

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

ALABAMA POWER COMPANY

Docket No. 32953

In re: Petition for Certificate of Convenience
and Necessity

**OBJECTION OF ALABAMA POWER COMPANY TO APPLICATION FOR LEAVE
TO INTERVENE OF SOUTHERN RENEWABLE ENERGY ASSOCIATION**

Alabama Power Company (“Alabama Power” or “Company”), petitioner in the above-captioned proceeding, hereby objects to the petition to intervene filed in this proceeding by Southern Renewable Energy Association (“SREA”). As explained below, SREA has failed to demonstrate legal standing to intervene and participate as a party to this proceeding. Accordingly, its petition to intervene should be denied.

1. On September 6, 2019, Alabama Power filed a petition for a certificate of convenience and necessity in the above-captioned docket. In connection with that petition, the Commission prescribed a deadline of September 27, 2019 by which interested parties could petition to intervene in the proceeding. The Commission's notice expressly required petitions to intervene to “set forth the basis for the proposed intervention, including the position and interest of the petitioner in the proceeding.”

2. The showing required for an interested party to establish standing to intervene in a matter before the Commission is well-settled. Specifically, an interested party may intervene in a proceeding before the Commission only if that party has a direct, personal interest in the subject matter of the proceeding that will be affected by the outcome of the proceeding. *See* Ala. Code § 37-1-87; *see also Declaratory Proceeding*, APSC Docket No. 28941 (January 9, 2004) (“[W]e reaffirm our longstanding policy of requiring individuals or entities who seek to intervene in

proceedings before the Commission to affirmatively demonstrate that they are affected by those proceedings.”); *Alabama Power Co.*, APSC Docket No. U-4485 (May 12, 2003), *appeal dismissed sub nom. Alabama Env’t Council v. APSC*, 893 So. 2d 287 (Ala. 2004); *M.W. Smith Lumber Co. v. APSC*, 24 So. 2d 409, 411 (Ala. 1946). A “public interest” shared “in common with the general public” does not confer standing. *See M.W. Smith, supra*.

3. The petition of SREA patently fails to satisfy the applicable requirements for standing. Any interest of its unidentified members in this proceeding is only a general one, shared by countless other energy resource developers. *See* Petition, p. 2 (“SREA members have a vital interest in the pending dockets inasmuch as its members develop and deploy facilities to generate and produce energy.”). Likewise, any effects on SREA members will be only general, and could be similarly claimed by any outside developer or industry—really anyone—that might be interested in building, operating or living Alabama Power’s service territory. *See id.* (“The Commission’s actions in this docket will affect development, deployment, or use of the various energy resources in the region and thus will affect the investment decisions made by members of SREA.”).¹

4. Unlike other associations that have sought to intervene in this proceeding, SREA identifies no member that is a current customer of Alabama Power. While the Commission has recognized that reliance on customer status is not the only way to demonstrate standing, the other associations have availed themselves of this approach, which for this proceeding does satisfy the

¹ In a 2015 certificate proceeding, Alabama Power raised a similar deficiency in the petitions to intervene of three organizations alleging a general interest in that proceeding. *Objection of Alabama Power Company*, APSC Docket No 32382 (Aug. 3, 2015). Ultimately, the Commission granted the intervention of two of the three organizations after they clarified their interests by providing the names of affected members and Alabama Power withdrew its objection. The Commission denied the petition of the third organization, which provided no additional information to establish a direct, personal interest in the proceeding that would be affected by the outcome. *See Procedural Ruling for Alabama Power Company*, APSC Docket No. 32382 (Aug. 7, 2015).

threshold requirements for standing.² Consistent with Commission precedent and that of the Alabama Supreme Court, these associations can represent their members' interests in manner consistent with the nature of such interests.

WHEREFORE, for the foregoing reasons, the Company submits that the application for leave to intervene of SREA fails to establish sufficient basis, as a matter of Alabama law, to afford it standing in this proceeding. Accordingly, its application is due to be denied.



Attorney for Alabama Power Company

OF COUNSEL:

Dan H. McCrary
Scott B. Grover
Balch & Bingham LLP
1710 6th Avenue North
Birmingham, Alabama 35203
Tel. 205.251.8100
Email — dmccrary@balch.com
sgrover@balch.com

Robin G. Laurie
Riley W. Roby
Balch and Bingham LLP
105 Tallapoosa Street, Ste. 200
Montgomery, AL 36104
Tel. 334.834.6500
Email — rlaurie@balch.com
rroby@balch.com

² Several associations did not list individual customer members, but rather appear to Alabama Power to be proceeding on the basis of their having been recognized in prior proceedings as possessing the requisite standing by virtue of their having individual members who are customers of Alabama Power. If this understanding is not correct, or should any of these associations seek to participate in a manner contrary to the interest of customers, Alabama Power reserves the right to challenge their continued participation in this proceeding.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2019, I have served a copy of the foregoing via electronic mail on Southern Renewable Energy Association, in care of its Executive Director as signatory to its application for leave to intervene.

A handwritten signature in blue ink, appearing to be "S. J. Smith", is written above a horizontal line.

Attorney for Alabama Power Company