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Public Utility Regulation Without the Public: The Alabama Public Service Commission and Alabama Power

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SUMMARY

There has not been a public rate case for the Alabama Power Company ("Alabama Power" or "the Company") in 30 years. Instead, the Alabama Public Service Commission ("PSC" or "the Commission") has a regulatory process that allows Alabama Power to adjust its charges each year without any public evidentiary hearings and, indeed, without any participation by ratepaying consumers whatsoever other than off-the-record and after-the-fact comments at an informal hearing that completely lacks public transparency. In fact, the evidence is clear that the PSC specifically adopted this extreme rate-making process in the '80s in order to protect Alabama Power from having to file for rate increases (as utilities in other states do) and to shield the process from public involvement and scrutiny. Moreover, the Alabama PSC allows Alabama Power to earn a rate of return of between 13.0 percent and 14.5 percent on the common stock investment made by its sole owner, the Southern Company. This return on equity range is significantly higher than other commissions around the nation allow their utilities to earn. For example, the average return on equity earned by utility operating companies like Alabama Power during the years 2008-2011 was only 9.40 percent or nearly 30 percent below the 13.27 percent return on equity earned by Alabama Power under the formula rate process followed by the Alabama Public Service Commission.

Only two other states with privately owned utilities have similar regulatory processes for electric utilities, Louisiana and Mississippi. However, in these states, unlike Alabama, there are meaningful opportunities for public involvement and ratepayer participation before major rate increases are approved.

Findings

This summary is based on the following findings:

1. Alabama Power provides electricity to approximately 1.2 million residential customers, 197,000 commercial customers and 5,200 industrial customers in the southern two-thirds of the state of Alabama. Alabama Power is a regulated monopoly with no competitors, unlike other companies in the free enterprise system. The Company is a wholly-owned affiliate of the Southern Company.
2. There has not been a publicly contested rate increase case for Alabama Power since 1982, a period of 30 years.
3. The Alabama Public Service Commission eliminated such public evidentiary rate cases in 1982 because it said the proceedings were lengthy and expensive.
4. Instead, the Commission adopted a formula rate mechanism, Rate Stabilization and Equalization ("Rate RSE"), in which Alabama Power is allowed to adjust its charges each year without any public evidentiary hearings and without any participation by ratepaying consumers.
5. Circumstances have changed dramatically since the Commission adopted the Rate RSE mechanism.
   - The demand for electricity is not growing at 8 percent annually as it was in 1982.
   - General inflation is now at 2 percent to 3 percent per year, much lower than the 13.5 percent overall inflation rate in 1980.
   - Utility financing costs are dramatically lower.
   - Although Alabama Power faces some significant uncertainty regarding environmental rules and regulations due to a generation mix heavily weighted toward fossil fuels, it does not face the same pressure to make large investments to build large new generating facilities, notably including two expensive nuclear units that were constructed in the late 1970s and early 80s.
6. Under present circumstances, it is unlikely that Alabama Power will face the same financial risks now that it did back in the 1960s, 1970s and early 1980s. Consequently, there is no reason to believe that the Commission would be flooded with rate cases as it was before the adoption of the Rate RSE formula rate mechanism.
7. Instead of holding public evidentiary rate hearings,

the Commission conducts a highly expedited review of Alabama Power's annual Rate RSE submittal. Alabama Power files its proposed charges under Rate RSE for the following calendar year on December 1st. The Commission staff conducts an informal public meeting with the company sometime in the following week or two. Then the Commission issues an order in early January. There is no evidence that the Commission or its staff reviews the prudence or reasonableness of Alabama Power's costs or its underlying system operations as part of its RSE process.

8. According to a review by the electric utility industry, since the Rate RSE was adopted in November 1982, Commission action on the company's annual Rate RSE submittals has produced 12 upward adjustments (rate increases), three downward adjustments and 15 instances in which there were no adjustments at all.
9. The Alabama Public Service Commission's Rate RSE review is substantively different from that in most other states, where utilities are required to file formal rate applications when they want to raise their base rates, with testimony and supporting exhibits, and commissions conduct public evidentiary hearings in which interested parties are permitted to intervene, cross-examine company witnesses under oath and present their own expert testimony.
10. The process by which the Alabama Public Service Commission and its staff monitor and regulate Alabama Power is opaque with no transparency about the effectiveness of how the Commission balances the interests of ratepayers against the Company and its shareholders. Instead of conducting public evidentiary hearings, the Commission staff conducts numerous private meetings with the company each year to review its books and records and determine whether Alabama Power will earn its allowed return on equity during the current 12-month period.
11. The Commission allows Alabama Power to earn a return of between 13.0 percent and 14.5 percent on common equity investment through the Rate RSE mechanism. This return on equity is significantly higher than the returns other utility companies earn. For example, the 13.3 percent average return on common equity that Alabama Power earned during the years 2008-2011 was more than 40 percent higher than the average 9.4 percent earned by 76 other domestic U.S. utility operating companies. Alabama Power's return on its total capitalization during these four years was 30 percent higher than the average return of the 76 other utility operating companies.
12. Only two other states have broad formula rate mechanisms for electric utilities similar to the Alabama Rate RSE. However, each of these states, Louisiana and Mississippi, allows for greater public involvement and transparency before major rate increases are granted. Moreover, the regulatory commissions in Louisiana and Mississippi allow their utilities to earn returns on equity through their formula rate mechanisms that are substantially lower than the 13.0 percent to 14.5 percent return that the Alabama Public Service Commission allows Alabama Power to earn.
13. There is no evidence that the Alabama Commission monitors and audits Alabama Power any better than it would if the Commission conducted periodic rate cases along with on-going monitoring and auditing activities. There also is no evidence to support the Commission's claim that its adoption of the Rate RSE mechanism increases its ability to fulfill its statutory duty to supervise the overall operation of Alabama Power.
14. At the same time in 1982 that it adopted its Rate RSE, the Alabama Commission also adopted a similar formula – Rate Certified New Plant ("Rate CNP") – to address the larger cost impacts of building new generating plants, which are less routine in nature. Under Rate CNP, as it now stands, Alabama Power is allowed to recover the costs of approved new generating facilities, costs incurred as part of approved purchased power agreements and environmental compliance costs. However, there does not appear to be any mechanism or process under which the prudence or reasonableness of the new plant costs or the environmental compliance costs are determined. In particular, the Company's annual Rate CNP submissions do not provide any evidence that the historic environmental compliance costs that it seeks to recover were the product of honest, efficient and economical management or that its projected environmental compliance expenditures represent prudent or reasonable investments or low-cost, low-risk long-term cost options for ratepayers.
15. Unlike many other states, Alabama does not have a public Integrated Resource Planning ("IRP") process that would provide any evidence that the environmental compliance projects and costs for which Alabama Power is seeking recovery are reasonable or prudent or represent the lowest practicable long-term cost option for ratepayers. Indeed, Alabama Power has refused to even release a public version of its IRP.
16. Although Mississippi and Louisiana have formula rate mechanisms for electric utilities similar to the Alabama Commission's Rate CNP, these states allow public participation in the regulatory process for the recovery of new plant and environmental compliance costs, unlike the Alabama Commission's Rate CNP review.
17. Comparisons with the rates paid by consumers in other states reveal that the Alabama PSC's Rate RSE and Rate CNP mechanisms do not lead to lower electric rates and bills. For example: the average price paid by Alabama Power Company's residential ratepayers for electricity during the years 2008-2011 was approximately 14 percent higher than the average price paid by the customers of investor-owned utilities in the other Southern states, including states that have not eliminated public participation or evidentiary hearings from the ratemaking process. The average price paid by Alabama Power Company's

commercial ratepayers was 20 percent higher than the average price paid by customers of investor-owned utilities in the other southern states. In fact, during the years 2008-2011, the customers of Alabama Power paid higher average residential bills and average commercial prices than customers of the three other sister utility companies owned by Southern Co. (Georgia Power, Gulf Power and Mississippi Power).

18. Industrial customers of investor-owned utilities in Virginia, Kentucky, North Carolina, Arkansas and South Carolina paid average prices for power during the years 2008-2011 that were lower than the average price paid by Alabama Power Company's industrial customers. These are states that have not adopted formula rate mechanisms and/or excluded the public from the ratemaking process. In addition, there are many states outside the South that have lower prices for industrial customers than Alabama even though these states have not eliminated public participation or formal evidentiary hearings from the ratemaking process. Thus, there clearly are other factors that are responsible for low industrial electricity rates than whether the state has adopted a formula rate mechanism that excludes public participation.
19. All three of the regulatory processes considered in this Report (Rate RSE, Rate CNP and IRP) lack public participation, true accountability and transparency. The Commission's isolation in these processes leads to secretive pro-utility decisions that fail to balance the interests of shareholders and ratepayers. As a monopoly, Alabama Power has enjoyed the advantage of this imbalanced and concealed process since the early 1980s and seems perfectly happy to keep it in place because it benefits them so greatly. But the current regulatory system in Alabama is unfair to customers, is no longer needed, unjustifiably rewards the utility company and is costly to the citizens of the state.
20. Nothing in this report is intended to criticize, in any way, the work of the Alabama Public Service Commission staff. Instead, the report focuses on the Commission's regulatory policies and oversight of Alabama Power.

ALABAMA POWER COMPANY

Founded on Dec. 4, 1906, the Alabama Power Co. now provides service to approximately 1.2 million residential customers, 197,000 commercial customers and 5,200 industrial customers in the southern two-thirds of Alabama. The company operates as a vertically integrated utility, providing electricity to both retail and wholesale customers within its traditional service area and to wholesale customers in the South. The company owns significant generating capacity and the transmission and distribution systems through which the power generated at its facilities (and power purchased from others) is transmitted to customers.

Alabama Power is one of the four operating companies owned by the Southern Company. The other three are Georgia Power, Gulf Power and Mississippi Power.

Under the terms of what has been called the Regulatory Compact, a utility is recognized as a natural monopoly and is obligated to provide service to all customers within its authorized service area. In exchange, the utility is allowed to recover not only its investment and the costs of providing service, but also is given an opportunity to earn a fair return on its investment. Under the Regulatory Compact, the utility's rates and service are regulated by a state utility commission. The commission is also responsible for balancing the interests of both ratepayers and shareholders.

A BRIEF HISTORY OF STATE REGULATION OF THE ALABAMA POWER COMPANY

The Alabama Public Service Commission was established in 1886.[1] Among its statutory responsibilities are providing general supervision to all persons, firms and corporations operating utilities in the state and ensuring that retail rates are reasonable and fair to both a utility and the public.[2] Under the generally accepted Regulatory Compact, state regulatory commissions are supposed to balance the interests of shareholders and ratepayers. Unfortunately, as this report reveals, the Alabama Public Service Commission seems to focus substantially more attention on ensuring the earnings of the company and its shareholders than protecting the interests of its customers.

Through 1982, the PSC carried out some of its responsibilities with regard to Alabama Power by conducting detailed investigations and holding public evidentiary hearings whenever the company requested a rate increase.

However, the 1960s, '70s and early '80s were a "volatile, contentious" period, as described in a case study by the Edison Electric Institute ("EEI").[3]

> "During the late 1960s and early 1970s, demand for electricity in the State of Alabama was growing at a rate of approximately 8 percent annually. In order to serve these increasing customer requirements, APCO initiated a robust construction program. The company built new hydroelectric and large coal-fired generation facilities, integrated a number of new high voltage transmission lines, and commenced development and construction of two nuclear units. To finance these projects, the company required additional capital. The cost of that capital became

[1] Alabama Code Section 37-1-1.
[2] Alabama Code Sections 37-1-32 and 37-1-80(a).
[3] According to its website, EEI is the association of U.S. Shareholder-Owned Electric companies, like Alabama Power and its parent Southern Co. EEI represents its members' interests, advocating equitable policies in legislative and regulatory arenas.

> increasingly expensive, however, as interest rates escalated and other economic pressures (such as oil price shocks and general inflation) were experienced. This in turn caused the company's financial health to suffer and its bond ratings to be lowered. As matters reached their nadir, the company even found itself periodically excluded from the capital markets due to coverage requirements in its first-mortgage indenture. During these periods, the company was unable to issue any new long-term debt to satisfy its funding requirements. Even when it could, the lower bond ratings translated directly into higher borrowing costs.
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> The cumulative effect of these circumstances forced the company into virtually continuous rate proceedings before the commission. Between 1968 and 1982, 10 separate rate cases were filed. These cases followed a traditional regulatory model, with the company tendering discrete applications to the commission for authorization to increase base rates to reflect, for a defined historical test period, the cost of providing service, including a fair return on the property devoted to public service….
>
> Virtually all of the rate cases filed by APCO during this period involved contested litigation, with proceedings typically last[ing] six to seven months. Of necessity, the company frequently felt compelled to file a new rate case while current proceedings remained unresolved, in an effort to address uncertainties surrounding the ability to recover its costs in a timely manner. Frustration and uncertainty led to mounting tensions. In 1977, the rate hearing was even moved to a coliseum in the state capital of Montgomery, where several thousand hostile people attended, incited to no small degree by newspaper editorials and opportunistic politicians. Not surprisingly, these pressures made it increasingly difficult for the commission to properly consider, and balance, the interests of customers and the company.[4]

The Alabama PSC's response to this financial uncertainty and public pressure against rate increases was to adopt two formula rate mechanisms, Rate Stabilization and Equalization ("Rate RSE") and Certified New Plant ("Rate CNP"), which allowed Alabama Power expedited recovery of its normal operating expenses, a guaranteed high return on equity, and recovery of the costs associated with new plants without any public involvement and with little to no public scrutiny. Expedited recovery of environmental compliance costs with little or no public scrutiny or involvement was subsequently added to Rate CNP in 2004.

Whatever the merits of the Alabama Commission's adoption of the Rate RSE and Rate CNP mechanisms back in 1982, it is clear that today's circumstances are significantly different from those in the 1960s, 1970s and early 1980s.

- Demand for electricity in Alabama is not growing at 8 percent annually. In fact, Alabama Power's total retail kilowatt-hour sales in 2011 were 4 percent lower than in 2007. Its summer peak load in 2011 was approximately 6 percent lower than in 2007.
- General inflation is now at 2 percent to 3 percent per year, much lower than the 13.5 percent overall inflation rate in 1980.
- As seen in Figure 2, later in this report, utility financing costs are dramatically lower, with, for example, 10-year Treasury Yields on the order of 2 percent to 3 percent, as opposed to the 10 percent and higher yields that were common in the early 1980s. In these circumstances, it is unlikely that Alabama Power will face the same financial risks now that it did in the 1960s, '70s, and early '80s.
- Although the company faces some significant uncertainty regarding environmental rules and regulation due to a generation mix heavily weighted toward fossil fuels, it does not face the same pressure to make large investments to build large new generating facilities, including two expensive nuclear units that were "on tap" in 1980.

Consequently, we believe the Commission should revisit its decision to adopt the Rate RSE and Rate CNP mechanisms and evaluate whether it would be appropriate to return to more traditional ratemaking with periodic rate cases and public involvement in the rate setting process. It is unlikely in our view that Alabama Power would require continuous rate cases under today's circumstances as it did in the period from 1968 to 1982, and therefore the Rate RSE and Rate CNP formula rate mechanisms have outlived their usefulness, if they ever were truly necessary.

RATE RSE: THE RATE STABILIZATION AND EQUALIZATION FORMULA RATE MECHANISM

As noted above, the Alabama PSC adopted a Rate Stabilization and Equalization formula rate mechanism – Rate RSE – in 1982 to allow for annual adjustments in the company's base rates without the need for filing annual rate increase applications. As the Alabama Commission has explained:

> Rate RSE … was designed to lessen the impact, frequency and size of retail rate increase requests by permitting the Company, through the operation of a rate that was filed and approved, to adjust its charges more readily to achieve the rate of return allowed by the rate order of the Commission. By provisions in the rate, the charges are increased if projections for the upcoming year show that the designated rate of return range will not be met and are decreased if such projections show that the designated rate of return range will be exceeded. Other provisions limit the impact of any one adjustment [to 5 percent per year](as well as the impact of any consecutive adjustments [to an average of 4 percent per year]), and also test whether actual results exceeded the equity return range.

[4] EEI *Case Study of Alabama Rate Stabilization and Equalization Mechanism*, dated June 2011.

Beginning December 1, 2006, and by December 1 of each year thereafter, the Company's rate of return on projected average common equity ("RRCE"), separated to retail electric service, shall be computed annually for the upcoming twelve-month period ending December 31 (such twelve-month period being the "rate year"). The RRCE shall be computed on the basis of cost estimates and budgets prepared by the Company in the ordinary course of its business and in a manner consistent with the Federal Energy Regulatory Commission's ("FERC") Uniform System of Accounts. If the resulting RRCE is less than 13.0 percent or more than 14.5 percent (13.0 percent to 14.5 percent being "the equity return range"), then monthly bills under the respective rate schedules subject to Rate RSE shall be adjusted by amounts per kilowatt-hour ("kWh") necessary, in total, to restore the RRCE to 13.75 percent (the "adjusting point" in the equity return range).[5]

According to a review by the electric utility industry's Edison Electric Institute, since the Rate RSE was adopted in November 1982, the rate has produced 12 upward adjustments (i.e., rate increases), three downward adjustments and in 15 years there were no adjustments at all.[6] However, there has not been a public rate case in 30 years.

The Alabama Commission's own orders and rules make clear that the Rate RSE was specifically adopted in order to avoid rate increase proceedings in which the public could participate, if they so desired, to question or oppose Alabama Power's request for higher rates or to show that specific expenditures or investments were not prudent or that the company was not being managed honestly, economically or efficiently. For example, the Commission's *Annual Report 2011* specifically noted:

> Rate RSE … was designed to lessen the impact, frequency and size of retail rate increase requests …."

The Commission had previously noted, in its 1982 Order adopting the Rate RSE mechanism:

> It is the intent of this order to avoid the large general rate increase requests so characteristic of recent years, with the attendant delays and lengthy, expensive proceedings.

The Rate RSE Process

Instead of holding public evidentiary hearings in which those directly affected by the Company's rates have an opportunity to intervene, the Commission conducts a highly expedited process for its Rate RSE review. The Company submits information and calculations on Dec. 1, a short "informal" public meeting is held sometime in the following week or two, and the Commission issues an order in early January of the following year. There is no evidence in these annual Company submissions that demonstrates the prudence or reasonableness of any of the Alabama Power's costs or of the system operations that underlie these costs.

There are no public evidentiary hearings in the Rate RSE formula rate mechanism – only the single informal public meeting at which the Company gives unsworn answers to questions posed by the Commission, its staff or any other interested party.[7] There is no other opportunity for the rate-paying public to participate in the rate-setting process, other than by asking questions at this informal meeting. There certainly is no opportunity to submit discovery questions to Alabama Power or to file sworn expert testimony or even to submit written comments on the company's request. In fact, it is our understanding that the only public evidentiary hearing for the Rate RSE was held in 1982 when the Commission adopted the formula rate mechanism. There appear to have been no other public evidentiary hearings on Rate RSE in the subsequent 30 years.

Under the Regulatory Compact, utilities are allowed rates that give them a reasonable opportunity to earn a rate of return that recovers costs that were prudently incurred and necessary for the provision of safe and reliable utility services, including financing costs and a reasonable rate of return to investors. Moreover, under Alabama law, costs to be borne by ratepayers must be the product of "honest, efficient and economical management."[8] However, because they are excluded from the Rate RSE rate-setting process, ratepayers have no meaningful opportunity whatsoever to contest a proposed increase or to present evidence to the Commission challenging any of the company's costs as imprudent or not the product of "honest, efficient and economical management."[9] Nor is there any opportunity for ratepayers to challenge or present detailed evidence on the question of whether, in today's economic and financial environment, Alabama Power actually needs to earn a return on equity of between 13.0 percent and 14.5 percent or that ratepayers benefit in any way from such high returns.

Instead, none of the very limited information available on the Commission's website (or that was provided by the Commission in response to our requests) shows that as part of its Rate RSE review the Commission and its staff do anything more than confirm the company's arithmetic to ensure that the rates being charged by Alabama Power give it a reasonable opportunity to earn a return on common equity that falls within the 13.0 percent to 14.5 percent range.

[5] Alabama Public Service Commission Annual Report 2011, at page 21.

[6] Edison Electric Institute, *Case Study of Alabama Rate Stabilization and Equalization Mechanism*, dated June 2011, at page 4.

[7] Alabama PSC *Special Rules Governing Operation of Rates RSE and CNP, Fifth Revision*, effective date October 16, 2005, Rule 4(d).

[8] See Alabama Code Section 37-1-80(a).

[9] Under Alabama Code Section 37-1-83, affected persons do have the opportunity to file a complaint seeking an investigation of unfair rates or inadequate service. However, such individual complaint investigations, while important, are in no way adequate substitutes for the sworn testimony and supporting exhibits, the detailed discovery and the public evidentiary hearings that regulatory commissions require when evaluating utility rate increase requests.

[10] A request was submitted to the Commission on November 30, 2012, seeking documents in which the Commission or staff have evaluated since January 1, 2011, the reasonableness or prudence of the costs which Alabama Power seeks to recover through either Rate RSE or Rate CNP. No documents have been provided in response to this request.

There certainly is no evidence that the Commission or its staff conduct detailed prudence reviews of costs and other factors that underlie the company's Rate RSE filing.[10]

The Commission's Oversight of Alabama Power Outside Rate RSE

The Commission claims that adoption of the Rate RSE formula rate mechanism and its increased monitoring and auditing provisions increase its ability to fulfill its statutory duty to supervise the overall operation of Alabama Power as provided in Title 37 of the Code of Alabama (1975) with appropriate representation of the consumer interest.[11] However, the Commission provides no evidence to support this claim. Nor is there any evidence offered that, as the Commission also claims, the absence of public evidentiary rate hearings actually does "provide a better opportunity for the Commission and its staff to effectively and closely monitor the company's daily operations and to investigate regulatory matters."[12]

In fact, the discussions of Alabama Power at the Commission's Monthly Meetings comprise only a portion of what, in total, are already extremely short meetings that also address other issues related to natural gas utilities, telecommunications utilities, water utilities, and administrative and legal issues as well as reports of the Commission's Electricity Policy Division. For example, as shown in Table 1, in the 20 months since April 2011, the Commission's Monthly Meetings have averaged less than 30 minutes in length, in total, for all of these topics.

The minutes for the Commission's Monthly Meetings also reveal that each month's staff presentation on Alabama Power includes reports on (1) the Company's Projected Retail Return on Common Equity for the entire year and (2) the amount of any over- or under-recovery of fuel costs. The only topics concerning Alabama Power, other than its Retail Return on Common Equity and its fuel cost recoveries, that are recorded in the Commission meeting minutes are discussions of Power Purchase Agreements, changes in individual rate riders and changes in tax or accounting practices. There is no evidence that the staff has discussed or reported on any assessments or evaluations of the prudence or reasonableness of the company's operations or expenditures or whether the Company was being honestly, economically or efficiently managed.

The Commission's Electricity Section does examine Alabama Power's books and records on a monthly basis to determine whether the Company is going to earn its allowed rate of return on common equity during the current year. However, there is no evidence that the public has been invited to participate in any of the numerous meetings between the Commission, staff and the company during the year except for the single "informal" meeting in December following the filing of Alabama Power's Rate RSE. Indeed, it does not appear that the public is even informed about these meetings. There also do not appear to be any records from these private meetings held throughout the year.[13]

The staff's Electricity Section also reviews financing petitions filed by Alabama Power and conducts monthly

Table 1: Alabama Public Service Commission Meetings since January 2011[14]

		Time Meeting Called to Order (AM)	Time Meeting Adjourned (AM)	Meeting Length in Minutes
January	2011	10:00	10:27	27
February	2011	10:01	10:35	34
March	2011	10:03	10:27	24
March - Special Meeting	2011	10:05	11:03	58
April	2011	10:03	10:41	38
April - Special Meeting	2011	10:01	10:10	9
May	2011	10:03	10:40	37
June	2011	10:03	10:24	21
July	2011	10:07	10:47	40
August	2011	10:03	10:20	17
September	2011	10:11	10:42	23
October	2011	10:01	10:28	27
November	2011	10:01	10:36	35
December	2011	10:03	10:32	29
January	2012	10:03	10:27	24
February	2012	10:04	10:27	23
March	2012	10:03	10:30	27
April	2012	10:07	10:32	25
May	2012	10:07	10:31	24
June	2012	10:03	10:30	27
July	2012	10:05	10:30	25
August	2012	10:04	10:28	24
September	2012	10:05	10:38	33
October	2012	10:05	10:20	15
November	2012	10:04	10:36	32
December	2012	10:01	10:38	37
Average Meeting Length				28

[11] Alabama PSC *Special Rules Governing Operation of Rates RSE and CNP, Fifth Revision*, effective date October 16, 2005.
[12] *Id*.
[13] A request was submitted to the Commission on November 30, 2012, seeking the notes of meetings between the Commission or their staff and Alabama Power since January 1, 2011. No documents have been provided in response to this request.
[14] Table 1 does not reflect the Commission's long executive session at its September 2011 meeting at which it appears to have discussed a confidential personnel matter, not Alabama Power Company's rates.

analytical reviews and/or audits to test the completeness and accuracy of financial statements, economic models and other data submitted by Alabama Power. According to the Commission, the staff's monthly fuel audit is particularly important because the company's energy costs are a major portion of its total operation and maintenance (O&M) expense.[15]

Although these are important functions, it is again unclear to what extent the staff actually reviews the prudence and reasonableness of the Company's operations and expenditures or merely looks at the calculations in Alabama Power's accounting records for fuel purchases and burns at the company's corporate office and at the respective generating facilities.[16]

In fact, the Commission's rate setting process for Alabama Power and its "increased supervision" of the Company are opaque to the public with no transparency into how effectively the Commission and staff monitor Alabama Power and whether or how the Commission balances shareholder and ratepayer interests.

Unlike Alabama, regulatory commissions in most other states monitor utility operations and costs both as part of and in addition to the public evidentiary hearings in rate increase proceedings. A wide range of issues and costs are examined in these public evidentiary hearings including, typically, required rate of return (including both debt and equity costs), non-fuel O&M, fuel costs, administrative and general expenses and local, state and federal taxes. Although it is true that many states have adjustment clauses or trackers for significant costs, the Alabama PSC's Rate RSE is much more extreme because it includes a wider range of costs, because it excludes the public from any significant participation and because it is not open to any meaningful public scrutiny and transparency.

Regulation in Other States

The Alabama PSC's Rate RSE review is very different from that in most other states where utilities are required to file formal rate increase applications when they want to raise their rates. For example, in stark contrast to the Alabama PSC's regulation of the rates charged by Alabama Power, if Georgia Power (Alabama Power's sister affiliate) wants to increase rates it must file an increase request with the Georgia Public Service Commission ("Georgia PSC") which includes supporting testimony and exhibits. The Georgia PSC then initiates a public hearing process, in which groups representing diverse classes of ratepayers – including residential, commercial and industrial interests – may intervene and present witnesses and experts on relevant issues. The Georgia PSC's Adversary Staff completes a review of the proposed application and makes independent recommendations on rates before the hearing dates. As part of the public hearing process, on the public record, the Georgia PSC hears testimony from witnesses for Georgia Power, from the PSC's own staff and from any of the public interest groups that choose to present a witness. In addition, the Georgia PSC allows members of the public to make brief unsworn comments at the outset of each day of hearings, giving individuals a chance to voice their opinions without the time or expense of intervening and presenting witnesses. The Commission takes the case under advisement following the public hearings and all parties – the utility, Commission staff and intervenors – review the transcript and record of the hearings and file recommendations and, if they wish, a proposed order on whatever issues they are interested in addressing. Parties in the case then have the opportunity to appeal any Commission order(s) to Fulton County Superior Court in Atlanta.

In fact, only two other states besides Alabama, Mississippi and Louisiana, have similar broad formula rate mechanisms for electric utilities. However, both of these states provide for much more public involvement than the Alabama PSC allows under the Rate RSE. For example, under its Performance Evaluation Plan ("PEP") for Mississippi Power Co., the Mississippi Public Service Commission is required to hold a public hearing for a rate change of greater than 2 percent of the company's annual aggregate revenues.[17] Such a hearing requires the pre-filing of exhibits, testimony and evidence by Mississippi Power and other parties, pursuant to Section 77-3-39 of the Mississippi Code of 1972. Interested parties, in addition to the company and the Commission staff, are allowed to intervene in these hearings.

Under the Louisiana PSC's Formula Rate Plan ("FRP"), Entergy Louisiana is required to file with the Commission on May 15 of each year an evaluation of its earnings for the immediately preceding calendar year. The company staff and all intervenors in either a prior base rate case or a prior FRP proceeding shall receive copies of such Evaluation Reports along with the supporting workpapers, calculations and data. These parties have until Aug. 15 to review the Evaluation Report and to determine if there are any disputed issues. Such issues are then presented to the PSC for review and decision.[18] In some proceedings the Commission also files a public report on its evaluation of the company's test-year formula rate filing.

The state Attorney General is designated in the Alabama PSC's rules as the representative of the ratepaying public in annual Rate RSE reviews. However, this does not justify or offset the exclusion of the public from the rate-setting process. It also is very unclear from the documents

[15] *Id*, at page 25.
[16] *Id*, at page 25.
[17] Mississippi Power Performance Evaluation Plan Rate Schedule PEP-5, with an effective date of November 9, 2009.
[18] Entergy Louisiana LLC, Rider Schedule FRP-6 Extension, effective date December 8, 2011, supersedes FRP-5, filed 10/21/2009.

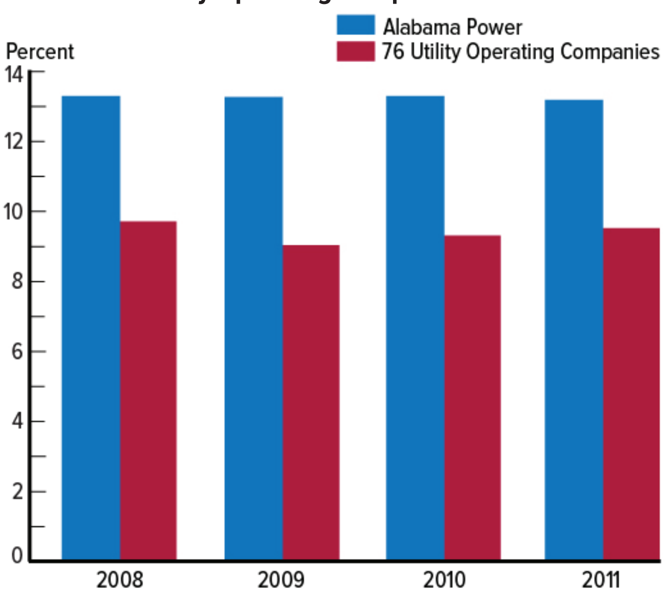
available on the PSC's website and the process followed under Rate RSE what opportunities the Attorney General actually has to influence the process or the outcome of the Commission's annual reviews or what resources the Attorney General has to apply to this process.

Alabama Power Company Earns an Extremely High Return on Common Equity Under the Rate RSE Formula Rate Mechanism

The Alabama PSC sets the company's rates to allow Alabama Power to earn a rate of return on average common equity ("RRCE") within the range of 13.0 percent to 14.5 percent within the Rate RSE. If the company's actual earnings in a year exceed 14.5 percent, it has to return the excess to ratepayers.

As a result, Alabama Power earns an extremely high return on common equity when compared to other utilities around the nation, as shown in Figure 1.

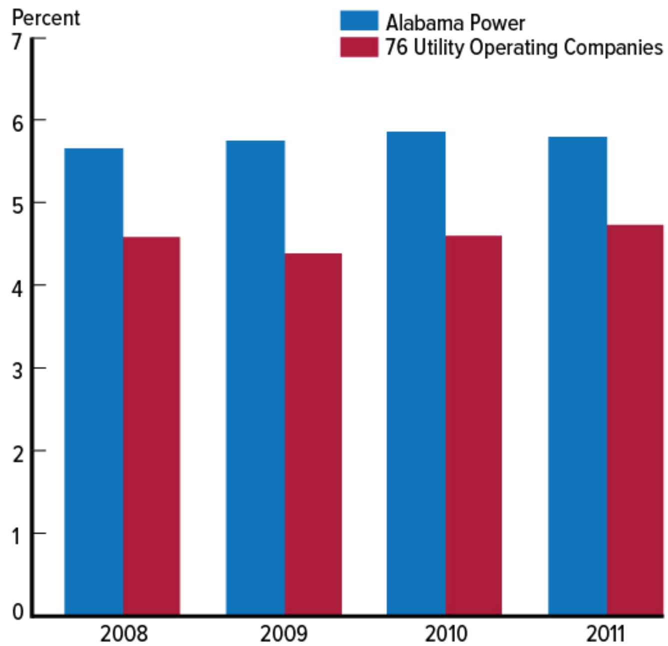
Figure 1: Earned Returns on Common Equity for 2008-2011 – Alabama Power Company vs. an Industry Comparison Group of 76 Other Utility Operating Companies[19]



In fact, Alabama Power's earned return on equity for the years 2008-2011 averaged 43 percent higher than the average ROE earned by comparable utility operating companies during the same four-year period.

A utility's common equity ratio represents the percentage of its total capitalization that is provided by its equity investors – in the case of Alabama Power this means the Southern Company. Alabama Power and the Public Service Commission have argued that the fact that the Company is not compensated for any increase in its equity ratio above 45 percent, which is below the 49 percent average equity ratio for the industry comparison group, helps protect ratepayers by offsetting the high returns on equity that Alabama Power is allowed to earn under the Rate RSE. However, as shown in Figure 2, the Company's equity returns are still approximately 25 percent above industry averages even when equity ratios are taken into consideration.

Figure 2: Returns on Equity Adjusted by Equity Ratios – Alabama Power Company vs. an Industry Comparison Group of 76 Other Utility Operating Companies[20]



Because of Alabama Power's very high earned returns on common equity, even when offset by its relatively lower equity ratio, the Company earned a return on its total capitalization that averaged 30 percent above the industry comparison group average during the years 2008-2011.

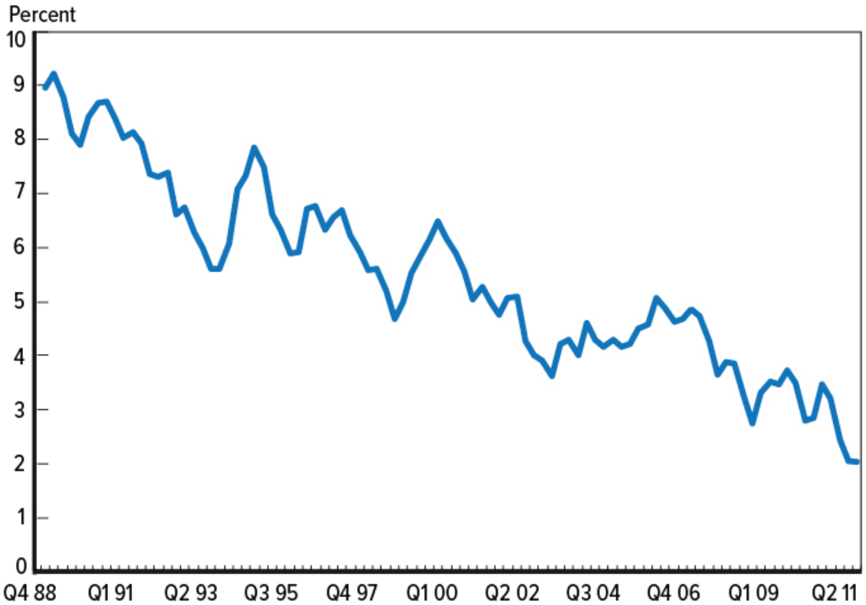
It has been claimed that Rate RSE and the very high return on equity range that is allowed has had a favorable effect on the Company's credit rating and its resulting cost of debt.[21] However, we have not seen any evidence that reduced debt costs have fully offset the very high returns on equity that Alabama Power has earned under Rate RSE. Nor have we seen any evidence that the elimination of public rate increase hearings and the exclusion of ratepayers from the rate-setting process actually save any, let alone significant, dollars for ratepayers or taxpayers. In fact, as this report will show, the average prices for power paid by Alabama's residential and commercial users of electricity are very high compared to the prices in other Southern states and that there are many states with lower industrial rates that have not excluded the public from the ratemaking process.

A 13 percent to 14.5 percent allowed return on common equity may have made sense in the 1980s when the

[19] The industry comparison group in Figures 1-3 includes utility electric and electric/gas operating companies. It does not include any exclusively gas operating companies or any utility holding companies. The data for this comparison are from an annual SNL Financial report on Quality Measures for Utility Operating Companies.
[20] The source for the earned returns on equity and equity ratios used to prepare Figure 2 came from data published by SNL Financial.
[21] EEI *Case Study of Alabama Rate Stabilization and Equalization Mechanism*, June 2011, at pages 6 and 7.

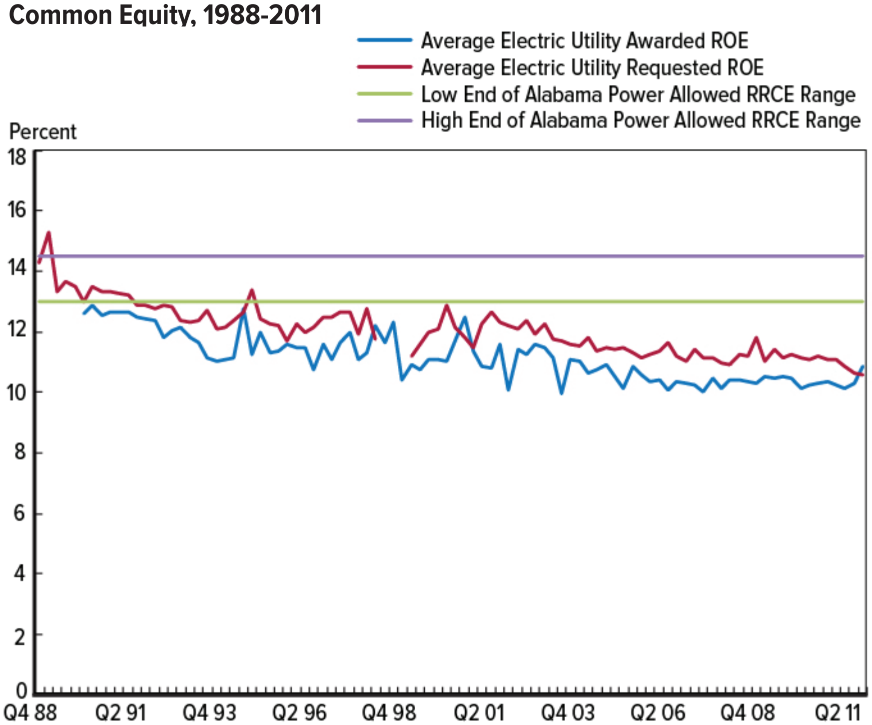
Rate RSE mechanism was first adopted. However, financing costs have dropped significantly since then, as can be seen from the Average 10-year Treasury Yields from 1988 through 2012 presented in Figure 3.

Figure 3: Average 10-Year Treasury Yields



As interest rates have dropped, the returns on equity requested by electric utilities and those granted by regulatory commissions also have gone down, as is shown in Figure 4.

Figure 4: Average Electric Utility Requested and Allowed Returns on Common Equity, 1988-2011



Unlike utility companies in many other states, there is no evidence that Alabama Power Company has requested a lower Retail Return on Common Equity range at any time in the past twenty or more years. Nor is there any evidence that the Commission has ever considered such a reduction on its own motion. Instead, the Commission recently has refused to even consider holding hearings to consider whether the 13.0 percent to 14.5 percent range of Retail Return on Common Equity that Alabama Power Company is allowed to earn should be re-evaluated in light of current circumstances.

On Nov. 30, 2012, a request was submitted to the Commission asking for the documents in which the Commission or its staff have evaluated or re-evaluated the appropriateness, the necessity or the benefits for ratepayers of setting the Rate RSE range of return on equity to be between 13.0 percent and 14.5 percent. Although the Commission has provided some other materials related to its monthly meetings, it has not provided any documents to date in response to this request.

Alabama Power's much higher allowed range of return on equity is particularly unreasonable given both (1) the current bond yields shown in Figure 3 and (2) the fact that the company does not bear any more risk than any of the 76 comparable utility operating companies used in the comparisons in Figures 1 and 2. In fact, given the PSC's Rate RSE and Rate CNP mechanisms and Alabama Power's recovery of fuel costs through the fuel adjustment clause, Alabama Power would seem to be an extremely low-risk investment for its sole owner, the Southern Co.

The Company acknowledged in its 2011 Annual Report that "due to cost-based rate regulation and other various cost recovery mechanisms, the Company continues to have limited exposure to market volatility in interest rates, commodity fuel prices and prices of electricity." Thus, there would appear to be no reason why Alabama Power should earn such a large risk premium above current debt costs or why it should earn so much higher returns on equity than other similarly situated utility operating companies. However, the PSC continues to refuse to even reconsider whether the 13.0 percent to 14.5 percent return on common equity range allowed for Alabama Power is too high given current economic and financial circumstances.

Both Louisiana and Mississippi allow electric utilities to recover significantly lower returns on equity under their formula rate plans than does the Alabama PSC. For example, the Mississippi PSC is re-evaluating whether the 10.62 percent ROE it has approved for the Mississippi Power Co. is too high and has established a new proceeding, with hearings, to look into this matter.[22]

[22] *PSC to examine formula rate plans for Entergy, MPC*, Mississippi Business Journal, August 12, 2012.

In an August 8, 2012, guest editorial titled "How much is too much?" Commissioner Brandon Presley, who represents North Mississippi on the Mississippi Public Service Commission, had this to say about the return on equity a regulated utility should be allowed to earn:

> How much is too much? The return on equity (or profit allowed) is more difficult to determine, and it can be one of the most controversial issues facing a utility regulator. In concept, the allowed return on equity is the return that utilities must offer to attract investors. In recent years, most regulatory commissions have allowed a return on equity of about 10 percent. It has been as low as 6 percent in some cases and as high as 16 percent in others. Today, the last approved return on equity for Entergy Mississippi was 11.63 percent, while Mississippi Power Company earned 10.62 percent. The companies' average return, as last approved is 11.128 percent. I think that is too high.[23]

The Louisiana PSC also allows a much lower range of ROE under its Formula Rate Plans for Entergy Louisiana and SWEPCO. For example, the current Formula Rate Plan ("FRP") for Entergy Louisiana allows the company to earn an ROE with a range between 9.45 percent and 11.05 percent.[24] SWEPCO has recently proposed that it be allowed to earn an ROE range from a low of 10.165 percent to 10.965 percent.[25]

RATE CNP: CERTIFIED NEW PLANT

At the same time in 1982 that it adopted Rate RSE to allow the recovery, without public hearings, of Alabama Power's normal costs of service and return on invested capital, the Alabama PSC also adopted Rate Certified New Plant – Part A ("Rate CNP – Plant Factor") to address the larger cost impacts that are less routine in nature, one of which is the financial effect of placing a new generation plant into commercial operation.[26] The scope of Rate CNP was subsequently enlarged in 2000 to include the fixed costs of purchase power agreements ("Rate CNP – Purchase Factor") that had been certified by the Commission. The scope of Rate CNP was further modified in 2004 to encompass environmental compliance costs. ("Rate CNP – Environmental Factor"). As with Rate RSE, the expanded Rate CNP-Plant Factor and Rate CNP-Environmental Factor do not allow for any participation by Alabama Power's ratepayers or any evidentiary hearings on the recovery of new plant or environmental compliance costs. Nor is there any public scrutiny of the prudence of the actual costs of building new generating units or adding new environmental control equipment or facilities. Moreover, there is no examination of whether, when built, new generating units represent excess capacity, in whole or in part.

Commissioner George Wallace, Jr. dissented from the expansion of Rate CNP in 2004 to include environmental costs because the process did not allow for any further evidentiary hearings and because he believed that the Alabama Power could have absorbed these environmental compliance costs through the return on equity allowed through Rate RSE without the need for any further rate increases. As Commissioner Wallace explained in his dissent:

> It is my firm belief that **all decisions of this Commission should be made with full consideration of the balance between the financial burden to Alabama consumer ratepayers and a fair and reasonable rate of return to the regulated utility**. The majority decision of the Commission **shifts Alabama Power Company's entire burden of paying for environmental compliance to the consumers of Alabama**. This will result in annual increases to Alabama consumers over the next nine years (2005-2013) in a process absent of any further evidentiary hearings. For these reasons, and because I believe the majority decision has been made in a process that was procedurally flawed and was rushed through this Commission with no real notice to the people of Alabama, I must respectfully dissent.[27]
>
> *   *   *   *
>
> I am also concerned about the exclusion of the Attorney General of Alabama and his representatives from meetings that occurred between Alabama Power Company representatives and this Commission about the merits of this rate filing.[28,29]
>
> *   *   *   *
>
> The majority order correctly recognizes that Alabama Power Company must comply with federal environmental mandates. I strongly support these clean air improvements that will benefit Alabama citizens. The majority order also correctly recognizes that a utility should be entitled to recover these environmental costs. The question before this Commission, however, is whether these costs could be recovered within the framework of the existing RSE range for Alabama Power Company – which is 13.0 percent to 14.5 percent – with no additional cost to Alabama ratepayers. Alabama Power Company enjoys one of the most generous rates of return in the United States under Rate RSE. My own preliminary analysis indicates that the RSE range for Alabama Power Company could

[23] The full text of Commissioner Presley's op-ed is available at: http://winstonnewsonline.com/2012/08/guest-op-ed-by-public-service-commissioner-brandon-presley/.
[24] Entergy Louisiana LLC Rider Schedule FRP-6 Extension, effective date December 8, 2011.
[25] Testimony of Thomas P. Brice in LA PSC Docket No. U-32220, July 20, 2012
[26] Alabama PSC Order in Docket Nos. 18117 and 18416, October 29, 2004
[27] Alabama PSC Order in Docket Nos. 18117 and 18416, dated October 29, 2004, Dissent of Commissioner George C. Wallace, Jr., at page 1, Appendix A. http://www.psc.state.al.us/18117_18416/APCO_18117_18416.pdf.
[28] *Id*, at page 3.
[29] Attachment B to Commissioner Wallace's Dissent listed about 50 meetings, mostly between Commission staff and the Company from which the Attorney General and his representatives had been excluded.

have absorbed much of these environmental costs, as has occurred for many years, and **Alabama consumers could have been spared the rate increases that are permitted by the majority order. By ordering these costs to be recovered under Rate CNP on an annual basis, without further formal evidentiary hearings in future years, the majority order has shifted the entire burden of these costs to the customers of Alabama Power Company, whose rates will increase in each of the next nine years**. [Emphasis added][30]

On Dec. 1 each year, Alabama Power submits the calculations associated with the Company's historic environmental compliance costs and its projected cost of complying with environmental mandates for the upcoming year. These annual filings present Alabama Power's calculations of its over- or under-recovery of environmental compliance costs for previous years and the additional revenues the company would need in order to recover its projected costs in the next 12-month calendar period while earning a 13.75 percent retail return on common equity. However, these filings contain no evidence that the company's historic environmental costs were prudently or reasonably incurred or were the product of honest, efficient and economical management. The filings also contain no evidence that Alabama Power's projected environmental compliance expenditures represent prudent or reasonable investments or the lowest practicable cost options for ratepayers.

The company also files its Annual Environmental Compliance Plan Associated with Rate CNP in early December of each year. This submittal contains a regulatory and legislative update on environmental issues affecting Alabama Power Co., including acid rain, ambient air quality standards, regional haze (visibility), hazardous air pollutants, climate change, water initiatives, toxics release inventory and coal combustion waste production.[31] The submittal also includes summary data on the Company's budgeted capital expenditures for environmental compliance for the next five-year period. However, the Annual Environmental Plan, like the environmental cost calculations, offers no evidence that the company's historic environmental compliance costs were prudently or reasonably incurred or were the product of honest, efficient and economical management or that its projected environmental compliance expenditures represent prudent or reasonable investments or the lowest practicable cost options for ratepayers.

Moreover, Alabama does not have a public Integrated Resource Planning ("IRP") process that would provide any evidence that the environmental compliance projects and costs for which Alabama Power is seeking recovery are reasonable or prudent or represent the lowest practicable long-term cost option for ratepayers. Indeed, the company has refused to even release a public version of its IRP.[32] Consequently, there is no public evidence to support the PSC claim that "[u]nder the Commission's supervision, Alabama Power already performs an annual assessment of its supply-side and demand-side options, which includes the consideration of energy efficiency resources. In addition, under the existing IRP process, 'cost effective energy efficiency' is viewed as a 'priority resource' in the long-term planning efforts of Alabama Power."[33]

It is clear, furthermore, that Alabama Power has passed along very significant costs to ratepayers through its Rate CNP Environmental Compliance Plan. For example, the Company's 2011 Annual Report noted that its retail rates in Alabama "increased approximately 4.3 percent in January 2010 due to environmental costs."[34] The company also has projected that it would spend up to $175 million on environmental compliance costs in 2012, $500 million in 2013 and $1.125 billion in 2014.[35] These expenditures would mean substantial increases in rates under the present Rate CNP Environmental without any public evidentiary hearings or public participation – and with no public scrutiny.

The company also makes annual submissions of information and calculations associated with the CNP – Part B purchased power agreement factors. But again, this is merely an accounting filing and there is no evidence of prudence or reasonableness in this submission, only calculations showing whether the company's RRCE falls within the 13.0 percent to 14.5 percent range allowed by the PSC. When appropriate, the company makes a similar filing with regard to new plants. However, there is no evidence that there is any scrutiny of the prudence or reasonableness of these new plant costs.

Although, as discussed above, Mississippi and Louisiana have formula rate mechanisms for electric utilities similar to the Alabama PSC's Rate RSE and Rate CNP, these states allow much greater public participation in regulatory process for the recovery of new plant and environmental compliance costs than does the PSC's Rate CNP. For example, the recovery of costs associated with new plants or major modifications at existing facilities are specifically excluded from the Mississippi Power Co.'s Performance Evaluation Plan. Instead, the Commission has ordered that any Mississippi Power request for rate relief related to the construction or purchase of a major plant or the making of major modifications to existing plant would be handled in its regular manner, that is, through normal public eviden-

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[30] *Id,* at pages 5 and 6.
[31] For example, see Alabama Power Company's December 11, 2012 *Final Version of Environmental Compliance Plan Associated with Rate CNP; Dockets Nos. 18117 and 18416.*
[32] See Attachment A to this Report.
[33] Alabama Public Service Commission October 28, 2010 Order in Docket 31045, at page 2.
[34] At page 16.
[35] *Id.*

tiary hearings. Consequently, the Mississippi PSC held public hearings earlier in 2012 with pre-filed testimony and allowed participation by interested consumers in a CNP proceeding that had been initiated by a Mississippi Power Company filing seeking recovery of costs incurred in the construction of the Kemper County Integrated Gasification Combined Cycle plant.

The Louisiana Formula Rate Plan ("FRP") grants Entergy Louisiana the right to request the recovery of the prudent level of increased costs incurred due to changes in a law or regulation related to environmental issues or environmental compliance. However, as noted above, unlike the Alabama Rate RSE, the Louisiana PSC's FRP mechanism allows for the intervention and participation of interested ratepayers.

The Louisiana PSC also has established a Federal Environmental Adjustment Clause that allows utilities to recover the reasonable and prudent cost of purchasing and selling air emission credits needed to meet local, state and federal environmental regulations. Unlike the Alabama PSC, however, the Louisiana PSC staff files a public report, with exhibits, on its investigation of these credits and the PSC allows intervenors time to review discovery prior to taking up the matter.[36]

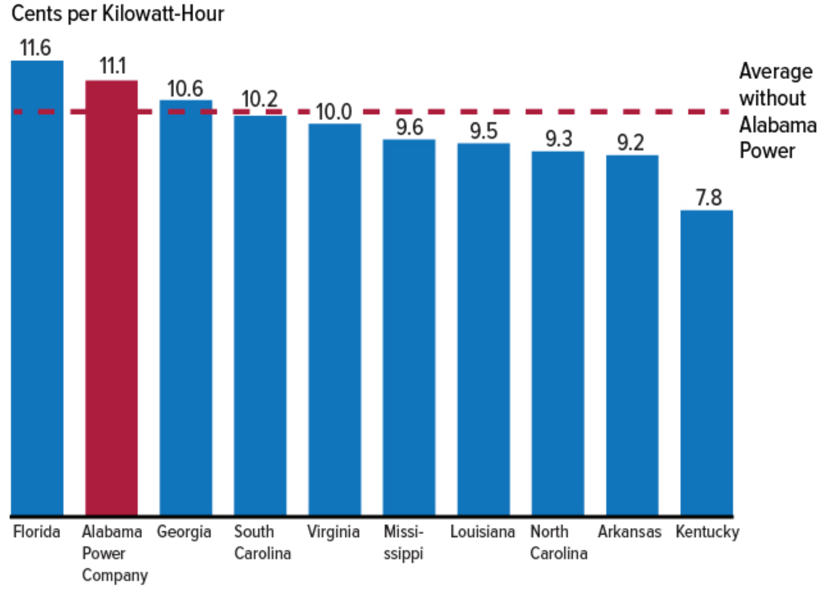
RATE COMPARISONS

The use of the Rate RSE and the Rate CNP mechanisms have not led to lower rates for Alabama Power's ratepayers as, in fact, the rates and bills paid by its residential and commercial customers are significantly higher than the rates residential and commercial customers of investor-owned utilities ("IOUs") are paying in other states that have not done away with holding public evidentiary hearings to set utility rates. At the same time, there is no evidence that the Rate RSE and Rate CNP mechanisms have contributed to Alabama Power's relatively lower industrial rates as these are higher than the rates paid by industrial customers of IOUs in a number of other southern states that have public evidentiary rate hearings.

Residential Rates

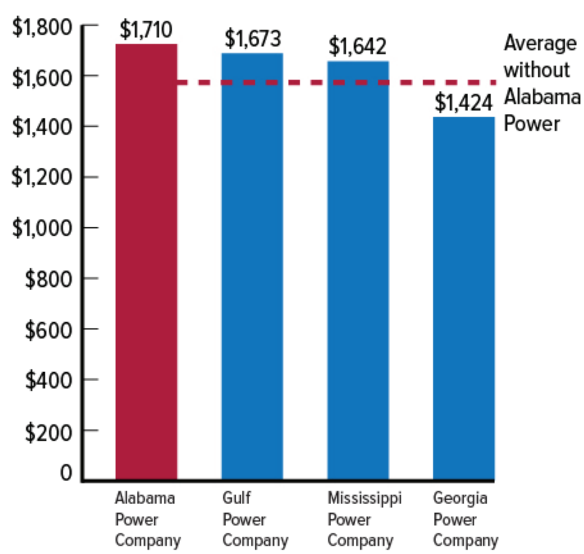
According to data published by the Energy Information Administration ("EIA") of the U.S. Department of Energy, the average price paid by Alabama Power Company's residential ratepayers for electricity during the years 2008 through 2011 was approximately 8 percent higher than the average price paid by the customers of investor-owned utilities in each of the other Southern states. In fact, only the IOUs in Florida had an average residential price per KWh higher than Alabama Power Company's, as shown in Figure 5.

Figure 5: Average Price per KWh Paid by Residential Customers of Alabama Power and the Customers of the IOUs in Other Southern States during the Years 2008-2011[37]



Indeed, data provided by Southern Co. shows that Alabama Power's average revenue per residential customer during the same four-year period, 2008-2011 was approximately 8 percent higher than the average revenue per residential ratepayer earned by the other Southern Co. affiliates in Florida, Georgia and Mississippi, as can be seen in Figure 6.

Figure 6: Average Revenue per Residential Customer for Each of the Southern Company Operating Utilities During 2008-2011[38]



[36] Louisiana Public Service Commission, Order in Docket No. U-32240, dated May 23, 2012.
[37] The source data for Figures 5, 9, and 11 is available at http://www.eia.gov/electricity/sales_revenue_price/.
[38] The source data for Figures 6 and 10 is taken from Southern Company's annual 10-K filings with the SEC for the years 2008-2011.

These high rates have placed a significant burden on the Company's residential ratepayers without any formal opportunity for them or their representatives to participate in public evidentiary rate hearings. In 2011, Alabama residential utility bills (rates multiplied by the amount electricity consumed), which are heavily influenced by Alabama Power's rates, were the second highest in the nation, after Hawaii, and neither Alabama Power nor the PSC have a commitment to assisting consumers with significant energy efficiency programs, which could lower electricity use.[39] Also, in 2011 Alabama had the second highest annual residential cost of electricity as a percentage of the state's median annual income – both regionally in the South and nationally, as seen in Figures 7 and 8.

Commercial Rates

Alabama Power Company also has extremely high rates for commercial users of electricity. As seen in Figure 9, Alabama Power Company had the highest average commercial price per KWh compared to the average prices paid by customers of IOUs in each of the other southern states during the years 2008-2011. In fact, Alabama Power's average commercial electricity price per KWh was approximately 12 percent higher than the average price paid by commercial customers of IOUs in the other southern states in this comparison.

Alabama Power's average commercial price per KWh during the four year period 2008-2011 also was approximately 12 percent higher than the commercial prices charged by the other Southern Co. electric operating affiliates, as is shown in Figure 10 on the next page.

Industrial Rates

As shown in Figure 11 on the next page, Alabama Power Company's average price for industrial users of electricity during the years 2008-2011 was near the middle of the range of prices paid by the industrial customers of the IOUs in the 10 southern states included in this comparison.

Thus, the prices per KWh paid by industrial customers of the IOUs in Virginia,

Figure 7: Average Annual Residential Cost of Electricity among Southern States in 2011 as a Percentage of the State's Median Income[40]

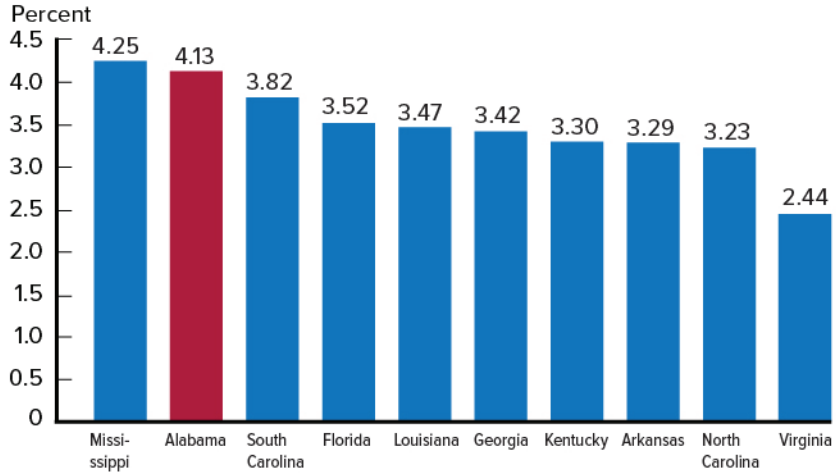


Figure 8: Average Annual Residential Cost of Electricity among All 50 States in 2011 as a Percentage of the State's Median Income

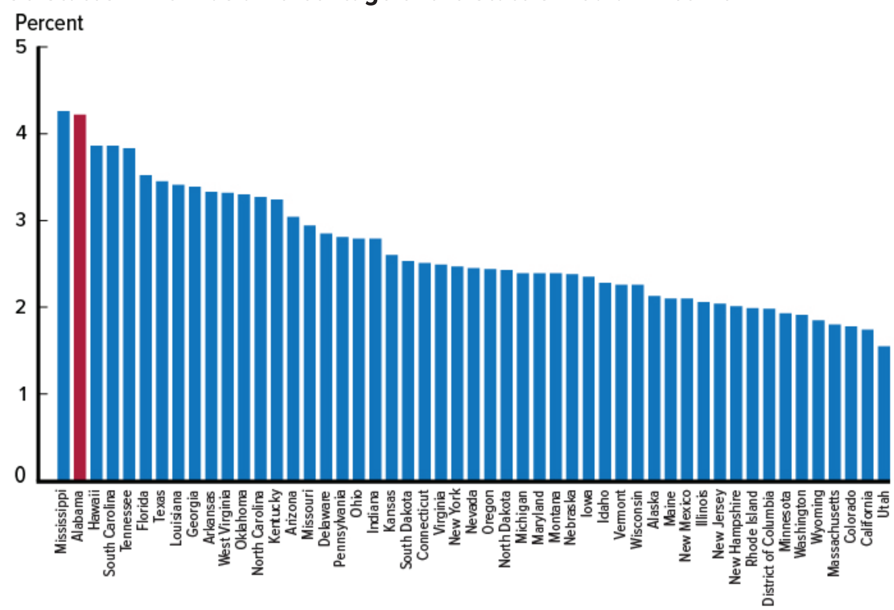
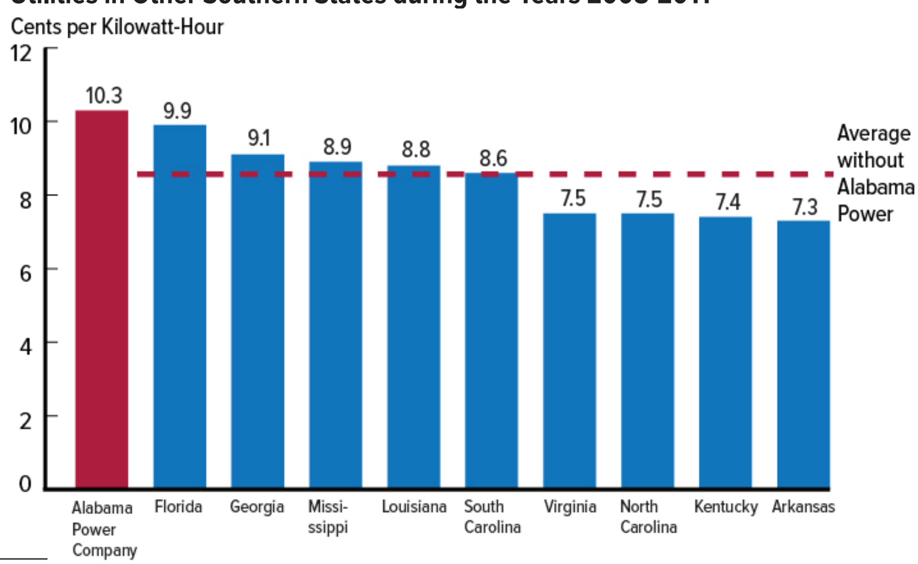


Figure 9: Average Price per KWh Paid by Commercial Customers of Alabama Power Company and the Customers of the Investor-Owned Utilities in Other Southern States during the Years 2008-2011



39 See http://www.eia.gov/electricity/sales_revenue_price/.

40 The sources for the data in Figures 7, 8 and 12 are http://www.eia.gov/electricity/sales_revenue_price/ and http://www.census.gov/hhes/www/income/data/statemedian/.

Arkansas, North Carolina, South Carolina and Kentucky during the years 2008-2011 were, on average, lower than the prices paid by industrial customers of Alabama Power Company.

Figure 12 then shows that the prices paid during the years 2008-2011 by industrial customers in the State of Alabama, which are heavily influenced by Alabama Power's rates, were, on average, slightly below the median of the industrial rates in all of the 50 United States.

There is no evidence that the use of the Rate RSE and Rate CNP formula rate mechanisms in place of formal evidentiary hearings contributes in any way to the state's relative industrial electricity prices. In fact, Mississippi and Louisiana, two states that like Alabama have adopted formula rate mechanisms, have higher industrial rates. At the same time, 19 states nationwide, including five Southern states, have lower industrial electricity rates than Alabama. These include states that have not eliminated public participation and formal public evidentiary hearings from the ratemaking process. Clearly, factors other than the use of formula rate mechanisms like the Rate RSE are responsible for the rates charged to industrial customers of electricity in Alabama and other states.

CONCLUSION

All three of the regulatory processes considered in this Report (Rate RSE, Rate CNP and IRP) lack any public participation, true accountability and transparency. The Commission's isolation in these processes leads to secretive pro-utility decisions that fail to balance the interests of shareholders and ratepayers. As a monopoly, Alabama Power Co. has enjoyed this process since the early 1980s and seems perfectly happy to keep it in place because it benefits the company so greatly. However, the current regulatory system in Alabama is unfair to customers, is no longer needed, unjustifiably rewards the company and is costly to the citizens of the state. The Commission should investigate moving back to more traditional ratemaking with periodic rate cases and public involvement in the rate-setting process.

Figure 10: Average Revenue per Commercial KWh for each of the Southern Company Operating Utilities during 2008-2011

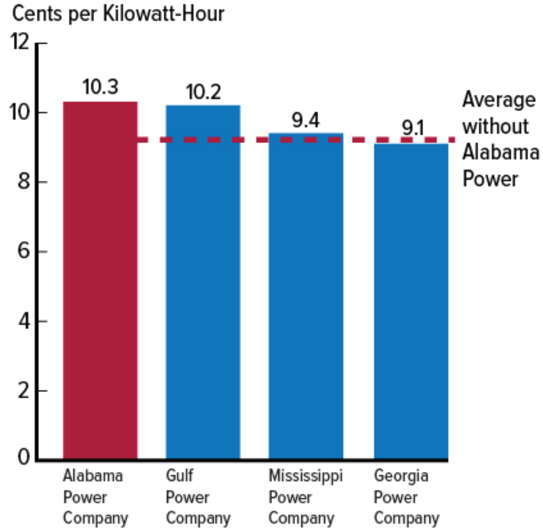


Figure 11: Average Price per KWh Paid by Industrial Ratepayers of Alabama Power Company and the Investor-Owned Utilities in Southern States During the Years 2008-2011

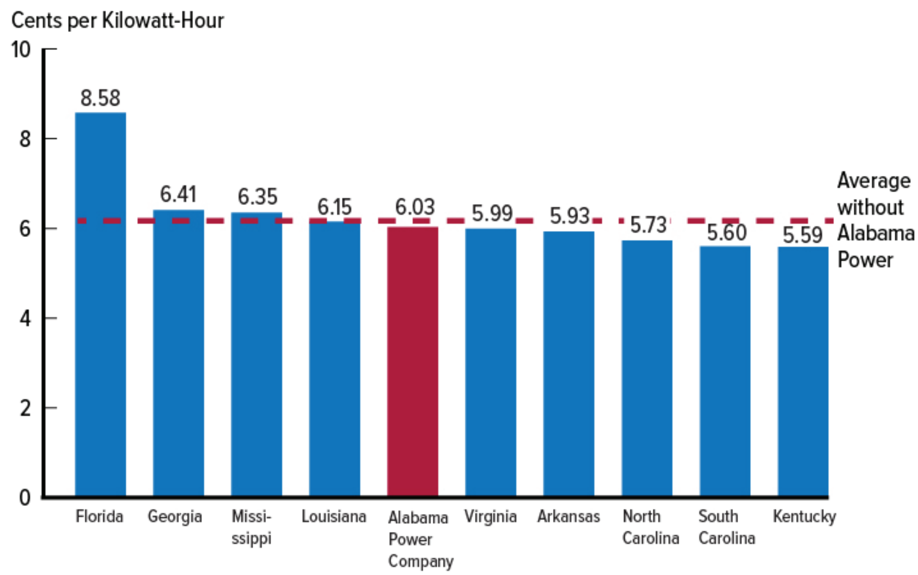
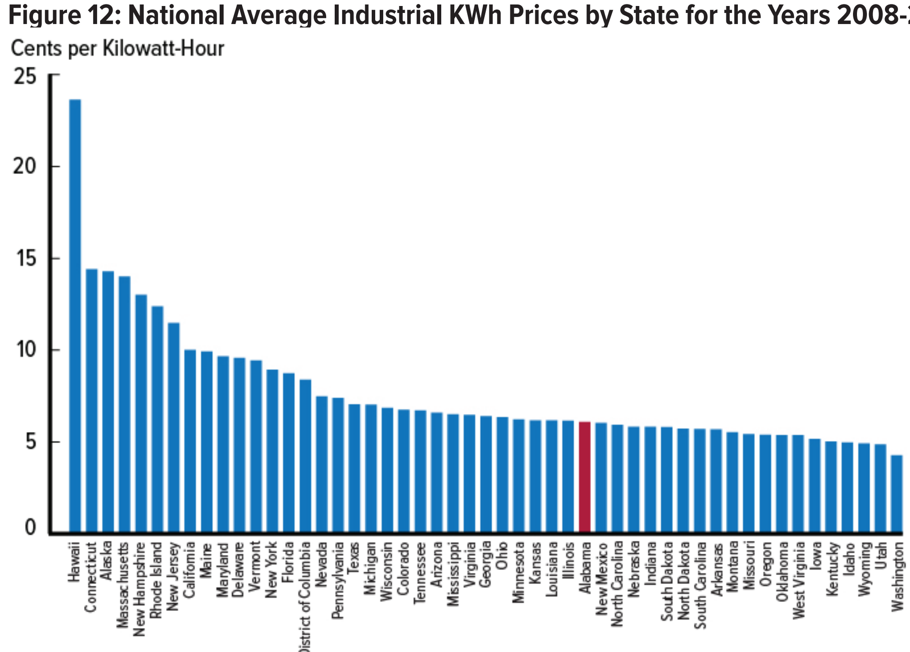


Figure 12: National Average Industrial KWh Prices by State for the Years 2008-2011



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ALABAMA POWER
A SOUTHERN COMPANY

April 6, 2011

Ms. Kirsten Bryant
Executive Director
GASP
732 Montgomery Hwy #405
Birmingham, AL 35216

Re: Integrated Resource Plan

Dear Ms. Bryant:

I was asked to respond to your letter to Charles McCrary requesting a copy of Alabama Power's Integrated Resource Plan (IRP). As we discussed last summer in connection with your previous request, Alabama Power's IRP is a non-public document and we do not release copies of private and proprietary business records.

As we did during our meetings last summer, we can generally discuss our resource planning process and major components of our future plans. Obviously, there is a great deal of potential change affecting our generation resources arising from various regulatory proposals. The outcome and uncertainty surrounding those regulatory proposals makes the planning process very challenging and fluid. Despite these challenges and as we have done for decades, we will continue to seek a mix of generation resources that allows us to provide affordable and reliable energy to our customers in a manner that meets all environmental requirements with an adequate margin of safety.

We will be happy to meet with you again if you have specific questions regarding our resource planning process that you would like to discuss further. In the meantime, you can find information about our generating plants and our mix of generation resources on our website, www.alabamapower.com. I would also encourage you to take a look at the updated environmental pages on the website which include details about our investments in environmental controls and the significant levels of emission reductions we have achieved over the past decade.

Thank you again for your interest in Alabama Power.

Sincerely,

Matthew W. Bowden
Vice President
Environmental Affairs