Rel: October 30, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2025-0595

Energy Alabama

v.

Alabama Public Service Commission and Alabama Power Company

Appeal from Montgomery Circuit Court
(CV-24-901910)

PARKER, Justice.[1]

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[1]This appeal was previously assigned to another Justice on this Court. It was reassigned to Justice Parker on August 27, 2026.

The Alabama Public Service Commission maintains an "administrative docket" for use in implementing a formula that influences the rates Alabama Power Company charges consumers. This appeal is about an attempt by the advocacy group Energy Alabama to "intervene" in that administrative docket. The Commission rejected Energy Alabama's attempt to intervene -- as did the circuit court on appeal -- reasoning that there was no "proceeding" that would support intervention under the applicable statutes and commission rules. We agree and therefore affirm the circuit court's judgment.

I.

A.

The Legislature created the Commission to supervise certain "persons, firms and corporations operating utilities," including electric companies. Ala. Code 1975, § 37-1-32. One aspect of this supervision is the regulation of utility companies' rates. Specifically, the Commission is charged with ensuring that such rates are "reasonable and just to both the utility and the public." Ala. Code 1975, § 37-1-80(a). To fulfill this task, the Alabama Code empowers the Commission to conduct certain kinds of proceedings subject to various procedures set by statute or the

Commission itself. See Ala. Code 1975, § 37-1-38 (setting forth the Commission's authority to "adopt and publish rules to govern its proceedings"). These procedures include requirements for advance public notice of commission hearings and intervention by interested parties in commission proceedings. See, e.g., Ala. Code 1975, §§ 37-1-86 (notice); 37-1-87 (intervention).

B.

Alabama Power is a utility company providing electricity to Alabama residents and is subject to regulation by the Commission. To recover certain "defined energy costs it incurs in connection with the provision of electric service," Alabama Power relies on a mechanism established by the Commission known as the Rate Energy Cost Recovery or "Rate ECR." In re Alabama Power Co., Docket No. 18148 (Ala. P.S.C., Oct. 8, 2008).

The Rate ECR is a two-part formula designed to allow rates to be adjusted on a dynamic basis, without the need for formal rate changes. The first part of the calculation is designed to "recoup the Company's actual costs to serve its customers as those costs are being incurred." Id. The second part of the calculation "captures and recovers (or refunds) any

under-recovered (or over-recovered) costs from prior periods." Id. The result of the calculation is known as the ECR Factor, which helps determine consumers' monthly power bills based on monthly data inputs by Alabama Power. Id.

In 1981, the Commission put the first ECR Factor in place. In 2005 and again in 2008, Alabama Power initiated proceedings to adjust the ECR Factor. Both times, the Commission ultimately entered orders increasing the ECR Factor. Meanwhile, the Commission has also periodically entered into interim "consent orders" with Alabama Power. Those consent orders have adjusted the ECR Factor downward -- always on a temporary basis -- so that Alabama Power's customers could "realize more immediately the benefits of a decrease in the Company's recoverable energy costs." In re Alabama Power Co., Docket No. 18148 (Ala. P.S.C., Oct. 8, 2008).

All proceedings and consent orders relating to Alabama Power's filed rate schedule are filed in Docket No. 18148, Alabama Power's administrative docket, and that docket is "retained for future proceedings concerning that schedule." In re Alabama Power Co., Docket No. 18148 (Ala. P.S.C., Aug. 30, 2024).

C.

In April 2024, Alabama Power submitted to the Commission its required monthly filing concerning its energy cost recovery for the preceding month -- that is, the data that would be used to adjust rates under the then-existing ECR Factor. Shortly thereafter, Energy Alabama, whose self-proclaimed mission is to "advance the state's transition to clean energy and to advocate on behalf of its members for the fair and equitable pricing of electricity generated by Alabama Power Company," filed a petition to intervene in Alabama Power's administrative docket. The Commission denied the petition, reasoning that there is no pending Rate ECR "proceeding" in which Energy Alabama may intervene.

After unsuccessfully seeking rehearing, Energy Alabama appealed to the circuit court, which allowed Alabama Power to intervene in defense of the Commission's decision. The circuit court affirmed the Commission's order. Energy Alabama then timely appealed to this Court.

II.

On appeal, Energy Alabama argues that the Commission's order denying its petition to intervene ran contrary to the substantial weight

of the evidence and relied on a misapplication of law. Energy Alabama's arguments can be broadly divided into those based on the applicable intervention statute and those based on the Commission's own rules.

A.

The Commission's governing statutes provide that "[e]very person, firm, corporation, copartnership, association, or organization affected thereby may by petition intervene and become a party to any proceeding before the commission." Ala. Code 1975, § 37-1-87 (emphasis added). The governing statutes designate the types of proceedings through which the Commission may act and set forth the procedures applicable to those proceedings. The statutorily authorized proceedings can be classified into two categories. One category consists of proceedings initiated by a utility company when it wants to institute "a new rate or service regulation or to change any existing rate or service regulation." Ala. Code 1975, § 37-1-81(a). Another category consists of proceedings initiated by the filing of a complaint or upon the Commission's own initiative to review certain utility-company practices alleged to be "unfair, unreasonable, unjust or inadequate, or unjustly discriminatory, or unduly preferential, or constitut[ing] unfair competition, or [resulting in]

service [that] is inadequate or cannot be obtained." Ala. Code 1975, § 37-1-83.

Energy Alabama does not contend that there is a pending proceeding that falls within either of these categories. Instead, it reads the term "proceeding" so broadly as to encompass any ongoing activity in Alabama Power's docket. The problem with this argument is that the Commission "'is purely a creature of the legislature, and has only those powers conferred upon it by its creator.'" Ex parte Crestwood Hosp. & Nursing Home, Inc., 670 So. 2d 45, 47 (Ala. 1995) (citation omitted). Here, the Legislature set forth specific "proceedings" that the Commission may conduct and then set forth specific procedures for those proceedings. Its specifications include the statutory procedure for intervention. The Legislature did not establish an all-purpose right of intervention into any and all commission business. To determine the meaning of a statute, "this Court must read the statute as a whole because statutory language depends on context." Bean Dredging, L.L.C. v. Alabama Dep't of Revenue, 855 So. 2d 513, 517 (Ala. 2003) Here, there is no way to accept Energy Alabama's argument without violating this principle.

Energy Alabama also argues that the ongoing activity in Alabama Power's docket -- that is, the entry of consent orders -- constituted a continuation of the 2008 ECR Factor proceeding. In support of this argument, Energy Alabama cites Valley Forge Insurance Co. v. Alexander, 640 So. 2d 925 (Ala. 1994), but that case is distinguishable. In Valley Forge, this Court approved intervention after entry of a final order, but only because that final order had been vacated and the trial court had essentially reopened the case under an interim order. In other words, the final order was not truly final.

The posture here is much different. Here, the Commission entered a truly final order in the 2008 proceeding. Even assuming that a commission proceeding is analogous to a court proceeding for these purposes, the Commission did not designate the 2008 order as interim or do anything else to reopen the proceeding. The 2008 proceeding thus cannot be deemed ongoing and capable of supporting intervention, even under the logic of Valley Forge.

B.

As we previously recognized, the Legislature also authorized the Commission to "adopt and publish rules to govern its proceedings and to

regulate the mode and manner of all investigations and hearings before it." Ala. Code 1975, § 37-1-38. Energy Alabama argues that the Commission's Rate ECR rules provide an avenue for intervention when the Commission considers a change in the ECR Factor. But in the very same paragraph of the Commission's rules permitting intervention, they expressly provide for a change in the ECR Factor only on: (1) a request by the utility company or (2) the Commission's issuance of a show-cause order to the company. Neither of those predicates occurred here.

III.

Energy Alabama has failed to show that there was a "proceeding" in which it could intervene under the relevant statutes or the Commission's own rules. Energy Alabama argues strenuously that the Commission is acting improperly in entering the consent orders. But the merits of those orders are not before this Court. We may consider only whether the Commission properly denied Energy Alabama's motion to intervene.

Our decision today does not bar any other available statutorily authorized path for challenging the Commission's action. But the path

Energy Alabama chose to pursue here is foreclosed by the applicable statutes and rules.

AFFIRMED.

Stewart, C.J., and Wise, Sellers, and McCool, JJ., concur.

Bryan and Mendheim, JJ., concur in the result.

Shaw and Cook, JJ., recuse themselves.