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March 4, 2020

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VIA HAND DELIVERY

CORRECTED PUBLIC VERSION FILED ELECTRONICALLY TODAY

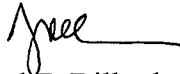
Walter L. Thomas, Jr., Secretary  
Alabama Public Service Commission  
RSA Building  
100 North Union Street - Suite 850  
Montgomery, AL 36140

RE: Docket 32953 Sierra Club Corrected Redacted Public Motion to Deny Petition  
Version Filed Electronically Today.

Dear Secretary Thomas:

Please accept this "hard copy" filing of the above described corrected motion electronically filed today which should be substituted for the Redacted Public Motion to Deny Petition filed on March 2, 2010.

Respectfully yours,



Joel E. Dillard  
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BEFORE THE ALABAMA PUBLIC SERVICE COMMISSION

IN RE: Petition for a Certificate of Convenience and Necessity by Alabama Power Company ) ) Docket 32953

SIERRA CLUB’S MOTION TO DENY PETITION

Sierra Club hereby moves to deny the petition under review because Alabama Power Company fails to carry its burden of proof.<sup>1</sup> In its petition, the company seeks to expand its system and extend its reliance on fracked gas for 40 years—at its customers’ expense. Sierra Club intervened to protect the interests of Sierra Club members who are the company’s customers, and who live, work, and recreate near the gas-burning power plants under review: the aging plant “Hog Bayou” by Africatown, another aging plant “Central Alabama” in Autauga County, and a new plant “Barry 8” near Mobile.<sup>2</sup> Sierra Club also intervened to investigate the smaller solar-storage, demand-side, and distributed-energy investments in the company’s proposed expansion. Now that discovery has concluded, it is clear that that expansion is not supported by the facts. Sierra Club therefore moves to deny the petition and in support states:

1. Section 37-4-28, Alabama Code, governs this case. Upon the filing of a written application for a certificate of convenience and necessity under section 37-4-28, like the petition under review,<sup>3</sup> and “after a public hearing of all parties interested,” the Alabama Public Service

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<sup>1</sup> This motion is timely under the deadline for pre-hearing motions in the Chief Administrative Law Judge’s ruling of February 12, 2020. Ruling Rescheduling Hearing and Establishing Hearing Procedures, Docket 32953 at ¶ 3 (Ala. Pub. Serv. Comm’n Feb. 12, 2020).

<sup>2</sup> Sierra Club’s Petition to Intervene, Docket 32953 (Ala. Pub. Serv. Comm’n Sept. 27, 2019).

<sup>3</sup> Petition for a Certificate of Convenience and Necessity, Ala. Power Co., Docket 32953 at 1 (Ala. Pub. Serv. Comm’n Sept. 6, 2019) [hereinafter “Certification Petition”].

Commission “may, or may not, in its discretion, issue such a certificate of convenience and necessity, and if issued, may prescribe such conditions upon the issuance as it may deem advisable.”<sup>4</sup>

2. Alabama Power has the burden of proof.<sup>5</sup> Specifically, its burden is to prove that customers need its proposed expansion,<sup>6</sup> and that the expansion is the least-cost means of meeting this customer need.<sup>7</sup>

3. The standard of proof is substantial evidence. The Alabama Supreme Court has held that Commission orders must be supported by such evidence,<sup>8</sup> that is, evidence “of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.”<sup>9</sup> As applied here, a certificate of convenience

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<sup>4</sup> Ala. Code § 37-4-28. See also In re Ala. Power Co., 2000 WL 562303 (Ala. P.S.C. Apr. 10, 2000) (extending section 37-4-28 certification to purchase power agreements); Ala. Power Co., 2017 WL 977522 (Ala. P.S.C. Mar. 9, 2017) (extending section 37-4-28 certification to power plant acquisitions).

<sup>5</sup> Ala. Admin. Code r. § 770-X-4-.15(5) (“Applicant, complainant or petitioner must, except as otherwise provided by law, establish the facts alleged by him as the basis for the relief sought, unless the party against which the complaint or petition is directed admits the same.”).

<sup>6</sup> The company’s proposed expansion is also referred to as the “proposed resource additions” and “portfolio of resources.”

<sup>7</sup> Sierra Club maintains that it was an error to grant Alabama Power’s request for a guarantee of payment for Barry 8. See Sierra Club’s Petition for Reconsideration, Docket U-5316 (Ala. Pub. Serv. Comm’n Oct. 31, 2019). Nevertheless, the Commission should hold Alabama Power accountable to its burden of proof in this case.

<sup>8</sup> Ala. Gas Corp. v. Wallace, 308 So. 2d 674, 678 (Ala. 1975) (holding there “[was] substantial evidence in the certified record to affirm the order of the Commission.”). See Purolator Courier Corp. v. Ala. Pub. Serv. Comm’n, 514 So. 2d 832, 836 (Ala. 1987) (holding the Commission’s order was “not supported by the substantial weight of the evidence.”).

<sup>9</sup> Von Sury v. Kuehn, 51 So. 3d 311, 315 (Ala. 2010). See also Ala. Code § 12-21-12(d).

and necessity may be issued only if the company carries its burden and supports the issuance with substantial evidence.

4. But Alabama Power fails to carry its burden. Its pre-filed testimony and exhibits do not show that customers need its proposed expansion, much less that it would serve them at the least possible cost. The company's claimed "needs" start [REDACTED], and grow until the [REDACTED]<sup>10</sup> But the company admits that it is currently meeting its "needs" using existing resources, including surpluses from its sister companies.<sup>11</sup> [REDACTED]  
[REDACTED],<sup>12</sup> and can do so

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<sup>10</sup> Direct Testimony of John B. Kelley on Behalf of Alabama Power Company, Confidential Version, Docket 32953 at 11, Winter Capacity Need Table (Sept. 4, 2019) [hereinafter "Kelley Direct"]. See also *id.* at 14 ("The IRP results shown for Alabama Power and for the system, coupled with other factors impacting reliable long-term supply, demonstrate a need for the Company to add approximately 2400 MW of additional resources by the 2023–2024 timeframe.") Accord Direct Testimony of Rachel S. Wilson on Behalf of Sierra Club, Confidential Version, Docket 32953 at 7–8 (Dec. 4, 2019) [hereinafter "R. Wilson Direct"] ("the projected capacity deficit in 2023–2024 [REDACTED]").

<sup>11</sup> See Kelley Direct at 12, lines 5–14 (original capitalization removed):

Q. Why does Alabama Power have large winter capacity needs over the timeframe, whereas the collective Southern system does not?

A. These capacity needs arise for Alabama Power because its load peaks in the winter season. In contrast, the largest of the retail operating companies, Georgia Power, continues to experience its peak load in the summer. The fact that Georgia Power does so, coupled with its size relative to the other companies, is the reason the winter need shown for the collective system is considerably less, as Georgia Power currently has capacity on its system that can be used to help support the winter requirements of Alabama Power's customers.

<sup>12</sup> Alabama Power's benchmark plan indicates the types and timing of resources that "may be required to meet an identified capacity need." Certification Petition, Exhibit JBK-1, at 31. [REDACTED]

cost-effectively.<sup>13</sup> In fact, the company advances no technical reason why existing resources cannot continue to meet its “needs.”<sup>14</sup>

5. Alabama Power relies on the Intercompany Interchange Contract (IIC)—a contract that, for some reason, it has not put before the Commission—to argue that it is legally prohibited from using surplus resources from its sister companies in the 2023–2024 winter and beyond.<sup>15</sup>

6. However, Alabama Power proffers only selected quotes of contractual language and interpretations of the same by company witness John B. Kelley, who is not a lawyer, and who only purports to quote the true language of the missing contract.<sup>16</sup> Assuming for argument’s sake that he quotes the true language, that language does *not* prohibit the company from buying

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See also Direct Testimony of Jeffry Pollock on Behalf of Alabama Industrial Energy Consumers, Public Version, Docket 32953 at 13 (Dec. 4, 2019) [hereinafter “Pollock Direct”] (“The Southern Company (Southern) does not need additional capacity until [REDACTED] Until then, APC can meet its capacity obligations by continuing to make Reserve Equalization purchases under the Southern Intercompany Interchange Contract (IIC).”).

<sup>13</sup> None of the parties contests the cost-efficacy of relying on existing resources. On the contrary, intervenors such as the Alabama Industrial Energy Consumers present evidence of the cost-efficacy of the status quo. See Pollock Direct at 13 (“APC can meet its capacity needs by continuing to make Reserve Equalization purchases under the IIC...[The] IIC Reserve Equalization charge is \$11 per kW-Yr. This rate is but a fraction of the cost of the Hog Bayou Energy Center (Hog Bayou) PPA.”).

<sup>14</sup> When Commission staff asked [REDACTED] the company did not identify any technical issue, such as a transmission constraint, much less provide documentation of such an issue. CONFIDENTIAL Sierra DR-1 I-01, Attachment O (Staff Q & A).

<sup>15</sup> See Kelley Direct at 4–5; Rebuttal Testimony of John B. Kelley on Behalf of Alabama Power Company, Confidential Version, Docket 32953 at 8–10 (Jan. 27, 2020) [hereinafter “Kelley Rebuttal”].

<sup>16</sup> *Id.*

surpluses from its sister companies; on the contrary, it expressly states that such surpluses may be available “in *any* given year.”<sup>17</sup> Indeed, the company has sold surpluses to sister companies over consecutive years,<sup>18</sup> belying its claim that there is a prohibition against such sales.

7. Moreover, Alabama Power’s “needs” are projected to [REDACTED] [REDACTED]<sup>19</sup> and Mr. Kelley admits that [REDACTED] in the analysis underlying the company’s petition.<sup>20</sup>

8. Clearly, the facts do not support a need to add more than 2,400 MW, all at once, by the 2023–2024 winter.

9. Nor do the facts support the cost-effectiveness of Alabama Power’s proposed expansion. Rather, that expansion leads to untold costs and risks,<sup>21</sup> and lower-cost, lower-risk options may very well be available; the company simply did not analyze them.

10. Indeed, there are stunning gaps in Alabama Power’s economic analysis. For some reason it does not disclose, for example, the total cost of its three proposed gas-burning power plants; it discloses only the estimated \$1.1 billion cost of building Barry 8 and buying Central

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<sup>17</sup> Kelley Rebuttal at 10, n. 11 (Jan. 27, 2020), citing Intercompany Interchange Contract, § 7.1 (emphasis added).

<sup>18</sup> Response of Alabama Power Company to the Fourth Set of Data Requests by Alabama Industrial Energy Consumers, Response to Interrogatory 56, Docket 32953 (Feb. 24, 2020) (listing Southern’s retail operating companies’ sales in the wholesale market during the period from 2000–2019).

<sup>19</sup> Kelley Direct at 11.

<sup>20</sup> Confidential Deposition of John Kelley, Docket 32953 at 132 (Feb. 13, 2020) [hereinafter “Kelley Deposition”].

<sup>21</sup> Direct Testimony of Christine M. Baker on Behalf of Alabama Power Company, Docket 32953 at 10 (Sept. 4, 2019).



12. Then again, lower-cost, lower-risk options may very well be available: Solar costs have plunged.<sup>30</sup> Storage costs have plunged.<sup>31</sup> And company witnesses admit they are aware of these decreases in costs.<sup>32</sup>

13. Alabama Power's own procurement results show that solar and storage are abundant and cost-effective in the market for resources available to the company.<sup>33</sup> In particular, the five solar-and-storage projects included in the company's petition would save customers' money<sup>34</sup> and meet the same needs (i.e., projected winter capacity deficits) as the proposed gas-burning plants.<sup>35</sup> In fact, company witness Brandon M. Looney readily admits that these solar-and-storage projects are, on average, the [REDACTED] in the company's supply-side evaluation.<sup>36</sup>

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[REDACTED]); Joseph Rago, "Tom Fanning: The Natural Gas Skeptic," *The Wall Street Journal* (June 8, 2012) (quoting Southern Company CEO Tom Fanning as saying, "nobody can sit here and tell me that [gas is] going to be safe forever, safe in terms of economics and reliability.").

<sup>30</sup> Direct Testimony of Mark D. Detsky, Public Version, Docket 32953 at 9 (Dec. 4, 2019) [hereinafter "Detsky Direct"].

<sup>31</sup> *Id.* at 11, Exhibit MDD-4 at 8 (showing an 89% drop in the prices of utility-scale solar over the past 10 years, and a 70% drop in the price of wind energy over the past 10 years).

<sup>32</sup> Bush Deposition at 89.

<sup>33</sup> Kelley Rebuttal at 18 (acknowledging that, while deciding which resource additions to propose in this petition, "[t]he Company evaluated approximately [REDACTED] of Solar BESS projects").

<sup>34</sup> Detsky Direct at 12 ("[T]he five proposed solar-and-storage projects could save customers over [REDACTED] on an NPV basis relative to the Company's benchmark.").

<sup>35</sup> *Id.* at 3 (stating that solar-and-storage projects could feasibly "be acquired to the equivalent capacity of the Central Alabama Generating Station").

<sup>36</sup> Rebuttal Testimony of M. Brandon Looney on Behalf of Alabama Power Company, Confidential Version, Docket 32953 at 4 (Jan. 27, 2020).



14. Alabama Power's claim that it has exhausted its cost-effective solar and storage options is flatly wrong. Its plan to conduct additional procurement points to precisely the opposite conclusion.<sup>37</sup>

15. Likewise, demand-side options, including energy efficiency measures such as low-income home weatherization,<sup>38</sup> are consistently low cost,<sup>39</sup> and have deferred the need for power plants as large as the three gas-burning plants under review.<sup>40</sup>

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<sup>37</sup> See Kelley Deposition at 138–39:

[REDACTED]

<sup>38</sup> U.S. Dep't of Energy, "Weatherization Works!" (Feb. 2018), [http://www.energy.gov/sites/prod/files/2018/03/f49/WAP-fact-sheet\\_final.pdf](http://www.energy.gov/sites/prod/files/2018/03/f49/WAP-fact-sheet_final.pdf).

<sup>39</sup> R. Wilson Direct at 14–15 (citing exhibits RW-3 and RW-4).

<sup>40</sup> Kelley Rebuttal at 22 ("... Alabama Power's [demand-side] programs will be eliminating the need for approximately [REDACTED] of supply-side capacity. By way of comparison, that amount is larger than the collective capacity of Barry Unit 8, the Central Alabama acquisition and the Hog Bayou PPA."). See also R. Wilson Direct at 14–15 (explaining that Alabama Power is "filling in the remaining capacity need with DSM and distributed energy resource (DER) measures only after seeking to procure 2,236 MW of supply-side resources").

16. But, disconcertingly, Alabama Power has neither calculated nor exhausted the savings available through demand-side options. Rather, it chose an arbitrary amount of incremental investment,<sup>41</sup> and inexplicably deferred further analysis of such options.<sup>42</sup>

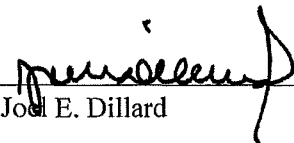
17. Clearly, Alabama Power fails to carry its burden of proof.

### CONCLUSION

The electric sector is undergoing dramatic changes. Thanks to these changes there are many low-cost, low-risk options to serve electric utility customers. But Alabama Power's petition is unmoored from this reality and the evidentiary standards governing section 37-4-28 certification cases like this one. Fortunately, the company's own evidence indicates that there is still ample time for it to investigate options and select those that are in-fact needed and the lowest possible cost for its customers.

Wherefore, Sierra Club respectfully moves for the entry of an order denying the petition at the conclusion of the evidentiary hearing scheduled to be held March 9-12, 2020, in the Main Hearing Room of the Carl L. Evans Chief Administrative Law Judge Hearing Complex, 100 North Union Street, Montgomery, Alabama. Sierra Club also urges the Commission to include in its order all other appropriate relief, consistent with the evidence taken at the hearing.

Respectfully submitted,

  
Joel E. Dillard

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<sup>41</sup> Kelley Rebuttal at 23 (“[T]he Company is requesting authorization to pursue an increase of 200 MW in demand-side management and distributed energy resource programs. [REDACTED]”).

<sup>42</sup> Kelley Direct at 24 (explaining that, in the future, “the Company would submit the demand-side management and distributed energy resource programs for Commission approval on a project-by-project basis”).

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been served on the following this 4<sup>th</sup> day of March, 2020.

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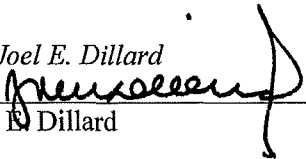
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