



STATE OF ALABAMA
PUBLIC SERVICE COMMISSION
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MONTGOMERY, ALABAMA 36130

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JEREMY H. ODEN, ASSOCIATE COMMISSIONER

CHRIS "CHIP" BEEKER, JR., ASSOCIATE COMMISSIONER

ALABAMA POWER,

Petitioner,

Petition: For approval of the seventh revision of Rate CPE (Contract for Purchased Energy) based on updated avoided cost data, filed February 15, 2024.

DOCKET U-5213

**ORDER DENYING PETITION TO INTERVENE AND APPLICATION FOR
RECONSIDERATION AND MODIFICATION OF SOUTHERN RENEWABLE
ENERGY ASSOCIATION AND PETITION TO INTERVENE OF ENERGY ALABAMA.**

I. INTRODUCTION AND BACKGROUND

By Order entered in this cause on March 5, 2024, the Commission approved certain revisions to Rate CPE (Contract for Purchased Energy) which reflected updated avoided cost data and the corresponding changes to the rate as filed by Alabama Power Company ("Alabama Power" or "the Company") on February 15, 2024. In addition, the Commission approved certain changes to the seasonal time periods proposed by Alabama Power for Rate CPE which aligned them with the seasonal time periods used in recent tariff filings for other rates, such as Rate FD-D (Family Dwelling-Demand).

The Commission's March 5, 2024 Order (the "Order") also approved an update to the Attachment A Standard Contract (the "Standard Contract") for Rate CPE which applies to any qualifying facility ("QF") that seeks to sell its total output to the Company. The changes to the Standard Contract were intended to streamline the renewal process by incorporating changes that had been requested by QFs seeking to execute Standard Contracts with the Company.

The March 5, 2024 Order also approved proposed changes to the Appendixes of the Standard Contract. Appendix A to the Standard Contract was revised so that payment calculations corresponded to the new seasonal time periods and incorporated a new variable integration cost recovery component. A new Appendix B setting forth provisions regarding the use of automatic integration control was also approved. The automatic integration control provision allows the Company to regulate the output of affected facilities.

All of the aforementioned changes to Rate CPE, its Standard Contract and the Appendixes were proposed and explained in detail in a filing made by Alabama Power on February 15, 2024. Said filing was made pursuant to the provisions of the Commission's Order entered in this cause on March 6, 2018 which established February 15th as the annual filing deadline for revisions to Rate CPE. The staff agenda which discussed Alabama Power's February 15, 2024 filing and recommended approval thereof was publicly served and posted on the Commission's website on March 1, 2024. The Commission unanimously voted to approve the staff recommendation regarding the changes to Rate CPE at its March 5, 2024 public meeting and entered the Order reflecting that unanimous vote later that same day. The effective date of all of the matters approved in the Order was April 1, 2024.

II. DISCUSSION OF THE PLEADINGS FILED

On or about April 4, 2024, the Southern Renewable Energy Association ("SREA") filed a Petition to Intervene in the captioned docket and an Application for Reconsideration and Modification of the March 5, 2024 Order of the Commission. Among other things, SREA claimed that the Commission failed to provide due process by issuing the Order without notice or a hearing, and that the changes approved had not been demonstrated to be just and reasonable. On or about

April 12, 2024, Energy Alabama filed a Petition to Intervene in this docket. Energy Alabama subsequently filed a corrected Petition to Intervene on April 16, 2024.

On April 15, 2024, Alabama Power filed a Motion to Dismiss both SREA's and Energy Alabama's Petitions to Intervene as untimely. Alabama Power explained that under prior Commission precedent, an intervention filed after the Commission has acted on a matter at its monthly meeting is untimely and is due to be dismissed. *Citing In re Alabama Power Co. (Rate Rider RE)*, Docket No. U-4485 (Sept. 22, 2003). Alabama Power noted that both SREA's and Energy Alabama's Petitions to Intervene were filed well after the Commission's monthly meeting.

Alabama Power's Motion to Intervene also sought to dismiss SREA's Application for Reconsideration and Modification due to SREA's failure to demonstrate legal standing. Alabama Power noted that SREA had failed to demonstrate the direct, personal interest in the subject of the March 5, 2024 Order necessary to pursue reconsideration under section 37-1-105, *Code of Alabama (1975)*, such as identifying a member pursuing a project that would be eligible to contract with the Company under Rate CPE. Alabama Power likened SREA's Application to a previous attempt by the organization to intervene in a certificate proceeding before the Commission, which was denied due to lack of standing. *See Southern Renewable Energy Association's Petition to Intervene*, Docket No. 32953 (Sept. 27, 2019).

Energy Alabama submitted a Response to Alabama Power's Motion to Dismiss on April 16, 2024. In that response, Energy Alabama claimed that the Commission's rules on intervention were contrary to statute, in that they abridged the rights afforded by section 37-1-105, *Code of Alabama (1975)* to seek reconsideration of Commission orders.

SREA filed a Response to Alabama Power's Motion to Dismiss on April 19, 2024, raising several different arguments. Like Energy Alabama, SREA claimed that the Commission's rules

on intervention were contrary to the timeframe to seek reconsideration provided by section 37-1-105, *Code of Alabama (1975)*. SREA also contended that its intervention was timely because the Commission never held a hearing on the proposed revisions to Rate CPE. SREA asserted that under the Commission's Rules of Practice, an intervention is timely when filed "in any pending proceeding prior to or at the time it is called for hearing, but not after, except for good cause shown." Rules of Practice, Rule 8. SREA also contended that the Order was not binding legal precedent, effectively arguing that the order was unlawful and in violation of statute. Finally, SREA claimed that it should be allowed to intervene in advance of an expected filing by Alabama Power in 2025.

SREA also raised several points in response to Alabama Power's Motion to Dismiss in its Application for Rehearing and Modification for lack of standing. SREA contended that because its members develop the sort of projects that would be eligible for contracts under Rate CPE, it had sufficient standing to pursue reconsideration. SREA noted that its members have made significant financial investments, including through generator interconnection processes and securing land leases to site projects in Alabama Power's service territory. Such members are not the general public, SREA stated, because the general public does not develop such power facilities. SREA did not, however, identify any such member specifically.

Alabama Power filed a Reply to SREA's and Energy Alabama's responses on April 25, 2024. Alabama Power first addressed the intervention question, observing that section 37-1-105, *Code of Alabama (1975)* does not require an entity to be an intervenor in a proceeding to seek reconsideration. Alabama Power then explained that governing law does not require the Commission to hold a hearing on every proposed rate change that comes before it. Accordingly, Rule 8 of the Commission's Rules of Practice, when viewed in this light, sets the deadline for

intervention as the monthly meeting, when a matter has not otherwise been set for hearing. Alabama Power further observed that SREA had not provided any basis to question the lawfulness of the Commission's March 5, 2024 Order. The Company also discussed why SREA should not be allowed to intervene now, in advance of a future filing to be made in 2025. As to Energy Alabama's response, Alabama Power discussed why the arguments were without merit, apparently based on a misunderstanding of section 37-1-105, *Code of Alabama (1975)* similar to that apparently held by SREA.

Alabama Power then offered a brief discussion of SREA's arguments in support of standing. Among other things, Alabama Power noted that SREA had once again failed to provide the requisite support for its claim of a direct, personal interest in the matter in question, and instead had opted to argue over the governing legal standards for determining standing before the Commission.

III. FINDINGS AND CONCLUSIONS OF THE COMMISSION

Having considered the foregoing, the Petitions to Intervene of SREA and Energy Alabama are due to be denied as untimely. The requirements of Rule 8 of the Rules of Practice, as interpreted and applied to matters not set for hearing, dictate that interventions must be filed before the Commission takes action on such matters at its monthly public meeting. The Petitions to Intervene filed by SREA and Energy Alabama were not filed until well after the March 5, 2024 Order of the Commission was entered in this cause following the Commission's monthly public meeting held on that same date. Indeed, the matters approved in the Commission's March 5, 2024 Order were already fully effective when both Petitions to Intervene were filed.

The Application for Reconsideration and Modification of SREA is also denied, as SREA has failed to identify any member with a planned or ongoing project, or some other specific interest

in Alabama Power's service territory. Absent demonstration of a direct, personal interest, SREA lacks standing to pursue reconsideration of the March 5, 2024 Order of this Commission.

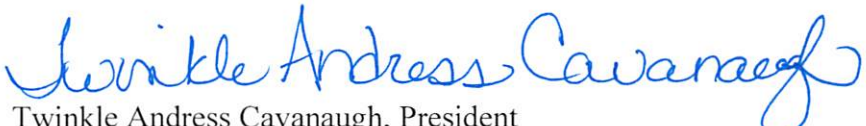
IT IS SO ORDERED BY THE COMMISSION.

IT IS FURTHER ORDERED, that Jurisdiction in hereby retained for the issuance of any Order or Orders that may appear just and reasonable on the premises.

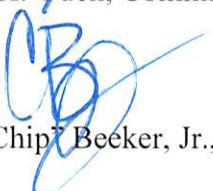
IT IS FURTHER ORDERED, that this Order shall be effective as the date thereof.

Done at Montgomery, Alabama this 22nd day of July, 2024.

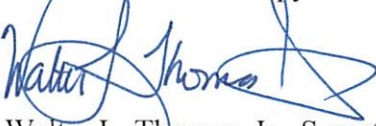
ALABAMA PUBLIC SERVICE COMMISSION


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Jeremy H. Oden, Commissioner


Chris "Chip" Beeker, Jr., Commissioner

ATTEST: A True Copy


Walter L. Thomas, Jr., Secretary