BEFORE THE ALABAMA PUBLIC SERVICE COMMIS

MONTGOMERY, ALABAMA

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**

REPLY COMMENTS OF ENERGY ALABAMA

I. INTRODUCTION

Energy Alabama respectfully submits these reply comments in response to the initial comments filed in this docket. Energy Alabama filed its initial comments on August 3, 2026, setting out a framework for the review of large load data center contracts under Ala. Code § 37-4-22.1.[1]

The record in this docket shows a remarkable consensus on many issues of consequence. Energy Alabama, the Southern Environmental Law Center ("SELC"), Americans for Prosperity-Alabama ("AFP"), the Office of the Attorney General, and the Sierra Club reached similar conclusions, namely that sixty days of regulatory silence cannot produce the determinations the statute requires, the burden of proof belongs on Alabama Power, enforceable financial guarantees and post-approval monitoring are essential, and the public must have a meaningful way to participate. Additional comments by the Southeast Energy Efficiency Alliance, a regional alliance whose membership includes Alabama Power, urged the commission to consider that large load contracts which fund energy efficiency and demand side resources be considered as part of the statute's positive benefits requirement, echoing Energy Alabama's low-income efficiency recommendation.[2]

Manufacture Alabama, the Energy Institute of Alabama ("EIA"), and the Business Council of Alabama (BCA), filed comments largely in line with Alabama Power seeking to preserve the status

[1] Initial Comments of Energy Alabama, Docket No. 33709 (filed Aug. 3, 2026) ("Energy Alabama Initial Comments").

[2] Initial Comments of the Southeast Energy Efficiency Alliance, Docket No. 33709, at 1-3 (filed Aug. 7, 2026) (recommending that contract review credit energy efficiency and demand side resource commitments under Ala. Code § 37-4-22.1(c)(1)-(2)); see Energy Alabama Initial Comments, Topic C (low income energy efficiency funding as direct positive benefits).

quo.[3] The filings asked the Commission to narrow the docket, preserve the existing Rate FCR process, and reject an additional role for the Attorney General.

The Commission should note one point of near unanimous agreement. All commenters declined to defend the adequacy of the current ten-day review timeline. Manufacture Alabama and the EIA conceded the existing ten-day review period may be too brief for contracts of this magnitude.[4] BCA had no objection to modest changes to the timeframes and approval procedures.[5] AFP rejected rushed, arbitrary deadlines outright and proposed a 120-day review period.[6] Alabama Power itself admitted that the current pre-filing meeting period with Commission Staff often reaches from nearly 60 days to several months.[7] Even the Data Center Coalition, the national membership association for the data center industry, proposed a thirty-day review starting at a complete filing and extendable by thirty days.[8] Practically all parties agree that the timeline for review should change but dispute the magnitude of the change required.

II. ACT 610 CHANGED ALABAMA LAW

Alabama Power's filing rests on a core theory, unsupported by any publicly available information, that the Legislature "sought to codify in Alabama Code § 37-4-22.1 the existing Rate FCR review process and its associated criteria," with the modest addition of a community economic growth consideration.[9] BCA adds that the purpose of Act No. 2026-610 "was largely to codify those

---

[3] Initial Comments of Alabama Power Company, Docket No. 33709 (filed Aug. 6, 2026) ("Alabama Power Comments"); Public Comments by Manufacture Alabama, Docket No. 33709 (filed Aug. 5, 2026) ("Manufacture Alabama Comments"); Public Comments by the Energy Institute of Alabama, Docket No. 33709 (filed Aug. 6, 2026) ("EIA Comments"); Comments of the Business Council of Alabama, Docket No. 33709 (filed Aug. 6, 2026) ("BCA Comments"). The Energy Institute of Alabama is a 501(c)(6) trade association whose member companies have been publicly reported to include Alabama Power, PowerSouth Energy Cooperative, and the Tennessee Valley Authority. See Energy Institute of Alabama celebrates Lineman Appreciation Day, Alabama Political Reporter (Apr. 16, 2026), https://www.alreporter.com/2026/04/16/energy-institute-of-alabama-celebrates-lineman-appreciation-day/.

[4] Manufacture Alabama Comments at 3 (acknowledging that "some such contracts may require more than the current ten days to review"); EIA Comments at 3 ("the current ten-day review period may be too brief for contracts of this magnitude"); see also EIA Comments at 4 (asking the Commission to focus on "the length of the review period").

[5] BCA Comments at 3 ("BCA would have no objection to modest changes in the post-filing timeframes or procedures for purposes of 'deemed approved' or 'disapproval' by the APSC"); see also id. at 2 (the Commission "may find it appropriate to adjust certain limited aspects of that process (e.g., specified timeframes for review and procedural mechanics for approval or disapproval)").

[6] Comments of Americans for Prosperity-Alabama, Docket No. 33709, at 5 (filed Aug. 6, 2026) ("AFP Comments") ("A thorough review of matters cannot be accomplished if arbitrary deadlines are set to rush a review matter through. That is form without substance."); id. at 8 (recommending "a 120-day review deemed-approved timeline").

[7] Alabama Power Comments at 4.

[8] Initial Comments of the Data Center Coalition, Docket No. 33709, at 2 (filed Aug. 6, 2026) ("DCC Comments") (proposing a 30 day standard review period beginning upon submission of a complete filing, with authority to extend the period for another 30 days).

[9] Alabama Power Comments at 13.

existing requirements."[10] Perhaps BCA lobbied the legislature on such grounds but the plain reading of the statute does not say so. Manufacture Alabama and the EIA agree saying the Order's observation that the Rate FCR criteria generally reflect the standards of the Act.[11] But generally reflect does not indicate that a law has been satisfied.

Legislatures do not pass statutes to change nothing. Act 610 makes objective changes to the status quo. The Act requires the Commission take certain steps before a contract takes effect and it includes a statutory definition of incremental cost built on a *but-for causation* (emphasis added).[12] If the existing Rate FCR process utilized by Alabama Power and the Commission already accomplished all of this, Act 610 is a meaningless piece of paper. Courts and this commission do not, and should not, read statutes as though the Legislature enacted meaningless laws, and common sense forbids that reading. Energy Alabama argues that the Alabama State Senate did not vote 30 to 0, and the House 100 to 1, to ratify the status quo.[13]

The Commission's Order posing questions and proposing new standards for comment does not carry the weight some commenters place on it. This proceeding exists to close the gap between what the Commission posed for comment and what will actually satisfy the law. The Attorney General agrees, stating the Act, "requires the Commission to determine the appropriateness of the proposed contracts, not the staff acting alone."[14]

EIA warns that capital "gravitates toward jurisdictions with predictable rules and retreats from those whose rules look open to sudden change."[15] EIA's warning cuts against its own position and Energy Alabama submits that EIA's position is key part of the argument for a standard and published framework. In fact, today's process of bilateral negotiations against undefined standards and one-off confidential deals increases the risk that an arrangement negotiated in private is questioned in litigation later. Alabama should make its "open for business" posture clear and widely known. Indiana, Ohio, and Georgia adopted published large load frameworks and development continues at a healthy clip. In Indiana, data center operators themselves like Amazon,

---

[10] BCA Comments at 3.

[11] Order Establishing a Generic Proceeding, Docket No. 33709, at 3-4 (July 8, 2026) ("Order"); Manufacture Alabama Comments at 2-3; EIA Comments at 3.

[12] Ala. Code § 37-4-22.1(a)(1) (defining incremental costs as those the utility "would not incur *but for* the large load data center customer contract") (emphasis added); Ala. Code § 37-4-22(b) (a contract "shall, before becoming effective, be submitted to the commission").

[13] SB 270, 2026 Reg. Sess. (Ala. 2026), enacted as Act No. 2026-610, codified at Ala. Code § 37-4-22.1 (effective Oct. 1, 2026). The bill passed the Senate 30-0 and the House 100-1 with 3 abstained.

[14] Comments of the Office of the Attorney General, Docket No. 33709 (filed Aug. 6, 2026) ("Attorney General Comments"), Conclusion at 7.

[15] EIA Comments at 2.

Google, and Microsoft signed the framework.[16] In Ohio, roughly 30,000 MW of speculative large load requests reduced to approximately 5,600 MW of signed commitments after the tariff took effect. This is precisely what a responsible regulator should want to see from clear rules.[17] A predictable, published framework, such as what Energy Alabama proposed in its initial comments, would also increase public trust that decisions made by this Commission regarding data centers do not increase their monthly electric bill.

III. ALABAMA POWER'S PARENT COMPANY SAYS GIGAWATTS OF NEW LOAD ARE IMMINENT

Alabama Power-aligned filings ask the Commission to treat this proceeding as a simple procedural change. Energy Alabama is not asking the Commission to evaluate specific contracts in this docket. Those contracts, however, demonstrate the live nature of this issue and this Commission should know what Southern Company, Alabama Power's parent company, is already telling its investors. On Southern Company's second quarter 2026 earnings call, Chief Executive Officer Chris Womack reported that Alabama Power "added approximately 3 GW" of newly contracted projects in the second quarter alone.[18] In its investor materials for the quarter, Southern said approximately 4 GW of large loads had been contracted in Alabama.[19] Southern's Chief Financial Officer said "a decent rule of thumb" is that each gigawatt of new generating capacity requires approximately $2 billion of capital investment.[20] Alabama Power estimated its own "peak load capability in excess of 12,000 MW,"[21] [22] which would mean that the contracted large load Southern

[16] Ind. Util. Regulatory Comm'n, Cause No. 46097, Final Order (Feb. 19, 2025) (approving unopposed settlement among Indiana Michigan Power, the Office of Utility Consumer Counselor, Citizens Action Coalition, Amazon Data Services, the Data Center Coalition, Google, and Microsoft), https://www.in.gov/iurc/files/ord_46097_021925.pdf.

[17] Ohio Capital Journal, AEP Ohio says new data center tariff is working (Feb. 20, 2026) (reporting reduction from ~30,000 MW of requests to 5,642 MW of signed final agreements under the tariff), https://ohiocapitaljournal.com/2026/02/20/aep-ohio-says-new-data-center-tariff-is-working-critics-arent-buying-it/.

[18] Southern Company Q2 2026 Earnings Call (July 30, 2026) (remarks of Christopher C. Womack, Chairman, President and Chief Executive Officer: "In just the last quarter, there were three projects across the state of Alabama, Alabama Power added approximately 3 GW, while Georgia Power signed a 3.2 GW 25-year contract for electric service with OpenAI …"). Southern Company does not publish an official transcript; the quoted language appears in the transcript published by The Motley Fool, https://www.fool.com/earnings/call-transcripts/2026/07/30/southern-company-so-q2-2026-earnings-call-transcript/.

[19] Southern Company, Second Quarter 2026 Earnings Presentation, slide 11 (July 30, 2026) (reporting contracted large load by utility: Georgia Power 12.5 GW, Alabama Power 4 GW, and Mississippi Power 0.5 GW, of a 17 GW system total across 31 projects), https://s27.q4cdn.com/273397814/files/doc_financials/2026/q2/SO-2026-Q2-Earnings-Call-Final.pdf.

[20] Southern Company Q2 2026 Earnings Call, supra note 18 (remarks of David P. Poroch, Executive Vice President and Chief Financial Officer: "Maybe a decent rule of thumb to think about capital opportunities going forward is about $2 billion or so, a little bit above maybe related to 1 GW of new generating capacity.").

[21] Alabama Power Comments at 19.

[22] Energy Alabama Initial Comments at 1 (estimating Alabama Power's total owned and contracted capacity at approximately 19,000 MW in winter and 18,000 MW in summer, citing Alabama Power Company, 2025 Preliminary

claims to its investors in Alabama *already* (emphasis added) equals roughly one third of Alabama Power's peak. Based on Southern "rule of thumb", Alabama Power may require as much as $8 billion in capital to serve this new load. This Commission has not yet seen, to Energy Alabama or the public's knowledge, the contracts for the new load that would be affected by how the Commission rules in this docket.

Three heavily redacted contracts have already been filed under the existing ten-day process that practically every commenter now concedes is inadequate in one way or another. First, a contract with Dotier, LLC, a subsidiary of Meta, was filed on June 18, 2026,[23] and a contract with Alabama ADC Holdings, LLC, a subsidiary of Nebius, was filed on July 27, 2026.[24] Most recently, a contract with Woostor, LLC, a customer Alabama Power does not identify, was filed on August 14, 2026, eight days after initial comments were due in this docket.[25]

Alabama Power's 2025 Integrated Resource Plan (IRP) Summary projects a capacity deficit beginning in 2029, and the Company's projected twenty-year winter peak growth is approximately 517 MW, less than half the size of Project Marvel alone.[26] Southern Company's estimates of four gigawatts of large loads already signed, compared to a forecast of 517 megawatts of winter peak growth over twenty years, is roughly eight times Alabama Power's entire 20-year growth forecast. And this is before the Commission has adopted a rule in this docket. Because of Alabama Power's non-litigated and non-Commission approved IRP process, Energy Alabama, and even Commission Staff, are ill equipped to determine if Alabama Power's load forecast is accurate or how, or if, it evaluates large loads.

Alabama Power seeks to reassure the Commission that service to a 1,000 MW customer only seems unprecedented, because the Company "manages every second of every day the retail electric

---

Integrated Resource Plan Summary Report). The 12,000 MW figure Alabama Power appears to be its retail peak load, not its total capacity.

[23] Contract for Electric Service between Alabama Power Company and Dotier, LLC, Informal Docket No. D-7842 (filed June 18, 2026) (transmittal letter stating the contract "promotes or contributes to economic growth in the Montgomery area"); Ralph Chapoco, Alabama Public Service Commission approves solar project supporting data center, Alabama Reflector (Aug. 4, 2026), https://alabamareflector.com/2026/08/04/alabama-public-service-commission-approves-solar-project-supporting-data-center/ (reporting that the Commission approved an agreement allowing Alabama Power "to pass the costs of the solar project to Dotier, a subsidiary of Meta, for a 20-year term").

[24] Contract for Electric Service between Alabama Power Company and Alabama ADC Holdings, LLC, Informal Docket No. D-7843 (filed July 27, 2026).

[25] Contract for Electric Service between Alabama Power Company and Woostor, LLC, Informal Docket No. D-7844 (filed Aug. 14, 2026).

[26] Alabama Power Company, 2025 Integrated Resource Plan Summary Report, Figure IV-B-2, at 18 (projecting winter peak demand of 15,147 MW in 2025 and 15,664 MW in 2044, an increase of 517 MW over twenty years); id. at 2 ("Alabama Power projects a capacity deficit beginning in 2029"). Project Marvel in Bessemer is expected to have a maximum load of 1,200 MW. See SELC's Initial Comments on Large-Load Contracts, Docket No. 33709, at 2 (filed Aug. 6, 2026) ("SELC Comments"). (citing $14bn "Project Marvel" Data Center Approved by Bessemer City Council Amidst Fierce Opposition, Data Center Dynamics (June 8, 2026)).

service needs of 1.5 million customers, with a peak load capability in excess of 12,000 MW." That attempt should give the Commission little solace. A single 1,000 MW customer would account for more than eight percent of Alabama Power's peak capacity. Rate FCR was built for industrial customers measured in single- and double-digit megawatts. A new rate class, preferably through a large load tariff, is appropriate because these loads interact with the grid differently than the large loads that came before them. In a 2024 event, data centers totaling approximately 1,500 MW disconnected from the grid within seconds of each other, an event of the kind North American Electric Reliability Corporation (NERC) later cited when it issued its highest tier alert.[27] Data centers are arriving at a pace measured in gigawatts per quarter, as evidenced by Southern Company's statements to investors. Energy Alabama respectfully submits that this rapid pace and market activity are not a reason to narrow the docket or the Commission's rules but are instead a reason enforceable, public, rules are necessary.

IV. THE RATE IMPACT MEASURE (RIM) IS APPROPRIATE IN THIS CASE

Alabama Power has proposed using the Rate Impact Measure (RIM) test, (sometimes called Ratepayer Impact Measure) and would require a positive net present value for other customers. Alabama Power calls the RIM "the course best insulated against allegations of discriminatory treatment or undue preference."[28] Energy Alabama agrees in this case despite its opposition to RIM in other cases such as for energy efficiency programs. In energy efficiency programs, RIM counts a utility's lost revenue as a cost to the system and ignores the bill savings a customer receives for participating in a program. The result is that an energy efficiency program that reduces total system costs can appear, artificially, not cost effective. RIM's flaw is irrelevant in this case because Act 610 requires the Commission to answer a different question, namely whether a data center contract provides material benefits to other customers. While properly designed energy efficiency programs can reduce system costs, the infrastructure needed to serve large data centers will, by definition, add billions in new costs. Act 610 demands proof that non-participants come out ahead.

But while the RIM test is appropriate in this case, any test is only as good as its verification. The inputs and assumptions used in the RIM test must be available for meaningful review and

[27] N. Am. Elec. Reliability Corp., Incident Review: Considering Simultaneous Voltage-Sensitive Load Reductions (Jan. 8, 2025), https://www.nerc.com/globalassets/our-work/reports/event-reports/incident_review_large_load_loss.pdf (documenting the July 10, 2024 event in which approximately 1,500 MW of data center load disconnected, and approximately 1,260 MW remained offline for hours, following six successive faults on a 230 kV line over 82 seconds); N. Am. Elec. Reliability Corp., Essential Action to Industry: Computational Load Modeling, Studies, Instrumentation, Commissioning, Operations, Protection, and Control (Level 3 Alert) (May 4, 2026), https://www.nerc.com/globalassets/programs/bpsa/alerts/level-3-computational-load-alert.pdf.

[28] Alabama Power Comments at 14.

examination, not simply summarized in a transmittal letter or promised without proof. As Alabama Power proposes it, the RIM test is a net present value calculation measured *over the life of the contract* (emphasis added). In other words, the test is designed to break even eventually, not immediately. Alabama Power's analysis must show that the contract will protect customers under stress scenarios such as if the new load arrives at half of the contracted capacity, the load never arrives at all, or if a customer exits at the earliest permitted date. Guaranteed minimum bills, collateral, and exit fees must convert Alabama Power's projections into contract terms that survive even if the estimated load does not. And lastly, the Commission should require reporting that tests Alabama Power's projections against actual results on a defined schedule determined by this Commission. Alabama Power claims its existing practices under Rate FCR, such as updating Staff, are sufficient. But this cannot be true because none of the information required to check those claims are public, such practices are not tied to the specific provisions of a contract subject to monitoring, and there is no trigger to remedy a situation if, or when, a contract fails to meet its projections. Without contract monitoring, Alabama Power customers must instead only hope that decades of projections are accurate. As Ronald Reagan famously said, "Trust, but verify." Energy Alabama is hopeful that since there is agreement on the use of the RIM test, Alabama Power would not oppose this Commission and intervenors checking its math.

This Commission should know that Southern Company already claims, to its investors, that it commits to minimum 15-year contract terms, a term even more stringent than proposed by Energy Alabama, and termination payments tied to the incremental costs to serve for the remainder of the term.[29] On its second quarter investor call, Southern Company reported approximately $21 billion of aggregate collateral securing its contracted large load portfolio.[30] If Alabama Power's parent company can tell Wall Street that it already secures long terms, termination payments, and collateral, Energy Alabama asks this Commission to require the same things be in a published tariff. Codifying these protections in the Commission's final rule, or better yet a large load tariff, costs Alabama Power nothing that has not already been promised to its shareholders. If the Commission wants Southern Company to keep its promises, it must make them enforceable for the benefit of ratepayers.

---

[29] Southern Company, Proxy Statement (Schedule 14A), Board Recommendation and Statement (filed Apr. 3, 2026), https://www.sec.gov/Archives/edgar/data/92122/000009212226000028/so-20260402.htm ("Contracts carry minimum terms of at least 15 years for nearly all data centers, with some extending even further"; "Contracts include strong protections in the form of termination payments tied to the incremental costs to serve over the life of the remaining contract"); Southern Company, Second Quarter 2026 Earnings Presentation, slide 12 (July 30, 2026) ("Contract Length – At least 15 years for data centers and 10 years for all others").

[30] Southern Company, Second Quarter 2026 Earnings Presentation, slide 11 (July 30, 2026) ("$21B+ collateral required by '28"); Southern Company Q2 2026 Earnings Call, supra note 18 (remarks of David P. Poroch: "the whole portfolio of the 17 GW, we got about $21 billion of collateral"); Poroch later clarifies: "that is about $20.8 billion of collateral that will be in the aggregate on full ramp".

V. MANUFACTURERS SHOULD WORRY ABOUT PRESERVING THE STATUS QUO

Energy Alabama agrees that Manufacture Alabama raised a serious concern that deserves consideration by this Commission. Manufacture Alabama's main concern appears to be that new standards could be applied, whether now or in the future, to its members who already take service under Rate FCR.[31] Manufacture Alabama's large industrial members are ratepayers too, and they would be seriously affected by whether or not large new loads pay their own way.

The classification of what constitutes a large load data center is not this Commission's to make. The Legislature defined a large load data center customer at 150 MW in Act 610.[32] The Legislature further narrowed the scope of Act 610 by stating that customers that will be subject to the statute as a data center are those that "meet[s] the definition of a data processing center under Section 40-9B-3, and operate[s] solely for the purpose of data processing." Manufacturers and data centers are not comparable loads in the eyes of the statute, or in practice, as discussed above in Section II.

The risk of cost shifting runs in the opposite direction Manufacture Alabama fears. Alabama Power proposed to continue processing data center contracts within the Rate FCR framework, potentially placing Manufacture Alabama's members in the same classification as new data centers, where each could contaminate the other. Energy Alabama's main recommendation, a separate published Large Load Tariff, would fully separate data centers from other Rate FCR customers and no change would be made, or necessary, for existing industrial contracts. Due to the confidentiality of existing Rate FCR contracts, no one outside of PSC Staff and perhaps the Attorney General can evaluate whether past deals were reasonable. Energy Alabama does not seek to litigate that in this proceeding but notes that even if subpar decisions were made in the past, this Commission can and should act to rectify it in the future. Alabama Power customers are not served by continuing to make the same mistake simply because it is the comfortable one.

The strongest protection available to Alabama's manufacturers is not found in the procedure of Rate FCR but instead is in making data centers pay their own way. Fuel and capacity costs not appropriately charged to data centers will almost certainly flow through Rate ECR to every Alabama Power customer, manufacturers included.[33] The Georgia PSC Staff's expert panel testified that additional large load "drives up the average fuel cost ($/MWh) in each month by approximately 5-11% in 2028, and the difference increases over time as more large load is added to the system."[34] Every megawatt of capacity and kilowatt hour of energy that a data center is

[31] Manufacture Alabama Comments at 3.

[32] Ala. Code § 37-4-22.1(a)(2).

[33] Energy Alabama Initial Comments, Topic B at 6.

[34] SELC Comments at 17 (quoting Georgia PSC Staff expert panel testimony in Georgia Power's Fuel Cost Recovery proceeding, Dkt. No. 56765).

responsible for, but is not assigned to them, will ultimately be a cost on the bill of every manufacturer and on the bill of every other customer.

VI. THE COMMISSION SHOULD TAKE THE TIME IT NEEDS TO PROPERLY REVIEW CONTRACTS

Regarding timing, the Commission faces near unanimous agreement. Manufacture Alabama and EIA conceded the current review period may be too brief. BCA would accept modest changes to the review timeframes. AFP called arbitrary deadlines "form without substance" and proposes extending the review period to 120 days, with extensions available as a "matter of right."[35] Alabama Power said that its own pre-filing reviews have run from nearly 60 days to several months and asked for the Commission to reserve authority to secure approval faster.[36] No commenter argued that ten-days of post-filing review is sufficient for contracts of this magnitude. Where Alabama Power praised the current ten-day window, it admitted that the window works because it planned to maintain the pre-filing period conducted behind closed doors.

Energy Alabama submits that AFP's logic deserves to be carried one step further as explained by the Attorney General. The Attorney General, like Energy Alabama, does not believe the Commission's proposed deemed-approval mechanism is lawful under Act 610. The Attorney General said there is "no statutory basis for PSC staff to make final decisions on large load electrical contracts," and "no statutory legal basis for a preemptive prospective approval of contracts filed pursuant to a tariff without a vote of the commission." It continued that an administrative order eliminating a Commission vote "is ultra vires and invalid," and the elected and appointed members of this Commission "must actively participate in the decisions of the commission by voting on large load contracts."[37]

For its part, Alabama Power demonstrates how a vote of the Commission would work. It recommended 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,"[38] acting through "a majority of Commissioners," and described that mechanism as one

---

[35] AFP Comments at 5; Manufacture Alabama Comments at 3; EIA Comments at 3; BCA Comments at 3.

[36] Alabama Power Comments at 4 ("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 . . . ."); id. at 16 (the proposed 60-day period "inevitably will prove too long for many (if not most) proposals"); id. at 10, 16 (recommending that the Commission reserve authority to recognize at a Commission meeting within the 60-day window that a contract has been reviewed and approved, "if the Commission concludes prior to the expiry of 60 days that there is no basis to recommend disapproval").

[37] Attorney General Comments ¶¶ 6-9.

[38] Alabama Power Comments at 16; see also id. at 10 (recommending 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

that "will promote efficiency and avoid unnecessary delays."[39] The remaining question for the Commission is whether the vote is optional, as argued by Alabama Power, or required by the new statute, as argued by the Attorney General and Energy Alabama, among others.[40]

Ultimately, this Commission may choose any review timeframe it deems appropriate. There are ample examples now on the record, such as Energy Alabama's 90-day proposal, to support a more reasonable timeframe for review. But while the timeframe may change, it is clear that the Commission itself, not Staff, must be the final arbiter, via an affirmative vote, of whether a contract complies with the statute.

Recent events in Georgia illustrate the need for appropriate time to review contracts. Georgia Power files large load contracts over 100 MW with the Georgia Public Service Commission at least 30 days before execution. The filing must meet the published minimum bill and termination terms, which were adopted in an open proceeding of the Commission. On August 13, the Georgia PSC Staff was prepared to object to a proposed 3.2 GW data center contract for OpenAI, the parent company of ChatGPT, unless Georgia Power agreed to changes. Georgia Power agreed to extend Staff's review period rather than let the clock expire.[41] Some of Georgia's elected commissioners have publicly questioned whether review of a contract of that scale should be left to staff alone.[42]

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").

[39] Id. at 16 ("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."); see also id. at 10 ("Such Commission latitude will promote efficiency and avoid unnecessary delays in the confirmation of the approval of a large load data center customer contract.").

[40] Attorney General Comments ¶¶ 6-9; Energy Alabama Initial Comments, Topic G (the deemed-approval provision "should be eliminated entirely" and contracts of this magnitude should require an affirmative Commission vote); see also SELC Comments at 22 ("An automatic approval mechanism is inconsistent with the Act"; the Act "necessitates a close look, analytical determinations, and explicit approval"); Initial Comments of the Sierra Club, Docket No. 33709, at 18 (filed Aug. 6, 2026) ("Sierra Club Comments") (the Commission "should not implement automatic deemed approval" and "contracts should require affirmative Commission approval by an order following Staff recommendation").

[41] Letter from Brandon F. Marzo, Counsel for Georgia Power Company, to the Georgia Public Service Commission, Docket No. 44280, Document No. 227592 (Aug. 13, 2026) (resetting the contract's filing date to July 27, 2026 and extending Staff's review period to August 26, 2026); Order on Georgia Power Company's Revision to Rules and Regulations Tariff Compliance Filing, Docket No. 44280, Document No. 222325 (Ga. Pub. Serv. Comm'n Apr. 2025) (requiring large load contracts over 100 MW to be filed at least 30 days before execution); Joint Statement of the Georgia Public Service Commission Staff and Georgia Power Company Regarding Large Load Contract, Docket No. 44280, Document No. 224192 (Oct. 9, 2025) (describing Staff review, minimum bills designed to recover the transmission and generation costs of serving the load, and termination protections).

[42] Mary Landers, Georgia Power extends deadline for PSC to consider its contract with OpenAI, The Current (Aug. 13, 2026), https://thecurrentga.org/2026/08/13/georgia-power-extends-deadline-for-psc-to-consider-its-contract-with-openai/ (quoting Commissioner Peter Hubbard: "I'm not comfortable with just allowing staff to review this on their own").

Here, Alabama has the opportunity to learn from Georgia and set reasonable timeframes for review that allow for flexibility and retain authority for who it belongs; the Commission.

Energy Alabama believes that its proposal strikes the right balance. A 90-day standard review clock would start upon receipt of a complete filing, extendable to 150 days for complex contracts, with tolling occurring during delinquent discovery responses, and an affirmative vote at a publicly noticed meeting.[43] In its comments, Alabama Power committed to making its best efforts to answer data requests within five business days, a very reasonable position and one Energy Alabama agrees is sufficient and fair. Energy Alabama agrees with the Attorney General when it stated that there are no practical obstacles to voting as commissioners can schedule special meetings between its regular monthly meetings, and "[t]here is no reason for delay in approving a large load contract upon completion of the designated review process."[44]

VII. TRANSPARENCY NOT CONTRARY TO GOOD SECURITY PRACTICES

EIA presented concerns regarding confidentiality, citing well-reported state-sponsored campaigns against utility systems.[45] Details regarding Alabama Power's operational control systems and the physical security of its infrastructure, including sensitive engineering, design, or vulnerability data its systems, deserve protection at the level of critical energy infrastructure information (CEII).[46] Energy Alabama has not and will never propose such information should be public.

But the Commission should reject the red herring EIA offers. No information discussed in this docket, especially not in Energy Alabama initial comments, involve CEII. What should be public, among other things, are the final customer's name and contracted megawatt total. Developers themselves routinely release such information to the public. Despite Alabama Power's redactions, Nebius' 300 MW project was reported to the press.[47] Southern Company announces the status of contracted data center load on its quarterly earnings calls. Such discordance cannot be compatible

---

[43] Energy Alabama Initial Comments, Topic G (90-day standard review from a complete filing, extendable to 150 days, with the clock tolled during delinquent discovery responses and an affirmative Commission vote at a publicly noticed meeting); see also Ala. Code § 37-4-28 (requiring written application to the Commission, and issuance of a certificate of convenience and necessity by the Commission after "a public hearing of all parties interested," before any generating plant is constructed).

[44] Attorney General Comments ¶ 10.

[45] EIA Comments at 2.

[46] 18 C.F.R. § 388.113(c)(2) (defining critical energy infrastructure information as "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure" that "[r]elates details about the production, generation, transportation, transmission, or distribution of energy," "[c]ould be useful to a person in planning an attack on critical infrastructure," is exempt from disclosure under the Freedom of Information Act, and "[d]oes not simply give the general location of the critical infrastructure").

[47] Energy Alabama Initial Comments at 2-3 (collecting public sources, including WBRC, 'AI factory' being proposed along Lakeshore Parkway in Birmingham) (Feb. 11, 2026) (describing the proposed facility as a 300 MW campus), https://www.wbrc.com/2026/02/11/ai-factory-being-proposed-along-lakeshore-parkway-birmingham/.

with Alabama Power's actions before this Commission. If a developer, or its parent company, can disclose basic project information, so can Alabama Power.

Consider what the redactions at issue actually conceal. In the July 27 filing regarding the Nebius project, the public version redacts the contract term, every pricing component, the security amount, and the minimum billing demand percentages. In other words, every piece of information that would demonstrate Alabama Power's compliance with the law, and with this Commission's Order, would be hidden from public view.[48] Indiana publishes its minimum billing floor in a tariff any member of the public can read. So do Ohio and Oregon. Again, those states adopted frameworks the data center industry and the utilities in those states supported. Amazon, Google, and Microsoft signed Indiana's settlement, Amazon and the Data Center Coalition joined Oregon's stipulation, and AEP Ohio is actively defending its tariff while reporting publicly that it is working.[49] The Attorney General "favors the maximum amount of transparency in the conduct of the public's business."[50] Energy Alabama agrees with the Attorney General.

VIII. THE ATTORNEY GENERAL'S ROLE IS VITAL AND SO IS THE PUBLIC'S

Manufacture Alabama and EIA argued that the Commission cannot give the Attorney General a role the Legislature declined to establish, and that the statute's silence on this topic was a deliberate legislative choice. In Manufacture Alabama's words, "[t]o do so is to legislate."[51]

Manufacture Alabama and EIA's positions are contradictory. In one breath it asks the Commission to preserve a process in which contracts are deemed approved on Staff review and the passage of time, despite the plain reading of the statute. In the next it says the Attorney General's role should be reduced or limited because the Legislature, in this bill, did not explicitly authorize it. But the Legislature did authorize it. Manufacture Alabama passed over the provisions of the Alabama Code that answer its own objection and provide for the role of the Attorney General. Section 37-1-16 establishes the Attorney General as representative of the "using and consuming public", and Section 37-1-87 established its intervention rights in Commission proceedings.[52] Alabama Power concedes this point in its comments, also citing Section 37-1-16, describing the role of the Attorney

---

[48] Energy Alabama Initial Comments, Topic J (describing the July 27 filing's redactions of contract term, pricing components, security amount, and minimum billing demand percentages).

[49] See supra notes 16 and 17.

[50] Attorney General Comments, Conclusion (favoring "the maximum amount of transparency in the conduct of the public's business" and citing Alabama Electric Cooperative Inc. v. Alabama Power Co., 148 So.2d 613 (Ala. 1963)).

[51] Manufacture Alabama Comments at 4; EIA Comments at 4.

[52] Ala. Code § 37-1-16(a) (assigning an Assistant Attorney General "the duty and responsibility, when the Attorney General deems it to be advisable in the public interest, of intervening in proceedings before the commission on behalf of the using and consuming public"); Ala. Code § 37-1-87 ("Every person, firm, corporation, copartnership, association, or organization affected thereby may by petition intervene and become a party to any proceeding before the commission.").

General as "responsibilities […] representative of the using and consuming public."[53] Act 610 is tethered to the Commission's existing authority under Section 37 and, because the Act did not repeal Section 37-1-16, the full rights of the Attorney General remain.

The Commission should take note of the Attorney General's candor about its capacity and its financial resources to conduct the mission given to it by the Legislature. The Attorney General stated that it has two attorneys working on utility issues throughout the state, and that the ratepayer representation fund established by Ala. Code § 37-1-18 has received no appropriation since 2013. It said that for more than 13 years its attorneys "have been almost completely dependent upon the PSC technical staff for assistance in providing ratepayer representation."[54]

Beyond the practical limitations, the Attorney General admits that it "represents all ratepayers collectively and is unable to represent the interests of particular classes of ratepayers. Individual ratepayers must be able to address the commission to protect individual interests."[55] Taken together, the Attorney General has neither the resources nor the legislative duty to "protect individual interests" or "particular classes of ratepayers," further underscoring the need for the Commission to allow for full intervention rights and the participation of individuals and organizations duly able to petition it.

SELC's comments provide a helpful procedure for public participation including a docketed review of each contract with a defined intervention window under Ala. Code § 37-1-87 and Rule 8 of the Commission's Rules of Practice, access to confidential materials pursuant to a protective agreement, and the opportunity to request a hearing.[56] In fact, this docket now demonstrates the public's interest in and demand for such a procedure. Comments from more than 750 people from Mount Vernon and Calvert have asked the Commission about a proposed data center development in their communities. The Commission should develop a process by which to hear the evidence of the individual ratepayers and communities, which the Attorney General says it cannot do on its own.[57] Energy Alabama notes that docketed review with intervention rights fits comfortably within its proposed 90-day structure and that the sunlight provided by such a process would both build public trust and lead to stronger protections for consumers. Both can be done while still providing the certainty and speed the market desires.

---

53 Alabama Power Comments at 5.

54 Attorney General Comments ¶¶ 2-3.

55 Id. ¶ 11.

56 SELC Comments at 27.

57 Attorney General Comments ¶ 11; see also Public Comments and Petition Submitted by Jeri Mathews and Debbie Byrd Weaver, Docket No. 33709 (filed Aug. 6, 2026) (transmitting two petition packages regarding the proposed Beacon Data Center in the Mount Vernon and Calvert area, supported by 369 and 392 signatories respectively).

IX. CONCLUSION

As recommended in Energy Alabama's initial comments, the Commission should direct Alabama Power to file a Large Load Tariff for approval in an open and litigated public proceeding. It should read Act 610's positive benefits test to require demonstrable savings to customers. The Commission should require a minimum of twelve-year terms (exclusive of ramp) on such contracts, minimum billing set at 85 percent of contracted capacity, robust collateral to be posted, and exit fees stringent enough to protect all other customer classes. The Commission should require public disclosure of the final customer's identity and core contract terms, none of which is, or should be, a trade secret. It should eliminate deemed approval, which the Attorney General has stated is not consistent with the law, and adopt a tiered 90- to 150-day review whereby a contract is only approved with an affirmative Commission vote at a public meeting properly noticed. The Commission should establish a monitoring process that maintains its authority and ability to correct issues. Energy Alabama reiterates that the Commission should open a separate proceeding on integrated resource planning because contract-by-contract review cannot manage gigawatt-scale growth while maintaining a least-cost system for consumers. Where commenters have proposed more stringent terms than Energy Alabama's, such as SELC's longer minimum terms and larger exit fees, those proposals can fall within the reasonable range this record now supports. Energy Alabama maintains the recommendations in its initial comments and trusts the Commission to strike the correct and final balance.

Energy Alabama again thanks the Commission for opening this proceeding and is encouraged by its willingness in recent months to hear from new and varied voices which will surely make for a stronger record and better decision-making. Alabama can have investment and consumer protection at the same time and Energy Alabama's proposed framework does so. We stand ready to assist the Commission and its Staff in any way possible.

Respectfully submitted,

Daniel Tait
Executive Director
Energy Alabama
PO Box 1381, Huntsville, AL 35807
dtait@energyalabama.org

Dated: August 21, 2026