



STATE OF ALABAMA

ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 304260
MONTGOMERY, ALABAMA 36130-4260

CYNTHIA LEE ALMOND, PRESIDENT
JEREMY H. ODEN, COMMISSIONER, PLACE 1
CHRIS V. BEEKER III, COMMISSIONER, PLACE 2

JOHN A. GARNER, EXECUTIVE DIRECTOR

MARY-BROOKE ODOM

Complainant,

DOCKET 33504

ALABAMA POWER COMPANY

Respondent.

ORDER OF DISMISSAL

I. Introduction and Background

On or about September 13, 2024, Ms. Mary-Brooke Odom filed a Formal Complaint against Alabama Power Company (“Alabama Power”, “the Company”, or “the Respondent”) alleging that the Company had violated Alabama law and other legal requirements in their dealings with her stemming from a dispute over her September 2024 bill for electric service.¹ Ms. Odom’s specific claims alleging violations of Alabama law are dismissed in more detail below.

II. The Complaint’s Claims and Requests for Relief

Ms. Odom first alleged that Alabama Power’s billing practices may have qualified as unfair and deceptive trade practices pursuant to the Alabama Deceptive Practices Act found at Alabama Code §8-19-1, *et seq* considering the number of complaints and the undue burden placed on customers during a State of Emergency. Ms. Odom secondly asserted that Alabama Power’s steep

¹ Ms. Odom claimed that in February 2024, during a State of Emergency declared by Alabama Governor Kay Ivey, her power bill spiked dramatically and thereafter continued to be high. In particular, Ms. Odom sought a correction of her September 2024 bill for \$736.58, which included an allegedly erroneous charge of \$49.52 for reconnection.

and unjustified increase in utility rates during a declared State of Emergency constituted price gouging pursuant to Alabama Code §8-31-1, *et seq.* Ms. Odom asserted in her third claim that Alabama Power's enjoyment of financial benefits at the expense of its customers constituted unjust enrichment under Common Law principles. Ms. Odom's fourth claim was that Alabama Power Company's refusal to accept her valid payment and her subsequent disconnection of service because of that failure to accept her valid payment could be construed as fraudulent behavior aimed at extorting additional fees from customers. Ms. Odom's fifth claim alleged that Alabama Power's improper refusal to accept a valid tender of payment from her constituted a violation of §3-603 of the Uniform Commercial Code²

Ms. Odom's request for relief included a demand for an immediate correction of her September electric bill totaling \$736.58. In particular, Ms. Odom sought a credit for an allegedly improper reconnection fee of \$50 paid on August 21, 2024 which she asserted she was wrongfully charged for a second time. Ms. Odom also sought recognition of her allegedly valid tender of an \$1,100.00 payment she claims was improperly refused by Alabama Power and application of that payment as a credit to her account. Ms. Odom further sought compensation for the financial and emotional distress caused to her family by Alabama Power's actions, including reimbursement of \$300 for perishable food items lost during a power outage she experienced at her home. Ms. Odom lastly sought a thorough review and immediate correction of Alabama Power's billing and disconnection practices, including the implementation of more flexible payment options to prevent further exploitation of Alabama Power's customers.

² Ms. Odom alleged that on or about August 21, 2024, she visited an Alabama Power drive through payment window and submitted a personal check for \$1,100.00 in keeping with a scheduled payment arrangement of \$2,000.52 she had negotiated with the Company. Ms. Odom claimed that Alabama Power's direct violation of the cited UCC provision by refusing to accept her allegedly valid tender of payment discharged her obligations to Alabama Power to the extent of the payment improperly refused.

III. Alabama Power's Motion to Dismiss

On or about October 17, 2024, Alabama Power filed a Motion to Dismiss the complaint filed by Ms. Odom. Alabama Power affirmatively denied all of Ms. Odom's claims and asserted that the Company had not violated any law, rule or regulation of the Alabama Public Service Commission (the "Commission"). Alabama Power argued that Ms. Odom's complaint should be dismissed because it failed to demonstrate or otherwise advise that there had been any violation, or potential violation, of any law, rule, or regulation by the Company as required by Rule 9(A)2 of the Commission's Rules of Practice.

In support of its Motion to Dismiss, Alabama Power noted that the essence of Ms. Odom's complaint was that Alabama Power was unlawfully collecting charges for electricity used by Ms. Odom.³ With respect to Ms. Odom's specific claims, Alabama Power noted that Ms. Odom's allegation that Alabama Power violated the Deceptive Trade Practices Act under Alabama Code §8-19-1, *et seq*; that Alabama Power violated Alabama's Unconscionable Pricing Act found at Alabama Code §8-31-1, *et seq*; and that Alabama Power unjustly enriched itself in violation of Common Law Principles were all barred by the Filed Rate Doctrine. Alabama Power cited *Taffett v. Southern Company*, 967 F.2d 1483, 1494 (11th Cir. 1992) for that assertion. Alabama Power noted that the charges for electric service imposed and collected by Alabama Power from its customers are established through a rate setting process that is within the exclusive jurisdiction of the Commission. See *City of Wetumpka v. Alabama Power Co.*, 297 So.3d 367, 369-70 (Ala. 2019); Ala. Code 37-1-31; see also *Taffett* at 1490. Alabama Power noted that in advance of Ms. Odom's usage during the winter months of 2024, adjustments to rates paid by her took place in

³ Alabama Power noted that per the billing statements submitted by Ms. Odom in support of her Complaint, Ms. Odom's power usage for December 2023 and January 2024 were in excess of 3,000 kilowatt hours, while February and March returned to levels of approximately 1,100 kilowatt hours. Alabama Power further noted that usage for the billing period reflected on the statement was nearly 5,300 kilowatt hours.

accordance with the formulary mechanisms of Rate CNP (Certified New Plant).⁴ One adjustment reflected Barry Unit 8 being placed in service at the beginning of November 23 (thus triggering an upward adjustment of Subpart A of Rate CNP); the other adjustment reflected a decrease in costs recoverable through Subpart C of Rate CNP (thus triggering a downward adjustment of Subpart C of CNP). Alabama Power emphasized that those rate adjustments were effective beginning with January 2024 billings which was prior to any declaration of a State of Emergency by Gov. Kay Ivey. Alabama Power accordingly asserted that Ms. Odom's first three claims failed *Cf. Taffett*, 967 F.2d at 1494.

Alabama Power further asserted that Ms. Odom's other two claims relating to the refusal of the Company to accept a check likewise failed. As to the fraud claim, Alabama Power alleged that Ms. Odom did not present allegations sufficient to state a claim of fraud. Alabama Power noted that according to the Complaint, Alabama Power refused to accept her check and then, when Ms. Odom apparently failed to follow the instruction that was given her when the check was refused and return to the business office to make payment in an acceptable way (e.g., cash), Alabama Power acted in accordance with the advisory on the billing statement and did not reestablish service to her premises. Put simply, Alabama Power argued that there was never a false representation of a material fact because the operative representations made by the Company were true. Accordingly, Alabama Power asserted that Ms. Odom did not allege fraud as a matter of law. *See Avendano v. Shaw*, 371 So.3d 278, 286 (Ala. 2022) ("Fraud requires (1) a false representation (2) of a material fact (3) relied upon by the plaintiff (4) who was damaged as a proximate result of the misrepresentation.")

⁴ See generally December 1, 2023 filings in Docket No. 18117.

Alabama Power lastly asserted that there was no merit to Ms. Odom's UCC claim. Alabama Power noted that the parallel provision to the UCC code section Ms. Odom referenced is Alabama Code §7-3-603(b), which states:

If tender of a payment of an amount due on an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

According to Alabama Power, the cited provision creates defenses for entities like banks who pay money out in exchange for checks presented to them. It does not govern the rights of third parties to accept or decline payment by check, and it does not vest rights in the party making the tender (i.e., Ms. Odom). *See* Alabama Code §7-3-603(b), official cmt. ("Under section (b) refusal of a tender of payment discharges any indorser or accommodation party having a right of recourse against the party making the tender."); *see also Baker v. Cenlar FSB*, 2022 WL 993668 at *2 (D. Minn. April 1, 2022) (citing *Moseley v. CitiMortgage, Inc.*, 2015 WL 728655 at *3 (W.D. Wash. Feb. 19, 2015)). Alabama Power accordingly asserted Ms. Odom's claim that Alabama Power violated provisions of the UCC should be dismissed.

Alabama Power concluded that Ms. Odom had failed to fully and completely demonstrate or otherwise advise Alabama Power and the Commission of the violation, or potential violation, of a law, rule or regulation by the Company, as required by Rule 9(A)(2) of the Commission's Rules of Practice. Alabama Power thus asserted that Ms. Odom's complaint was due to be dismissed.

IV. Alabama Power's Response to the Commission's Procedural Ruling

On May 22, 2025, the Commission entered a Procedural Ruling seeking clarification on certain information regarding the background and justification for the decision of Alabama Power Company personnel to refuse the Complainant's attempted payment by check in the amount of \$1,100.00. On or about May 7, 2025, Alabama Power submitted its response to the Commission's May 22, 2025, Procedural Ruling. Alabama Power noted that the rules and regulations governing the provision of electric service by Alabama Power, including the Commission's General Rules and the Rules and Regulations for Electric Service, do not dictate the form or manner that customers that may use to pay for electric service, and likewise, what Alabama Power must accept. Historically, Alabama Power has accepted traditional forms of payment: cash, check, certified check, credit card and money order. In recent years, Alabama Power expanded the acceptable form of payment to include digital forms of payment.

Alabama Power noted that it generally retains the right to ensure the methods of payment being used are valid and will result in satisfaction of the amount of service provided. Specifically with regard to checks, Alabama Power will refuse to accept a check from a customer as a form of payment if the customer has more than (1) returned check in a 12-month period. Accounts subject to such refusal are designated "cash only", which indicates to Company payment processors that checks are no longer acceptable form of payment from such customers. These internal requirements respecting checks and their acceptability or limitation by the Company as a form of payment have been in place for decades.

With respect to the Complainant, Alabama Power noted that Ms. Odom had two returned checks at the start of 2023, one in January and a second in February. Upon the occurrence of the second returned check in February, Ms. Odom's account was designated cash only. Due to continuing issues with timely payment and insufficient resolution of outstanding balances, the cash only designation in effect with regard to Ms. Odom remained on her account through the operative period of the Complaint and was effective when the check she presented at the local business office drive through was refused.

V. Findings and Conclusions

Having considered the pleadings submitted in this matter in their entirety, we find and conclude that Ms. Odom's allegations that Alabama Power violated the Deceptive Trade Practices Act under Alabama Code §8-19-1, *et seq*; that Alabama Power violated Alabama's Unconscionable Pricing Act found at Alabama Code §8-31-1, *et seq*; and that Alabama Power unjustly enriched itself in violation of Common Law Principles are all barred by the Final Rate Doctrine as explained in *Taffett v. Southern Company*, 967 F.2d 1483, 1494 (11th Cir. 1992). Simply put, the rates and charges for electric service imposed and collected by Alabama Power from its customers are established through a statutory scheme which is within the exclusive jurisdiction of the Commission (see *City of Wetumpka v. Alabama Power Co.*, 297 So.3d 367, 369-70 (Ala. 2019). As such, the rates and charges which Ms. Odom complains of were the legally established, filed rates which Alabama Power was required to assess, and Ms. Odom was required to pay. Further, said rates and changes were in effect prior to any declaration of a State of Emergency by Alabama Governor Kay Ivey.

With regard to Ms. Odom's claim that Alabama Power's refusal to accept a valid payment on her account and the Company's subsequent disconnection of her service because of that failure constituted fraudulent behavior, we conclude that Ms. Odom failed to establish that Alabama Power made any false representation of a material fact which was relied upon by the Complainant to her detriment. It in fact appears that Alabama Power refused to accept the method of payment tendered by Ms. Odom in a manner consistent with the Company's well established billing and payment policies of which the Company fully advised Ms. Odom when it refused to accept the tendered check discussed at length herein.

We lastly find and conclude that there is no merit to Ms. Odom's claim that Alabama Power's refusal to accept her payment tendered by the aforementioned check constituted a violation of the Uniform Commercial Code provision cited by Ms. Odom or Alabama Code §7-3-603(b) which is the parallel Alabama provision cited by Alabama Power. Neither of the cited provisions govern the rights of third parties to accept or decline payment by check or vest rights in the party making the tender.

In summary, we find and conclude that Ms. Odom failed to fully and completely demonstrate, or otherwise advise, Alabama Power and the Commission of a violation, or potential violation of a law, rule or regulation by Alabama Power as required by Rule 9(A)(2) of the Commission's Rules of Practice. Ms. Odom's complaint is accordingly due to be dismissed and her requests for relief are accordingly denied in their entirety.

IT IS SO ORDERED BY THE COMMISSION,

IT IS FUTHER ORDERED BY THE COMMISSION, that jurisdiction in this cause is hereby retained for the issuance of any further Order or Orders this Commission may find just and reasonable in this cause.

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

DONE at Montgomery, Alabama, this *10* day of March, 2026.

ALABAMA PUBLIC SERVICE COMMISSION


Cynthia Lee Almond, President


Jeremy H. Oden, Commissioner


Chris V. Beeker, III, Commissioner

ATTEST: A True Copy


Devon D. Beaty, Secretary