

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 205-745-3060

2829 2ND AVENUE SOUTH, SUITE 282
BIRMINGHAM, AL 35233-2838

Facsimile 205-745-3064

July 6, 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 No. 32767
James H. Bankston, et al. v. Alabama Power Company

Dear Secretary Thomas:

Enclosed please find complainants James Bankston, Ralph Pfeiffer and Gasp, Inc.'s First Amended Complaint and Petition for Declaratory Judgment and Relief from Unfair, Unreasonable, Unjust and Discriminatory Charges Imposed on Complainants under Alabama Power's Rate Rider RGB and Proposed Modifications to Rate Rider RGB.

Please call if you have any questions or concerns.

Sincerely,


Keith Johnston
Southern Environmental Law Center

Enclosure
KAJ/npd

**BEFORE THE ALABAMA PUBLIC SERVICE COMMISSION
MONTGOMERY, ALABAMA**

JAMES H. BANKSTON, RALPH B. PFEIFFER, JR.,	)	Docket No. 32767
)	
Complainants,	)	<i>First Amended Complaint</i>
	)	<i>and Petition for</i>
GASP, INC.	)	<i>Declaratory Judgment</i>
	)	<i>and Relief from Unfair,</i>
Complainant,	)	<i>Unreasonable, Unjust and</i>
	)	<i>Discriminatory Charges</i>
v.	)	<i>Imposed on Complainants</i>
	)	<i>under Alabama Power's</i>
ALABAMA POWER CO.,	)	<i>Rate Rider RGB and</i>
	)	<i>Proposed Modifications to</i>
Defendant.	)	<i>Rate Rider RGB</i>

**FIRST AMENDED COMPLAINT AND PETITION FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

James Bankston, Ralph Pfeiffer and Gasp, Inc. (“Complainants”), pursuant to Title 37 of the Alabama Code and Rule 9(A)(2) of the Rules of Practice of the Alabama Public Service Commission (“PSC” or “Commission”), and through their respective undersigned counsel, hereby file this First Amended Complaint and Petition for Declaratory Judgment and Injunctive Relief. Complainants seek an order from this Commission declaring Alabama Power Company’s (“Alabama Power” or “Company”) current and proposed rate treatment of particular solar-generating customers to be unfair, unreasonable, unjust, discriminatory, contrary to the public interest and otherwise unlawful. Specifically, Complainants seek relief from Rate Rider RGB in its currently approved form as well as proposed modifications thereto, both of which levy unfair, unreasonable, and unjustly discriminatory surcharges on residential customers, small businesses and schools who install on-site, solar electric generating systems.

Statement of Jurisdiction and Identification of Parties

1. This First Amended Complaint is brought pursuant to Alabama Code §§ 37-1-83 and 37-1-84 and PSC Rules of Practice 9, which authorize any person adversely affected by any utility rate, service regulation, classification, practice or service in effect or proposed to be made effective that is in any respect unfair, unreasonable or unjustly discriminatory to file a written complaint with the Public Service Commission seeking relief therefrom.

2. Alabama Power is an investor-owned electric utility in Alabama subject to the Commission's regulatory authority. Pursuant to its state-granted monopoly franchise, Alabama Power provides electric service to 1.4 million customers in approximately the southern two-thirds of Alabama. Alabama Power's main office is located at 600 North 18th Street, Birmingham, Alabama 35203.

3. Complainant James H. Bankston, Jr. is a resident of Tuscaloosa, Alabama and an Alabama Power customer. Complainant Bankston resides at 6408 Lake Vista Circle, Tuscaloosa, Alabama 35406.

4. Complainant Ralph B. Pfeiffer, Jr. is a resident of Mobile, Alabama and an Alabama Power customer. Complainant Pfeiffer resides at 3726 Dawes Road, Mobile, Alabama 36695.

5. Complainant Gasp, Inc. 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. Presently, Gasp has over 600 members in Alabama, including members adversely affected by the unfair and unreasonable

surcharges that Alabama Power levies against on-site solar generating systems. Gasp brings this action on behalf of itself and its members.

6. To fulfill its mission, Gasp works to increase renewable energy opportunities in the state. For example, through its “Solar Works” initiative, Gasp seeks to raise awareness of the benefits of solar energy in Alabama. Solar Works provides educational information to the public about Alabama’s potential solar capacity and policies, including information about Alabama Power’s surcharges on solar customers.

7. The following Gasp members, identified by name and address, are adversely affected by Alabama Power’s revisions to Rate Rider RGB, and have standing to file this action in their own right:

Mark Johnston
16266 Highway 195
Double Springs, AL 35553

Charles Scribner
740 Montgomery Drive
Birmingham, Alabama 35213

Teresa K. Thorne
193 Adamson Road
Springville, Alabama 35146

Affidavits for each of Gasp’s affected members are attached as Exhibits 1 through 3.

8. The violations alleged herein directly affect Gasp’s members, and the granting of the requested relief will redress the injuries to Gasp’s members resulting from those violations. The interests Gasp seeks to protect are germane to Gasp’s purposes and objectives, and neither the claims asserted, nor any of the relief requested, require the participation of individual Gasp members in this complaint. Accordingly, Gasp has associational standing to commence this

action. *See Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.*, 783 So.2d 792 (Ala. 2000).

Background Facts

9. Complainants incorporate paragraphs 1 through 8 as if fully set out herein.

10. Alabama Power first proposed Rate Rider RGB - Supplementary, Back-up, or Maintenance Power (“Rate Rider RGB”) in 1988 to facilitate the sale of supplementary, back-up and maintenance power to customers with on-site generating capacity. This rate rider covered the sale of power from Alabama Power to customers as a supplement to their on-site electric generating capacity.

11. Rate Rider RGB made supplementary, back-up or maintenance power available to eligible commercial and industrial customers (those on rate plans Rate Light and Power Service (LPL), Rate Light and Power Medium (LPM) or Rate Real Time Pricing (RTP)) without imposing any additional charges for this dedicated source of power. In its original form, and as implemented over the next twenty-four years, Rate Rider RGB did not apply to residential customers, small businesses, or schools.

12. On December 20, 2012, Alabama Power requested that the PSC approve revisions to Rate Rider RGB that would, for the first time, impose charges on smaller customer classes, such as residential customers, small businesses and schools, for “firm” back-up power. *See* 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 Special Rules Governing the Application of Rate Rider RGB (Docket No. 18126) (Dec. 20, 2012) (hereinafter “2012 Revisions”). “Firm” back-up power is defined in Rate Rider

RGB as “[e]lectric energy or capacity intended to be available to the Customer at all times.”

Ala. Power Co., Rate Rider RGB (effective as of May 2013) (hereinafter “Rate Rider RGB”).

13. Alabama Power’s letter to the Commission describing the proposed Rate Rider RGB revisions did not mention any additional charges for residential customers, small businesses or schools, but instead simply stated that “[t]he updates reflected herein clarify the applicability of the rate rider, while expanding the number of rate options that are eligible to take service under the rider. Also included are updated rate definitions and service options to reflect changes in technology and system costs.” 2012 Revisions at 1.

14. The 2012 revisions requested by Alabama Power to Rate Rider RGB included new sections I.B.1. and 2.a under Back-Up Power. They state:

B. Available for Customers on Rates FD, LPS, RTA and SCH with the following modifications to the terms and conditions of such rates. Customers will be eligible to remain on their current rate, with the following modifications to the terms and conditions of such rate, when the nameplate capacity of the installed on-site, non-emergency electric generating capacity is no greater than the lesser of 6% of the maximum integrated fifteen (15) minute kW demand during the previous 11 months or 25 kW.

1. The Capacity Reservation Charge of \$5.00/kW (secondary service) or \$4.46/kW (primary service) shall be added to the applicable rate schedule. The Capacity Reservation Charge shall be applied to the nameplate capacity of the Customer’s installed on-site, non-emergency electric generating capacity. The Customer may request the Company to calculate its actual capacity requirement to which the Capacity Reservation Charge shall be applied if the Customer believes the nameplate capacity of its installed on-site, non-emergency electric generating capacity exceeds its actual capacity needs. The monthly bill minimum shall be adjusted to include the Capacity Reservation Charge plus the Minimum Bill provisions of the applicable rate schedule. All other terms and conditions of the applicable rates shall continue to apply.

2. In lieu of the Capacity Reservation Charge in 1. above, qualifying customers may take service under Rate RTA with the following modification.

a. During the months of June through September, the energy charge shall be 70¢/kWh during the weekday hours of 3:00 pm – 5:00 pm, excluding

holidays as outlined in Rate RTA. All other terms and conditions of Rate RTA shall continue to apply.

Rate Rider RGB at Back-Up Power, I.B.

15. Through these revisions to Rate Rider RGB, Alabama Power proposed to levy a new surcharge, called a Capacity Reservation Charge (herein also referred to as “surcharge”), on customers in certain classes who install on-site electrical generation capacity but remain connected to the grid. The Capacity Reservation Charge would apply only to electrical service under Rate FD (Family Dwelling), Rate LPS (Light and Power Service – Small), Rate RTA (Residential Time Advantage) and Rate SCH (School Service). The surcharge amounts to \$5.00 per installed kilowatt (kW) for secondary service and \$4.46 per installed kilowatt (kW) for primary service each month, based on the nameplate capacity of the customer’s self-generating electrical system.

16. The Commission approved the 2012 revisions approximately three weeks after their filing by Alabama Power on December 20, 2012. Order, Docket Nos. U-4226 and 18126 (Ala. P.S.C. Jan. 10, 2013). In its two-page Order, the Commission did not mention any new charges, or their applicability to residential customers: “The proposed revisions clarify the applicability of the rate rider, while expanding the number of rate options that are eligible to take service under the rider. Also included are updated rate definitions and service options to reflect changes in technology and system costs since the rider was originally filed 24 years ago.” *Id.*

17. Affected customers can avoid the Capacity Reservation Charge by agreeing to take service under a modified Rate RTA (Residential Time Advantage) (referred to herein as the “Alternative Rate RTA Charge”), which subjects them to a peak energy charge of 70¢/kWh from June through September during the weekday hours of 3:00 pm and 5:00 pm, in addition to other energy charges associated with Rate RTA.

18. The 2012 revisions to Rate Rider RGB became effective in May 2013.
19. Prior to the Commission's approval of the 2012 revisions to Rate Rider RGB, there was no evidentiary hearing, Company testimony, or public comment period.
20. On June 15, 2018, in response to Complainants' initial formal complaint filed in this docket, Alabama Power submitted proposed modifications to Rate Rider RGB. *See* Letter from Scott B. Grover to Walter Thomas, Secretary, Ala. Pub. Serv. Comm'n, Rate Rider RGB (Docket No. U-4226) (June 15, 2018) (hereinafter "Proposed Modifications"). The Company asks for the proposed modifications to go into effect sixty (60) days following entry of a Commission order.
21. In the new filing in Docket No. U-4226, Alabama Power proposes to increase the Capacity Reservation Charge from \$5.00/kW to \$5.42/kW (secondary service) and from \$4.46/kW to \$4.88/kW (primary service). Proposed Modifications to Rate Rider RGB at Back-Up Power, I.B.1.
22. Alabama Power also proposes to increase the Alternative Rate RTA Charge from 70¢/kWh to 71¢/kWh. Proposed Modifications to Rate Rider RGB at Back-Up Power, I.B.2.
23. The filing includes the written testimony of Alabama Power's Regulatory Pricing Manager, Ms. Natalie Dean.
24. Witness Dean testifies that the underlying methodology used by the Company as the basis for its proposed modifications is the same as that employed to develop the 2012 revisions to Rate Rider RGB. *See* Proposed Modifications, Dean Testimony at 11:11-13.
25. This type of testimony was not filed to support the 2012 revisions to Rate Rider RGB.

26. The Capacity Reservation Charge, as currently imposed and as proposed to be modified, applies to customers with on-site solar energy generation, such as Complainants Bankston and Pfeiffer and Complainant Gasp's affected members. The surcharge is applied irrespective of whether the customer sells any excess energy back to Alabama Power.

27. Other customer classes using supplementary, back-up or maintenance power under Rate Rider RGB do not pay the Capacity Reservation Charge; only Rates FD, LPS, RTA and SCH are subject to the Capacity Reservation Charge.

28. In both its current and proposed forms, the amount of Capacity Reservation Charge is based on the installed size of a customer's on-site generating system. The surcharge is not based on the customer's actual electricity demand or usage, the customer's actual generation, the timing of demand, usage or generation, or the cost of providing electric service to that customer.

29. Complainant Bankston interconnected an on-site, self-generating solar system at his home with Alabama Power's grid on or about April 2016. His system has a nameplate capacity of 1.68 kilowatts.

30. Alabama Power provides electric service to Complainant Bankston under Rate Family Dwelling ("FD"). Since interconnecting his solar system in April 2016, Complainant Bankston has been subject to surcharges assessed by Alabama Power under its Rate Rider RGB.

31. Complainant Bankston is required to pay \$8.40 each month in Capacity Reservation Charge fees. Complainant Bankston has paid over \$200 in Capacity Reservation Charge fees as of the date of this filing. Over the estimated 30-year life of his solar investment, if the current surcharge remains in place, he expects to pay approximately \$3,000 in fees to Alabama Power due to this surcharge. If the proposed modifications are adopted by the

Commission, Complainant Bankston expects to pay \$9.10 each month in Capacity Reservation Charge fees, which will amount to approximately \$3,300 over the 30-year life of his solar system.

32. In accordance with Rate FD, Complainant Bankston pays a fixed customer charge of \$14.50 each month to receive service from Alabama Power, in addition to the Capacity Reservation Charge.

33. Complainant Pfeiffer interconnected an on-site, self-generating solar system at his home with Alabama Power's grid on or about April 2017. His system has a nameplate capacity of 3.36 kilowatts.

34. Alabama Power provides electric service to Complainant Pfeiffer under Rate FD. Since interconnecting his solar system in April 2017, Complainant Pfeiffer has been subject to surcharges assessed by Alabama Power under its Rate Rider RGB.

35. Complainant Pfeiffer is required to pay \$16.80 each month in Capacity Reservation Charge fees. Complainant Pfeiffer has paid over \$200 in Capacity Reservation Charge fees as of the date of this filing. Over the 30-year life of his solar investment, if the current surcharge remains in place, he expects to pay approximately \$6,000 in fees to Alabama Power due to this surcharge. If the proposed modifications are adopted by the Commission, Complainant Pfeiffer expects to pay \$18.21 each month in Capacity Reservation Charge fees, which will amount to approximately \$6,500 over the 30-year life of his solar system.

36. In accordance with Rate FD, Complainant Pfeiffer pays a fixed customer charge of \$14.50 each month to receive service from Alabama Power in addition to the Capacity Reservation Charge.

37. Upon information and belief, approximately 44 on-site solar-generating customers are subject to the Capacity Reservation Charge, out of Alabama Power's total 1.4 million customers (or 0.0031%). Hank Black, *New Tariff on Solar Panels May Give Companies Second Thoughts About Doing Business in Alabama*, Birmingham Watch, Jan. 22, 2018.

38. Residential customers in Alabama have the second highest average electric bills in the country. *Today in Energy*, U.S. Energy Information Administration (Feb. 13, 2018), <https://www.eia.gov/todayinenergy/detail.php?id=34932#>.

39. Investments in on-site solar and efficiency measures are the chief practical ways for Alabamians to exert some measure of control over their household electricity costs.

Legal Background

40. Complainants incorporate paragraphs 1 through 39 as if fully set out herein.

41. State and federal laws give consumers the right to invest in on-site solar generation. Ala. Code § 37-4-140 (specifying requirements for when utilities purchase electrical energy from distributed generation facilities); 16 U.S.C. § 824a-3(c); 18 C.F.R. § 292.305.

42. The Public Service Commission has exclusive jurisdiction over public utility rates and service regulations in Alabama. Ala. Code § 37-1-31; *see also id.* § 37-1-32 (granting the Commission general supervisory authority over entities such as Alabama Power). The Commission's jurisdiction extends to ensuring that "rates and other charges" comply with the provisions of Title 37 of the Alabama Code "and any other law or laws." *Id.* at § 37-1-32.

43. Title 37 of the Alabama Code also defines a rate, as it applies to utilities including Alabama Power:

Such term shall mean and include, in the plural number as well as in the singular, every individual or joint rate, classification, fare, toll, charge, or other compensation for service rendered, or to be rendered, by any utility, and every rule, regulation, practice, act, requirement, or privilege in any way relating to such rate, fare, toll,

charge, or other compensation, and any schedule or tariff, or part of a schedule or tariff thereof.

Ala. Code § 37-4-1(8).

44. The Capacity Reservation Charge and Alternative Rate RTA Charge and proposed modifications to both meet the definition of “rate” as set forth in § 37-4-1(8) of the Alabama Code because they are surcharges that Alabama Power requires or proposes to require customers with on-site electric generation to pay in order to take electric service from Alabama Power. *See also* Ala. Code § 37-4-140(c)(1) (stating that a utility’s rates, fees and charges for services to a distributed generation facility include, among other things, standby power, supplementary power, back-up power and maintenance power).

45. Under Alabama Law, “[t]he rates and charges for the services rendered and required shall be reasonable and just to both the utility and the public.” Ala. Code § 37-1-80.

46. The property of a monopolistic public utility is “devoted to public service and impressed with a public interest,” while allowing for that private property investment of the utility to earn “fair and just” compensation. *See Alabama Public Serv. Comm’n v. Southern Bell T. & T. Co.*, 253 Ala. 1, 12 (1949).

47. “The question of what constitutes just and reasonable rates . . . must be determined in the exercise of a fair, enlightened and independent judgment in the light of all the relevant facts.” *Birmingham Elec. Co. v. Ala. Pub. Serv. Comm’n*, 254 Ala. 140, 146 (1949).

48. Rates cannot unjustly discriminate against particular customers or a class of customers. *See* Ala. Code §§ 37-1-97 (requiring that the Commission fix a reasonable rate whenever it finds that an existing rate is unreasonable or unjustly discriminatory); 37-1-83 (requiring the Commission to investigate, upon written complaint, any rate in effect or proposed to be made effective that “is in any respect unfair, unreasonable, unjust or inadequate, or unjustly

discriminatory, or unduly preferential, or constitutes unfair competition . . .”); 37-1-95 (empowering Commission, after investigation finding that any provision or requirement of Title 37 “is being, has been, or is about to be violated,” to enter an order “requiring that such violation be discontinued or rectified, or both, or that it be prevented.”).

49. Rates charged to customer classes must be based on the cost of providing electric service to each class. *Re: PURPA Rate Design Standards*, Docket 17859, 1981 WL 721422, at 32–33, 37 (Ala. P.S.C. 1981) (stating that “the commission finds that the rates of Alabama Power Company should, to the maximum extent practicable, be based on the cost of providing service” and that “rates charged by an electric utility for each class of customer shall be designed to reflect the costs of providing electric service to such class, to the maximum extent practicable and equitable.”); *Greater Birmingham Unemployed Committee v. Ala. Gas Corp.*, Docket No. 19674, 1987 WL 257976, at 223–24 (Ala. P.S.C. 1987); *see also Birmingham Elec. Co. v. Ala. Pub. Serv. Comm’n*, 47 So. 2d 455, 460 (Ala. 1949) (stating that rates must be just and reasonable to both the investor and the consumer, and “[t]he investor interest is adequately served if the utility is allowed the opportunity to earn the cost of service” (quoting *Fed. Power Comm’n v. Natural Gas Pipeline Co. of America*, 315 U.S. 575, 607 (1942) (Black, J., concurring))).

50. Unjust and undue discrimination occurs when a rate or charge singles out a particular sub-class of customers for differential treatment with no cost-of-service basis for doing so. *See Greater Birmingham Unemployed Committee*, 1987 WL 257976, at 223–24 (finding that low-income customers were not entitled to lower rates because the complainants failed to show that it “costs less to serve low-income customers than other residential customers” or that “low-income customers impose different service characteristics on the system”).

51. Rates must also be supported by proper evidence. *Ala. Metallurgical Corp. v. Ala. Pub. Serv. Comm’n*, 441 So. 2d 565, 575 (Ala. 1983); *Ala. Power Co. v. Ala. Pub. Serv. Comm’n*, 422 So. 2d 767, 769 (Ala. 1982). An order finding that a rate is just and reasonable, without supporting evidence, is arbitrary. *See Ala. Power Co. v. Ala. Pub. Serv. Comm’n*, 390 So.2d 1017, 1025 (Ala. 1980) (holding that the Supreme Court must set aside a PSC decision “as being arbitrary as a matter of law, and a denial of due process, when such order is based upon findings without evidence to support them”).

52. Rates should be understandable to the ordinary customer. *See Re: PURPA Rate Design Standards*, 1981 WL 721422, at *4 (stating an advantage of basing cost of service on a class of customers). In addition, rates should send proper price signals, so that a consumer can make rational decisions about their consumption. *See id.* at *7 (discussing the benefits of rates based on embedded cost and stating that they provide proper price signals to consumers).

53. Ala. Code § 37-1-83 authorizes any affected person to file a written complaint stating that any rate, service regulation, classification, practice or service “in effect or proposed to be made effective” is in any respect unfair, unreasonable, unjust or inadequate, or unjustly discriminatory. Upon receipt of such written complaint, “the commission shall proceed . . . to make such investigation as it may deem necessary or appropriate” *Id.* In addition, the Commission “shall fix a time and place for public hearings of the matters under investigation.” Ala. Code § 37-1-85.

54. Once the Commission finds that an existing rate is unreasonable or unjustly discriminatory, it must “by order fix . . . a reasonable rate . . . to be imposed, observed and followed in the future in lieu of that found to be unreasonable or unjustly discriminatory, or inadequate, as the case may be.” Ala. Code § 37-1-97.

55. In addition, whenever the Commission determines, after investigation, “that any provision or requirement of this title . . . is being, has been, or is about to be violated, it may make and enter of record an order in the premises, specifying the actual or proposed acts or omission to act which constitute such real or proposed violation and requiring that such violation be discontinued or rectified, or both, or that it be prevented.” Ala. Code § 37-1-95.

Cause of Action

56. Complainants incorporate paragraphs 1 through 55 as if fully set out herein.

57. Complainants Bankston and Pfeiffer and the Gasp, Inc. members identified herein are “affected persons” within the meaning of Alabama Code § 37-1-83.

58. Both the 2012 revisions to Rate Rider RGB, under Back-Up Power Part I.B., currently imposed by Alabama Power on Complainants and the proposed modifications to Rate Rider RGB submitted on June 15, 2018 are unfair, unreasonable, unjust, discriminatory and contrary to the public interest in violation of Alabama Code § 37-1-80, due to the following deficiencies:

- a. Alabama Power has failed to provide sufficient justification and evidence to the PSC establishing a cost-based need for either its current Capacity Reservation Charge of \$5.00/kW (secondary service) and \$4.46/kW (primary service) or, as proposed, an increased Capacity Reservation Charge of \$5.42/kW (secondary service) and \$4.88/kW (primary service) of nameplate capacity for self-generators.
- b. Alabama Power has failed to provide sufficient justification and evidence to the PSC establishing a cost-based need for either the current 70¢/kWh peak energy

charge or, as proposed, an increased peak energy charge of 71¢/kWh, in the Alternative Rate RTA Charge.

- c. Neither the current Capacity Reservation Charge and Alternative Rate RTA Charge nor the proposed modifications to these charges have a correlation to the costs to serve customers with on-site solar generation.
- d. Alabama Power did not perform a sufficient cost-of-service analysis to demonstrate that it under-recovers costs associated with serving small-scale solar customers under Rates FD, LPS, RTA or SCH.
- e. The Company has not demonstrated that customers subject to the surcharges impose different or additional costs related to the operation of the electric grid as compared to other customers without solar generation within the same rate class.
- f. The Company has made no showing that there is any incremental cost to serve self-generating customers that is not adequately recovered through other fixed and variable charges already imposed on customers through existing cost-based rates.
- g. Absent a demonstration by the Company of actual cost causation by self-generating customers, the Company appears to base the charges on the loss of hypothetical revenues that it might have collected from customers but for their investment in self-generation.
- h. The Company has not shown that a surcharge based on the size of customers' generating equipment is reasonably correlated with any cost to serve those customers.
- i. The Rate Rider RGB provisions and proposed modifications related to firm back-up power are unnecessarily complex and appear intended to confuse customers.

- j. In addition, residential and small commercial customers lack critical data and information needed to assess the cost impacts of how Rate Rider RGB, in its current and proposed forms, will be applied to them.
- k. Alabama Power has failed to evaluate, estimate or account for the system benefits received and costs avoided due to customer investments in on-site electric generation.
- l. As currently imposed and as proposed to be modified, the Capacity Reservation Charge and Alternative Rate RTA Charge unjustly enrich Alabama Power. The charges, which are not cost-based and infringe on customers' right to invest in self-generation on their private property, can amount to thousands of dollars in charges collected over the average thirty-year life of a solar system.

58. Because the existing Capacity Reservation Charge and Alternative Rate RTA Charge are unreasonable and unjustly discriminatory, the Commission should so determine in accordance with Alabama Code § 37-1-97.

59. Likewise, because the proposed modifications in Docket U-4226 are unreasonable and unjustly discriminatory, they too violate the requirement of Alabama law that utility rates be just and reasonable. The Commission should therefore enter an order disapproving the proposed modifications as a proposed violation of Alabama law, as authorized under Alabama Code § 37-1-95.

Prayer for Relief

Wherefore, based upon the foregoing, Complainants seek evidentiary submissions, testimony from witnesses, a hearing on the merits and any other procedures due Complainants. Complainants respectfully request that the Public Service Commission grant the following relief:

- A. Duly investigate the matters alleged herein as mandated by Alabama Code § 37-1-83;
- B. Enter a procedural and scheduling order fixing a time and place for public hearings on the matters under investigation, as required by Alabama Code § 37-1-85, and providing for discovery, as authorized by Rule 16 of the Commission's Rules of Practice;
- C. Receive evidence and testimony relating to those matters;
- D. Issue a declaratory ruling that the surcharges currently imposed under Rate Rider RGB, Back-Up Power Part I.B. are unfair, unreasonable, unjust, discriminatory and contrary to the public interest.
- E. Issue an injunction ordering Alabama Power to immediately cease collecting current surcharges under Rate Rider RGB, Back-Up Power Part I.B.
- F. Require Alabama Power to withdraw Back-Up Power Part I.B. from Rate Rider RGB.
- G. Disapprove the proposed modifications to Part I.B of Rate Rider RGB, which the Company submitted for approval on June 15, 2018.
- H. Award Complainants such other relief to which they may be entitled under the governing law.

Respectfully submitted, this 6th day of July, 2018.

s/Clay Ragsdale
Clay Ragsdale (RAG001)
Allison Riley (RIL018)
RAGSDALE LLC
517 Beacon Parkway W.
Birmingham, AL 35209
Telephone: (205) 290-6800
clay@ragdalellc.com
allison@ragdalellc.com

Attorneys for Complainants James Bankston and Ralph Pfeiffer



Christina Andreen (AND119)

Keith Johnston (JOH230)

Katherine C. Ottenweller (Pro Hac Vice Admission pending)

Southern Environmental Law Center

2829 2nd Avenue South, Suite 282

Birmingham, Alabama 35205

Tel: (205) 745-3060

Fax: (205) 745-3064

candreen@selcal.org

kjohnston@selcal.org

kottenweller@selcga.org

Attorneys for Complainant Gasp, Inc.

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 6th day of July, 2018.

Dan H. McCrary
Scott B. Grover
Balch & Bingham LLP
P.O. Box 306
Birmingham, AL 35201
Tele. 205-251-8100
dmccrary@balch.com
sgrover@balch.com

Olivia Martin
Assistant Attorney General
Office of the Attorney General
P.O. Box 300152
Montgomery, AL 36130-0152

Robin G. Laurie
Riley W. Roby
Balch and Bingham, LLP
105 Tallapoosa Street, Ste. 200
Montgomery, AL 36104
rlaurie@balch.com
rroby@balch.com



Keith Johnston
Attorney for Complainant Gasp, Inc.

Exhibit 1

in the Diocese of Alabama. One of the camp programs I started while there is the McDowell Environmental Center, which I believe is the largest residential environmental education program in the southeast. It correlates to the Education Standards of Alabama and over 150,000 Alabama children have benefited from this nationally known program. Its mission is to connect people to their environment, teach respect for the Earth and its beings, and to promote a commitment to lifelong learning. In addition, we started an initiative at Camp McDowell to rely almost totally on renewable energy by approximately 2020, reducing our carbon footprint by approximately 78%

5. I am very involved in charitable work, contributing time, experience, and money to local, statewide and national groups. Since I graduated from college, I have actively pursued social justice issues in Alabama. In addition, I have been very involved in environmental issues, and I have worked for years to clean up pollution and illegal dumping in the watershed where I live and around the state. I have also served on the boards of the Alabama Rivers Alliance and the Alabama Environmental Council. Nationally, I have served on the board of the Institute for Conservation Leadership, and, regionally, on the American Rivers southeastern advisory board. I have also been recognized for my environmental and religious work. I was named Alabama's Outstanding Young Religious Leader in 1981, and I was the volunteer of the year for ARC (organization dedicated to helping people with disabilities) in 1983 because of my work with people who have disabilities. I started the West Alabama Food Bank in approximately 1983 and served as its board president for the first three years. It still distributes over 3 million pounds of food a year. I have had the honor of receiving the James Dockery Southern Environmental Leadership Award, River Hero award given by the Alabama Rivers Alliance, and the Sierra Club's Environmentalist of the Year award.

6. I have an approximately 6 kilowatt solar system next to my house. I have connected my solar system to Alabama Power's electric grid, and Alabama Power charges me \$30/month due to the capacity reservation charge (or surcharge) levied on my solar system.

7. I decided to install a solar system on my home because I want to do my part to reduce the release of CO₂ in the atmosphere. I fear for the future of our children and grandchildren because of the potential impacts of climate change. I adamantly believe in conservation and protection of our environment. Increased use of renewable energy decreases the amount of air pollution created by the burning of fossil fuels and protects our planet. In 2014, the Pentagon declared that climate change is one of the top three threats to national security.

8. My 6 kilowatt solar system was installed in approximately March of 2017 and has been generating solar power for approximately 13 months. My home and solar generation system are connected to Alabama Power's electric grid, and I continue to buy power from Alabama Power every day. I do not have any batteries connected to my solar generation system, so any power that I do not use is sent onto the grid. Because my system is interconnected to Alabama Power's grid, I am subject to the capacity reservation charge. Therefore, I pay \$30 a month under the capacity reservation charge. This \$30/month in capacity reservation charges equates to \$360 per year, and over an estimated 30-year life of my solar system, a total of \$10,800. This fee is in addition to the \$14.50 customer charge I pay monthly and the base charge for Rate PAE (Purchase of Alternate Energy). I have noticed that the capacity reservation charge increases my bill by approximately 50% per month which means it will take at least approximately 50% longer for me to recoup my investment. The capacity reservation

charge impacts my ability to recoup my investment and leaves me less money to spend on other bills and needs.

9. Not only am I personally impacted because I have to pay an extra \$30 each month to be connected to Alabama Power's grid, I am concerned that the capacity reservation charge unfairly impacts all residential solar customers who have chosen to create their own electricity and also connect to the grid. I am also concerned that the capacity reservation charge discourages others from installing solar. Furthermore, I am concerned about the impacts that continued reliance on fossil fuels, in lieu of greater reliance on clean fuels like solar energy, will have on my child and grandchild, and on future generations.

10. Gasp and its members, me included, have a direct interest in the protection and enhancement of Alabama's natural environment and economy, and in the health of its citizens. I believe that additional residential solar systems in the state will lead to clean, renewable power, thereby decreasing the use of fossil fuels for electricity and improving air quality. Anti-solar policies such as the capacity reservation charge substantially and adversely impact these interests. My economic, environmental and human health interests are adversely affected by the capacity reservation charge because it dissuades the use of clean, renewable solar power.

11. The capacity reservation charge went into effect in May 2013. I did not see any public notice or opportunity to comment on the surcharge. Had I known about the proposed revisions being made that affect solar systems like mine, I would have voiced my opposition to the revisions in some way.

12. Gasp represents my interest in challenging the capacity reservation charge for solar systems, which I consider to be unfair. People like me should not be punished financially for taking steps to limit their consumption of fossil fuel-based electricity. If the Commission

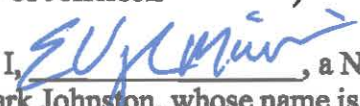
were to require Alabama Power to stop collecting the capacity reservation charge for solar energy generating systems, that would resolve the charge's adverse impacts on me and encourage the expansion of solar around the state.

FURTHER AFFIANT SAYETH NOT.


Mark Johnston

State of Alabama)

County of Jefferson)

I, , a Notary Public, in and for said County and State, hereby certify that Mark Johnston, whose name is signed to the foregoing Affidavit, and who is known to me, acknowledged before me on this day that being informed of the contents of said Affidavit, he executed the same voluntarily on the day the same bears date.

Given under my hand this 23rd day of April, 2018.


Notary Public

My commission expires: _____

Edward Vaughn McWilliams
Notary Public, Alabama State At Large
My Commission Expires Nov. 30, 2019

NOTARY SEAL

Exhibit 2

Docket No. _____

7. My 6.7-kilowatt solar generating system was installed on the south-facing roof of my home in July 2015 and began generating solar power in approximately August, 2015. To avoid paying Alabama Power's capacity reservation charge, I chose to take most of my home off of Alabama Power's electric grid. I invested in and installed a 6.7-kilowatt solar generating system and a bank of lead batteries. Most of my appliances, light fixtures and electric outlets are powered by the battery system, which is recharged by the solar panels daily. The batteries and associated equipment, such as charge controllers, represent roughly half of the cost of the entire system (which includes the panels, batteries, inverter and other equipment). Other appliances, including the air conditioner, dryer and oven, still use power from Alabama Power's grid, and I buy electricity from Alabama Power every day to run these appliances. If there were no capacity reservation charge, I would connect my solar generating system with Alabama Power's grid to sell excess energy back through the grid.

7. I am personally impacted by the capacity reservation charge because I spent a significant amount of money on a battery system to avoid paying the charge.

8. I am also concerned that the capacity reservation charge unfairly impacts all residential solar customers who have chosen to create their own electricity and also connect to the grid. I am also concerned that the capacity reservation charge discourages others from installing solar.

9. Furthermore, I am concerned about the impacts that continued reliance on fossil fuels, in lieu of greater reliance on clean fuels like solar energy, will have on future generations.

10. Gasp and its members, me included, have a direct and beneficial interest in the protection and enhancement of Alabama's natural environment and economy, and in the health of its citizens. I believe that additional residential solar systems in the state will lead to clean,

renewable power, thereby decreasing the use of fossil fuels for electricity and improving air and water quality. Anti-solar policies such as the capacity reservation charge substantially and adversely impact these interests. My economic, environmental and human health interests are adversely affected by the capacity reservation charge because it dissuades the use of clean, renewable solar power.

11. The capacity reservation charge went into effect in May 2013. I did not know about the charge until after it was approved by the Alabama Public Service Commission. Had I known about the proposed revisions being made, I would have voiced my opposition to the revisions in some way.

12. Gasp represents my interest in this complaint concerning the capacity reservation charge for solar systems, which I consider to be unfair. If the Commission were to require Alabama Power to stop collecting the capacity reservation charge for solar energy generating systems, that would address the charge's adverse impacts on me and my interests.

FURTHER THE AFFIANT SAYETH NOT.



Charles Scribner

State of Alabama)

County of Jefferson)

I, Heather Miller Cover Notary Public, in and for said County and State, hereby certify that Charles Scribner, whose name is signed to the foregoing Affidavit, and who is known to me, acknowledged before me on this day that being informed of the contents of said Affidavit, he executed the same voluntarily on the day the same bears date.

Given under my hand this 24 day of April, 2018.


Notary Public Heather Miller Cover

My commission expires: 10/1/2021

NOTARY SEAL



Exhibit 3

[illegible]

Petitioners,

Docket No. _____

V.

**ALABAMA POWER CO.,
Defendant.**

AFFIDAVIT OF TERESA K. THORNE

5. I worked for the Birmingham Police Department for over 20 years, and retired as a Captain in 1999. After retiring from the Police Department, I served as the Executive Director

of the City Action Partnership, a nonprofit organization that manages downtown Birmingham's business district for the property owners of downtown. Its mission is to keep downtown safe, clean and friendly. I am now retired from the City Action Partnership and am a full-time writer.

6. I actively pursue social justice issues in Alabama. I am a full-time writer, and I focus heavily on social justice issues in my writing. For instance, I wrote a book on the Birmingham 16th Street Baptist Church bombing investigation.

7. I decided to install a solar system on my home because using renewable energy, such as solar, protects our environment. I also hoped to reduce my monthly electricity bills.

8. My 4 kilowatt solar system was installed on the roof of my home and began generating solar power around September 2015. My home and solar generating system are connected to Alabama Power's electric grid, and I continue to buy power from Alabama Power every day. I do not have any batteries connected to my solar generating system, so any power that I do not use is sent onto the grid. Because my system is interconnected to Alabama Power's grid, I am subject to Rate Rider RGB and the capacity reservation charge. Therefore, I pay \$20 a month under the capacity reservation charge. This \$20/month in capacity reservation charges equates to \$240 per year, and over an estimated 30-year life of my solar generating system, over \$7,000. This fee is in addition to the \$14.50 customer charge I pay monthly and the base charge for Rate PAE (Purchase of Alternate Energy). As a result of the charge, I may not be able to recoup the cost of my solar system before it needs to be replaced.

9. I did not think that the capacity reservation charge applied to my 4-kilowatt solar generating system when it was installed. I received a letter from Alabama Power in September 2015 notifying me that my system was sending electricity onto Alabama Power's grid. The letter informed me of Rate PAE and the capacity reservation charge. If I had thought that the capacity

reservation charge was applicable, I probably would not have installed my solar generating system.

10. Not only am I personally impacted because I have to pay an extra \$20 each month to be connected to Alabama Power's grid, I am concerned that the capacity reservation charge unfairly impacts all residential solar customers who have chosen to create their own electricity and also connect to the grid. I am also concerned that the capacity reservation charge discourages others from installing solar. Furthermore, I am concerned about the impacts that continued reliance on fossil fuels, in lieu of greater reliance on clean fuels like solar energy, will have on future generations.

11. Gasp and its members, me included, have a direct and beneficial interest in the protection and enhancement of Alabama's natural environment and economy, and in the health of its citizens. I believe that additional residential solar systems in the state will lead to clean, renewable power, thereby decreasing the use of fossil fuels for electricity and improving air quality. Anti-solar policies such as the capacity reservation charge substantially and adversely impact these interests. My economic, environmental and human health interests are adversely affected by the capacity reservation charge because it dissuades the use of clean, renewable solar power.

12. The capacity reservation charge went into effect in May 2013. Had I known about the proposed revisions being made, I would have voiced my opposition to the revisions in some way.

13. Gasp represents my interest in challenging the capacity reservation charge for solar systems, which I consider to be unfair. People like me should not be punished financially for taking steps to limit their consumption of fossil fuel-based electricity. If the Commission

were to require Alabama Power to stop collecting the capacity reservation charge for solar energy generating systems, that would resolve the charge's adverse impacts on me and my interests.

FURTHER AFFIANT SAYETH NOT.

Teresa K. Thorne
Teresa K. Thorne

State of Alabama)

County of Blount)

I, Carla Monaghan a Notary Public, in and for said County and State, hereby certify that Teresa K. Thorne, whose name is signed to the foregoing Affidavit, and who is known to me, acknowledged before me on this day that being informed of the contents of said Affidavit, she executed the same voluntarily on the day the same bears date.

Given under my hand this 24th day of April, 2018.

Carla Monaghan
Notary Public

My commission expires: 10/20/19

NOTARY SEAL

