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December 21, 2018

Via Electronic Delivery

Mr. Walter L. Thomas, Jr., Secretary
Alabama Public Service Commission
RSA Union Building
100 North Union Street, Suite 950
Montgomery, AL 36104

RE: Docket Nos. 32767 and U-4226
James H. Bankston, *et al.* v. Alabama Power Company

Dear Secretary Thomas:

Enclosed please find a Motion for Hearing filed on behalf of James Bankston, Ralph Pfeiffer and Gasp, Inc. in the above referenced matter.

Complainants/Intervenors are submitting this filing to the Commission through its e-filing system, consistent with the rules and practices of the Commission. The original and one copy of this filing are being delivered to the Commission via overnight mail.

Please call if you have any questions or concerns.

Sincerely,

Keith Johnston

Keith Johnston
Southern Environmental Law Center

BEFORE THE ALABAMA PUBLIC SERVICE COMMISSION
MONTGOMERY, ALABAMA

JAMES H. BANKSTON, RALPH B. PFEIFFER, JR., Complainants/Intervenors,	)	**Docket No. 32767**
GASP, INC., Complainant/Intervenor,	)	
v.	)	**Docket No. U-4226**
ALABAMA POWER CO., Defendant/Petitioner.	)	

In re: Rate Rider RGB (Supplementary, Back-Up, or Maintenance Power)

MOTION FOR HEARING

James Bankston, Ralph Pfeiffer and Gasp, Inc. (Complainants) hereby move the Commission to set a hearing concerning the issues addressed in the Amended Complaint filed by Complainants in Docket No. 32767 and the Complainants' Petition to Intervene filed in Docket No. U-4226.

Background

On April 26, 2018, Complainants filed a Complaint, pursuant to Ala. Code §§ 37-1-83 and 37-1-84 and the Rules of Practice for the Alabama Public Service Commission (Commission), seeking relief from revisions to Rate Rider RGB. Among the relief requested, Complainants specifically asked for a "hearing on the merits." Compl. at 13. The Commission assigned the Complaint Docket No. 32767. On June 15, Alabama Power Company (Company) responded by moving to dismiss the Complaint. On the same day, the Company submitted proposed modifications to Rate Rider RGB under informal docket U-4226, pursuant to Ala.

Code § 37-1-81. The Company's proposed modifications sought to increase the charges to the original rate tariff from which Complainants sought relief.

Complainants, in order to preserve their rights, then petitioned to intervene in U-4226 pursuant to Ala. Code § 37-1-87 and the Commission's Rules of Practice. In this petition, Complainants sought to suspend any operation of the modifications proposed by the Company until "such time as a full and fair hearing has occurred to address the Complaint in Docket No. 32767." Pet. to Intervene at 6, ¶ B.

Complainants also filed a Response in Opposition to the Company's Motion to Dismiss in Docket No. 32767, again seeking a hearing. Resp. in Opp'n to Mot. to Dismiss at 5–6. In this same Motion, Complainants agreed to a combining of Dockets Nos. 32767 and U-4226 for the sake of administrative efficiency "provided a hearing is held in which Complainants can air their objections and otherwise exercise their right as both Complainants and Intervenors." *Id.* at 6, n.3. In light of the proposed rate increases by the Company, Complainants filed an Amended Complaint that includes objections to the proposed changes sought by the Company in Docket No. U-4226 and requested, as with the original Complaint, that the Commission "[e]nter a procedural and scheduling order fixing a time and place for public hearings on the matters under investigation." First Am. Compl. at 17, ¶ B.

Subsequent to these filings, the Commission issued a Procedural Ruling which held in abeyance the Motion to Dismiss in Docket 32767, granted Complainants' Petition to Intervene in Docket U-4226, established an evidentiary cycle and allowed discovery per the Commission's rules. Procedural Ruling at 5, 6 (Aug. 23, 2018). The Commission's Procedural Ruling did not provide for a hearing but instead stated that "[f]ollowing the submission of any testimony and evidence submitted by the parties pursuant to the schedule set forth above, the Commission will be in a position to properly evaluate a course of action." *Id.* at 6. On December 18, the

Commission entered a second Procedural Ruling stating that "the Commission now takes said matters under advisement for a final determination based on testimony and evidence submitted by the parties." Procedural Ruling (Dec. 18, 2018). Both Procedural Rulings were issued under Docket Nos. 32767 and U-4226, and there is no reference to Complainants' hearing requests in either ruling.

Request for Hearing

Before issuing an order affecting the rates in Rate Rider RGB, Part B, the Commission should set a hearing as requested by Complainants. The evidence and testimony presented during the evidentiary cycle established by the Commission reveal fundamental differences between the opposing expert witnesses as to the proper method of calculation for Rate Rider RGB, Part B, and the methodology and data used to obtain these charges. A fair and open hearing on this matter would be beneficial to all parties and the public. In addition, this matter is one of significant public interest, as it implicates the rights of customers to pursue an increasingly economic means of reducing their electricity costs.

Complainants initiated the complaint process in this matter under Ala. Code § 37-1-83 with the understanding that any order affecting the Rate Rider RGB would be subject to a hearing. A hearing is warranted as a matter of basic due process, given that Complainants are alleging unnecessary and unreasonable interference with their property rights as citizens and consumers in the State of Alabama. The Alabama Supreme Court has held that before the Commission issues an order affecting the actions complained of under § 37-1-83, a hearing should be held. *See S. Cent. Bell Tel. Co. v. Ala. Pub. Serv. Comm'n*, 425 So. 2d 1093, 1097 (Ala. 1983) ("Thus, we conclude that any order affecting a proposed change of service based on a complaint filed under § 37-1-83 is, prior to a hearing, premature."); *see also* Ala. Code § 37-1-96 ("No order shall be made by the commission affecting any rate or service, except as otherwise

specifically provided, unless or until a public hearing has been held in accordance with the provisions of this title.").[1] The actions complained of by the Complainants in Docket Nos. 32767 and U-4226 are the same—Complainants allege that the Company's charges under Rate Rider RGB, Part B, and its proposed increases to those charges, unjustly discriminate against self-generating solar customers. To issue an order without a public hearing in this instance would undermine the intent of the statute and deny Complainants their due process rights.

In addition, in the complaint process established under Ala. Code § 37-1-83, Complainants would have the burden of proof showing that the rate complained of is unjust, unreasonable and not in the public interest. Under Ala. Code § 37-1-81, the Company has the burden of proof to show that its requested rate increase is justified. Because the Commission has held Docket No. 32767 in abeyance, the Company has presented its case in docket U-4226 and thereby had the last opportunity to comment through its reply testimony submitted on November 13, 2018. A hearing in this matter would ensure that both parties' evidence and testimony are fully presented before the Commission as intended under the complaint process established in § 37-1-83. As the complaining parties, Complainants deserve the opportunity to respond to the Company's reply testimony and to otherwise prove their case to the Commission. A hearing would allow Complainants to fully vindicate their rights in this matter of significant public interest.

Conclusion

In light of these considerations, Complainants feel strongly that a hearing in this matter would benefit both the Commission, the public and the parties involved. Complaints respectfully

[1] *See also Airco, Inc. v. Ala. Pub. Serv. Comm'n*, 496 So.2d 21 (Ala. 1986) (where appellants had previously sought a "formal, public hearing" and were denied, the Court admonished the appellants for not seeking review per § 37-1-83).

request that the Commission enter an order setting a time and date for hearings in Docket Nos. 32767 and U-4226.

Respectfully submitted this 21st day of December, 2018.

s/ Clay Ragsdale

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been served upon the following, either by hand-delivery, electronic transmission, or by depositing a copy of the same in the United States Mail, properly addressed and postage prepaid on this 21st day of December, 2018.

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