



**STATE OF ALABAMA**  
PUBLIC SERVICE COMMISSION  
P.O. BOX 304260  
MONTGOMERY, ALABAMA 36130

TWINKLE ANDRESS CAVANAUGH, PRESIDENT

JOHN A. GARNER, EXECUTIVE DIRECTOR

JEREMY H. ODEN, ASSOCIATE COMMISSIONER

CHRIS "CHIP" BEEKER, JR., ASSOCIATE COMMISSIONER

**Alabama Power Company,**  
Petitioner

**Petition:** For evaluation and approval  
of the LaFayette Solar Project.

**Informal Docket No. 32382**

**ORDER**

**BY THE COMMISSION:**

**I. INTRODUCTION**

On May 6, 2016, Alabama Power Company ("Alabama Power" or "the Company") proposed the LaFayette Solar Project ("Project") for evaluation and approval pursuant to the requirements of the certificate of convenience and necessity previously granted by Commission order dated September 16, 2015 ("Certificate"). See Docket No. 32382. As discussed below, this Project involves an energy purchase agreement (a form of Power Purchase Agreement, or "PPA") whereby Alabama Power would receive the output from a new solar photovoltaic electric generating facility to be built in Chambers County, Alabama, and also a Contract for Renewable Participation Program ("Participation Contract") between Alabama Power and Wal-Mart Stores East, LP ("Wal-Mart"). The Project is expected to yield positive economic benefits to all customers through avoided energy and capacity savings, along with customer-specific contributions under the Participation Contract. In its submittal to the Commission Staff,

Alabama Power supplied detailed information regarding the Project to facilitate the evaluation of its merit and its eligibility under the Certificate. The Company also provided the same information to the Office of the Attorney General on May 6, 2016. Upon completion of its review and evaluation, the Commission Staff reports that the Project satisfies the governing requirements of the Certificate previously authorized in this docket. Accordingly, the LaFayette Solar Project is hereby approved.

## **II. BACKGROUND**

On June 25, 2015, Alabama Power filed a Petition with the Alabama Public Service Commission (“the Commission”), pursuant to *Alabama Code § 37-4-28*, seeking a certificate of convenience and necessity for the construction or acquisition of renewable energy and environmentally specialized generating resources and the acquisition of rights and the assumption of payment obligations under power purchase arrangements pertaining to renewable energy and environmentally specialized generating resources, together with all transmission facilities, fuel supply and transportation arrangements, appliances, appurtenances, equipment, acquisition and commitments necessary for or incident thereto. In accordance with statutory requirements, a public hearing (“hearing”) was held on August 12, 2015, concerning the Company's Petition. Participants in the hearing included representatives of the Commission Staff, the Attorney General's office and Alabama Power Company, as well as Alabama Industrial Energy Consumers (AIEC), Southern Environmental Law Center (SELC) on behalf of Alabama Environmental Council (AEC), Gulf States Renewable Energy Industries Association (GSREIA), JobKeeper Alliance and Southern Alliance for Clean Energy (SACE). The only witness in the proceeding was sponsored by Alabama Power.

The Attorney General's office, as well as all other parties, participated in the hearing. Each party cross-examined the witness sponsored by Alabama Power and posed a variety of questions concerning the Company's petition. Following the hearing, SELC and GSREIA filed post-hearing briefs for the Commission's consideration, to which Alabama Power filed a response. Neither of the parties articulated express opposition to the petition and both were generally supportive of it.

The record compiled during the course of the hearing reflected that the Certificate sought by Alabama Power would authorize the Company, subject to specific qualifying criteria, to secure up to five hundred (500) MW of renewable or environmentally specialized generating capacity, whether through the construction, acquisition, or the entry into a power purchase arrangement relating to such facilities, or a combination thereof, with no single project to exceed 80 MW (alternating current, or "AC"). Each project would be expected to result in a positive economic benefit for all customers, taking into account the expected cost of the project as compared to Alabama Power's projected avoided cost, plus the other positive benefits that may accrue to customers through load growth, load retention, environmental compliance and/or customer specific contributions. To the extent the Company does not secure resources up to the authorized 500 MW amount within a period of six (6) years from the date the Certificate was granted, the unused authority will expire and the Company will be required to petition the Commission for a certificate of authority for additional resources.

The testimony of record further reflected that customer interest in renewable energy, coming from both the governmental and private sectors, was the primary driver behind the authority requested by Alabama Power. In particular, the record demonstrated that the Company's federal government customers such as the military are under mandates to shift a

certain level of their energy consumption to renewable energy. Similarly, many large companies have renewable mandates or goals, with some seeking to be 100 percent renewable. In addition to addressing the renewable energy needs of such governmental and private sector customers, the record demonstrated that renewable energy projects subsequently approved under the requested authority may provide a secondary benefit in the form of environmental compliance solutions. Furthermore, the record showed that the Certificate would greatly enhance the ability of Alabama Power to react quickly and efficiently to changing federal policies, customer needs and evolving market conditions.

After full consideration of the record compiled in the hearing and all other relevant information, the Commission adopted the Staff's recommendation of approval with modifications. The Commission issued an order on September 16, 2015, authorizing Alabama Power to secure up to five hundred (500) MW of renewable or environmentally specialized generating capacity, within a period of six (6) years from the date of the Certificate, subject to the terms and conditions set forth below:

1. In order to qualify for inclusion under the Certificate granted herein, each individual project must:
  - a. Be renewable or environmentally specialized generating capacity,
  - b. Be no greater than eighty (80) MW (AC) in size, and
  - c. Be expected to result in a positive economic benefit for all customers over the term of the project, taking into account the expected cost of the project as compared to Alabama Power's projected avoided cost, plus other positive benefits that may accrue to customers through load growth, load retention, environmental compliance and/or customer specific contributions.
2. Projects totaling no more than 160 MW can be submitted and approved under the 500 MW authority in any given calendar year. Alabama Power may, however, seek an exception to this limitation by way of a written request to the Commission. Such request would be deemed approved unless the Commission

notifies the Company, no later than forty-five (45) days following the Company's submission of its written request, that such request is disapproved.

3. To the extent the Company does not secure resources up to the authorized 500 MW amount within a period of six (6) years from the date of the Certificate, the unused authority expires and the Company must petition the Commission for a certificate of authority for additional resources.
4. Alabama Power must issue a generic request for proposal on a biennial basis, beginning in 2016, for projects submitted under the Certificate. Such request for proposal must be conducted in a manner consistent with the guidelines set forth in Appendix 1 to the Commission's September 16, 2015 order in this proceeding. It is not necessary, however, for every project submitted to arise from an RFP. Market information and project opportunities can be identified through other means, such as unsolicited offers. Such flexibility will preserve the Company's ability to act on available market information coming to it from sources other than an RFP.
5. With each project submitted for approval, Alabama Power must provide project details, supporting analysis and other information concurrently to the Commission Staff and the Office of the Attorney General, as a representative of the using and consuming public under *Alabama Code § 37-1-16*. Such submissions must comply with the Minimum Informational Requirements set forth in Appendix 2 to the Commission's order entered in this cause on September 16, 2015. All such information must be submitted not less than thirty (30) days prior to the Commission meeting at which the specific project(s) will be considered.
6. Each project submitted for approval shall be approved or disapproved by a majority vote of the Commission at a public meeting.
7. In accordance with the requirements of *Alabama Code § 37-4-29*, Alabama Power will be required to exercise the authority conferred for each project approved under the 500 MW block Certificate within one year from the date the project in question is approved; otherwise, the authority granted will become null and void. This requirement will be satisfied for the full authority granted for each approved project upon the taking of initial action by the Company under the authority granted and provided that such initial action is within one year of the grant of the authority for each project. The circumstances involving the construction or acquisition of a new renewable environmentally specialized resource, initial action would include activities commensurate with the commencement of construction of a road, line, system or works for the company, or action otherwise consistent with *Section 37-4-29* and previous direction by the Commission. In situations involving a PPA, initial action likewise would include activities indicative of an exercise of the certificate of authority (*e.g.*, actual performance under the PPA or the commencement of interconnection efforts related to the resource(s) specified in the PPA).

8. Each project submitted and approved under the Certificate shall be authorized for the specified term of each project. Given the unique nature of this authority and the specified approval criteria for the projects submitted thereunder, the Commission requires that any request to extend a specific project beyond its original term shall be subject to the approval process set forth in this docket.

### **III. DISCUSSION**

The Project encompasses a 72 megawatt (AC) solar photovoltaic electric generating facility to be built in Chambers County, Alabama. The Company will receive the full energy output from the facility, along with all associated environmental attributes, under a 28-year PPA with AL Solar A, LLC (“seller”). As provided in the PPA, the facility will be constructed, owned, operated and maintained by the seller. Consistent with the authority granted in Docket No. U-5177, the seller is also responsible for all facilities up to the point of interconnection, with Alabama Power being responsible for the interconnection facilities and beyond. The Project is expected to commence commercial operation on or before December 31, 2017.

The primary impetus for the PPA is interest by one of Alabama Power’s customers in renewable energy options and a willingness by that customer to contribute towards the procurement of that renewable energy. In this regard, and as part of its proposal, the Company is also presenting for approval a 15-year Participation Contract between Alabama Power and Wal-Mart. Under the Participation Contract, Wal-Mart will contribute financial support that will further enhance the PPA’s expected yield of positive economic benefits to all of Alabama Power’s customers. In exchange for the contribution, Alabama Power will retire, on Wal-Mart’s behalf, renewable energy certificates corresponding to Walmart’s subscription percentage of the total output of the Project. The Participation Contract includes an option to renew upon written agreement between Alabama Power and Wal-Mart.

The Company has explained to the Commission's Staff that the proposed Participation Contract represents a form of agreement that, if approved by the Commission, it intends to use with other customers that might be interested in subscribing to some or all of the remainder of the output of the LaFayette Solar Project. In the event one or more additional subscribers are obtained, the Participation Contract provides for an adjustment to the contribution levels of existing subscribers (here Wal-Mart) to reflect the additional participating customer(s). These adjustments are designed to be revenue neutral, such that the overall level of net customer contributions for the Project will remain essentially the same.

As stated at the outset, Alabama Power has provided, along with its transmittal letter, detailed information relating to the LaFayette Solar Project. All components of the minimum informational requirements established as part of the Commission's grant of the Certificate were enclosed, including the Project's economics, interconnection costs, information related to underlying forecasts (*e.g.*, fuel, emissions, hydroelectric generation and load), and the PPA and the Participation Contract.

The Staff has engaged with Alabama Power to discuss the data supplied in connection with the Project. The Staff has issued numerous data requests and reviewed the Company's response to each. The Staff has also conducted independent research to corroborate and verify data supplied by Alabama Power in support of the Project.<sup>1</sup> In general, the Staff's evaluation focused on three primary areas: 1) the terms and conditions of the PPA (*e.g.*, energy payments, risk allocation and seller performance guarantees); 2) Alabama Power's projected avoided costs,

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<sup>1</sup> Alabama Power's proposal for the Project is based on numerous variables, which the Staff has evaluated within the context of reasonableness. As part of its review, the Staff has evaluated many of the data inputs within selected ranges to determine how the projected outcome of the Project would be impacted based on reasonable changes in one or more inputs. Specifically, the Staff has evaluated several scenarios with differing views of important variables, including natural gas prices and carbon prices.

particularly its underlying natural gas and coal price forecasts and the future impact of current and pending environmental regulations on such forecasts; and 3) the direct net benefits derived under the Participation Contract.

After full consideration of the information included with Alabama Power's submittal of May 6, 2016, together with its independent analysis and other information obtained from various sources, the Staff is satisfied that the Project meets the criteria as specified in the Certificate, specifically, that the Project is a renewable energy generating resource, is less than 80 MW in size, and is reasonably expected to result in positive benefits to customers over its term. Accordingly, the Staff recommends that the Project be approved. As to the Participation Contract between the Company and Wal-Mart, the Staff further recommends that, should the Company and Wal-Mart agree to extend the initial 15-year term, the Company be required to submit a written request to the Commission seeking approval for such extension. The request would be deemed approved unless the Commission notifies the Company, no later than forty-five (45) days following the Company's submission of its written request, that such request is disapproved. The Staff also recommends that, in the event the Company is able to obtain additional customer subscriptions for the Project, the Company be required to provide written notice to the Staff of such new Participation Contracts and the specific details of each, as deemed appropriate by the Staff. Separate approval of additional subscriptions would not be required so long as Alabama Power can demonstrate to the Staff that the new customer agreements do not deviate in any material respect from the form of the Participation Contract that the Staff is recommending for approval here.



#### **IV. FINDINGS AND CONCLUSIONS**

After full consideration of the information included with Alabama Power's submittal of May 6, 2016, together with the Commission Staff's independent analysis and other information obtained from various sources, the Commission **FINDS** that the Project satisfies the governing requirements of the Certificate, is in the public interest, and should be approved, subject to the additional findings set forth below.

The Commission **FURTHER FINDS** that, should the Company and Wal-Mart agree to extend the initial 15-year term, the Company is required to submit a written request to the Commission seeking approval for such extension. The request will be deemed approved unless the Commission notifies the Company, no later than forty-five (45) days following the Company's submission of its written request, that the request is disapproved.

The Commission **FURTHER FINDS** that, in the event the Company is able to obtain additional customer subscriptions for the Project, the Company is required to provide written notice to the Staff of such new Participation Contracts and the specific details of each form of Participation Contract, as deemed appropriate by the Staff. Separate approval of additional subscriptions is not required so long as Alabama Power can demonstrate to the Staff that such new customer agreements do not deviate in any material respect from the form of the Participation Contract that the Staff is recommending for approval here.

**IT IS, THEREFORE, ORDERED BY THE COMMISSION** that the LaFayette Solar Project, comprising the PPA with AL Solar A, LLC and the Participation Contract with Wal-Mart, is hereby approved pursuant to the Certificate previously authorized in this docket, as discussed in the body of this Order and, subject to all the aforementioned findings.

**IT IS FURTHER ORDERED BY THE COMMISSION** that jurisdiction in this cause is, hereby, retained for any further order or orders that this Commission may find just and reasonable under the circumstances.

**IT IS FURTHER ORDERED BY THE COMMISSION** that this Order shall be effective as of the date hereof.

**DONE** at Montgomery, Alabama, this 9th day of, June, 2016.

ALABAMA PUBLIC SERVICE COMMISSION



Twinkle Andress Cavanaugh, President



Jeremy H. Oden, Commissioner



Chris "Chip" Beeker, Jr., Commissioner

ATTEST: A True Copy



Walter L. Thomas, Jr., Secretary