

**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 RESPONSE TO ENERGY ALABAMA, GASP AND
SIERRA CLUB’S JOINT MOTION FOR SUPPLEMENTAL BRIEFING AND
REQUEST FOR A BRIEFING SCHEDULE**

Alabama Power Company respectfully submits this response to the May 1, 2020 Joint Motion of Energy Alabama, Gasp (“Energy Alabama/Gasp”) and Sierra Club (collectively “Intervenors”) for a Briefing Schedule. As explained below, the motion should be denied.

1. As the Commission is aware, Friday, May 1 was the deadline for parties to submit post-hearing briefs in this proceeding. Originally, the deadline for briefing had been set for April 17, but upon a motion from Intervenors to extend that deadline by 30 days (citing, among other reasons, the COVID-19 pandemic), the Chief Administrative Law Judge entered a procedural ruling granting a two-week extension.

2. Without any prior notice or suggestion whatsoever, and despite having explicitly invoked COVID-19 as a basis for a prior extension request, Intervenors served the instant motion on Alabama Power and the other parties on May 1 at approximately 6:00 p.m.¹ In the motion, Intervenors request another briefing schedule that spans 90 days from the date of the motion. The briefing schedule would be for the purpose of “allow[ing] the parties to more fully brief the

¹ See Ex. 1.

potential for the coronavirus pandemic to impact Alabama Power's perceived need for an additional 2,400 MW of capacity resources." Motion, page 4.

3. As it reviews Alabama Power's post-hearing brief, the Commission will find a thorough exploration of the relevant issues. To this end, the brief offers thoughtful consideration of the implications of COVID-19 and why the pandemic does not justify or otherwise support a decision by this Commission to depart from the evidence of record and delay action on the proposed portfolio of resources. In marked contrast, Intervenors' briefs contain barely any mention of COVID-19. Sierra Club makes no reference to it at all (despite having noted the pandemic in opening remarks at hearing)² and Energy Alabama/Gasp only offer a passing comment.³

4. As noted, Intervenors served their motion at approximately 6:00 p.m. Alabama Power served its brief shortly after 4:00 p.m.⁴ From the Company's perspective then, Intervenors' motion strongly suggests that Intervenors were able to assess Alabama Power's brief and are now trying to utilize the global pandemic as a basis for responsive briefing. The procedural schedule, adopted without complaint or opposition by any party, in no way contemplates such a course.

5. Even if the timing of Intervenors' motion is purely coincidental, the Commission should just as readily reject their continued efforts to delay a decision on the requested portfolio

² See Hearing Tr., page 32, lines 16-22.

³ See Energy Alabama/Gasp brief, page 15. Intervenors' briefs do appear to have been coordinated in some fashion though, given Sierra Club's incorporation of portions of the Energy Alabama/Gasp's brief by reference. See Sierra Club brief, page 14.

⁴ See Ex. 2.

of resources. Over the course of the entire proceeding, Intervenors have asked for two months' worth of extensions.⁵ Their pending request takes that balance to five months.

6. As shown above, Intervenors have been well aware of COVID-19 since at least the opening day of the hearing, and their April 10 request for more time specifically relied on the pandemic as a ground for relief. Intervenors thus have had ample opportunity to address pandemic-related issues. That they chose not to do so (and Alabama Power did) is not a legitimate basis for imposing or allowing more briefing by the parties.

7. Finally, as Alabama Power made clear in its response to Intervenors' April 10 motion for extension and in the Company's post-hearing brief, continued delay has the potential to impact the proposed portfolio.⁶ That Intervenors would propose their 90-day briefing schedule with no regard or acknowledgment to these timing concerns reveals their likely intent. Specifically, as Alabama Power carried its burden of proof with regard to its entitlement to a certificate of convenience and necessity for the proposed portfolio, the only remaining course for Intervenors is to try and cause one or more of the projects to self-destruct due to transactional deadlines. This obviously affords no valid basis for an extension. Rather, it is a factor that, along with other relevant facts and circumstances, supports a denial of Intervenors' motion.

⁵ In round numbers, these include a one week requested extension for the filing of testimony, a three week requested extension for the start of the hearing, and a four week requested extension for the filing of post-hearing briefs.

⁶ Intervenors have been aware of this issue for some time, as the various deadlines and schedules associated with the resource portfolio are readily apparent from the exhibits supporting the Petition or in discovery provided by Alabama Power.

For the foregoing reasons, Intervenor is not entitled to any supplemental, reply or extended briefing in connection with this proceeding. The case is and should remain under submission for the rendering of a timely decision by this Commission.



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CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of May, 2020, I have served a copy of the foregoing via electronic mail on the active participants in Docket No. 32953.



OF COUNSEL

Exhibit 1

Fox, Abby

From: Keith Johnston <kjohnston@selcal.org>
Sent: Friday, May 1, 2020 5:59 PM
To: McCrary, Dan; Grover, Scott; Laurie, Robin; Roby, Riley; 'Jen Howard'; 'conwellhooper@gmail.com'; 'patrick@alcoal.com'; 'george@manufacturealabama.org'; 'jdillard@baxleydillard.com'; 'diana.csank@sierraclub.org'; 'julie.kaplan@sierraclub.org'; 'paul@energyfairness.org'; 'crh@chlaw.com'; 'omartin@ago.state.al.us'; 'thammonds@ago.state.al.us'; 'zwilson@ago.state.al.us'; 'jdillard@dillardmcknight.com'; Fox, Abby
Cc: Christina Andreen Tidwell; Kurt Ebersbach
Subject: APSC Docket No. 32953 - Service Copy - Joint Motion for Supplemental Briefing
Attachments: 2020-05-01 Joint Motion for Supplemental Briefing - Docket 32953.pdf

[External Email] Please use caution.

Counsel:

Please find the attached service copy of Energy Alabama, Gasp and Sierra Club's *Joint Motion for Supplemental Briefing*. The same has been filed with PSC.

Please let me know if you have any questions.

Best regards,

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Exhibit 2

Fox, Abby

From: Fox, Abby
Sent: Friday, May 1, 2020 4:08 PM
To: 'Jen Howard'; Christina Andreen Tidwell; 'Keith Johnston'; Kurt Ebersbach; 'conwellhooper@gmail.com'; 'patrick@alcoal.com'; 'george@manufacturealabama.org'; 'jdillard@baxleydillard.com'; 'diana.csank@sierraclub.org'; 'julie.kaplan@sierraclub.org'; 'paul@energyfairness.org'; 'crh@chlaw.com'; 'omartin@ago.state.al.us'; 'thammonds@ago.state.al.us'; 'zwilson@ago.state.al.us'; 'jdillard@dillardmcknight.com'; McCrary, Dan; Grover, Scott; Laurie, Robin; Roby, Riley
Subject: Docket No. 32953
Attachments: Final Brief with Transmittal Letter.pdf

The attached post-hearing brief was e-filed with the Commission today in Docket No. 32953 and is being served on you as a participant in that docket.

Abby Fox



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