EARTHJUSTICE
BECAUSE THE EARTH NEEDS A GOOD LAWYER

September 15, 2026

VIA HAND DELIVERY

Adam J. Teitzman
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

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

Dear Mr. Teitzman,

On behalf of Intervenor Florida Rising, Inc., ("Florida Rising") I have enclosed the following: one (1) confidential paper copy of Florida Rising's Post-Hearing Brief; and two (2) redacted paper copes of Florida Rising's Post-Hearing Brief. Please file these documents in Docket No. 20260064-EI. All of the confidential information contained in Florida Rising's Post-Hearing Brief has already been subject to a request for confidential classification by Duke Energy Florida, LLC ("Duke"). Pursuant to Florida Administrative Code Rule 25-22.006(8)(c), Duke filed a statement today that the information is already subject to requests for confidentiality. Please contact me if there are any questions regarding the enclosed documents.

/s/ Bradley Marshall
Florida Bar No. 98008
Email: bmarshall@earthjustice.org
Jordan Luebkemann
Florida Bar No. 1015603
Email: jluebkemann@earthjustice.org
flcaseupdates@earthjustice.org
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, Florida 32301
Telephone: (850) 681-0031
Fax: (850) 681-0020

Counsel for Florida Rising

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REDACTED

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

FLORIDA RISING'S POST-HEARING BRIEF (REDACTED)

DOES NOT CONTAIN CONFIDENTIAL INFORMATION

Florida Rising, Inc. ("Florida Rising"), pursuant to Order No. PSC-2026-0275-PCO-EI, files this post-hearing Brief. For the first three large load customers furthest along to becoming customers of Duke Energy Florida, LLC ("Duke"), Duke projects over [redacted][1] in *just*

[1] Although providing this Brief in redacted form, Florida Rising does not necessarily agree that all underlying information subject to redaction here has been determined to be confidential when aggregated and derived from confidential documents as has been done in this Brief. Pursuant to Florida Administrative Code Rule 25-22.006(7)(a), "Any person may file a petition to inspect and examine any" confidential material, such as that contained within this brief. Although Florida Rising did not object to the requests for confidential classification that the aggregated cost information is derived from, Florida Rising does not believe that the aggregate information regarding the potential costs to serve potential large load customers, like that redacted in this Brief, is necessarily confidential business information pursuant to section 366.093, Florida Statutes. While plans regarding specific costs for specific generation purchases may be confidential, aggregated incremental generation costs for new large load customers, nominally summed over a twenty-year period, like that contained in this Brief, should not qualify as "Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms," nor as "Information related to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." § 366.03(3), Fla. Stat. Simply put, there is no way to take aggregated nominal incremental generation costs over a twenty-year period and break that down to specific planned capital expenditures for specific generation projects—especially when the form of generation is not specified and is kept confidential. Certainly the public interest in knowing Duke's projected aggregated incremental generation costs for the first new large load customers on its system, compared to the expected revenue, is quite high given the passage of SB 484. Out of abundance of caution, Florida Rising has also redacted those portions of the Brief that characterize the size of the discrepancy between the expected revenue from large load customers under Duke's proposal and the expected costs that Duke has provided. This does not mean that Florida Rising agrees that such information is confidential under section 366.03, Florida Statutes.

incremental generation costs. On the other hand, even under a best-case scenario in which those three large load customers actually complete their entire 20-year contracts, Duke anticipates just over [redacted] in corresponding revenues from their projected minimum bills. This leaves a dramatic, unprecedented gap—[redacted]—for the general body of customers to fill. Putting aside Duke's fewer than 200,000 commercial and industrial customers, Exhibit 125, MPN F4-1750; MPN F4-1753, the resulting revenue shortfall works out to almost [redacted] per residential customer.[2] What of compliance with section 366.043, Florida Statutes? A promise to design rates at some point in a future docket cannot square with the unambiguous direction to implement those rates now to ensure that other customers don't wind up on the hook for costs caused by new data centers. This Commission has no choice but to reject Duke's proposal in full and require Duke to come forward with a proposal that reasonably ensures that new data centers pay their full costs of service.

EXECUTIVE SUMMARY

SB 484 was passed with the express intent of ensuring that the costs to serve data centers are not passed onto existing customers. Duke's proposal all but guarantees the opposite, by throwing new data centers—with city-sized appetites for electricity—onto the same existing rate as a new two pump gas station, with nothing to ensure that those data centers pay their full costs of service. Duke's proposal includes no analysis, plan, or meaningful safeguards to protect the general body of customers from paying the truly staggering incremental costs to serve data centers. A pledge to work out a plan in the future and design rates for data centers, then, is no plan at all and should be rejected by this Commission. More importantly, Duke's as-filed

[2] Divide [redacted] by 1,819,962 residential customers, Exhibit 125, MPN F4-1750. The expected amount to be incurred by each residential customer would be less due to commercial and industrial customers.

proposal will irrefutably strand the general body of customers with [redacted] billions of dollars of extra costs that will be incurred for the sole purpose of serving new data center customers, in direct contravention of the newly created section 366.043, Florida Statutes. It's as if Duke saw SB 484 and rather than recognize its protections for existing customers, read just the opposite: a novel license to saddle the general body of customers with unprecedented cross-subsidies to serve a handful of new customers, which are themselves connected to some of the world's richest and most powerful corporations. But the statute's language is clear: Duke must "ensure that each large load customer bears its own full cost of service." § 366.043(3)(a), Florida Statutes. Since Duke's proposal ensures the opposite, to the tune of billions of dollars, it must be denied.

STATEMENT OF ISSUES AND POSITIONS

ISSUE A: **Does DEF's petition and associated tariffs comply with the requirements of Section 366.03, Florida Statutes?**

POSITION: *No. By forcing the general body of ratepayers to subsidize large load customer costs, Duke's LLCP is neither fair nor reasonable under sections 366.03, Florida Statutes.*

ISSUE B: **Does DEF's petition and associated tariffs comply with the requirements of Section 366.043, Florida Statutes?**

POSITION: *No. Section 366.043, Florida Statutes, contains several mandates to ensure such costs are not passed to the general body of ratepayers, and Duke's petition and associated tariffs fall well short of those requirements, with no assurance at all that the general body of customers will not be paying the costs for large load customers, among other violations of the statutory requirements.*

ISSUE C: **Does DEF's petition and associated tariffs comply with the requirements of Section 366.05, Florida Statutes?**

POSITION: *No. This statute gives the Commission the power to "prescribe fair and reasonable rates and charges." As discussed in the positions to Issue A and B, Duke's proposal is nowhere near ensuring fair and reasonable terms.*

ISSUE D: Omitted as fully addressed in Order No. PSC-2026-0288-PCO-EI.

ISSUE E: **Is Commission approval, as-filed or with modifications, of the proposed, Large Load Customer Agreement (Tariff Sheet Nos. 7.510-7.530), the Large Load Customer Policy (Tariff Sheet Nos. 4.130-4.132), and their associated terms and conditions consistent with provisions of the 2024 Settlement Agreement approved in Order No. PSC-2024-0472-AS-EI?**

POSITION: *Duke's petition fails to create a new rate class for large load customers as required by section 366.043, Florida Statutes. However, even if Duke's petition was modified to add such a new rate class, it would not violate Order No. PSC-2025-0472-AS-EI, given the independent legal obligation to comply with the new intervening law.*

ISSUE 1: **Should the Commission approve, deny, or deny with leave to refile with modifications the proposed Large Load Customer Policy (Tariff Sheet Nos. 4.130-4.132) and the associated terms and conditions (e.g., minimum term, minimum monthly bill, security requirements, early termination, and special terms provision)? If denied with leave to refile, what should the modifications be?**

POSITION: *The Commission should deny the proposed LLCP or, in the alternative, deny with leave to refile, provided that the new filing contains a separate rate class for large load customers, the minimum monthly bill is adjusted to ensure that it recovers the full costs of serving large load customers, and the security and early termination provisions are revised to include a higher security payment and Termination Payment Obligation or Termination Fee.*

ISSUE 2: **Should the Commission approve, deny, or deny with leave to refile with modifications the proposed Large Load Customer Agreement (Tariff Sheet Nos. 7.510-7.530) and the associated terms and conditions (e.g., minimum demand, minimum term, minimum demand charge payments, security**

requirements, and early termination provision)? If denied with leave to refile, what should the modifications be?

POSITION: *The Commission should deny the proposed LLCA or, in the alternative, deny with leave to refile, provided that the security to be rendered is increased and the early termination provisions are revised to include all costs associated with servicing a large load customer.*

ISSUE 3: Should the Commission approve, deny, or deny with leave to refile with modifications the proposed CIAC tariff modifications (Tariff Sheet No. 4.030 and 4.132, paragraph 13.07)? If denied with leave to refile, what should the modifications be?

POSITION: *The CIAC provisions should be made more robust, so as to comply with section 366.043, Florida Statutes, and protect ratepayers.*

ISSUE 4: What are the effective dates for the proposed Large Load Customer Policy, Large Load Customer Agreement, and CIAC tariff?

POSITION: *Effective date should not be decided until there are proposals that comply with the statutory mandates.*

ISSUE 5: Should this docket be closed?

POSITION: *No. The Commission should deny Duke's proposal and then direct Duke to re-file with a proposal that complies with section 366.043, Florida Statutes.*

STANDARD OF REVIEW

This is Duke's petition, and therefore it is Duke's burden, to show by the preponderance of the evidence, that its proposal complies with Florida Statutes.

Contrary to Duke's likely assertions that somehow SB 484 codifies the status quo and creates no new requirements for large load customers, SB 484 is mandatory. As the Florida Supreme Court has repeatedly stated, in reviewing the text of a statute, "We begin with the text. The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means. A statute's language should be given its plain and ordinary meaning. Its meaning is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Gessner v. Southern Co.*, 435 So. 3d 8, 14 (Fla. 2026) (internal quotations and citations omitted).

As section 366.043(3), Florida Statutes lays out, "[t]he following minimum tariff and service requirements for large load customers are *required* in public utility tariffs:" (emphasis added). What follows, then, is what is *required* by the law. By definition, a requirement is not voluntary or optional. The first thing that follows is section 366.043(3)(a), Florida Statutes, which states: "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 customers." (emphasis added). Note the mandatory language used. The section continues that "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." Therefore, under the plain language of this subsection, all of the enumerated costs of service *must* be included in the minimum tariff and service requirements, as indicated by the "includes, but is not limited to" language. The subsection finishes by emphasizing that "The risk of nonpayment of such costs *may not* be borne by the general body of ratepayers." *Id.* (emphasis added). Again, this is mandatory language in a mandatory subsection.

Contrast these mandatory provisions with the text of subsection 366.043(5), Florida Statutes, which provides that

> To effectuate the requirements of subsection (3), the commission *may* approve public utility tariffs that include utility industry-accepted ratemaking and other financial tools, including, but not limited to, the following: (a) Contributions in aid of construction or other required customer infrastructure investments that may

> be returned, in whole or in part, to such customers over time. (b) Demand charges, including minimum demand charges. (c) Incremental generation charges. (d) Financial guarantees. (e) Minimum load factors. (f) Take-or-pay provisions or similar provisions requirement payment for contracted capacity, regardless of a large load customer's actual electricity use or demand. (g) Minimum period of service contract requirements, including early termination fees or other fees for violation of such contracts.

(emphasis added). Based on the clear, plain language, it is easy to harmonize subsections 3 and 5. Subsection 3 contains the minimum requirements in order to comply with section 366.043, while subsection 5 contains possible tools to achieve the requirements of subsection 3.

Take, for example, incremental generation costs. Under subsection 3, any proposal by the utility (like Duke), *must* ensure that large load customers are paying for their incremental generation costs. An incremental generation *charge*, under subsection 5, is one way to achieve that requirement, but not the only way. The incremental generation costs could be recovered through other charges, such as the demand, volumetric, or minimum bill charges to the large load customers. But nothing in subsection 5 obviates the requirements of subsection 3. The fact that an incremental generation *charge* may be optional in no way means that ensuring large load customers bear the incremental generation *costs* is optional. Duke, which has never even claimed that their proposal ensures that large load customers are bearing their incremental generation costs, let alone offered any evidence that it does, fails right here. No other reading of section 366.043, Florida Statutes, is workable as the language could not be clearer. Even if there were any ambiguity—there is not—referencing the legislative intent would also make clear that large load customers are meant to "pay for it all" and that no large load customer coming onto the grid should ever put upward pressure on rates for other customers at any point. *See, e.g.*, § 366.043(1), Fla. Stat. ("The Legislature finds that . . . it [is] necessary for the commission to develop and enforce rate structures and other policies for such [large load] customers which ensure such risk is mitigated as much as possible and prevent shifting the costs of serving large load customers to the general body of customers.").

ARGUMENT

I. Requirements of SB 484 Are Clear, and Duke Does Not Attempt to Comply

a. Specific Rates for Large Load Customers Required to Ensure Those Customers Pay Their Costs

Duke's proposal 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.

§ 366.043(3)(a), Fla. Stat. (emphasis added).

First, this unambiguously requires the creation of a "tariff"—not a mere policy or special contract—but a formal tariff that ensures those large load customers bear their own full costs of service. At barest minimum, any tariff that ensures the payment of costs must actually contain the specific numeric rate or rates at which customers taking service under the tariff will be charged for electric service. Fla. Admin. Code R. 25-9.002(8) (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."); Fla. Admin. Code R. 25-9.002(5) ("'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."). In other words, the only way to ensure that revenues are recovering the costs to serve a particular class is to design rates to recover those revenues. Random, pre-existing rates, designed years before large load customers started expressing interest in becoming Duke customers, cannot accomplish this. By its express terms, rate GSD-1 applies "[t]o any customer, other than residential, for light and power purposes for which no other rate schedule is specifically applicable." Exhibit 90, MPN F2-538. Thus, a person who wants to open a 100 square-foot business office in Duke's territory would take service under the GSD-1 rate. The average demand of this tiny office, likely around 1 kilowatt, is literally a million times smaller than a hyperscale data center with an average demand of 1 Gigawatt—yet Duke's proposal inexplicably adds these users to the same class and charges them at the same rate.

Duke freely admits that the current GSD-1 and GSDT-1 rates "do not contemplate large load customer costs at all," as stated by Duke's own witness Chatelain on cross-examination, let alone cover incremental generation costs. TR. 105. Rates that "do not contemplate large load customer costs *at all*" (emphasis added), cannot be designed to reasonably ensure that such large load customer costs are recovered as required under section 366.043(3)(a), Florida Statutes. This admission alone is sufficient for the Commission to find that Duke has not met its burden. Because Duke has not factored large load customer costs into in the rates it plans to charge those customers, Duke's GSD-1 and GSDT-1 rates do not reasonably ensure that such large load 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."[3] § 366.043(3)(a), Fla. Stat. Instead, it alleges that Duke will file such tariffs in the future. As discussed later, a promise to comply with the law later cannot be used to find compliance with the law now.

b. Firm/Non-Firm Distinction Contained in Duke's Proposal Not Found in Law

Duke's proposal does not even apply to all large load customers as required by Florida law, which defines "Large load customer" to include "a customer with an anticipated monthly peak load of 50 megawatts or more." § 366.043(2)(d), Fla. Stat. Instead, Duke's proposed "Large Load Customer Policy" would only apply to customers with at least 50 MW "of firm (i.e., not Interruptible or Curtailable) load." Duke Petition at Proposed Sheet No. 4.130, section 13.01; TR. 51. The new law 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." § 366.043(6), Fla. Stat. 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. Section 366.043 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. Duke's proposal seeks to bypass these requirements and unilaterally amend the statute by writing the word "firm" into the Legislature's definition of a large load customer, that is, to read as "a customer with an anticipated firm monthly peak load of 50 megawatts or more" (underlined

[3] In fact, Duke cannot even claim that *existing* GSD-1 and GSDT-1 customers are paying their full cost of service today, as Duke admitted at hearing that the current rates for both of those classes are below parity. TR. 145–46; *see also* TR. 372; Exhibit 10, MPN C6-440.

word implicitly added by Duke, *not* in statute). As a non-firm customer can just as easily have an anticipated monthly peak load exceeding 50 MWs as a firm customer, and no such distinction between firm and non-firm is found in the statute, Duke's proposal must be rejected for failing to comply with the definition of "large load customer" in section 366.043(2)(d), Florida Statutes.

c. Grandfathering Not Lawful

Finally, Duke's proposal also contains an impermissible grandfather clause that expressly releases all existing customers from applicability of the LLCA and LLCP provided they took service from Duke as of December 31, 2025. Duke Petition at Proposed Sheet No. 4.130, section 13.01; TR. 90–91. Once again, Florida law recognizes no such temporal exception to the clear definition of "large load customer," which embraces *all* customers who cross the threshold of an anticipated 50 MW peak demand. § 366.043(2)(d), Fla. Stat. Duke's release of existing customers that otherwise meet the statutory definition of a large load customer is not permissible under 366.043. This is not an academic objection: Duke itself admits that current customers could ramp up their peak demand after qualifying for grandfathering without losing that status, TR. 91, which would invite currently sheltered customers to expand their operations and demand to supply a data center without coming under the ambit of even Duke's lackluster LLCA and LLCP. This undercutting of the statute cannot stand.

II. Invitation to Negotiate Renders Any Customer "Protections" Illusory

Instead of filing rates and tariffs that 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; TR. 58. However, neither the LLCA or LLCP define what "non-material" means in the context of altering the terms, and Duke's witness Chatelain confirmed expressly at hearing that "when it comes time for DEF to negotiate a contract with a potential large load customer, . . . DEF is the one that decides what nonmaterial means." TR. 106–07. Mr. Chatelain further conceded that he would not be involved in the contract negotiations with potential large load customers, and that he does not know how whichever person(s) are ultimately involved "will decide what the term nonmaterial means." *Id.* 107–08.

Moreover, not only does Duke reserve the authority to unilaterally decide what changes to terms are material, Duke's proposal includes no obligation to inform the Commission or other parties of any deviations from the LLCA or LLCP that Duke itself has concluded are nonmaterial. *See* Duke Petition at Proposed Sheet No. 4.132 at section 13.06 (Duke must only submit executed LLCA to Commission for review and approval "if the terms . . . differ materially"). Here, we have Duke's open invitation for data centers—whose generation costs alone raise the prospect of adding [redacted] to Duke's rate base—to negotiate terms away from the already insufficient as-filed LLCP and LLCA, and as the sole backstop, Duke's obligation to share with the Commission any changes that Duke itself concludes to lessen customer protections. Coming from the fox guarding the henhouse, Duke's "just-trust-us" approach is abjectly incompatible with the duties set out by section 366.043, Florida Statutes.

III. Contribution in Aid of Construction Inadequate

Right from the outset, it must be noted that the Contribution in Aid of Construction ("CIAC") provisions do not include incremental generation nor incremental transmission costs (that are not site specific). TR. 103. This alone means that they fail to meet the requirements of section 366.043(3)(a), Florida Statutes, and means they are inadequate to ensure that large load customers are paying for their full cost of service. In order to do so, a "but for" test, like that addressed by witness Nelson, would need to be included. TR. 270–74. By Duke's own admission, should Duke's proposal be approved and a large load customer signed up, if they were to terminate after they reached their load ramp, they would not be responsible for the cost of their incremental generation under the termination fee. TR. 106. To avoid this, Duke's hypothetical future rate for such customers would need to have been actually proposed and approved by the Commission; today, Duke has not so much as shared a draft for such a rate.

Additionally, Duke's proposal would refund the CIAC costs to the large load customer, but by refunding those costs, the general body of ratepayers is essentially paying for those costs incurred solely by the large load customer, despite the new law providing that those costs must fall on the large load customer to recover. TR. 368. Thus, the CIAC provisions, beyond being inadequate in the funds being recovered to cover the costs to serve a large load customer, additionally violate section 366.043, Florida Statutes, by improperly refunding the money to the large load customers.

IV. Existing Duke Settlement No Obstacle to Statutory Compliance

It has been implied by Duke and some of the intervenors aligned with Duke, and by Issue E, that the 2024 settlement agreement is some kind of excuse or obstacle to compliance with the provisions contained in SB 484. *See* Final Order Approving 2024 Settlement Agreement, *In re: Petition for rate increase by Duke Energy Florida, LLC*, Order No. PSC-2024-0472-AS-EI (Fla. Pub. Serv. Comm'n, Nov. 12, 2024) (hereinafter "2024 Duke Settlement Order"). It is no obstacle, nor could it be, to compliance with the law.

In paragraph 34 of the 2024 settlement, there is a provision that specifically states that Duke "may seek approval to implement new or revised tariff provisions or *rate schedules* if any such provision or rate schedule is (a) required in order to implement a legislative requirement for which compliance is mandatory during the Term of this 2024 Settlement Agreement." 2024

Duke Settlement Order at 68 (emphasis added). As discussed elsewhere in this Brief, compliance with the requirements of SB 484 is required now, and this is during the term of the 2024 settlement agreement. A plain reading of the language contained in this 2024 settlement shows that when such compliance is mandated by the Florida Legislature, as it has been here, it constitutes an exception to the settlement's requirements that Duke not seek to implement any new rate schedules. The Florida Legislature has plainly required that Duke propose tariffs that large load customers pay their full costs of service, and the 2024 Duke Settlement Order also plainly allows Duke to do so.

This, of course, makes sense, as a settlement is essentially a contract and a company cannot contract their way around mandatory statutory requirements, especially when such provisions, like those in SB 484, have been enacted in order to protect the public's interest. *See Shotts v. OP Winter Haven*, 86 So. 3d 456, 474 (Fla. 2011) (striking down arbitration agreement that limited remedies as violating public policy for undermining specific statutory remedies created by the Florida Legislature). There is no question that the Legislature enacted section 366.043, Florida Statutes, as a matter of public policy for the general welfare. *See* § 366.043(1), Fla. Stat. (provision of "reasonable rates[] is essential to the welfare of the ratepayers of this State"). To the extent there was any conflict between the 2024 settlement and SB 484, which establishes the public policy of the State—even though there is no conflict—the latter controls. To proceed otherwise would invite absurd results, with settling parties seeking terms to preempt legislation they disfavor (e.g., the parties agree that a utility shall maintain the current federal minimum wage value in perpetuity; the parties agree that the utility shall not be subject to remediation costs for any chemical/waste product not already regulated by federal law, etc.). *See also Fla. Atl. Univ. Bd. of Trs. v. Harbor Branch Oceanographic Inst. Found.*, 423 So. 3d 842, 853 (Fla. 2025) (internal quotations and citations omitted) (explaining principles regarding whether statute unconstitutionally impairs a contract by weighing "importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective").

V. Projected Costs Far Exceed Revenues, Violating Law

a. <u>Costs Far Exceed Revenues & Minimum Bills of Large Load Customers</u>

1. Costs are already being incurred now.

Contrary to claims that Duke has repeatedly made in this case that no costs are currently being incurred, Duke is presently incurring costs to serve new large load customers. This is in the form of purchase orders and preparation to serve large loads. From the confidential documents Duke has provided, we know Duke is already incurring costs, including by [redacted]

[redacted] *see also* TR. 411–13 for discussion on reimbursement agreements.

2. *Duke touts the revenue, but projected costs are far higher.*

[redacted] Duke projects that just the incremental generation costs (and associated transmission to connect that generation to the grid) for just that one large load customer will cost over [redacted] Exhibit 155, cell C37; TR. 415 ("It's the sum of all the values in nominal dollars with no discounting of the various costs associated, both the operational and variable costs, as well as the assumed capital revenue requirements"); TR. 414 (units in millions of dollars). [redacted] Exhibit 145 at 4. We have no estimate for the general transmission upgrades needed to serve this large load customer, but given the size, almost assuredly there would need to be additional transmission upgrades and additional transmission costs, which could be billions of dollars more. TR. 370. [redacted] Under SB 484, Duke "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." § 366.043(3)(a), Fla. Stat. With one large load customer, Duke is [redacted] billions of dollars off. *See also* TR 370–72. [redacted]

[redacted] TR. 416 (project has increased 20% in size)[4] and as such, [redacted] This is against nominal incremental generation costs of [redacted]. Exhibit 155, cell C56; TR. 417 ("shows the nominal sum . . . that's the difference between the cost for this case and the base case"). [redacted]

4 [redacted]

[redacted] The incremental generation needed to serve [redacted] Exhibit 155, cell C75; TR 418. Combined together, the 20-year minimum bill of [redacted][5] That sounds like a lot, until it is compared to *just the incremental generation costs* of [redacted] billion difference.

Although Duke asserts that long-term, somehow, data center customers will put downward pressure on rates, they have no analysis showing that. Instead, all we have to make determinations regarding whether Duke's proposal ensures that data centers are paying their full costs of service, including incremental generation and incremental transmission costs, are the revenue projections on the rate that Duke is assigning the new data center customers, and the projected costs to serve them. Duke has not provided any projected transmission costs (other than to directly connect data centers to the grid [redacted] *see* Exhibits 145–49) and connect incremental generation to the grid, i.e., not any upgrades needed for the grid itself), TR. 410 ("only transmission costs included here [Exhibit 155] are those assumed to connect the generation – any new generation"). But based on the information Duke has made available, Duke's proposal is a [redacted] for data center customers to connect to the grid and have Duke incur [redacted] of incremental generation costs, and pass those costs onto the general body of customers, including residential customers, to the tune of [redacted] per residential customer. [redacted]

5 [redacted]

[redacted] This violates all principles of cost-causation and fair, just, and reasonable ratemaking, let alone the new principles that *require* and single out data centers for ensuring that they pay all their costs and that there is no cost-shift. No utility in Florida has ever proposed such a large cost-shift, here [redacted] per residential customer *just* for the *incremental generation*, and that for just the first 3 new large load customers. SB 484 was not a license for an unlimited cost-shift as never before seen in Florida—it's the opposite! The Commission must reject Duke's proposal.

Any promise to fix rates in the future to ensure data centers pay their costs, without any kind of look or promise as to what that entails is completely illusory and not a basis to find compliance with the law. The circular defense of "I'm not violating the law because I promise to comply in the future" is no defense at all and needs to be rejected. Otherwise, SB 484 is completely meaningless (less than meaningless since Duke's proposal is also out of bounds with current law regarding fair, just, and reasonable rates), and no company in a case impacting and determining rates could ever be found to be in violation of the law as long as they promise to comply at some point "in the future." Duke's proposal to be found to be compliant now because Duke will comply "in the future" is due to be summarily rejected.

b. Termination Fees Pale in Comparison to Expected Costs

The above scenario, which virtually amounts to [redacted] for the data centers compared to the costs, is the best-case scenario where the large load customers stay for their full 20-year contracts and never look to leave the system. But if they do want to leave the system, Duke's proposal allows them to do so with proper notice and a termination fee. The revenue from these termination fees are about one-third of the 20-year minimum bill value. For example, [redacted]

[redacted][6] Who is going to pay for the costs? Duke hopes some other large load customer will come in and take the spot of [redacted] or that the assets could potentially be re-allocated to serve the general body of ratepayers. But hope is not a plan and certainly does not constitute compliance with the requirement that "[t]he risk of nonpayment of such costs may not be borne by the general body of ratepayers." § 366.043(3)(b), Fla. Stat. Yet, we have seen no indication, and heard nothing from Duke, that they are prepared to have their shareholders cover the costs of the billions [redacted] of dollars in potentially stranded assets.

For [redacted], the termination fee, with full notice, is [redacted] with a termination fee, with full notice, of [redacted] using the assumptions Duke used for the projected revenue calculations contained in Chatelain's testimony) [redacted] Combined together, if all three large load customers come to Duke's system, and decide to leave, and fulfill all of their legal obligations under Duke's proposal in this docket, they will pay termination fees with notice of [redacted] in incremental generation costs that will need to be incurred to serve those customers (and the fact that they got as far as having a full termination fee, i.e., full service, means that the generation will have needed to be built), will cover [redacted] of the incremental generation costs, and nothing else. In this scenario, all of the data centers will have fulfilled all of their obligations under Duke's proposal here, leaving the general body of customers to pay the

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6 [redacted]

other [redacted] of the incremental generation costs, and *all of the other costs* needed to serve those data center customers. Duke's proposal cannot seriously be argued to protect the general body of customers when the general body of customers is so exposed to these enormous costs under Duke's proposal with these so-called "protections."

c. <u>Security In Hand for Large Load Customers Even Less Than Termination Fee</u>

Of course, the scenarios above are where the large load customers give full notice and pay all of their outstanding termination fees to Duke, fulfilling all of their contractual obligations. They could, of course, just leave, like in the scenario where all of this data center construction is a bubble and the bubble bursts, a scenario that Duke has not considered. TR 408–09. We don't know who these large load customers are, so they could easily go bankrupt in any bubble-bursting scenario. As testified to by witness Chatelain, for a [redacted] Of course, *just the incremental generation* for [redacted] has a cost of [redacted] Billions more in the form of transmission grid upgrades, transmission to the load site, operations and maintenance, and other costs are, of course, to be expected. *See, e.g.*, TR 370 (regarding possibility of need of billions of dollars just for transmission grid upgrades). [redacted] of just the incremental generation costs.[7] Duke says they can sue and hope to get more if that's all they get if a customer like [redacted] leaves, but hope is not a plan and certainly does not ensure that the "risk of nonpayment of such costs *may not be borne* by the general body of ratepayers." § 366.043(3)(a), Fla. Stat. (emphasis added).

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[7] [redacted]

For [redacted] All together, if the 3 large load customers furthest along all become Duke customers, and then all go bankrupt, Duke will have [redacted] in security to cash against incremental generation costs (not including the billions of dollars of other costs) of [redacted] of the incremental generation costs.

Based on the best numbers Duke has provided, it is asking the Commission to accept [redacted] of *just* the incremental generation costs (not including any other costs) as the full security being provided to assure that the risk of nonpayment is not being borne by the general body of customers, yet has given no indication that their shareholders are bearing any of this risk. So who is bearing the risk of [redacted] of the costs? If not the shareholders, it must be the general body of customers. Duke seems to be treating the new law read as if it read "The risk of nonpayment of [redacted] of such costs may not be borne by the general body of ratepayers." Of course, that is not what the new law reads. All of the risks of nonpayment of *all* of the costs to serve large load customers may *not* be borne by the general body of customers. Duke is off by over [redacted] (as there are other costs besides incremental generation costs). These are hardly doomsday scenarios. By having a security amount, Duke recognizes that new large load customers are not guaranteed to fulfill their contracts. However, the security amount Duke has rounds to [redacted] when compared to the costs to serve data centers and [redacted]

d. <u>Promise to Fix in Future is Not Compliance with Law</u>

We expect Duke to argue that all of these issues really are not issues, because Duke can fix it all in the future in an indeterminate fashion that will comply with the law by designing rates at that time to cover the costs to serve data centers. But no matter how good (or bad) Duke's proposal may be in the future, it is not before the Commission now and cannot be used to make a finding of compliance with the law now. Furthermore, the security amounts and termination fees, unless made much more robust, will continue to fail to ensure that the risk of nonpayment of costs to serve large load customers is not borne by the general body of customers. § 366.043(3)(a), Fla. Stat. Under the plain language of section 366.043, "No later than October 1, 2026, each public utility shall file, for commission approval, a tariff that *complies* with this section." § 366.043(8), Fla. Stat. (emphasis added). Notably, the statute does not say that a utility merely needs to file a "tariff that promises in the future that it complies with this section." "Complies" is in the present tense, and Duke's proposal must be evaluated on whether it presently complies. It does not. Unless serious changes are made, Duke cannot meet its statutory obligations to protect the general body of customers.

e. It is Not Impossible to Design Rates Even in the Absence of Customers

The generation costs to serve the projected large load customers are remarkably consistent. The 20-year minimum bill, for all of the project scenarios, represents [redacted] A good starting point, then, would be to have rates that cover at least the incremental generation costs. Duke is certainly capable of estimating incremental transmission costs, as well. Put those costs together, plus the transmission needed to the load site, operations and maintenance costs, plus some embedded costs to cover the existing generation and transmission system, along with the projected demand and energy usage (i.e., billing determinants), and you would have rates. Duke has not claimed any kind of impossibility defense, nor can it. Duke's job here was to propose rates that would "reasonably ensure" that data centers pay their full costs of service. Duke chose not to do so, and instead proposes a rate that guarantees that data centers will pay [redacted] of their cost of service. They must do more, and the Commission must reject Duke's proposal and instruct Duke to design rates that attempts to "reasonably ensure" that data centers pay their full costs of service. § 366.043(3)(a), Fla. Stat. Duke did not even try, and the general body would have been virtually just as well off if Duke had proposed [redacted], and Duke would have been basically as close to complying with the requirements of section 366.043, Florida Statutes as it is here. [redacted] versus Duke's proposal here are much, much closer together than Duke's proposal here is to the requirements of section 366.043, Florida Statutes. No matter how you parse it, if we took a foot long ruler with [redacted] at the 0-inch mark and full compliance at the 1-foot mark, Duke's proposal is well-within the first inch, considering expected revenue versus costs once accounting for the termination fee and the security amounts.

CONCLUSION

This is an easy one. Once taking away Duke's promises to comply in the future, when the deadline is now, Duke is very far off the mark. Based on this record and the new statute, the Commission has no choice but to deny Duke's proposal and direct it to file a proposal with a separate large load rate class and *rates* for that class that are designed to reasonably ensure that those customers pay their full costs of service, including, but not limited to, incremental generation and incremental transmission costs, as the plain language of section 366.043, Florida Statutes, indisputably requires.

RESPECTFULLY SUBMITTED this 15th day of September, 2026.

/s/ Bradley Marshall
Florida Bar No. 98008
Email: bmarshall@earthjustice.org
Jordan Luebkemann
Florida Bar No. 1015603
Email: jluebkemann@earthjustice.org
Earthjustice

111 S. Martin Luther King Jr. Blvd.
Tallahassee, Florida 32301
Telephone: (850) 681-0031
Fax: (850) 681-0020

Counsel for Florida Rising.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 15th day of September, 2026, via electronic mail on:

Duke Energy Florida, LLC Dianne M. Triplett 299 1st Avenue North St. Petersburg, FL 33701 dianne.triplett@duke-energy.com Matthew R. Bernier Stephanie Cuello Robert Pickels 106 E. College Avenue, Ste. 800 Tallahassee, FL 32301 matthew.bernier@duke-energy.com stephanie.cuello@duke-energy.com flregulatorylegal@duke-energy.com robert.pickels@duke-energy.com	**Office of Public Counsel** Walt Trierweiler Charles J. Rehwinkel Octavio Simoes-Ponce Austin A. Watrous c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, FL 32399-1400 trierweiler.walt@leg.state.fl.us rehwinkel.charles@leg.state.fl.us ponce.octavio@leg.state.fl.us watrous.austin@leg.state.fl.us
Nucor Steel Florida, Inc. Peter J. Mattheis Michael K. Lavanga Joseph R. Briscar Stone Mattheis Xenopoulos & Brew, PC 1025 Thomas Jefferson Street, NW Suite E-3400 Washington, DC 20007-5201 pjm@smxblaw.com mkl@smxblaw.com jrb@smxblaw.com	**PCS Phosphate – White Springs** James W. Brew Laura Wynn Baker Sarah B. Newman Stone Mattheis Xenopoulos & Brew, PC 1025 Thomas Jefferson Street, NW Suite E-3400 Washington, DC 20007-5201 jbrew@smxblaw.com lwb@smxblaw.com sbn@smxblaw.com
Florida Public Service Commission Office of the General Counsel Major Thompson Saad Farooqi 2540 Shumard Oak Boulevard Tallahassee, Florida 32399 major.thompson@psc.state.fl.us sfarooqi@psc.state.fl.us discovery-gcl@psc.state.fl.us	**Florida Industrial Power Users Group** Jon C. Moyle, Jr. c/o Moyle Law Group 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com kputnal@moylelaw.com mqualls@moylelaw.com

DATED this 15th day of September, 2026.

/s/ Bradley Marshall
Attorney