BEFORE THE ALABAMA PUBLIC SERVICE COMMIS

GENERIC PROCEEDING TO	**)**	
ESTABLISH A PROCESS FOR	**)**	
CONSIDERATION OF CONTRACTS	**)**	
FOR ELECTRIC SERVICE	**)**	**DOCKET NO. 33709**
BETWEEN ALABAMA POWER	**)**	
COMPANY AND LARGE LOAD	**)**	
DATA CENTER CUSTOMERS	**)**	

REPLY COMMENTS OF THE ALABAMA INDUSTRIAL ENERGY CONSUMERS

The Alabama Industrial Energy Consumers ("AIEC") respectfully submits these reply comments in response to the initial comments filed in this proceeding.

AIEC did not submit initial comments because the proceeding, as established by the Commission, is directed to implementation of Act No. 2026-610 and the development of an appropriate review process for contracts between Alabama Power Company and the newly defined category of "large load data center customers." Nothing in the Commission's July 8, 2026 Order suggested that the Commission intended this docket to serve as a general reconsideration of Rate FCR, the principles governing special contracts with existing industrial customers, or the validity of contracts previously reviewed under those procedures.

Certain initial comments, however, raise issues extending well beyond the data-center-specific process contemplated by Act 610. Most notably, the Office of the Attorney General questions the validity of the longstanding Rate FCR approval process and suggests that the Commission should require an affirmative vote on all large-load contracts, including contracts outside the class of data-center contracts addressed by the new statute.

That issue is of direct concern to AIEC. Whatever procedures the Commission ultimately adopts for contracts governed by Act 610, this proceeding should not be used to reconsider or alter the regulatory framework applicable to existing and future non-data-center industrial contracts. If the Commission determines at some later date that a broader review of Rate FCR is appropriate, that review should occur in a separate proceeding in which affected industrial customers receive clear notice that the existing contract-rate framework is at issue and an adequate opportunity to address the consequences of any proposed change.

I. THE COMMISSION ESTABLISHED THIS PROCEEDING TO IMPLEMENT ACT 610 FOR A SPECIFIC NEW CATEGORY OF CUSTOMER.

The starting point is the Commission's July 8 Order.

Act 610 adds Ala. Code § 37-4-22.1 and establishes a refined public-interest standard for a defined class of contracts. The statute applies to a "large load data center customer," which is defined by reference to, among other things, an expected total peak demand of at least 150 megawatts and operation solely for data processing. Ala. Code § 37-4-22.1(a)(2).

The Commission recognized in its July 8 Order that the existing Rate FCR criteria already "generally reflect the standards in Act 610." Order Establishing Generic Proceeding at 3 (July 8, 2026). The Commission identified two particular issues created by applying the existing process to this new class of unusually large customers: the existing ten-day review period may be insufficient, and the current Rate FCR process does not formally incorporate the Office of the Attorney General. *Id.*

The Commission therefore proposed a new process specifically for contracts governed by Act 610. Most importantly for present purposes, the Order expressly distinguished those contracts from all others:

> "For all contracts with customers that meet the definition of a large load data center customer under Act 610, Alabama Power shall use this process. For all other contracts, Alabama Power may utilize Rate FCR or file for approval under Ala. Code § 37-4-22."

Id. at 4.

That distinction should be preserved in the final process.

Nothing in Act 610 purports to alter the treatment of existing industrial customers. It does not direct the Commission to reconsider contracts previously reviewed pursuant to Rate FCR. Nor does it direct the Commission to undertake a wholesale reassessment of the procedures and methodologies applicable to special contracts outside the newly defined data-center category.

The Commission can fully implement Act 610 without deciding any of those broader questions.

II. THE ATTORNEY GENERAL'S COMMENTS RAISE QUESTIONS THAT EXTEND BEYOND THE SCOPE NECESSARY TO IMPLEMENT ACT 610.

The Attorney General's initial comments address more than the procedures that should apply to large-load data-center contracts.

The Attorney General questions the legal basis for the Commission's longstanding use of Rate FCR, including the provision under which a contract satisfying the applicable criteria is deemed approved unless affirmatively disapproved. The Attorney General asserts that there is "no statutory legal basis for a preemptive prospective approval of contracts filed pursuant to a tariff without a vote of the commission." Comments of the Attorney General at 3. The comments further state that the issue could be resolved "for contracts under Rate FCR and the data center procedure being developed" by requiring the Commission to "vote to approve or disapprove all large load contracts," and suggest that this approach could be applied immediately to existing contracts. *Id.* at 4.

Those arguments place the validity and continued operation of Rate FCR generally into question. That is a considerably broader issue than the one for which this proceeding was established.

To be clear, AIEC firmly believes that Rate FCR and the review process that has operated under it for more than 30 years are appropriate, lawful, and valid under Alabama law, and AIEC supports their continued operation. The arguments raised by the Attorney General, however, implicate issues considerably broader than the discrete question for which this proceeding was established. The Commission can establish a process satisfying Act 2026-610 while leaving undisturbed its treatment of other industrial contracts. Indeed, that is precisely the distinction contemplated by the July 8 Order. The Commission therefore should decline to use this docket to determine whether the existing Rate FCR process is legally defective, whether contracts previously reviewed pursuant to Rate FCR require additional Commission action, or whether future non-data-center industrial contracts must be subjected to a different approval mechanism. Those questions are unnecessary to implementation of Act 2026-610 and would materially expand this proceeding beyond the discrete regulatory task presently before the Commission.

III. THE EXISTING INDUSTRIAL CONTRACT FRAMEWORK SHOULD NOT BE ALTERED INDIRECTLY THROUGH THIS DATA-CENTER PROCEEDING.

Several initial commenters have recognized the importance of maintaining that distinction.

The Business Council of Alabama observes that the existing Rate FCR process has long provided a stable and efficient framework for commercial and industrial contracts and urges the Commission not to expand this proceeding beyond what is necessary to implement Act 610. Comments of the Business Council of Alabama at 2-4.

Manufacture Alabama raises the concern even more directly. Its comments explain that industrial customers have relied upon Rate FCR for decades and warn that revising the underlying standards in this docket could create uncertainty concerning existing and future industrial contracts. Comments of Manufacture Alabama at 1-4. Manufacture Alabama specifically urges the

Commission to preserve the existing Rate FCR framework for contracts outside the new data-center category. *Id.* at 4.

The Energy Institute of Alabama similarly observes that Act 610 addresses a narrow category of transaction and cautions against using this proceeding to reopen the broader foundations of contract ratemaking. Comments of the Energy Institute of Alabama at 3-5.

Alabama Power likewise states that Rate FCR has been in place since 1996, that the existing process includes substantial pre-filing review by Commission Staff, and that Act 610 can be implemented by making limited adjustments applicable to the newly defined class of large-load data-center contracts. Initial Comments of Alabama Power Company at 3-6, 12-19.

AIEC agrees with those comments insofar as they recognize the importance of keeping the Commission's present inquiry appropriately confined.

Large industrial customers make long-term capital, operating, production, and employment decisions in reliance upon a predictable regulatory environment. Electric service is frequently a material component of those decisions. Stability in the principles governing negotiated electric-service arrangements is therefore important not only to individual customers, but also to Alabama's continuing ability to retain and attract energy-intensive industry.

That does not mean that any particular regulatory process must remain unchanged indefinitely. It means that a change of potentially significant consequence to industrial customers should be considered deliberately and directly.

If the Commission concludes that Rate FCR generally should be reconsidered after nearly thirty years of operation, that consideration should only occur in the context of a comprehensive review of the Commission's ratemaking practices and only after the affected customers are given notice that the Commission is undertaking that review. They should be afforded an opportunity to address the legal, economic, competitive, contractual, and practical consequences of the proposed changes. A proceeding expressly directed to data-center contracts under a newly enacted statute is not an appropriate substitute for that process.

IV. THE COMMISSION NEED NOT RESOLVE OTHER DATA-CENTER-SPECIFIC PROPOSALS TO PRESERVE THE EXISTING RATE FCR FRAMEWORK.

The initial comments present a wide range of competing recommendations concerning large-load data-center contracts. Among other things, commenters disagree concerning the appropriate review period, minimum contract terms, minimum billing requirements, collateral, termination obligations, public disclosure, the scope of Attorney General participation, system planning, load flexibility, and whether large-load service should eventually be governed by a separate tariff.

AIEC does not believe it is necessary to address any of those issues in these reply comments because resolution of those issues is not necessary to protect AIEC's interests in this proceeding.

The Legislature has expressly directed the Commission to determine whether a contract governed by § 37-4-22.1 is expected to recover the incremental costs attributable to the large-load data-center customer and promote positive benefits for the utility's other retail customers. Ala. Code § 37-4-22.1(b). The Commission has considerable experience evaluating special contracts and is capable of developing procedures appropriate to the unusual scale and characteristics of the data-center loads addressed by the new statute.

AIEC's principal concern is narrower.

Whatever process the Commission adopts for those contracts should remain limited to the customer category addressed by Act 610 unless and until the Commission affirmatively determines, in an appropriate proceeding, that changes to the broader Rate FCR framework are warranted.

Likewise, the Commission need not decide in this docket whether every aspect of Rate FCR is the only permissible means of reviewing industrial contracts. It need only decline to transform a proceeding concerning implementation of Act 610 into an adjudication of the validity of a longstanding regulatory structure governing customers that are not subject to Act 610.

V. CONCLUSION

AIEC respectfully requests that the Commission adopt a final process implementing Act 610 that preserves the distinction drawn in the July 8 Order between large-load data-center contracts governed by § 37-4-22.1 and other contracts that may continue to be reviewed pursuant to Rate FCR or Ala. Code § 37-4-22.

Nothing in Act 2026-610 requires the Commission to revisit or alter Rate FCR or the longstanding process applicable to non-data-center industrial contracts. AIEC respectfully submits that the Commission should implement the Act through a process tailored to the contracts and customers within its scope while leaving the existing Rate FCR framework undisturbed.

If the Commission determines that broader review is warranted, those matters should be addressed separately, with appropriate notice and an opportunity for affected industrial customers to participate fully.

Respectfully submitted,

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