

BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION

**PETITION OF ALABAMA POWER COMPANY)
FOR APPROVAL OF THE SEVENTH REVISION)
OF RATE CPE (CONTRACT FOR PURCHASED)
ENERGY) BASED ON UPDATED AVOIDED COST)
DATA, FILED ON FEBRUARY 15, 2024)**

DOCKET NO. U-5213

**SOUTHERN RENEWABLE ENERGY ASSOCIATION'S
PETITION TO INTERVENE**

COMES NOW, the Southern Renewable Energy Association (“SREA”), and hereby files this *Petition to Intervene* (“Petition”) in the above-referenced docket pursuant to Rule 8 of the Alabama Public Service Commission (“Commission”) Rules of Practice.¹ In support hereof, SREA respectfully states as follows:

INTRODUCTION

On February 15, 2024, Alabama Power Company (“Alabama Power” or “the Company”) made a filing proposing revisions to its Rate CPE (Contract for Purchased Energy), which provides terms and rates for the sale of alternate electrical energy from certain Qualifying Facilities (“QFs”) to Alabama Power pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”).² Alabama Power proposed revisions included changes to the purchase rates, changes to the seasonal time periods, and changes to the standard contract which applies to any QF that wishes to sell its total output to the Company pursuant to Rate CPE.³ The revisions include an “Integration Cost”

¹ Rules of Practice of the Alabama Commission, available at <https://psc.alabama.gov/wp-content/uploads/2021/12/RevRulesofPractice.pdf>. See also Alabama Administrative Code Chapter 770-X-X-4 – Rules of Practice, available at <https://admincode.legislature.state.al.us/administrative-code/770-X-4>.

² Docket No. U-5213, Alabama Power Request for Approval of Proposed Revisions to Rate CPE, February 15, 2024.

³ *Id.*

of \$0.00193 per kWh of Delivered Energy, which Alabama Power alleges “relates to the increasing levels of penetration of variable resources on the Southern Company system and the corresponding cost incurred to mitigate a reduction in reliability.”⁴ Alabama Power proposes to substantially decrease the rate for purchase of energy from QFs by approximately 40-50% beginning on April 1st, 2024.⁵

On March 5, the Commission held a Monthly Commission Meeting and issued an order approving Alabama Power’s proposed revisions to Rate CPE, finding that the revisions approved shall be effective beginning April 1, 2024.

TIMELINESS OF PETITION

SREA’s Petition is timely pursuant to Rule 8 of the Commission’s Rules of Practice, which states that “[a]nyone entitled under the law to complain to the Commission may petition for leave to intervene in any pending proceeding prior to or at the time it is called for hearing, but not after, except for good cause shown.”⁶ The Commission has not held any hearing regarding Alabama Power’s seventh revision of Rate CPE. The Commission’s Rules of Practice distinguish between “Hearings” and “Monthly Commission Meetings”, providing separate rules for each.⁷ The Commission’s Rule 26 regarding Monthly Commission Meetings expressly prohibits a party or the public from presenting arguments or evidence.⁸ Since the disputed rate changes were approved by the Commission following a very brief summary at the March 5th Monthly Commission Meeting, without a full evidentiary Hearing pursuant to Rule 15, SREA’s Petition to Intervene is timely pursuant to Rule 8.

⁴ *Id.* at 1.

⁵ *Id.* at 8 (e.g., proposing to decrease Transmission Voltage rates for purchase of energy from QFs from 7.327 to 3.653 ¢/kWh during the period of 12pm to 5pm, and from 4.990 to 2.984 ¢/kWh during all other hours).

⁶ Rule 8, Parties.

⁷ Hearings are governed by Rule 15. Monthly Commission Meetings are governed by Rule 26.

⁸ Rule 26, Monthly Commission Meetings (“Arguments or evidence will not be received from a party or the public at this time.”)

LEGAL STANDARD FOR INTERVENTION

Alabama Code provides that “every...association...affected thereby may petition to intervene and become a party to any proceeding before the Commission.”⁹ Additionally, Commission Rule of Practice 8 states the following:

Petitions shall set forth the grounds of their proposed intervention; the position and interest of the petitioner in the proceeding; and if affirmative relief is sought, should conform to requirements for a formal complaint.¹⁰

The Commission has also adopted the following requirements for associational standing established by the Alabama Supreme Court:

[I]n order for an association to achieve intervenor status and seek relief on behalf of its members, said association must establish that (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.¹¹

SREA’S SPECIFIC INTERESTS IN RATE CPE

As demonstrated below, SREA meets the standing requirements to intervene in this docket under applicable law because its members have specific interests in Rate CPE. SREA is a regional trade association that works to promote the responsible development and use of utility-scale wind energy, energy storage, solar energy, and transmission solutions throughout the South. SREA members include some of the world’s most innovative energy companies, investors, energy consumers, and advocates in wind energy, solar energy, energy storage and transmission solutions in the southeastern United States.¹²

⁹ AL Code § 37-1-87.

¹⁰ Rule 8, Parties.

¹¹ APSC Docket No. 28941, *Declaratory Proceeding to Consider the Administrative Interpretation of Alabama Code § 37- 1-87 (1975), as amended, Governing Intervention in Proceedings Before the Alabama Public Service Commission* at 7 (citing *Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.*, 783 So. 2d 792 (Ala. 2000)).

¹² See [Our Members - Southern Renewable Energy Association](#).

SREA members have a vital interest in the proceeding, including but not limited to in the current year, because they develop and deploy QFs to generate renewable energy pursuant to PURPA, and Alabama Power's Rate CPE provides terms and rates for QFs. Examples of SREA's specific interests and ongoing projects include QFs under development in Alabama Power's service territory that could participate in Rate CPE once constructed and similarly situated independent power facilities that may seek to contract with Alabama Power through power purchase agreements outside of the QF process, including in response to competitive bidding processes such as requests for proposals. SREA members have already invested in developing at least sixteen (16) specific generation projects totaling more than 1,000 megawatts (MW) in Alabama Power's service territory. SREA members have already made significant financial investments in the development of ongoing projects, including through generator interconnection customer processes and securing land leases to site projects in Alabama Power's service territory. Decreasing the purchase rates paid for energy through lower avoided cost rates and integration charge negatively impacts SREA's member companies by reducing the amounts paid for their product.

Thus, for the reasons outlined above, the Commission's actions in this docket directly affect the financial interests of SREA's members, and its members identified herein would otherwise have standing to sue or intervene in their own right. SREA has an interest in ensuring that its members who develop and own QFs are provided just and reasonable purchase rates, as required by PURPA, and likewise that its members who develop similarly situated independent power facilities are not subjected to unsubstantiated fees, including integration costs.¹³ Therefore,

¹³ See [16 U.S. Code 824a-3\(b\)\(2\)](#). See also FERC Order No. 872, 172 FERC ¶ 61,041 at P 82. (Since PURPA prohibits discriminatory treatment between QFs and similarly situated independent power generation facilities, SREA is concerned that its members who develop similarly situated generator facilities will also be directly affected by the proposed revisions to the CPE Rate, including the new integration cost.)

the interests SREA seeks to protect are germane to its purpose. Neither the claim asserted nor the relief requested requires the participation of SREA's individual members in this proceeding. As a result, SREA meets the associational standing adopted by the Commission and the Alabama Supreme Court. SREA has substantial interests in the outcome of this proceeding and desires to intervene in order to advance and protect those interests. SREA respectfully requests that it be granted leave to intervene and participate fully as a party in this docket, including the right to present testimony and exhibits, cross-examine witnesses, file briefs, and seek reconsideration, rehearing, or modification of Commission orders.

SREA requests that the following persons be included on the service list in this docket and that all communications regarding this docket be directed to them:

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The aforementioned persons are both full-time employees of SREA, and thus are authorized to represent SREA in Commission proceedings pursuant to the Commission Rules of Practice.¹⁴

WHEREFORE, SREA respectfully requests that the Commission grant its Petition and admit it as a full party of record in these proceedings with all rights attendant thereto.

¹⁴ Rule 5, Representation (providing that "any bona fide officer or full-time employee of a corporation, association, or of an individual may appear for such corporation, association or individual.")

Respectfully submitted this 4th day of April, 2024.

Whit Cox

Whit Cox
Regulatory Director
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CERTIFICATE OF SERVICE

I hereby certify that I have served all parties with the foregoing document by electronic mail on this 4th day of April, 2024.

Whit C

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