

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION
MONTGOMERY, ALABAMA**

In Re:)
)
)
MEDIA COVERAGE PLAN)
FOR FORMAL HEARINGS) **Informal Docket U-5329**
OF THE ALABAMA PUBLIC)
SERVICE COMMISSION)
)

COMMENTS SUBMITTED BY GASP, ENERGY ALABAMA, AND SIERRA CLUB

I. Introduction

Good governance requires transparent proceedings and well-informed citizens. While many states’ public service commissions livestream their proceedings,¹ Alabama proposes to do so only when Alabama Power Company (hereinafter “Alabama Power”), the Commissioners, Administrative Law Judge, and all other parties, witnesses and attorneys consent to such livestreaming, with no limits on when or why that consent can be withheld. Moreover, Alabama proposes that Alabama Power, and any other party, witness or attorney, be able to rescind the ability to livestream at any point during the hearing, for any reason. The Media Coverage Plan is not only unconstitutional and unlawful, but also contravenes the *public*-facing and *public*-serving role of Alabama’s *Public Service Commission* (hereinafter “PSC”).

Both the First Amendment to the U.S. Constitution and the Alabama Open Meetings Act prohibit the Alabama PSC from unilaterally deciding—or delegating to parties, witnesses or

¹ As just some examples, public service commissions in Connecticut, Florida, Georgia, Maryland, Massachusetts, Mississippi, New York, Rhode Island, South Carolina, Virginia and West Virginia all livestream their hearings.

attorneys the decision—whether persons or media outlets are licensed to record hearings, as well as the power to revoke that license at will.

The PSC Media Coverage Plan also makes for bad policy, as it penalizes Alabama Power customers who cannot attend hearings in person—possibly because they cannot afford to travel to Montgomery, take multiple days off of work to attend a hearing, or physically fit into an overcrowded hearing room. When APC’s most recent public hearing began on March 9, 2020, the hearing room did not have enough seats, or even enough standing room, to accommodate all of the members of the public who wanted to attend. Customers who care enough about their utility’s expansion plans to travel to the PSC’s offices in Montgomery should have a right to hear the ostensibly public proceedings taking place there.

In many ways, utilities’ proceedings are already far less open and transparent in Alabama than in neighboring states. For example, Alabama Power conducts its Integrated Resource Plan (“IRP”) process privately, while the nearby states of Georgia, North Carolina, South Carolina, Mississippi, Virginia and West Virginia, among other states, have open and public IRP processes. Alabama Power—in contrast with utilities in Georgia, Mississippi, North Carolina, South Carolina, Virginia, West Virginia and other states—regularly raises its rates without holding public hearings on rate increases. When Alabama Power does appear before the PSC, such as in its March 2020 hearing, the PSC does not provide individual members of the public with any opportunities to speak or submit questions or comments for consideration. In contrast, individuals are permitted to voice their views during hearings before public service commissions in Florida, Georgia, Mississippi, North Carolina, South Carolina, Virginia and West Virginia, among other states.

Gasp, Energy Alabama and Sierra Club (hereinafter “Commenters”) provide the following Comments on the Alabama PSC Media Coverage Plan (hereinafter the “Media Coverage Plan”).

II. Background on Commenters

Energy Alabama is a 501(c)(3) nonprofit organization representing the interests of the public in Alabama with a mission to accelerate the state’s transition to sustainable energy. Energy Alabama recognizes the clear benefits of sustainable energy, which include lowering energy bills for residents of the State of Alabama, boosting Alabama’s economy, and reducing Alabama’s use of fossil fuels.

Energy Alabama has an interest in, has intervened in, and has actively participated in proceedings before the Alabama PSC, including, but not limited to, Docket 32953 and Docket U-4226. Therefore, Energy Alabama is directly affected by the PSC Media Coverage Plan. Energy Alabama was blocked from communicating (using devices such as smartphones, tablets or laptop computers) during the formal public hearings for Docket 32953 held March 9-11, 2020 with its legal counsel, other staff members of the organization, and the organization’s members. This infringement impeded Energy Alabama’s ability to represent its members’ interests and consequently led to a weakening of the record in Docket 32953.

Gasp is a 501(c)(3) nonprofit health advocacy organization with a mission to advance healthy air and environmental justice in Alabama. Gasp strives to reduce air pollution and to educate the public on the health risks associated with poor air quality in order to secure the right of Alabamians to breathe clean air. Gasp brings this action on behalf of itself and its members.

Gasp has an interest in and has actively participated in proceedings before the Alabama

PSC, including, but not limited to, Docket 32953 and Docket U-4226. Therefore, Gasp is directly affected by the PSC Media Coverage Plan. Gasp was blocked from communicating (using devices such as smartphones, tablets or laptop computers) during the hearing with its legal counsel, other staff members of the organization, and the organization's members during the formal public hearings for Docket 32953 held March 9-11, 2020. This infringement impeded Gasp's ability to represent its members' interests and consequently led to a weakening of the record in Docket 32953.

Sierra Club, the nation's largest and oldest environmental nonprofit organization, aims to improve environmental quality for its many members who live, recreate, work and purchase electricity in Alabama. Sierra Club recently participated in a hearing in Docket 32953 before the Alabama PSC. As occurred with Energy Alabama and Gasp, Sierra Club's ability to communicate was restricted during that hearing, and its members were similarly prevented from communicating with counsel. Thus, Sierra Club is directly affected by the PSC Media Coverage Plan.

III. The PSC Media Coverage Plan Is Not a “Reasonable” Rule under the Alabama Open Meetings Act Because It Is Unconstitutional and Contravenes the Common Practices Adopted by Alabama’s Sister States

The Alabama Open Meetings Act provides that “the deliberative process of governmental bodies shall be open to the public during meetings, as defined in Section 36-25A-2(6). Except for executive sessions permitted in Section 36-25A-7(a) or as otherwise expressly provided by other federal or state laws or statutes, all meetings of a governmental body shall be open to the public and no meetings of a governmental body may be held without providing notice pursuant to the

requirements of Section 36-25A-3.” Ala. Code § 36-25A-1. The Open Meetings Act also states that “a meeting of a governmental body, except while in executive session, may be openly recorded by any person in attendance by means of a tape recorder or any other means of sonic, photographic, or video reproduction provided the recording does not disrupt the conduct of the meeting. The governmental body may adopt *reasonable* rules for the implementation of this section.” Ala. Code § 36-25A-6 (emphasis added).

Title 37 of the Alabama Code establishes the PSC as “consisting of a president and two associates who shall be competent persons and qualified electors of this state.” Ala. Code § 37-1-1. Title 37 of the Alabama Code also references the need for the public information officer of the PSC to give advance notice of public meetings. *See* Ala. Code § 37-1-8. The Alabama PSC is subject to the Open Meetings Act, as it is a “commission[] of the executive or legislative department of the state” and “expend[s] or appropriate[s] public funds.” Ala. Code § 36-25A-2(4). Additionally, because the PSC is subject to the Open Meetings Act, any person may record a meeting of the PSC in a non-disruptive manner, and the PSC may adopt only *reasonable* rules for recordings of its meetings. *See* Ala. Code § 36-25A-6 (emphasis added).

Commenters specifically object to Paragraphs 3,² 4,³ 14,⁴ 15⁵ and 18⁶ of the Media

² “Persons desiring to broadcast, record, or photograph formal hearings of the Alabama Public Service Commission must make a timely written request to the Secretary of the Alabama Public Service Commission (the “Secretary”) at least five (5) days before the date of the formal hearing for which coverage is requested. A form for such purpose is attached to this Media Coverage Plan as Exhibit A. The Secretary shall then seek to obtain written consent to media coverage from the parties and attorneys involved in the formal hearing as provided in paragraph 4.” Alabama Public Service Commission, *Media Coverage Plan* (2020) available at <https://tinyurl.com/y7y5uqde>.

³ “Written consent from the parties and attorney shall be obtained on a form provided by and filed with the Secretary, a copy of which is attached as Exhibit B to this Media Coverage Plan. When a party’s or an attorney’s written consent to media coverage has been filed with the Secretary, duplicate consent forms for that party or attorney shall not be required for different formal hearings in the same case.” *Id.*

Coverage Plan. We contend the Media Coverage Plan is not a reasonable rule for recording the PSC's meetings because: (1) the Media Coverage Plan is an unconstitutional prior restraint on speech; (2) even if it were not a prior restraint on speech, the Media Coverage Plan would be an unconstitutional time, place and manner restriction; and (3) the Media Coverage Plan deviates from neighboring states' rules regarding public meetings. Sections IV, V and VI of this Comment discuss these three points in greater detail.

IV. Paragraphs 3, 4 and 18 of the PSC Media Coverage Plan Constitute an Unconstitutional Prior Restraint on Speech

A. The First Amendment, by Way of the Fourteenth Amendment, Applies to the State of Alabama, and Thus the PSC, a State Government Agency

The U.S. Constitution is the “supreme Law of the Land,” and “[i]t is emphatically the province and duty of the judicial department to say what the law is.” U.S. Const. art. VI; *Marbury v. Madison*, 1 Cranch 137, 177 (1803). “It follows that the interpretation of the Fourteenth Amendment enunciated by this Court ... is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States ‘any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.’” *Cooper v. Aaron*, 358 U.S. 1, 18 (1958)

[1] “Any party, witness, attorney, Commissioner or presiding Administrative Law Judge may request a cessation of coverage. In such event, the presiding Administrative Law Judge will require the recording and broadcasting to cease.” *Id.*

⁴ “No live audio or video broadcasting or social-media updates of formal hearings are permitted from inside the hearing room. At the discretion of the Secretary, or the Bench, such activity may be permissible in overflow rooms or in other public areas adjacent to the room where the formal hearing is being conducted.” *Id.*

⁵ Digital devices may not be used in the hearing room while formal hearing is in session except by attorneys appearing before the Court and their supportive staff.” *Id.*

⁶ “Any party, witness, attorney, Commissioner or presiding Administrative Law Judge may request a cessation of coverage. In such event, the presiding Administrative Law Judge will require the recording and broadcasting to cease.” *Id.*

(citing U.S. Const. art. VI, § 2).

Since 1925, the Supreme Court has held that the First Amendment's free speech clause applies to the states by way of the Fourteenth Amendment. *Gitlow v. People of the State of New York*, 268 U.S. 652, 666 (1925); *see Cent. Hudson Gas v. Pub. Serv. Comm'n*, 447 U.S. 557, 561 (1980); *Freedman v. State*, 197 A.2d 232, 234 (1964); *rev'd on other grounds*, 380 U.S. 51, 85 (1965). The liberty of the press, and of speech, is within the liberty safeguarded by the Fourteenth Amendment's due process clause from invasion by state action. The Supreme Court found it was impossible to conclude that this essential personal liberty of the citizen was left unprotected by the general guarantee of fundamental rights of person and property. *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716 (1931); *Gitlow*, 268 U.S. at 666. According to the U.S. Supreme Court, the "power of the state stops short of interference with what are deemed to be certain indispensable requirements of the liberty assured." *Olson*, 238 U.S. at 708.

As discussed in greater detail above, because the Alabama PSC is an agency of the State of Alabama, and the First Amendment applies to the State of Alabama, the Alabama Public Service cannot unlawfully restrict speech protected by the First Amendment.

B. The Act of Recording PSC Proceedings Is Protected Speech Under the First Amendment

The Supreme Court has held that conduct can be a form of protected speech. *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 933–34 (1982) (holding that giving speeches is protected by the First Amendment); *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971) ("This Court has often recognized that the activity of peaceful pamphleteering is a form of communication protected by the First Amendment."). Nonverbal conduct is protected by the

First Amendment when the speaker has “[a]n intent to convey a particularized message . . . and in the surrounding circumstances the likelihood was great that the message would be understood by those who viewed it.” *Spence v. Washington*, 418 U.S. 405, 410-411 (1974). In *Blackston v. Alabama*, the Eleventh Circuit found that prohibiting plaintiffs from filming a public committee violated their First Amendment rights. 30 F.3d 117, 120 (11th Cir. 1994).

The conduct of recording a PSC meeting, which is protected by statute in Alabama, is also constitutionally protected speech. When exercising one’s right to record a public meeting, such as a PSC meeting, one is engaged in “[a]n intent to convey a particularized message,” and being that such message is in the form of a video recording, there is a strong “likelihood [...] that the message would be understood by those who viewed it.” *See Spence*, 418 U.S. at 410-411. If the PSC were to outright prohibit such protected speech—which it does not do, despite dancing close to that line—the PSC would clearly violate the First Amendment. *See Blackston*, 30 F.3d at 120. Regardless, the Media Coverage Plan, as it is currently written, would violate the First Amendment by serving as an unconstitutional prior restraint on speech.

C. Paragraphs 3, 4 and 18 of the PSC Media Coverage Plan Create a Prior Restraint on Speech That Violates the First Amendment

Laws requiring the receipt of licenses before one can engage in protected speech, and providing state governmental officials with “arbitrary power or an unfettered discretion” over whether to award such licenses, are considered “prior restraints.” *See Cox v. State of New Hampshire*, 312 U.S. 569, 766 (1941). The U.S. Supreme Court subjects prior restraints to very strict scrutiny, and has held that “[a]ny prior restraint on expression comes to this Court with a ‘heavy presumption’ against its constitutional validity.” *Keefe*, 402 U.S. at 419 (quoting another

source) (internal quotation marks omitted). A prior restraint on pure speech can be justified only if the speech to be forbidden threatens a constitutional value even more precious than the First Amendment. *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 227 (6th Cir. 1996); see also *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969) (“It is settled by a long line of recent decisions of this Court that an ordinance which ... makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.”). The *Freedman* principle prohibits states from requiring persons to invoke unduly cumbersome and time-consuming procedures before they may exercise their constitutional right to free expression. *Freedman v. Maryland*, 380 U.S. 51, 58-61 (1965).

Paragraph 3 of the PSC Media Coverage Plan requires that “[p]ersons desiring to broadcast, record or photograph formal hearings of the Alabama PSC [] make a timely written request to the Secretary [...] at least five (5) days before the date of the formal hearing for which coverage is requested.” This effectively establishes a licensing system; in order to engage in the protected expression of recording PSC meetings, persons and media outlets must receive advance permission to do so.

Because the Media Coverage Plan improperly accords the PSC unfettered discretion over whether to grant licenses, a power that the PSC proposes to extend to Alabama Power as well, it operates as a prior restraint. Neither Paragraphs 3 nor 18 of the PSC Media Coverage Plan provides state officials with any standards dictating when or why to grant licenses. Instead, the

Media Coverage Plan allows the PSC to deny a license to record, broadcast or photograph proceedings at any time, for apparently any reason. Even after the PSC has granted this license, Paragraph 18 authorizes Commissioners, Administrative Law Judges and Alabama Power to revoke this license at any time, for any reason. Even more problematically, Paragraph 18 requires the PSC to revoke licenses provided to persons or media outlets upon the request of any party, attorney or witness, which can occur at any time, for any reason. Thus, the PSC Media Coverage Plan is a prior restraint on speech.

There is a heavy presumption against the constitutional validity of prior restraints of expression, and the PSC failed to meet its burden of showing justification for the imposition of such a restraint. *See Keefe*, 402 U.S. at 419. The U.S. Supreme Court has indicated very few scenarios that justify a prior restraint. In *Near v. Minnesota*, the Chief Justice indicated three exceptions to the rule of no prior restraint: when the nation is at war, obscenity and sedition. *Near*, 283 U.S. at 716. Clearly, the PSC cannot show that it has a substantial interest in protecting against any of these concerns through Paragraphs 3 or 18 of its Media Coverage Plan. Accordingly, the PSC could not meet its burden of proof that Paragraphs 3 and 18 are supported by a significant government interest.

Moreover, the Plan runs afoul of the *Freedman* principle. Paragraph 3 clearly requires persons, who otherwise have the right to record under Ala. Code § 36-25A-6, to invoke unduly cumbersome and time-consuming procedures before they may exercise their constitutional right of free expression. *Freedman*, 380 U.S. at 58-61. Even if a request five days in advance of a formal hearing in which a person or media outlet wanted to exercise its right to record a public meeting were reasonable, Paragraph 3 creates additional procedures. The form in Exhibit A is

not cumbersome; however, that such a request must also be consented to by a “party” or an “attorney involved in the formal hearing” is clearly both cumbersome and time-consuming—and problematically, purports to extend to third parties the authority to unlawfully restrain speech. Approval by the Secretary allows for the “uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official.” Surely the additional requirement of consent from a “party” or an “attorney” would constitute “an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.” *Shuttlesworth*, 394 U.S. at 151 (quoting another source) (internal quotation marks omitted). Accordingly, Paragraph 3 of the PSC Media Coverage Plan clearly violates the *Freedman* principle, which further illustrates it is an unlawful prior restraint on speech.

Because there is a heavy presumption that prior restraints on speech violate the First Amendment, and because the First Amendment applies to the State of Alabama, Paragraphs 3 and 18 of the PSC Media Coverage Plan are profoundly concerning to Commenters. Commenters feel strongly that Paragraph 3 and 18 constitute an unlawful prior restraint on speech. We think it highly unlikely that Paragraphs 3 and 18 of the PSC Media Coverage Plan can be justified by saying that a person’s right to record a public meeting should be forbidden because it threatens a constitutional value even more precious than the First Amendment. *See Procter & Gamble Co.*, 78 F.3d at 226-27 (stating that national security and Sixth Amendment concerns failed to justify a prior restraint). Certainly, the Commission’s proposed media plan does not identify any such constitutional value. Accordingly, we urge the PSC to eliminate Paragraphs 3 and 18 of the PSC Media Coverage Plan in their entirety.

V. Even If the PSC Media Coverage Plan Were Not a Prior Restraint Providing the PSC with Unfettered Discretion, It Would Be an Unconstitutional Time, Place and Manner Restriction

If a court were to consider the PSC's Media Coverage Plan and conclude it is not a prior restraint, the Media Coverage Plan would be classified as a time, place and manner regulation on speech, because it limits when persons or media outlets may engage in protected speech without restricting the content of that speech. *See, e.g., Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288 (1984); *Grayned v. City of Rockford*, 408 U.S. 104 (1972).

"[R]egulations of the time, place, and manner of expression" are constitutional only when they "are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983).

The burden would be on the PSC to show that the prior restraint on speech in Paragraphs 3 and 18 of the Media Coverage Plan is supported by a significant government interest. While the term "significant" is not defined, it is difficult to imagine the PSC's interest in allowing parties, attorneys and witnesses to unilaterally prevent reporting of its proceedings would be deemed significant. The PSC cannot be deemed to have an interest in maintaining the privacy of its public meetings, as the PSC is undisputedly a public forum. Preventing disruption in public proceedings could constitute a significant interest, but Paragraph 2 protects that particular interest, whereas Paragraphs 3 and 18 do not.

Paragraphs 14 and 15 of the PSC Media Coverage Plan unreasonably limit alternative avenues of communication, thus failing the fourth prong of the *Perry* test. Paragraph 14 prohibits

certain types of recording (that are otherwise allowed under Ala. Code § 36-25A-6). Paragraph 15 prohibits the use of any devices that would be technologically capable of not only communication, but also the recording allowed under Ala. Code § 36-25A-6. Representatives from Gasp, Energy Alabama and Sierra Club were unable to communicate with their attorneys during the formal public hearings for Docket 32953 held in March 2020, as a result of Paragraph 15. Further, although the prohibited activity in Paragraph 14 may be allowed in an “overflow room,” the Secretary has unfettered discretion over whether to allow such activity. The Media Coverage Plan imposes restrictions in Paragraphs 3, 4 and 18 on “broadcast[ing], record[ing] or photograph[ing]” public meetings. Commenters contend that the restrictions in Paragraphs 14 and 15 unreasonably and unconstitutionally limit the channels of communication that could serve as alternatives to broadcasting, recording or photographing the PSC’s meetings. Thus, even if the PSC Media Coverage Plan were not an unconstitutional prior restraint, it would fail the *Perry* test for regulations on the time, place and manner of expression.

VI. The Unreasonableness of Paragraphs 3, 4, 14, 15 and 18 Is Clearly Apparent When Contrasted with the PSCs’ Media Rules in Mississippi and Georgia, States That Regulate Other Southern Company Subsidiaries

A. The Georgia PSC Does Not Place Any Restrictions on the Use of Social Media or Electronic Devices in Hearing Rooms, and Livestreams All of Its Meetings

The Georgia PSC livestreams all of its meetings, including formal hearings, on the internet.⁷ The Georgia PSC prominently displays on its website the ability for visitors to watch hearings live and to watch any previous meeting or hearing of the PSC.

⁷ See *Livestream*, Georgia Public Service Commission, <http://livestream.com/psc> (last visited May 14, 2020).

Further, the Georgia PSC does not place any restrictions on the use of electronic devices inside a hearing room for any type of meeting. Members of the media, including print, radio and television, are allowed inside the hearing room with equipment. Parties to the case are not allowed to block or otherwise stop any person or media outlet from recording or reporting from inside the hearing room.

The Georgia PSC does not place any restriction on the use of social media by any person or media outlet present at a PSC hearing or meeting. The Georgia PSC rules do not require anyone wishing to broadcast, record or photograph hearings to submit a form in advance (much less is there an added condition of requiring further approval from “parties and the attorney” involved in the hearing).

B. The Mississippi PSC Does Not Place Any Restrictions on the Use of Social Media or Electronic Devices in Hearing Rooms, and Livestreams All of Its Meetings

The Mississippi PSC livestreams all of its meetings, including formal hearings, on YouTube.⁸ The Mississippi PSC prominently displays on its website the ability for visitors to watch hearings live, and its YouTube channel allows visitors to watch any previous meeting or hearing of the PSC.

The Mississippi PSC does not place any restrictions on the use of electronic devices inside a hearing room for any type of meeting. Members of the media, including print, radio and television, are allowed inside the hearing room with equipment. Parties to the case are not allowed to block or otherwise stop any person or media outlet from recording or reporting from inside the hearing room. The Mississippi PSC does not place any restriction on the use of social

⁸ See *Mississippi Public Service Commission*, YouTube, http://www.youtube.com/channel/UCh7aLORd63J2_xhIp9uqKHQ (last visited May 14, 2020).

media by any person or media outlet present at a PSC hearing or meeting.

The Mississippi PSC has published a “Ratepayer Bill of Rights,” which states, “Ratepayers shall have the right to view or listen to Mississippi PSC hearings and docket calls that are held in the PSC’s Courtroom via the Internet.”⁹ The Mississippi PSC rules do not require anyone wishing to broadcast, record or photograph hearings to submit a form in advance (much less is there an added condition of requiring further approval from “parties and the attorney” involved in the hearing).

C. Given That the Alabama PSC Media Coverage Plan Is More Restrictive than the Rules Issued by PSCs That Regulate Other Southern Company Subsidiaries, Paragraphs 3, 4, 14, 15 and 18 Are Unreasonable and Due to Be Revised

As is discussed in Sections IV and V of this Comment, Paragraphs 3, 4, 14, 15 and 18 of the Media Coverage Plan are unreasonable due to multiple constitutional issues. Moreover, the Media Coverage Plan is unreasonable because Georgia and Mississippi’s PSCs do not have any requirements to request to record public meetings (or a second layer of approval of such requests by parties and their attorneys).

Further, where one could reasonably assume some level of communication or coordination goes on between PSCs and PUCs across the country, and Alabama PSC Commissioners have the same ability to access the internet as Commenters who located the Georgia and Mississippi PSC rules, it is unclear why the Alabama PSC has chosen to create a much more restrictive Media Coverage Plan. Given that Mississippi and Georgia impose none of the restrictions complained of in this Comment—namely, requiring requests to record public

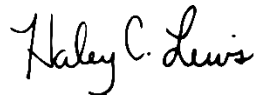
⁹ See *Bill of Rights*, Mississippi Public Service Commission, <http://www.psc.ms.gov/exec-sec/rights> (last visited May 14, 2020).

meetings, and restricting digital devices in the hearing room—it is clear that the Alabama PSC Media Coverage Plan is unreasonably restrictive. This issue is compounded by the fact that the Alabama PSC, unlike the Georgia and Mississippi PSCs, does not broadcast a livestream of its meetings. Taken together, Paragraphs 3, 4, 14, 15 and 18 are not reasonable, and thereby violate § 36-25A-6 of the Alabama Open Meetings Act. We suggest that these paragraphs be removed in their entirety.

VII. Conclusion

Under Alabama law, persons are afforded the right to openly record public meetings of state agencies, including the PSC. With this Media Coverage Plan, the PSC is attempting to exercise its right to implement rules regarding a person's right to record its public meetings. However, Commenters contend that the PSC neglected to implement *reasonable* rules, as the state statute requires. Moreover, Paragraphs 3, 4 and 18 create an unlawful prior restraint on speech that infringes on not only the statutory rights of people wishing to record PSC meetings, but also their First Amendment rights. Additionally, given that PSCs in Georgia and Mississippi have no such similar restrictions, the PSC Media Coverage Plan is further shown to be unreasonable. As such, Commenters urge the PSC to eliminate Paragraphs 3, 4, 14, 15 and 18 in their entirety from the PSC Media Coverage Plan.

Respectfully submitted this 15th day of May, 2020.



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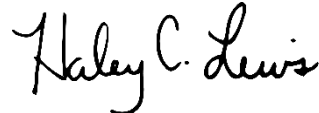
Appendix: Comparing Alabama PSC Media Coverage Plan to Other States' Policies

Process	State											
	AL	CT	FL	GA	MA	MD	MS	NC	NY	SC	VA	WV
Livestream public PSC meetings		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Allow use of digital devices by public and/or media during PSC meetings		✓	✓	✓	N/A	✓	✓	✓	N/A	✓	✓	✓
Allow public comment at PSC hearings or through formal comment process		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Hold (or are moving toward) public IRP (or state variant)			✓	✓	N/A	N/A	✓	✓	N/A	✓	✓	✓
Hold public PSC hearings for rate increases		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2020, a copy of Gasp, Energy Alabama, and Sierra Club's Comments on the Media Coverage Plan for Formal Hearings of the Alabama Public Service Commission was served upon the following by electronic mail, electronic submission and/or placing a copy of same in the United States Mail, postage prepaid to:

Mr. Walter Thomas
Secretary
Alabama Public Service Commission
P.O. Box 304260
100 North Union Street
Suite 950
Montgomery, AL 36130-4260



Attorney for Gasp