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August 21, 2026

VIA E-FILE & HAND DELIVERY

Mr. Devon D. Beaty, Secretary
Alabama Public Service Commission
RSA Union Building
100 North Union Street, Suite 950
Montgomery, AL 36104

RE: SELC's Reply Comments on Large Load Contracts, Docket 33709

Dear Secretary Beaty:

Enclosed please find the reply comments of the Southern Environmental Law Center (SELC) on the above-referenced matter. This document is being filed pursuant to the Alabama Public Service Commission's *Generic Proceeding Order* issued on or about July 8, 2026.

Consistent with the rules on electronic filing and practices of the Alabama Public Service Commission, this document is being filed through the e-filing system, and a hard copy is being delivered by courier. A service copy will be sent to all parties on the service list.

Please contact me if you have any questions or concerns.

Sincerely,

s/ Jaclyn Brass
Jaclyn Brass
Southern Environmental Law Center

Enclosure

BEFORE THE ALABAMA PUBLIC SERVICE COMMISSION

Generic Proceeding to Establish a Process for Consideration of Contracts for Electric Service Between Alabama Power Company and Large Load Data Center Customers	)	**Docket No. 33709**

<u>SELC'S REPLY COMMENTS ON LARGE-LOAD CONTRACTS</u>

The Alabama Legislature passed, and the Governor adopted, a new law to ensure that data centers are not "built on the backs of our ratepayers."[1] The question before this Commission is whether it will execute this law in a manner that is true to the intent of the Legislature, or whether it will surrender to the status quo. The Southern Environmental Law Center ("SELC")[2] respectfully submits these reply comments in the Alabama Public Service Commission's ("Commission") generic proceeding in Docket No. 33709[3] urging the Commission to use its authority to truly ensure that Alabama Power's residential and small business customers "never foot the bill for someone else's private profit."[4]

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[1] Statement of Senator Lance Bell, Recording of Standing Meeting of Senate Committee on Fiscal Responsibility and Economic Development at 10:53 (Feb. 11, 2026), https://www.youtube.com/live/O6ptDEGQd5c?si=hLBqN78hxTc0c0g_&t=653.

[2] SELC is a nonprofit, nonpartisan legal advocacy organization rooted in and focused on the South with extensive experience practicing before public service commissions and engaging on energy issues in our nine offices across six states.

[3] *In re Generic Proceeding to Establish a Process for Consideration of Contracts for Elec. Serv. Between Ala. Power Co. & Large Load Data Ctr. Customers*, Docket No. 33709 (Ala. Pub. Serv. Comm'n July 8, 2026) [hereinafter Generic Proceeding Order].

[4] *State Legislators Introduce Bipartisan Alabama Affordability Protection Plan*, Ala. Pol. Rep. (Feb. 6, 2026) (quoting bill sponsor Senator Lance Bell), https://www.alreporter.com/2026/02/06/state-legislators-introduce-bipartisan-alabama-affordability-protection-plan/.

INTRODUCTION

Act No. 2026-610, codified as Ala. Code § 37-4-22.1, directs the Commission to affirmatively determine whether a proposed contract between Alabama Power and a large-load data center is consistent with the public interest.[5] Alabama Power's principal argument in its initial comments in this docket is that the Commission can satisfy that requirement by continuing to do what it has done since 1996 under Rate FCR—in other words, that the Legislature intended minimal to no changes.[6] That reading would make the Legislature's work pointless and the Commission should reject it.

The bill's primary sponsor was explicit about its purpose. Senator Lance Bell said the legislation was meant to "ensure[] fairness and transparency in our energy system."[7] Nothing in Alabama Power's comments explains how a process that produces no public findings, on a record no member of the public may see, advances either fairness or transparency. Alabama Power does not explain how continuing the Rate FCR process almost unchanged can be reconciled with the plain terms of the law. This business-as-usual approach would not protect the 1.6 million residential and small business customers, allowing them no opportunity to evaluate the contracts that will ultimately determine whether they bear the cost of a multi-billion-dollar buildout.[8] At last count, Alabama ranked **third** out of all 50 states for the highest average residential bills (following just Hawaii and Connecticut),and has the **highest** residential rates (cents/kWh) among states in the

[5] 2026 Ala. Acts 610 (S.B. 270) (effective Oct. 1, 2026) (codified as Ala. Code § 37-4-22.1).
[6] *Initial Comments of Alabama Power Company*, Docket No. 33709, at 13 (Ala. Pub. Serv. Comm'n Aug. 6, 2026) [hereinafter APC Initial Cmts.]
[7] *State Legislators Introduce Bipartisan Alabama Affordability Protection Plan*, Ala. Pol. Rep. (Feb. 6, 2026), https://www.alreporter.com/2026/02/06/state-legislators-introduce-bipartisan-alabama-affordability-protection-plan/.
[8] Southern Co., Second Quarter 2026 Earnings Conference Call (July 30, 2026), slides 10–11; unofficial transcript (July 30, 2026); *See* Ala. Power Co., By the Numbers: Fact Card 2026, https://www.alabamapower.com/content/dam/alabama-power/pdfs-docs/company/fact-card.pdf (figures complete for 2025).

South.[9] This reality is only more difficult for low-income Alabamians; for residential customers at or below the federal poverty level, Alabama has the **second highest** electricity burden (percent of household income spent on electricity bills) among all 50 states (following Hawaii).[10] These and all Alabama Power customers deserve proper regulatory oversight, transparency, and accountability.

The record confirms that the questions raised by this proceeding are significant and timely. And recent events confirm that the stakes are high—since June of this year, Alabama Power has filed three apparent large-load data center contracts.[11] Twenty interested parties (in nineteen filings) submitted initial comments in this docket.[12] They represent sharply different interests—data center companies, industrial and business associations, consumer advocates, environmental organizations, and individual ratepayers. But the overlap in issues that matter most to residential and small business customers is striking. At least ten of the comments argue for additional transparency and greater public access.[13] Three explicitly propose a new large-load tariff.[14] The record also shows broad consensus that all contracts must include 1) adequate minimum contract

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[9] U.S. Energy Info. Admin., Electric Power Monthly tbl.5.6.A (July 2026), https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_6_a; *see also* U.S. Energy Info. Admin., Electric Sales, Revenue, and Average Price (Oct. 7, 2025), https://www.eia.gov/electricity/sales_revenue_price/.

[10] U.S. Dept. of Energy, Low-income Energy Affordability Data ("LEAD") Tool (accessed Aug. 20, 2026), https://www.energy.gov/cmei/scep/slsc/lead-tool.

[11] *See* Contract for Electric Service Between Alabama Power Co. and Dotier, LLC, Dkt. No. D-7842 (Ala. Pub. Serv. Comm'n, June 18, 2026) [hereinafter "Dotier Contract"]; Contract for Electric Service Between Alabama Power Co. and Alabama ADC Holdings, LLC, Dkt. No. D-7843 (Ala. Pub. Serv. Comm'n, July 24, 2026) (Alabama ADC Holdings a subsidiary of Nebius) [hereinafter "Nebius Contract"]; Contract for Electric Service Between Alabama Power Co. and Woostor, LLC, Dkt. No. D-7844 (Ala. Pub. Serv. Comm'n Aug. 14, 2026) [hereinafter "Woostor Contract").

[12] *See generally* Dkt. No. 33709, Generic Proceeding to Establish a Process for Consideration of Contracts for Electric Service Between Alabama Power Company and Large Load Data Center Customers (Ala. Pub. Serv. Comm'n) (Debbie Byrd Weaver and Jeri Mathews combined their separate comments in one filing).

[13] *See generally* Dkt. No. 33709, Initial Cmts. of Energy Alabama; Initial Cmts. of the Gulf States Renewable Industries Association [hereinafter GSREIA Initial Cmts.]; Cmts. of Attorney General's Office [hereinafter AGO Initial Cmts.]; Initial Comments of Black Warrior Riverkeeper.; Arie Lucille Kimble-Foster Initial Cmts.; AFP-Alabama Initial Cmts.; Ricky Neighbors Initial Cmts.; Sierra Club Initial Cmts.; Debbie Byrd Weaver Initial Cmts; Jeri Mathews Initial Cmts.

[14] *See* Initial Cmts. of Energy Alabama; Sierra Club Initial Cmts; SELC Initial Cmts.

term length, 2) minimum bills, 3) adequate collateral and credit, and 4) sufficient termination fees.[15] Alabama Power does not dispute that such terms are necessary; it says its contracts already contain "all of the items listed in the July 8 Order, and many more."[16] It declined, however, to cite to or add anything to the record in support of that claim.

In its initial comments, SELC asked the Commission to:

- Expand any adopted procedures to data centers with at least 100 megawatts of capacity;
- Open an investigation into adopting a large load tariff;
- Require Alabama Power to file a public integrated resource plan;
- Adopt a model contract for large-load data center customers;
- Require that model contract to include terms that truly protect other customers; and
- Require real transparency and public input at every stage of review.[17]

This reply builds on SELC's initial comments and responds to key arguments and proposals raised in others' comments.

COMMENTS

I. Alabama Power customers cannot afford for the Commission to put this decision off.

Several commenters urge the Commission to move slowly, to change as little as possible, and to leave harder questions for another day.[18] Delay could prove extremely costly for Alabama Power customers. The scale of what is already being decided *without* a vetted review process designed to handle large-load data center contracts is concerning. Southern Company informed shareholders that Alabama Power contracted approximately 3 gigawatts of large load in the second quarter of 2026 alone, bringing the total contracted large load to approximately 4 gigawatts, and

[15] *See* Docket 33709.
[16] APC Initial Cmts. at 15-16.
[17] SELC's Initial Cmts., Dkt. No. 33709 (Ala. Pub. Serv. Comm'n Aug. 6, 2026).
[18] *See, e.g.*, Comments from Manufacture Alabama, Dkt. No. 33709, at 3-4 (Ala. Pub. Serv. Comm'n filed Aug. 5, 2026) (warning against "reopening the fundamentals of ratemaking") [hereinafter Mfg. Ala. Initial Cmts.]; Comments to Docket No. 33709 from the Bus. Council of Alabama at 2 (Ala. Pub. Serv. Comm'n filed Aug. 6, 2026) ("if it isn't broken, don't fix it"); Comments of Jim Zeigler, Dkt. No. 33709, at 1-3 (Ala. Pub. Serv. Comm'n, Aug. 4, 2026) ("A broad reexamination is inappropriate for a Commission in transition".).

that roughly $2 billion of capital expenditure accompanies each gigawatt of new generating capacity—implying approximately $8 billion of investment already in motion.[19] Alabama Power itself raises the prospect of "service to a 1,000 MW customer" against a system with a "peak load capacity in excess of 12,000 MW."[20] Alabama Power seemingly offered these figures to assure the Commission that it should be trusted to serve such large loads, but the statement only highlights the unprecedented, paradigm-shifting nature of a single customer approaching 10 percent of its entire system.

While the Commission and the parties debate how large-load data center contracts should be reviewed, Alabama Power is signing them. When SELC filed its initial comments on August 6, it could identify two large-load contracts recently filed by Alabama Power: the Dotier Contract, Docket No. D-7842 (filed June 18, 2026, and connected to the Meta data center) and the Alabama ADC Holdings, LLC Contract, Docket No. D-7843 (filed July 2026 and connected to the Nebius data center).[21] A third contract that may be another large-load data center (though it is difficult to tell) has been since filed. On August 14, 2026, Alabama Power filed a contract with Woostor, LLC, in docket D-7844.[22] Woostor was registered as a business entity with the Alabama Secretary of State in June 2026, just two months prior to signing its APC contract.[23] SELC could not identify with certainty what Woostor is or whether it is a large-load data center. It appears to have no identity or internet presence at all prior to its June formation.

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[19] S. Co., Second Quarter 2026 Earnings Conference Call, slides 10-11 (July 30, 2026), https://s27.q4cdn.com/273397814/files/doc_financials/2026/q2/SO-2026-Q2-Earnings-Call-Final.pdf; Southern Company (SO) Q2 FY 2026 Earnings Call Unofficial Transcript (July 30, 2026), https://finance.yahoo.com/quote/SO/earnings/SO-Q2-2026-earnings_call-658272.html; see SELC Initial Comments at 3 & nn.9-10.

[20] APC Initial Cmts. at 19.

[21] *See* Nebius Contract, *supra* note 11; Dotier Contract, *supra* note 11.

[22] *See* Woostor Contract, *supra* note 11.

[23] Ala. Sec'y of State, Business Entity Details:Woostor, LLC, Entity ID No. 001-259-969, https://arc-sos.state.al.us/cgi/corpdetail.mbr/detail?corp=001259969 (last visited Aug. 21, 2026).

In each filed contract, Alabama Power's cover letter states in conclusory terms that the contract recovers all incremental costs and places downward pressure on rates. The contract itself does not allow any way to verify that claim. The effective date, the contract term, the customer's committed capacity, the entire pricing schedule, the required financial security, the credit rating trigger for additional collateral, the length of the load buildup period, the annual energy threshold, and the minimum bill payment obligations are all redacted.[24]

Whatever processes the Commission adopts to both effect Ala. Code § 37-4-22.1 and to ensure that rates are just and reasonable to all customers, the contracts being filed today will impact Alabama Power's 1.6 million existing customers for decades.[25] Delaying action would only provide an opportunity for additional contracts to avoid proper scrutiny before effective safeguards are firmly in place. This Commission must not allow that.

II. The Legislature did not codify Rate FCR.

Alabama Power, Manufacture Alabama, and the Business Council of Alabama each build their comments on a common premise—that in enacting Act No. 2026-610 the Legislature did not intend to change anything.[26] Alabama Power states this position plainly, asserting that "applying the traditional canons of statutory interpretation, it seems evident that the Legislature sought to codify" "the existing Rate FCR review process and its associated criteria" with an "added emphasis" of economic growth.[27] The canons of statutory interpretation Alabama Power invokes defeat its argument. The plain language and legislative intent are clear that the Legislature did not intend to codify Rate FCR.

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[24] Note that Nebius itself has stated it is pursuing buildout of a 300-megawatt facility. That information is clearly not confidential.
[25] *See* Ala. Power Co., By the Numbers: Fact Card 2026, https://www.alabamapower.com/content/dam/alabama-power/pdfs-docs/company/fact-card.pdf (figures complete for 2025 listing 1.6 million customers).
[26] APC Initial Cmts. at 1-2 ,12-13; Mfg. Ala. Cmts. at 2-3; BCA Cmts. at 2-3.
[27] APC Initial Cmts. at 12-13.

The most fundamental canon of statutory interpretation is that "where the language of a statute is plain," Courts will "interpret the statute to mean exactly what it says."[28] And courts will not "blindly follow an administrative interpretation" in the face of the plain language of a statute.[29] The language of Ala. Code § 37-4-22.1 does not acknowledge, address, or adopt Rate FCR.

While plain meaning is the primary tool, the purpose of statutory construction is to "ascertain and effectuate the intent of the Legislature as expressed in the statute."[30] That intent may be gleaned from the "language used, the reason and necessity for the act, and the purpose sought to be obtained."[31] Here, the Commission need not guess at legislative intent. Senator Bell was explicit: this bill was meant to "ensure[] fairness and transparency in our energy system" and prevent Alabama Power and data centers from profiting at the expense of other Alabama Power customers.[32] It was not meant to endorse or perpetuate the status quo.

A. The Legislature is presumed to have known Rate FCR existed and chose not to codify it.

Courts presume that the Legislature acts with full knowledge of existing law (and administrative interpretations) when it legislates.[33] The Legislature knew Rate FCR existed. It knew the Commission was actively using Rate FCR to review large-load data center contracts. If the Legislature intended to retain Rate FCR in its entirety, it could have said so. If the Legislature intended to largely retain Rate FCR with modest additions, it could have said that too. Instead, it enacted a new section and imposed a new standard. A Legislature that knew about Rate FCR and

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[28] *Farmer v. Hypo Holdings, Inc.*, 675 So. 2d 387, 390 (Ala. 1996)
[29] *Id*.
[30] *Blue Cross & Blue Shield of Ala., Inc. v. Nielsen*, 714 So.2d 293, 296 (Ala.1998).
[31] *Id.*
[32] *State Legislators Introduce Bipartisan Alabama Affordability Protection Plan*, Ala. Pol. Rep. (Feb. 6, 2026), https://www.alreporter.com/2026/02/06/state-legislators-introduce-bipartisan-alabama-affordability-protection-plan/.
[33] *See Blue Cross & Blue Shield of Ala., Inc. v. Nielsen*, 714 So. 3d 293, 296 (Ala. 1998) ("It is a familiar principle of statutory interpretation that the Legislature, in enacting new legislation, is presumed to know the existing law.").

chose to write a different law did not mean to compel the same process the Commission and Alabama Power have followed for decades.

B. *Reading Ala. Code §37-4-22.1 to continue Rate FCR unchanged renders the statute pointless.*

Another basic principle of statutory interpretation is that a statute should not be read so that any part of it is rendered meaningless, superfluous, or redundant.[34] In other words, through the enactment of legislation, "it is presumed that the Legislature did not do a vain and useless thing."[35] Reading Ala. Code § 37-4-22.1 to permit Rate FCR to continue essentially unchanged would render the Legislature's work useless. That is not a legally defensible construction.

Alabama Power's conduct does not comport with its claims that the Legislature intended to codify Rate FCR. In consenting to the Commission's temporary modifications to Rate FCR, Alabama Power clarified that any large-load data center contract filed before October 1, 2026, would be evaluated under Rate FCR, as modified by consent, and would be exempt from any revised procedures adopted by the Commission to effectuate the new law.[36] That exemption would only be worth having *if there is something to be exempted from*. If Ala. Code § 37-4-22.1 merely codified Rate FCR, and if the procedures adopted in this docket will simply restate what the Company already does, Alabama Power would not need to specify that the contracts it rushes to file before October 1 are exempt.

The Commission should not be persuaded to presume that a pre-existing administrative practice that predates the proliferation of large-load data centers satisfies a new statute enacted with the specific purpose to protect ratepayers from impacts associated with that proliferation. As

[34] *Ex parte Children's Hospital*, 721 So.2d 184, 191 (Ala. 1998).
[35] *Alidor v. Mobile Cnty. Comm'n*, 284 So.2d 257, 261 (Ala. 1973).
[36] Letter from Moses Feagin (Alabama Power Company) to Devon Beaty (Alabama Public Service Commission), Confirmation of Consent, Dkt. No. 33709 (Ala. Pub. Serv. Comm'n July 13, 2026).

the Commission considers how to implement Ala. Code § 37-4-22.1, it should ensure that its process is grounded in clear statutory authority—not convenience.

C. *The Attorney General's Office reinforces this conclusion and raises a question about Rate FCR's original validity.*

The Attorney General's Office ("AGO") notes that contracts of this kind have been subject to Commission approval under Ala. Code § 37-4-22 since 1920, and questions whether the Commission had authority in 1996 to relax that statutory requirement through an administrative order.[37] As the AGO puts it, an agency order that rewrites a statute to ease a statutory restriction is ultra vires and invalid.[38]

Section 37-4-22(b) of the Alabama Code, the statute that has governed contracts like these since 1920, says "[i]f the commission shall find the provisions of any such contract consistent with the public interest, it shall approve the same." The new statute, Ala. Code § 37-4-22.1, carries the same requirement for affirmative approval forward, specifically directing that the Commission "*determine* that the contract pricing and contract terms and conditions over the contract term are expected to" provide for recovery of incremental costs and promote positive benefits.[39]

Rate FCR, on the other hand, deems a contract approved ten days after filing unless the Commission affirmatively disapproves it.[40] Rate FCR, therefore, conflicts with the statutory requirements of the original Ala. Code § 37-4-22, and the additional requirements added by Ala. Code § 37-4-22.1. As SELC stated in its initial comments, the Commission must take action—through a vote—under Ala. Code § 37-4-22.1 in determining whether the requirements of the statute are met.

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[37] AGO Initial Cmts. at ¶ 1, 5.
[38] *Id.* at ¶ 8.
[39] Ala. Code § 37-4-22.1 (emphasis added).
[40] *See* Generic Proceeding Order at 2-3.

D. Alabama Power's position is that nothing should change but the Act says otherwise.

Alabama Power's comments reach the same conclusion on almost every question the Commission posed in its July 8 Generic Proceeding Order—that nothing needs to change. The proposed submission requirements, it says, "align with the approach used by Alabama Power today."[41] The proposed review period is "consistent with how the Rate FCR review process by Commission Staff operates today."[42] The process for handling a disapproved contract "generally aligns with existing Rate FCR review process."[43] Alabama Power further urges the Commission to "proceed cautiously in calling out a single sub-class of customers for treatment to which no other sub-class is subject."[44] But identifying large-load data centers as a distinct class is precisely what the Legislature prudently chose to do. Risk borne across 1.6 million customers, each a tiny fraction of the system, is diversified. One contract approaching 10 percent of the Company's peak load capacity is not. A position that nothing should change cannot be reconciled with the statute the Legislature passed nor is it prudent given the stakes.

III. The Commission must honor both the letter and intent of the statute.

In subsection (b), Ala. Code § 37-4-22.1 requires the Commission to find that a contract's pricing, terms, and conditions are expected to (1) recover all incremental costs of serving the large load data center customer, *and* (2) "[p]romote positive benefits to other retail electric customers of the utility."[45] Subsection (c) of the Act then lists, non-exhaustively, considerations bearing on the second finding: whether the contract is expected to lower costs for other customers; whether the

[41] APC Initial Cmts. at 6.
[42] *Id.* at 9.
[43] *Id.* at 10.
[44] *Id.* at 19-20.
[45] Ala. Code § 37-4-22.1(b)(1)-(2).

customer is "expected to increase the efficiency of the utility's power system;" and whether the customer contributes to economic growth in the community where its premises are located.[46]

The Commission is a creature of statute and possesses only those powers the Legislature has conferred upon it.[47] Here, the Legislature was clear. The Commission must protect ratepayers by, at minimum, ensuring that incremental costs are covered and that any contract results in a positive benefit to other customers.

A. Alabama Power must demonstrate that its methodologies appropriately calculate incremental costs as defined by Ala. Code § 37-4-22.1.

Ala. Code § 37-4-22.1 defines incremental costs as "additional costs associated with generation, transmission, distribution, sale, or furnishing of electricity to a large load data center customer, including fuel costs and taxes, which the utility would not incur but for the large load data center customer contract."[48] Alabama Power, however, does not acknowledge the definition nor address whether or how its methodologies ensure these costs are covered by contract terms. Instead, it simply states that it "would use the same tools, models and data that are used throughout its operations and which it uses today when it calculates such costs in connection with a proposed contract under Rate FCR."[49] It does not explain what those models and methodologies are. It does not describe assumptions made. And it does not say what tools it uses. In other words, the process is completely lacking in transparency; the Company provides the public with no information or reassurances. This lack of transparency is not consistent with the requirements of the new statute and reflects exactly why the public is so frustrated with the process and the lack of regulatory

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[46] *Id.*
[47] *See Ala. Great S. R.R. Co. v. Ala. Pub. Serv. Comm'n*, 97 So. 226, 228 (Ala. 1923).
[48] Ala. Code § 37-4-22.1(a)(1).
[49] APC Initial Cmts. at 13.

oversight and protection. The Commission should require Alabama Power to demonstrate, for each contract, that its incremental cost calculation follows Ala. Code § 37-4-22.1's "but-for" standard.

B. The positive-benefit determination requires more than just a RIM output.

Alabama Power proposes to collapse the second inquiry into one question: whether the contract satisfies the Rate Impact Measure ("RIM") test. As described by the 1996 Rate FCR order:

> To determine whether or not a new load addition passes the RIM test, the incremental costs of serving the new load are subtracted from the incremental revenues to be generated from the new load accumulated over the duration of the contract term. The resulting difference is discounted in recognition of the time-value of money to achieve a net present value of the load addition. When the net present value is positive, the RIM test has been passed.[50]

Alabama Power claims that if the contract passes the RIM test, then it satisfies the positive benefits determination by "by placing downward pressure on their rates."[51] Alabama Power also indicates that since the Commission equated power system efficiency to downward pressure on rates in 1996, that Commission need not independently assess power system efficiency under the new statute.[52]

The Legislature included a non-exhaustive list of considerations for a positive benefit and any determination that a contract promotes a positive benefit requires a holistic review, not a formula addressing a single financial output. An inquiry into power system efficiency should consider how the system is planned, dispatched, and operated. As SELC explained in its initial comments, the efficiency inquiry should turn on measurable operational factors: utilization of existing facilities, system load factor, coincidence with system peak, curtailment potential, and

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[50] *In re Alabama Power Co. (Rate FCR)*, Docket No. U-3672.
[51] *Id.*
[52] *See* APC Initial Cmts. at 12 (quoting *In re Alabama Power Co. (Rate FCR)*, Docket No. U-3672).

demand-response participation.[53] Further, the list does not preclude consideration of other factors, such as a customer's clean energy commitments.

SELC does not ask the Commission to disregard the RIM test. But the test is a projection subject to limitations.[54] The test produces a single number, calculated over a period that can run for decades, using a discount rate and cost assumptions that Alabama Power alone selects and the public never sees. Small changes in those assumptions can flip the result. There is no opportunity for anyone outside of Alabama Power and the Commission to check the math. The test is calculated by the party that *benefits* from a passing result—Alabama Power.

Additionally, it is not clear whether the test would be rerun when a contract changes. Alabama Power states that it has "included in contracts self-executing provisions that allow for modifications without the need for filing" and that it expects to continue to evade additional review.[55] In other words, Alabama Power itself decides whether a modification affects the satisfaction of the criteria, and, therefore, decides whether additional oversight is required. Permitting the self-interested parties to amend the contract on their own assessment of the statutory criteria without oversight cannot stand. This is particularly important in the current large load context because, as stated by Georgia Power earlier this year discussing the dynamic nature of RIM results, "the cost to serve -- the first [large load] project was likely a lot cheaper than the cost to serve the last one, right? … So if you go back in time to 2022, the world of cost and capacity

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[53] SELC Initial Cmts. at 16-17.

[54] As noted by Georgia Power Company in response to questions about its RIM test model, "year-by-year -- or the more granular you get, it should not be relied on for that." Hr'g Transcript at 50:3-19, 53:23-54:10, Georgia Power Company's Application for the Certification of the 2029-2031 All-Source Capacity RFP and Supplemental Resources for 2028-2031 Capacity: GIPL and Southface Institute Petition for Limited Hearing Concerning Stipulation (Access to Trade Secret Information under an NDA) (Feb. 3, 2026), https://www.selc.org/wp-content/uploads/2026/08/2026.02.03-56298-56310-Transcript-w-Exhibits_Limited-Hrg.pdf [hereinafter "Georgia Hr'g Tr."].

[55] APC Initial Cmts. at 18.

costs back in 2022 are much different than they are today."[56] Last, there is no indication whether the test is calculated for individual customer classes or considered as a whole. Would the contract still pass if a specific customer class, such as residential ratepayers, ends up worse off depending on how shared costs are divided?

Recent experience in North Carolina shows why a single forecast number is an insufficient basis on which to rest approval. Duke Energy used a Large Load Impact Analysis to estimate net revenue from a large load over a 15-year period. Duke projected a $3.6 billion net benefit to other customers over fifteen years.[57] When the North Carolina Public Staff held Duke's model constant and changed one input, the same analysis produced a $1.8 billion dollar *net cost.*[58] This illustrates plainly that any test result—no matter how proven the methodology—is only as sound as its input assumptions, and the Commission must not accept unexamined projections from the party that produced it.

SELC reiterates its initial recommendations that the Commission require Alabama Power to file a standardized cost-recovery analysis identifying the model used and each material input and assumption, with sources. The Commission should also require results disaggregated by customer class and require re-analysis upon any material amendment to an approved large-load contract. Finally, the methodology should be publicly disclosed with only genuinely sensitive figures redacted.

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[56] Georgia Hr'g Tr. at 55:4-18.

[57] Second Corrected Joint Testimony of Jay Lucas, Jethro Ssengonzi & Leah Weaver, Public Staff, Application of Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges, Docket No. E-7, Sub 1329, at 18-19 (N.C.U.C. July 2, 2026) https://starw1.ncuc.gov/NCUC/PSC/PSCDocumentDetailsPageNCUC.aspx?DocumentId=d20155f2-e8f0-41b2-af25-e1c72bdcaaaa&Class=Filing.

[58] *Id.*

C. *No contract should take effect through "deemed approval," or an early vote.*

Under the Commission's proposed process, a large load data center contract is "deemed approved" if the Commission does not issue an order disapproving it within 60 calendar days of filing.[59] Some commenters ask that the Commission shorten this process. Others ask that the Commission lengthen it. Alabama Power asks the Commission to clarify that it can take action at any point *within* that 60 days without public notice or opportunity to object.[60]

In response to this, SELC reemphasizes that decisions of this magnitude must not be swept through without adequate review. Rather, the Commission should seriously consider lengthening the review period, as proposed by several commenters.[61]

Further, Ala. Code § 37-4-22.1 requires an affirmative vote. It directs the Commission to "*determine*" whether a contract is consistent with the public interest. A "determination" requires an affirmative decision. When the Legislature intends Commission silence to have legal effect, it says so. For example, Ala. Code § 37-1-81(b), regarding Schedules of Rates or Service Regulations, sets out procedures under which a suspended rate schedule or service regulation becomes effective if the Commission does not act within the statutory period.[62] That is an express, legislatively authorized deemed-effective mechanism. Ala. Code § 37-4-22.1 contains no such provision. At minimum, the Commission should be able to vote to extend the period if, at the end of 60 days, it is not ready to make a determination.

Alabama Power asserts that because it has a *practice* of engaging in "pre-filing discussions" with the Commission and sees "no upside to the abandonment of such a practice,"

[59] Generic Proceeding Order at 6.
[60] APC Initial Cmts. at 10.
[61] *See, e.g.*, Americans for Prosperity Alabama Initial Cmts, Dkt. No. 33709, at 3-4 (Ala. Pub. Serv. Comm'n filed Aug. 5, 2026); Energy Alabama Initial Cmts.
[62] Ala. Code § 37-1-81(b).

the review period will prove too long for most proposals.[63] Treating informal, prefiling discussions as part of the review period undermines transparency and accountability. Once the Commission adopts a procedure, it should not *shorten* established review periods without notice and an opportunity to object. Doing so would create uncertainty and render it impossible for an affected individual to know when a contract is being reviewed or when it will be voted on. The Commission, Attorney General, and the public should be able to identify when the formal review period begins, assess the information available to decisionmakers at that point, and have procedural assurances that the contract will not go into effect until the time for review has expired and the Commisision has formally voted.

The Commission is adopting these review procedures to fulfill its regulatory and statutory responsibilities—not to accommodate Alabama Power's calendar or practices. A regulated utility follows those procedures once a matter is properly before the Commission. It should not get to run its own private process alongside them and then ask to be excused from the public process. Negotiation behind closed doors may have a place between a utility and private party. It has no place in a public-interest determination the Legislature specifically assigned to the Commission.

IV. The Commission must distinguish legitimate confidentiality concerns from attempts to avoid public scrutiny.

Alabama Power, the Data Center Coalition, Manufacture Alabama, the Business Council of Alabama, and Energy Institute of Alabama each frame this docket as a choice between extremes: either the public sees nothing, or the public sees everything, including information whose disclosure could cause real competitive harm or create security risk.[64] That is a false choice. The

[63] APC Initial Cmts. at 16.
[64] APC Initial Cmts. at 6-9; 16; DCC Cmts. at 6-7; Energy Inst. of Ala. Cmts. at 2-4; Mfg. Ala. Cmts. at 5-6; BCA Cmts. at 3-4.

Commission can and should protect genuinely sensitive financial or trade secret information that is widely accepted to require confidentiality. But the Commission can and should also require sufficient disclosure and opportunities for the affected parties to be heard. Crucially, there is a distinction between information that could cause harm if public and information that merely permits public scrutiny.

Appropriate confidentiality does not mean no transparency. The Energy Institute of Alabama argues that national security justifies broader confidentiality, pointing to cyberattacks on utility and water systems, including a July 2026 attack on Minnesota water systems and an earlier intrusion into a Massachusetts utility.[65] This comparison is completely misplaced. Both involved unauthorized access to control systems and network equipment, not disclosure of contract pricing.[66] The transparency SELC requests concerns commercial contract terms, which have no apparent connection to the security risks Energy Institute of Alabama describes. Nor is SELC arguing for disclosure that would threaten any competitive advantage Alabama Power seeks. None of these commenters have explained how publishing contract length, effective dates, minimum payment obligations, cost allocations, exit fees, contracted load size, or the identity of the end user could conceivably create security risks or threatens competition.

In fact, in the Alabama ADC Holdings contract, one of the few paragraphs NOT redacted deals with voltage stability and technical protocols the customer must follow to avoid destabilizing the grid.[67] Instead, what Alabama Power redacts is ordinary commercial terms with no apparent connection to physical security. Legitimate confidentiality interests—even for commercial purposes—do not require blanket nondisclosure. As described in our initial comments, the

[65] Energy Inst. of Ala. Cmts. at 2–3.
[66] *Id.*
[67] Nebius Contract ¶ 6.

interested public needs some form of public disclosure and a mechanism by which to intervene in the docket and obtain the information kept confidential under an appropriate protective order.

The Energy Institute of Alabama and Manufacture Alabama also argue that Ala. Code § 37-4-22.1's silence about the Attorney General means the Commission cannot give that office any role in reviewing these contracts.[68] As Alabama Power acknowledges, the Attorney General has a statutory role representing the "using and consuming public."[69] Ala. Code§ 37-4-22.1 did not repeal the Attorney General's authority by implication. More importantly, however, the AGO's participation cannot be the only safeguard. The Attorney General (as it notes) represents generalized ratepayer interests, not the particular interests of host communities, local governments, or other affected parties. The AGO's own comments confirm this constraint, reporting that it has not received an appropriation for this work in more than a decade.[70] An office without dedicated resources, representing every customer class at once, is not even functional, much less a substitute for public participation.

SELC recommends, at minimum, that the Commission require: 1) public disclosure of a standard summary of the cost-recovery analysis for every contract; 2) access to the full, unredacted contract for any intervening party formally admitted to the docket under a protective order consistent with the Commission's existing practice in other dockets; and 3) a public-comment period.

Alabama Power proposes that only a transmittal letter and a redacted contract be filed with the Commission, with all other supporting materials—the data, calculations, and analysis underlying the statutory findings—submitted directly and confidentially to Commission Staff and

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[68] Energy Inst. of Ala. Cmts. at 4; Mfg. Ala. Cmts. at 5–6.
[69] APC Initial Cmts. at 5 & n.9 (citing Ala. Code § 37-1-16).
[70] AGO Cmts. ¶¶2-3.

the Attorney General.[71] This proposal is unacceptable. At a minimum, the public should be able to review the material terms of the contract: contract length, minimum payment obligations, cost allocation, exit fees, contracted load size, and the identity of the end user. Public disclosure of these terms allows the ratepaying public to analyze cost allocation, ratepayer risk, and system impact. And intervenors should be allowed to obtain access to such contracts under an appropriate protective order as they would be allowed in any other docket.

Georgia should serve as a cautionary tale to this Commission of how detrimental withholding fundamental contract information can be to public interests. On August 4, the Georgia public began to connect the dots between a completely redacted "contract" filed with the Georgia Public Service Commission ("Georgia PSC") 20 days earlier and a proposed OpenAI data center.[72] As proposed, at 3.2 gigawatts, OpenAI *would be the single largest electricity customer in Georgia history*.[73] One Commissioner offered a striking comparison: "that's the equivalent of three cities of Atlanta's worth of power."[74] A reasonable estimate for the capital expenditures required of Georgia Power to serve new facility is approximately $7 billion.[75]

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[71] APC Initial Cmts. at 8-9; 16-17.
[72] Mary Landers, *State regulator reviews OpenAI-Georgia Power contract*, The Current (Aug. 4, 2026, updated Aug. 8, 2026), https://thecurrentga.org/2026/08/04/state-regulator-reviews-openai-georgia-power-contract/.
[73] *See* Georgia Power Company, Q2 2026 Large Load Economic Development Report (Aug. 17, 2026), Ga. PSC Docket No. 55378, available at https://psc.ga.gov/search/facts-document/?documentId=227753 *with* Hr'g Transcript at 266:20-267:16, Georgia Power Company's 2025 Integrated Resource Plan (Mar. 25, 2025), available at https://www.selc.org/wp-content/uploads/2025/04/2025.03.25-IRP-Hrg-Day-1_FINAL_pp1-581.pdf.
[74] Statement of Commissioner Peter Hubbard, Recording of Georgia Public Service Commission Committee Hearing at 25:38 (Aug. 13, 2026), available at https://www.youtube.com/live/sCtpmUxqYxQ?si=aA7F-fy69w6Zd__-&t=1538.
[75] Southern Company (SO) Q2 FY 2026 Earnings Call Unofficial Transcript (July 30, 2026), https://finance.yahoo.com/quote/SO/earnings/SO-Q2-2026-earnings_call-658272.html.

According to the Georgia PSC's current policies, only the PSC can view the contract; the public sees nothing.[76] Further, the contract is automatically deemed approved 30 days after filed with staff.[77] Indeed, elected officials are not required to review the contract.[78]

On August 4, Georgians discovered that not only was the OpenAI contract already under review by staff, but that there were just 10 days left in that review period. An outpouring of concern followed. SELC is aware of over 2,000 comments submitted to the Georgia PSC from concerned citizens. The large majority of these comments flooded the commission within the span of less than seven business days. And concerns raised by both the public and, importantly, by the PSC staff[79] and commissioners,[80] have resulted in no additional transparency or oversight by elected officials, but only a brief extension of staff's deadline for review.[81]

The moral of the story is this: shutting citizens out of these critical decisions and relying on the status quo impedes a public service commission's ability to fulfil its responsibilities to the ratepaying public. Here, the Commission should adopt a transparent process that provides

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[76] Georgia Public Service Commission Order on Georgia Power Company's Revision to Rules and Regulations Tariff Compliance Filing, Ga. PSC Docket No. 44280 (Apr. 17, 2025), available at https://psc.ga.gov/search/facts-document/?documentId=222325.

[77] *Id*.

[78] *Id*.

[79] *See* Statement of Director of Utilities Tom Bond, Recording of Georgia Public Service Commission Committee Hearing at 28:53 (Aug. 13, 2026) ("Q: Is staff planning to file an objection? A: Um, right. Right now, unless the company agrees to certain changes, staff would file an objection.") https://www.youtube.com/live/sCtpmUxqYxQ?si=4ckxMGCYhmk3k8Bf&t=1733.

[80] *See* Statements of Commissioners Peter Hubbard, Alicia Johnson, and (Chairman) Jason Shaw, Recording of Georgia Public Service Commission Committee Hearing (Aug. 13, 2026) ("I'm concerned about this. . . . I'm asking staff to object." (Hubbard at 27:07); "Commissioner Hubbard and I met with Georgia Power and Open AI, that we have presented a list of questions, and I have challenged the level of transparency on the contract and just, again, had this conversation with [Georgia Power] in my office this morning . . . so I want you to know that you do have commissioners who are actively engaged in asking questions. . . . and so we still have some open questions. . . ." (Johnson at 45:36); "I just kind of wanted to follow up with everything that's been said, and like Commissioner Johnson said, I think she sort of hit the nail on the head here that, I think, there's a lot of information out there that has not been communicated appropriately and efficiently and enough." (Shaw at 58:40)), https://www.youtube.com/live/sCtpmUxqYxQ?si=Ct8xp2aFSjPXQbwQ&t=1626.

[81] Large Load Contract Review Extension Letter, Dkt. No. 44280, Document No. 227592 (Aug. 13, 2026), https://psc.ga.gov/search/facts-document/?documentId=227592.https://psc.ga.gov/search/facts-document/?documentId=227592.

meaningful opportunities for public awareness and comment, ensures adequate Commission oversight, and preserves the ultimate decision-making authority for the duly elected/appointed commissioners, not staff.

V. The Commission should also adopt SELC's other initial recommendations.

SELC reaffirms the structural recommendations from its initial comments. A buildout of this scale requires a holistic approach considering cumulative impacts including generation planning and risk. To adequately address the risks, the Commission should extend its review to loads of 100 megawatts or greater, open a large-load tariff investigation (or direct Alabama Power to file a tariff), adopt a public model or template electric service agreement with adequate terms and conditions, require a public integrated resource planning process, and ensure the public is not left in the dark.

CONCLUSION

The Legislature gave the Commission a new standard. It did so to protect Alabama Power customers from bearing the risk of a potentially poorly planned data-center buildout. The Commission should take this opportunity to address the issue holistically, reject the status quo urged by parties who only stand to financially benefit from irresponsible data center development, and ensure a continuing practice established in Alabama of letting the public weigh in on these important decisions. SELC respectfully requests that the Commission adopt the recommendations set forth above and in SELC's initial comments.

Respectfully submitted this 21st day of August 2026.

s/ Jaclyn Brass
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