ELECTRONICALLY FILED
Thursday, August 6, 2026
TR2641186
ALABAMA PUBLIC SERVICE COMMISSION
DEVON BEATY, SECRETARY

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

STEVE MARSHALL
ATTORNEY GENERAL

P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
ALABAMAAG.GOV

August 6, 2026

Mr. Devon Beaty, Secretary
Alabama Public Service Commission
100 North Union Street - Suite 950
Montgomery, Alabama 36104

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

Dear Mr. Beaty:

Enclosed for filing with the Alabama Public Service Commission are Comments regarding the above docket submitted by the Attorney General's Office. The original and two copies are being delivered to the Commission. Please stamp one of the copies "filed" for return to our office.

Sincerely,

Olivia W. Martin
Division Chief
Consumer Interest

Enclosure

BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION
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 33709**

COMMENTS

On behalf of the State of Alabama, its agencies, citizens, and utility consumers generally, we submit the following:

1. Almost 50 years ago, the legislature enacted section 37-1-16 of the *Alabama Code* transferring the authority to represent utility ratepayers to the Attorney General. When the legislature enacted legislation for the Attorney General to provide ratepayer representation, the existing technical staff of utility analysts and accountants remained with the Alabama Public Service Commission.

2. Section 37-1-16 of the *Alabama Code* provides that the Attorney General "shall have the assistance and cooperation of the commission's staff, when available, and access to the commission's books, records, studies, and reports." *Ala. Code* §37-1-16 (1977). The statute further provides that the Attorney General may employ attorneys, expert witnesses, and clerical assistance in the performance of representing ratepayers. *Id.* The costs of ratepayer representation supposedly would have been paid by the consumer's utility rate

hearing fund. See *Ala. Code* §37-1-18 (1977). However, the legislature has not appropriated any money for this fund since 2013, and for some years prior to 2013 the full statutory amount was not appropriated. 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.

3. The issues of staff and funding become critical in assessing an expedited review process for large electric load contracts. The Attorney General's Office has two attorneys working on utility issues throughout the state. Obtaining technical experts to assist in reviewing large load data center contracts would require additional funding, time to locate and negotiate contracts with experts, complete the legislature's contract review process, and then analyze the proposed contract within the designated time frame. Given these hurdles, 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.

4. The Public Service Commission has been reviewing large load contracts since 1920 according to the statutory history of section 37-4-22 of the *Alabama Code*. This statute provides for the commission to approve large load contracts. Statutory approval would require the commission to determine that the contracts were consistent with the public interest.

5. Since April 1, 1996, pursuant to a PSC order issued in Informal Docket U-3672, Petition for Approval of New Rate FCR (Flexible Contract Rate), the commission has delegated the approval of large load contracts to its staff. This order provides that contracts reviewed by the staff shall be deemed approved, if the contracts meet certain conditions outlined in the order. There is nothing in the language of this order to explain how the commission

has the authority to allow its staff, who are technical experts, but not elected by the people of Alabama to review and approve large load contracts.

6. There is no statutory basis for PSC staff to make final decisions on large load electrical contracts in section 37-4-22(b) which specifically provides "[i]f the commission shall find the provisions of any such contract consistent with the public interest, it shall approve the same." *Ala. Code* §37-4-22(b) (1977). It appears that the PSC commissioners have been able to avoid approving and voting on certain large load contracts by issuing an order in 1996 that Rate FCR was in the public interest and the commission could preemptively assert that any contract filed under this rate would also be in the public interest (even if filed 30 years later), when the contract met certain criteria discussed in the order.
7. There is no statutory legal basis for a preemptive prospective approval of contracts filed pursuant to a tariff without a vote of the commission. The Alabama Examiners of Public Accounts routinely audits administrative agencies to ensure that rules, regulations, and orders of an agency do not exceed the statutory authority of that agency. It does not appear that the Alabama PSC has ever had an audit of its FCR contracts. It is further unclear how many large load contracts were deemed approved from 1996 until today. More unclear is how many large load contracts were brought to the attention of the commissioners and disapproved either under the statutory provisions of Title 37 or the FCR tariff. If it is determined that FCR contracts required an approval by the commission and not a deemed approval, the matter may be instantly resolved by the commission voting to approve such contracts.
8. The Order in this proceeding indicates that there might be three possibilities for approval of large load electric contracts: (1) a statutory process under *Ala. Code* §37-4-22 requiring

a commission vote; (2) a review under the FCR tariff allowing a contract to be deemed approved after 10 days; and (3) a new process specifically for data centers required by Alabama Senate Bill 270 (enacted as Act 2026-610 to be codified at section 37-4-22.1). Section 37-4-22 (as enacted and amended several times since 1920 with its additional amendment enacted this Spring) does not give the PSC the authority to create a more lenient approval process allowing staff to make final decisions under the FCR tariff or a new procedure being discussed in this proceeding. Whenever a legislative agency issues an administrative order that rewrites a statute to ease restrictions, such as eliminating the requirement for a commission vote, the order is ultra vires and invalid. This issue may be resolved for contracts under Rate FCR and the data center procedure being developed by having the commission vote to approve or disapprove all large load contracts, including data center contracts. This could be done immediately for existing contracts.

9. The elected and appointed members of the Alabama Public Service Commission must actively participate in the decisions of the commission by voting on large load contracts, especially when the matter involves an assessment of public benefits or a determination of the public interest. For more than 100 years, the Alabama legislature had provided that the Public Service Commission determines whether a utility contract is in the public interest. This subjective standard requires analysis, study, thoughtfulness and may not be reduced to a set of economic factors evaluated by staff which has not been appointed or elected to make the final decision on whether a specific contract is in the public interest.

10. Timeliness and confidentiality are important considerations, and the Public Service Commission must ensure that contracts are reviewed promptly, and confidential customer or trade data is protected. During the last legislative session, the Office of PSC

commissioner was changed from a full time to a part time position. However, the commissioners are allowed to schedule special meetings between the monthly meetings, and they must be available to approve contracts timely, as needed. There is no reason for delay in approving a large load contract upon completion of the designated review process.

11. 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. They are concerned that the utility rates will include expenses for economic development in contravention of the traditional rule that taxpayers, not ratepayers, pay for economic development. 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. Ultimately, the PSC has the responsibility to protect ratepayers and there must be a procedure in place for commissioners to understand the impact of large load electric contracts on ratepayers.

CONCLUSION

The Commission explained its review of proposed contract rates under Ala. Code §37-4-22 in its FCR Order U-3672, published April 1, 1996, in a proceeding involving the Alabama Power Company. The Order provides, in relevant part, "that contracts between the Company and its eligible commercial and industrial customers which meet [the statutory] criteria, as confirmed by Commission staff review, may be deemed approved unless expressly disapproved by the Commission . . . ." The Attorney General's Office requests the Commission to clarify its procedures in these matters by explaining whether there are any circumstances in which the staff recommendation is determinative, without any further action by the Commission. Additionally, we would like to know what kind of record (if any) is generated by the staff review and then made available to the public. We note that one litigated case of contract rate review saw the Commission conduct "an extensive hearing" that produced a "395-page record" used by the court on review. *Alabama Electric Cooperative Inc. v. Alabama Power Co.*, 148 So.2d 613 (Ala. 1963).

The AGO favors the maximum amount of transparency in the conduct of the public's business and urges the Commission to use any discretion given to it by statute to conduct proceedings that lead to a full ventilation of the issues and a fair resolution of them. We note also that the statute passed this year, Act 2026-610, to be codified at §37-4-22.1, dealing with contracts to serve "large load data center" customers requires the Commission to determine the appropriateness of the proposed contracts, not the staff acting alone.

Respectfully submitted,

Steve Marshall
Attorney General

/s/ Olivia W. Martin
Olivia W. Martin
Division Chief
Consumer Interest

ADDRESS OF COUNSEL:
Office of the Attorney General
Consumer Interest Division
501 Washington Avenue
Montgomery, Alabama 36130
Phone: (334) 242-7393
Email: Olivia.Martin@AlabamaAG.gov

CERTIFICATE OF SERVICE

I hereby certify that I will, on August 6, 2026 serve a copy of the foregoing Attorney General Comments upon the following via hand delivery to:

Mr. Devon Beaty, Secretary — via hand delivery
Alabama Public Service Commission
100 Union Street
Montgomery, AL 36130-4260

Hon. Luke Bentley — via hand delivery
Alabama Public Service Commission
100 N. Union Street
Montgomery, AL 36130-4260

And that I have filed a copy via e-mail to:

Daniel L. Tait
Executive Director
Energy Alabama
dtait@energyalabama.org

Jaclyn Brass
Southern Environmental Law Center
jbrass@selcal.org

Ryan Anderson
Southern Environmental Law Center
randerson@selc.org

Barry Brock
Southern Environmental Law Center
bbrock@selc.org

Jeri Michele Mathews
jerimathews@outlook.com

Moses H. Feagin
Executive Vice President, Chief Financial Officer and Treasurer
Alabama Power Company
mhfeagin@southernco.com

Scott B. Grover
Attorney
sgrover@balch.com

/s/ Olivia W. Martin

Olivia W. Martin
Division Chief
Consumer Interest

ADDRESS OF COUNSEL:

Office of the Attorney General
Consumer Interest Division
501 Washington Avenue
Montgomery, Alabama 36130
Phone: (334) 242-7393
Email: Olivia.Martin@AlabamaAG.gov