

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

JAMES H. BANKSTON, JR.)
RALPH B. PFEIFFER, JR.) Docket No. _____
MARK JOHNSTON,)
TERESA K. THORNE,)
and GASP, INC.)

**PETITION FOR ENFORCEMENT UNDER THE
PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978**

Pursuant to Section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (“PURPA”), 16 U.S.C. § 823a-3(h)(2)(B), James H. Bankston, Jr., Ralph B. Pfeiffer, Jr., Mark Johnston, and Teresa K. Thorne (“Alabama Solar QFs”), and GASP, Inc. (collectively, “Petitioners”) hereby petition the Federal Energy Regulatory Commission (“FERC” or “Commission”) to initiate an enforcement action against the Alabama Public Service Commission (“Alabama PSC”). Petitioners ask FERC to compel the Alabama PSC to implement this Commission’s PURPA regulations requiring just, reasonable and non-discriminatory rates for the sale of electricity to solar qualifying facilities (“QFs”) served by Alabama Power Company (“Alabama Power” or “the Company”).

In January 2013, the Alabama PSC approved revisions to Alabama Power’s Rate Rider RGB tariff.¹ By its terms, Rate Rider RGB applies to any customers connected to the Company’s system who obtain any portion of their electric requirements from installed on-site, non-emergency generating capacity operating in parallel with the

¹ Ex. 1, Ala. Power Co., Rate Rider RGB (Supplementary, Back-up, or Maintenance Power) (Revision Fifth), at Back-Up Power Part I.B. (pages 4-5 of exhibit) (effective May 2013) [hereinafter 2013 Rate Rider RGB].

Company's system—a category that includes customers who are solar QFs under PURPA.² The revisions approved by the Alabama PSC in January 2013 imposed new charges for back-up power service on such customers, including a monthly “Capacity Reservation Charge” of \$5.00/kilowatt (kW) based on the nameplate capacity of the customer's system.³ In October 2020, following a limited hearing, the Alabama PSC approved revisions to Rate Rider RGB that increased the Capacity Reservation Charge to \$5.41/kW.⁴

The Commission's PURPA regulations, 18 C.F.R. § 292.305(a)(1), require that rates for sales of electricity to QFs be “just and reasonable and in the public interest,” and that they “not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility.” As the Commission has explained, “[t]his section contemplates formulation of rates on the basis of traditional ratemaking (*i.e.*, cost-of-service) concepts.”⁵ Specifically, a QF “should be charged at a rate applicable to a non-generating [customer of the same customer class] unless the electric utility shows that a different rate is justified on the basis of sufficient load or other cost-related data.”⁶ A utility may charge a different rate to QFs only if it demonstrates “on the basis of accurate data and consistent system-wide costing principles” that “the rate that would be charged to a comparable customer without its own generation is not appropriate.”⁷ Absent such data, the rate for sales to QFs “shall be the rate that would be

² *Id.* at Applicability (page 2 of exhibit).

³ *Id.* at Back-Up Power Part I.B. (pages 4-5 of exhibit).

⁴ Ex. 2, Order, *Bankston, et al. v. Ala. Power Co.*, Docket Nos. 32767 & U-4226 (Ala. P.S.C. Oct. 16, 2020) [hereinafter RGB Rider Order]; Ex. 3, Ala. Power Co., Rate Rider RGB (Supplementary, Back-up, or Maintenance Power) (Revision Sixth) (effective Dec. 2020) [hereinafter 2020 Rate Rider RGB].

⁵ Joint Explanatory of the Committee of the Conference, P.L. 78-617, reprinted in *FERC Statutes and Regulations* ¶ 5151, at p. 5105-06; 45 Fed. Reg. 12,214, 12,228 (Feb. 25, 1980) (“FERC Order No. 69”).

⁶ *Id.*

⁷ *Id.*

charged to the class to which the qualifying facility would be assigned if it did not have its own generation.”⁸ Rates for sales to QFs shall be deemed non-discriminatory “to the extent that such rates apply to the utility’s other customers with similar load or other cost-related characteristics.”⁹

With inclusion of the charges for back-up service, Alabama Power’s rates for sales to QFs, including customers with distributed solar generation, violate these FERC regulations. The back-up service rates are unjust and unreasonable, discriminatory and not based on cost-of-service principles. As a result of the charges, residential solar QFs in Alabama Power’s service territory (as well as schools and small businesses that adopt solar) pay more than comparable customers without solar generation even though the solar QFs cost less to serve. The Alabama PSC’s adoption of the charges for back-up service therefore constitutes a failure to properly implement FERC’s electricity sales regulations, 18 C.F.R. § 292.305, within the meaning of 16 U.S.C. §§ 824a-3(f) and (h)(2)(B).¹⁰

Petitioners respectfully request that the Commission institute an enforcement action under Section 210(h) of PURPA¹¹ to compel the Alabama PSC to implement 18 C.F.R. § 292.305(a) by ordering Alabama Power to set non-discriminatory rates for sales to solar QFs. Petitioners understand that the Commission’s enforcement authority under Section 210(h) is discretionary and that, due to time and resource constraints, the Commission routinely has refrained from exercising that authority, instead leaving it to

⁸ *Id.*

⁹ 18 C.F.R. § 292.305(a)(2).

¹⁰ *ConocoPhillips Co. v. Dep’t. of Water & Power, City of Los Angeles*, No. CV-07-5742-ABC (JTLx), 2018 WL 11422174, at *2-4 (C.D. Cal. June 20, 2018) (finding that a challenge to discriminatory rates for sales to QFs is an implementation claim).

¹¹ 16 U.S.C. § 824a-3(h).

petitioners to bring their own judicial enforcement actions.¹² In this case, however, the Commission should depart from its usual practice. As shown below, the charges lack any cost-of-service basis and result in solar QFs paying significantly more than comparable non-generating customers for the same level of service. The charges are therefore unjust and discriminatory in violation of 18 C.F.R. § 292.305(a).

Moreover, the back-up charges appear to be the highest assessed by any investor-owned utility in the country, and they clearly frustrate PURPA's core objective of encouraging QF development. Over the last eight years, the charges have stymied development of residential and small commercial solar power in Alabama, a state otherwise rich in solar potential.

Accordingly, for the reasons set forth in this Petition, the Commission should exercise its enforcement authority to ensure full and proper implementation of PURPA's protections in Alabama Power's service territory, which covers two-thirds of Alabama. However, should the Commission nevertheless decline to pursue an enforcement action, Petitioners respectfully urge the Commission to make findings and declarations pertinent to the issues at stake. Specifically, Petitioners alternatively urge the Commission to find and declare that the Alabama PSC's Order approving Rate Rider RGB's charges for back-up service violate Sections 292.305(a), (b), and (c) of the Commission's PURPA regulations because:

(1) The charges are not based on a cost-of-service study of solar QFs or other accurate data showing that those customers cost more to serve than non-solar customers in the same class;

¹² See Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of the Public Utility Regulatory Policies Act of 1978, 23 FERC ¶ 61,304, 61,645 (1983).

(2) The charges are based on lost revenues resulting from reduced customer usage, which is not unique to solar adoption, making it *per se* discriminatory to single out QFs for differential treatment;

(3) The charges are not based on consistent systemwide costing principles because they apply a different pricing policy to solar customers, charging them more for the same level of service as non-solar customers;

(4) The charges are for a service that solar QFs did not request and result in overcharging them for supplementary service; and

(5) The charges rely on unreasonable and unsupported assumptions regarding the frequency of forced system outages of customer-sited solar equipment.

I. Description of Petitioners

James H. Bankston, Jr., M.D., is a residential customer of Alabama Power and the owner of a 1.86 kW rooftop solar photovoltaic (PV) system, which is a QF under 18 C.F.R. § 292.203(a). Section 292.203(d)(1) exempts this QF from certification filing requirements. Dr. Bankston interconnected his solar facility with Alabama Power's system in April 2016 and thereby became subject to the Rate Rider RGB's rates for back-up service. Dr. Bankston's principal place of business for his solar facility is 6408 Lake Vista Circle, Tuscaloosa, Alabama 35406.

Ralph B. Pfeiffer, Jr., M.D., is a residential customer of Alabama Power and the owner of a 3.36 kW rooftop solar PV system, which is a QF under 18 C.F.R. § 292.203(a). Section 292.203(d)(1) exempts this QF from certification filing requirements. Dr. Pfeiffer interconnected his solar facility with Alabama Power's system in April 2017 and thereby became subject to the Rate Rider RGB's rates for back-up service. Dr.

Pfeiffer's principal place of business for his solar facility is 3726 Dawes Road, Mobile, Alabama 36695.

Reverend Mark Johnston is a residential customer of Alabama Power and the owner of an approximately 6 kW ground-mounted solar PV system, which is a QF under 18 C.F.R. § 292.203(a). Section 292.203(d)(1) exempts this QF from certification filing requirements. Rev. Johnston interconnected his solar facility with Alabama Power's system in May 2017 and thereby became subject to the Rate Rider RGB's rates for back-up service. Rev. Johnston's principal place of business for his solar facility is 16266 Highway 195, Double Springs, Alabama 35553.

Teresa K. Thorne is a residential customer of Alabama Power and the owner of a 4 kW rooftop solar PV system, which is a QF under 18 C.F.R. § 292.203(a). Section 292.203(d)(1) exempts this QF from certification filing requirements. Ms. Thorne interconnected her solar facility with Alabama Power's system in September 2015 and thereby became subject to the Rate Rider RGB's rates for back-up service. Ms. Thorne's principal place of business for her solar facility is 193 Adamson Road, Springville, Alabama 35146.

GASP, Inc. ("GASP") is an Alabama § 501(c)(3) nonprofit organization headquartered in Birmingham, Alabama and an Alabama Power customer. GASP's business address is 2320 Highland Avenue South, Suite 270, Birmingham, Alabama 35205. GASP seeks to improve the environment, economy and public health of Alabama. GASP has over 1,400 members in Alabama, including members adversely affected by the charges that Alabama Power levies against on-site solar generating systems for back-up service. GASP advocates on behalf of its members, including Mark Johnston and Teresa

K. Thorne. GASP has associational standing to bring this petition and any subsequent litigation on behalf of its members.

II. Communications

Please address all notices and communications regarding this petition to the following persons who are also designated for service in this proceeding:

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Petitioners respectfully request waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3), to the extent necessary to permit designation of more than two persons for service on behalf of Petitioners in this proceeding.

III. Procedural and Factual Background

A. The Alabama PSC's adoption of the charges.

On December 20, 2012, Alabama Power filed with the Alabama PSC certain proposed revisions to its Rate Rider RGB.¹³ By its terms, Rate Rider RGB applies to all

¹³ Ex. 4, Letter from Nick C. Sellers, Ala. Power Co., to Walter Thomas, Secretary, Ala. Pub. Serv. Comm'n, Rate Rider RGB Supplementary, Back-up, or Maintenance Power (Docket No. U-4226) and

customers with non-emergency on-site generation interconnected and operating in parallel with the Company's electrical system. The rate rider includes the rates, terms and conditions for three services: Supplementary, Back-Up and Maintenance Power.¹⁴

A version of Rate Rider RGB has been on file with the Alabama PSC since early 1988. However, it was not until the changes proposed on December 20, 2012—the so-called “Revision Fifth”—that Alabama Power would begin assessing charges for back-up service against small customer generators taking service under the Company's standard residential tariff (Rate FD – “Family Dwelling”), alternative residential tariff (Rate RTA), standard school tariff (Rate SCH), and small commercial tariff (Rate LPS).¹⁵ Pursuant to Back-up Power Part I.B of the Revision Fifth, the Company would, for the first time, assess a “Capacity Reservation Charge” of \$5.00 per kW against these customers for back-up service.¹⁶ The charges would apply based on the size of the customer's self-generation equipment. For example, a customer with a 5 kilowatt (kW) solar array would now owe the Company \$25.00 per month for back-up service (\$300 per year), in addition to fixed and variable energy charges imposed by Alabama Power on that customer.

Of the covered customer classes, only the Rate RTA customer could avoid the Capacity Reservation Charge, but only by opting to pay a 70¢ per kilowatt-hour (kWh) charge (“Alternative Rate RTA Charge”) during the weekday hours of 3:00 to 5:00 p.m. of the summer season, June through September (summer peak hours).¹⁷ Rate RTA is a

Special Rules Governing the Application of Rate Rider RGB (Docket No. 18126) (Dec. 20, 2012) [hereinafter 2012 Proposed Revisions].

¹⁴ See *id.* at Rate Rider RGB Back-Up Power Part I.B (page 4 of exhibit).

¹⁵ These rate tariffs are attached as Exhibits 5 through 8.

¹⁶ See Ex. 4, 2012 Proposed Revisions at Rate Rider RGB Back-Up Power Part I.B (page 4 of exhibit).

¹⁷ *Id.* at Rate Rider RGB Back-Up Power Part I.B.2.a (pages 4-5 of exhibit).

time varying rate that includes a demand charge; the Alternative Rate RTA charge is more than three times the otherwise applicable rate.¹⁸

The cover letter accompanying the Company's December 20, 2012 filing made no reference to the proposed new charges. Instead, the filing described the revisions merely as "updates" that would "clarify the applicability of the rate rider, while expanding the number of rate options that are eligible to take service under the rider."¹⁹ In addition, the letter described the revisions as including "updated rate definitions and service options to reflect changes in technology and system costs."²⁰

The Alabama PSC approved the revisions just three weeks later.²¹ The Alabama PSC held no hearing and received no public testimony before approving the new charges, which its order made effective with May 2013 billings. Solar customers who had filed for interconnection prior to May 2013 were exempted from paying the new charges.²²

While the charges nominally apply to any form of non-emergency customer-sited generation, they were developed based upon solar production data and the expectation that customer solar adoption was beginning to take root in Alabama.²³ As a preemptive strike against that nascent trend, the charges have proved devastatingly effective. When the Alabama PSC adopted the new charges in May 2013, there were just 79 customer accounts subject to Rate Rider RGB (and these customers have been exempted from the new charges).²⁴ As of November 2019, there were only approximately 132 customers

¹⁸ Ex. 6, Rate RTA.

¹⁹ Ex. 4, 2012 Proposed Revisions at 1.

²⁰ *Id.*

²¹ Ex. 9, Order, Docket Nos. U-4226 & 18126 (Ala. P.S.C. Jan. 10, 2013); *see also* Ex. 1, 2013 Rate Rider RGB (submitting the updated rate sheet and special rules to the PSC following approval).

²² Ex. 9, Order at 1 ("These revisions will not impact service to existing RGB customers.").

²³ *See* Ex. 10, Hr'g Tr. 20:2-5, 16:7-17:3, *Bankston, et al. v. Ala. Power Co.*, Docket Nos. 32767 & U-4226 (Ala. P.S.C. Nov. 21, 2019).

²⁴ *Id.* 20:2-5.

subject to the charges, representing a total combined capacity of just over 650 kilowatts (compared to a total system capacity for Alabama Power of approximately 13,000 megawatts).²⁵ With scarcely any customer-sited solar in its service territory, Alabama Power has, with the Alabama PSC's blessing, erected a significant barrier to solar deployment. As a result, Alabama significantly lags other states in customer solar adoption.

B. Petitioners file Complaint at the Alabama PSC.

In April 2018, Petitioners filed a complaint with the Alabama PSC alleging that the charges assessed for back-up service were unfair, unreasonable, unjust, discriminatory, contrary to the public interest and otherwise unlawful.²⁶ Alabama Power responded by seeking to increase the Capacity Reservation Charge to \$5.42/kW (later lowered to \$5.41/kW due to an Alabama Power error) and the Alternative Rate RTA Energy Charge to 71¢/kWh.²⁷ The Company presented written direct testimony from its Regulatory Pricing Manager, Ms. Natalie Dean, who purported to justify the charges as necessary “to fully recover the fixed costs associated with providing Back-Up Power.”²⁸ Petitioners timely amended their complaint to include challenges to the proposed

²⁵ See *id.* 20:2-5, 20:18-21:4, 21:19-22:10.

²⁶ Ex. 11, Complaint, *Bankston, et al. v. Ala. Power Co.*, Docket No. 32767 (Ala. P.S.C. Apr. 26, 2018).

²⁷ Ex. 12, Letter from Scott Grover, Balch & Bingham, to Walter Thomas, Secretary, Ala. P.S.C., Docket No. U-4226 (Ala. P.S.C. June 15, 2018) [hereinafter Dean Testimony]. The Company's filing included the direct testimony of Natalie Dean, Alabama Power's Regulatory Pricing Manager. Alabama Power later filed errata and substitutes to Ms. Dean's direct and reply testimony and exhibits. Those later corrected versions are attached hereto as Exhibits 12 and 15, respectively, and the two errata filings that include replacement figures for the direct testimony are attached hereto as Exhibit 13.

²⁸ Ex. 12, Dean Testimony 10:6-15. By “fixed costs,” the Company meant “those related to the infrastructure needed to provide Firm Back-Up Power Service, including generation, transmission and distribution facilities that must be available to respond to the demands of customers with on-site generation” *Id.* 8:15-22.

increases in back-up service charges.²⁹ The parties thereafter engaged in limited discovery pursuant to a procedural ruling from the Alabama PSC.

C. Alabama Power’s attempt to justify the charges shows no basis in cost to serve.

Alabama Power’s filings and subsequent discovery provided detail regarding its development of the charges. The Company developed and compared two “representative” customer profiles—one with solar and one without.³⁰ Solar was the predominant form of self-generation used by Alabama Power customers, and the one the Company viewed as most likely to continue to be adopted by residential customers.³¹ The Company began by identifying current customers on the standard residential rate (Rate FD) who had installed solar.³² The Company looked to those customers’ usage *prior to* installing on-site generation, which yielded an indicative load profile for a representative Rate FD customer without solar.³³ The Company then used solar production data from the PVWATTS® tool to determine what this representative customer’s load profile would look like after adopting on-site solar generation.³⁴ The Company reduced the representative Rate FD customer’s load profile by the amount of solar production profile, thus yielding a representative solar customer. Finally, the Company assumed a 4.3 kW

²⁹ Ex. 14, First Am. Compl., *Bankston, et al. v. Ala. Power Co.*, Docket No. 32767 (Ala. P.S.C. July 6, 2018).

³⁰ Ex. 12, Dean Testimony 13:20-14:15, 15:7-11.

³¹ Ex. 10, Hr’g Tr. 20:2-5.

³² Ex. 12, Dean Testimony 14:20-15:22; Ex. 15, Dean Reply Testimony 10:21-11:1, *Bankston, et al. v. Ala. Power Co.*, Docket Nos. 32767 & U-4226 (Ala. P.S.C. Dec. 13, 2018).

³³ Ex. 15, Dean Reply Testimony 11:1-4.

³⁴ *Id.* 11:5-10. The PVWATTS® Calculator developed by the National Renewable Energy Laboratory (NREL) “[e]stimates the energy production and cost of energy of grid-connected photovoltaic (PV) energy systems throughout the world. It allows homeowners, small building owners, installers and manufacturers to easily develop estimates of the performance of potential PV installations.” *PVWatts Calculator*, Nat’l Renewable Energy Laboratory, <https://pvwatts.nrel.gov/> (last visited March 5, 2021).

solar installation size as representing the average residential solar installation in its service territory.³⁵

The Company did not evaluate the actual metered net usage of existing Rate FD customers with solar. Had the Company done so, it could have determined what demands those customers place on the system and when.³⁶ The Company could also have determined how solar QFs' net usage, as a sub-class, compared to the usage patterns for the residential class as a whole. Having not made that comparison, the Company conceded that it did not know whether the actual net usage of its solar customers is within the range for the Rate FD class as a whole or is higher or lower than the average.³⁷

Such a comparison is important because Rate FD is a volumetric energy rate—*i.e.*, its energy charge (in ¢/kWh) is designed to recoup both variable and fixed costs incurred by the Company in connection with the customer's usage.³⁸ As a class, residential customers exhibit fairly significant load diversity.³⁹ Rate FD is designed to recover the Company's fixed and variable costs with consideration of that load diversity.⁴⁰

But even without evaluating actual net usage patterns, the Company's analysis demonstrated unequivocally that solar customers *cost less to serve* than customers without solar. Specifically, the representative solar customer is 2.53¢/kWh less costly to serve from a variable energy cost standpoint, which Alabama Power determined is a total of \$136 per year based on the representative solar customer using 5,358 kWh less than a

³⁵ Ex. 12, Dean Testimony 18:6-13.

³⁶ Ex. 10, Hr'g Tr. 39:12-40:3.

³⁷ *Id.* 88:16-20.

³⁸ *Id.* 40:20-41:1.

³⁹ *Id.* 41:2-5.

⁴⁰ *Id.* 41:10-14.

non-solar customer.⁴¹ From a fixed cost standpoint, the representative solar customer is \$129/kW less costly to serve, or \$554.70 based on the representative solar customer's 4.3 kW-sized system.⁴²

Alabama Power argued the fixed cost savings were not real but would exist only if the solar customer never required back-up power.⁴³ But in a concession to PURPA requirements, the Company acknowledged that it could not base its rates for back-up service on the assumption that reductions in electric output by every on-site generator on its system would occur simultaneously, or during system peak, or both.⁴⁴ Therefore, for every 10 kW of on-site solar on its system, the Company did not need to hold 10 kW in reserve for back-up but could instead reserve "just" 6.5 kW, that is, a 35% credit. Thus, the Company gave solar QFs credit for just 35% of the \$129/kW in fixed cost savings shown by its original comparison of the representative solar and non-solar customer profiles.⁴⁵ The application of this 35% credit (or 65% decrement) had the effect of lowering the fixed cost savings attributable to the solar customer, but in the Company's analysis the solar customer remained less costly to serve than the non-solar customer.

In developing the 35% adjustment, the Company claimed it considered several factors, including customer diversification, the expected annual utilization of the on-site generator and its incremental capacity equivalent.⁴⁶ However, the Company did not rely on any numerical representation of these factors; the 35% credit instead reflected its "informed judgment."⁴⁷ The 35% credit amounts to an assumption that customer solar

⁴¹ Ex. 12, Dean Testimony at Revised Ex. ND-6.

⁴² *Id.* 16:19-23.

⁴³ *Id.* 17:3-5.

⁴⁴ *Id.* 17:5-11; *see* 18 C.F.R. § 292.305(c)(1); FERC Order No. 69, 45 Fed. Reg. at 12,229.

⁴⁵ Ex. 12, Dean Testimony 17:13-16, 19:1-2, Revised Ex. ND-6.

⁴⁶ *Id.* 17:13-16.

⁴⁷ Ex. 10, Hr'g Tr. 56:1-8.

systems simultaneously fail 65% of the time. At no point did Alabama Power produce data or analysis estimating the actual demand for backup power from customer generators.

Even after applying the 35% credit, the Company determined that the representative solar customer was \$330 less costly to serve⁴⁸ than the representative customer without solar.⁴⁹

D. Lacking a cost-of-service basis, Alabama Power relies on lost revenues.

Alabama Power's analysis should have stopped there, with the conclusion that no separate charges for back-up service could be justified on a cost-of-service basis. Instead, the Company turned its focus to lost revenues. The Company determined that the representative solar customer with a 4.3 kW array consumes 5,358 fewer kWh annually than the representative customer without solar.⁵⁰ This reduced consumption results in a revenue shortfall, which the Company misleadingly called a "cost recovery difference," of \$609.⁵¹ To this difference the Company credited the solar customer for the \$330 in cost *savings* (both variable and fixed).⁵² Accounting for those benefits yielded a hypothetical⁵³ annual net unrecovered balance \$279, which divided system size (4.3 kW) and 12 months produced the Capacity Reservation Charge of \$5.41 per kW.⁵⁴

⁴⁸ The \$330 in cost savings is the sum of the \$136 in variable energy savings determined by the Company and 35% of the fixed cost savings (35% of \$129/kW times 4.3 kW or \$194) – *i.e.*, \$136 + \$194 = \$330.

⁴⁹ Ex. 12, Dean Testimony 18:19-21, Revised Ex. ND-6; Ex. 13, Errata Filings.

⁵⁰ Ex. 10, Hr'g Tr. 73:15-19.

⁵¹ Ex. 12, Dean Testimony 18:15-17, Revised Ex. ND-6.

⁵² Ex. 10, Hr'g Tr. 74:3 – 75:23.

⁵³ *Id.* 76:5-17. It is important to recognize that the "lost revenues" used by Alabama Power as purported justification for the Capacity Reservation Charge are estimated only; are unrelated to any legal or regulatory obligation of customers to pay regardless of their level of usage; and are ultimately recovered only from customers who reduce their consumption through self-generation from on-site non-emergency generators, and not by other means.

⁵⁴ The Company developed its 71¢/kWh peak energy Alternative Rate RTA charge in a similar fashion, by assessing the difference in energy consumption (and hence cost recovery) between the solar and non-solar customer. The 71¢/kWh charge is what the Company determined was necessary to bring cost recovery

Having so determined the amount of the Capacity Reservation Charge using a “representative” Rate FD customer, Alabama Power then applied the same charge to three other rate schedules—Rate LPS (small commercial), Rate SCH (schools), and Rate RTA (residential time-varying).⁵⁵ As noted, of those three other rate classes, only the Rate RTA customer can avoid paying the charge, but only by agreeing to pay the 71¢/kWh peak energy Alternative Rate RTA charge during the summer peak hours.⁵⁶ Rate RTA customers are already on a time-varying rate with a demand charge; the Alternative Rate RTA assesses these customers an energy charge more than triple the otherwise applicable rate during the affected hours.⁵⁷

E. Alabama Power overcharges for supplementary service.

The evidence also revealed that Alabama Power makes no intelligible distinction between “supplementary” and “back-up” service, even though the Company charges differently for the two services. The contested charges are for back-up service. In contrast, for supplementary service under Rate Rider RGB, the customer pays the otherwise applicable rate, which under the Company’s analysis is the Rate FD volumetric energy charge.⁵⁸ Hence, the solar customer on Rate FD pays for supplementary service the same way a non-solar customer on the same rate pays for general service, by the kilowatt-hour. The Company acknowledged it would be inappropriate to assess the back-up service charges for supplementary service.⁵⁹ Yet the Company nevertheless views

from the solar customer on Rate RTA back in line with that reaped from the non-solar customer. *See* Ex. 12, Dean Testimony 20:3-21:2, Revised Ex. ND-7.

⁵⁵ Ex. 12, Dean Testimony 13:20-14:3; Ex. 3, 2020 Rate Rider RGB at Back-Up Power Part I.B. (page 4 of exhibit).

⁵⁶ Ex. 3, 2020 Rate Rider RGB at Back-Up Power Part I.B.2.a. (pages 4-5 of exhibit); Ex. 12, Dean Testimony 10:16-11:2.

⁵⁷ Ex. 6, Rate RTA.

⁵⁸ *See* Ex. 3, 2020 Rate Rider RGB at Supplementary Power (page 3 of exhibit).

⁵⁹ Ex. 10, Hr’g Tr. 64:10-13.

back-up power service as covering *all* reductions in on-site generation, including those expected deviations in output already reflected in the PVWATTS® tool used to develop the representative solar profile.⁶⁰ By assessing back-up charges for supplementary service, the Company overcharges Petitioners and other similarly situated customers.

F. Alabama PSC dismisses complaint and approves increases to charges.

On November 21, 2019, the Alabama PSC held a limited hearing in which the Company's sole witness was cross-examined and the opportunity was then provided to cross-examine Petitioners' sole witness. Following the hearing, the parties submitted proposed orders, and the Alabama PSC's Staff made its recommendation for action by the Commission. Staff recommended that the Alabama PSC grant Alabama Power's motion to dismiss Petitioners' complaint and approve the proposed increases to the charges for back-up service. On October 16, 2020, the Alabama PSC issued an Order giving effect to Staff's recommendation.⁶¹

IV. How the Charges Impact Solar Customers

The Alabama Solar QFs are all Rate FD customers, as are most Alabama Power customers. Thus, they are required by Rate Rider RGB to pay the Capacity Reservation Charge of \$5.41/kW applied to their system size. For example, a customer with a five kilowatt solar array must pay a monthly fee of \$27.05. Over the thirty-year life of a typical solar installation, the charges add up to a considerable amount. In the example just cited, the customer would pay Alabama Power \$324.60 per year, which translates to \$9,738 over thirty years. The charge thus significantly erodes the customer's expected savings while lengthening the payback period of their investment.

⁶⁰ Ex. 15, Dean Reply Testimony 17:3-5.

⁶¹ See generally Ex. 2, RGB Rider Order.

The Capacity Reservation Charge paid by the Alabama Solar QFs and others similarly situated applies on top of the other standard charges assessed under Rate FD. For example, Alabama Solar QFs pay the same base charge of \$14.50 per month as other Rate FD customers.⁶² In addition, for each kWh they consume from the grid as supplementary service, Alabama Solar QFs pay the same standard volumetric energy charge as non-solar customers—a charge that is designed to recoup the variable and fixed costs attributable to the Rate FD class.⁶³

V. Argument

PURPA and FERC’s implementing regulations prohibit utilities from charging discriminatory rates to QFs, including residences, schools, and small businesses with rooftop solar systems. Congress required FERC to adopt regulations necessary to encourage small power production, including regulations that ensure electric utilities sell energy to QFs at nondiscriminatory rates.⁶⁴ Congress deemed this protection necessary to prevent utilities from circumventing Congress’s goal to increase small power production by charging unjust and non-cost-based rates that discourage self-generation.⁶⁵

FERC’s implementing regulations satisfy Congress’s mandate by requiring that rates for electricity to QFs “[s]hall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility.”⁶⁶ The regulation then defines rates that are not discriminatory. Rates for QFs may differ only if they are “based on accurate data and consistent with systemwide costing principles” and do not differ from rates charged “to the utility’s other customers with similar load or

⁶² Ex. 10, Hr’g Tr. 18:14-16.

⁶³ Ex. 12, Dean Testimony 10:8-10.

⁶⁴ 16 U.S.C. § 824a-3(a)-(c).

⁶⁵ FERC Order No. 69, 45 Fed. Reg. at 12,228-29.

⁶⁶ 18 C.F.R. § 292.305(a)(1)(ii).

other cost-related characteristics.”⁶⁷ In FERC Order No. 69, the Commission explained that the purpose of that rule is to require rates based on “traditional ratemaking (*i.e.*, cost of service) concepts” such that “a customer should be charged at a rate applicable to a non-generating [customer of the same class type] unless the electric utility shows that a different rate is justified on the basis of sufficient load or other cost-related data.”⁶⁸ Thus, to develop separate rates for QFs, a utility must rely on systemwide costing principles to show that the rate “charged to a comparable customer without its own generation is not appropriate” and, thereafter, base any different rate for customer-generators “upon those data and principles.”⁶⁹ A rate that is not based on actual and accurate data showing a difference, or that applies a different pricing policy to QFs, is prohibited.

The Alabama PSC failed to implement 18 C.F.R. § 292.305 when it adopted the revisions to Rate Rider RGB that imposed new and increased charges for “back-up service” to QFs. QFs in the residential class, in the small general service class, and schools must pay large fixed charges that non-QFs in those same classes do not pay for common demand costs. Those charges violate 18 C.F.R. § 292.305(a) for three distinct reasons. First, they are not based on accurate data showing a difference in cost to serve customers who have adopted on-site solar. Second, the charges are based on lost revenues rather than on cost-of-service principles. Third, the charges apply a different pricing policy to QFs than non-QFs with similar load patterns for collecting demand costs common to the rate class from customers. The Rate Rider RGB charges therefore discriminate against QFs “in comparison to rates for sales to other customers served by

⁶⁷ *Id.* § 292.305(a)(2).

⁶⁸ 45 Fed. Reg. at 12,228.

⁶⁹ *Id.*

the electric utility” without any justification based upon “accurate data and consistent systemwide costing principles.”⁷⁰

The charges also violate 18 C.F.R. § 292.305(b) because they assess charges for back-up services that Alabama Solar QFs did not request. FERC’s regulations make clear that back-up service shall be provided “upon request of a qualifying facility,” but not as a matter of course, and certainly not without the QF’s consent. And because Alabama Power makes no meaningful distinction between back-up and supplementary service, the charges force solar customers to pay back-up service charges for what amounts to supplementary service—effectively double-charging them for the same service.

Finally, the charges violate 18 C.F.R. § 292.305(c) by relying upon unreasonable and unsupported assumptions regarding forced outages of customer-sited systems. The Company’s assumption that solar QFs would experience simultaneous forced outages 65% of the time has no basis in fact.

A. Violations of 18 C.F.R. § 292.305(a).

1. The Rate Rider RGB Back-up Power charges are not based on accurate data showing a difference between solar and non-solar customers.

In developing its charges for back-up service, Alabama Power did not perform a cost-of-service study specific to solar customers. The Company performed no cost-of-service study beyond the general study performed to allocate costs among all rate classes. For solar QFs, the Company performed only a “representative” cost-of-service study for the subset of the customer population it considered likely to interconnect on-site generation.⁷¹

⁷⁰18 C.F.R. § 292.305(a)(1)(ii) & (a)(2).

⁷¹ Ex. 12, Dean Testimony 13:20-21.

The Company selected the Rate FD class because that is the rate under which most of its solar customers take service (it is also the rate structure used by most of the Company's 1.2 million customers).⁷² The Company then evaluated the usage patterns of Rate FD customers with solar, but only their usage patterns *prior to* installing solar, not after.⁷³ The Company deemed this pre-solar usage profile indicative of a customer likely to adopt solar. This yielded the “representative” Rate FD customer *without* solar.⁷⁴ The Company did not evaluate the actual metered net usage of Rate FD customers after adopting solar. Instead, the Company simply assumed that the “representative solar customer” would—as a result of their system's expected production—annually consume 5,358 fewer kWh of utility-supplied electricity than the representative customer without solar.⁷⁵ As a result, the charges for back-up service have nothing to do with the actual usage patterns of solar customers, including their electricity demand during the peak hours that drive infrastructure costs. Without such data, the Company lacked any basis for comparing solar and non-solar customers' loads and costs and failed to demonstrate that different rates are appropriate for solar customers due to a difference in loads and costs between solar and non-solar customers.

Absent such data, the Company could not and did not assess the usage patterns of solar customers relative to the normal variation of usage for the Rate FD class as a whole. Without data showing that its solar customers have patterns of electric usage outside of the range of other customers, Alabama Power could not and did not show that solar customers have a categorically different cost of service justifying different rate treatment.

⁷² *Id.* 14:3-4, 15:7-11; Ex. 10, Hr'g Tr. 14:2-8.

⁷³ Ex. 15, Dean Reply Testimony 11:1-3.

⁷⁴ Ex. 12, Dean Testimony 14:21-15:6; Ex. 15, Dean Reply Testimony 11:1-5.

⁷⁵ Ex. 12, Dean Testimony at Revised Ex. ND-6.

In fact, the Company admitted it does not know whether the actual net usage of its solar customers is within the average for the Rate FD class as a whole or is higher or lower than the average.⁷⁶

Finally, the Company elected to base the Capacity Reservation Charge on the size of a customer's solar system despite the lack of any correlation between system size and the customer's usage of utility-supplied electricity during system peak. Thus, the charge does not vary with the level or pattern of the customer's usage, nor is it impacted by the extent to which the customer, by self-generating, may reduce demand during system peak hours.

Given these deficiencies, the Alabama PSC's approval of the Rate Rider RGB charges for back-up service constitutes a failure to implement 18 C.F.R. § 292.305(a).

2. *A back-up power rate calculated based upon lost revenues does not meet PURPA requirements for cost-of-service rates.*

Even if the Company's "representative customer" analysis could legitimately substitute for a cost-of-service study specific to solar customers, it failed to supply a cost-based justification for the charges. The Company's analysis instead demonstrated unequivocally that solar customers are *less costly* to serve than customers without solar. Specifically, the Company found that the representative solar customer is \$330 less costly to serve annually than the non-solar customer, a figure that includes both the variable and fixed cost *savings* attributable to solar adoption.⁷⁷

Lacking any cost-of-service basis, the Rate Rider RGB charges derive ultimately from projected lost revenues. The charges are based on the assumed under-collection of demand costs from customers with solar. The Company assumed that the "representative"

⁷⁶ Ex. 10, Hr'g Tr. 88:16-20.

⁷⁷ *Id.* 76:1-4; Ex. 12, Dean Testimony 18:19-21.

solar customer with a 4.3 kW array will buy 5,358 fewer kWhs annually—totaling \$609—than the customer without solar.⁷⁸ This reduced electricity consumption (and resulting revenue to the Company) was the true starting point for the Company’s development of the charge. To this sum—a “cost recovery difference” of \$609—Alabama Power credited the energy and demand *savings* attributable to solar generation (\$330) in order to reach an “annual net unrecovered balance” of \$279. That sum, when divided by system size (4.3 kW) and 12 months, produced a Capacity Reservation Charge of \$5.41 per kW.⁷⁹

Thus, the charges are based purely on cost recovery *decrease* the Company believes solar adoption will cause, not from any cost of service *increase* for providing back-up power during unscheduled outages of solar equipment. Indeed, the Company adopted the charges even though it has no information that solar customers were driving any specific infrastructure costs relating to interconnection and reliable operation of the grid.⁸⁰ The Company concedes it has not had to incur any additional capacity costs specifically as a result of the extremely limited solar penetration in its service territory.⁸¹

In promulgating its PURPA regulations, the Commission was clear that it “contemplates formulation of rates [for sales to QFs] on the basis of traditional ratemaking (*i.e.*, cost-of-service) concepts.”⁸² Lost revenues are not cost of service. For the residential class to which Rate FD is applicable, the Company designed electric rates

⁷⁸ Ex. 10, Hr’g Tr. 73:15-74:2; Ex. 12, Dean Testimony 18:15-19:1, Revised Ex. ND-6; Ex. 13, Errata Filings.

⁷⁹ See Ex. 12, Dean Testimony at Revised Ex. ND-6.

⁸⁰ Ex. 10, Hr’g Tr. 25:7-12.

⁸¹ *Id.* 25:16-19. A further indication that the charges have no legitimate cost-of-service basis is shown by Alabama Power’s willingness to grandfather all solar customers who had interconnected prior to May 2013, the effective date of the new charges. Were such customers truly imposing new costs on the system, Alabama Power would be seeking to recover those costs.

⁸² FERC Order No. 69, 45 Fed. Reg. at 12,228.

to collect the class's demand-related costs based on the amount of kWh each customer uses each month. Specifically, for the residential class, Alabama Power primarily collects demand-related costs through a ¢/kWh charge for each kilowatt-hour residential customers use.⁸³ Thus, residential customers pay for whatever demand-related costs they impose based only on how much electricity they use during the month. This approach comports with traditional rate making. Solar customers on Rate FD pay such costs through every kWh of "supplementary service" they consume—*i.e.*, the electric service they regularly require "in addition to" what their solar systems generate.⁸⁴

Under such a rate design, the Company has no entitlement to any particular level of usage (and resulting revenue) from any residential customer. Residential customers as a class exhibit load diversity, and while the Company bases its rates on projections of usage, that does not mean it must be made whole if and when its projections fail to materialize. Customers may lower their consumption of utility-supplied electricity in myriad ways, only one of which is to make a sizeable private investment in on-site solar. For instance, the Company conceded it could not bill a family for lost revenues from reduced usage when their children leave home for college; nor could the Company charge that customer for holding capacity in reserve for when the children return home in the summer and usage patterns resume to prior levels.⁸⁵

But the Company made exactly those sorts of illegitimate assumptions regarding solar customers by assuming an entitlement to more than 5,000 kWh of annual sales avoided by the "representative" customer's solar investment. For the Company to single out customer generators for special charges, when the "cost recovery difference" revealed

⁸³ See Ex. 12, Dean Testimony 10:6-10.

⁸⁴ See 18 C.F.R. § 292.101(8) (defining "supplementary power").

⁸⁵ Ex. 10, Hr'g Tr. 80:23-81:16.

by its analysis can result from a multitude of other circumstances, is to unjustly discriminate against solar customers. And the Company's reliance on lost revenues is especially problematic when its analysis otherwise demonstrated that solar customers are *less costly* to serve in terms of both variable and fixed costs. Because the evidence firmly established that the charges have their basis in lost revenues, and not in cost to serve, and because reduced customer usage is not unique to solar customers, the Alabama PSC-approved charges are unlawful and discriminatory under PURPA.

3. *The back-up power charges are discriminatory because they are not based on consistent systemwide costing principles as applied to other customers with similar load characteristics.*

Rate Rider RGB charges solar customers more for the same level of service as non-solar customers. The Rider's back-up charges collect class demand costs common to QFs and non-QFs differently, based on different pricing policies. A solar QF on Rate FD pays for class demand costs twice: once through the Capacity Reservation Charge under Rate Rider RGB, and again through every kWh purchased under Rate FD's volumetric energy rate, which applies to their "supplementary service" needs. Meanwhile, non-QFs under Rate FD pay for class demand costs based solely on their volumetric energy usage. Hence, while all residential customers on Rate FD—with or without solar—pay the same rate for each kWh of electricity from the utility,⁸⁶ and the same basic customer service charge,⁸⁷ only solar customers must pay an additional charge for "back-up service."

⁸⁶ Rate FD assesses a charge of 10.6618¢/kWh for the first 1000 kWh in the months of June through September and for the first 750 kWh in the remaining months of the year. For the summer months, the charge is 10.9147¢/kWh for all consumption over 1000 kWh; for the remaining months, the charge is 9.4618¢/kWh for all consumption over 750 kWh. Ex. 5, Rate FD.

⁸⁷ *Id.* Rate FD assesses a base charge of \$14.50 per month per customer.

To illustrate, a non-solar customer on Rate FD who purchases 500 kWh of electricity in a month pays \$53.31⁸⁸ in kWh charges and the \$14.50 base charge, for a total bill of approximately \$67.81.⁸⁹ In contrast, a solar customer with a 5 kW solar array who also purchases 500 kWh of electricity from Alabama Power pays the same \$53.31 in kWh charges, and the same \$14.50 base customer charge, and must also pay a \$27.05 monthly charge for back-up service, for a total bill of \$94.86, which is 40% higher for the same amount of electricity in the same month solely because the customer has solar generation.⁹⁰ The solar customer must pay that much more than an equivalent non-solar consumer despite the Company's own analysis showing the solar customer is less costly to serve. Further, the solar customer must pay the additional monthly charge even if the patterns of use for both customers are exactly the same.

Pursuant to 18 C.F.R. § 292.305, even if a different rate for QFs could be justified based on accurate data, it must still be based on the “consistent systemwide costing principles.” A charge may not single out QFs for different treatment if non-QFs in the same class have “similar load or other cost-related characteristics.”⁹¹ The Alabama PSC violated these requirements by approving the Company's different pricing policy for QFs.

B. Rate Rider RGB violates 18 C.F.R. § 292.305(b) by forcing back-up service on customers who did not request it.

None of the Alabama Solar QFs requested back-up power service from Alabama Power. Instead, they simply sought interconnection, at which point they became subject

⁸⁸ 500 kilowatt-hours multiplied by 10.6618¢/kWh = \$53.31.

⁸⁹ See Ex. 5, Rate FD.

⁹⁰ This analysis is simplified in that both customers in the example would be responsible for other charges, such as fuel costs and environmental compliance costs assessed under different riders. In addition, the solar customer may receive a nominal payment between \$0.0237 and \$0.035/kWh for any excess electricity that it sells to Alabama Power under Rate PAE. But the overall point remains: the customer with solar pays more for the same level of usage because of the Capacity Reservation Charge.

⁹¹ 18 C.F.R. § 292.305(a)(2).

to Rate Rider RGB and its monthly charge for “back-up” power service. For the times when their system does not generate electricity as anticipated (*e.g.*, at night), they expect and are charged for supplementary service at the consumption rate otherwise applicable to customers in their class.

The Commission’s PURPA regulations provide that back-up service is something to be provided upon request of the QF, not something foisted upon them as an additional cost of interconnecting their system.⁹² Unlike a cogeneration facility, a customer’s solar array is unlikely to experience forced outages necessitating a separate arrangement with the utility to hold equivalent capacity in reserve. In the rare event in which a customer’s solar array is unexpectedly inoperable, the customer resumes status as a full requirements customer, paying fully for the variable and fixed system costs occasioned by their usage through each kWh they consume from the grid.

To be sure, solar customers require supplementary power—defined as energy or capacity that a customer uses “in addition to” that which the customer generates on their own.⁹³ Alabama Power agrees that interconnected customers with solar are unlikely to be able to meet all of their needs through self-generation.⁹⁴ A customer’s solar installation will rarely produce up to its nameplate capacity, will produce less or not at all when it’s cloudy, and will not produce at night.⁹⁵ In those instances, the customer takes supplementary service from the Company at the full retail rate.⁹⁶ For the Rate FD

⁹² See 18 C.F.R. § 292.305(b)(1) (back-up power to be provided “[u]pon request of a qualifying facility”).

⁹³ Ex. 10, Hr’g Tr. 60:1-6.

⁹⁴ *Id.* 60:22-61:12.

⁹⁵ *Id.* 61:13-62:8.

⁹⁶ *Id.* 62:13-63:4.

customer that means paying a volumetric charge that is designed to cover both the variable and fixed costs associated with their usage.⁹⁷

Back-up power serves a different function. It is designed to replace what the customer would ordinarily generate during an unscheduled outage of the customer's facility.⁹⁸ Alabama Power has nevertheless made clear that it views back-up power service as covering *all* reductions in on-site generation, including "unscheduled" outages associated with the absence of sunlight.⁹⁹ But such a sweeping conception of back-up service would include expected deviations in system output, which are the province of supplementary service, and which the Company already accounted for through its use of the PVWATTS® tool to develop the "representative" solar customer profile.¹⁰⁰

Alabama Power acknowledges that it would be inappropriate to assess back-up service charges for supplementary service.¹⁰¹ But the Company's failure to make a clear analytical distinction between the two services means the Company is over-charging solar customers for supplementary service. Petitioners should not have to pay for a service they did not request (and rarely, if ever, need) when the effect is to over-charge them for a service they do need—supplementary service.

C. The Rate Rider RGB charges for back-up service violate 18 C.F.R. § 292.305(c) by relying on unsupported assumptions regarding forced outages.

The Commission's PURPA regulations contain a specific provision covering rates for sales of back-up and maintenance power. Section 292.305(c) provides that rates for back-up power service "shall not be based upon an assumption (unless supported by

⁹⁷ *Id.* 63:11-13.

⁹⁸ *See* 18 C.F.R. § 292.101(9) (defining "Back-up power").

⁹⁹ Ex. 15, Dean Reply Testimony 17:3-5.

¹⁰⁰ *See* Ex. 12, Dean Testimony 15:11-18.

¹⁰¹ Ex. 10, Hr'g Tr. 64:10-13.

factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both."¹⁰² In its discussion of this provision, the Commission noted that QFs exhibit diversity in size and load requirements. As a result, "an electric utility supplying back-up or maintenance power to qualifying facilities will not have to plan for reserve capacity to serve such facilities on the assumption that every facility will use power at the same moment."¹⁰³ The Commission believed that "probabilistic analyses of the demand of qualifying facilities will show that a utility will probably not need to reserve capacity on a one-to-one basis to meet back-up requirements."¹⁰⁴ The Commission also made clear that a utility seeking to refute that assumption must do so on the basis of "factual data," which need not necessarily be "empirical load data," but must nevertheless be data.¹⁰⁵

In supposed deference to this requirement, Alabama Power assumed that solar QFs across its service territory experience simultaneous forced outages 65% of the time.¹⁰⁶ As a result, solar customers would receive credit for only 35% of the demand savings otherwise attributable to solar deployment.¹⁰⁷ The effect of this assumption is that for every 10 kW of solar on the system, the Company asserts it must hold 6.5 kW in reserve to cover simultaneous forced outages of solar equipment. The Company provided no support for that assumption. The Company says it considered several factors, such as customer diversification and expected utilization of the customer's system, but admits it

¹⁰² 18 C.F.R. § 292.305(c).

¹⁰³ 45 Fed. Reg. at 12,229.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *See* Ex. 12, Dean Testimony 17:1-16.

¹⁰⁷ *Id.*

did not rely on any numerical representation of those factors.¹⁰⁸ Instead, the Company relied on its “informed judgment,”¹⁰⁹ which cannot substitute for the data-driven probabilistic analysis of demand required by Section 292.305(c) of the Commission’s PURPA regulations.¹¹⁰

To be clear, whether the Company’s 35% “diversity” credit has sufficient empirical support is an issue of secondary importance. Even accepting the Company’s assumption that customer solar systems experience simultaneous forced outages 65% of the time, the fact remains that solar customers produce capacity savings relative to non-solar customers within the same rate class. The Company admitted that for every 10 kW of customer-sited solar, 3.5 kW of system capacity becomes available for use by other customers.¹¹¹ In contrast, for a non-solar customer with a peak demand of 10 kW, the Company asserted that it must be prepared to meet that 10 kW of demand at any time, including during system peak.¹¹² Solar customers are less costly to serve because they allow the Company to hold less capacity in reserve to serve those customers’ needs. Because the Company’s own evidence shows that solar customers are less costly to serve than non-solar customers in the same class, there is no cost-of-service justification for charging them more than other customers. While a more reasonable assumption regarding simultaneous forced outages would result in a lower charge for back-up service, the

¹⁰⁸ *Id.* 17:13-16.

¹⁰⁹ Ex. 10, Hr’g Tr. 56:1-8.

¹¹⁰ The Company also pointed to a 2015 study of distributed solar performance data in Alabama by the Electric Power Research Institute (“EPRI”). Ex. 15, Dean Reply Testimony 18:11-18, Ex. ND Reply-7. But that study did not examine the phenomenon for which back-up service is required—*i.e.*, the frequency with which solar systems experience simultaneous forced outages. Alabama Power made no showing that weather-driven simultaneous reductions in solar output across geographically dispersed systems were not the same expected deviations in output already captured in solar performance projection tools like PVWATTS®. Thus, here again, the Company made no showing of a need for back-up as opposed to supplementary service.

¹¹¹ Ex. 10, Hr’g Tr. 30:8-13.

¹¹² Ex. 15, Dean Reply Testimony 9:17-10:2.

reality is that the Company has not shown that *any* separate charge for back-up service is justified.

Nevertheless, Petitioners urge the Commission to clarify that any attempt by Alabama Power to assess a back-up service charge against solar QFs must be grounded in real-world data regarding simultaneous forced outages of customer-sited solar systems. In addition, the utility should also be prepared to show that existing demand-cost recovery mechanisms—such as Rate FD’s volumetric energy charge—are insufficient to recover the demand costs imposed by those customers. Here, because the evidence unequivocally demonstrates that solar QFs are less costly to serve than their non-solar peers, the charges for back-up service are unlawful under PURPA. The Commission should therefore direct the Alabama PSC to reject the charges and properly implement PURPA’s rates for sales provisions.

VI. Requested Remedy

For the foregoing reasons, Petitioners respectfully urge the Commission to initiate an enforcement action against the Alabama PSC compelling it to properly implement the Commission’s PURPA regulations requiring the sale of electricity to solar QFs in Alabama at just, reasonable and non-discriminatory rates. The Commission should take such action because the charges for back-up service assessed by Alabama Power through its Rate Rider RGB are stifling and discouraging solar QF development contrary to PURPA.

Should the Commission elect not to pursue its own enforcement action, Petitioners alternatively request that the Commission enter the following findings and such additional findings as it believes would establish a legally sufficient predicate for

Petitioners to initiate an enforcement action and for a court summarily to hold that the Alabama PSC's approval of the Rate Rider RGB charges for back-up service violated the Section 292.305(a), (b), and (c) of the Commission's regulations. To this end, Petitioners request that the Commission find and declare that the Alabama PSC has violated PURPA and the Commission's regulations in approving the Rate Rider RGB charges for back-up service violate PURPA because:

(1) The charges are not based on a cost-of-service study of solar QFs or other accurate data showing that those customers cost more to serve than non-solar customers in the same class;

(2) The charges are based on lost revenues resulting from reduced customer usage, which is not unique to solar adoption, making it *per se* discriminatory to single out QFs for differential treatment;

(3) The charges are not based on consistent systemwide costing principles because they apply a different pricing policy to solar customers, charging them more for the same level of service than non-solar customers;

(4) Back-up service may not be unilaterally imposed upon a QF that does not request it, especially when such action results in overcharging them for supplemental service; and

(5) The charges rely on unreasonable and unsupported assumptions regarding the frequency of simultaneous forced system outages of customer-sited solar equipment.

VII. Conclusion

For the foregoing reasons, James H. Bankston, Jr., Ralph B. Pfeiffer, Jr., Mark Johnston, Teresa K. Thorne and GASP, Inc. respectfully request that the Commission

grant this petition and initiate an enforcement action against the Alabama PSC to remedy the PURPA violations discussed herein. In the alternative, Petitioners respectfully request that the Commission provide the findings requested in Section VI above.

Respectfully submitted,

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