, without first confirming the cause of the outage, whether it was capable of being (and had been) isolated, and whether it was, in fact, the only problem on the line, the Company not only would be putting the customers served off of the Double Oak Mountain feeder line at risk of losing service, it also would be putting people (and property) along the Leeds feeder line at risk of harm.

12. During the April 27 storms and Tropical Storm Lee, the Leeds feeder line was not the only location impacted. The April 27 storms knocked out 150 feeder lines in the Birmingham Division; Tropical Storm Lee knocked out 105 feeder lines in the Birmingham

Division. For each of these events, the Birmingham Division received in excess of 2,300 accounts of down or damaged wire. In all, the Company methodically analyzed the reports it received of system disturbances (reported through both traditional and electronic sources), and then implemented service restoration efforts in the safest, most reliable manner that it could, considering the circumstances. In this regard, the Company utilized its SCADA system as it was able and when it was safe to do so. For thousands of customers, the utilization of SCADA devices resulted in service being restored more quickly than in the absence of such devices.⁶

Legal Deficiency of the Complaint

13. Separate and apart from the foregoing discussion, the Complaint fails to allege any action that violates a law, rule or regulation, upon which the requested relief can be granted.

14. Rule 3 of the Commission's General Rules provides as follows:

(B) Each utility shall, so far as practicable, operate and maintain its entire plant and system in such condition as will enable it to furnish safe, adequate, and continuous service at all times.

(1) Each utility shall, in the event of an emergency threatening the integrity of its system, take such action, including interruption of service to a customer or customers, as shall in the judgment of such utility be appropriate to prevent or alleviate such emergency and enable such utility to continue or restore its service consistent with the public welfare.

(2) In such instances, the good faith judgment of the Utility shall be deemed conclusive on all parties involved and the Utility shall be under no liability with respect to any such curtailment or interruption.

15. General Rule 3(B) appropriately balances the responsibilities of Alabama utilities to the public⁷ they serve in normal times, and the responsibilities of Alabama utilities to the public they serve in times of emergency. In those latter instances, utilities must be able to act

⁶ See Compl., Ex. A.

⁷ See Ala. Code 37-1-49 ("Every utility shall maintain its plant, facilities and equipment in good operating condition and shall set up and maintain proper reserves for renewals, replacements and reasonable contingencies. Every utility shall render adequate service to the public and shall make such reasonable improvements, extensions and enlargements of its plants, facilities and equipment as may be necessary to meet the growth and demand of the territory which it is under the duty to serve.").

quickly, decisively, and with the goal of safely and reliably addressing the emergency at hand,⁸ so that the Company's electrical system can be returned to normal operating conditions as soon as is reasonably feasible, considering the aftermath of the emergency.

16. This is not to say that the Commission through its Staff does not monitor the Company's performance in response to severe weather events and the extent to which it is able to restore the system following a severe weather event. It most certainly does. And with regard to Alabama Power specifically, the Commission knows through its monitoring and oversight that the Company's efforts to restore the system following the April 27 and Tropical Storm Lee events were commendable and a testament both to the quality of personnel at Alabama Power and the commitment of those persons, and the Company as whole, to the customers they serve.

WHEREFORE, for the foregoing reasons, the Complaint is due to be dismissed.

Respectfully submitted,



Scott B. Grover
Attorney for Alabama Power Company

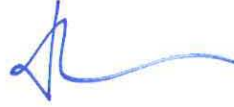
OF COUNSEL:
BALCH & BINGHAM LLP
Scott B. Grover
Post Office Box 306
Birmingham, Alabama 35201
(205) 251-8100

⁸ See General Rules of the Alabama Public Service Commission, Rule 16 ("Each utility shall make reasonable efforts to avoid interruption of firm service, but when interruptions occur service shall be re-established within the shortest time practicable, consistent with safety."); Special Electric Rules of the Alabama Public Service Commission, Rule E-1(A) ("The electric plant of the utility shall be constructed, installed, maintained, and operated in accordance with accepted good engineering practice in the electric industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.").

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following by U.S. Mail, properly addressed and postage prepaid, on this the 7th day of November, 2011:

W. Lee McVey, P.E.
3 Squires Glenn Lane
Leeds, Alabama 35094-4564



Of Counsel

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

W. LEE MCVEY, P.E.

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Complainant,

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ALABAMA POWER COMPANY,

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Respondent.

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Docket Number: 31726

**Exhibit 1
Affidavit of Gary Hearn**

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

W. LEE MCVEY, P.E.	)	
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Complainant,	)	
	)	Docket Number: 31726
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Respondent.	)	

AFFIDAVIT OF GARY HEARN

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

1. My name is Gary Hearn. I am employed by Alabama Power Company, and my business address is 6641 Green Drive, Trussville, Alabama 35173. I hold a bachelor's degree in electrical engineering from Auburn University and I have been employed by Alabama Power Company for more than 32 years. During that time, I have exclusively worked in the area of power distribution within the Birmingham Division. I have served a number of different functions during my time with Alabama Power and have worked in different district offices within the Birmingham Division. Typically, however, my work has focused on engineering and maintenance of the distribution system related to service for new and existing customers. I have held the position of Supervisor since 2001. From 2001 to 2003, I worked in Distribution Operations Support, during which time I provided support for operational and reliability issues. Currently, I am employed as the Engineering Supervisor for the Trussville District Office.

2. My duties as Engineering Supervisor include oversight for the maintenance and distribution of power within the Birmingham Division for the East Jefferson and Leeds Operating areas. In this regard, I am responsible for engineering of new service installations as well as the maintenance and reliability of service to existing commercial, industrial, and residential customers. My responsibilities for system maintenance include daily monitoring of reliability and operating issues that impact the operation of the system and interaction with our Operations Center regarding these issues, including the supervision and coordination of power restoration during and following storm events in the area.

3. The Birmingham Division of Alabama Power's service territory includes all of Jefferson County, portions of Northern Shelby County (including the City of Columbiana), Western St. Clair County (including the Town of Margaret), and portions of Southern Blount County (including the City of Warrior). The address provided by Mr. W. Lee McVey, P.E., indicates a residence in the Birmingham Division.

4. On the morning and afternoon of April 27, 2011, a volatile weather system moved through central and northern Alabama, producing a number of tornados, thunderstorms and periods of straight line winds. Public reports indicate that more than 240 people were killed in the State as a result of these storms. Across the Alabama Power system, the storms resulted in 5,260 broken power poles, nearly twice the damage caused by Hurricane Ivan. More than 400 transmission structures were damaged or downed during the storms (seven times the number seen with Hurricane Ivan). In addition, two substations were destroyed entirely, six were damaged significantly, and 150 feeder lines were knocked out. In the Birmingham Division, approximately 161,000 customers lost service during the morning storms and approximately 182,000 lost service during the afternoon storms. Across the entire Alabama Power system, a peak of 412,229 customers lost power on April 27, and the Company received 2,324 reports of wire down.

5. Given the magnitude of this event, the Company relied on extensive assistance from neighboring states. By the time service had been restored to all customers who were capable of receiving service on May 4, 2011, more than 10,000 workers from 20 states had come to Alabama to assist with Alabama Power's restoration efforts.

6. On September 5, 2011, Tropical Storm Lee made landfall along the Gulf Coast, and over the course of the day, passed through the Alabama Power system. During that time, areas experienced extended periods of high winds as well as extensive rainfall and flooding. As a result of this severe weather, more than 169,000 customers in the Birmingham Division lost service. Across the entire Alabama Power system, a peak of 220,001 customers lost power on April 27, and the Company received nearly 2,400 reports of wire down. More than 100 feeder lines were knocked out as a result of Tropical Storm Lee. As compared to the recovery efforts for the April 27 storms, less than half the number of non-state workers was relied upon as part of the restoration efforts for Tropical Storm Lee. Nevertheless, service was restored to all customers by September 9.

7. The residence at 3 Squires Glenn Lane, Leeds, Alabama, 35094-4564, is served from a primary distribution line originating from Leeds DS, a substation located in the Birmingham Division. It runs from the Leeds substation location on Highway 119 in Leeds for a distance of approximately 10 miles, where it connects with a feeder originating out of Double Oak Mountain substation, near the Jefferson County/Shelby County line. The Leeds feeder line serves 1,033 customers. The Double Oak Mountain feeder line serves 2,482 customers.

8. A number of Alabama Power's distribution lines are equipped with supervisory control and data acquisition ("SCADA") equipment. Generally speaking, SCADA equipment includes different types of mechanical and electronic devices installed on the Company's transmission and distribution facilities that provide the Company with the ability to remotely monitor the operational status of those devices and manage the electricity flow through those devices by means of redirection or alternative sourcing. A limited number of SCADA devices possess the ability to communicate with each other and self diagnose. This functionality, when available, has the ability to remotely identify and isolate faults on individual line segments between communicating SCADA devices. Through the utilization of SCADA devices, the Company has the ability to more efficiently restore service to a given outage area by remotely isolating a faulted segment of line.

9. The Leeds DS feeder line serving Squires Glenn Lane includes SCADA equipment at the Leeds/Double Oak Mountain junction and also at a site approximately 2 miles from the Leeds substation, near the intersection of Highway 25 and Elliot Lane. These two devices are located approximately 8 miles apart. The SCADA device located at the junction of the Leeds/Double Oak Mountain feeders typically stands in a normal state of open, preventing electricity from flowing between the Leeds and Double Oak Mountain feeder lines. As a result, the Leeds feeder line and associated branch lines are energized from the direction of the Leeds substation, and the Double Oak Mountain feeder line and associated branch lines are energized from the direction of the Double Oak Mountain substation. The switch at the junction of the two lines can be closed remotely or manually. Doing so allows the Leeds feeder line to be energized from the direction of the Double Oak Mountain substation, and the Double Oak Mountain feeder line to be energized from the direction of the Leeds feeder line. The SCADA equipment near the intersection of Highway 25 and Elliot Lane is a recloser. The purpose of a recloser is to provide automatic reclosing capabilities in the event of a temporary fault (such as a tree brushing the line or squirrel on the line). Thus, in the event a fault passes through this device, it will automatically reclose itself after a set period of time in order to provide an opportunity for a temporary fault to resolve itself. If the fault does not resolve, the automatic recloser locks out after a programmed period and will not attempt to reclose. The recloser does not, however, possess the ability to communicate with other SCADA equipment (such as the switch at the Leeds/Double Oak Mountain junction) and self diagnose.

10. In circumstances of severe weather, such as the April 27 storms and Tropical Storm Lee, when SCADA equipment detects a fault on a line and that information is transmitted to the Company, the Company does not immediately begin trying to restore power to the area affected by the fault. Rather, the Company seeks to verify through the use of in-the-field personnel the nature of the fault and, more importantly, whether the fault is limited to a single problem on the line segment. As was the case with the April 27 storms and Tropical Storm Lee, lines often experience damage in multiple places. If a fault occurs and the line is outaged, the SCADA equipment will not necessarily communicate the existence of multiple problems. If the Company were to try and isolate a single faulted segment and restore power to the affected area when there are, in fact, other problems on the line, the Company not only would be putting additional areas at risk of outage, it also would be putting property and people at risk.

11. When Alabama Power experiences weather-related outages on the order of what occurred as a result of the April 27 storms and Tropical Storm Lee, Company personnel seek to restore service to the maximum number of customers as quickly, and as safely, as possible. In this regard, the Company will implement efforts to isolate faults and redirect power flows, thereby restoring power to affected areas more quickly than if the Company focused on simply addressing the issue that caused the fault before attempting to re-energize the line. However, the Company will take these steps only when it is confident that doing so will not create further risk of outage, property damage, or injury to people or the Company's employees.

12. On the weekend of May 6, 2011, the 2011 Regions Tradition Senior PGA Tour golf tournament was held at the Shoal Creek Country Club. For events like the Regions Tradition that are nationally televised, the Company customarily assigns personnel to monitor the event on-site. In so doing, the Company has the ability to assist more quickly in the event an issue arises regarding the electrical supply serving the event. The type of events to which

personnel are assigned include the Regions Tradition and its predecessor the Regions Charity Classic, when it was played at the Robert Trent Jones Trail at Ross Bridge, as well as nationally televised Alabama or Auburn home football games.

Further Affiant sayeth not.

This 27th day of October, 2011.



Gary Hearn

Sworn to and subscribed before me this 27th day of October, 2011, by Gary Hearn, who is personally known to me.



Notary Public
My Commission Expires On

