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

Reply Comments of Alabama Power Company

Alabama Power Company ("Alabama Power" or "Company") provides the following reply comments in connection with the July 8, 2026 order ("July 8 Order") of the Alabama Public Service Commission ("Commission") in this docket, and the submissions that have been tendered by various entities and individuals. Based on the Company's review of these submissions, Alabama Power supports the adoption of a new rate schedule applicable to large load data center customer contracts that would implement the specific directives of the Legislature. This new rate schedule would strike an appropriate balance between—on the one hand—various commenter requests for greater transparency and process and—on the other hand—the need to maintain flexibility in contract development, the discrete scope of the Legislature's directions in Act 610, and the forthcoming changes to the makeup of the Commission that will take effect in January 2027. Draft tariff sheets are included with these comments at Attachment A.

Reply Comments

1. The Proposals of Commenters like Energy Alabama, SELC and Sierra Club

Alabama Power appreciates the input provided by the various commenters, and while it has not undertaken to respond to every point raised, Alabama Power does through these reply comments address thematic items that appear in one form or another in many of the comments. For some of the groups though, Alabama Power would stress to the Commission that it should view their statements through a lens of familiarity. Energy Alabama, Southern Environmental Law Center ("SELC"), and Sierra Club are not strangers to this Commission—they have since 2019 consistently opposed (among other things) any effort by the Company to address generation resource adequacy concerns through the construction or procurement of gas-fired generation.[1] The Commission isn't the lone forum in which they direct such opposition—in recent years, Sierra Club and SELC (acting on behalf of various groups, including Energy Alabama) have been actively litigating before the Federal Energy Regulatory Commission, attempting to frustrate efforts by interstate natural gas pipelines to certificate system expansions to support load growth in the Southeast and elsewhere associated with data center growth.[2]

While entities like Energy Alabama, Sierra Club and SELC appear to travel under a self-designed banner of transparency and process, the Commission should appreciate where their recommendations lead—delay, to the point of project disruption and the consequential elimination of any need for new fossil-fired generation.[3] In each of the proceedings cited in footnote 1, the intervenors were afforded the opportunity to conduct extensive discovery. Access to information did not assuage their purported concerns though—opposition continued until this Commission, or in the case of the resource portfolio certificated in Docket No. 32953, the Supreme Court, conclusively rejected their positions as against the weight of the evidence and applicable law. In

---

[1] Sierra Club appeared and opposed the Company's proposed generation resource portfolio in full in Docket No. 32953. SELC, on behalf of Energy Alabama, engaged in that docket as well (and opposed the certification of the non-renewable generation resources), and also intervened in the Lindsay Hill certificate proceeding (Docket No. 32953) and the Calhoun certificate proceeding (Docket No. 33182) to oppose those certificate petitions.

[2] *See, e.g.*, *Tennessee Gas Pipeline Co., L.L.C., et al.*, 196 FERC 61093 (July 31, 2026). Notably, as part of its order granting the requested interstate pipeline certificates, FERC rejected the proverbial 11th hour motion by several parties represented by SELC (including Energy Alabama) for an evidentiary hearing, describing it as "an inappropriate attempt to delay our action." *Id.* at P 32.

[3] *See* Dodd, John, *Data Centers Done Right in Alabama*, Energy Alabama (July 17, 2025), *available at* [Data Centers Done Right in Alabama - Energy Alabama] (criticizing a data center project in Louisiana for relying on fossil fuel generation, and stating "We must not let that happen in Alabama.").

this vein, several commenters rightly observe that delay tactics are one method by which opponents to large load data center customers can frustrate projects.[4] The Commission should thus avoid adopting procedural requirements that introduce unnecessary delay without corresponding customer or public-interest benefits.

2. Comments of the Attorney General

The Office of the Attorney General raises important questions in an apparent effort to verify the legality of the current Rate FCR contract process under Title 37 of the Alabama Code, while offering guidance on the agency's ability to participate in that process, as it may be modified through this Generic Proceeding. Of course, the Commission does not delegate to the Staff contract approval authority under Rate FCR when it relies on Staff's knowledge and expertise, or when it relies on Staff to perform evaluative functions in support of the Commission's regulatory responsibilities. As Rate FCR plainly states, the Commission's authority to disapprove a proposed contract sits independent of the Staff's determination that the applicable review criteria have or have not been satisfied. This authority is comparable to that which the Commission holds today under Alabama Code § 37-1-81, by which the Legislature expressly provided for rates to go into effect absent suspension or disapproval by the Commission within a prescribed period.[5]

Additionally, the language of the statute upon which Rate FCR is predicated—Alabama Code § 37-4-22—further confirms the legitimacy of the existing process. The operative provisions of this Code section distinguish two categories of contracts: (i) those between a municipality and

[4] *See, e.g.*, AFL-CIO comments, p. 3. Recent industry reporting observes that delay can impede developers' ability to obtain financing, as well as cause increases in the cost of financing. Goldberg, Keith, *Data Center Backlash Fogs Finance Picture for New Projects*, Law360 (Aug. 14, 2026) (*see* Attachment B). *See also* Energy Institute of Alabama comments, p. 3.

[5] *See* Ala. Code § 37-1-81(a) ("In the absence of suspension or disapproval by the commission, as herein provided, the new rate or service regulation embodied in any such new schedule shall become effective at the time specified in such schedule, subject however to the power of the commission at any time thereafter to take any action respecting the same authorized by this title.").

a utility for a specified term not exceeding 30 years, and then (ii) other contracts between utilities, and between utilities and persons who are not utilities. Contracts falling within the former category (i.e., contracts between a utility and a municipality)—the subject of the case referenced by the Office of the Attorney General in its comments[6]—become effective "only by and with approval of the commission to be expressed by its order."[7] The Legislature did not, however, direct the Commission to issue an order for the latter category of contracts.[8] Instead, it left the Commission with the same latitude to express approval that it holds under the above-referenced provision of Alabama Code § 37-1-81—that is, approval expressed without the issuance of an order.[9] Accordingly, the Company supports the process contemplated in the Commission's July 8 Order, with a 45-day review period.

3. Contract Protections and the Continued Need for Flexibility

Many of the commenters outline recommendations for contractual standards that the proponents claim will help ensure the cost of service for large load data center customer contracts are borne by the large load data center customers, and not shifted to other customers. As the Commission and its Staff are aware, Alabama Power already utilizes these and other protections today in its contracts. Key protective features in that regard include:

(i) minimum contract initial term lengths;

(ii) minimum billing requirements, including billing capacity ratchets and annual energy thresholds;

---

[6] *See Alabama Elec. Coop. Inc. v. Alabama Power Co.*, 148 So.2d 613 (Ala. 1963).

[7] Ala. Code § 37-4-22(a) ("Rates and service regulations may be established by contract between a municipality and utility for a specified term, not exceeding 30 years, *but only by and with the approval of the commission to be expressed by its order*." (emphasis added)).

[8] Ala. Code § 37-4-22(b) ("Whenever any such contract shall be made, it shall, before becoming effective, be submitted to the commission. If the commission shall find the provisions of any such contract consistent with the public interest, *it shall approve the same*. Otherwise, it shall disapprove the same, and unless and until so approved, such contract shall be of no effect; but if it is approved, it shall in all respects be lawful." (emphasis added)).

[9] *See id*.

(iii) the incorporation of adjustments associated with the operation of existing formulary rate mechanisms (e.g., Rate RSE and Rate CNP);

(iv) security requirements;

(v) load ramp schedules;

(vi) cost responsibility for any default, termination or permitted load reduction;

(vii) assignment limitations; and

(viii) comprehensive operational standards relative to the Company's existing system and its service to other customers.[10]

Provisions such as these help to ensure that the goals of the Commission, and the corresponding commitments of Alabama Power and the large load data center customers, are realized—large load data center customers pay for their cost of service and do not shift those costs to other customers.[11]

Contrary to the recommendations of commenters like SELC, a one-size-fits-all large load tariff with a corresponding contract template is not in the best interest of customers. Like other industrial and commercial sectors, the size and location of data center projects vary, as do the backers of projects and their respective business objectives. A given data center project might be driven by the varied business interests of hyperscalers, colocation/wholesale operators, private developers, infrastructure investors, telecommunication and energy companies, enterprise end-users, and even government and public sector entities. Alabama Power can best facilitate service to each and all of these unique customers, consistent with the requirements of Alabama law and the Commission, by being able to tailor contracts to the plans of the specific customer, the site at

[10] Several commenters observe the recently filed AL ADC Holdings contract, acknowledging their review of the public version. Notably (but in line with Alabama Power's and the Commission's experiences with such entities, and indicative of such entities' various agendas), none offered to express any positive reaction as to the provisions that were included, in complete and/or outline form, including the very robust operational standards applicable to counterparty operations.

[11] And to be clear, the utilization of such provisions is not something new that Alabama Power has developed in response to the institution of this Generic Proceeding. Such contractual protections have been employed in various forms stretching back to the first large load data center contract executed in 2024 (and in other Rate FCR contracts dating back to the inception of the tariff). Moreover, the importance of ensuring that incremental costs are not shifted to other customers is recognized comprehensively by State leaders, Alabama Power leadership and data center developers themselves. *See* Ratepayer Protection Pledge – The White House.

which service will be provided, and the corresponding system costs that the customer will cause and for which it will be responsible.[12] In this way, the contract as a whole establishes a service arrangement between the parties that satisfies the public interest standards prescribed by the Legislature and is thus appropriate for Commission approval.

The recommendations of Energy Alabama, SELC and Sierra Club around contractual minimum billing demand provide a useful illustration. Their respective proposals range from a minimum billing demand of 80 to 90 percent, but none of them pause to reflect on the equally important role that the actual demand charge plays in the operation of a minimum bill. A 90 percent ratchet may look good on paper, but an 80 percent ratchet will be equally effective at ensuring cost recovery if the demand charge itself has been adjusted upward to reflect the application of that lower ratchet.

The same holds true for contract term lengths. As the Commission knows, Alabama Power has employed term lengths of varying duration, all of which align with the recommendations offered by commenters. Length itself though should not be the principal consideration—rather, it is the accomplishment of cost recovery over the term so that other customers do not see data center service costs shifted to them. Thus, as with the minimum billing demand example, a shorter term may not at first glance carry the same value as a longer one, but if the pricing has been adjusted to provide for accelerated recovery over that shorter term, other customers are indifferent (if not better off) if the initial term of a contract is 15 years or 20 years in duration.

The benefits afforded by contractual flexibility are best realized if Alabama Power and the customer have the ability to negotiate and agree on them in confidence. From the Company's

[12] For its part, Sierra Club seems to recognize this appropriateness of this course, advocating for uniformity in the analytics underlying cost recovery, as opposed to the contract itself. *See* Sierra Club comments, pp. 4-5.

standpoint, if key and contractually unique commercial terms become subject to publicity, Alabama Power loses the ability to design and secure the optimum arrangement for a given customer. From the customer's standpoint, public disclosure of its commitments would enable those negotiated terms to be used as leverage in other jurisdictions (which will inevitably have service considerations separate and distinct from those present in Alabama). Moreover, and contrary to the assertions of several commenters, a large load data center customer does not relinquish its right to protect confidential information—such as the identity of its upstream corporate affiliations—simply because it is a large data center. The customer may elect to disclose certain pieces of information that are specifically confidential to it, but doing so remains its right, exercisable when and if it chooses to do so.

Respect for confidentiality has been a longstanding principle of this Commission—the Company included several recent such recognitions by the Commission in its initial comments.[13] Equally important, nothing in Act 610 suggests, let alone directs, that the Commission consider abandoning its traditional practices in favor of a different course for large load data center customers. The Commission can readily accomplish what the Legislature set forth in Act 610 without having to publish the confidential and proprietary information of large load data center customers.

Alabama Power understands the desire for assurance that the Commission is doing what the Legislature required. The July 8 Order contemplates the Commission recognizing an approved contract at the Commission meeting following the effectiveness of its approval. In so doing, the Commission could confirm—without revealing confidential and proprietary information—that the

[13] *See* Alabama Power comments, pp. 7-8.

contract satisfies the requirements of Act 610.[14] Specifically, the Commission could affirmatively state that the contract: (i) provides for the recovery of the incremental costs of retail electric service to the large load data center customer's premises from the large load data center customer; (ii) promotes positive benefits to other retail electric customers of Alabama Power, and increases the efficiency of the Company's electric system, by placing downward pressure on existing customers' rates (through satisfaction of the RIM test, as defined below); and (iii) promotes or contributes to economic growth in the community where the premises of the large load data center customer is located. The Commission also could recite, and in general terms not revelatory of confidential and proprietary information, that the contract satisfies certain threshold requirements—for example, that it includes a meaningful initial term length of more than a decade and minimum billing requirements, including a billing capacity ratchet of least 80 percent; that it incorporates formulary rate mechanisms like Rate RSE and Rate CNP; that it assigns cost responsibility for any default, termination or permitted load reduction to the large load data center customer, with corresponding security requirements to ensure compensation in the event of such an event; and that the contract contains comprehensive operational standards relative to the Company's existing system and its service to other customers.

4. Economic Evaluations

Alabama Power would offer a few additional comments on the economic evaluations performed for large load data center customer contracts. As discussed in the Company's initial comments, the evaluation called for by Act 610 largely reflects the approach historically used by Commission Staff under Rate FCR, and which continues in use today. That evaluation seeks to confirm that a proposed contract's pricing and terms provide for recovery of all incremental costs

[14] Or Alabama Code § 37-4-22.1 if that is the final location for codification of Act 610.

associated with service to the new large load data center customer—including costs associated with the generation, transmission, and distribution of electricity to the customer, including fuel costs and taxes—which the utility would not have incurred but for the large load data center customer contract.

Drawing from various comments offered by others, Alabama Power would emphasize that the incremental costs evaluated include associated costs as such as the firm transportation required for any incremental generation, as well as direct transmission costs associated with facilities that are dedicated to the customer. Incremental bulk transmission costs associated with system additions and upgrades to the broader electric system are modeled as well to confirm cost recovery. Moreover, costs associated with the performance of associated system studies are funded by customer prospects at the earliest stages of engagement—that is, in advance of the execution of any contract for electric service—to avoid inadvertent cost shifting. Thus, even in the case of the so-called "speculative" large load data center customer projects, the Company takes steps to ensure that all prospects and would-be customers pay for costs arising from their potential, as well as actual, service needs.

The evaluation likewise encompasses the second key requirement of Act 610, an examination of the contract's ability to promote positive benefits to all other customers by placing downward pressure on the rates of other customers. Said differently, contracts with large load data center customers not only require those customers to pay for the incremental costs associated with their service requirements, they also require the customers to pay for a portion of the existing electrical system that would otherwise be paid for by current retail electric customers. As the Company explained in its initial comments, the longstanding economic evaluation:

> … assess[es] 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.[15]

This same RIM-based approach remains in use today for large load data center customer contracts.

The one aspect of Act 610 that is not expressly part of the existing evaluation process is the requirement that the large load data center customer contract promote or contribute to economic growth in the community in which the project will be sited. While lacking a specific parallel in the existing Rate FCR review criteria, the Commission has long supported policies that promote economic development in the state and in the service territories of the utilities under its jurisdiction.[16] It should not prove difficult to identify ways in which 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 construction-related and project-specific jobs,[17] the award of grants and direct funding to schools, nonprofits and community organizations, and other community participation efforts. In evaluating these types of benefits, however, the

---

[15] *In re Alabama Power Co. (Rate FCR)*, Docket No. U-3672 (April 1, 1996). As noted in those initial comments, this approach has been endorsed by the Commission 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.").

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

[17] The comments of the Alabama AFL-CIO highlight the impact these projects have on the skilled and craft labor communities and the significant benefits accretive to Alabama communities as a result. *See* AL AFL-CIO comments, pp. 1-2; *see also* Slaiman, Don, *Electricians Love Data Centers. You Should, Too*, New York Times (Aug. 21, 2026), *available at* Opinion | Electricians Love Data Centers. You Should, Too. - The New York Times (reflecting a guest opinion essay on behalf of I.B.E.W Local 26).

Commission should be careful to avoid matters that entail policy considerations beyond its jurisdictional purview—areas that the Legislature did not call for it to explore (but for which commenters like Energy Alabama, Sierra Club and SELC lobby).[18]

5. Publicity and Monitoring

As Alabama Power discussed in its initial comments, direct third party involvement in the large load data center contract filing and review process is inappropriate and unwarranted. Negotiated contracts of this kind have long been treated as confidential. Accordingly, apart from the Commission in its regulatory capacity and the Office of the Attorney General as the Legislature's designated representative of the using and consuming public, no party outside the contract should receive comparable access. Such a position is not unduly restrictive of any public right, but is consistent with the historic actions taken by this Commission, as well as Alabama law as it applies to other state agencies and Executive/Legislative/Judicial branch functions. The Legislature did not in Act 610 direct the Commission to apply the procedural features of Title 37 (i.e., Ala. Code §§ 37-1-83 through -105) to the Commission's review of contracts under Act 610. That alone should counsel against any significant retooling of the existing process.[19]

---

[18] *See, e.g.*, Energy Alabama comments, p. 11; Sierra Club comments, pp. 13-14; SELC comments, pp. 17-18.

[19] *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."); *see also* AFL-CIO comments; Business Council of Alabama comments; Energy Institute of Alabama comments; and Manufacture Alabama comments. Alabama Power shares these concerns, particularly to the extent the Commission invited comments on "big picture planning", which not surprisingly drew effusive recommendations from Energy Alabama and SELC that the Commission require a public integrated resource planning ("IRP") process. As the Commission knows, the IRP process is a management tool that informs resource procurement decisions, and existing law and practice does not contemplate any sort of proceeding or event relating to such planning. In contrast, the opportunity for outside involvement arises when Alabama Power seeks to act on its IRP and procure additional resources. As that process has served customers well for decades, there is no legitimate reason for the Commission to invite any consideration of a departure from it. *See also* Jim Zeigler comments.

As discussed above, Alabama Power recognizes the desire of the public for assurance that the Commission is acting consistent with the law, and that contracts it approves will deliver the expected benefits. Numerous avenues exist by which Alabama Power will be able to relay, at a level that protects appropriate customer and Company confidential information, the progress of its large load data center customer contracts. This includes the annual meeting under Rate RSE, as well as future annual meetings called for by Act 354 (which will commence in 2027). Alabama Power also expects, as part of the Commission Staff's ongoing monitoring of the Company in accordance with existing requirements and Alabama law, to report on developments for specific contracts, such as the completion of up-front payment of contributions in aid of construction and other advances made by customers in connection with their respective contracts. And with consideration of appropriate treatment for confidentiality, the Company would expect that information adduced in certificate proceedings for new generation resources will allow for further verification that the projected cost for incremental generation has been appropriately priced into new contracts with large load data center customers.[20]

The manner by which Alabama Power supplies this information will necessarily evolve over time, as new customer loads come into service, the makeup of the Commission transitions and the Energy Secretary is installed. Alabama Power looks forward to working with the Commission through its Staff to identify the level and frequency of information flow that affords the Commission the ability to monitor the performance of large load data center customer contracts

[20] It is at this stage where matters such as those encapsulated by the comments of counsel for litigants in certain pending cases before the Jefferson County Circuit Court would be addressed. *See generally* Mark Parnell comments. As an aside, and as the Commission is aware, the IRP summary document referenced by Mr. Parnell is outdated. (Alabama Power will not comment on his litigation-specific arguments concerning infrastructure, as those are beyond the scope of this proceeding and will be addressed by the Jefferson County Circuit Court.) *See id.*, pp. 3-4.

relative the goals of Act 610, and to refine the Company's contracting strategies and analytical tools to the extent new information signals the suitability of such a course.

6. Next Steps

To assist the Commission in its completion of the process begun with this Generic Proceeding, Alabama Power is including with these comments a draft Rate FCR-LLDC.[21] If the Commission finds this draft acceptable, the Company is prepared to file the new tariff in compliance with the issuance of an order upon the completion of the Generic Proceeding. Alabama Power would also consider reasonable adjustments to the proposed draft (if any) that the Commission deems necessary or appropriate for purposes of this Generic Proceeding, consistent with the statements offered in its initial and reply comments and the input of certain other entities.

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.

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

Attorney for Alabama Power Company

OF COUNSEL:

Scott B. Grover
Dan H. McCrary
Balch & Bingham LLP
1710 6th Avenue North
Birmingham, Alabama 35203
Phone: (205) 251-8100

Robin G. Laurie
Riley W. Roby
Balch & Bingham LLP
445 Dexter Avenue, Suite 8000
Montgomery, Alabama 36104
Phone: (334) 834-6500

---

[21] *See* Attachment A.

Attachment A
Reply Comments of
Alabama Power Company
Docket No. 33709

DRAFT -- RATE FCR – LLDC
FLEXIBLE CONTRACT RATE
LARGE LOAD DATA CENTERS

By order of the Alabama Public Service Commission dated ______ in Docket # ______.

PAGE	EFFECTIVE DATE	REVISION
1 of 2	____, ____ Billings	ORIGINAL

AVAILABILITY

Available in all areas served from the interconnected system of the Company and regulated by the Alabama Public Service Commission.

APPLICABILITY

Applicable to large load data center customers with a capacity requirement of at least one hundred fifty megawatts (150 MW) that meet the definition of a data processing center under § 40-9B-3, Code of Alabama, and operate solely for the purpose of data processing.

REVIEW CRITERIA

- Prices charged under Rate FCR-LLDC shall not be below the Company's expected incremental costs of providing service to the Customer's location. Components of incremental costs generally include generation, transmission and distribution for the sale and furnishing of electricity to the Customer, including fuel costs and taxes, operation and maintenance expenses, and promotional and administrative costs.

- Contracts proposed under Rate FCR-LLDC shall be supported by economic evaluations, made in accordance with methods accepted by the Commission, demonstrating that the contract pricing and the contract terms and conditions are designed to recover the incremental costs of providing service to the Customer's location and promote positive benefits to all retail customers of Alabama Power over the term of the contract.

  - In determining whether the contract pricing promotes positive benefits, the evaluation shall assess whether a load addition increases the efficiency of the power system by exerting "downward pressure on rates" for all of Alabama Power customers in accordance with the Rate Impact Measure ("RIM") test.

  - To calculate whether 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 RIM test is passed if the net present value of the resulting difference is positive.

  - In determining whether the contract terms and conditions promote positive benefits, the evaluation shall assess whether contract includes protective provisions such as a minimum initial term length, upfront payments, security and collateral, and minimum payments.

  - The evaluation also shall assess whether the load addition promotes or contributes to economic growth in the community where the customer is located, through such measures as direct contributions to the local tax base, the creation of construction-related and project-specific jobs, the award of grants and direct funding to schools, nonprofits and community organizations, and other community participation efforts.

CONTRACT REVIEW AND APPROVAL

All contracts filed with the Commission under Rate FCR-LLDC shall be reviewed by Commission Staff to assure compliance with the Review Criteria. The Staff shall complete its review of each contract within forty-five (45) days of the Company's filing of the contract and corresponding submittal of related evaluative information to Staff and the Office of the Attorney General. Commission approval of a contract shall be effective upon expiration of the 45-day period, absent disapproval by the Commission.

The Company shall take appropriate steps to protect confidential information included in any contract filed for approval under Rate FCR-LLDC, as well as in evaluative materials provided to Staff and the Office of the Attorney General.

Attachment B
Reply Comments of
Alabama Power Company
Docket No. 33709

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Data Center Backlash Fogs Finance Picture For New Projects

By **Keith Goldberg**

Law360 (August 14, 2026, 9:49 PM EDT) -- Public protests in communities ranging from rural, deep-red Texas towns to blue cities like Detroit and Nashville, Tennessee. Moratoriums on large data centers passed by New York and advanced by several other states. Anti-data center candidates beating pro-data center candidates in primary elections.

The groundswell of opposition to unchecked data center development has made it more challenging to finance projects, with many lenders unwilling to put up cash until they have greater assurances developers can overcome any potential community obstacles.

Fueled by concerns over higher electricity bills, environmental impacts or the rise of artificial intelligence in general, scores of state and local governments in a matter of months have enacted data center restrictions ranging from increased oversight and community input on projects to **outright bans**.

Attorneys who work on data center development told Law360 that as a result, local approvals and permitting have zoomed to the top of the project risk list, especially in the eyes of potential investors.

"Community opposition at this point, it's no longer just a political or public relations issue," said Ammad Waheed, who leads the Houston real estate practice at Norton Rose Fulbright and works extensively on data center development. "It's really become a project delivery risk, and therefore it's a credit risk."

A couple of years ago, attorneys said, a lender's primary concerns would be whether a proposed data center has sufficient control of its project site and can secure enough power. Now, a big question is how politically durable these arrangements are over the life of the project's financing.

"Developers, investors and hyperscalers are all asking me what happens if the regulatory environment changes after the land, power or offtake agreements have been signed," said Duane Morris LLP partner Robert Montejo, who focuses on data center development.

That very situation is now playing out in Texas, a hub of U.S. data center development.

Earlier this month, Gov. Greg Abbott **directed state utility regulators** to audit any data centers going through the electric grid interconnection process and deny interconnection to ones that can't satisfy disclosure requirements.

Meanwhile, the Electric Reliability Council of Texas, which operates the bulk of the state's grid, said it would suspend its "Batch Zero" transmission planning study evaluating data centers and other facilities with large power demands.

That has developers scouring their already-signed agreements to see how the potential delays could affect various covenants, as well as trying to determine the fate of millions of dollars' worth of financial security they had to post in order to take part in ERCOT's Batch Zero process.

For well-capitalized and well-organized developers, satisfying disclosure demands like the ones made by Texas won't be overly onerous, according to Steven Shparber, who co-chairs the digital infrastructure practice at Mintz Levin Cohn Ferris Glovsky and Popeo PC. But it might be more challenging for smaller, less sophisticated developers to comply — and that may be by design, he said.

Places like Texas "really do want to try to separate out the wheat from the chaff in terms of these projects: which are real, which have good plans in place for their power supply, for plans related to their water consumption," Shparber said.

Attorneys say that's already happening in the financing space, with lenders requiring more due diligence on community sentiment and permitting status. In some cases, they're making their investments contingent on projects having the necessary state and local approvals.

"Lenders are pushing more development risk back into the equity, so the funding is much more conditional," said Mona Dajani, who co-chairs the infrastructure, energy and real estate practice at Cooley LLP. "The lender may want final permits or greater interconnection certainty, and evidence of zoning durability or resolution of significant local challenges before substantial debt is deployed."

Dajani said the capital structure of data center projects is also changing, with lenders pushing for larger contingencies like more sponsor equity, additional liquidity reserves and greater scrutiny of interest reserves.

Lenders are also demanding more precision over how any project delay risks are allocated, attorneys say.

"We're spending a lot of time as deal lawyers asking: What happens if power is not available when everyone thought it would be? Who funds the delay? Who gets an extension? When does the customer get to walk? When does the lender stop funding?" Dajani said. "Those provisions used to feel somewhat remote and sometimes ambiguous, and now they're becoming very central economic terms."

All that will translate into a more staggered financing process for data center projects, which ultimately could lengthen development timelines, attorneys say.

"These projects are so capital-intensive that if you now have ... more traditional debt saying, 'We don't want to have exposure to this asset class until a laundry list of conditions have been satisfied,' and you know the project is pretty de-risked at that point, that means you're going to find developers looking to alternative sources of capital who are maybe interested in getting involved," said Waheed of Norton Rose. "But the reality is, at that point, because the underwriting standards are going to become more stringent, you're going to find that there's not going to be as much capital available."

It may also make projects more expensive to finance and build.

"Anything that increases the uncertainty always adds in a risk premium to the loans," Montejo of Duane Morris said. "So the uncertainty of power, which is the main thing that is driving most of these deals, will cause lenders to increase their spreads. Everybody knows that that's coming."

Given how quickly community pushback to data center development has escalated, and with November elections rapidly approaching, it might behoove some developers and investors to take a breather and see what the state and local political landscapes look like after Election Day, attorneys said.

"Whether or not that's viable will really depend on how quickly the project's needed, how advanced it is, when the compute or the energy is needed," said Morgan Lewis & Bockius LLP energy regulatory partner Arjun Ramadevanahalli. "If the train has sort of left the station, maybe that's not a viable approach."

The train may also have already left the station when it comes to lenders assigning credit risk and making investment decisions based on what jurisdiction a proposed data center will be built in.

"While there is a substantial appetite for investors and lenders to be involved in the digital infrastructure space, the reality is, a lot of that capital is pretty fungible and fluid," Waheed said. "If you've got County X and County Y, one of which has significant, publicly known opposition to data centers, and the other where maybe there's a little more of a nuanced approach to it, you might say, all things being equal, 'I would prefer to get a slice of this deal.'"

--Additional reporting by Isaac Monterose. Editing by Alanna Weissman and Marygrace Anderson.