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Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: June 26, 2026

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey, Hampson, Nguyen, Ward) SKG
Division of Engineering (Davis, Ellis) LBK
Office of the General Counsel (Thompson, Farooqi) JC

RE: Docket No. 20260064-EI – Petition for a limited proceeding to approve large load tariff, by Duke Energy Florida, LLC.

AGENDA: 07/07/26 – Regular Agenda – Motion to Dismiss – Participation is at the Commission's Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case 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 by Order No. PSC-2026-0144-PCO-EI, issued May 8, 2026. Florida Rising, Inc. (FR),[1] PCS Phosphate – White Springs (PCS Phosphate),[2] and the Florida Industrial Power Users Group[3] 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 the Florida Public Service Commission (Commission) 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 the Commission deny the Joint Motion and let the case proceed to an evidentiary hearing. No request for oral argument was filed concurrently with the Joint Motion under Rule 25-22.0022(7)(a), F.A.C.; however, participation on this item is within the Commission's discretion.[4]

This is staff's recommendation on the Joint Motion. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

[1] Order No. PSC-2026-0233-PCO-EI.
[2] Order No. PSC-2026-0234-PCO-EI.
[3] Order No. PSC-2026-0238-PCO-EI.
[4] Under Rule 25-22.0022(7)(a), F.A.C., oral argument at an Agenda Conference will only be entertained for recommended orders and dispositive motions, such as motions to dismiss. Rule 25-22.022(1), F.A.C., provides that oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested. Failure to timely file a request for oral argument constitutes waiver thereof. However, the Commission may request oral argument on matters over which it presides. Rule 25-22.0022(2), F.A.C.

Discussion of Issues

Issue 1: Should the Commission grant the Office of Public Counsel and Florida Rising, Inc.'s Joint Motion to Dismiss?

Recommendation: No. Staff recommends that the Commission deny the Joint Motion to Dismiss because there are material questions of fact to be resolved at an evidentiary hearing. (Thompson, Farooqi)

Staff Analysis:

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 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.

Parties' Positions

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

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[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.

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, claimed 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 argue that whether a utility's petition meets the requirements of a statute is a mixed question of fact and law appropriate for hearing.

Staff Analysis

This case is the first time the Commission 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. Staff suggests that there are mixed questions of facts and law that have been raised and, thus, to determine whether or not the criteria set forth in the statute is met, the Commission would benefit from allowing the case to go forward with a hearing. For this reason, staff recommends denying the Joint Motion. The individual arguments from the Joint Motion are discussed more fully below.

Non-Rate Tariff

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." The Commission has previously approved tariffs without a specific rate.[11] Staff suggests that the parties could provide additional evidence and argument at a full hearing that would assist the Commission's resolution of this argument. Thus, staff does not recommend dismissal on this ground.

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, staff does not recommend dismissal 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*.

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 the Commission can exercise its discretion in analyzing the operating characteristics of large load customers requiring firm service and those that are interruptible or curtailable. On this issue, staff suggests the parties provide additional argument and evidence that could be introduced and provided to the Commission via the hearing process. Consequently, staff recommends that this is not a valid ground to dismiss the petition.

Conclusion

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, staff recommends that the Commission deny the Joint Motion.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending the Commission's decision on DEF's petition. (Thompson, Farooqi)

Staff Analysis: No. This docket should remain open pending the Commission's decision on DEF's petition.