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SECRETARY

**CONSIDERATION OF SECTIONS 1251 AND
1254 OF THE ENERGY POLICY ACT OF 2005**

DOCKET 30066

ORDER

BY THE COMMISSION:

On August 8, 2005, the United States Congress enacted the Energy Policy Act of 2005, P.L. 109-58, 119 Stat 594 ("EPACT 2005"), to develop, among other things, new federal standards under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). The standards set forth in §1251 of EPACT 2005 would, if adopted, require: (1) each electric utility to make available, upon request, net metering service to any electric consumer that the utility serves; (2) each electric utility to develop a plan to minimize dependence on one fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies; and (3) each electric utility to develop and implement a ten year plan to increase the efficiency of its fossil fuel generation. The standard set forth in §1254 of EPACT 2005 would, if adopted, require utilities to make available, upon request, interconnection service to any customer that the utility serves.

Section 1251 (b) of the EPACT 2005 requires each state regulatory authority to consider whether or not those standards would be appropriate for implementation. However, a state regulatory authority is not required to consider and determine whether or not such standard is appropriate to be implemented if, prior to the August 8, 2005 enactment of EPACT 2005: (1) the state implemented the standard or a comparable one; (2) the state regulatory authority conducted a proceeding to consider implementation of the standard or a comparable one; or (3) the state legislature voted on the implementation of the standard or a comparable one.

By Order dated September 15, 2006, the Commission established this Docket and directed staff to make a review of prior Commission action and prior action of the state legislature and to make a recommendation whether prior state action negates the requirement that the Commission consider the standards set forth in §1251 of EPACT 2005.

The new PURPA §111(d) (11) set forth in EPACT 2005 §1251 requires each electric utility to make available upon request net metering service to any electric consumer that the electric utility serves. The statute defines “net metering service” as service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and distributed to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

Staff has determined that the Commission has approved Rate PAE (Purchase of Alternate Energy) for Alabama Power Company (“Alabama Power”) which allows certain qualifying customers (those with a capacity of 100kw or less and which are qualifying facilities (QFs) under FERC requirements) to sell the output of their facility to Alabama Power using bi-directional metering. Staff has reviewed Rule PAE and has determined that the bi-directional metering and different rates for sale of electric energy to Alabama Power and for purchase of electric energy from Alabama Power do not meet the definition of net metering in PURPA §111(d)(11). Staff is uncertain whether the requirement in Rule PAE that the facility be a “Qualifying Facility” is consistent with PURPA §111(d)(11)’s requirement that net metering service be made available to “any electric consumer that the utility serves”. Staff notes that PURPA §111(d) (11) references an “eligible on-site generating facility” but does not define this term. Staff has recommended that the Commission accept public comments on whether the standard set forth in PURPA §111(d)(11) should be adopted by the Commission.

The new PURPA §111(d)(12) set forth in EPACT 2005 §1251 requires each electric utility to develop a plan for minimizing dependence on one fuel source and ensuring that the

electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies. Staff has determined that, while the Commission has not formally adopted such a standard, Alabama Power's Integrated Resource Planning ("IRP") program has in the past led to a diverse mix of generation resources. Staff has recommended that the Commission seek public comments on whether the standard set forth in PURPA §111(d) (12) should be adopted by the Commission.

The new PURPA §111(d) (13) set forth in EPACT 2005 §1251 requires each electric utility to develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation. Staff has determined that, as in the standard above on fuel source diversity, Alabama Power's IRP program considers the costs and benefits of efficiency upgrades to its fossil generation facilities. As above, while the Commission has not adopted a formal standard, it has noted its ongoing knowledge of and involvement in Alabama Power's IRP process. Staff has recommended that the Commission seek public comments on whether the standard set forth in PURPA §111(d) (13) should be adopted by the Commission.

Section 1254 of EPACT 2005 requires each electric utility to make available, upon request, interconnection service to any electric consumer that the electric utility serves. For the purposes of this provision, the term "interconnection service" means service to an electric consumer under which an on-site generating facility on the consumer's premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services that are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.

Section 1254 (b) of EPACT 2005 requires each state regulatory authority to consider whether or not the interconnection standard would be appropriate for implementation. However, a state regulatory authority is not required to consider and determine whether or not such standard is appropriate to be implemented if, prior to the August 8, 2005, enactment of the statute: (1) the state implemented the standard or a comparable one; (2) the state regulatory authority conducted a proceeding to consider implementation of the standard or a comparable one; or (3) the state legislature voted on the implementation of the standard or a comparable one.

By order dated August 6, 2006, the Commission established Docket 30068 and directed that staff make a review of prior Commission action and prior action of the State Legislature and recommend whether prior state action negates the requirement that the Commission consider the standard in EPACT 2005 §1254. The Commission further directed that staff recommend a schedule of proceedings on this matter in the event that they determined that no prior state action had been taken.

At the May 2007 Commission meeting, staff recommended that the Commission not adopt the standard set for in §1254 of EPACT 2005 at this time, but consider this standard in conjunction with its consideration of the standards in §1251 of EPACT 2005 as part of the proceedings in Docket 30066. By Order dated May 24, 2007, this proposed course of action was submitted for public comment for a period of thirty (30) days.

On June 25, 2007, a Petition to Intervene and comments were filed by Alabama Power. Alabama Power stated that the staff's proposal that the Commission should decline to adopt the interconnection standard at this time and consider this standard in conjunction with the net metering standard is a reasonable approach for dealing with the issues reflected in the interconnection standard. Alabama Power further stated that there is a practical relationship between many of the issues associated with the interconnection standard and the net metering standard. By considering the interconnection standard in conjunction with the net metering

standard in Docket 30066, Alabama Power agreed that the Commission can efficiently evaluate and address these interrelated issues. However, Alabama Power suggested that the Commission should reserve the right to conclude in its subsequent review of these standards that no further action is required because it has already addressed the provisions of the interconnection standard through its prior actions such that it qualifies for the EPACT 2005 statutory exemptions.

By Order entered in Docket 30068 of July 16, 2007, the Commission adopted the recommendation of the staff to not adopt the standard in §1254 at that time and to transfer the matter to this Docket for consideration with the standards in §1251.

Staff has reviewed prior Commission action and determined that the Commission has approved various provisions under which Alabama Power offers interconnection service to customers with on-site generation. All of Alabama Power's interconnection services appear to be compliant with the IEEE Standard 1547. Further review of Rate PAE, the primary rate under which residential and other consumers with small generating facilities would interconnect with Alabama Power, indicates that its provisions are not consistent with interconnection guidelines adopted by the National Association of Regulatory Utility Commissioners ("NARUC") or with "Distributed Energy Interconnection Procedures Best Practices for Consideration" published by the United States Department of Energy ("DOE"). In particular, Rate PAE Special Rule 14 states:

Prior to the start of any interconnection work, the customer shall furnish evidence to the Company of liability insurance protecting the Company, its officers, employees, agents and representatives from any liability resulting from any injuries or damages caused by the operation of any of the customer's equipment or by the customer's failure to maintain his equipment in satisfactory and safe operating condition. The policy providing such liability insurance shall provide coverage of not less than One Million Dollars (\$1,000,000) for each accident. The insurance policy shall be placed with an insurance company whose financial condition and policy forms are acceptable under the standards of the Insurance Code and the Insurance Department of the State of Alabama, and shall be endorsed to cover all liabilities resulting from any injuries or damages caused by the operation of any of the customers' equipment or by failure to maintain his equipment in satisfactory and safe operating condition.

In addition, the above-required policy shall be endorsed with a provision whereby the insurance company will notify the Company thirty (30) days prior to the effective date of cancellation or material change in the policy.

The customer may furnish to the Company equivalent security acceptable to the Company in lieu of insurance.

The DOE Best Practices document includes as a best practice: "Set liability insurance requirements commensurate with levels typically carried by the respective customer class." Staff has found no evidence that the insurance requirement in Rate PAE is typical for residential customers of Alabama Power.

The NARUC "Model Interconnection Procedures and Agreement for Small Distributed Generation Resources" contains in Paragraph 7 of its Model Agreement:

The Interconnection Customer is not required to provide general liability insurance coverage as part of this Agreement, or any other Interconnection Provider requirement. Due to the risk of incurring damages, the State regulatory commission may recommend that every Interconnection Customer protect itself with insurance or other suitable financial instrument sufficient to meet its construction, operating and liability responsibilities pursuant to this Agreement. At no time shall the Interconnection Provider require that the Interconnection Customer negotiate any policy or renewal of any policy covering any liability through a particular insurance Interconnection Provider, agent, solicitor, or broker.

Staff is of the opinion that the Special Rule 14 of Rate PAE is not consistent with the NARUC Model Interconnection Procedures. It is the conclusion of staff that the Commission has not taken prior action with regard to the standard set forth in §1254 of EPACT 2005 and that the Commission should accept public comments on the proposed standard in §1254.

The Commission hereby adopts the findings and recommendations of staff.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission will accept public comments on whether it should adopt the standards set forth in §1251 and §1254 of EPACT 2005.

IT IS FURTHER ORDERED BY THE COMMISSION, That comments shall be filed with the Secretary of the Commission under this Docket 30066 no later than December 14, 2007, and that reply comments shall be so filed no later than January 15, 2008.

IT IS FURTHER ORDERED BY THE COMMISSION, That staff shall make recommendations as to any further proceedings by March 10, 2008.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be 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 11th day of October, 2007.

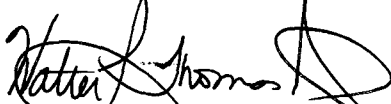
ALABAMA PUBLIC SERVICE COMMISSION


Jim Sullivan, President


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Susan D. Parker, Commissioner

ATTEST: A True Copy


Walter L. Thomas, Jr., Secretary