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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a limited proceeding to approve large load tariff by Duke Energy Florida, LLC	DOCKET NO.: 20260064-EI FILED: September 15, 2026

POST-HEARING BRIEF OF THE FLORIDA OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel ("Citizens" or "OPC"), submit this Post-Hearing Brief pursuant to the Florida Public Service Commission ("Commission") Order Establishing Procedure ("OEP"), Order No. PSC-2026-0120-PCO-EI, issued on May 5, 2026.

STATEMENT OF BASIC POSITION

On July 1, 2026, section 366.043, Florida Statutes, became effective. The law was part of a series of new consumer protections contained in Senate Bill 484 ("SB 484"), a historic piece of legislation addressing the concerns of the Legislature relating to large load customers. The law itself specifies the Legislature's intention in passing it: "when one class of electric service customer requires uniquely large electrical loads at a single location, it imposes a disproportionate risk on the other ratepayers of this state and makes it necessary for the Commission to… ensure such risk is mitigated as much as possible and prevent shifting the costs of serving 1arge load customers to the general body of ratepayers." § 366.043(1), Fla. Stat. Pursuant to section 366.043(8), Florida Statutes, affected utilities were given until October 1, 2026, to demonstrate their efforts to protect their customers from uniquely large electrical loads by filing compliant tariffs with the Commission.

Section 366.043(3)(a), Florida Statutes, requires Duke Energy Florida, LLC ("DEF") to 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. Despite the Legislature's effort in designing

and passing SB 484 and its clear intent to address the "unique" and "disproportionate" risk of large electrical loads, DEF would have this Commission believe that business as usual is good enough to meet its burden to file a compliant tariff. In defiance of the statute, and with tens of billions of dollars at stake that the general body of rate payers may have to subsidize, DEF is asking this Commission to approve tariffs for large load customers using rates that were designed under a 2024 Settlement Agreement. However, as described below, these rates were never designed to address the statutory requirements of future large load customers, and the tariffs, not surprisingly, completely fail to do so. DEF's current defiance of the statute serves its overriding goal, which is to attract large load customers, grow rate base, and increase profits. The only consideration given to the general body of rate payers is for them to serve as a "catch-all" insurance policy when some of this large load inevitably fails to materialize, which is directly contrary to the purpose of the new statute.

DEF weakly attempts to defend using existing rates to serve large load customers by claiming that customer rates won't change pursuant to the same 2024 settlement. This argument lacks any evidentiary or legal basis, and its self-serving, profit-seeking nature should not be tolerated by the Commission. There is nothing in the statute or Florida case law that would support the concept that a settlement approved by the Commission trumps the clear intent of statutory law and it is improper to suggest that the Commission possesses that authority. The mere suggestion that DEF has the option to devise its own unique remedy in this situation to either avoid compliance with a statutory mandate or to rely upon a prior agreement between parties is similarly unsupported. The Commission is not the conduit of DEF's defiance, but rather, directly responsible for the enforcement of the statutory requirements.

Further, under the 2024 settlement DEF may seek to recover costs that are: "(1) of any type that have historically and traditionally been recovered in base rates if those costs are the direct and unavoidable result of new government impositions or requirements, or (2) new or atypical costs that were unforeseeable and could not have been contemplated by the Parties resulting from significantly changed industry-wide circumstances directly affecting DEF's operations…"[1] DEF is stuck with these provisions and may not change, reword, manipulate, or modify these terms, but must, as a matter of law, support the agreed upon terms. As neither of these provisions provide the escape clause sought by DEF, strict statutory compliance cannot be excused by the prior 2024 Settlement Agreement. DEF is already legally bound by the terms, and it cannot reinterpret them to bootstrap post agreement promises to shield customers by having shareholders bear the costs of serving new large load customers. DEF's promises are not only hollow and unenforceable, but in conflict with DEF's responsibility to support the terms of the 2024 Agreement. DEF's responsibility to comply with the Legislature's new statutory provisions and customer protections are in addition to its legal responsibilities under the 2024 Agreement, except to the extent that the statute supersedes the agreement. DEF's suggestion that the agreement trumps the new statute is completely without merit. DEF is impermissibly attempting to legislate through this tariff filing.

Even if the 2024 settlement somehow completely anticipated and contained each and every specific protection and requirement within the statute, which it certainly does not, statutory compliance can only be achieved by filing a compliant tariff. While a settlement agreement remains relevant to the settlement parties, to the extent that it has not been superseded by the

[1] Order No. PSC-2024-0472-AS-EI, issued November 12, 2024, Docket No. 20240025-EI, Attachment A, p. 34, *In re: Petition for rate increase by Duke Energy Florida, LLC.*

statute, it is not a relevant component to the Commission's determination that DEF has achieved statutory compliance.

DEF's refusal to comply with the statute initially manifests in two ways. First, DEF purposefully failed to design a new large load rate. Second, and to add insult to injury, they proposed a Large Load Customer Policy ("LLCP") limiting the application of its tariffs to firm load customers. Nothing in section 366.043, Florida Statutes, restricts its application to firm loads. DEF's decision to restrict its LLCP to firm load customers is merely based upon continued ease of use, which does not exempt the utility from compliance. DEF's current business practices must conform to the statute, not the other way around.

DEF's LLCP also attempts to exempt a single customer from its terms through the use of a grandfather clause that is not authorized by Florida Statute 366.043. DEF's grandfather clause was created to shield one anonymous customer from the newly enacted statute. DEF's proposals to use existing rates instead of designing new ones demonstrate that DEF has chosen noncompliance with the statute to avoid disruption of a single customer and perhaps more importantly, to attract future large load customers who may balk at the Legislature's new statutory requirements.

DEF's application should be rejected as opaque, imprecise, open-ended, and ineffective for containing variable terms that can be changed by DEF without Commission notification or approval. At best, according to DEF, its tariff is a statement of intent to create a future compliant tariff. EXH 2, MPN C1-22. The Commission is without authority to grant waiver of this customer protection statute. See § 120.542(1), Fla. Stat.

Throughout the proposed LLCP and Large Load Customer Agreement ("LLCA"), DEF has arrogated to itself sweeping and unconstrained discretion to amend the terms of those documents. The worst example of this self-serving discretion is a provision in the LLCA's special terms section which would allow DEF to negotiate any term that DEF deems is "non-material" if doing so doesn't result in "fewer customer protections." These provisions enable DEF to renegotiate any term it wishes so long as DEF, and DEF alone, decides the term is "non-material" and the resulting changes don't result in fewer customer protections. DEF has written itself a blank check through the provisions of the LLCA and LLCP and is merely waiting for this Commission to cash it.

Other areas where DEF has decided the Commission doesn't actually have to know what it's going to negotiate include but are not limited to: the customer's load ramp, the attachment form in the LLCA for which is left entirely blank; and the customer's minimum demand for billing purposes, which DEF will set at its discretion from within a proposed range. An opaque contract with vague, ill-defined or absent terms, where one party can unilaterally change the terms, is unenforceable. *Hepler v. Atlas Mut. Ins. Co.*, 501 So. 2d 681, 687 (Fla. 1st DCA 1987). Who pays when a large load customer fails to perform and avoids responsibility by challenging the unenforceable contract? The general body of rate payers become the insurers of last resort; the avoidance of this outcome is the entire purpose and intent of the statue. § 366.043(3)(a), Fla Stat.

In addition to frustrating the Commission's oversight responsibilities, DEF's proposal also contravenes Rule 25-9.034, Florida Administrative Code ("F.A.C."), which requires Commission approval prior to execution whenever a utility enters into a special contract for the sale its product or services on terms not specifically addressed by its filed regulations and standard approved rate

schedules. DEF's tariff proposals maximize their own flexibility at the expense of enforceability, leaving current customers exposed.

Finally, the Commission should reject DEF's application because its proposals do not reasonably ensure that each large load customer bears its own full cost of service. At the outset, DEF concedes that it does not track all of the costs associated with performing system impact studies, which are the earliest fees DEF could recoup from a potential large load customer. Tr. 91:15-17. DEF's proposed early termination fees are, by design, structured not to recoup the full cost of serving an early-terminating customer. Tr. 310:4-8. While DEF claims that large load customers must pay "100%" of the estimated costs of extending service in advance, its Contributions In Aid of Construction ("CIAC") policy leaves the costs of incremental transmission and generation unrecovered. Tr. 103:19-25. These deficiencies, along with those described in the preceding paragraphs, are intentional. DEF designed its proposed tariffs to attract large load customers, and postpones compliance with section 366.043(8), Florida Statutes, to a more convenient future date, with no consideration of the resulting risks to existing customers, to maximize speculative profits for shareholders.

The Legislature passed SB 484 to ensure that the risk of nonpayment of the costs to serve large load customers is not borne by the general body of ratepayers. This case represents the first opportunity to enforce, and comply with, that legislation. The Commission will be setting a statewide policy through a single tariff docket. Commissioners should seize this opportunity to fulfill the regulatory purpose that they have been entrusted with by denying DEF's application. Let this precedent provide helpful guidance for the remaining utilities that have yet to file compliant tariffs. In denying DEF's application, were the Commission to grant DEF leave to refile a new tariff, the new tariff must include new terms that: 1) Establish an actual rate designed to

recover the costs to serve such customers including incremental costs, 2) Eliminate any special terms affording DEF unlimited discretion in negotiating with large load customers, and 3) Include any other terms necessary to reasonably ensure that each large load customer bears its own full cost of service. Failure to do otherwise will leave customers exposed to the risks that SB 484 and its enacting legislation was designed to protect them from and encourage other affected utilities to file tariffs that prioritize shareholder profit over the intended customers' protections.

STATEMENT OF FACTUAL ISSUES AND POSITIONS

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

OPC Position: * No. DEF has failed to demonstrate that it is "fair and reasonable" to serve large load customers using rates that were not designed to do so. Serving large load customers under existing rates would give those customers undue or unreasonable preference or advantage. DEF has also failed to demonstrate that its proposed CIAC modifications, LLCP, and LLCA, are fair and reasonable and do not give large load customers undue or unreasonable preference or advantage. (Nelson) *

ARGUMENT:

The electric utility industry is experiencing unprecedented growth and demand from large load customers, particularly from data centers. Tr. 49:5-7. These large load customers have unique characteristics that are unprecedented in Florida. Tr. 52:5-7, 121:1-5. By requiring uniquely large electrical loads at a single location, large load customers impose a disproportionate risk on the other ratepayers of this State. See § 366.043(1), Fla. Stat.

In response, the Legislature enacted section 366.043, Florida Statutes. The new law requires certain public utilities, including DEF, to propose compliant tariffs for large load customers by October 1, 2026. § 366.043(8), Fla. Stat. The minimum tariff and service requirements for large load customers include reasonably ensuring 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. § 366.043(3)(a), Fla. Stat. 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. *Id*.

Typically, it is uncommon for utilities to base rate schedule charges on incremental costs. Tr. 178:2-4. Under this approach, the new load is directly allocated the incremental cost to serve it in one or more functional categories. Tr. 270:2-3. Allocating the incremental cost to new customers can protect existing customers from short-term rate increases and, potentially, insulate customers from risks of stranded assets associated with large loads. Tr. 270:6-8. This is as opposed to a traditional embedded cost of service approach, under which a utility allocates costs to each customer class using allocation factors. Tr. 269:11-15. By specifically naming incremental transmission and generation costs as examples of costs of service that ratepayers need not bear the nonpayment risk for, section 366.043, Florida Statutes, clearly demands tariffs that exceed traditional ratemaking requirements. Tr. 269:3-7.

DEF's proposal is not fair and reasonable because DEF is proposing serving large load customers using its existing GSD-1 and GSDT-1 rates. Tr. 53:10-19; EXH 2, MPN C1-22. Specifically, both a customer's minimum bill and early termination fee will be determined using the GSD-1 and GSDT-1 rates. EXH 2, MPN C1-19-C1-21. These rates were designed in a 2024 Settlement Agreement that was approved before SB 484 had even been introduced in the Legislature. Tr. 114:2-6. Despite the Legislature's mandate that the risk of nonpayment of incremental transmission and generation costs may not be borne by the general body of ratepayers, the GSD-1 and GSDT-1 rates reflect traditional embedded cost revenue allocation (Tr. 121:16-18) and therefore do not recover incremental costs. Tr. 105:17-22; EXH 90, MPN F2-538, EXH 91,

MPN F2-541. In fact, these rates do not contemplate large load customer costs at all because they were designed using cost of service studies that were part of a 2024 Settlement Agreement. Tr. 105:17-22. Because these rates were not designed with recovering costs, including incremental costs, from large load customers, by definition it cannot be fair and reasonable to base large load minimum bills and termination fees using them.

Applying the existing GSD-1 and GSDT-1 rates to large load customers is also unfair and unreasonable because these rates are below parity. Tr. 145:22-25. Parity refers to the concept that each customer pays its actual cost of service. Tr. 145:7-9. If a large load customer's rates are below parity, a portion of the costs caused by serving that customer will not be recovered from that customer but instead will be allocated to the general body of ratepayers and recovered by increasing rates for other customer classes. Tr. 365:13-17. Therefore, by being below parity, the GSD-1 and GSDT-1 rates are being subsidized by residential and small business customers, who are above parity. Tr. 363:3-11. Given that section 366.043(3)(a), Florida Statutes, forbids the risk of nonpayment of large load customer costs from being borne by the general body of ratepayers, it is unfair and unreasonable to use rates that are already being subsidized by residential and small commercial customers.

DEF's 2025 Ten Year Site Plan ("TYSP") further illustrates the unreasonableness and unfairness of using existing rates to serve large load customers. According to the 2025 TYSP, DEF's 2024 net firm demand was 8.6 GW. Tr. 275:16-19. However, DEF has received inquiries from large load customers representing 13.2 GW of additional capacity. Tr. 275:16-19. If all of this data center capacity were to interconnect, it would more than double the company's 2024 net firm demand. Tr. 275:16-19. Under the GSD-1 and GSDT-1 rates, the astronomical, unprecedented costs of more than doubling the company's net firm demand to serve exclusively large load

customers would be borne by the general body of ratepayers. DEF has offered no competent and substantial evidence to demonstrate that this would be fair or reasonable. Indeed, doing so would unreasonably, unfairly and unjustly double the burdens carried by the current body of ratepayers, which is the antithesis of the intent of SB 484 and the cost causer pays the costs to serve principle.

On top of requiring all rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, to be fair and reasonable, section 366.03, Florida Statutes, also requires that no public utility make or give any undue or unreasonable preference or advantage to any person or locality. Utility companies may classify customers into subgroups, and it is within their discretion to treat these groups differently when there is a reasonable basis to do so. *See Fla. Power Corp. v. Mayo*, 203 So. 2d 614, 615 (Fla. 1967) (holding that a petitioner may not effectively attack rates based on discriminatory or arbitrary preference when the utility sufficiently identifies and distinguishes a class of consumers). In fact, the very rate structure of a utility is "the classification system used in justifying different rates." *Lewis v. Pub. Serv. Comm'n*, 463 So. 2d 227, 229 (Fla. 1985) (quoting *City of Tallahassee v. Mann*, 411 So. 2d 162, 163 (Fla. 1981)).

While there is a reasonable basis to treat large load customers differently from other customers given their unique characteristics that are unprecedented in Florida (Tr. 52:5-7, 121:1-5), there is no reasonable basis to charge them rates that cannot recover their cost of service. Doing so defies the very reason why the Legislature enacted section 366.043, Florida Statutes: to ensure that the risk of nonpayment of large load customer costs of service is not borne by the general body of ratepayers. Not only is charging large load customers based on the GSD-1 and GSDT-1 rates unfair and unreasonable, doing so also gives large load customers undue and unreasonable preferences through the massive subsidies from other customers that they will receive.

DEF attempts to defend using the GSD-1 and GSDT-1 rates to serve large load customers by referencing its 2024 settlement. Tr. 15:11-12, 65:20-21. DEF claims that the 2024 Settlement freezes rates through 2027, ensuring no incremental costs incurred to serve a data center will increase the cost the general body of customers pay. Tr. 66:4-7. Any costs incurred to serve large load customers in the meanwhile would be absorbed by the company's shareholders. Tr. 114:17-115:4. However, the 2024 Settlement Agreement authorizes DEF to seek to recover costs of any type or category that have historically and traditionally been recovered in base rates if such costs are "(i) the direct and unavoidable result of new governmental impositions or requirements; (ii) new or atypical costs that were unforeseeable and could not have been contemplated by the Parties resulting from significantly changed industry-wide circumstances directly affecting DEF's operations…"[2] These provisions would allow DEF to seek to recover the costs of serving large load customers in base rates. Accordingly, DEF's assertion that shareholders would bear large load customer costs during the 18 months remaining in the settlement agreement is unenforceable, as that statement is not reproduced in the company's proposed LLCP or LLCA. Tr. 120:8-10.

Regardless of whether DEF claims with respect to the 2024 settlement are true or not, compliance with section 366.043, Florida Statutes, is not contingent on whether DEF is currently operating under a settlement. Tr. 230:17-19. The Legislature considered the existence of settlement agreements in the past when enacting statutes affecting electric utilities. *See, e.g.*, § § 366.8260(2)(c)2.a., 366.95(1)(k)1., 366.95(2)(b), 366.95(2)(c)2.g., Fla. Stat. By not including language addressing the issue of existing settlements in section 366.043, Florida Statutes, it's clear that the Legislature intended the statute to apply regardless of whether an applicable utility had

[2] Order No. PSC-2024-0472-AS-EI, issued November 12, 2024, Docket No. 20240025-EI, Attachment A, p. 34, *In re: Petition for rate increase by Duke Energy Florida, LLC.*

previously entered into a settlement agreement or not. DEF's attempt to use the 2024 Settlement Agreement to shield its decision-making in this case is completely without merit. In order to qualify as a colorable argument in Florida practice, the claim must be plausible, legally cognizable, and supported by relevant authorities or facts. DEF's assertion utterly fails to meet that standard.

DEF also attempts to defend not proposing a rate specific to large load customers because it claims it is unlikely to incur costs to serve a large load customer during the settlement period in the first place. Tr. 15:11-12, 114:17-115:4. Again, it is irrelevant for the purposes of section 366.043, Florida Statutes, whether a utility is "likely" to have a large load customer in the next 18 months. Even if a utility were expecting zero such customers, section 366.043(8), Florida Statutes, requires affected utilities to file a compliant tariff by October 1, 2026. DEF's argument is a non sequitur, as the company concedes that it could serve at least a 55 MW customer before the end of the settlement period. Tr. 106:9-12.

Section 366.03, Florida Statutes, additionally requires that utilities provide "service upon terms as required by the commission." The LLCP allows DEF to negotiate "non-material" terms differently from those included in the policy without Commission approval. EXH 2, MPN C1-22. Neither the LLCP nor the LLCA define what the term "non-material" means. Tr. 106:21-23. When it comes time to negotiate a contract with a potential large load customer, DEF will be the entity that decides what "non-material" means. Tr. 106:24-107:7. As DEF has an obligation to act in the interests of its shareholders, DEF concedes that it "possibly" has an incentive to decide to arbitrarily designate a term as non-material if it means closing a deal with a customer. Tr. 108:23-109:7. Therefore, DEF's petition and associated tariffs fail to comply with the requirements of section 366.03, Florida Statutes, because the company can't demonstrate that it would be providing service upon terms as required by the Commission.

DEF's petition and associated tariffs fail to comply with the requirements of section 366.03, Florida Statutes. Proposing serving customers with the existing GSD-1 and GSDT-1 rates is not fair or reasonable and would result in an undue preference for large load customers. Further, DEF's proposed ability to modify terms that DEF deems to be "non-material" authorizes it to furnish to each person applying for service upon terms that were not authorized by the Commission. The Commission should therefore deny DEF's petition.

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

OPC Position: *No. At a minimum, the failure to design a large load customer-specific rate and the attempted resort to an existing rate fails to comply with the requirements of section 366.043, Florida Statutes. DEF's proposed CIAC modifications, LLCA, LLCP, and grandfather clause also fail to contain sufficient protections to ensure that the risk that the nonpayment of large load customer costs will not be borne by the general body of ratepayers. (Nelson)*

ARGUMENT:

DEF's petition and associated tariffs do not comply with the requirements of section 366.043, Florida Statutes, because they fail to provide sufficient protections to ensure that the risks of nonpayment of large load customers' costs of service are not borne by the general body of ratepayers. Almost every aspect of DEF's petition and associated tariffs are deficient. As such, the Commission should deny DEF's petition.

I. Too Vague to be Enforceable

A tariff is a document setting forth a public utility's services, the rates for those services, and the rules and regulations that govern the utility's relationship with its customers. *Tampa Elec. Co. v. Gansner*, 327 So. 3d 1281, 1284 (Fla. 2d DCA 2021). Tariffs that have been approved by the Commission are "recognized as a contract between the utility and its customers with the force and effect of law." *Id*. It is an elementary principle of contract law that when an offer which does

not contain all essential elements of the contract is accepted by a communication that does not supply the missing element, the purported agreement is too vague to constitute an enforceable contract. *Hepler v. Atlas Mut. Ins. Co.*, 501 So. 2d 681, 687 (Fla. 1st DCA 1987).

DEF's tariff, which also functions as a contract, is so vague as to be unenforceable. DEF can renegotiate any term that DEF decides, at its sole discretion, is "non-material". EXH 2, MPN C1-22. Entire exhibit attachments contemplating substantial provisions are completely blank. EXH 2, MPN C1-42-43, C1-57. Multiple terms, such as a client's minimum monthly bill, security requirements, and early termination are left open to negotiation with few, if any, guardrails. EXH 2, MPN C1-19-21. Finally, any large load customer who takes service from DEF pursuant to the LLCP will at some point have their rates changed without the option to opt out. Tr. 115:25-24; EXH 2, MPN C1-22. This is because DEF intends to present in its next proceeding to reset rates a new large load rate schedule "which shall reasonably ensure that Customer bears its own full cost of service." EXH 2, MPN C1-22. In other words, a large load customer who takes up service from DEF between now and whenever DEF ultimately resets its rates will actually have no idea what their rate is going to end up being. These vagaries go to the essential terms of the contract, rendering the contract unenforceable. *Hepler v. Atlas Mut. Ins. Co.*, 501 So. 2d 681, 687 (Fla. 1st DCA 1987).

II. "Large Load Customer" Definition

As an additional threshold matter, DEF's petition and associated tariffs fail to comply with section 366.043, Florida Statutes, because they only apply to customers who have 50 megawatts or higher of "firm" load. Tr. 86:17-20; EXH 2, MPN C1-19. However, the definition of a "large load customer" in section 366.043(2)(d) is as follows:

> "Large load customer" means a customer with an anticipated monthly peak load of 50 megawatts or more, calculated as the highest average load over a 15-minute interval at a single location. The term does not include a load aggregated across multiple locations owned by the same customer. However, the term includes all customers or other entities that have entered into a colocation or similar agreement at a single location that otherwise meets the anticipated monthly peak load provided in this paragraph.

Nowhere does the above definition require a large load customer's anticipated monthly peak load to be taken under firm service. The only requirements are that the load, firm or otherwise, be 50 megawatts or more at a single location.

This issue is not theoretical because DEF admits that it has at least one customer taking service at 50 megawatts or higher of non-firm load. Tr. 87:3-6. That customer would not fall under DEF's faulty LLCP due to their load being non-firm. This means that the risks of that customer's cost of service, along with the costs of service of any future customers taking service at 50 MW or higher of non-firm load, will not be covered by DEF's petition and associated tariffs. This is simply not the customer protection SB 484 was enacted to provide. DEF should not be allowed to bypass core requirements of the statute with no express exemptions.

III. LLCP Section 13.01 - General

DEF's proposal next defies section 366.043, Florida Statutes, by including a grandfather clause. EXH 2, MPN C1-19. The grandfather clause specifically provides that the "[LLCP] will not impose any additional requirement for customer sites that otherwise meet the Peak Contract Demand requirements and exist on the Company's system as of December 31, 2025." EXH 2, MPN C1-19. Under DEF's proposal, this grandfather clause would apply to one anonymous existing customer taking firm service at 50 MW or higher (Tr. 87:7-21); however, under section 366.043(2)(d)'s definition of a large load customer, the grandfather clause would also include DEF's 50 MW or higher non-firm customer. EXH 59, MPN F2-8.

The grandfather clause fails to comply with section 366.043, Florida Statutes, because the statute does not authorize such a clause. Even without an express prohibition, the concept of a grandfather clause is incompatible with the purpose of section 366.043, Florida Statutes, because any grandfathered customer increases the risk that their cost of service will be borne by the general body of ratepayers. This is because any customer who has been grandfathered in may continue to increase their peak load. Tr. 91:7-10. DEF has also failed to present any competent or substantial evidence for why any customer should be grandfathered in, and therefore exempt from the statute, as the clause is not addressed in the testimony of the company's rate design witness. Tr. 90:15-22.

If DEF's proposed grandfather clause fails, then so must the grandfather clauses proposed by certain other interveners. FIPUG's Prehearing Statement advocating for the removal of all conditions from DEF's grandfather clause exposes all of DEF's 2 million customers to increased risks.

The "General" section of DEF's LLCP also includes a system impact fee of $150,000 "to support the company's initial analysis and engineering costs to determine the investments and upgrades necessary to serve the Customer's proposed load." Upon first blush, this may seem reasonable given that DEF has charged approximately $130,000 to $140,000 for most of the system impact studies it has conducted so far. EXH 58, MPN F2-5-F2-6. However, none of these amounts are accurate as DEF concedes that it does not track its internal costs to complete these studies. Tr. 91:15-17; EXH 58, MPN F2-5. Without tracking these costs, it's impossible to determine whether DEF's proposed system impact fee is designed to protect its general body of ratepayers by capturing the full costs to be paid by new large load users or serve as a low fee enticement to potential large load customers.

Section 366.043(3)(b), Florida Statutes, also requires that DEF's proposed minimum tariff and service requirements include provisions reasonably designed to prevent the utility from providing electric service to a customer that would otherwise qualify as a large load customer if that customer were a foreign entity. DEF's LLCP does provide that DEF "may not provide service to a Customer that is a foreign entity…" EXH 2, MPN C1-19. However, DEF's sole plan to ensure they are not providing service to a foreign entity is to rely on an affidavit from the potential large load customers in determining whether or not that customer is in fact a foreign entity. Tr. 117:25-118:3. DEF's LLCP fails to comply with section 366.043, Florida Statutes, by containing what amounts to zero policies or procedures to ensure that DEF does not serve foreign entities. This falls far short of the sufficiency requirement in the statute. DEF's "requirement" of an affidavit is essentially a rubber stamp, with no independent verification of who is submitting the affidavit. Indeed, DEF also fails to address the common scenario where it contracts with a U.S.-based construction company, who may then transfer ownership to a noncompliant end-user/customer or broker/middleman.

IV. LLCP Section 13.02 – Term

The LLCP provides that its minimum term shall be for a period of 20 years. EXH 2, MPN C1-19. This term may initially seem reasonable as it is one of the longer terms contemplated by large load tariffs nationally. Tr. 182:7. However, unlike most other tariffs nationally, DEF's proposal does not include a provision defining the length of a large load customer's load ramp period. Instead, the Customer-Requested Load Ramp exhibit attached to the LLCA is completely blank. EXH 2, MPN C1-42. As discussed below, a large load customer's load ramp has implications for how much it may be liable for in the event of early termination. EXH 2, MPN C1-42. As discussed below, a large load customer's load ramp has implications for how much it may

be liable for in the event of early termination. EXH 2, MPN C1-21. When asked why DEF did not include a limit on a customer's load ramp period, DEF described such as an "arbitrary policy limit." EXH 4, MPN C3-168. This description is not credible as utilities in other states have included load ramp limits in their own large load tariffs. Tr. 182:7. Further, DEF did not rely on any data when it decided not to have a load ramp cap, indicating that this proposal lacks competent and substantial evidence. Tr. 95:3-9. By failing to include a load ramp limit in its proposal, DEF is exposing its general body of ratepayers to increased risk of subsidizing large load customers in violation of section 366.043, Florida Statutes.

V. LLCP Section 13.03 – Determination of Minimum Monthly Bill

DEF's proposed minimum monthly bill provides insufficient protection from the risks of large load customers for its general body of ratepayers. As part of determining a large load customer's minimum monthly bill, DEF's proposal includes a minimum demand percentage of the customers annual Contract Capacity. EXH 2, MPN C1-19. Depending on the customer, the minimum demand percentage shall be between 75% and 85%. EXH 2, MPN C1-19. DEF intends to charge initial large load customers 75%, which is at the bottom of the range. Tr. 96:6-12. The LLCP does not describe when or under what factors DEF will begin charging customers using a minimum demand higher than 75%. Tr. 101:6-9. Rather, it will be up to DEF to decide when it will begin signing customers with a minimum demand percentage higher than 75%. Tr. 96:13-24. The understanding of DEF's rate design witness was that DEF would not be going back and changing the percentage in previously agreed upon projects. Tr. 100:22-101:2.

By proposing using a range of percentages to determine minimum monthly bills but then leaving it to its own discretion as to when to increase that range, DEF's proposal increases the risk that the costs of serving large load customers will be borne by the general body of ratepayers. Even

if DEF determines that its current minimum demand percentage was insufficient to recover costs from large load customers, nothing in DEF's proposal requires DEF to increase the minimum demand percentage to recover those costs. In fact, once a large load customer signs a LLCA with DEF, DEF has no intention of updating that customer's minimum demand percentage from there on out. Tr. 100:22-101:2. As DEF has an obligation to act in the interest of its shareholders (Tr. 108:23-109:1), it's logical to conclude that it would prefer to sign an LLCA with a customer with the lowest minimum demand percentage possible if doing otherwise would cause the customer to walk away.

Additionally, DEF's minimum monthly bill calculation is deficient because, whatever minimum demand DEF lands on, this percentage will ultimately be multiplied by the base demand rate(s) per the applicable base rate schedule. EXH 2, MPN C1-19. As discussed above, under DEF's current proposal, the applicable base rate schedules would be either the GSD-1 or GSDT-1 rates. EXH 2, MPN C1-21. Again, the GSD-1 and GSDT-1 rates were designed in a 2024 Settlement Agreement that was approved before SB 484 had even been introduced in the Legislature. Tr. 114:3-6. The rates do not recover incremental costs (Tr 105:17-22; EXH 90, MPN F2-538, EXH 91, MPN F2-541) and do not contemplate large load customer costs at all because they were designed using cost of service studies that were part of a 2024 Settlement Agreement. Tr. 105:17-22. This means that, from now until whenever DEF decides to actually design and implement a large load customer-specific rate, DEF's minimum monthly bills do not recover the full costs of serving large load customers, by definition. Tr. 114:11-16. This failure to recover large load customer costs shifts to the risks of the nonrecovery of such to DEF's general body of ratepayers in violation of section 366.043, Florida Statutes.

VI. LLCP Section 13.04 – Security Requirements

The security requirements reflected in DEF's LLCP represent another instance of the company giving itself too much negotiating discretion at the potential expense of its general body of ratepayers. Per section 13.04 of the LLCP, a large load customer shall provide a security amount to DEF, that is a percentage of the applicable termination payment. EXH 2, MPN C1-21. From the outset, this provision does not comply with section 366.043, Florida Statutes, because DEF's termination payments are too small, as discussed below. Tr. 310:4-8. The provision is additionally deficient because it provides little guidance on what "percentage" of the applicable termination payment DEF will seek as security. Tr. 311:7-10. The only fixed term is that the security percentage threshold shall be 10% at an early termination fee of $100 million. EXH 2, MPN C1-21. Beyond that, DEF can set whatever security percentage it negotiates with the customer, with no input from the Commission, outside stakeholders, or other customer groups. Tr. 311:16-19. By setting a low floor of 10% for the security percentage at the $100 million termination fee level, DEF appears to suggest that security percentages for smaller customers could be even lower. Tr. 312:5-7. By requiring small security amounts, DEF may attract more customers, but more of those customers will represent speculative loads that will not materialize. Tr. 297:1-3. Because DEF has again proposed terms with the purpose of making it easier to negotiate with large load customers and because the resulting security requirements will be too low to screen out speculative loads, DEF's proposed security requirements are in violation of section 366.043, Florida Statutes.

VII. LLCP Section 13.05 – Early Termination

DEF's proposed early termination fees represent a divide of results based on when a large load decides to terminate their LLCA. If a large load customer terminates their contract while they are still within their load ramp period, then they are responsible for paying DEF its actual costs

incurred to provide service to that customer. EXH 2, MPN C1-21. Unlike every other aspect of the company's petition, this actually includes the incremental generation costs to serve the customer. Tr. 103:2-5. However, if a large load customer is able to wait until their load ramp period is completed before early terminating their contract, then the termination fee is instead determined by a formula. Tr. 103:6-14. In this situation, the large load customer's Termination Fee will be equal to three years of Minimum Monthly Bills plus the netbook value of new facilities referenced in section 13.07, less any refundable portion of the upfront CIAC payment, which has not yet been refunded. EXH 2, MPN C1-21. Again, neither a large load customer's CIAC payment nor their GSD-1 or GSDT-1-based minimum monthly bills are designed to recover incremental costs under DEF's proposal. Tr. 103:19-25, 105:17-22. A large load customer who terminates after their load ramp period ends will not be responsible for paying DEF the incremental costs that DEF incurred to serve that customer, unlike a customer who terminates while they are still within their load ramp period.

The above early termination fees are more lenient than those of many other utilities. Tr. 309. Many large load tariffs contain an early termination fee of either 1) all minimum monthly bills for the duration of the contract, or 2) the remaining undepreciated value of facilities whose costs have been directly assigned to the customer, whichever is higher. Tr. 309:19-22. DEF's proposed early termination fees for large load customers past their load ramp offers minimal protection to existing customers because only a small subset of incremental costs are included in the CIAC and minimum bill provisions. Tr. 309:22-310:4. This is problematic because, when a large load customer terminates service before a utility has recovered the costs incurred to provide that service, the physical grid assets built to serve them remain on the utility's system and in the company's rate base. Tr. 310:12-16. If the company cannot quickly repurpose those assets, their

costs will be socialized to customer groups that do not receive any benefits from them. Tr. 310:12-16. As such, DEF's proposed early termination fees do not comply with section 366.043, Florida Statutes, because they increase the risks that the general body of ratepayers will have to bear the costs of stranded assets built to serve early terminating large load customers.

VIII. LLCP Section 13.06 – Special Terms

As discussed above, the LLCP allows DEF to negotiate "non-material" terms different than those included in the policy without Commission approval. EXH 2, MPN C1-22. *See argument in Issue A.* In response to discovery, DEF stated that examples of non-material terms include, but are not limited to, changes in how the parties will be notified under the LLCA, changes to how long the parties must negotiate in good faith to avoid disputes, or changes to the nature of the interconnection. EXH 16, MPN E1. While these examples may appear benign, as DEF has an obligation to act in the interests of its shareholders, DEF concedes that it "possibly" has an incentive to decide that a term is non-material even if that term is arguably material if that means closing a deal with a customer. Tr. 108:23-109:7. Nothing in the LLCP or LLCA would stop DEF from concluding, for example, that a special rate unique to a particular large load customer is non-material. Were it to do so, the only entities who would know would be DEF and the large load customer it is negotiating with. Because this discretion would only be checked by the conscience of whoever performs DEF's large load contract negotiations, it impermissibly exposes DEF's general body of ratepayers to the risks of large load customers not bearing their full costs of service.

IX. LLCP Section 13.07 – CIAC

This section of the LLCP incorporates the changes to DEF's CIAC tariff into the LLCP. DEF proposes to require large load customers to pay CIAC up front, subject to refund over five years. Tr. 59:12-13; EXH 2, MPN C1-22. These CIAC requirements supposedly encompass

"100% of the total estimated costs to extend service…" EXH 2, MPN C1-22. This language is misleading, if not outright false, because incremental generation and non-site specific transmission costs are not included in the CIAC amount. Tr. 103:19-25. This flies in the face of section 366.043(3)(a), Florida Statutes, which states the following:

> (3) The following minimum tariff and service requirements for large load customers are required in public utility tariffs:
> (a) 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. (emphases added)

As incremental generation and transmission are enumerated examples of a large load customer's cost of service, DEF fails to comply with the statute by not including such costs as part of the "100% of the total estimated costs to extend service." This further increases the risk that the nonpayment of these costs may be borne by the general body of ratepayers in violation of section 366.043(3)(a), Florida Statutes. In fact, nowhere does DEF's proposal contemplate recovering the costs of incremental generation. EXH 111, MPN F4-1547.

X. LLCP Section 13.08 – Customer Rate

Despite section 366.043, Florida Statutes, requirement to file compliant tariffs by October 1, 2026, DEF's LLCP instead proposes requiring customer to take service under the company's existing GSD-1 or GSDT-1 rates. EXH 2, MPN C1-22. Again, these rates were designed in a 2024 Settlement Agreement that was approved before SB 484 had even been introduced in the Legislature. Tr. 114:3-16. Despite the Legislature's mandate that the risk of nonpayment of incremental transmission and generation costs may not be borne by the general body of ratepayers, the GSD-1 and GSDT-1 do not recover incremental costs. Tr. 105:17-22; EXH 90, MPN F2-538,

EXH 91, MPN F2-541. In fact, these rates do not contemplate large load customer costs at all because they were designed using cost of service studies that were part of a 2024 Settlement Agreement. Tr. 105:17-22.

While the GSD-1 and GSDT-1 rates will initially be available to large load customers, any large load customer who takes service from DEF pursuant to the LLCP will at some point have their rates changed without the option to opt out. Tr. 115:25-24; EXH 2, MPN C1-22. This is because DEF intends to present in its next proceeding to reset rates a new large load rate schedule "which shall reasonably ensure that Customer bears its own full cost of service." EXH 2, MPN C1-22. DEF intends to present these new rates even if DEF still has no LLCA customers signed by the time of its next rate case. Tr. 116:9-12. In order to design new rates absent any large load customers, DEF would develop a cost-of-service study using assumptions. Tr. 116:9-18. In other words, it was possible for DEF to design rates compliant with section 366.043, Florida Statutes, in this proceeding, DEF simply chose not to. If a large load customer were to take service under DEF's deficient LLCP, they would have no idea what their rates will ultimately look like until DEF opts to present new ones in a hypothetical future rate case. Tr. 115:25-116:4.

Because the GSD-1 and GSDT-1 rates were not designed to recover the full costs, including incremental costs, of serving large load customers, DEF's petition and associated tariffs do not comply with the requirements of section 366.043, Florida Statutes.

XI. No Competent and Substantial Evidence

The burden of proof in ratemaking cases in which a utility seeks an increase in rates rests on the utility. *Fla. PSC v. Fla. Waterworks Ass'n*, 731 So. 2d 836, 841 (Fla. 1st DCA 1999). DEF has failed to present competent and substantial evidence supporting its case. DEF did not rely on any data when it decided not to have a load ramp cap (Tr. 95:3-9), or in deciding on its 5-year

CIAC refund period (Tr. 113:12-15). DEF's entire application is simply a series of unsupported assertions for how DEF feels its vibes-based tariff should look like. Nor did DEF provide references to relevant legal authority or precedent that would obviate their burden to establish record evidence upon which the Commission could support a finding in the utility's favor.

XII. Conclusion

At every step, DEF, in its petition and associated legacy-based tariffs, has opted to maximize the enticement of future large load customers over the protection of the current body of ratepayers and compliance with section 366.043, Florida Statutes. Despite the plain language of the statute, enumerating incremental transmission and generation costs as components of the full costs of service that may not be borne by DEF's general body of ratepayers, DEF defiantly declines to recover such costs in its proposed tariffs. By failing to recover incremental costs, DEF shifts the risks of serving large electric loads at one location to its current customers. The various provisions affording DEF near-unlimited discretion to modify LLCP and LLCA terms were designed to give DEF the ability to entice large load customers at the cost of increased risks for its current body of ratepayers. Finally, the proposed weak protections such as the minor security requirements and deficient early termination fees result in a very real risk that DEF may attract the wrong kind of large load customer, those looking for the cheapest, quickest, and easiest to escape deal possible. Section 366.043, Florida Statutes, makes it very clear there can be no cross-subsidization. If a new large load customer is coming into the state of Florida, they have to pay full freight and cannot put upward pressure on rates for existing utility customers. That is the law now. It is on the utility to find a way to make the new customer carry the entire costs, including capital costs, of serving that new load. This Commission must reject DEF's petition and associated legacy tariff proposals for these reasons and establish clear precedent for future utilities.

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

OPC Position: *No**.** DEF's proposed tariff reserves to DEF so much discretion and variability that the Commission cannot find that the associated tariffs meet the specific requirements of the new law. Furthermore, the Commission would be unable to enforce Rule 25-9.034, Florida Administrative Code (based on section 366.05(1), Florida Statutes), because the Commission cannot determine whether a special contract with a customer is specifically covered by the tariff or to what degree arrangements deviate from the tariff.*

ARGUMENT:

Section 366.05(1)(e), Florida Statutes, provides that changes to tariffs must be approved by a majority vote of the Commission. Section 13.06 of the LLCP alone permits DEF to dictate different terms of the LLCP and alone determine whether those changes are material. EXH 2, MPN C1-22. DEF also gives itself the discretion to negotiate various terms in other parts of the LLCP, such as determining a large load customer's minimum demand percentage or the percent of a large load customer's termination fee for that customer's security requirement. EXH 2, MPN C1-19-C1-21. The entire exhibit attachment to the LLCA for determining a Customer-Requested Load Ramp is completely blank. EXH 2, MPN C1-42. Under these circumstances, DEF has afforded itself so much discretion to change tariff terms that the Commission cannot meet its obligations under section 366.05(1)(e), Florida Statutes, to approve by majority vote new tariffs.

Further, the Commission has promulgated Rule 25-9.034, F.A.C., to implement section 366.05(1)(e), Florida Statutes. This Rule provides that:

> Wherever a special contract is entered into by a utility for the sale of its product or services in a manner or subject to the provisions not specifically covered by its filed regulations and standard approved rate schedules, such contract must be approved by the Commission prior to its execution.

By proposing to only submit executed LLCAs to the Commission for review and approval when DEF unilaterally determines that the LLCA contains terms that differ materially from the approved form tariff, DEF is proposing to not only prevent the Commission from exercising its oversight duty under section 3666.05(1)(e), Florida Statutes, to approve the language of tariffs by majority vote, but also to violate the above Rule. Therefore, the Commission must deny DEF's petition and associated tariffs.

ISSUE D: This issue was the subject of a separate hearing and brief in this docket.[3]

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?

OPC Position: *To the extent that the 2024 Settlement Agreement does not conflict with the provisions of, those t rates, associated terms and conditions, continue in full effect.*

ARGUMENT:

While Commission approval of DEF's petition and associated terms and approval would not violate the 2024 Settlement Agreement, this is not a valid reason for the Commission to grant such approval. DEF's argument that the 2024 Settlement Agreement protects customers from the costs of large load customers is both a non sequitur and inaccurate. Filing a compliant tariff pursuant to section 366.043(8), Florida Statutes, which does not transfer the risks of nonpayment by large load customers to the general body of ratepayers is not dependent on whether or not a covered utility is operating under a settlement agreement. Also, the 2024 Settlement itself has

[3] See Document No. 05345-2026, filed August 20. 2026, docket No. 20260064-EI, *In re: Petition for a limited proceeding to approve large load tariff by Duke Energy Florida, LLC.*

terms that give the company avenues for recovering costs from customers that were not contemplated by the agreement.[4]

Section 34 of the 2024 Settlement Agreement provides that a rate or rates, and their associated terms and conditions, resulting from this docket and ordered by the Commission in compliance with legislative requirements like those contained in SB 484, will not violate the terms of the agreement. Furthermore, the base rate freeze provision in Paragraph 5 of the Agreement does not protect existing customers from the risk that the nonpayment of large load customer costs will not be borne by the general body of ratepayers or that costs will otherwise be improperly redistributed among customer classes in a cost-of-service study applicable to future rate setting.

DEF is stuck with these provisions and may not change, reword, manipulate, or modify these terms, but must, as a matter of law, support the agreed upon terms. DEF's promises are not only hollow and unenforceable, but in conflict with DEF's responsibility to support the terms of the 2024 Agreement. DEF's responsibility to comply with the Legislature's new statutory provisions and customer protections are in addition to its legal responsibilities under the 2024 Agreement, except to the extent that the statute supersedes the agreement. DEF's suggestion that the agreement trumps the new statute is completely without merit in the civilized world. The Commission should deny the LLCP and associated terms and conditions. *See arguments regarding Issues A, B, and C.*

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?

[4] Order No. PSC-2024-0472-AS-EI, issued November 12, 2024, Docket No. 20240025-EI, Attachment A, p. 34, *In re: Petition for rate increase by Duke Energy Florida, LLC.*

OPC Position: *The Commission should deny the proposed LLCP and its associated terms and conditions for not having sufficient protections. If the Commission denies the LLCP with leave to refile with modifications, then the Commission should strip DEF of the discretion to negotiate changes to provisions without total oversight by the Commission, strengthen the early termination policy and security collateral requirements, and make any other changes deemed necessary to protect the general body of ratepayers. (Nelson) *

ARGUMENT:

The Commission should deny the LLCP and associated terms and conditions. *See arguments regarding Issues A, B, and C.*

Should the Commission deny the LLCP and associated terms and conditions with leave for DEF to refile with modifications, then the Commission must specify modifications to bring DEF's petition in compliance with the requirements of sections 366.03, 366.043, and 366.05, Florida Statutes. Modifications to strip each provision of DEF's LLCP that grants DEF authority to negotiate terms different from the LLCP or LLCA as-filed would bring any refiled petition into compliance with sections 366.03 and 366.05, Florida Statutes. DEF should also be required to refile with a modification that brings all large load customers under the LLCP's umbrella, not only those large load customers who take firm service from DEF to comply with the definition of large load customers under section 366.043, Florida Statutes.

With regards to cost recovery, the Commission should require DEF to refile its LLCP and associated terms with methodologies to recover incremental costs that DEF's current LLCP fails to recover. For example, the Commission should require DEF to allocate the incremental transmission and distribution costs caused by large load customers directly to those customers, using a tiered connection-cost framework. Under this framework all customer-specific, dedicated transmission facilities needed to serve a large load customer should be directly allocated to that customer through an up-front CIAC payment with no refund. Additionally, upstream from

customer-specific facilities, all "but for" connection and incremental transmission, including network upgrade, costs incurred to connect a large load should be recovered through CIAC subject to a refund period of up to 15 years. Implementation of this recommendation can be accomplished by either defining "but for" transmission costs as excess facilities within an LLCA or by further modifying the Company's line extension policies or LLCA to include these costs within the CIAC provision. The Commission should also require DEF to recover incremental generation costs directly from large load customers and to track costs for future cost increases or overruns to ensure these costs are not shifted to other ratepayers. Tr. 257:13-258:12.

The Commission should also propose modified provisions to ensure that DEF's security collateral and early termination provisions are filtering out speculative, unserious large load customers. The Commission can do so by requiring termination fees under the LLCP to equal the large load customer's minimum monthly bills for the entire remaining contract term, regardless of the contract year in which the customer elected to terminate service. Tr. 258:13-16. With regards to DEF's current open-ended, negotiated security collateral provision, the Commission could require terms with clear and specific parameters set at 24 months of minimum bills based on the large load customer's planned post-load ramp peak demand. Tr. 258:17-20.

The Commission should deny DEF's petition. However, by rejecting DEF's petition with leave to refile with modifications, the Commission will have the opportunity to guide not only DEF's refiled petition, but also future petitions filed by other utilities. The Commission should seize this opportunity to make sure all large load tariffs in Florida recover the costs of serving large load customers from those customers while complying with the Legislature's mandates.

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?

OPC Position: *The Commission should deny the proposed LLCA and associated terms and conditions. If the Commission denies the LLCA with leave to refile with modification, then, at a minimum, the Commission should recommend modifications consistent with the above. (Nelson) *

ARGUMENT:

DEF's proposed LLCA is based on the company's proposed LLCP. Tr. 51:9-10. Therefore, the Commission should deny the proposed LLCA and associated terms and conditions for the same reasons the Commission should deny the LLCP and associated terms and conditions. If the Commission does deny DEF's LLCA with leave to refile, the Commission should impose terms that will ensure the LLCA recovers the costs of serving large load customers from those customers while complying with the Legislature's mandates. *See Arguments regarding Issues A, B, and C and Issue 1.*

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?

OPC Position: *The Commission should deny the proposed CIAC modifications. If the CIAC tariff provisions are denied with leave to refile, the Commission should require DEF to include modifications to make large load customers pay 100% of the "but for" connection costs related to large load customers that include the incremental generation and transmission upgrades costs, including the costs of network transmission upgrades. (Nelson) *

ARGUMENT:

DEF's proposed CIAC modifications purports to recover 100% of the total estimated costs to extend service in advance. The CIAC modifications fail to actually recover all costs from large load customers because they do not recover incremental costs. Therefore, the Commission should deny the proposed LLCA and associated terms and conditions for the same reasons the Commission should deny the proposed CIAC modifications. If the Commission does deny DEF's CIAC modifications with leave to refile, the Commission should impose terms that will ensure the CIAC recovers the costs of serving large load customers from those customers while complying with the Legislature's mandates. *See Arguments regarding Issues A, B, and C and Issue 1.*

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

OPC Position: *There should be no effective dates as DEF's Petition should be denied. If DEF's proposals are approved, the effective date(s) should be in compliance with the provisions of SB 484. *

ARGUMENT:

There should be no effective dates as DEF's Petition should be denied in its entirety. The only circumstances under which the Commission should consider effective dates are if the Commission is granting DEF leave to refile its petition after denying the petition and mandating terms under which DEF may bring the petition back to comply with section 366.043, Florida Statutes. *See Arguments regarding Issues A, B, and C and Issue 1.*

ISSUE 5: Should this docket be closed?

OPC Position: *No. *

ARGUMENT:

This docket should not have been opened in the first place.

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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 on this 15th day of September, 2026, to the following:

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