



ABBY
t: (205) 226-3405
f: (205) 488-5622
e: afox@balch.com

October 1, 2020

Mr. Walter L. Thomas, Jr.
Secretary
Alabama Public Service Commission
RSA Union Building
100 North Union Street, Suite 950
Montgomery, Alabama 36130

Re: Alabama Power Company Comments on Proposed Amendment to Rule 4

Dear Mr. Thomas:

In response to the Commission's September 11, 2020 Order, Alabama Power Company hereby submits the attached comments regarding the proposed amendment to Rule 4 of the Commission's Rules of Practice.

Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Abby Fox".

Abby Fox

Encl.

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

**RULES OF PRACTICE OF THE
ALABAMA PUBLIC SERVICE
COMMISSION**

Docket No. 33046

COMMENTS OF ALABAMA POWER COMPANY

Alabama Power Company (“Alabama Power” or the “Company”) provides the following initial comments in response to the September 11, 2020 Order (the “Order”) of the Alabama Public Service Commission (the “Commission”) in this docket.¹ In the Order, the Commission solicited input on proposed amendments to Rule 4 of the Commission’s Rules of Practice (the “Rules”). Alabama Power strongly supports the Commission’s efforts to streamline the filing process and offers the following comments in response.

I. Introduction

Since June 2005, a temporary rule of practice (the “Temporary Rule”) has governed the Commission’s procedures for the electronic filing of documents. The instant proceeding presents a valuable opportunity to update this aspect of the Rules to increase procedural efficiency and allow greater focus on substantive issues pending before the Commission.

Alabama Power is a corporation organized and existing under the laws of the state of Alabama that operates as a utility in service to the public in accordance with Title 37 of the Alabama Code. Accordingly, Alabama Power is subject to the Commission’s regulatory authority, and as such, makes frequent filings with the Commission. Given its extensive experience using the

¹ Ala. Pub. Serv. Comm’n, Order Establishing Rulemaking, Docket No. 33046 (Sept. 11, 2020) (the “Order”).

Commission's electronic filing system, the Company appreciates the opportunity to provide feedback on the Commission's proposed modification to the Rules.

II. Comments

The Company has identified three areas for the Commission's consideration, as follows.

A. The Commission should authorize the use of electronic signatures.

The current practice of the Commission, as reflected in the Temporary Rule, calls for filings to reflect the original (*i.e.*, "wet") signature of a representative (*e.g.*, officer, counsel) of the submitting entity. Since the issuance of the Temporary Rule, however, the use of technology in daily life and in commerce has increased exponentially, such that the use of an "electronic signature" has become a commonly accepted means of authenticating a document submitted to an Alabama judicial body² or an administrative body.³ Similarly, the Federal Energy Regulatory Commission has permitted the use of "typed characters representing the name of a person" in lieu of a signature since 2000.⁴

The use of electronic signatures to authenticate a document should not present a security risk or otherwise compromise the integrity of the Commission's attention to proceedings and matters before it. Electronic filings systems—including that utilized by the Commission—typically require a login and password, with such credentials serving as sufficient assurance of the filer's identity.⁵ Likewise, the activities of the Commission occur with the full expectation that

² *See, e.g.*, Alabama Rules of Judicial Administration 30(g) (providing for use of electronic signatures on court records or documents); *see* Alabama Rules of Civil Procedure 11 (incorporating ARJA Rule 30(g) and providing for the use of electronic signatures on any pleading, motion or other paper filed with a court).

³ *See, e.g.*, ADEM Admin. Code r. 335-1-1-.08 (permitting electronic signatures "[w]here a signature is required but an electronic signature is not otherwise prohibited").

⁴ *Electronic Filing of Documents*, 92 FERC ¶ 61,203 (2000).

⁵ *Cf.* Ark. Pub. Serv. Comm'n, *Electronic Filing User's Agreement*, available at <http://www.apscservices.info/efs/EFSUserAgreementNEW.asp> ("An electronic document is deemed signed when filed by a User or the Commission using a valid login and password.").

parties conduct themselves with professionalism and honesty.⁶ Accordingly, Alabama Power respectfully requests that the Commission authorize the use of electronic signatures on filings made under its Rules.

B. The Commission should narrow the “hard copy” requirement of the proposed rule.

The rulemaking also proposes to continue to require entities that electronically submit a filing with the Commission under Rule 4 to effect delivery of a “hard copy” of the filing by the close of the Commission’s offices for the transacting of business (*i.e.*, 5 p.m.). Alabama Power respectfully encourages the Commission to consider narrowing the circumstances in which a hard copy must follow an electronic filing.

On its face, the proposed rule would appear to apply to the universe of filings over which the Commission may exercise its jurisdictional authority, save certain forms and applications.⁷ This includes not only rate filings and complaints, but also any pleading in a proceeding before the Commission. With the vast majority of these materials originating from Alabama Power’s offices in Birmingham, hard copy (original) filings must be transmitted to the Commission offices by overnight mail. Thus, the hard copy requirement adds an additional layer of time and expense to the filing process, a fact that has only been amplified by the pandemic and the corresponding increased prevalence of remote work (which further complicates the effectuation of physical delivery of paper documents).

Alabama Power appreciates that the hard copy requirement may in many instances play a necessary part in the Commission’s administration of its regulation and oversight of the utilities under its jurisdiction. Likewise, the Company recognizes that the Title 37 may well require the

⁶ *Cf.* ARCP 11 (providing that a signed filing, including one signed electronically, submitted with an intent to defeat the purpose of the rule may be stricken as “sham and false”).

⁷ *See* Rule 6 and Rule 10.

submission of certain filings in a hard form with the Commission.⁸ However, inasmuch as many filings may involve pleadings in proceedings that require only that they be received and docketed (and circulated among the Commission's Staff, as appropriate), Alabama Power would request the Commission consider whether the hard copy requirement might be limited to certain specific filings (*e.g.*, filings that initiate a docket or proceeding, such as a rate filing under Alabama Code § 37-1-81, a complaint under Section 37-1-83, or a petition for a certificate of convenience and necessity under Section 37-4-28 (and any comparable statutes for other jurisdictional utilities)).⁹ Finally, Alabama Power would request that the Commission make clear that any hard copy requirement requires only the submission of a single, hard copy, and not multiple copies (*e.g.*, ten (10)) as may be otherwise specified by the Rules.

C. The Commission should clarify that electronic filings must be submitted by the close of business the day they are due.

The proposed changes include a provision stating that electronic filings are deemed to be received by the Commission at the time they are received electronically, “as long as the hard copy of the filing is received by the Secretary of the Commission by 5 PM on the next business day.”¹⁰ The requirement that the electronic submission be tendered by 5 PM on the day prior is not explicitly set forth; however, it seems rather clearly implied through the Temporary Rule's statement that an electronically filed document is deemed received by the Commission when it is received in the PSC Tracking Database. As the Commission is not open for the transaction of business after 5 PM or on

⁸ *See, e.g.*, Ala. Code § 37-1-83 (providing for investigation of complaints made “in writing against any utility”).

⁹ Other jurisdictions have seen fit to limit paper copies of electronic filings even further. *See, e.g.*, Fla. Pub. Serv. Comm'n, Filing Documents Electronically, *available at* <http://www.psc.state.fl.us/ClerkOffice/EFilingRequirements> (“There is no requirement to file additional copies when documents are e-filed, except for rate case minimum filing requirements . . .”).

¹⁰ *See* Order, page 1.

weekends and holidays, it logically follows that it is unable to “receive” anything during those times. Nevertheless, to avoid refereeing disputes regarding such matters, the Commission should expressly state that electronic filings must be submitted by 5 PM on the deadline day.

III. Conclusion

Over the years since Temporary Rule was adopted, the Commission has fully implemented electronic filing, and filers like Alabama Power have gained ample experience with the system and the attendant filing procedures. Alabama Power appreciates the opportunity to draw on this experience and provide its perspective on the proposed modifications. It is the Company’s hope that this feedback assists in the Commission’s efforts to streamline its current procedures for electronic filing. In furtherance hereof, the Company has included as Attachment A proposed modifications to the language of the proposed rule that would implement the changes suggested in these comments.

Respectfully submitted,



Attorney for Alabama Power Company

OF COUNSEL:

Scott B. Grover
Abby C. Fox
Balch & Bingham LLP
1710 6th Avenue North
Birmingham, Alabama 35203
Phone: (205) 251-8100
Fax: (205) 226-8799

Exhibit A

Proposed Modifications to Proposed Amendment to Rule 4(A)(2)

As an alternative to filing pursuant to subparts (1) and (2) above, documents may be filed electronically using links available on the Commission's website. All electronically-filed documents shall be in text-searchable public document format (pdf). **For all electronically-filed documents that initiate a new docket, one (1)** hard copy of **all the** electronically-filed documents shall be filed with the Secretary of the Commission in accordance with subpart (1). Any document filed electronically, in compliance with this procedure, is deemed received by the Commission when it is received electronically **as long as by not later than 5 PM Central Time and** the hard copy of the filing is received by the Secretary of the Commission by **not later than** 5 PM Central on the next business day. In the event the hard copy of the filing is not received on the next business day, the filing will be deemed as received on the date that the hard copy is received by the Secretary of the Commission.