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October 28, 2020

VIA HAND DELIVERY

Mr. Walter Thomas
Secretary
Alabama Public Service Commission
100 N. Union Street
9th Floor
Montgomery, Alabama 36104

Re: Alabama PSC Docket No. 32953




Dear Mr. Thomas:

Please find enclosed for filing by Alabama Power Company in the above-referenced matter an original and ten (10) copies of the its Objection to Sierra Club's Motion for Leave to Make Discovery Requests to Alabama Power Company and Commission Staff.

If the Alabama Public Service Commission or you have any questions related to the enclosed filing, please let me know.

Sincerely,


Riley W. Roby

Enclosures

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

ALABAMA POWER COMPANY)
)
In re Petition for a Certificate)
of Convenience and Necessity)

Docket No. 32953

**ALABAMA POWER COMPANY’S OBJECTION TO SIERRA CLUB’S MOTION FOR
LEAVE TO MAKE DISCOVERY REQUESTS TO ALABAMA POWER COMPANY
AND COMMISSION STAFF**

Alabama Power Company (“Alabama Power” or “the Company”) respectfully submits this objection to Sierra Club’s October 23, 2020 Motion for Leave to Make Discovery Requests to Alabama Power Company and Commission Staff (the “Motion”). The latest in a seemingly never-ending barrage of post-hearing pleadings, the Motion is nothing more than a poorly concealed attempt to resuscitate claims that have long since been addressed. Having failed to make any headway thus far, Sierra Club now repackages these very same arguments as a “discovery request” that violates the most elementary of procedural standards. Sierra Club has been heard, and the record is now closed. Accordingly, the Commission should reject the Motion out of hand.

A. The discovery process has terminated.

Sierra Club manifests a profound misunderstanding—or, perhaps, an intentional disregard—of the most basic tenets of legal discovery. Discovery follows a defined timeline and is not available at the whim of the parties. Rule 16 of the Commission’s Rules of Practice requires that discovery requests be proffered “within a reasonable period of time *from the filing of testimony and a reasonable time before the hearing.*” As Sierra Club is well aware, the Commission

established February 24, 2020 as the deadline for written discovery,¹ and the hearing has long since concluded. The record is now closed and will remain so unless and until the Commission decides to grant rehearing and, only then, reinstate discovery respecting the issues to be reheard.

Still more egregious, Sierra Club misreads Ala. Code § 37-1-105 to *require* the Commission to grant its rehearing request and hold a hearing by November 13, thus, in its view, warranting discovery before that date. Apart from its inherent illogic, this position would seek to usurp the Commission's role as decision maker. Commission Rule 21 makes clear that the Commission has full authority to determine whether or not rehearing is appropriate,² and as of yet, no such determination has been made.

B. The Motion restates arguments that have already been addressed.

The Motion centers on two issues that inspire a keen sense of déjà vu. First, Sierra Club seeks discovery related to the Southeast Energy Exchange Market ("SEEM"). Sierra Club has sought (and failed) to establish SEEM's relevance to the instant proceeding on two separate occasions.³ There is simply no reason to raise the issue again. Second, Sierra Club requests discovery of "all documents reflecting communication with Staff about the coronavirus-induced recession...."⁴ This horse has endured a similar beating. Fixated on a passing statement regarding the data Staff gathers as part of routine regulation and oversight, Sierra Club offered an extensive

¹ See *Ruling Rescheduling Hearing and Establishing Hearing Procedures* (Feb. 12, 2020), at p. 1.

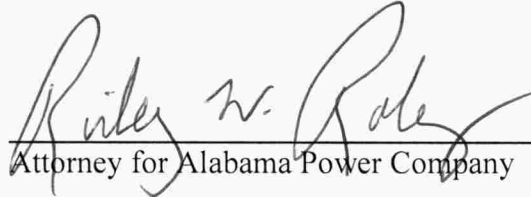
² See Commission Rule 21(B) ("[T]he Commission will give consideration to such applications [for rehearing] and any answers thereto that may be filed, and will make such order or orders as appear to be warranted....").

³ See generally *Sierra Club's Motion to Supplement the Record* (Aug. 14, 2020); see also *Sierra Club's Petition for Reconsideration and Rehearing* ("Rehearing Request"), at pp. 8-11.

⁴ *Sierra Club's Document Request to Alabama Power*, Document Production Request No. 2 (Oct. 23, 2020).

critique of the Commission's purported violation of its "basic due process rights" in its Rehearing Request.⁵ Notwithstanding the absurdity of that argument, Alabama Power has since filed a response addressing it, and the matter now sits with the Commission.

Though one month has passed since the last exchange of pleadings addressing rehearing and reconsideration, Sierra Club has yet again resurfaced to bang the same drum. At this juncture, such action borders on harassment. Sierra Club must now await the Commission's ruling on the various rehearing requests filed in this proceeding, as must all parties. In the interim, the Commission should decline to consider the Motion.



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⁵ See Rehearing Request at p. 12.

CERTIFICATE OF SERVICE

I hereby certify that on this the 28th day of October, 2020, I have served a copy of the foregoing via electronic mail on the active participants in Docket No. 32953.


OF COUNSEL