



## STATE OF ALABAMA

ALABAMA PUBLIC SERVICE COMMISSION  
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MONTGOMERY, ALABAMA 36130-4260

TWINKLE ANDRESS CAVANAUGH, PRESIDENT  
JEREMY H. ODEN, COMMISSIONER, PLACE 1  
CHRIS V. BEEKER III, COMMISSIONER, PLACE 2

JOHN A. GARNER, EXECUTIVE DIRECTOR

### ALABAMA PUBLIC SERVICE COMMISSION,

Complainant

vs.

### ALABAMA POWER COMPANY,

Defendant

**COMPLAINT:** Alabama Public Service  
Commission vs. Alabama Power  
Company – Investigation of Rate ECR  
(Energy Cost Recovery).

**Docket No. 18148**

## ORDER

### INTRODUCTION/BACKGROUND

Pursuant to Rule 21 of the Rules of Practice of the Alabama Public Service Commission (the “Commission”), Energy Alabama filed a Petition for Reconsideration or Alternatively Rehearing (the “Petition”) of the Commission’s August 30, 2024 Order in this cause on September 30, 2024. The Commission’s August 30, 2024 Order dismissed Energy Alabama’s May 3, 2024 Petition to Intervene in Docket 18148 as captioned above.

In support of its Petition, Energy Alabama asserts that its intervention in Docket 18148 (also “the Rate ECR Docket”) is warranted pursuant to applicable law and the public interest. The chief argument Energy Alabama raises is that the Rate ECR Docket is a proceeding, as that term is used in §37-1-87, *Code of Alabama (1975)*, or a pending proceeding as that term is used in Rule 8 of the Commission’s Rules of Practice. Energy Alabama maintains that the numerous adjustments made to the Rate ECR Interim Factor since the last proceeding in Docket 18148 in 2008 is conclusive evidence that the docket is in continuance, and thus a pending proceeding.

Energy Alabama also observes that the service list in Docket 18148 remains active, that the Commission accepts modifications to it, and that Alabama Power Company (“Alabama Power” or the “Company”) regularly files reports in the Docket. Energy Alabama further states that the Commission cannot lawfully reduce the rights afforded intervening parties pursuant to §37-1-87, *Code of Alabama (1975)* through the inclusion of the word pending in its Rules of Practice.

Energy Alabama closes its petition by urging the Commission to reconsider its dismissal on the basis that the public interest supports intervention. Energy Alabama states that its participation in the docket, as a nonprofit membership-based organization advancing Alabama’s clean energy future, would play a critical role in ensuring transparency and accountability regarding Alabama Power’s energy cost recover under Rate ECR. By dismissing Energy Alabama’s intervention petition in what it sees as an active proceeding, Energy Alabama asserts that the Commission violates its due process rights.

On October 23, 2024, Alabama Power filed a Response to Energy Alabama’s Petition. In the Response, Alabama Power argues that the Commission’s prior actions in Docket Nos. U-5213 and U-4485<sup>1</sup> support the dismissal of Energy Alabama’s Petition to Intervene on the basis that no proceeding is pending in the Rate ECR docket. Alabama Power also claims that existing Alabama Supreme Court precedent acknowledged the authority of the Commission to interpret and apply its rules, including those applicable to intervention, and that the Commission was within its right to dismiss the intervention request under such precedent.<sup>2</sup> The Company also contends that various activities in the docket were consistent with undertakings in other dockets, and that such activities, including the issuance of consent orders, did not create a proceeding for which a right of intervention arose.

On October 30, 2024, Energy Alabama filed a Motion to Strike Response of Alabama Power Company as Untimely Filed (“Motion to Strike”). In its motion, Energy Alabama argues that Alabama Power did not file its response within 10 days of Energy Alabama submitting its Petition, as required by Rule 21 of the Commission’s Rules of Practice. Instead, the response was filed 23 days after the petition was filed. Energy Alabama also states that Alabama Power’s

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<sup>1</sup> *In re: Alabama Power Company (Rate CPE)*, Docket No. U-5213 (July 22, 2024); and *(In re: Alabama Power Company (Rate RE))*, Docket No. U-4485 (Sept. 22, 2003).

<sup>2</sup> See *Mobile County Gas District v. Mobile Gas Service Corp.*, 227 So.2d 565, 568-569 (Ala. 1969); and *Glen McClendon Trucking Co. v. Hall Motor Express, Inc.*, 229 So.2d 488, 491-493 (Ala. 1969).

Response did not rebut any of the fundamental reasons supporting Energy Alabama's request to intervene, as the response focused on the question of timeliness, and not the question of whether a proceeding is pending and thus available for intervention by Energy Alabama.

On October 31, 2024, Alabama Power filed a Response to Energy Alabama's Motion to Strike. Alabama Power contends that Rule 21 does not establish a firm 10-day deadline for responses or answers to petitions for reconsideration. The Company acknowledges, however, that the Commission could interpret its rule differently. Alabama Power nonetheless reiterates that the intervention request of Energy Alabama remains due for dismissal, as there was no pending proceeding in Rate ECR.

### **FINDINGS AND CONCLUSIONS**

Having considered the arguments of Energy Alabama, the Commission concludes that reconsideration or rehearing of its August 30, 2024 Order in this matter is not warranted. The Commission disagrees with Energy Alabama's view that the identified activities in Docket No. 18148, Rate ECR, establish a proceeding as that term is used in §37-1-87, of *Code of Alabama (1975)* and Rule 8 of the Commission's Rules of Practice. The Commission has broad authority to administer the affairs of the regulated entities under its jurisdiction, and it does so in accordance with the requirements of Title 37, *Code of Alabama (1975)*. Consistent with the exercise of that authority, the Commission is not prepared to find that the routine status reports and intermittent consent orders issued in Docket No. 18114 since the conclusion of the last proceeding in that cause in 2008 are equivalent to the commencement, reactivation or continuation of a proceeding that is pending per the Commission's rules. Accordingly, the Commission concludes there was no pending proceeding in Docket No. 18148, Rate ECR, when Energy Alabama submitted its petition to intervene. As set forth in the Commission's Aug. 30, 2024 Order in this cause, Energy Alabama's petition to intervene was untimely and dismissal was appropriate and consistent with the rights that Energy Alabama has under the law.

In reaching this conclusion, the Commission declines to strike the Response of Alabama Power. Customary practice would have dictated that the Company's Response include, at a minimum, a motion for leave to file out-of-time. However, given the prevailing circumstances, including the timeframe for a Commission decision on Energy Alabama's Petition for Reconsideration or Alternatively Rehearing, the Commission does not see any obvious prejudice

to Energy Alabama through consideration of that filing. The Company's Response only presented legal arguments and authorities, and did not seek to introduce new, non-cumulative evidence.

IT IS SO ORDERED BY THE COMMISSION.

IT IS FURTHER ORDERED, that jurisdiction in this cause is hereby retained for the issuance of any Order or Orders that may appear just and reasonable in the premises,

IT IS FURTHER ORDERED, that this Order shall be effective as of the date hereof,

DONE at Montgomery, Alabama, this 21<sup>st</sup> day of November, 2024.

ALABAMA PUBLIC SERVICE COMMISSION



Twinkle Andress Cavanaugh, President

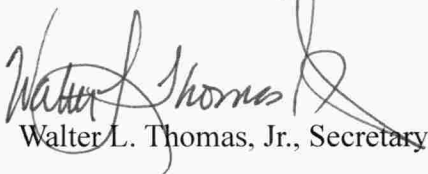


Jeremy H. Oden, Commissioner



Chris V. Beeker, III, Commissioner

ATTEST: A True Copy



Walter L. Thomas, Jr., Secretary