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

CITIZENS' AND FLORIDA RISING, INC.'S
JOINT MOTION TO DISMISS

The Citizens of the State of Florida, by and through the Office of Public Counsel ("OPC") and Florida Rising, Inc. ("Florida Rising"),[1] (collectively "Movants") pursuant to Rule 28-106.204(2), Florida Administrative Code ("F.A.C."), hereby request the Florida Public Service Commission ("Commission") to dismiss the petition for a limited proceeding to approve a large load tariff ("Duke Petition") by Duke Energy Florida, LLC ("Duke"), on the grounds that the Petition does not comply with recently enacted Florida law. In support, Movants state the following:

STANDARD OF REVIEW

A motion to dismiss challenges the legal sufficiency of the facts alleged in a petition to state a cause of action.[2] *Meyers v. City of Jacksonville*, 754 So.3d 198, 202 (Fla. 1st DCA 2000). In determining the sufficiency of a petition, all material factual allegations therein should be

[1] Florida Rising's petition to intervene in this docket, filed on May 5, 2026, is pending.
[2] This motion to dismiss is timely pursuant to Rule 28-106.204(2), F.A.C., because this motion is filed "no later than 20 days after assignment of the presiding officer," with the pre-hearing officer being assigned on May 5, 2026. This Commission previously decided that "[p]ursuant to Rule 28-106.102, F.A.C., a Commissioner serving as the Prehearing Officer is a 'presiding officer' in cases set for hearing at the Commission." *In re: Application for certificate to provide wastewater service in Charlotte County by Environmental Utilities, LLC*, Order No. PSC-2024-0450-PCO-SU at 4 (Fla. Pub. Serv. Comm'n Oct. 16, 2024). Duke has agreed not to object, on the basis that this filing is out of time, if this motion is filed by May 26. Duke's agreement not to object on the basis that this filing is out of time is only applicable to this docket and cannot be used against Duke as precedent in any other proceeding.

assumed to be true. *Id.* This is the standard that the Commission has applied to motions to dismiss under Rule 28-106.204(2), F.A.C. *See, e.g., In re: Application for certificate to provide wastewater service in Charlotte County by Environmental Utilities, LLC*, Docket No. 20240032-SU, Order No. PSC-2024-0450-PCO-SU at 2 (Fla. Pub. Serv. Comm'n Oct. 16, 2024).

FACTUAL BACKGROUND

On April 22, 2026, Duke filed its Petition. In its Petition, Duke requests that the Commission approve its proposed Large Load Customer Policy and proposed Large Load Customer Agreement.

Senate Bill 484, which was enacted by the Florida Legislature this March, was presented to the Florida Governor on May 6, 2026, and signed into law on May 7, 2026. In his signing statement, the governor emphasized that he "signed [the] legislation to protect our citizens and communities from hyperscale data centers," by, among other things, "prevent[ing] data center costs from being passed on to consumers, including electricity costs."[3] SB 484, now entered into the Laws of Florida as Chapter 2026-65,[4] requires Florida's investor-owned electric utilities to establish a large load tariff for the provision of electric service to data centers, and provides with great specificity what minimum requirements the tariff must contain and results achieve.

ARGUMENT

Duke states that its proposal is its attempt at "complying with the new legislation" contained within SB 484 (now contained in Chapter 2026-65, Laws of Florida). Duke Petition at 4. However, as detailed below, because Duke's Petition fails to facially comply with Chapter 2026-65, Laws of Florida, it is due to be dismissed and Duke should be directed to re-file a

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[3] Fla. Exec. Off. of the Gov'r, *Governor Ron DeSantis Signs Law to Protect Floridians From Subsidizing Data Centers* (May 7, 2026), https://www.flgov.com/eog/news/press/2026/governor-ron-desantis-signs-law-protect-floridians-subsidizing-data-centers.
[4] Chapter 2026-65 will be effective July 1, 2026. Ch. 2026-65, § 8, Laws of Fla.

petition that at least, on its face, represents a good faith attempt to comply with what is now Florida law.

Duke's Petition facially violates Florida law with a regulatory scheme that ignores both the text and spirit of the freshly signed SB 484. The new law expressly requires investor-owned utilities, like Duke, to create a large load "tariff" and then specifies particular minimum requirements that such a tariff "must" contain. In relevant part, these requirements include:

> The minimum tariff and service requirements must *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. *Such cost of service includes*, but is not limited to, connection, *incremental* transmission, *incremental* generation, and other infrastructure costs; operations and maintenance expenses; and any other costs required to serve a large load customer. The risk of nonpayment of such costs may not be borne by the general body of ratepayers.

Ch. 2026-65, § 3, Laws of Fla. (emphasis added). First, this unambiguously requires the creation of a "tariff"—not a mere policy or special contract—but a formal tariff. At 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. R. 25-9.002(8), F.A.C. (defining a tariff as "the assembled volume containing the 'rules,' 'regulations,' 'rate schedules,' 'standard forms,' 'contracts,' and other material required by these regulations as filed with the Commission."); R. 25-9.002(5), F.A.C. ("'rate schedule' refers to the rate or charge for the particular classification of service plus the several provisions necessary for billing, including all special terms and conditions under which service shall be furnished at such rate or charge.").

Duke's Petition does not contain a tariff (rate), but states that "all large load customers will take service under the existing GSD-1 or GSDT-1 rate, until DEF's next rate case filing. *At that time*, DEF will propose a new rate schedule for large load customers that will meet the objectives of the new legislation." Duke Petition at 4–5 (emphasis added). On its face, then, Duke's petition, taken as true, fails to comply with Chapter 2026-65, Laws of Florida, as it does not allege that the existing GSD-1 or GSDT-1 rates comply with 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." Ch. 2026-65, § 3, Laws of Fla. Nor does it allege that the GSD-1 or GSDT-1 rates ensure that such customers pay for all "connection, incremental transmission, incremental generation, and other infrastructure costs; operations and maintenance expenses; and any other costs required to serve a large load customer." *Id.* Instead, it alleges that Duke will file tariffs in the future, in a new rate case that will attempt to "meet the objectives of the new legislation." Nor does Duke allege that such next rate case will be filed by October 1, 2026, the deadline by which SB 484 requires that "each public utility shall file, for commission approval, a tariff that complies with this section." Ch. 2026-65, § 3, Laws of Fla. Because Duke's Petition, even accepting all alleged facts as true, fails to comply with the Florida law it has been filed to purportedly comply with, it must be dismissed.

Instead of filing rates and tariffs that even purport to facially comply with the new law of Florida, Duke has filed a proposed policy that even allows Duke to "negotiate different non-material terms than reflected in this policy, if those terms do not result in fewer customer protections." Duke Petition at Proposed Sheet No. 4.132, section 13.06. It seems that the determination if such terms result in fewer customer protections is entirely within Duke's discretion under the policy, which comes nowhere close to the statutory requirements of Chapter 2026-65, Laws of Florida.

Finally, this policy does not even apply to all large load customers as defined in the Laws of Florida, which defines "Large load customer" to include "a customer with an anticipated monthly peak load of 50 megawatts or more." Ch. 2026-65, § 3, Laws of Fla. Duke's proposed "Large Load Customer Policy" is only applicable to customers with 50 MW "of firm (i.e., not

Interruptible or Curtailable) load." Duke Petition at Proposed Sheet No. 4.130, section 13.01. Chapter 2026-65 contains no such exception for "interruptible" or curtailable customers, and, in fact, specifically contemplates "the curtailment or interruption of electric service to a large load customer." Ch. 2026-65, § 3, Laws of Fla. If, as Duke's policy suggests, being interruptible definitionally excludes a customer from counting as a "large load customer," it would render the quoted language absurd and substitute Duke's own definition in place of the Legislature's. Chapter 2026-65, Laws of Florida, is a specifically worded consumer protection law designed to protect the general body of ratepayers from paying the costs associated with data centers *and* from the risk of subsidizing the costs, including from stranded assets, should any portion of expected data center load fail to materialize at any time in the contractual process. DEF's proposal seeks to bypass these requirements and fails *ab initio.* These facial flaws with Duke's petition renders Duke's proposal unlawful and due to be dismissed.

CONCLUSION

For the foregoing reasons, Duke's Petition facially violates Chapter 2026-65, Laws of Florida and cannot be approved by this Commission, even assuming all facts alleged by Duke were true. Citizens and Florida Rising therefore request this Commission to grant this Joint Motion to Dismiss Duke's Petition and direct Duke to file, by October 1, 2026, a tariff that facially complies with Chapter 2026-65, Laws of Florida.

RESPECTFULLY SUBMITTED this 26th day of May, 2026.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 26th day of May, 2026, via electronic mail on:

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DATED this 26th day of May, 2026.

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