CORRESPONDENCE
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Tristan Davis

From:	Tristan Davis on behalf of Records Clerk
Sent:	Tuesday, August 4, 2026 8:27 AM
To:	Mark McNees
Cc:	Consumer Contact
Subject:	RE: Public Comment, Docket No. 20260064-EI

Good Morning,

We will be placing your comments below in consumer correspondence in Docket No. 2026064, and forwarding them to the Office of Consumer Assistance.

Thank you!

Tristan Davis
Commission Deputy Clerk I
Florida Public Service Commission
2540 Shumard Oak Boulevard
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From: Mark McNees <mmcnees@jmc.fsu.edu>
Sent: Tuesday, August 4, 2026 7:45 AM
To: Records Clerk <CLERK@PSC.STATE.FL.US>
Subject: Public Comment, Docket No. 20260064-EI

Office of Commission Clerk: Please file the attached public comment in Docket No. 20260064-EI, Petition of Duke Energy Florida, LLC, for a limited proceeding to approve a large load tariff. I am not a party to this proceeding and do not seek to intervene. I submitted this as a member of the public. Please confirm that you have received the attached public comment.

Best,
Dr. Mark R. McNees

FLORIDA STATE UNIVERSITY
JIM MORAN COLLEGE OF ENTREPRENEURSHIP

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A. Schedule a 30-minute online meeting
https://calendly.com/markmcnees/meet-with-mark

Available for interviews on deadline. Energy policy, data center cost accountability, utility regulation, and ratepayer impact. Recent op-eds in USA Today and The Hill. Quoted in The Washington Post.

PUBLIC COMMENT

Before the Florida Public Service Commission

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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

Date: August 4, 2026

Commissioners:

I submit this comment on the cost-allocation question presented by this docket. I am a Florida resident and a member of the faculty of Florida State University, where I direct the Master of Science in Social and Sustainable Enterprises in the Jim Moran College of Entrepreneurship. My research concerns how the costs of large infrastructure are allocated between the parties whose demand causes them and the public that bears them. I write in my individual capacity. The views are my own and not those of the university. I am not a customer of Duke Energy Florida, I do not seek to intervene, and I claim no substantial interest in this proceeding. I offer this comment as a member of the public.

My comment is confined to one question: whether the tariff structure this docket will approve satisfies the cost-of-service standard the Legislature enacted in section 366.043(3)(a), Florida Statutes. I take no position on the rate of return, on the prudence of any investment, or on the size of the data center buildout in Florida or nationally.

I. The statutory standard is specific, and it names incremental generation

Section 366.043, Florida Statutes, was created by CS/CS/SB 484, enacted as Chapter 2026-65, Laws of Florida, effective July 1, 2026. Two provisions govern this proceeding.

First, section 366.043(3)(a) sets the substantive standard. 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. The statute then defines that cost of service by enumeration. It 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 same paragraph provides that the risk of nonpayment of those costs may not be borne by the general body of ratepayers. [S1]

Two features of that text bear on this docket. The enumeration is inclusive rather than exhaustive, so it sets a floor and not a ceiling. And it names incremental generation expressly. The Legislature did not leave the generation component of large-load cost of service to implication.

Second, section 366.043(5) supplies the means. To effectuate subsection (3), the Commission may approve tariffs that include utility industry-accepted ratemaking and other financial tools, including contributions in aid of construction subject to return over time, paragraph (a); demand charges, including minimum demand charges, paragraph (b); incremental generation charges, paragraph (c); financial guarantees, paragraph (d); minimum load factors, paragraph (e); take-or-pay or similar provisions requiring payment for contracted capacity regardless of actual use, paragraph (f); and minimum service terms with early termination fees, paragraph (g). [S1]

The relationship between the two subsections is the analytical point. Subsection (3)(a) states an obligation that includes incremental generation. Subsection (5)(c) places the incremental generation charge in the Commission's hands as an approved instrument. A determination that the generation component cannot practically be assigned is therefore difficult to sustain on this statute, because the Legislature both required the assignment and named the tool.

The legislative findings in section 366.043(1) confirm the direction. The Legislature found that when one class of customer requires uniquely large electrical loads at a single location, it imposes a disproportionate risk on other ratepayers, making it necessary for the Commission to develop and enforce rate structures that mitigate that risk and prevent shifting the costs of serving large load customers to the general body of ratepayers. [S1]

II. What the petition concedes, and why it matters to the analysis

The record in this docket contains real near-term protection, and any comment that ignored it would be incomplete.

Duke's petition, filed April 22, 2026, lowered applicability from 100 MW to 50 MW, withdrew rate schedule LLC-1 from consideration with stated intent to propose a new large load rate schedule in the next rate case, removed contribution-in-aid-of-construction flexibility so that all such customers pay upfront subject to a five-year refund, and raised the minimum term from fifteen to twenty years with a two-year notice requirement. [S2]

The company's witnesses have testified that Duke has no large load customer under signed agreement and none reflected in its Ten-Year Site Plan, and that a combined cycle unit sized to serve a very large customer would require six to eight years to site and construct. A 2024 rate settlement freezes base rates through 2027, and Duke's witness testified that costs incurred to serve a large load customer during that freeze which existing rates do not cover fall to shareholders rather than ratepayers, with a commitment not to seek adjustment during the settlement period even if that pushes the company below its authorized return band. Duke has further committed to file a large load rate schedule to take effect January 1, 2028. [S4]

I do not dispute any of this, and I would urge the Commission to discount any argument that Florida households face imminent cost shifting from this petition. They do not. The base-rate freeze and the shareholder-absorption commitment are meaningful and they are on the record.

The concession is what sharpens the question. Because the near-term risk is contained, the operative issue in this docket is not immediate harm. It is the structure that governs when the containment expires. The petition is a limited proceeding that defers permanent large-load rate design, and in the interim large loads would take service under existing general service demand schedules. [S2] The consequential decision is therefore the January 1, 2028 rate schedule, and the reasoning the Commission adopts here will frame it.

III. The allocation gap: average embedded cost against a statute that requires incremental assignment

General service demand schedules recover capacity cost on an average embedded basis. That method spreads the cost of capacity across the billing determinants of a class. It does not assign the incremental cost of new capacity to the specific load whose demand required that capacity to be built. Duke's rate design testimony defends average embedded treatment for this purpose. [S5]

Measured against section 366.043(3)(a), average embedded treatment does not reach the standard, for a reason that is definitional rather than argumentative. The statute requires that each large load customer bear its own full cost of service, and defines that cost to include incremental generation. An average embedded charge is, by construction, not an incremental charge. It recovers a class-average share of an existing cost pool. Whatever its merits as conventional ratemaking, it does not perform the function the statute assigns, and section 366.043(5)(c) supplies the instrument that does.

I therefore respectfully urge the Commission to state, in whatever order issues in this docket, that the large load rate schedule contemplated for January 1, 2028 must assign the incremental cost of capacity, including incremental generation, to the load that triggers it, and that average embedded recovery of that capacity cost does not by itself satisfy section 366.043(3)(a).

IV. The strongest argument against this position, and my answer

The most serious objection is federal, not state, and it deserves to be stated at full strength.

Duke's rate design witness observes in rebuttal that FERC Order No. 2003 considered a "but for," or participant-funding, standard under which the customer whose request triggers an upgrade pays for it, and declined to adopt it as the general rule for non-independent transmission providers. FERC's stated concern was that identifying which facilities satisfy a "but for" test is inherently subjective and could permit discriminatory cost allocation. FERC generally preserved a crediting approach instead, on the reasoning that network upgrades benefit the system as a whole. On that view, the federal order most often invoked for direct assignment does not support direct assignment of shared network costs. It supports direct assignment of customer-specific interconnection facilities, which is what Duke already proposes at 100 percent, paid in advance. [S5, S8]

That argument is correct as far as it reaches, and it should not be dismissed. My answer is that it reaches transmission, not retail generation cost of service, and that the two are governed by different instruments and different sovereigns.

Order No. 2003 governs interconnection to the transmission system under the Federal Power Act. It addresses how the cost of network upgrades is allocated among interconnection customers and the transmission network. It does not purport to set the retail cost-of-service standard a state commission applies to a retail rate class, and it does not address a state statute that expressly enumerates incremental generation as a component of a retail customer's full cost of service. Florida's Legislature has now enacted precisely that. Section 366.043(3)(a) does not ask whether shared network upgrades satisfy a "but for" test. It directs that the large load customer bear connection, incremental transmission, incremental generation, and other infrastructure costs, and it does so as a matter of state retail ratemaking under Chapter 366.

A second point follows. FERC's subjectivity concern was addressed to identifying which network facilities a particular request caused. That concern has far less force for generation capacity procured to serve a load of 50 MW or greater at a single location under a twenty-year contract with a defined ramp and a contracted maximum demand. The causal link there is documented in the agreement itself. Where the contract states the capacity, the identification problem FERC worried about is substantially resolved by the instrument the tariff already requires.

A third objection is that assigning incremental generation cost will make Florida uncompetitive for large-load investment. That is a policy judgment for the Legislature, and the Legislature has made it. Section 366.043 was enacted with the finding that these loads impose a disproportionate risk on other ratepayers. The Commission's task under subsection (8) is to approve compliant tariffs, not to reweigh the competitiveness question the statute resolved. [S1]

V. A comparative data point from the FPL proceeding, stated precisely

The Commission's own record contains a recent instance of how these protections move during negotiation, and I offer it with the qualification it requires.

In Docket No. 20250011-EI, FPL's Large Load Contract Service tariffs as filed February 28, 2025 included a minimum take-or-pay requirement applicable to demand charges, base and clauses, based on the higher of 90 percent of contract demand or the highest previously established monthly billing demand during the preceding eleven months. In rebuttal testimony, FPL reduced that minimum take-or-pay demand charge from 90 percent to 70 percent. Paragraph 6(b) of the 2025 Stipulation and Settlement Agreement set the minimum take-or-pay demand charge at 70 percent, and the Commission approved the agreement. [S6, S7]

Two qualifications are necessary and I state them rather than leave them to rebuttal. First, the reduction originated in FPL's rebuttal testimony and the settlement carried it forward; the settlement did not itself originate the change. Second, FPL correctly observes that the take-or-pay provision applies only to demand charges, which recover a portion of the fixed transmission, distribution and customer costs of serving the customer, and that the customer remains obligated for 100 percent of the incremental generation charge. The intervenor association representing data center developers argued that the 70 percent minimum combined with full incremental generation charge recovery over the twenty-year term provides robust safeguards. [S6]

The narrower and durable point survives both qualifications. The take-or-pay percentage governs the share of fixed transmission, distribution and customer cost recovery that is contractually assured irrespective of actual use. Reducing it from 90 percent to 70 percent reduced that assured share by twenty points, and the balance is recovered, if at all, from billing determinants that include the residual body of ratepayers. The Office of Public Counsel's witness testified that the reduction from 90 percent to 70 percent weakens customer protections and offered 80 percent as a compromise; 80 percent was carried in the non-signatory parties' proposal as a midpoint among FPL's original 90 percent, the 65 percent sought by the data center intervenors, and the 70 percent adopted. [S6]

I draw one inference for this docket. The percentages that protect the general body of ratepayers are the terms most exposed to erosion in negotiated resolutions, because they are continuous variables rather than binary ones. That argues for the Commission stating the governing principle in its order rather than leaving it to be re-derived, at the margin, in each subsequent proceeding.

VI. The state and federal seam on affiliate transactions

I ask the Commission to keep one structural feature in view.

The cost-of-service review in this proceeding examines what the large load customer pays the utility. It does not, by its terms, reach the price a regulated utility pays a generator owned by the same corporate parent. The Federal Energy Regulatory Commission maintains its own affiliate-transaction rules at the wholesale level. This is therefore a seam between state and federal review rather than an unreviewed gap, and I do not contend that no authority examines the transfer price.

The observation is narrower. Where the retail tariff recovers incremental generation cost from a large load customer, and the generation is supplied by an affiliate of the utility, the transfer price becomes an input to a retail charge that the state approves while the price itself is reviewed elsewhere on a different standard. As utility ownership consolidates, the practical consequence is that neither review alone sees the full transaction. I ask only that the Commission make explicit, in how it audits large-load cost of service under these tariffs, how it will treat affiliate-supplied generation cost.

VII. The allocation question that survives the contract term

One further matter is properly a question about tariff structure rather than a forecast.

Large load commitments are contract-driven, and the underlying facilities are in some cases relocatable. This raises an allocation question the current structure does not answer: if a utility builds capacity to serve a load that later departs, fails to materialize at contracted volume, or renegotiates, who bears the cost of the asset that remains. Under default cost-recovery rules, the residual falls to the general body of ratepayers.

I want to be precise about what I am and am not asserting. I offer no view on how large the buildout will be, or on the probability that any particular load fails to materialize. I have no basis for such a forecast and this comment does not rest on one. The question is allocation: the tariff should specify who bears that cost before the circumstance arises, because after it arises the default answer operates automatically.

Section 366.043(3)(a) speaks to part of this by providing that the risk of nonpayment may not be borne by the general body of ratepayers, and section 366.043(5) supplies financial guarantees, minimum terms, early termination fees, and take-or-pay provisions as instruments. [S1] The question I raise is whether those instruments, as approved here and as carried into the 2028 schedule, are sized to the residual they are meant to cover.

VIII. Recommendations

I respectfully recommend that the Commission:

1. State in its order that section 366.043(3)(a) requires assignment of incremental generation cost to the large load customer, and that average embedded recovery of new capacity cost does not by itself satisfy that standard.

2. Condition or note, in approving any interim arrangement, that the interim treatment is not a precedent for the permanent large load rate schedule contemplated for January 1, 2028.

3. Make explicit how affiliate-supplied generation cost will be treated in the cost-of-service audit these tariffs require.

4. Confirm that the financial assurance instruments authorized by section 366.043(5) are sized to the residual cost that would remain if a contracted load departs or is not realized.

Thank you for the opportunity to comment.

Respectfully submitted,

Dr. Mark McNees
Director, MS in Social and Sustainable Enterprises
Jim Moran College of Entrepreneurship, Florida State University
Institutional affiliation listed for identification only

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Sources relied on

Each factual assertion above traces to one of the following. No assertion in this comment rests on a secondary source, an aggregator, or press coverage.

[S1] Section 366.043, Florida Statutes, created by CS/CS/SB 484, Second Engrossed, enacted as Chapter 2026-65, Laws of Florida, effective July 1, 2026. Provisions relied on: (1) legislative findings; (2)(d) definition of large load customer, 50 MW, 15-minute interval, single location; (3)(a) full cost of service and its enumeration, including incremental generation, and the nonpayment-risk provision; (4) anti-splitting; (5)(a) through (g) authorized ratemaking tools, including (c) incremental generation charges and (f) take-or-pay; (6) curtailment; (8) October 1, 2026 tariff filing deadline.

[S2] Duke Energy Florida, LLC, petition for a limited proceeding to approve large load tariff, Document No. 02327-2026, filed April 22, 2026, Docket No. 20260064-EI. Paragraph 11 lists the SB 484 compliance changes. Section 13.08 of the proposed Large Load Customer Policy provides that large load customers take service under existing GSD-1 or GSDT-1 rates until a new large load rate schedule is approved.

[S3] Docket No. 20260064-EI procedural posture: tariff suspended by Commission order June 19, 2026; prehearing conference August 5, 2026; hearing August 25 and 26, 2026; briefs due September 15, 2026.

[S4] Testimony in Docket No. 20260064-EI relied on in Section II: Borsch, resource planning, on the absence of any large load customer under signed agreement or in the Ten-Year Site Plan and the six-to-eight-year build interval; Chatelain on the 2024 rate settlement base-rate freeze through 2027, shareholder absorption of uncovered cost during the freeze, and the commitment to file a large load rate schedule effective January 1, 2028.

[S5] Testimony in Docket No. 20260064-EI relied on in Sections III and IV: Wishart, rate design, defending average embedded cost treatment and raising FERC Order No. 2003 and the participant-funding, or "but for," standard.

[S6] Florida Public Service Commission, Staff Overview and Summary, Document No. 15095-2025, filed November 14, 2025, Docket No. 20250011-EI, Settlement Summary Document, Major Element 6, Large Load Contract Service. Page 35 records the as-filed minimum take-or-pay requirement based on the higher of 90 percent of contract demand or the highest previously established monthly billing demand during the past eleven months, citing TR 2627 through 2629. Page 36 records the reduction from 90 percent to 70 percent in rebuttal testimony, citing TR 2686 through 2687; FPL's position that the take-or-pay applies only to demand charges and that the customer remains liable for 100 percent of the incremental generation charge, citing FPL BR 70; the data center intervenor position, citing FEIA BR 14; and OPC witness Wilson's testimony that the reduction weakens customer protections with a proposed 80 percent compromise, citing TR 4744 and TR 4745, with the 80 percent midpoint carried in the non-signatory proposal against FPL's 90 percent, FEIA's 65 percent, and the 70 percent adopted, citing EXH 1290.

[S7] 2025 Stipulation and Settlement Agreement, Docket No. 20250011-EI, dated August 20, 2025, paragraph 6(b): the minimum take-or-pay demand charge for the LLCS Tariffs shall be 70 percent. Approved by the Commission at the November 20, 2025 Special Agenda Conference.

[S8] FERC Order No. 2003, on the participant funding or "but for" standard and the crediting approach for non-independent transmission providers, as characterized in the Docket No. 20260064-EI record described at [S5].