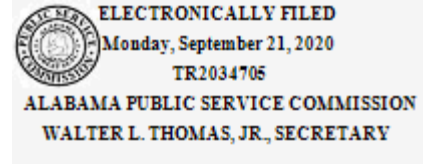


**BEFORE THE  
ALABAMA PUBLIC SERVICE COMMISSION**



**ALABAMA POWER COMPANY**                    )  
  )  
**In re Petition for a Certificate**                    )  
**of Convenience and Necessity**                    )  
**Docket No. 32953**

**ALABAMA POWER COMPANY’S ANSWER TO THE PETITIONS  
FOR RECONSIDERATION AND REHEARING  
OF SIERRA CLUB AND ENERGY ALABAMA/GASP**

Pursuant to Rule 21(b) of the Commission’s Rules of Practice, Alabama Power Company (“Alabama Power” or “the Company”) respectfully submits this answer to the September 15, 2020 Petition for Reconsideration and Rehearing of Sierra Club, and the September 11, 2020 Petition for Reconsideration and Rehearing of Energy Alabama/Gasp. Sierra Club and Energy Alabama/Gasp do not raise any argument that necessitates reconsideration or rehearing of the August 14, 2020 Order of this Commission (“the Order”).<sup>1</sup> These intervenors instead rehash prior arguments, or offer up new theories that seem to border on frivolous. In either case, and as explained in more detail below, both petitions may be summarily denied.<sup>2</sup>

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<sup>1</sup> It is well established that petitions for rehearing before the Commission are governed by the same judicial rules that apply to motions for new trials in civil courts. *See Walker v. APSC*, 297 So. 2d 370, 374 (Ala. 1974), *overruled on other grounds by Ex parte Andrews*, 520 So. 2d 507 (Ala. 1987) (“[W]e apply the same general rules to applications for rehearings on orders of the Commission as we do on motions for new trials in civil matters in circuit court.”). Alabama courts grant new trials based on newly discovered evidence only where such evidence meets several narrowly defined requirements—among them, changing the result of the trial, being material to the case and not being cumulative or impeaching. *See, e.g., Clemons v. Howard*, 124 So. 3d 738, 741-42 (2013) (discussing the standards applicable to motions for a new trial). To the extent that the arguments proffered by Sierra Club and Energy Alabama/Gasp qualify as “evidence”, such “evidence” clearly fails to meet these criteria, as discussed below.

<sup>2</sup> Based on representations from Sierra Club’s local counsel, it appears that Sierra Club electronically filed its petition after the close of business at the Commission on September 14, 2020. This conclusion is borne out by a September 14, 2020 email from Mr. Joel Dillard to the Docket No. 32953 service list, time-stamped 6:06 p.m., stating that Sierra Club’s petition “has just been electronically filed with the Alabama Public Service Commission”, coupled with the fact that the docketed copy of Sierra Club’s petition is stamped-filed September 15, 2020. Under Commission

## 1. Sierra Club's Petition

Putting aside its untimely filing, Sierra Club's petition lacks any substantive merit. There has been no violation of due process or of the First Amendment, a conclusion that jumps from the very pages of Sierra Club's own pleading. The only thing noteworthy about Sierra Club's petition is the apparent ease with which Sierra Club sees fit to disparage Alabama Power or scold the Commission. Alabama Power nonetheless provides the following answer to Sierra Club's claims.

*A. Alabama Power has not "deceived" any intervenor or this Commission regarding the Southeast Energy Exchange Market.*

The first of Sierra Club's arguments claims that Alabama Power intentionally failed to disclose the fact that a number of Southeast electricity suppliers (including Alabama Power's parent, Southern Company) have been discussing the possible creation of a Southeast Energy Exchange Market ("SEEM"). Sierra Club previously raised this argument in a motion to supplement the record filed on the same day that the Commission issued the Order.<sup>3</sup> Alabama Power responded two business days later,<sup>4</sup> emphasizing two points. First, informed by the Commission's ruling in the Order, the Company observed the following:

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Rules of Practice, Rule 7(a), the Commission is open for the transaction of business each weekday (excluding holidays and weekends) until 5 p.m. As a result, Sierra Club did not timely file its petition, as petitions for rehearing or reconsideration must be filed with the Commission within 30 days of the date of the final action for which rehearing or reconsideration is sought (unless an extension is granted by the Commission)—and the 30-day deadline from the Order expired on September 14. *See* Rules of Practice, Rule 21(c). For this reason, the Commission is fully within its right to strike Sierra Club's petition as untimely. *See, e.g., Baggett Transp. Co. v. Avery Freight Lines*, 56 So. 2d 615, 670-71 (Ala. 1952) (affirming the power of the Commission to strike a petition for rehearing and establishing that such an action is a non-appealable order).

<sup>3</sup> *See Sierra Club's Motion to Supplement the Record*, Docket No. 32953 (Aug. 14, 2020).

<sup>4</sup> Sierra Club served its motion on Friday, August 14, 2020, at approximately 3:15 p.m. Alabama Power responded on Tuesday, August 18. The Company makes this point only in reaction to the following statement in Sierra Club's petition: "Moreover, when the Company finally did respond to Sierra Club's motion to supplement the record in late August, it did not dispute SEEM's relevance to the contested issues in this case." (emphasis added.) Exaggeration aside, Alabama Power clearly refuted claims of SEEM's alleged relevance, and given that fact, the

[T]he Commission rejected the claims of Sierra Club and others that Alabama Power can rely on the temporary surpluses of its sister operating companies in order to meet its long-term need for reliable capacity.<sup>5</sup> So as to the “core issue of surplus sharing”, as Sierra Club states in its motion, the Commission has clearly spoken as to the *inappropriateness of Alabama Power leaning* on others to address a capacity deficit.<sup>6</sup> (footnotes in original).

Second, Alabama Power stressed that SEEM is an energy market, *not a capacity market*,<sup>7</sup> and “is in no way intended to be a vehicle by which participants can meet their discrete, jurisdictionally-specific retail service obligations.”<sup>8</sup> Thus, SEEM would not provide Alabama Power dependable access to capacity resources that the Company in turn could deploy, whenever and however the need arose, to meet customer demand.

Now in possession of documents obtained from one of the potential participants in SEEM,<sup>9</sup> Sierra Club attempts to rehabilitate its argument that SEEM somehow bears on this proceeding. As with the August 14 motion, Sierra Club points to a data request that it claims should have elicited information about SEEM. This request, however, is even less germane than the one identified in the

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Company did not bother to object to the motion being included in the record so long as the Company’s response was included as well. The irrelevance of SEEM is discussed further in the body of this answer.

<sup>5</sup> See *In re Alabama Power Company*, Docket No. 32953, pp. 22-23 (Aug. 14, 2020).

<sup>6</sup> See *Alabama Power Company’s Response to Sierra Club’s Motion to Supplement the Record*, Docket No. 32953, p. 1 (Aug. 18, 2020) (emphasis added).

<sup>7</sup> See *Alabama Power Company’s Response to Sierra Club’s Motion to Supplement the Record*, Docket No. 32953, Attachment A; see also *Sierra Club Petition*, Ex. 2-2, pp. 1-2 (describing SEEM as an “intra-hour energy exchange”; a “15-minute energy market”; and a platform that “will facilitate sub-hourly bilateral trading allowing participants to buy and sell power close to the time the energy is consumed ....”).

<sup>8</sup> See *Alabama Power Company’s Response to Sierra Club’s Motion to Supplement the Record*, p. 2.

<sup>9</sup> The documents in question appear to be in response to a records request from Daniel Tait. See *Sierra Club Petition*, Ex. 2-1. This fact is notable only inasmuch as (1) Mr. Tait is the Chief Operating Officer of Energy Alabama—yet it is Sierra Club who brings the SEEM argument, not Mr. Tait’s employer Energy Alabama or its co-litigant Gasp; and (2) Mr. Tait requested the records in his capacity as “Research and Communications Manager” for Energy and Policy Institute, and not on behalf of Energy Alabama or Sierra Club. He also represented that the request “is not being made for commercial purposes” and elected not to disclose the potential for the use of responsive materials in this proceeding. See *id.*

August 14 motion.<sup>10</sup> Questioning Alabama Power’s responses to Sierra Club’s and the other intervenors’ discovery, however, is really just a flimsy contrivance for Sierra Club to advance the SEEM argument a second time. The core issue remains the inappropriateness of Alabama Power relying on the surplus capacity of others, and on that issue, the Commission has spoken.

Undeterred, Sierra Club points to references in the documents that appear to draw parallels between the SEEM concept and the Western Energy Imbalance Market, which operates in California and other western states. Sierra Club then focuses on a statement from a June 3, 2020 industry article. In that report, an officer for Warren Buffet’s Berkshire Hathaway Energy is quoted as saying: “Generally, [Western Energy Imbalance Market] entities are helping with the over-supply problem in California by absorbing the excess energy in the solar hours and helping meet California’s morning and evening peaks.”<sup>11</sup> From here, Sierra Club and its consultant Rachel Wilson leap to the conclusion that SEEM is being “modeled” on the Western Energy Imbalance Market<sup>12</sup> and can play the same role as the resource options secured through the certificate of convenience and necessity.<sup>13</sup>

These dots do not connect. First, in choosing what information to provide the Commission (both as part of its August 14 motion to supplement the record and its current petition), Sierra Club elects not to discuss a July 30, 2020 article authored by counsel for the Solar Energy Industries

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<sup>10</sup> Compare Sierra Club’s First Set of Interrogatories and Document Production Requests to Alabama Power Company, Interrogatory No. 1 (Oct. 25, 2019) (“Identify any and all documents and facts that support or bear on the Company’s claim in Petition paragraph 2 that the proposed resource additions are ‘necessary and appropriate.’”) with Energy Alabama and Gasp’s First Set of Interrogatories and Requests for the Production of Data and Documents to Alabama Power Company, Interrogatory No. 37 (Nov. 4, 2019) (“Has Alabama Power explored the possibility of contracting with Georgia Power, or other retail operating companies, for capacity? If not, explain why not.”).

<sup>11</sup> See Sierra Club Petition, Ex. 2-10A, p. 2.

<sup>12</sup> See *id.*, p. 2.

<sup>13</sup> See *id.*, Ex. 1. Indeed, Ms. Wilson appears to be of the mind that Alabama Power should have considered joining or forming an RTO in lieu of pursuing the necessary capacity to meet the needs of its customers. See *id.*, pp. 3-4 & nn. 5-7.

Association, which appeared in the very same publication as did Sierra Club’s Exhibit 2-10A.<sup>14</sup> This article refutes Sierra Club’s claim that SEEM is modeled on the Western Energy Imbalance Market, instead stating that SEEM “is not truly an energy imbalance market (EIM) ... [and] should not be seen as an outright substitute for more competitive options, such as an EIM modeled after the Western Energy Imbalance Market (WEIM) or a Regional Transmission Organization (RTO).”<sup>15</sup>

Even if the SEEM concept had been modeled off of the Western Energy Imbalance Market, its irrelevance to this proceeding would remain unchanged. In Sierra Club Exhibit 2-10B, the Commission will find a September 16, 2019 joint letter from the Western Energy Imbalance Market participants to their board of governors. In that letter, the participants state in no uncertain terms that any expansion of the market “will need to include a test to ensure that all participating Balancing Authorities *are not leaning on neighbors to meet their continued reliability obligations.*”<sup>16</sup> Later in the letter, the authors underscore the point—“A key design principle of the EIM design is that *each entity must be able to stand on its own and not lean on the market footprint as a whole, before being granted the opportunity to trade and reap mutual efficiencies.*”<sup>17</sup> The importance of self-reliance, as opposed to leaning on others, cannot be overstated, as barely three months removed from the Berkshire Hathaway claim referenced above, *California suffered rolling blackouts* because it lacked sufficient dispatchable generating resources to meet customer demand.<sup>18</sup>

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<sup>14</sup> See Steven Shparber, *Southeastern utilities' energy market proposal appears to be less than it may SEEM*, Utility Dive (July 30, 2020), available at <https://www.utilitydive.com/news/southeastern-utilities-energy-market-proposal-appears-to-be-less-than-it-m/582542/>.

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*, Ex. 2-10B, p. 1 (emphasis added).

<sup>17</sup> See *id.*, p. 7 (also referenced as p. 5 of the “Extended Day-Ahead Market Principles and Elements of the EIM Entities” attachment included with the letter).

<sup>18</sup> See Cal. Indep. Sys. Operator, *The ISO declares State 2 Emergency; power outages possible* (Aug. 14, 2020), available at <http://www.aiso.com/Documents/The-ISO-Declares-Stage-2-Emergency-Power-Outages->

SEEM is simply not relevant to this proceeding. If and when launched, it cannot and will not serve as a substitute for the capacity resources identified by Alabama Power and certificated by the Commission. This is so as a matter of fact—SEEM is contemplated as a sub-hourly, voluntary energy market, and *not* a capacity market. This also is so as a matter of policy—SEEM participants, their peers in the West, *and most importantly this Commission*, each operate with the paramount understanding that a retail electric supplier must be able to stand on its own in order to reliably meet the needs of its customers, and that supplier cannot lean on others. Accordingly, this issue does not require reconsideration or rehearing by the Commission.

*B. The Commission has not deprived Sierra Club or any other intervenor of due process through its consideration of information obtained outside of the hearing.*

The next argument by Sierra Club is nothing more than a distortion of the Commission's Order and its findings with respect to the pandemic. Sierra Club claims that the Commission denied parties due process when, as part of its consideration of the voluminous record developed in this case (including, but not limited to, the sweeping discovery propounded by intervening parties like Sierra Club),<sup>19</sup> the Commission properly recognized that its decision was not being made in a vacuum. Rather, as the regulatory authority with exclusive jurisdiction over all aspects of Alabama Power's regulated retail operations, the Commission's judgment<sup>20</sup> as to the long-term

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[Possible.pdf](#); see also Sammy Roth, California blackouts are Public Utility Commission's fault, grid operator says, Los Angeles Times (Aug. 17, 2020), available at <https://www.latimes.com/environment/story/2020-08-17/public-utilities-commission-to-blame-for-blackouts-caiso-says>.

<sup>19</sup> As part of this argument, Sierra Club asserts that the *ex parte* rule was somehow offended when the Commission was provided the Company's discovery responses to all the other parties. Leaving aside the illogic of claiming that the Commission needs to collect more information on something that cannot be known (the long-term implications of the pandemic), but then suggesting that it should not have access to the parties' discovery, it seems telling that Sierra Club's own questioning of the Company's witnesses during the hearing verified Staff's possession of and access to discovery. See Hearing Tr., p. 732, line 5 through p. 733, line 17; see also *id.*, p. 908, line 12 through page 909, line 9.

<sup>20</sup> See, e.g., Ala. Code §§ 37-1-31 & -32.

effects of the pandemic necessarily was informed by the data Staff gathers as part of its routine regulation and oversight and the information that Staff customarily relies on to remain informed.<sup>21</sup> All of this information, including but not limited to the hearing record, informed the Commission's wholly unassailable observation that the "long-term impacts of the pandemic are not knowable with any reasonable degree of certainty."<sup>22</sup>

Sierra Club does not challenge this conclusion. (Energy Alabama/Gasp effectively concede its correctness.<sup>23</sup>) Instead, Sierra Club falsely claims the Commission made findings, using clandestine information, as to the impacts of the pandemic on the Company's long-term customer demands.<sup>24</sup> The Commission obviously did not do this, as the Order makes clear.<sup>25</sup> Rather, in reliance on prior precedent that neither the Commission nor the Company can ignore the Company's duty to provide reliable service because of what might happen in the future,<sup>26</sup> the

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<sup>21</sup> See, e.g., Hearing Tr., p. 323, line 11 through p. 326, line 3. Notably, none of the intervening parties, Sierra Club included, raised objections during the hearing regarding the extent to which the Commission, through its Staff, gathered information that might inform its assessment of the Company's certificate petition (or regarding the fact that it received discovery in the case, consistent with past practice). This is not surprising, given the routineness and appropriateness of such activities. Likewise, the Commission receives other information outside the specific context of this proceeding that nonetheless informs its assessment of the Company's retail electric service operations and the impact of the pandemic (such as the monthly energy cost reports filed in Docket No. 18148). See also Request for Accounting Authorization Related to the Use of Regulatory Liability for Customer Refunds, Docket No. U-5344, Order (Aug. 7, 2020). As might be expected, Staff also seeks to apprise itself of ongoing developments that might bear on its duties and responsibilities by reviewing materials in the public domain.

<sup>22</sup> See Order, p. 25.

<sup>23</sup> As noted later in this answer, Energy Alabama/Gasp witness Jim Wilson continues to find the long-term effects of the pandemic to be uncertain, although he claims that the uncertainty is less than what it was in May. Less uncertainty, however, does not equate to certainty, and surely the Commission can deduce that conclusion without offending due process.

<sup>24</sup> See Sierra Club Petition, p. 12 ("Instead, the Commission purported to resolve the issue of the recession's impacts on Alabama Power's alleged needs by reference to unspecified discovery ....").

<sup>25</sup> See Order, pp. 25-27.

<sup>26</sup> See *In re Certificate of Convenience and Necessity (Barry Steam Plant)*, Docket No. 26115, at p. 5 (Dec. 31, 1997).

Commission concluded that the uncertainty caused by the pandemic did not warrant a course contrary to the evidence before it.<sup>27</sup> The Commission's action here comported with all requisite principles of process and fairness due the parties, and does not require reconsideration or rehearing.<sup>28</sup>

*C. Sierra Club's First Amendment claims do not require the Commission to reconsider or rehear the proceeding.*

Sierra Club's final argument need not delay this Commission, as the law in Alabama is well-settled as to the impropriety of a litigant springing a Constitutional claim like Sierra Club does in its petition:

An appellant cannot invoke action by a court and have a case tried on certain issues and then later, when dissatisfied with the result, raise an entirely new issue, such as the constitutionality of the statutes under which he was proceeding, on motion for a new trial. In order for an appellate court to review a constitutional issue, that issue must have been raised by the appellant and presented to and reviewed by the trial court.<sup>29</sup>

Sierra Club had every opportunity to raise the issue in a timely manner, as the Presiding Judge discussed the limitations on those in the hearing room as to the recording or broadcasting of the proceeding, as well as the use of electronic devices, and did so prior to turning to opening statements and the taking of testimony.<sup>30</sup> Furthermore, during the weeks leading up to hearing, it was Energy Alabama/Gasp, and not Sierra Club, who sought limited relief from a procedural

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<sup>27</sup> For their part, Energy Alabama/Gasp focus on the extent to which uncertainty continues to prevail. That argument likewise provides no reason for the Commission to reconsider or rehear any aspect of the Order, as discussed below.

<sup>28</sup> See *Illinois Cent. R. Co. v. Thos. Ala. Kaolin Co.*, 153 So. 2d 794, 796 (Ala. 1963) (rejecting claims by appellants that “a substantial and material part of the Commission’s order is based upon matter not presented in evidence at the hearing”, and holding that extra-record “consideration, study, analysis, and comparison ... was within the province of the Commission.”).

<sup>29</sup> See *Alabama Power v. Turner*, 575 So. 2d 551, 553 (Ala. 1991) (internal citations and quotations omitted).

<sup>30</sup> See Hearing Tr., p. 9, line 8 through p. 10, line 18.



ruling that, among other things, set forth some restrictions on the use of social media.<sup>31</sup> Sierra Club remained silent on the issue and did not voice any objection, either in pleading or at the hearing, as to the subsequent action by the Commission to adopt its Media Coverage Plan or the conclusion of the Presiding Judge that such action addressed and/or mooted Energy Alabama/Gasp's concerns.<sup>32</sup> In short, Sierra Club cannot raise this claim now, and the Commission need not conduct any reconsideration or rehearing in light of it.<sup>33</sup>

## **2. Energy Alabama/Gasp's Petition**

The petition filed by Energy Alabama/Gasp, like that of Sierra Club, relies on overreaching and irrelevant assertions in a transparent effort to restart the regulatory process that began with the filing of the Company's petition over a year ago. As such, this petition likewise fails to raise any issue that merits reconsideration or rehearing. Accordingly, and as discussed further below, their petition also is due to be rejected.

### *A. The Commission properly considered and addressed the ongoing uncertainty regarding the effects of the COVID-19 pandemic.*

In its Order, the Commission recognized the significance of the pandemic, including its impact on public health and the state's economy. The Commission concluded, however, that any long-term impact on customers' electricity demands is simply unknowable with any degree of certainty. Given this conclusion, the Commission declined to take any action contrary to the substantial evidence gathered over the course of the proceeding. In so doing, the Commission considered the critical importance of reliable service. The Commission also recognized that the

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<sup>31</sup> See Energy Alabama & Gasp Motion for Amendment, Docket No. 32953 (Mar. 2, 2020).

<sup>32</sup> See Procedural Ruling in Response to Motion for Amendment, Docket No. 32953 (Mar. 6, 2020).

<sup>33</sup> To be sure, Alabama Power's focus on the procedural defectiveness of this claim should in no way be understood as suggestive that the claim has merit. Cf. *Beeker v. Casey*, 2020 WL 5268491 (Ala. Sept. 4, 2020).

delays urged by the intervenors would place the cost-effective and due-to-be-certified resources at risk of loss. The Commission also found that, even if the Company entered a period with an actual reserve level above the target margin, such would not be an unusual circumstance for an electric utility and would provide Alabama Power with opportunities to optimize its fleet.

Undaunted, Energy Alabama/Gasp seek rehearing or reconsideration based on the same COVID-related argument presented in their supplemental brief and rejected by the Commission. This rebooted argument is laced with speculation, overstatements and errors that reveal its baseless nature. For example, intervenors include updated pandemic-related statistics that doubtless will continue to change (either positively or negatively) over the coming months, but the petition fails to note that current trends are in a favorable direction.<sup>34</sup> More to the point, however, current pandemic statistics and the corresponding economic activity do not dictate what Alabama Power's electricity demand will be three or five or seven years hence.<sup>35</sup>

In a similar vein, Energy Alabama/Gasp reference numbers from the Alabama Department of Commerce's compilation of *Plant Closings/Layoffs Warn List*, presumably to imply significant

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<sup>34</sup> See Leada Gore, *Alabama adds 701 new COVID cases; hospitalizations dip to lowest since end of June*, AL.com (Sept. 9, 2020), available at <https://www.al.com/news/2020/09/alabama-adds-701-new-covid-cases-hospitalizations-dip-to-lowest-since-end-of-june.html>. Mr. Wilson reluctantly concedes this fact, stating that "Alabama's current rate of new infection is lower than at the peak in July ...." Wilson Declaration, p. 3. The chart that he presents likewise confirms the fluid nature of the employment impact and the inherent difficulty in predicting future developments in that regard.

<sup>35</sup> Energy Alabama/Gasp consultant James Wilson opines that there will be "lasting" impacts and that the Company's loads will be "substantially" lower as a result of the pandemic. See Wilson Declaration, p. 7. In support of this opinion, he references a presentation from PJM. That presentation tells a different story than what Mr. Wilson tells the Commission, with loads during the peak summer season showing a "comparably small" impact from the pandemic (an approximate 1.6 percent reduction), with some days showing no impact at all. See PJM, *Recent COVID-19 Load Impacts*, Planning Committee meeting (slides 3-4) (Sept. 1, 2020), available at <https://www.pjm.com/-/media/committees-groups/committees/pc/2020/20200901/20200901-item-10-recent-covid-19-load-impacts.ashx>.

and perhaps permanent industrial load loss due to the pandemic.<sup>36</sup> Even a cursory look at that list reveals that seven of these entities were on the list before March, several of the entities are quite small, and others are not even customers of Alabama Power. Moreover, those with layoffs reflect reduced operations that would obviously affect near-term energy usage, but say nothing about long-term demand. And while Energy Alabama/Gasp offer speculative assurances (as they did at the hearing) that costs will always be lower in the future, these claims turn a blind eye to the many market forces (beyond changes in technology) that can adversely impact the cost of resources (*e.g.*, supply/demand relationships, supply chain issues, equipment and labor force availability).

Putting aside these errors and leaps in logic, the fact is that Energy Alabama/Gasp's petition relies on materials that *validate* and *confirm* the Commission's fundamental conclusion that the long-term impacts of the pandemic are unknown and unknowable. Perhaps the clearest example is the Morgan Stanley report cited by Mr. Wilson.<sup>37</sup> In an effort to undermine this Commission's conclusion and its illustrative citation to that report,<sup>38</sup> he refers to an updated Morgan Stanley report that, according to Mr. Wilson, reflects more dire predictions as to the pandemic. To make this argument, however, Mr. Wilson refers only to the "base case" in that report, which is predicated on assumptions of a second wave of infections triggering another economic contraction, along with the delayed arrival of a vaccine. What he chose not to mention is that the Morgan Stanley report he cites includes *four possible scenarios*, of which *two are more optimistic* than the

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<sup>36</sup> See Wilson Declaration, p. 6. If Energy Alabama/Gasp are truly interested in the unemployment trend in Alabama, public data from the Bureau of Labor Statistics show that Alabama has already regained 106,500 jobs – nearly half of the jobs that were lost since February. See <https://data.bls.gov/timeseries/SMS0100000000000001>.

<sup>37</sup> See Wilson Declaration, p. 5, n.11.

<sup>38</sup> On June 5, 2020, Alabama Power replied to the supplemental briefs of Energy Alabama/Gasp and Sierra Club, citing numerous public sources showing a broad range of predictions regarding the depth and duration of the pandemic's economic impacts. This reply was among the materials considered by the Commission. See Order, p. 8.

base case. It also bears noting that Morgan Stanley emphasized that, while several factors influence the outlook, the two that are most critical are the timing of the vaccine and the severity of consumer risk aversion. On their face, these variables would seem rather difficult, if not impossible, to predict at this point, again validating the Commission’s decision.

Similarly, Mr. Wilson leans heavily on projections of United States Gross Domestic Product (“GDP”) to support his conclusions regarding possible impacts on the Company’s future peak demand. Putting aside questions as to the meaningful correlation between GDP and electricity demand,<sup>39</sup> one of Mr. Wilson’s own GDP sources, the International Monetary Fund (“IMF”) Outlook, speaks to the inability to know the effects of the pandemic due to the many underlying and unpredictable variables.<sup>40</sup> The IMF includes the rather pointed caveat that “there is a higher-than-usual degree of uncertainty around this forecast.” In its full report, the IMF goes further:

Fundamental uncertainty around the evolution of the pandemic is a key factor shaping the economic outlook and hinders a characterization of the balance of risks. The downturn could be less severe than forecast if economic normalization proceeds faster than currently expected in areas that have reopened—for example in China, where the recovery in investment and services through May was stronger than anticipated. Medical breakthroughs with therapeutics and changes in social distancing behavior might allow health care systems to cope better without requiring extended, stringent lockdowns. Vaccine trials are also proceeding at a rapid pace. Development of a safe, effective vaccine would lift sentiment and could improve growth outcomes in 2021, even if vaccine production is not scaled up fast enough to deliver herd immunity by the end of 2021.<sup>41</sup>

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<sup>39</sup> See Richard Hirsh & Jonathan Koomey, *Electricity Consumption and Economic Growth: A New Relationship with Significant Consequences*, The Electricity Journal (2015), available at <https://law.stanford.edu/wp-content/uploads/2016/06/Electricity-Consumption-and-Economic-Growth.pdf>.

<sup>40</sup> See Wilson Declaration, p. 8, n.9.

<sup>41</sup> See IMF World Economic Outlook Update, June 2020 (full report), p. 8.

Energy Alabama/Gasp's petition also confirms that the pandemic is not reasonably expected to impact the Company's long-term forecast that was the subject of the hearing. This is evident from the conclusion offered by Mr. Wilson himself, as he speculates that an updated forecast would show loads and capacity needs "substantially lower for the 2020 to 2023 period."<sup>42</sup> Accepting this statement for the sake of argument, it too suggests that the economic impacts of the pandemic will have played out by 2023. Given that the long-term forecast and associated capacity need in the proceeding is for the 2023-2024 timeframe,<sup>43</sup> Energy Alabama/Gasp's argument here does nothing to undermine the need for the capacity resources certified by the Commission.<sup>44</sup>

In sum, the pandemic-related arguments of Energy Alabama/Gasp are without merit and offer no basis for rehearing or reconsideration. To the contrary, the arguments and materials in the Energy Alabama/Gasp petition support the Order and the Commission's actions reflected in it.

*B. Energy Alabama/Gasp provide no reason for the Commission to revisit its decision on stranded asset risk.*

The second item Energy Alabama/Gasp raise concerns the Commission's decision not to require Alabama Power to bear so-called stranded cost risk associated with the certificated resources. According to Energy Alabama/Gasp, the Commission should revisit this conclusion

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<sup>42</sup> See Wilson Declaration, ¶ 18.

<sup>43</sup> Here again, Energy Alabama/Gasp get it wrong in terms of the Company's proven need. See Energy Alabama/Gasp Petition, p. 8, n. 8 (asserting a need for only 1,200 MW by 2025). The Commission rejected intervenors' claim that Alabama Power can meet its statutory duty to provide reliable service by leaning on the capacity of others. See Order, pp. 22-23. That determination, coupled with the Commission-approved planning reserve margin, translates into a winter need of over 2,300 MW for Alabama Power in 2023. See Direct Testimony of John Kelley, page 11.

<sup>44</sup> Even if the demand forecast for 2023 were somewhat overstated due to the impacts of the pandemic (which it is not), the Commission did not certify resources equal to the full amount of the indicated need. Rather, it approved gas-fired resources totaling about 1,800 MW (which basically replace recently retired capacity and a PPA that is soon to expire), along with another 200 MW of potential DSM/DER resources, while declining to certify 400 MW of Solar/BESS projects. Accordingly, the Company's projected need could be different by as much as 600 MW and still support the certified gas-fired resources.

because the Commission “failed to consider customers’ near-term economic prospects before placing all stranded asset risk on their shoulders.”<sup>45</sup> This argument drifts into territory previously staked out by Sierra Club.

The Commission most certainly did consider near-term economic effects on consumers. In assessing the near-term prospect for the certificated resources becoming unnecessary or being incapable of dispatch, it found none.<sup>46</sup> Thus, the Commission determined that consumers faced no near-term economic burden, as it saw no corresponding potential for the newly certificated resources to be rendered unnecessary.<sup>47</sup> Furthermore, Energy Alabama/Gasp’s continued efforts to press this argument ignore the relative economics of the certificated resources subject to the claim. That is to say, if in some hypothetical future, circumstances arise that implicate the ongoing utilization of Alabama Power’s conventional baseload generating resources, Barry Unit 8 and Central Alabama would be among the last units affected, given their efficiencies.<sup>48</sup> Finally, Energy Alabama/Gasp make no attempt to refute the Commission’s conclusion that the imposition of its request, under the circumstances of the case, would violate its statutory obligations.<sup>49</sup>

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<sup>45</sup> See Energy Alabama/Gasp Petition, p. 11.

<sup>46</sup> See generally Order pp. 36-41.

<sup>47</sup> And in making that determination, the Commission was very much mindful of the economic impacts of the pandemic on consumers. See Order, pp. 25, 61.

<sup>48</sup> While Energy Alabama/Gasp and Sierra Club presumably will insist that such a hypothetical future should be here sooner rather than later, the very recent collapse of reliable energy supply in California (due to the lack of dispatchable fueled generation) should temper such reckless pursuits. Cf. *Secretary Brouillette Authorizes Federal Intervention During California Grid Reliability Emergency*, DOE (Sept. 6, 2020) (“While the Secretary has offered this emergency assistance to California in this time of crisis, he also encourages state policymakers to evaluate why the grid is not able to handle extreme stress, which could be alleviated with the support of greater baseload power generation and natural gas supply.”), available at <https://www.energy.gov/articles/secretary-brouillette-authorizes-federal-intervention-during-california-grid-reliability>.

<sup>49</sup> See Order, p. 45.

In sum, Energy Alabama/Gasp raise no legitimate issue with regard to the Commission's determination regarding stranded cost risk that would warrant reconsideration or rehearing.

C. *Any challenge to the Commission's decision not to certify the five proposed Solar/BESS projects in this proceeding is moot.*

The final arguments raised by Energy Alabama/Gasp concern the Commission's decision with respect to the Solar/BESS projects. On July 31, 2020, the contracts for these projects expired by their own terms.<sup>50</sup> With the underlying agreements having terminated, all associated issues are moot and there remains nothing left for the Commission to review in this docket regarding them.<sup>51</sup> Accordingly, with no live controversy to decide, there is no reason for the Commission to pursue reconsideration or rehearing of any issue related to the proposed Solar/BESS projects.

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### 3. Conclusion

Due to the absolute lack of substantive merit and petitioners' collective failure to meet the bare minimum rehearing standards, the Commission should deny their petitions and decline to rehear or reconsider any aspect of the Order.<sup>52</sup>

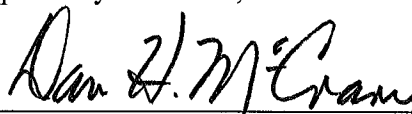
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<sup>50</sup> See, e.g., Direct Testimony of John Kelley, Ex. JBK-3 (APC H'rg Ex. 22), Section 3.5.4 ("[I]f by the APSC Approval Deadline ... there is not a Final APSC Approval Order, then this Agreement shall automatically terminate without further action of the Parties. For purposes of this Agreement, 'APSC Approval Deadline' shall mean July 31, 2020.").

<sup>51</sup> See *Am. Fed'n of State, Cty. & Mun. Emp. v. Dawkins*, 104 So. 2d 827, 830–31 (1958) ("A moot case or question is a case or question in or on which there is no real controversy; a case which seeks to determine an abstract question which does not rest on existing facts or rights, or involve conflicting rights so far as plaintiff is concerned." (citing *Postal Telegraph-Cable Co. v. City of Montgomery*, 69 So. 428 (1915))).

<sup>52</sup> It has become readily apparent over the course of this proceeding that these intervenors will submit any argument—no matter how farfetched—in an effort to impede the progress of the certificated natural gas resources. As the Commission's Rules of Practice do not provide a right for parties that seek reconsideration or rehearing to respond to an answer to such petitions, the Commission should decline to entertain any further pleadings by either Sierra Club or Energy Alabama/Gasp.

Respectfully submitted,

  
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Attorney for Alabama Power Company

OF COUNSEL:

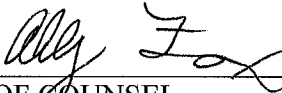
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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 21st day of September, 2020, I have served a copy of the foregoing via electronic mail on the active participants in Docket No. 32953.

  
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OF COUNSEL