Manifest Energy

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ALABAMA PUBLIC SERVICE COMMISSION
DEVON BEATY, SECRETARY

a program of Manifest America

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August 21, 2026

VIA ELECTRONIC FILING AND U.S. MAIL

Mr. Devon D. Beaty Alabama Public Service Commission Attn: Secretary's Office 100 N. Union St., Suite 950 Montgomery, AL 36104

Re: Docket 33709 — Generic Proceeding to Establish a Process for Consideration of Contracts for Electric Service Between Alabama Power Company and Large Load Data Center Customers; Reply Comments of Manifest Energy

Dear Mr. Beaty:

Enclosed for filing in the above-referenced docket are the Reply Comments of Manifest Energy, submitted pursuant to Rule 4 of the Commission's Rules of Practice and the Chief Administrative Law Judge's procedural ruling of July 16, 2026, that no intervention is required to participate in this proceeding. These comments are timely filed on or before the August 21, 2026 deadline established by the Commission's July 8, 2026 Order.

Consistent with the Commission's rules on electronic filing, this filing has been submitted through the Commission's electronic filing system, and a physical copy is being supplied to your office, along with a confirmation copy to be stamped as filed and returned in the enclosed self-addressed envelope.

Please contact me directly at (202) 507-9337 or claire@manifestamerica.us with any questions regarding this filing.

Respectfully submitted,

/s/ Claire Douglass

Claire Douglass Senior Advisor, Manifest America

Enclosures: Reply Comments of Manifest Energy (9 pages); confirmation copy

Reply Comments of Manifest Energy

a program of Manifest America

Before the Alabama Public Service Commission

In re: Generic Proceeding to Consider Contracts for Electric Service Between Alabama Power Company and Large Load Data Center Customers

Docket No. 33709

August 21, 2026

Introduction

Manifest Energy submits these reply comments pursuant to Rule 4 of the Commission's Rules of Practice and the Chief Administrative Law Judge's procedural ruling of July 16, 2026, that no intervention is required to participate in this proceeding.

Manifest Energy is the energy program of Manifest America, a national nonprofit organization and a fiscally sponsored project of Cause and Impact, Inc., which is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Manifest Energy studies how the costs of very large new electric loads are allocated among the customers who ultimately pay them. It has no client, member or financial interest in any contract, customer, developer or project before this Commission, and it takes no position on whether any data center should be built or served in Alabama.

Manifest Energy files these comments because the Attorney General has told the Commission that someone should, and that his office cannot. In his August 6, 2026 comments he wrote:

> *"There must be a procedure developed to allow for public participation. Many Alabama citizens believe that electricity rates will be higher because of data centers. Unfortunately, the Attorney General 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."*

Attorney General's Comments ¶ 11 (Aug. 6, 2026).

Manifest Energy supports the Attorney General's position without qualification. It takes no position on the questions he raises under Ala. Code § 37-4-22(b) concerning the delegation of contract approval, which are properly between that office, the Company and this Commission. These comments address the single point he identified as lying beyond his office's reach, the interests of a particular class of ratepayers, and his closing question, which asks "what kind of record (if any) is generated by the staff review and then made available to the public."

Manifest Energy offers six provisions that would answer it, under four of the topics identified in the Commission's July 8, 2026 Order: Contract Review Standards, Submission Requirements, Public Notice and Transparency, and Post-Approval Monitoring. It takes no position on the length of the review period or on interconnection procedure, which other commenters have addressed at length.

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1. Act 610 owes a benefit to a class that cannot see the record

Act No. 2026-610 conditions the consistency of a large load data center contract with the public interest on this Commission determining that the contract's pricing and terms are expected to recover the incremental costs of serving that customer, and that they are expected to "promote positive benefits to other retail customers." Ala. Code § 37-4-22.1(b).

The Legislature did not write a general public-interest standard. It wrote a benefit that runs to a specific group, and defined that group by exclusion: the retail customers who are *not* the contracting party.

That class does not negotiate. It has no counterparty and no alternative supplier. It holds no commercial information that any protective order needs to shield, because it is not in the bargaining. It cannot retain a rate consultant, commission a load study, or decline the terms. Residential customers in particular have exactly one instrument by which they can know whether the benefit the Legislature promised them was in fact found: the public record of this Commission's determination.

Residential customers have already done in this docket what the Attorney General said they must be able to do. Individual customers filed in their own names, and a group described to the Commission as "residential customers of Alabama Power who own homes in and near the Oxmoor Valley area of Jefferson County" filed through counsel. Public Comments of Jeri Mathews and Debbie Byrd Weaver (Aug. 5, 2026); Public Comments of Ricky A. Neighbors (Aug. 5, 2026); Public Comment of Arie Lucille Kimble-Foster (Aug. 5, 2026); Public Comments Filed on Behalf of Residents in and near the Oxmoor Valley Area at 1 (Aug. 6, 2026). The class is willing to be heard. What it can say is bounded by what it is permitted to see.

Confidentiality in this proceeding is being weighed as though its cost fell evenly. It does not. Granting confidentiality to the negotiating parties may protect their business interests, but it costs the other retail customers the only means they have of knowing the finding was made in their favor. A benefit conferred by statute on a group, proven in a record from which that group is excluded, is not a benefit that group can rely on. It is an assurance.

Nor can the assurance be checked from inside the review. The Attorney General has advised the Commission that the rate hearing fund established by Ala. Code § 37-1-18 has received no appropriation since 2013, that his office has two attorneys covering utility issues statewide, and that consequently "it is more likely than not, the attorneys at the Attorney General's Office will rely upon the PSC technical staff for assistance in analyzing large load electric contracts." Attorney General's Comments ¶¶ 2–3. In short, the Attorney General has told this Commission that he lacks the capacity to independently verify the Company's claims. Manifest Energy raises this in no critical spirit toward either office. It raises it because furnishing the analysis in confidence to Staff, and to an office that has said it will rely on Staff to read it, does not produce a second and independent examination. Whatever independent scrutiny the finding receives will come from what the Commission publishes.

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2. The Company already publishes the conclusion. It withholds only the number.

Two large load data center contracts are on file. Alabama Power Company Contract for Electric Service with Dotier, LLC, Docket D-7842 (filed June 18, 2026); Alabama Power Company Contract for Electric Service with Alabama ADC Holdings, LLC, Docket D-7843 (filed July 27, 2026). Each was filed in a redacted public version, with the unredacted contract and supporting information provided to Commission Staff. Each transmittal letter tells the public that the contract

> *"increases the efficiency of Alabama Power's power system and provides for positive benefits to all of Alabama Power's customers by placing downward pressure on rates as demonstrated by a net present value positive Rate Impact Measure test."*

The two letters say this in identical words. The Company has therefore already determined, without objection from anyone, that the existence and direction of the Rate Impact Measure result is not confidential and may be told to the public. What is withheld is the magnitude.

A reader of the public record learns that the result was positive. That reader cannot learn whether it was positive by a dollar or by a hundred million, whether the margin would survive a load arriving at half its projected size, or whether a result positive in the aggregate is positive for residential customers. Two contracts of different size, in different communities, produce public statements identical to the letter.

Nor can that reader see the size of what is being weighed. In the public version of the ADC Holdings contract the heading "Contract Capacity" is followed by nothing, and the provision stating that "Customer has requested and Company shall provide a Contract Capacity for each Phase" is followed by nothing. The Dotier contract refers the reader to a schedule that the public filing does not contain. Neither document states a megawatt figure anywhere. The public record thus sets out the structure of the promise with every quantity removed, including the size of the load whose effect on other customers this Commission must find to be positive.

Manifest Energy therefore asks the Commission to require that the public version of each order publish the output of the Rate Impact Measure Test. That figure is what makes the statutory promise checkable by the people it was made to. The request does not ask the Commission to disclose anything the Company has withheld as confidential; it asks that the sentence the Company already publishes be completed with the figure it already rests on.

No party in this proceeding has asserted a confidentiality interest in this Commission's own determination. Every commenter opposing wider disclosure describes what it is protecting as the *inputs* the parties brought to the bargain. Alabama Power objects to release of "confidential project- and customer-specific pricing, financial and costing data and analysis," because it "impairs the negotiating position of Alabama Power and its customer counterparty." Alabama Power Initial Comments (Aug. 6, 2026). The Business Council of Alabama's list is expressly one of "financial inputs (*e.g.*, unit prices, escalation provisions, minimum payment obligation, contract duration), the nature and extent of expansion plans …, market entry strategies, and system architecture and performance expectations." Business Council of Alabama Comments at 4 (Aug. 6, 2026). The Data Center Coalition asks that confidential treatment "protect the substance of negotiated terms, rather than only isolated data points." Data Center Coalition Initial Comments (Aug. 6, 2026).

A Rate Impact Measure analysis resolves to a single figure. Publishing it discloses no unit price, no escalation provision, no minimum payment obligation, no expansion plan and no system architecture, none of the inputs any party has asked this Commission to protect. Act 610 makes the determination the Commission's act, not any party's information. The distinction is available to the Commission without disturbing a single objection in this record.

Manifest Energy respectfully suggests the Commission state the line in the standards order:

> *Information concerning the commercial terms negotiated by a large load data center customer — including price, cost models, load characteristics, security arrangements and the customer's business plans — is that customer's information and remains entitled to protection. Information describing the effect of an approved contract on other retail customers is not that customer's information, and shall be stated in the public version of the order approving or disapproving the contract.*

That formulation concedes every commercial sensitivity any party has identified and protects the counterparty's negotiating position in full. What it does not do is allow the protection of one customer's information to operate as the concealment of another class's statutory entitlement.

Both sides of these contracts have already committed to this standard in public. The Data Center Coalition states that its members "support the White House Ratepayer Protection Pledge" and that "[t]he industry remains committed to paying its full energy costs" so that "homes and businesses do not shoulder the costs associated with data center growth." Data Center Coalition Initial Comments (Aug. 6, 2026). On July 23, 2026 Alabama Power's parent announced it was joining the same Pledge, describing its approach as ensuring "that the infrastructure investments and operational requirements associated with new, energy-intensive demand are appropriately borne by the businesses driving that growth, helping to protect existing customers." Press Release, Southern Company, *Southern Company Joins President Trump's Ratepayer Protection Pledge* (July 23, 2026). Manifest Energy takes both commitments at face value and questions no one's good faith. A commitment that cannot be checked is simply not yet one its beneficiaries can rely on.

3. "Other retail customers" is not one class

The Commission serves residential, small commercial and large industrial customers under different rate schedules, with different load shapes and different cost-allocation treatment. A new load of several hundred megawatts does not affect them identically, and a contract can produce a net benefit in the aggregate while producing a net detriment for one class within it. An aggregate figure would satisfy the statute's words and defeat its purpose for whichever class sits on the wrong side of the average.

Residential customers are the class least able to detect that outcome and least able to respond to it, and, by the Attorney General's own account, the class no one before this Commission is positioned to speak for. Attorney General's Comments ¶ 11.

Manifest Energy therefore asks that the public version of each order state the projected effect of the contract by rate class, identifying the residential class specifically. This imposes no additional analytical burden. Any analysis capable of supporting a finding under § 37-4-22.1(b)(2) must already allocate costs and revenues among customer classes; an analysis that cannot say which customers benefit cannot support a finding that customers benefit. The class-level results already exist wherever the finding is properly made. The request is only that they be reported rather than aggregated away.

Manifest Energy further asks that the public order state the portion of the incremental generation, transmission and distribution investment attributable to the customer that is not covered by the customer's minimum billing obligation over the contract term. Where a very large load does not materialize, is reduced, or exits early, that residual is what the remaining classes carry. It discloses no price, and it is among the most useful numbers a public order could contain.

Commenters across this docket have asked for information at the level of the class. Energy Alabama asked the Commission to require the "[p]rojected bill impact for residential and small business customers, expressed in cents per kWh and dollars per month," Energy Alabama Initial Comments (Aug. 3, 2026), and Sierra Club asked for examination of class cost-of-service methodologies, Sierra Club Comments (Aug. 6, 2026). From the opposite end of the docket, Americans for Prosperity–Alabama asked that every order contain "a separate and distinct paragraph in boldface type" setting out the total dollar amount of the approved contract and the amounts approved for generation and transmission. Americans for Prosperity–Alabama Comments (Aug. 6, 2026). Manifest Energy asks for less than any of them: not the contract's dollar value, but the direction and size of its effect on the customers who are not party to it.

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4. A finding that is never written cannot be read

The July 8, 2026 Order proposes, under the heading "Deemed Approval Provision," that "[s]hould the Commission not issue an order disapproving the contract within sixty calendar days from the date of filing, the contract shall be deemed approved by the Commission. The approval would then be recognized at the next Commission meeting, but no vote or order would be required." July 8, 2026 Order at 6.

Manifest Energy takes no position on the length of that period, nor on the Attorney General's argument under Ala. Code § 37-4-22(b) that approval without a Commission vote exceeds this Commission's authority. That question is properly his.

The concern here is narrower. Under the framework as proposed, the ordinary outcome of a review — approval — produces no order at all. But § 37-4-22.1(b)(2) requires a finding, made by this Commission, that the contract is expected to promote positive benefits to other retail customers. A contract approved because sixty days elapsed produces no document in which the benefit to other customers was ever found. The provisions requested in §§ 2 and 3 above would have nothing to attach to.

The remedy is procedural and disturbs no timetable:

> *Upon the approval of a contract under § 37-4-22.1, whether by order of the Commission or by expiration of the review period, the Commission shall enter in the docket a written determination stating the findings required by § 37-4-22.1(b), including the finding that the contract is expected to promote positive benefits to other retail customers, and the basis for that finding. The determination shall be made available to the public.*

This is a ministerial recording requirement, not a gate. It creates no condition precedent to approval, alters no timeline, and gives no party a tolling mechanism. Approval occurs exactly when it would occur otherwise, by order or by operation of the review period, and the determination records, at that moment, the finding the statute already requires. The Commission is not being asked to decide whether the benefit exists. It is being asked to say so out loud.

Nor does the request disturb anything the Legislature fixed. The sixty-day period is this Commission's own proposal in this proceeding rather than a term of Act 610, and the Order asks commenters whether "the proposed 60-day deemed-approval timeline [is] appropriate." July 8, 2026 Order. Manifest Energy expresses no view on its length.

Nor is it foreign to the restraint the Commission has been urged to observe. The Business Council of Alabama, while opposing wider disclosure, states that it "would have no objection to modest changes in the post-filing timeframes or procedures for purposes of 'deemed approved' or 'disapproval,'" objecting only to revisions that would "inject inordinate delay." Business Council of Alabama Comments at 2–3 (Aug. 6, 2026). A written determination injects no delay at all.

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5. Notice of each contract, not further notice of this docket

This request concerns notice of an individual contract when it is filed for review. It does not ask the Commission to repeat anything it has already done in this proceeding.

The Commission has provided notice of *this* docket, and provided it well. On July 24, 2026 it recorded that it had added a banner to its homepage linking to instructions for submitting and viewing comments, invited members of the public having difficulty to call for assistance, and stated that "Commission Staff will work with members of the public to ensure their comments are included in the record for this proceeding." Procedural Ruling (July 24, 2026).

No comparable notice reaches the public when a *contract* is filed. Under the process as it now operates, a contract committing hundreds of megawatts for a term of years may be filed, reviewed and approved without any notice to the retail customers on whose behalf the statutory benefit finding is made. They may learn of it afterward, if at all. That leaves the Commission to make a finding for a class that had no opportunity to be heard on it.

Manifest Energy asks that the standards provide:

> *Upon the filing of a contract for review under § 37-4-22.1, the Commission shall publish notice of the filing in the docket and on the Commission's website, stating the date of filing and the date on which the review period is scheduled to conclude, and shall accept written public comment at any time before that date.*

Notice, not a hearing. No party need respond, no proceeding is created, and no review period is extended. The Commission has already built the mechanism in this docket; the request is only that it be pointed at the contracts themselves.

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6. If the Commission adopts post-approval monitoring, the result should name the class

The Commission has asked whether it should "establish procedures to monitor compliance with approved contracts and to evaluate actual impacts on other customers and the Company's power system." July 8, 2026 Order. Several commenters have urged that it should, and Manifest Energy does not repeat their case for it. It makes one observation about what such a procedure should produce.

Section 37-4-22.1(b) conditions approval on what is *expected*. A forecast that is never compared with an outcome cannot be shown to have been wrong, so monitoring is what gives the finding in § 2 above its meaning over time. But the public value of monitoring depends entirely on the form in which its result is reported. The most detailed proposal in this record, Energy Alabama's, would have Alabama Power file semi-annual compliance reports with the Commission and publish "[a]n annual public report, in aggregate form." Energy Alabama Initial Comments (Aug. 3, 2026).

Aggregate form is where the class-level result disappears, for the reason set out in § 3 above. A result positive across all customers can be negative for residential customers within it, and a public report that aggregates cannot distinguish the two. The class least able to detect that outcome would again be the class unable to see it.

Manifest Energy therefore asks that whatever monitoring the Commission adopts, its public product state the actual effect on other retail customers by rate class, identifying the residential class, on the same terms requested in § 3 above for the finding at approval. This adds no reporting obligation beyond what the Commission decides to require of its own motion, and asks for no corrective authority, no hearing, and no reopening of an approved contract.

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7. Why what this Commission publishes has to do more work in Alabama

This section asks the Commission for nothing. Manifest Energy states it because the Attorney General placed the underlying facts in this record and they bear on the weight the Commission's published order must carry.

Alabama did the hard part almost fifty years ago. In 1977 the Legislature created ratepayer representation before this Commission and assigned it to the Attorney General, Ala. Code § 37-1-16, and created a consumer's utility rate hearing fund to pay for the experts the work would require, Ala. Code § 37-1-18.

The representation still exists. The funding does not. The Attorney General has advised this Commission that the Legislature "has not appropriated any money for this fund since 2013," and that consequently "for more than 13 years the attorneys in the Attorney General's Office have been almost completely dependent upon the PSC technical staff for assistance in providing ratepayer representation." Attorney General's Comments ¶¶ 2–3.

Alabama does not need to create ratepayer representation. It created it in 1977. What it has not done since 2013 is fund it. That is a repair, and it is a matter for the Legislature rather than for this Commission. Manifest Energy does not ask the Commission to remedy it and could not.

What follows for this docket is entirely within the Commission's authority. In a state where the ratepayer advocate has no independent technical capacity of its own, the published order is not one avenue of scrutiny among several. It is the first one. Until the Legislature repairs the funding, the public record is the only ratepayer representation in Alabama that scales.

Conclusion

Manifest Energy respectfully asks the Commission to adopt, in the standards order issued in this docket:

1. a requirement that the Commission enter a written determination stating the findings required by § 37-4-22.1(b) upon each approval, whether by order or by expiration of the review period;
2. a statement that information describing the effect of an approved contract on other retail customers is not the contracting customer's information and shall appear in the public version of the order;
3. publication of the output of the Rate Impact Measure Test in that public version;

4. a requirement that the projected effect be stated by rate class, identifying the residential class specifically, together with the portion of the incremental investment not covered by the customer's minimum billing obligation;
5. public notice of each contract filed for review, with the filing date and the scheduled conclusion of the review period, and an opportunity to comment before that date; and
6. that the public product of any post-approval monitoring the Commission adopts state the actual effect on other retail customers by rate class, identifying the residential class.

None of these asks the Commission to disapprove any contract, to reopen any methodology, to disclose any negotiated price, or to delay any project. Several commenters have urged the Commission to do only what Act 610 requires and to leave larger questions to another day and another Commission. Manifest Energy does not quarrel with that view. Each of these requests is implementation of the statute the Legislature wrote, in the words the Legislature chose.

Together they answer the question the Attorney General put to the Commission: what kind of record is generated by the review and made available to the public. The answer should be a public order stating what the contract costs, whom it benefits, by how much, class by class, and what remains uncovered if the load does not appear.

The Legislature could have written a public interest standard and left its application to the Commission's discretion. It did not. It named a beneficiary. Manifest Energy asks only that the beneficiary be able to see the finding made in its name.

Respectfully submitted this 21st day of August, 2026.

/s/ Claire Douglass

Claire Douglass

Senior Advisor, Manifest America

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