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DEVON BEATY, SECRETARY

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

Initial Comments of Alabama Power Company

Alabama Power Company ("Alabama Power" or "Company") provides the following initial comments in response to the July 8, 2026 order ("July 8 Order") of the Alabama Public Service Commission ("Commission") in this docket. As the order reflects, the current review process employed by the Commission and applicable to large load data center customer contracts generally reflects the standards in Alabama Code § 37-4-22.1.[1] Given the Legislature's passage of Alabama Code § 37-4-22.1, along with (as the July 8 Order observes) the recent nationwide proliferation of data centers, the Commission has proposed several refinements to the process, and has solicited comments from Alabama Power, the Office of the Attorney General, and other interested parties respecting the proposal and other topics for potential consideration. Alabama Power appreciates the efforts being taken by the Commission in this Generic Proceeding and provides its initial comments below.

Background

Before turning to the proposed refinements to the review process that would apply to large load data center contracts, as well as the topics for which the Commission has solicited comment,

[1] Alabama Code § 37-4-22.1(a)(2) defines a large load data center customer as a "customer of the utility which has executed a contract for retail electric service with the utility which requires the utility to serve an expected total peak demand of 150 megawatts or greater at one or more contiguous parcels of land, meets the definition of a data processing center under Section 40-9B-3, and operates solely for the purpose of data processing."

Alabama Power offers context regarding its utilization of contracts for retail electric service, as such will help frame the issues under consideration. Most of Alabama Power's 1.5 million customers receive electric service under rate schedules and riders (generally, a "tariff") that are on file with the Commission. Service under such a tariff constitutes the contract between the Company and its customer, but the service arrangement itself is not reduced to an instrument executed by Alabama Power and the individual customer.[2]

For many customers, however, Alabama Power does have a retail electric service contract in place.[3] These contracts incorporate pricing that is reflected in filed tariffs, as well as other standard and applicable terms, conditions, rules, regulations and rate schedules that have been approved by the Commission. Most of these contracts are not individually reviewed or approved by the Commission or its Staff.[4] A subset of such contracts is subject to Commission Staff review, consistent with the applicable tariff requirements that are incorporated into their terms.[5] And as the July 8 Order recites, contracts also can be filed for approval directly under Alabama Code § 37-4-22.

The July 8 Order focuses on contracts that are subject to Rate FCR (Flexible Contract Rate). As the order recites, the Rate FCR process has been in place since 1996. The Commission approved Rate FCR as being "in furtherance of the Company's continuing objective to provide competitive prices to its customers as cost reductions are realized by the Company [and] further

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[2] *See* Rules and Regulations for Electric Service, Rule 1.1.

[3] *See id*.

[4] *See, e.g.*, Rate Rider IC (Interruptible Capacity), Docket No. U-5453.

[5] *See, e.g.*, Rate Rider EDI (Economic Development Incentive), Docket No. U-5017.

enabl[ing] the Company and its customers to obtain timely approval of contracts, thereby enabling the customers to meet essential financing and other commitments."[6]

The July 8 Order also identifies the review criteria applicable to contracts proposed under Rate FCR, but leaves to the original Rate FCR Order elaboration provided by the Commission as to how certain review criteria are to be satisfied. Chief among those are the considerations surrounding how the Company is to demonstrate whether the pricing in a proposed contract promotes a positive benefit to all other customers over the term of the contract.

> This evaluation of each contract shall assess whether a load addition increases the efficiency of the power system, which determines whether or not the load addition exerts "downward pressure on rates" for all of the Company's customers (the "Rate Impact Measure Test" or "RIM"). 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.[7]

The importance of this section of the Rate FCR Order is twofold. First, it sets forth the Commission's understanding of the concept of "power system efficiency"—namely, that the incremental costs of serving the new contract load are exceeded by the revenues yielded by the contract pricing. That is, the new contract's coverage of incremental costs as well as its

[6] *In re Alabama Power Co. (Rate FCR)*, Docket No. U-3672 (April 1, 1996) ("*Rate FCR Order*"). The original Rate FCR order noted that the review criteria applicable to contracts proposed under Rate FCR "memorialize the criteria utilized by the Commission in its review of special contracts filed under [Alabama Code § 37-1-22]. In a later order, the Commission clarified its intent to refer to Alabama Code § 37-4-22. *In re Alabama Power Co. (Rate FCR)*, Docket No. U-3672 (Aug. 20, 2002).

[7] *In re Alabama Power Co. (Rate FCR)*, Docket No. U-3672 (April 1, 1996). The Commission is familiar with the RIM test, having endorsed its use numerous times in recent years in connection with litigated evidentiary proceedings, including its use as part of the contract review process for large load contracts. *See, e.g.*, *In re Alabama Power Co. (Lindsay Hill)*, Docket No. 33513 (Aug. 13, 2025) ("[T]he Commission's contracting process (pursuant to which the referenced data center contract was approved) has been in place for nearly 30 years and requires, among other things, that such contracts pass the [RIM] test."); *In re Alabama Power Co. (Barry 8)*, Docket No. 32953 (Aug. 14, 2020) ("We also reaffirm Alabama Power's ongoing use of the RIM test as the appropriate measure for cost-effectiveness.").

contribution to embedded costs (already reflected in customers' rates) are expected to result in downward pressure on other customers' rates. Second, this part of the Rate FCR Order delineates clear and objective parameters by which contracts proposed for approval under Rate FCR will be evaluated. That is, when the evaluation yields a positive net present value, indicating that contract pricing yields revenues in excess of the incremental costs to serve the load under contract, that portion of the review criteria is satisfied.

The July 8 Order also truncates discussion of the practices surrounding the review of proposed contracts under Rate FCR. As observed in its Confirmation of Consent filed in this docket, Alabama Power historically has engaged in a pre-filing review process with Commission Staff of a proposed contract under Rate FCR before actually filing the contract and triggering the commencement of 10-day approval period. The duration of this pre-filing review process varies with the complexity of the contract being proposed, the information required by Commission Staff, and the extent to which Commission Staff attention is consumed with other pending matters. The most recent contract pre-filing review encompassed nearly 60 days. For each of the two proposed contracts that preceded it, the process lasted several months, as did the contract referenced in the *Lindsay Hill* proceeding cited above. The Company would emphasize, however, that its practice with respect to contracts proposed under Rate FCR has been to file for approval only upon its determination that Commission Staff had been provided sufficient information demonstrating that the proposed contract satisfied the applicable review criteria. That being so, the 10-day review period prescribed in Rate FCR provides a means by which the Commission can reject a proposed contract if insufficient information, or time for review, has been provided to Commission Staff. In addition, the 10-day review period affords Alabama Power and the customer counterparty a means of knowing when a contract has become effective for service purposes.

Not surprisingly, while the Rate FCR review process has been in place for several decades, its fundamental mechanics have proven and continue to prove sound, including for the review of large load data center customer contracts, as expressly recognized by the Commission in the *Lindsay Hill* proceeding. Alabama Power recognizes that the enactment of Alabama Code § 37-4-22.1 postdates said proceeding. In addition, the statute calls for the additional consideration of whether the large load data center customer promotes or contributes to economic growth in the community where it will be located—an item not explicitly encompassed by the existing Rate FCR review criteria. Thus, the institution of the Generic Proceeding to consider proposed refinements and enhancements to the Rate FCR review process is consistent with the Commission's long-recognized obligation of acting pursuant to its statutory authority.[8] In addition, as explained below, the Company has a practice of including the Office of the Attorney General in a variety of filings and submittals at the Commission, and doing so in the large load data center contract review process would align with this practice.[9]

Initial Comments

A. Proposed Contract Review Procedures

I. Applicability and Scope

As discussed above, the process employed for Rate FCR contracts is proven and effective. Moreover, because the review criteria applicable to Rate FCR contracts already encompasses generally the requirements of Alabama Code §§ 37-4-22.1(b) and (c)(1) & (2), it is readily adaptable to (i) include consideration of Alabama Code §§ 37-4-22.1(c)(3) (i.e., whether the large

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[8] *See, e.g.*, *Ala. Great So. Ry. Co. v. Alabama Pub. Serv. Comm'n*, 97 So. 226, 228 (Ala. 1923) ("[T]he Public Service Commission can assume only such powers and exercise only such prerogatives as are clearly granted to it by the Legislature, and that its authority will not be extended by doubtful inference or intendment.").

[9] Such activities correspond to the Office of the Attorney General's responsibilities as representative of the using and consuming public. *See* Ala. Code § 37-1-16.

load data center customer promotes or contributes to economic growth in the community where the premises of the large load data center customer is located); (ii) provide for a modified review period, as appropriate, to accommodate potentially complex contractual arrangements; and (iii) provide for inclusion of the Office of the Attorney General. In terms of implementation, a straightforward approach would be to update Rate FCR to include provisions to address the matters that the Commission deems unique to the review of large load data center customer contracts.

The July 8 Order states in the *Applicability and Scope* section that "For all other contracts, Alabama Power may use Rate FCR or file for approval under Ala. Code § 37-4-22." Alabama Power assumes the Commission's intended scope here is limited to contracts for which the Company today would seek Commission approval, either under Rate FCR or Alabama Code § 37-4-22. Presumably the Commission is not intending to require the Company to file every contract for electric service entered into by the Company for approval by the Commission, particularly those that incorporate tariffed pricing, or that are executed as part of tariffs such as Rate Rider EDI or Rate Rider IC. A contrary approach that mandated filing and approval for all contracts would not only depart from decades of practice, it would impose additional and unnecessary costs and burdens on both the Company and the Commission (including its Staff).

II. Submission Requirements

Generally, the proposed submission requirements align with the approach used by Alabama Power today when submitting materials to Commission Staff for review under Rate FCR. The Company also files a public version of all proposed Rate FCR contracts, with pricing and certain other terms and conditions redacted to protect the confidential and proprietary information of Alabama Power and the customer counterparty. The proposed submission requirements are unclear, however, whether the supporting materials that include confidential data and calculations need to be filed in redacted form, or simply submitted in a confidential, unredacted form to the Commission Staff and the Office of the Attorney General. Based on statements in the July 8 Order, and appreciating the time and expense a contrary approach would create, Alabama Power presumes the Commission is contemplating the confidential submittal course, and not a redacted filing requirement.

The Commission has long recognized the appropriateness of protecting such information from public disclosure. Among other concerns, the public release of confidential project- and customer-specific pricing, financial and costing data and analysis impairs the negotiating position of Alabama Power and its customer counterparty with respect to future arrangements (whether between each other or with other parties), which can be to the detriment of other Alabama Power customers. In addition, disclosure of such details can have consequences for Alabama Power's participation in the energy and equipment marketplaces, as it affords potential counterparties and suppliers competitive intelligence that would not otherwise be available, which again can be to the detriment of other Alabama Power customers. The Commission frequently employs measures to safeguard against such outcomes.

The most obvious example is the current practice used for the review of Rate FCR contracts today. A public version of the contract is filed (with redactions), but all other supporting data (including an unredacted copy of the contract) is submitted directly to Commission Staff on a confidential basis. In this way, sensitive data is protected while the Commission undertakes its evaluation. An analogous process is used for projects proposed for approval under the Renewable Generation Certificate ("RGC"). Namely, information regarding a project, including all supporting data and analysis, is provided directly to the Commission Staff and the Office of the Attorney

General, on a confidential basis, so that the appropriate evaluation can be performed.[10] Notably, as part of its order in 2023 renewing and expanding the RGC, the Commission rejected calls for expanded access by the Southern Environmental Law Center (acting on behalf of Alabama Environmental Council), including a request for public notice of a project and opportunity for public participation.

> Given the nature of the projects pursued through the RGC and the direct involvement of specific customers in that process, the publicity that AEC envisions is at odds with what project proponents and customer participants have come to expect regarding access to their confidential and proprietary information.[11]

The Commission's reasoning and discretion with respect to such sensitive information of course is not unique to RGC matters, as its attentiveness to matters of confidentiality pervades the discharge of its regulatory activities.[12]

Accordingly, consistent with the existing process applicable to Rate FCR contract review, the Company recommends that only item A of the submission requirements be subject to a filing requirement.[13] The Company would recite in the transmittal accompanying the filing that information had also been provided to Commission Staff and the Office of the Attorney General,

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[10] *See In re Alabama Power Co. (Renewable Generation Certificate),* Docket No. 32382 (Sept. 16, 2015) (approving Alabama Power's petition for a blanket certificate of convenience and necessity, which included the condition that "information, analyses and data supporting individual projects be submitted for review directly to Commission Staff and the Attorney General, as opposed to being filed and subject to additional formal proceedings … [so that] all proprietary and confidential information, including that of the associated customer or customers, can be handled appropriately once in the custody of Commission Staff and the Attorney General [which] fulfills an expectation of customers that their information will be closely held ….").

[11] *In re Alabama Power Co. (Renewable Generation Certificate),* Docket No. 32382 (June 14, 2023).

[12] *See, e.g.*, *In re Alabama Power Co. (Lindsay Hill)*, Docket No. 33513 (Aug. 13, 2025) (reciting the separation of public and non-public materials developed as part of the proceeding as part of the maintenance of the official administrative record); *In re Alabama Power Co. (Rate Rider TRR)*, Docket No. U-3605 (Sept. 14, 2021) (reciting Commission Staff's recommendation for approval, which included the observation "that the information particular to the affected Rate XRTPD customers constitutes proprietary and confidential information to Alabama Power and those customers" and that "only such customers will be authorized to review such information, upon confirmation by Alabama Power of the customer's eligibility to do so.").

[13] The data called for by Item E is included on the filing letter, and when the Company submits information to Commission Staff, one or more points of Company contact are identified.

and in that regard, the substance of the remaining submission requirement items (i.e., B-E) would be submitted directly to the Commission Staff and the Office of the Attorney General on a confidential basis and in unredacted form.

III. Notice to the Attorney General

The process outlined for the submission of information to the Office of the Attorney General is consistent with (i) how the Company plans to proceed with Rate FCR contract review during the period while this Generic Proceeding is pending, and (ii) the approach outlined above in the *Submission Requirements* section regarding (A) information that would be filed with the Commission (i.e., a transmittal letter and a redacted contract), and (B) the information that would be submitted confidentially to the Commission Staff and the Attorney General (i.e., items B-E).

IV. Review Period

The details outlined in this section are consistent with how the Rate FCR review process by Commission Staff operates today, and inclusion of the Office of the Attorney General as described would be consistent with its involvement in other Company activities at the Commission. The Company would recommend that any finalized version of this step reflect an obligation on the part of the Company to use its best efforts to respond to data requests within five (5) business days. Alabama Power always endeavors to provide timely and complete responses to Commission Staff inquiries, but a circumstance conceivably might arise where a complete response cannot be completed within 5 business days (e.g., a subject matter expert might be unavailable).

Alabama Power would reiterate here its intent to continue the practice of pre-filing discussions with both Commission Staff and the Office of the Attorney General (as part of its consent to a modified Rate FCR review process, as well as under any process resulting from the information collected in this docket). As discussed, in Alabama Power's experience, such discussions are an effective and productive way of ensuring that Commission Staff has the information it needs to evaluate a contract proposal, before the Company commences the final review process (with its defined time period).

V. Deemed Approval Provision

This section represents the material change from the existing Rate FCR review process, and Alabama Power's principal concern relates to the mechanics surrounding the sixty (60) day period. Consistent with the statements in its Confirmation of Consent, the Company is concerned that the imposition of an extended review period for large load data center customer contracts implies the absence of pre-filing discussions, which it has no intent or desire to abandon. To accommodate the fact of such discussions, the Company would recommend that the Commission reserve for itself the authority to recognize that a new large load data center customer contract has been reviewed and approved at a Commission meeting occurring within the 60-day window, if the Commission concludes prior to the expiry of 60 days that there is no basis to recommend disapproval. Such Commission latitude will promote efficiency and avoid unnecessary delays in the confirmation of the approval of a large load data center customer contract.

VI. Disapproval and Modification

The process outlined in the July 8 Order for what should transpire if a large load data center customer contract is not approved generally aligns with existing Rate FCR review process. The Company would expect that any such Commission order would avoid disclosing information confidential to Alabama Power and the customer, including any identified deficiencies in or recommended modifications to the proposed contact. In addition, it is not entirely clear what the Commission is contemplating by its statement that "Alabama Power may submit a revised contract for renewed review within that 60-day timeframe." Specifically, is the Commission's intent that a revised contract be subject to a new 60-day review period, or is the Commission indicating its willingness to utilize the balance of the 60-day review period to complete an updated review? Depending on the circumstances surrounding a particular contract and the basis for disapproval, Alabama Power believes that both options should be available.

VII. Confidentiality

The July 8 Order correctly recognizes that contracts will contain commercially sensitive and confidential information, and must be treated accordingly, consistent with Alabama law and Commission precedent. The supporting data that the Company would provide to demonstrate that the large load data center customer contract satisfies the applicable review standards likewise will contain such information, and will require similar protections. Alabama Power outlined above the different procedures that the Commission has utilized historically to protect confidential information from disclosure, and would expect those procedures to be utilized for its submission of large load data center customer contracts. Those procedures include, but are not limited to, the separation of public and non-public information as part of the Commission's administrative record, and a limitation on access to such information to personnel of the Commission and the Office of the Attorney General.

VIII. Alabama Power Consent to Additional Rate FCR Requirements during Generic Proceeding

Consistent with the process outlined in the July 8 Order, Alabama Power has filed in the above-captioned docket its consent to the application of modifications to the Rate FCR review process for large load data center customer contracts.

B. Topics and Issues for Public Comment

I. Contract Review Standards

As discussed at the outset, Alabama Code § 37-4-22.1(b) generally reflects the requirements of the existing Rate FCR review process. In addition, as explained above, that review process, with the modifications discussed, offers a very workable and effective means by which the Commission can evaluate whether a large load data center customer contract satisfies the criteria in Alabama Code § 37-4-22.1(b). That determination entails a straightforward evaluation of whether the expected contract revenues cover the incremental costs to serve the new customer load, while also contributing to the cost of service recovered through the rates for electric service paid by existing customers. In other words, the process calls for the performance of a RIM evaluation, and if the evaluation shows that the answers to these questions are yes, then the contract can be said to promote positive benefits to other retail customers by placing downward pressure on their rates.

The Legislature provided no indication that the Commission should dispense with its existing practices surrounding contract review for purposes of evaluating large load data center customer contracts. Instead, the Legislature directed the Commission

- to act consistent with its authority under Title 37 generally and Alabama Code 37-4-22 specifically, and
- to find a large load data center customer contract in the public interest when the Commission determines that the contract (i.e., the contract pricing and terms and conditions over the term) is expected to
    - provide for recovery of incremental costs of retail electric service to the large load data customer premises from said customer, and

- promote positive benefits to other retail customers, by
  - providing for lower costs for other customers,
  - increasing the efficiency of the power system, and
  - promoting or contributing to economic growth in the community where the customer will be located.

As the July 8 Order recognizes, these considerations track the criteria governing contract review under Rate FCR (and which, as observed above, are also the same criteria utilized by the Commission in its review of contracts filed directly under Alabama Code § 37-4-22).[14] Thus, applying the traditional canons of statutory interpretation, it seems evident the Legislature sought to codify in Alabama Code § 37-4-22.1 the existing Rate FCR review process and its associated criteria as the applicable standards for the review of large load data center customer contracts, with the added emphasis of considering the potential for economic growth in a community.[15]

II. Incremental Cost Analysis

The applicable provisions of Alabama Code § 37-4-22.1 contemplate recovery of the "incremental costs of retail electric service", which is defined as the "additional costs associated with the 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."[16] To calculate these costs, Alabama Power 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.

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[14] *See In re Alabama Power Co. (Rate FCR)*, Docket No. U-3672 (April 1, 1996), as modified, *In re Alabama Power Co. (Rate FCR)*, Docket No. U-3672 (Aug. 20, 2002).

[15] *See, e.g.*, *Farmer v. Hypo Holdings, Inc.*, 675 So.2d 387, 390-91 (Ala. 1996).

[16] *See* Alabama Code § 37-4-22.1(a)(1).

These methodologies and assumptions, and specifically the data sets and reports yielded by them and which the Company provides to the Commission for consideration, have long been deemed a sufficient basis upon which the Commission can determine whether a proposed contract satisfies the applicable Rate FCR criteria, including when the proposed contract was a large load data center customer contract.[17] Given the comparability of those criteria to what the Legislature has codified in Alabama Code § 37-4-22.1, these data sets and reports are equally suitable for a contract review under any new large load data center review process.

III. Benefits to Other Customers

As discussed elsewhere in these comments, Alabama Power believes the performance of a RIM evaluation should continue to serve as the metric for determining whether a proposed large load data center customer contract promotes positive benefits to customers. Not only is this approach consistent with the Commission's precedent and historic review of contracts—as well as the review that would apply to other, non-large load data center customer contracts, as contemplated by the July 8 Order—it is an objective assessment. As such, the continued use of the RIM analysis for all proposed customer contracts subject to Commission review—large load data center customers and other commercial and industrial customers—is the course best insulated against allegations of discriminatory treatment or undue preference.

IV. Economic Development Considerations

This element—the promotion or contribution to economic growth in the community in which the large load data center will be sited—is unique among the criteria in Alabama Code § 37-4-22.1, as it does not have an express parallel in the existing Rate FCR review criteria. That

[17] *See, e.g.*, *In re Alabama Power Co. (Lindsay Hill)*, Docket No. 33513 (Aug. 13, 2025) ("[T]he Commission's contracting process (pursuant to which the referenced data center contract was approved) has been in place for nearly 30 years and requires, among other things, that such contracts pass the [RIM] test.").

said, the Commission has long supported policies that promote economic development in the state and in the service territories of the utilities under its jurisdiction.[18] Thus, Alabama Power believes the Commission can readily identify and assess the various ways a particular project might contribute to or promote the economic development in a community, including through direct contributions to the local tax base, the creation of jobs, the award of grants and direct funding to schools, nonprofits and community organizations, and other community participation efforts.

V. Power System Efficiency

In the context of the existing Rate FCR economic analysis, the concept of "increased power system efficiency" correlates to the expectation that a load addition will place downward pressure on rates.[19] That is, the pricing for the contract and the corresponding revenues yielded by such pricing are sufficient to cover the incremental cost to serve the load under contract while also contributing to the cost of the existing system. From an operational perspective, the load addition will utilize (and thus contribute to the cost of) existing infrastructure, as well the incremental facilities (for which the load addition will pay fully). Hence the finding of increased power system efficiency.

VI. Contract Terms and Conditions

As evidenced by the record in the 2025 *Lindsay Hill* proceeding, the principal concern of the Commission respecting large load data center customer contracts is whether such arrangements unduly shift risks to the Company's broader customer base. The Commission is aware of the contracting practices used by the Company to avoid such risk shifting, and they include all of the items listed in the July 8 Order, and many more. The Company appreciates the Commission's

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[18] *In re Generic Proceeding to Determine the Commission's Jurisdiction over Electric Vehicle Charging Stations*, Docket No. 32694 (June 22, 2018).

[19] *See In re Alabama Power Co. (Rate FCR)*, Docket No. U-3672 (April 1, 1996).

effort to solicit feedback on the types of terms and conditions that can be expected to provide for incremental cost recovery and promote positive benefits, and Alabama Power will assess the extent to which any identified concepts offer enhancements over what it already uses today.

VII. Review Timeline

As discussed above, Alabama Power's principal concern with the extended review period is that it seemingly implies the absence of pre-filing discussions. Alabama Power sees no upside to the abandonment of such a practice. But, recognizing the use of pre-filing discussions, a 60-day review period inevitably will prove too long for many (if not most) proposals, if the Company already has spent a month or longer discussing the contract with Commission Staff and the Office of the Attorney General.

Thus, the Company would recommend that the Commission reserve for itself the authority to recognize at a Commission meeting occurring within the 60-day window that a new contract has been reviewed and approved. The Commission would exercise this authority only if the conclusion is reached by a majority of Commissioners that there is no basis to recommend disapproval. This flexibility will promote efficiency and avoid unnecessary delays in the confirmation of contract approval. An approach of this kind also would allow for situations where the Commission felt it necessary to announce an extension of the review period.

VIII. Submission Requirements

The Company outlined its expectations regarding submission requirements above. To reiterate, the Commission should draw a distinction between what Alabama Power must file (i.e., a redacted version of any proposed contract) and what the Commission expects Alabama Power to submit to the Commission Staff and the Office of the Attorney General (i.e., the submittal items B-E, on a confidential basis and in unredacted form).

IX. Role of the Attorney General

Alabama Power understands the role contemplated for the Office of the Attorney General, for as outlined it would appear to function in a manner comparable to that used today for projects proposed for approval under the RGC.

X. Public Notice and Transparency

Alabama Power reviewed above the Commission's consistent approach to the treatment of confidential information, and does not believe any departure from or modification to those practices is warranted. This is particularly so where, as here, the confidential information concerns a specific type of customer, and the Legislature in nowise directed or indicated any intent that the Commission develop a large load data center customer-specific exception to its historic practices surrounding customer confidentiality and its corresponding treatment as non-public information.

XI. Post-Approval Monitoring

Existing practices of the Commission embrace the oversight contemplated by this topic. For example, the Company routinely apprises Commission Staff as to the status of a project for which a contract has been approved (such as the status of advance payments, and whether electric service has commenced). The routine and ongoing monitoring by Commission Staff of Alabama Power's operations, coupled with the periodic and annual filings the Company must make in accordance with its formulary rate mechanisms, also provide for insight into the integration of a new customer load into the Company's service territory. In addition, the Commission will have opportunities to evaluate the extent to which new large load data center customer contracts contribute to the need for new generation on the Alabama Power system, through petitions for a certificate of convenience and necessity filed by the Company.

XII. Contract Modifications

Alabama Power believes the existing practice in place for modifications and amendments to Rate FCR contracts should apply to any process established for large load data center customer contracts. As this topic implies, that process calls for the review and approval of any material amendment to an existing contract approved under Rate FCR. For non-material changes, the Company customarily provides notice to the Commission Staff (typically both the Electricity Policy and Legal Divisions). In recent years, Alabama Power has included in contracts self-executing provisions that allow for modifications without the need for filing, provided that such a modification (if it were to occur) did not affect the contract's satisfaction of the applicable Rate FCR review criteria. Alabama Power would expect to continue to employ such techniques in future contracts.

XIII. Alternative Review Threshold

The Company assumes the Commission's focus on this topic remains large load data center customers, as defined in Alabama Code § 37-4-22.1 As noted at the outset, there are a host of contracts that the Company executes today that do not require approval, or for which only Commission Staff review is required. At this time, the Company believes the process in place for the review of contracts under Rate FCR, as adapted for the review of large load data center customer contracts, is sufficient and an expedited option is not necessary. To the extent the need for modifications to that process become appropriate at some future time, the Company would propose changes to the Commission (or the Commission could initiate a proceeding *sua sponte*, as it has done here).

XIV. Big Picture Planning

The Company is unclear as to the intent for this topic. By law, Alabama Power must "render adequate service to the public and shall make such reasonable improvements, extensions and enlargements of its plants, facilities and equipment as may be necessary to meet the growth and demand of the territory which it is under the duty to serve."[20] Stated differently, the Company has a duty to serve all customers, regardless of class, commerce or industry, with no one segment seemingly more deserving of a "holistic review" than any other.

Alabama Power recognizes that service to a 1,000 MW customer might be perceived as unprecedented (until one stops to think that the Company manages every second of every day the retail electric service needs of 1.5 million customers, with a peak load capability in excess of 12,000 MW). And to the extent the Commission has specific questions relating to Alabama Power's ongoing ability to fulfill its duty of service to large load data center customers, those of course can be addressed in the normal course of the Commission's regulatory oversight. Alabama Power believes the Commission should proceed cautiously in calling out a single sub-class of customers for treatment to which no other sub-class is subject. As recognized in the Commission's July 8 Order, there are limits to the jurisdiction of the Commission. It does not, for example, regulate customer siting matters (such as permitting and zoning), or environmental regulation. Nor does it assume the responsibility of fashioning of statewide policies, including those relating to data centers.[21]

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[20] Ala. Code § 37-1-49.

[21] *Cf. Generic Proceeding to Determine the Commission's Jurisdiction over Electric Vehicle Charging Stations*, Docket No. 32964 (June 22, 2018).

Conclusion

Alabama Power again extends its appreciation to the Commission for initiating this Generic Proceeding and proactively exploring potential refinements to the contract review process utilized today. Subject to its review of other comments proposed in this docket, Alabama Power will submit a proposed modification to the Rate FCR review process for the Commission's consideration.

Respectfully submitted, this 6th day of August, 2026.

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