FILED 6/2/2026
DOCUMENT NO. 03302-2026
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Duke Energy Florida, LLC, for a limited proceeding to approve large load tariff	Docket No. 20260064-EI Dated: June 2, 2026

DUKE ENERGY FLORIDA, LLC'S RESPONSE IN OPPOSITION TO JOINT MOTION TO DISMISS

Duke Energy Florida, LLC ("DEF"), by and through undersigned counsel and pursuant to Fla. Admin. Code Rule 28-106.204(1), hereby responds in opposition to the Joint Motion to Dismiss ("MTD") filed by Florida Rising, Inc ("Florida Rising") and the Office of Public Counsel ("OPC") (collectively "Intervener Parties"). In short, the Intervener Parties completely disregard the clear definition of "tariff" set forth in the very Florida Public Service Commission ("Commission" or "FPSC") rule they cite as support for their position, and myopically focus on wording of DEF's Petition while ignoring the provisions of DEF's proposed large load customer policy and large load customer agreement, all in support for their tortured arguments about the legal interpretation of a statute for which a hearing has been set for parties to make all these arguments. The Commission should deny the MTD, for the reasons set forth below:

BACKGROUND

1. DEF filed its Petition in the above-referenced docket on April 22, 2026. The Petition presents a tariff, specifically a large load customer policy ("LLCP") and a large load customer agreement ("LLCA"), that complies with the newly enacted Chapter 2026-65, Law of Fla., which the Governor signed into law on May 7, 2026 ("Chapter 2026-65").

2. On April 23, 2026, OPC filed a notice of intervention and has also served discovery and set depositions of DEF's two witnesses. On May 5, 2026, Florida Rising filed its Petition to

Intervene in the above-referenced docket. Although the Commission has not yet ruled on its petition, Florida Rising has served discovery on DEF. The Commission set a two-day hearing to consider DEF's tariff on August 25 and 26, 2026.

3. On May 26, 2026, Intervener Parties filed the MTD, alleging that DEF's Petition must be dismissed because it "does not comply with recently enacted Florida law." (MTD at 1). Specifically, the main argument of the MTD is Chapter 2026-65 "unambiguously requires a tariff to be filed," so Intervener Parties allege DEF's failure to include a specific tariff rate schedule is not compliant with the new law. The MTD also alleges the flexibility provision and the exclusion of interruptible and curtailable customers within the large load customer class conflict with Chapter 2026-65. None of these allegations meet the high standard for a motion to dismiss to be granted.

STANDARD TO CONSIDER MOTION TO DISMISS

4. The standard to be applied in disposing of a motion to dismiss is whether, with all allegations in the petition assumed to be true, the petition states a cause of action upon which relief can be granted. *Meyers v. City of Jacksonville*, 754 So.2d 198, 202 (Fla. 1st DCA 2000). "For purposes of ruling on the motion to dismiss, the trial court [is] obliged to treat as true all of the amended complaint's well-pleaded allegations, including those that incorporate attachments, and to look no further than the amended complaint and its attachments." *City of Gainesville v. State*, 778 So. 2d 519, 522 (Fla. 1st DCA 2001).

ARGUMENT

5. The MTD, when distilled to its main argument, seeks to presuppose an interpretation of the new Chapter 2026-65, without any feedback from other parties or the Commission itself. Taking a step back, the Florida Legislature often passes legislation that directs

agencies with particular expertise to implement that legislation. This is particularly true with respect to legislation involving ratemaking of public utilities, which is a highly specialized area of regulation. The FPSC is tasked with interpreting and applying complex statutes, and for good reason, given the vast intricacies involved with setting rates for electric utilities.

6. Against this general backdrop, the MTD first argues that Chapter 2026-65 requires DEF to file a tariff rate schedule now, rather than waiting until DEF's next rate proceeding. DEF first notes that Chapter 2026-65 does not require a utility to file a tariff until October 1, 2026. (Ch. 2026-65, § 3, Laws of Fla.) Given that the hearing will be held in late August 2026, it is possible that the Commission could consider DEF's filing before DEF would even be required to submit a tariff pursuant to Chapter 2026-65. Notwithstanding this timing issue, much of the MTD argument must fail because it is imposing a definition of "tariff" into Chapter 2026-65 that is simply not present. It does not "unambiguously" require the utility to propose a *rate schedule*. It requires that the utility propose a *minimum tariff and service requirements*." (Ch. 2026-65, § 3, Laws of Fla. (emphasis added)). Intervener Parties' argument impermissibly narrows the Commission-accepted definition of "tariff" while also completely reading "and service requirements" out of the statute. The MTD cites Rule 25-9.002, F.A.C. as justification that a tariff must include a rate schedule. However, it is clear from the definition of "tariff" in Rule 25-9.002(8), F.A.C., that it is not limited to "rate schedule" as Intervener Parties assert. The definition also contemplates, for example, rules, regulations, and standard contracts. The proposed LLCP and LLCA absolutely include all these elements and are therefore well within the definition of "tariff" as defined in Rule 25-9.002(8), F.A.C.

7. DEF has also identified the rate schedule applicable to large loads: "Until the Company presents in its next proceeding to reset rates, and Commission approves, a new large

load rate schedule, *which shall reasonably ensure that Customer bears its own full cost of service*, Customer shall take service under the Company's existing GSD-1 or GSDT-1 rate. Once the new large load rate schedule is approved, the Customer shall be switched to that new rate schedule." (Section 13.08, proposed DEF LLCP, emphasis added). Pursuant to Order Number PSC-2024-0472-AS-EI (which approved DEF's 2024 Settlement Agreement), DEF's rates, including GSD-1 and GSDT-1, are set and cannot change (other than for changes set forth in the settlement agreement) until the end of 2027. Accordingly, the Commission can find that this approach to the rate to be charged to large load customers will "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.), because the rates for all other customers cannot be changed during the pendency of the rate case settlement. Indeed, how to meet this standard in Chapter 2026-65 should be decided by the Commission after a full hearing, rather than in the motion to dismiss stage. Use of the subjective term "reasonably" in the statute is an indication that this determination is a mixed issue of fact and law, which requires the Commission to accept evidence and then apply the law to its factual conclusions. The Commission cannot grant the MTD without accepting Intervener Parties' interpretation of the statute, which presupposes the resolution of the very issue that will be litigated in the hearing. At the motion to dismiss stage, the Commission must accept all facts in the Petition as true, and because DEF has alleged that its proposed tariff reasonably ensures that each large load customer bears its own full cost of service, the Commission must deny the MTD and allow DEF's proposed tariff to proceed to hearing. It can then issue its ruling after careful consideration of all the evidence, including the parties' post-hearing briefs. *See State v. Glatzmeyer*, 789 So. 2d, 297, fn. 7 (Fla. 2001) (discussing the various standards of review that apply to trial court rulings generally, including "[i]f the ruling consists of a mixed question o.

aw and fact addressing other [non-constitutional] issues . . . the ruling must be sustained if the trial court applied the right rule of law and its ruling is supported by competent substantial evidence.”).

8. Contrary to the MTD (p. 2), DEF’s Petition did not “attempt to comply” with Chapter 2026-65. Rather, the Petition unequivocably states: “DEF has proposed a reasonable, measured approach to accommodate new large loads by appropriately balancing the interests of these customers and the other existing and future DEF customers and *also complying with the new legislation*.” (“DEF Petition at para. 7 (emphasis added))[1]. Florida Rising and OPC simply disagree with the interpretation of Chapter 2026-65, but because the Commission must accept DEF’s Petition as true, the Commission should deny the MTD and proceed to the hearing, where Florida Rising and OPC are free to make all their arguments about the “unambiguous” language in Chapter 2025-65 and the meaning of “tariff.”

9. Intervener Parties also argue that DEF’s inclusion of a provision to negotiate different non-material terms somehow violates Chapter 2026-65, but it is unclear what exactly about this provision is in conflict with Chapter 2026-65. The MTD only includes this sentence on the topic: “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.” This is the fully cited portion of this provision in Section 13.06 of the LLCP: “The Company may negotiate different non-material terms than reflected in this policy, if those terms do not result in fewer customer protections than what is included in this Large Load Customer Policy. If the terms in the LLCA differ materially from the

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[1] Florida Rising and OPC also request that DEF be ordered to make a new filing that is a “good faith attempt to comply” with the statute, implying that DEF made its original filing in bad faith. It seems that Florida Rising and OPC’s clear mischaracterization of DEF’s Petition, in a motion to dismiss context when DEF’s allegations must be taken as true, may be a more accurate example of bad faith.

approved form tariff, then Company must submit the executed LLCA to the Commission for review and approval." There is no requirement in the new legislation that DEF has no flexibility; Chapter 2026-65 does not even mention flexibility.

10. Intervener Parties' final argument as to why the Petition should be dismissed is because the LLCP applies to "firm, i.e., not Interruptible or Curtailable" load, while Chapter 2026-65 requires that non-firm large load customers also be subject to the tariff. DEF disagrees with this interpretation of Chapter 2026-65. The LLCA clearly provides: "the Company shall retain the right to curtail or interrupt service to Customer only where such curtailment or interruption is intended to ensure grid stability, reduce the likelihood or breadth of wider service outages, or ensure public safety during an emergency or other exceptional circumstance." (LLCA, para. 4) This language is directly from Chapter 2026-65 (*see* § 6: "Any tariff, contractual provision, service requirement, or other public utility policy relating to large load customers may not prevent or otherwise hinder the curtailment or interruption of electric service to a large load customer where such curtailment or interruption is intended to ensure grid stability, reduce the likelihood or breadth of wider service outages, or ensure public safety during an emergency or other exceptional circumstance."). DEF's proposed tariff does not prevent or otherwise hinder the curtailment or interruption of electric service in those enumerated instances; to the contrary, it explicitly provides the right to do just that when required by the statute. The Commission can exercise discretion in determining whether the operating characteristics of large load customers that are able to take service under DEF's existing Interruptible and Curtailable rate schedules are the same as those large load customers requiring firm service.

WHEREFORE, because the Intervener Parties have failed to demonstrate that DEF's Petition fails to state a cause of action, and because the issues raised involve mixed questions of law and fact requiring a full evidentiary hearing, DEF respectfully requests that the Commission deny the MTD.

Respectfully submitted this 2nd day of June, 2026.

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CERTIFICATE OF SERVICE
Docket No. 20260064-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 2nd day of June, 2026, to the following:

/s/ Dianne M. Triplett
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