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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a limited proceeding to approve large load tariff, by Duke Energy Florida, LLC.	DOCKET NO. 20260064-EI ORDER NO. PSC-2026-0264-PCO-EI ISSUED: July 28, 2026

The following Commissioners participated in the disposition of this matter:

GABRIELLA PASSIDOMO SMITH, Chairman
GARY F. CLARK
MIKE LA ROSA
BOBBY PAYNE
ANA ORTEGA

ORDER DENYING OFFICE OF PUBLIC COUNSEL'S AND FLORIDA RISING, INC.'S JOINT MOTION TO DISMISS

BY THE COMMISSION:

Background

On April 22, 2026, Duke Energy Florida, LLC (DEF or Utility) filed a petition for a limited proceeding seeking approval of a new Large Load Customer Policy (LLCP), a Large Load Customer Agreement (LLCA), and revised Contribution in Aid of Construction (CIAC) tariffs. DEF states that this filing complies with newly passed state legislation, Senate Bill 484 (SB 484). The Governor signed SB 484 into law on May 7, 2026, which takes effect on July 1, 2026 (Chapter No. 2026-65, Laws of Florida).

The LLCP and associated LLCA establish a minimum contract term, minimum monthly bill provisions, security requirements, and early termination provisions. Customers subject to the LLCP must also pay a non-refundable system impact fee. Finally, the LLCP contains a CIAC provision requiring customers to pay 100 percent of the estimated costs to extend service in advance.

Pursuant to the proposed LLCP, potential large load customers would take service under DEF's existing GSD-1 or GSDT-1 rate schedules until a new rate class is established as anticipated in DEF's next rate case filing. In this filing, a large load customer is defined as a customer with a Peak Contract Demand forecast to be greater than or equal to a Monthly Maximum Demand of 50 Megawatts (MW) at a single location. Customers meeting this criteria would be subject to the LLCP and would need to execute the LLCA. Customers already existing on the Utility's system as of December 31, 2025, that meet the demand requirements would not be subject to these additional requirements.

The Office of Public Counsel's (OPC) intervention in this docket was acknowledged on May 8, 2026. Florida Rising, Inc.[1] (FR),[2] PCS Phosphate – White Springs (PCS Phosphate),[3] and the Florida Industrial Power Users Group[4] were granted intervention in this docket subject to proof of standing or stipulations that there are sufficient facts to support all elements for standing.

On May 26, 2026, OPC and FR (collectively, Movants) filed a Joint Motion to Dismiss (Joint Motion) requesting we dismiss DEF's petition for failing to meet the requirements of SB 484. On June 2, 2026, DEF and PCS Phosphate separately filed responses to the Joint Motion requesting we deny the Joint Motion and let the case proceed to an evidentiary hearing.

We have jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

Decision

Standard of Review

A motion to dismiss raises as a question of law the sufficiency of the facts alleged to state a cause of action.[5] In order to sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition still fails to state a cause of action for which relief may be granted.[6] The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations.[7] A sufficiency determination should be confined to the petition and documents incorporated therein, and the grounds asserted in the motion to dismiss.[8]

To evaluate a motion to dismiss, all allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted.[9] The "[d]ismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured."[10]

Section 120.57(1)(h), F.S., provides that a summary final order shall be granted if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that (1) no genuine issue as to any material fact exists, and (2) the

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[1] Order No. PSC-2026-0144-PCO-EI.
[2] Order No. PSC-2026-0233-PCO-EI.
[3] Order No. PSC-2026-0234-PCO-EI.
[4] Order No. PSC-2026-0238-PCO-EI.
[5] *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).
[6] *Id*. at 350.
[7] *Matthews v. Matthews*, 122 So. 2d 571 (Fla. 2nd DCA 1960).
[8] *Barbado v. Green and Murphy, P.A.*, 758 So. 2d 1173 (Fla. 4th DCA 2000).
[9] *See, e.g. Ralph v. City of Daytona Beach*, 471 So. 2d 1, 2 (Fla. 1983); *Orlando Sports Stadium, Inc. v. State of Florida ex rel. Powell*, 262 So. 2d 881, 883 (Fla. 1972); *Kest v. Nathanson*, 216 So. 2d 233, 235 (Fla. 4th DCA 1986); *Ocala Loan Co. v. Smith*, 155 So. 2d 711, 715 (Fla. 1st DCA 1963).
[10] Section 120.569(2)(c), F.S.

moving party is entitled as a matter of law to the entry of a final summary order. The purpose of a summary final order is to avoid the expense and delay of trial when no dispute exists concerning the material facts.

<u>Parties' Positions</u>

In the Joint Motion, the Movants argue that DEF's petition facially violates Florida law because the tariff does not contain a specific rate, the rate under which large load customers will take service does not comply with SB 484, and the specification of "firm" load is an impermissible narrowing of the statutory language.

In its response in opposition, DEF argues that the Joint Motion presupposes interpretations of SB 484 that have yet to be applied. DEF notes that tariffs are more broad than a simple rate schedule, claims that the rate under which large load customers will take service will not be shifted to the general body of ratepayers, and argues that the statute specifically recognizes that the company retains "the right to curtail or interrupt service. . . ."

PCS Phosphate also filed a written response opposing the Joint Motion and argues that whether a utility's petition meets the requirements of a statute is a mixed question of fact and law appropriate for hearing.

<u>Analysis</u>

This case is the first time we will be interpreting the new Chapter 2026-65, Laws of Florida, which the Governor approved on May 7, 2026. The Joint Motion seeks to assume an interpretation of the new law without any opportunity for the parties to solicit facts, argument, and evidence. There are mixed questions of facts and law that have been raised and, thus, to determine whether the criteria set forth in the statute is met, we would benefit from allowing the case to go forward with a hearing. For this reason, the Joint Motion is denied. The individual arguments from the Joint Motion are discussed more fully below.

<u>*Non-Rate Tariff*</u>

The Movants argue that SB 484 requires, "[a]t barest minimum, any tariff must actually contain the specific numeric rate or rates at which customers taking service under the tariff will be charged for electric service." DEF argues that the statute requires a "minimum tariff and service requirements." We have previously approved tariffs without a specific rate.[11] The parties could provide additional evidence and argument at a full hearing that would assist our resolution of this argument. Thus, we do not dismiss DEF's petition on this ground.

[11] *See, e.g.,* Order No. PSC-2025-0292-PAA-EG, issued July 29, 2025, in Docket No. 20250048-EG, *In re: Petition for approval of proposed demand-side management plan, by Florida Power & Light Company,* and Order No. PSC-2025-0393-TRF-GU, issued October 22, 2025, in Docket No. 20250057-GU, *In re: Petition for approval of tariff modification for equipment financing, by Florida Public Utilities Company*.

GSD-1/GSDT-1 Rate

The Movants argue that by virtue of large load customers being on the GSD-1 or GSDT-1 rate, DEF's petition facially violates "the requirement that they 'reasonably ensure that each large load customer bears its own full cost of service and that such cost is not shifted to the general body of ratepayers.'" DEF argues that because rates for customers have already been set, there is no risk of costs being shifted to the general body. Here, whether each large load customer will bear its own full cost of service under the GSD-1 or GSDT-1 rate is an evidentiary question. Thus, we do not dismiss DEF's petition on this ground.

Load Threshold

The Movants argue that SB 484 imposes a requirement that all customers with an anticipated monthly peak of 50 megawatts or more are subject to the statute, but DEF's proposed tariff falls short by only applying to customers with 50 megawatts or more of *firm* capacity. DEF argues that this is an inaccurate interpretation of the statute, and that the proposed tariff complies with the requirements to "not prevent or otherwise hinder the curtailment or interruption" of service to a large load customer. DEF argues we can exercise our discretion in analyzing the operating characteristics of large load customers requiring firm service and those that are interruptible or curtailable. On this issue, the parties can provide additional argument and evidence that could be introduced via the hearing process. Consequently, we find that this is not a valid ground to dismiss DEF's petition.

Decision

If, when accepting the allegations in the petition as true there remains a genuine issue of material fact, a motion to dismiss should be denied. Here, questions of material fact remain as to the issues raised in the Joint Motion. Therefore, we deny the Joint Motion.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's and Florida Rising, Inc.'s Joint Motion to Dismiss is hereby denied. It is further,

ORDERED that this docket shall remain open pending the Commission's decision on DEF's petition.

By ORDER of the Florida Public Service Commission this 28th day of July, 2026.

ADAM TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MRT/SF

DISSENT

Commissioner Mike La Rosa dissents from the Commission's decision as follows:

I respectfully dissent from the motion to deny the joint motion to dismiss filed by the Office of Public Counsel and Florida Rising regarding Duke Energy's petition for a limited proceeding to approve a large load tariff. The statute requires tariffs to reasonably ensure each large-load customer bears its full cost of service. The statute also requires 50 MW of usage over any 15-minute interval. In my view, the petition appears facially noncompliant with the mandatory statutory requirements of Senate Bill 484 and falls outside the intended scope of the mechanism contemplated under Senate Bill 484.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.