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Public Service Commission

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

DATE: October 22, 2026

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey, Nguyen, Ward) CJD
Division of Engineering (Davis, Ellis) LVK
Office of the General Counsel (Thompson, Crawford) JSC ACH

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

AGENDA: 11/03/26 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: 12/22/26 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: Place on the Agenda after staff's recommendation in Docket No. 20260064-EI regarding OPC's Motion for Reconsideration.

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Case Background

On September 5, 2025, in Docket No. 20250113-EI, Duke Energy Florida, LLC (DEF, Company, or Utility) filed a petition requesting approval of a new large load tariff with an associated rate schedule and other associated provisions. On March 13, 2026, the Florida Legislature passed Senate Bill 484 (SB 484), which if signed into law, would have had an impact on the tariff as filed. On March 19, 2026, the procedural schedule was abated in light of the pending legislation.[1] On April 20, 2026, DEF filed a status report notifying the Commission of the withdrawal of its petition. Docket No. 20250113-EI was subsequently closed on April 27, 2026.

On April 22, 2026, DEF filed a petition in Docket No. 20260064-EI, for a limited proceeding seeking approval of a new Large Load Customer Policy (LLCP), a Large Load Customer Agreement (LLCA), and revised Contribution in Aid of Construction (CIAC) tariffs. DEF states that this filing complies with newly passed state legislation, SB 484. The Governor signed SB 484 into law on May 7, 2026, which took effect on July 1, 2026, and created in part Section 366.043, Florida Statutes (F.S.) (Chapter 2026-65, Laws of Florida). Section 366.043(1), F.S., provides that:

> 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 develop and enforce rate structures and other policies for such 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 ratepayers.

The proposed LLCP and associated LLCA establish a minimum contract term, minimum monthly bill provisions, security requirements, and early termination provisions. Customers subject to the LLCP must also pay a non-refundable system impact fee. Finally, the LLCP contains a CIAC provision requiring customers to pay 100 percent of the estimated costs to extend service in advance.

Pursuant to the proposed LLCP, potential large load customers would take service under DEF's existing GSD-1 or GSDT-1 rate schedules until a new rate class is established as anticipated in DEF's next rate case filing. In this filing, a large load customer is defined as a customer with a Peak Contract Demand forecast to be greater than or equal to a Monthly Maximum Demand of 50 megawatts (MW) at a single location. Customers meeting this criterion would be subject to the LLCP and would need to execute the LLCA. Large load customers already existing on the Utility's system as of December 31, 2025, that meet the demand requirements, would not be subject to these additional requirements.

The Office of Public Counsel's (OPC) intervention in this docket was acknowledged by Order No. PSC-2026-0144-PCO-EI, issued May 8, 2026. Florida Rising, Inc. (FL Rising);[2] PCS

[1] Order No. PSC-2026-0068-PCI-EI, issued March 19, 2026, Docket No. 20250113-EI, *In re: Petition for a limited proceeding to approve large load tariff, by Duke Energy Florida, LLC.*
[2] Order No. PSC-2026-0233-PCO-EI.

Phosphate – White Springs (PCS Phosphate);[3] and the Florida Industrial Power Users Group (FIPUG)[4] were granted intervention in this docket subject to proof of standing or stipulations that there are sufficient facts to support all elements for standing.

On May 26, 2026, OPC and FL Rising filed a Joint Motion to Dismiss (Joint Motion) requesting the Commission dismiss DEF's petition for failing to meet the requirements of SB 484. On June 2, 2026, DEF and PCS Phosphate separately filed responses to the Joint Motion requesting the Commission deny the Joint Motion and let the case proceed to an evidentiary hearing. By Order No. PSC-2026-0264-PCO-EI, the Commission denied the Joint Motion, finding that DEF's petition presented material questions of fact to be resolved at an evidentiary hearing.[5] Nucor Steel Florida, Inc.'s (Nucor) intervention in this docket was acknowledged by Order No. PSC-2026-0268-PCO-EI, issued on July 31, 2026.

A Prehearing Conference was held on August 5, 2026. On August 17, 2026, the Prehearing Officer conducted an evidentiary hearing to receive testimony and exhibits as to whether FIPUG, PCS Phosphate, Nucor, and FL Rising have standing to intervene in this docket. The Prehearing Officer concluded that all parties whose standing was contested proved their respective standing and entered an Order on Standing on August 24, 2026.[6] On September 3, 2026, OPC filed a motion for reconsideration of Order No. PSC-2026-0288-PCO-EI and a request for oral argument on its motion of reconsideration. On September 10, 2026, FIPUG filed responses in opposition to OPC's requests for reconsideration and oral argument. A separate staff recommendation is scheduled to be filed for the November 3, 2026 Agenda Conference addressing OPC's motion.

The Commission conducted an administrative hearing on DEF's petition on August 25, 2026, with all parties participating. On September 15, 2026, DEF, OPC, and FL Rising filed their post-hearing briefs. Additionally, FIPUG, Nucor, and PCS Phosphate (collectively Joint Customers) filed their joint post-hearing brief on September 15, 2026. As of October 20, 2026, the Commission received more than 4,400 consumer comments that have been filed in the docket file.[7]

DEF's current base rates were approved in a settlement agreement by DEF and several parties to the docket in the Utility's 2024 rate case in Order No. PSC-2024-0472-AS-EI (2024 Settlement or 2024 Settlement Agreement).[8] The term of the 2024 Settlement is from January 1, 2025, through December 31, 2027.

[3] Order No. PSC-2026-0234-PCO-EI.
[4] Order No. PSC-2026-0238-PCO-EI.
[5] Order No. PSC-2026-0264-PCO-EI, issued July 28, 2026, in Docket No. 20260064-EI, *In re: Petition for a limited proceeding to approve large load tariff, by Duke Energy Florida, LLC.*
[6] Order No. PSC-2026-0303-PCO-EI, issued August 24, 2026, in Docket No. 20260064-EI, *In re: Petition for a limited proceeding to approve large load tariff, by Duke Energy Florida, LLC.*
[7] The majority of letters object to rate increases for DEF and Florida Power & Light Company and encourage the use of clean, renewable energy,
[8] Order No. PSC-2024-0472-AS-EI, issued November 12, 2024, in Docket No. 20240025-EI, *In re: Petition for rate increase by Duke Energy Florida, LLC.*

This is staff's post-hearing recommendation on DEF's petition. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.043, 366.05, and 366.06, F.S.

Executive Summary

With respect to the tariffs discussed in Issues 1 through 3, the Commission has three options in this proceeding: (1) approve DEF's proposed tariff as filed; (2) deny the tariff; or (3) deny the tariff with leave for DEF to file modifications. The recommendation addresses these alternatives, including staff's recommended tariff modifications concerning the limitation to "firm" load, the distinction between material and non-material negotiable terms, and the security requirement. The recommendation's Table of Contents identifies each issue and its location in the recommendation. As explained in the final paragraph of this executive summary, the Commission's resolution of the threshold statutory question in Issue 1B will determine which remaining issues and proposed tariff modifications require consideration.

Section 366.043(3)(a), F.S., provides:

> 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.

This recommendation presents alternative applications of Section 366.043, F.S., to DEF's proposed large load tariffs. The principal question is whether DEF's existing rates, together with its proposed contractual and financial protections, reasonably ensure that each large load customer bears its own full cost of service without shifting those costs or the risk of nonpayment to the general body of ratepayers.

Staff's recommended interpretations, addressed in Issue 1B, address the cost shifting as distinct statutory requirements. Although the 2024 Settlement's base rate freeze provides short-term protection to existing customers, the issue is whether there is evidence in this record that satisfies the statutory requirement that each large load customer pays its own full cost of service. One statutory interpretation is that DEF has not met its burden to demonstrate compliance with this cost-causer requirement because it has not included a supported rate schedule associated with a large load rate class. Instead, DEF proposes service under existing rate classes without adequate cost support demonstrating that those rates and the proposed protections collectively satisfy the statute. Staff therefore recommends denial with leave to refile a supported large load rate schedule and revised applicability provisions covering all customers meeting the statutory definition. As discussed in Issue 1E, the settlement did not preclude DEF from proposing such a rate schedule.

Alternatively, there is another interpretation of the statute, whereby the Commission could interpret the statute's "reasonably ensure" standard as permitting an interim framework based on existing rates, the settlement's protections, and the proposed contractual safeguards, pending consideration of supported large load rates in DEF's anticipated 2027 rate case. Under this interpretation, any interim approval should expressly reserve the Commission's discretion to

independently evaluate and decide the appropriate large load rates based on the rate schedules and supporting cost evidence presented in the future rate case.

The remaining issues address the implementation of these alternatives. Issue 1 evaluates the individual tariff protections, including staff's recommended revision to the security requirements, removal of the word "firm" in the tariff, and limiting negotiated changes to administrative changes consistent with Section 366.05(1)(e), F.S. Issue 2 aligns the customer agreement with the disposition of the policy tariff; Issue 3 addresses the associated CIAC provisions; and Issues 4 and 5 address effective dates, further review, and docket closure.

Discussion of Issues

Issue 1A: Does DEF's petition and associated tariffs comply with the requirements of Section 366.03, Florida Statutes?

Recommendation: Staff believes that Section 13.06 Special Terms does not comply with Section 366.03, F.S. Staff recommends that the Commission deny the proposed tariff with leave to amend the tariff to reflect the administrative language contained in Section 366.05(1)(e), F.S. (Thompson, Crawford)

Position of the Parties

DEF: Yes. Section 366.03 obligates DEF to provide service to all customers, including large load customers. It further requires that DEF's rates be "fair and reasonable." DEF's proposed tariffs are fair and reasonable because they establish rates large load customers can take service under now, while the existing settlement ensures no rate increase to existing customers. The Commission should memorialize DEF's commitment to filing a new rate schedule to take effect on January 1, 2028.

OPC: 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.

FL Rising: 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.

Joint Customers: Yes. DEF's filing complies with Section 366.03, F.S., because the tariffs provide for "fair and reasonable" rates for existing customers and new customers and do not give any undue or unreasonable preference or advantage to any person or locality, nor result in undue or unreasonable prejudice or disadvantage.

Staff Analysis: Section 366.03, F.S., requires a public utility to provide "service upon terms as required by the commission." DEF's filing includes Section 13.06, Special Terms. Within that section is a clause that provides:

> The Company may negotiate different non-material terms than reflected in this policy, if those terms do not result in fewer customer protections than what is included in this Large Load Customer Policy. If the terms in the LLCA differ materially from the approved form tariff, then Company must submit the executed LLCA to the Commission for review and approval.

(DEF Petition p. 19) The tariff does not define what "non-material" means. In his rebuttal testimony, DEF witness Chatelain testified to some examples of terms that DEF views as non-material. Those terms are changes in how parties are notified, changes in how long parties must

negotiate in good faith, and changes to the nature of an interconnection. The list provided by DEF is specifically non-exhaustive and leaves interpretation of "non-materiality" to the Utility. (EXH 16, p. 1; TR 131–35)

Staff believes that this provision does not comply with Section 366.03, F.S., because it may result in customers receiving service upon terms not contemplated or approved by the Commission. However, as discussed more fully in Issue 1C, staff also believes that this language can be replaced easily by the utility without substantial change to the tariff. Consequently, staff recommends that the tariff be denied on this ground with leave to modify the tariff as set forth in Issue 1C.

The parties' briefs focus on whether the rates resulting from this tariff are fair and reasonable, but no rates are at issue in this proceeding. Although potential large load customers would be placed on the GSD-1 or GSDT-1 rate schedules, those have been previously approved by the Commission and are not up for consideration in this docket. (TR 138–39) Staff analyzes the propriety of placing large load customers on those rate schedules, including the supporting evidence, in Issue 1B.

Conclusion

Staff believes that Section 13.06 Special Terms does not comply with Section 366.03, F.S. Staff recommends that the Commission deny the proposed tariff with leave to amend the tariff to reflect the administrative language contained in Section 366.05(1)(e), F.S.

Issue 1B: Does DEF's petition and associated tariffs comply with the requirements of Section 366.043, Florida Statutes?

Recommendation: Staff recommends that the Commission deny DEF's proposed tariff as filed, with leave to refile, on two grounds. First, the tariff excludes customers who meet the statutory definition of a large-load customer but do not request firm service. Second, DEF has not adequately demonstrated that service under the existing GSD-1 and GSDT-1 rate schedules, together with the proposed contractual and financial protections, reasonably ensures that each large-load customer bears its own full cost of service as required by Section 366.043(3)(a), F.S. DEF should be permitted to refile tariff provisions covering all customers who meet the statutory definition and a proposed large load rate schedule with adequate cost support.

Alternatively, if the Commission finds that DEF's existing rates and proposed protections collectively satisfy the full-cost-of-service and no-cost-shifting requirements, it could approve the cost-recovery framework while requiring DEF to revise the tariff's applicability to include all customers who meet the statutory definition. Approval as filed would require affirmative findings that both the tariff's applicability and its cost-recovery provisions comply with the statute. (Thompson, Crawford)

Position of the Parties

DEF: Yes. Section 366.043 requires DEF to file a large load tariff meeting minimum tariff and service requirements that reasonably ensure that each large load customer bears its own full cost of service and that such cost or the risk of nonpayment of such cost is not shifted to the general body of ratepayers. DEF's proposed tariffs include coordinated cost responsibility and risk mitigation mechanisms to satisfy the statute's objectives.

OPC: 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.

FL Rising: 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

Joint Customers: Yes. DEF's as-filed petition and tariffs comply with Section 366.043, F.S.

Staff Analysis:

Background

Section 366.043, F.S., is a newly enacted statute that went into effect on July 1, 2026. The statute acknowledges that "uniquely large electrical loads" impose a "disproportionate risk on the other ratepayers of this state." This heightened risk requires "the commission to develop and enforce

rate structures and other policies for such 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 ratepayers."

This recommendation presents alternative applications of Section 366.043, F.S., to DEF's proposed large load tariffs. The statute creates multiple questions for Commission consideration. In order as presented by the statute, those questions are:

- Does DEF's tariff apply to the same customers that the statute describes? Staff analyzes this under the "Definitions" subheading below.

- Do DEF's existing rates, together with the proposed protections, reasonably ensure that each large load customer bears its own full cost of service? Staff analyzes this under the "Statutory Requirements for Each Large Load Customer" subheading below.

- What can the Commission consider when deciding whether to approve or deny the tariff? This is the focal point of the parties' arguments that largely revolve around incremental generation costs. Staff analyzes this under the "Tools for Commission Consideration" subheading below.

Definitions

Section 366.043(2), F.S., contains definitions of multiple terms used in the statute. At issue under this subsection is the question of who qualifies as a large load customer. Within that issue are two direct questions: (1) does the statute allow DEF to only have protections in place for *firm* load and (2) how is peak demand calculated?

Does Section 366.043, F.S., allow DEF to only have Protections for Firm Load?

Subsection (2)(d) of the new statute defines large load users as "customers with an anticipated monthly peak load of 50 megawatts (MW) or more, calculated as the highest average load over a 15-minute interval at a single location." DEF's proposed tariff, however, applies only to customers with an anticipated monthly peak of 50 MW or more of *firm* load. Consequently, any potential or existing customers that would qualify under the statute (e.g. a customer taking or requesting 100 MW of interruptible load) would not be subject to any provisions or protections provided in the proposed tariffs.

DEF argues that because the different service profiles require materially different planning and investment risks, the distinction of firm load is reasonable. (DEF BR 30-32). Staff is not convinced by the evidence in the record. Although DEF's planning and investments may change based on whether customers are seeking firm, interruptible, or curtailable load, nothing in the statute supports any such distinction. To the contrary, the statute *does* recognize the existence of interruptible and curtailable service profiles[9] but did not apply any qualifier to the 50 MW

[9] § 366.043(6), F.S., provides "[a]ny tariff, contractual provision, service requirement, or other public utility policy relating to large load customers may not prevent or otherwise hinder the curtailment or interruption of electric service to a large load customer where such curtailment or interruption is intended to ensure grid stability, reduce the likelihood or breadth of wider service outages, or ensure public safety during an emergency or other exceptional

demand threshold. This means that for a customer requesting 100 MW of interruptible service under DEF's proposed tariff, DEF could interrupt service under agreed conditions, which would meet the statutory definition of a large load customer but would still fall outside the language of DEF's proposed large load protections. The statute is designed to protect the general body of ratepayers and to mitigate risks associated with large electrical loads. Differences in planning and investment risks may justify different tariff terms for firm and interruptible customers, but they do not justify excluding customers who meet the statute's definition of a large load customer.

Staff recommends that DEF's proposed tariff be denied on this basis with leave to modify Section 13.01 of the tariff to include all customers with an anticipated monthly peak load of 50 MW or more.

How is Peak Demand Calculated?

Section 366.043(2)(d), F.S., also clarifies that the peak demand is "calculated as the highest average load over a 15-minute interval at a single location." DEF's proposed tariff, however, calculates peak demand as the "highest total demand indicated in any 30-minute interval during the month."

Although the language of the proposed tariff does not facially align with the language of the statute, the version offered by DEF provides more protection for the general body of ratepayers than the statute does. The statutory language relies on an average whereas DEF's language relies on a single peak moment. It is not possible for a customer to qualify as a large load user under the statutory, 15-minute definition without also qualifying under DEF's 30-minute window. However, it would be possible for a customer to qualify under DEF's version – and thus be subject to the protections included in the proposed tariffs – that does not qualify under the statute.

Because DEF's interval timing calculation provides more protection than required by the statute, staff does not recommend denying the tariff on these grounds.

Statutory Requirements for Each Large Load Customer

The core of the new statute lies in subsection (3) which states:

> (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

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circumstance." Under staff's reading of the statute, large load customers must be treated similarly to DEF's other customers when circumstances warrant curtailment or interruption.

> serve a large load customer. The risk of nonpayment of such costs may not be borne by the general body of ratepayers.
>
> (b) The minimum tariff and service requirements must include provisions reasonably designed to prevent a public utility from providing electric service to a customer that would otherwise qualify as a large load customer if that customer is a foreign entity.

These are requirements that *must* be in place as mandated by the Legislature. The following analysis goes through both subsections in order.

Minimum Tariff and Service Requirements

Subsection (3)(a) provides that – at a minimum – a large load tariff must reasonably ensure that a large load customer bears its own full cost of service *and* that those costs are not shifted to the general body of ratepayers. DEF claims that the proposed tariffs in this docket meet the statutory requirements by virtue of the rate freeze established in the 2024 Settlement Agreement.[10] DEF argues that, because of the rate freeze, the general body of ratepayers cannot pay for the costs of service for a large load customer. Staff agrees that, as currently filed, no costs from the possible service of large load customers can be shifted to the general body of ratepayers until DEF's next general base rate case when a new cost of service study is filed.[11] Once DEF's next rate case is filed, it would again be an issue as to whether any costs of service are being shifted to the general body.

However, staff believes that the rate freeze only addresses half of the statute. The other half of the statute – that each large load customer bears its own full cost of service – remains an open question. As currently proposed by DEF, large load customers would be placed on the GSD-1 or GSDT-1 rate schedules.

DEF did not offer a new rate for large load customers in this proceeding, opting instead to defer the creation of a new rate class until its 2027 rate case. However, staff believes that the 2024 Settlement Agreement did not prevent DEF from proposing a large load rate schedule to comply with the new statute. DEF expressly acknowledges that the agreement would permit it to change its rates in response to Section 366.043, F.S., but maintains that such changes are unnecessary because its proposed framework already complies with the law. (DEF BR 10) Accordingly, reliance on GSD-1 and GSDT-1 through 2027 represents DEF's chosen approach, rather than a restriction imposed by the settlement.

That distinction matters because the 2024 Settlement's rate freeze does not resolve whether each large load customer will bear its own full cost of service. DEF's commitment that shareholders will absorb any unrecovered costs during the settlement period provides protection to the general body of ratepayers. (TR 115, 149, 232; DEF BR 10–12) However, shareholder absorption of a shortfall does not itself demonstrate that the large load customer pays its full cost. Staff believes

[10] *See* Order No. PSC-2024-0472-AS-EI, issued November 12, 2024, in Docket No. 20240025, *In re: Petition for rate increase by Duke Energy Florida, LLC.*

[11] Expected to be filed as part of a full rate case in 2027 per rebuttal testimony from DEF witness Chatelain, page 10, line 21 through page 11, line 3.

that the Commission therefore must evaluate whether the existing rates, together with the proposed tariff protections, reasonably ensure the customer's full cost responsibility.

No evidence was provided by the utility to establish that these rates affirmatively cover the cost of serving each large load customer. Instead, the utility offered assurances that these costs will be revisited in the 2027 rate case. DEF cannot rely on the settlement as a reason to defer an otherwise necessary rate modification until 2028. The evidence provided in this record does not establish that its proposed framework satisfies subsection (3)(a) and the Settlement does not prevent DEF from proposing a supported large load rate schedule to address that deficiency. Therefore, staff recommends that the tariff be denied for lack of evidence to establish that each large load customer bears its own full cost of service.

Foreign Entity Prohibition

Subsection (3)(b) requires that the tariff must be reasonably designed to prevent the utility from providing large load service to a foreign entity. DEF's proposed tariffs acknowledge that the utility is prohibited from providing service to any customer that would qualify and requires an affidavit from the potential customer to attest that it is not a foreign entity.

OPC argues that the affidavit alone – without independent verification – is a rubber stamp that falls short of the statutory requirements. (OPC BR 17) Staff disagrees. The statute requires that the tariff be reasonably designed to prevent service to a foreign entity. The tariff is designed in a way that identifies the prohibition on service and includes a method of enforcement on the customer while also requiring DEF to have that attestation in order to proceed. The statute does not impose a requirement on any utility to engage in independent verification or investigation into the customer.

Tools for Commission Consideration

While subsection (3) delineates what a tariff *must* have, subsection (5) describes how the Commission *may* ensure that those requirements are met. Specifically, subsection (5) states:

> (5) 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 requiring 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.

Of these seven considerations, subsection (c) – the incremental generation charges (IGC) – make up the majority of the parties' arguments. Staff addresses the IGC after analyzing the remaining six factors below.

DEF's tariff contemplates and enacts several of these requirements. Per the proposed tariff, customers seeking to take service are required to pay 100 percent of the total estimated costs to extend service in advance with those payments refunded over a period of up to five years as contemplated by subsection (5)(a). DEF also includes a minimum demand charge as contemplated by subsection (5)(b), financial guarantees as contemplated by subsection (5)(c), a minimum load factor as contemplated by subsection (5)(e), a take-or-pay provision in the form of a minimum bill as contemplated by subsection (5)(f), and a 20-year minimum term with early termination and other fees as contemplated by subsection (5)(g). Consequently, six of the seven ratemaking tools identified in the statute are utilized in DEF's filing. The only industry-accepted ratemaking or financial tool that DEF does not employ is (5)(c) – an incremental generation charge.

The lack of an IGC is at the core of the arguments raised by OPC and FL Rising in their briefs. (OPC BR 6-11, 19, 21-24, 29-30, 32; FL Rising BR 5-9, *passim*) As noted by DEF in its brief, an IGC is an optional tool that the Commission *may* consider when analyzing a tariff under Section 366.043, F.S. (DEF BR 15)

DEF witness Wishart provided testimony to the advantages and disadvantages of average embedded cost ratemaking when compared to incremental cost ratemaking. He testified:

> The primary concern associated with using the embedded cost of service approach, particularly with regard to new large customers, is that due to the currently high cost of generation capacity and other infrastructure, there is the potential for average rate increases that would be borne by all customers.
>
> The primary strength of the incremental cost of service approach is that it may prevent unwanted cost shifts between new and existing customers.[12]

This is precisely what Section 366.043, F.S., is intended to address. Although the average embedded cost of service methodology "has resulted in stable rates and charges that have long been deemed just and reasonable," witness Wishart also testifies that these are unprecedented times.[13]

[12] TR 179.
[13] TR 162-64.

Meanwhile, the advantages for the embedded cost methodology are consistency, fairness across customer groups, and avoiding the "perception of unfairness" from an incremental cost approach. Regardless of those perceptions, Section 366.043, F.S., is what instructs the Commission on how to consider these customers and tariffs to serve them.

DEF did not propose a new rate class or associated rate schedule for large load customers in this proceeding, and the intervenors argue that an IGC would have addressed that gap. (TR 71-72; 138) While an IGC could be part of DEF's future rate case filing, without persuasive testimony supporting a cost allocation methodology or other cost support demonstrating how an IGC would operate and satisfy the statutory requirements, staff is unable to recommend whether an IGC is appropriate at this time. If the Commission exercises its discretion to require DEF to include an IGC in its tariff, DEF would need to file supporting testimony and cost information demonstrating how the proposed charge satisfies Section 366.043, F.S. Staff's recommendation to deny the tariff as filed relies on the evidence in the record before the Commission in this proceeding and the statutory requirements of Section 366.043, F.S.

Alternatives

This docket is a case of first impression. Section 366.043, F.S., went into effect on July 1, 2026, and has never been interpreted by the Commission. If the Commission disagrees with staff's recommendation, staff recognizes that DEF has acknowledged that any costs not borne by prospective large load customers would be borne by the shareholders as opposed to the general body of ratepayers.

Returning to the text of the statute, Section 366.043(1), F.S., states:

> The Legislature further finds that 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 develop and enforce rate structures and other policies for such 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 ratepayers.

(emphasis added). The Commission is granted discretion by the Legislature in how to mitigate that risk and protect the general body of ratepayers. DEF's rate freeze protects existing customers from base rate increases through the end of 2027. The Commission may find that temporary protection, together with the proposed contractual safeguards, satisfies the statute's "reasonably ensure" standard on the present record and permits interim approval pending consideration of supported large load rates in DEF's anticipated 2027 rate case.[14] On the other hand, staff believes that the Commission could find that while DEF has demonstrated its proposal contains customer protections, the statute does not afford DEF with the flexibility to postpone inclusion of a rate schedule (supported by evidence on cost responsibility) in its tariff until a future rate case.

[14] Any approval should expressly reserve the Commission's discretion to independently evaluate and decide the appropriate large load rates and related tariff provisions based on the rate schedules, supporting cost evidence, and other evidence presented in DEF's anticipated 2027 rate case.

Conclusion

Staff recommends the Commission should deny the tariff as filed on two grounds: first, because DEF's tariff applies only to firm load without statutory justification to do so and, second, because the evidence introduced at hearing does not establish that the proposed framework reasonably ensures that large load customers will bear their own full cost of service as required by Section 366.043, F.S. If the Commission agrees with this interpretation, it should deny the tariff with leave for DEF to revise its applicability provisions and file a rate schedule with adequate cost support.

Alternatively, the Commission may interpret the statute's "reasonably ensure" standard as permitting a framework based on existing rates, the settlement's protections, and the proposed contractual safeguards, pending consideration of supported large load rates in DEF's anticipated 2027 rate case; an interpretation that is arguably in line with the statutory directive to "ensure risk is mitigated as much as possible." Under that interpretation, the Commission could deny the tariff with leave for DEF to refile with modifications to its applicability provisions to include non-firm load (such as the requirement to apply to all load profiles instead of just firm load). Approval as filed would require affirmative findings that both the tariff's applicability and its cost recovery provisions comply with the statute. Any approval should expressly require DEF to propose a large load rate schedule(s) and reserve the Commission's discretion to independently evaluate the large load rate schedule(s) and related tariff provisions based on the evidence presented in the next rate case.

Issue 1C: Does DEF's petition and associated tariffs comply with the requirements of Section 366.05, Florida Statutes?

Recommendation: Staff believes that Section 13.06 Special Terms does not comply with Section 366.05(1)(e), F.S. Therefore, staff recommends that DEF's proposed tariff be denied with leave to modify Section 13.06 Special Terms to reflect the language utilized in Section 366.05(1)(e), F.S. (Thompson, Crawford)

Position of the Parties

DEF: Yes. DEF's petition and associated tariffs provide fair and reasonable terms and conditions to serve large load customers while protecting existing customers. DEF's proposed tariffs are fair and reasonable because they establish rates large load customers can take service under now, while the existing settlement ensures no rate increase to existing customers.

OPC: 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.

FL Rising: 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.

Joint Customers: Yes. DEF's filing complies with Section 366.05, F.S., because the tariffs provide for "fair and reasonable rates and charges" for existing and new customers.

Staff Analysis: Section 366.05, F.S., establishes the powers of the Commission. It is the Commission's prerogative to prescribe rates and charges and the "service rules and regulations to be observed by each public utility." Section 366.05(1)(e), F.S., provides:

> New tariffs and changes to an existing tariff, other than an administrative change that does not substantially change the meaning or operation of the tariff, must be approved by majority vote of the commission, except as otherwise specifically provided by law.

As discussed in Issue 1A, DEF's proposed tariff includes language that allows the company to negotiate different "non-material" terms. As currently written, the proposed tariff language leaves the determination of whether a change in LLCA terms is non-material and results in fewer customer protections to the discretion of the Utility. (TR 131–32) That creates the possibility of customers possibly receiving service upon terms not reviewed, contemplated, or approved by the Commission.

Staff recommends that DEF's petition be denied with leave to modify the language to reflect the language utilized in Section 366.05(1)(e), F.S. In lieu of "non-material" changes which are

undefined by the tariff, allowing DEF to make "administrative" changes without additional approval aligns more closely to the statutory language than the proposed language.

Conclusion

Staff believes that Section 13.06 Special Terms does not comply with Section 366.05(1)(e), F.S. Therefore, staff recommends that DEF's proposed tariff be denied with leave to modify Section 13.06 Special Terms to reflect the language utilized in Section 366.05(1)(e), F.S.

Issue 1D: Whether the following persons have standing to intervene in this proceeding:

a. PCS Phosphate – White Springs
b. Florida Industrial Power Users Group
c. Florida Rising, Inc.
d. Nucor Steel Florida, Inc

Recommendation: This issue was resolved in Order No. PSC-2026-0288-PCO-EI. (Thompson, Crawford)

Position of the Parties

DEF: No position provided.

OPC: This issue was the subject of a separate hearing and brief in this docket.

FL Rising: Omitted as fully addressed in Order No. PSC-2026-0288-PCO-EI.

Joint Customers: No position provided.

Staff Analysis: As discussed in the case background, this issue was the subject of a separate administrative hearing and resolved by Order No. PSC-2026-0288-PCO-EI.

Conclusion

No further action is necessary on this issue as it was resolved in Order No. PSC-2026-0288-PCO-EI.

Issue 1E: 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?

Recommendation: Although the 2024 Settlement Agreement would have permitted DEF to create a new rate class, none was provided. However, staff nonetheless believes that the proposed tariff complies with the existing settlement agreement. (Thompson, Crawford)

Position of the Parties

DEF: Yes. The proposed LLCA and LLCP do not change the rates of any existing customers; and is consistent with the 2024 Settlement Agreement. The Company will not be able to defer costs incurred during the settlement freeze and if DEF does incur costs and the GSD-1 and GSDT-1 rates are not adequate to cover them during the settlement period, those costs will be borne by DEF shareholders.

OPC: 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.

FL Rising: 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.

Joint Customers: Yes, Commission approval of the as-filed LLCP and LLCA is consistent with the provisions of the 2024 Settlement Agreement based on our understanding that neither will change the rates, terms or conditions of service to existing customers. Joint Customers reserve the right to take a position regarding any modifications to the as-filed LLCP and LLCA that the Commission may order that may alter the rates or terms of service established in the 2024 Settlement Agreement.

Staff Analysis: All parties in this docket were either signatories to or did not object to the approval of the 2024 Settlement Agreement.[15] These parties universally recognize a base rate freeze implemented in the 2024 Settlement that was intended by all parties to last through the end of the 2027 calendar year. Paragraph 5 of the 2024 Settlement Agreement reflects that intent:

> Except for the base rate increases provided for in Paragraphs 2, 3, 12, 16, and 35, the Company shall freeze its base rates through the last billing cycle for December 2027. As a part of this base rate freeze, the Company will not seek Commission approval to defer for later recovery in rates, any costs incurred or reasonably expected to be incurred from the Effective Date through and including December 31, 2027, which are of the type which traditionally or historically have been or would be recovered in base rates, unless such deferral and subsequent

[15] Although all current parties were signatories to—or did not object to—the 2024 Settlement Agreement, not all parties to the 2024 Settlement Agreement are parties to this docket.

> recovery is expressly authorized herein or otherwise agreed to in writing by the Parties.

Order No. PSC-2024-0472-AS-EI, p. 45. In light of this base rate freeze, DEF has maintained[16] that the utility may not petition to change its general base rates or create a new rate class for large load customers. (DEF BR 10–12) However, Paragraph 29.b. of the 2024 Settlement Agreement provides exceptions for when the base rate freeze may not apply:

> It is the intent of the Parties that, in conjunction with the provisions of Paragraph 6,[17] DEF shall not seek to recover, nor shall DEF be allowed to recover, through any cost recovery clause or charge, or through the functional equivalent of such cost recovery clauses and charges, costs of any type of category that have historically and traditionally been recovered in base rates, unless such costs are: (i) the direct and unavoidable result of new governmental impositions or requirements. . . .

Order No. PSC-2024-0472-AS-EI, p. 64. Staff believes that Section 366.043, F.S., is a new governmental imposition or requirement that triggers Paragraph 29.b. Thus, staff believes that the 2024 Settlement Agreement did not preclude DEF from proposing a new rate schedule for large load customers in response to the statute. However, no new rates were provided.

No other provision of the 2024 Settlement Agreement is implicated by the current filing. Consequently, staff recommends that the tariff not be denied on the ground that it fails to comply with the settlement.

Conclusion

Although the 2024 Settlement Agreement did not preclude DEF from proposing a new rate schedule for large load customers in response to Section 366.043, F.S., none was proposed. Staff nevertheless believes that the proposed tariff complies with the existing Settlement Agreement and, consistent with staff's analysis and recommendation in Issue 1, recommends that it not be denied on this ground.

[16] In its brief, DEF provides the following footnote:

> DEF acknowledges that the 2024 Settlement Agreement would allow DEF to change its rates in response to section 366.043. However, for the reasons explained herein, DEF does not need to avail itself of this provision because it does not need to change rates to comply with the law.

[17] It appears in hindsight that the reference to Paragraph 6 likely meant to reference Paragraph 5. Paragraph 6 deals with unrelated revenue allocation issues.

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?

Recommendation: If the Commission in Issue 1B finds that DEF's petition and associated tariffs do not meet the requirements of Section 366.043, F.S., this issue is moot.

If the Commission in Issue 1B votes that DEF's petition and associated tariffs do meet the requirements of Section 366.043, F.S., staff recommends that the Commission should deny the tariffs with leave to refile the Large Load Customer Policy with the following three tariff modifications. First, DEF should remove the word "firm" from Section 13.01. Second, DEF's proposed calculation of the security amount should be denied. DEF's security amount should be based on two months of minimum bills (Section 13.04). Finally, DEF's proposed provision that would allow the Company to negotiate different non-material terms without Commission review and approval should be denied (Section 13.06). DEF should only be allowed to negotiate different terms that are purely administrative in nature. Staff recommends approval of all other LLCP provisions.

If the Commission approves DEF's LLCP as proposed, without modifications, no changes would be needed to the tariffs. (Guffey, G. Davis)

Position of the Parties

DEF: The Commission should approve, without modifications, DEF's proposed LLCP. The Company's proposal ensures that large load customers bear appropriate costs in the near term through CIAC requirements, minimum bill obligations, termination provisions, and related contractual protections. These mechanisms provide meaningful cost responsibility without requiring the Commission to adopt a rigid, customer-specific allocation model that does not reflect system realities.

OPC: 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.

FL Rising: 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.

Joint Customers: The Commission should approve the as-filed LLCP. However, if the Commission decides to adopt modifications that would result in the LLCP applying to existing DEF customers, then the LLCP needs to be revised to establish an existing customer tier.

Staff Analysis: The proposed LLCP tariff contains eight sections. The sections are as follows:

13.01 General

13.02 Term

13.03 Determination of Minimum Monthly Bill

13.04 Security Requirements

13.05 Early Termination

13.06 Special Terms

13.07 Contribution in Aid of Construction (CIAC)

13.08 Customer Rate

Each section, except for Section 13.07, CIAC provision, is discussed below. The CIAC provision is discussed in Issue 3.

LLCP Section 13.01 General

Section 366.043(2)(d), F.S., defines a large load customer as "customers with an anticipated monthly peak load of 50 MW or more, calculated as the highest average load over a 15-minute interval at a single location." Section 13.01 of the proposed LLCP provides the general terms and applicability for large load customers. The general terms include the monthly maximum demand requirements, a grandfather clause, system impact study fees, a liability waiver for securing necessary rights-of-way, permits, equipment for electric service, and the foreign entity clause, as defined by Section 366.043(2)(c), F.S. The applicability, grandfather clause and system impact study fees are discussed below.

Applicability of Firm Load Customers

Section 13.01 states that the LLCP applies to "any individual Customer, for either a new or expanded facility, with an aggregate Peak Contract Demand forecast reasonably expected to be equal to or in excess of a Monthly Maximum Demand of fifty thousand (50,000) kilowatts of firm (i.e., not Interruptible or Curtailable) load, at a single location including co-located load, any time during the Minimum Term." (EXH 2, MPN C1-19)

DEF's proposed tariff defines large load customers as 50 MWs or more of firm load. (TR 135, TR 137, TR 143) DEF witness Chatelain explained upon cross examination that the firm load requirement is reflective of the Company's obligation to serve a firm customer versus a non-firm customer. (TR 143) Witness Chatelain further explained that DEF treats the investments of assets for a non-firm and a firm customer differently and the expectation is that large load customers

are requesting firm load. (TR 143-144) Witness Wishart testified that data centers have backup generators to avoid loss of service. (TR 327) Finally, witness Chatelain testified that he is not aware of a large load request for non-firm load, either with DEF or across the country. (TR 144)

OPC in its brief states that nothing in Section 366.043, F.S., restricts the application to firm loads. (OPC BR 4, 14, 15) Similarly, FL Rising argues that the new law contains no exception for interruptible or curtailable customers. (FL Rising BR 10-11) The Joint Customers argue that DEF's approach is consistent with the operating characteristics of new data center loads and DEF does not build generation to serve non-firm load. (Joint Customers BR 19-20)

Consistent with staff's recommendation in Issue 1B, staff recommends that DEF's proposed tariff be denied with leave to modify Section 13.01 of the tariff to remove the word "firm" to include all customers with anticipated monthly peak load of 50 MW or more.

Peak Load Calculation for Applicability of Large Load

Section 13.03 of the LLCP defines the Monthly Maximum Demand for billing purposes as the highest total demand indicated in any 30-minute interval during the month. (EXH 2, MPN C1-19) Generally, for all its rate schedules, DEF bills customers on a 30-minute interval basis. (EXH 16, MPN E3) Section 366.043(2)(d), F.S., defines large load customers as "a customer with an anticipated monthly peak load of 50 MW or more, calculated as the highest average load over a 15-minute interval at a single location."

During cross-examination, witness Chatelain testified that DEF bills "on a 30-minute interval, so that's the number that's reflected from a billing standpoint, but as far as applicability of the 50-megawatt measure, we fully intend to comply with the law and evaluate it based on a 15-minute increment…". (TR 135) Witness Chatelain argued that the 15-minute increment was only explicit in the applicability of Section 366.043, F.S., and that billing methodologies were up to Commission discretion. (TR 136) Witness Chatelain further explained that DEF would expect large customers to have constant high load, and a 15-minute versus a 30-minute interval calculation would be very similar. (TR 136) Based on DEF's explanations provided and staff's recommendation in Issue 1B, staff recommends approval of DEF's proposed applicability provision in Section 13.01 of the LLCP tariff.

Grandfather Clause

In section 13.01 of the proposed LLCP, DEF proposed a grandfather clause. (EXH 2, MPN C1-19) The grandfather clause states that this "policy 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) DEF argues that this treatment is reasonable in light of the purpose of the new tariff framework, because the LLCP and LLCA are principally designed to address the incremental planning, investment, and nonpayment risks associated with committing resources to serve new large loads. (DEF BR 32) DEF further stated that existing customers are already taking service under Commission-approved rates and existing contractual arrangements, and the system has been planned and operated with those existing loads in place. (DEF BR 32) Witness Chatelain testified that DEF currently has two customers taking service that are over 50 MW and it is his belief that two customers have been DEF customers "at least more than 20 years." (TR 144)

OPC argues that the grandfather clause fails to comply with Section 366.043, F.S., because the statute does not authorize such a clause. (OPC BR 16) OPC further states even without an express prohibition, the concept of a grandfather clause is incompatible with the purpose of Section 366.043, F.S., because any grandfathered customer increases the risk that their cost of service will be borne by the general body of ratepayers, as any customer who has been grandfathered in may continue to increase their peak load. (OPC BR 16, TR 91) Upon cross examination, witness Chatelain confirmed that the grandfathered customers' monthly peak load could increase after they have been grandfathered in. (TR 91)

The Joint Customers argue that the grandfather provision is consistent with the intent of Section 366.043, F.S. (Joint Customers BR 16) The Joint Customers further state that Section 366.043, F.S., addresses an anticipated problem attributable to significant new load additions; it does not purport to retroactively change the rates, terms and conditions of service for existing customers that the Commission has previously approved as just, reasonable and in the public interest. (Joint Customers BR 16-17) The Joint Customers also argue that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively. (Joint Customers BR 17) Additionally, upon cross-examination, DEF witness Nelson confirmed his recommendation that incremental generation costs should be recovered from large customers would generally not apply to existing large customers. (TR 333-334)

FL Rising argues that Section 366.043(2)(d), F.S., does not recognize temporal exceptions to the definition of large load customer, and instead includes all customers who cross the threshold of an anticipated 50 MW peak demand. (FL Rising BR 11) FL Rising further explains that DEF's release of existing customers that otherwise meet the statutory definition of a large load customer is not permissible under Section 366.043, F.S. (FL Rising BR 11) Additionally, FL Rising notes that DEF itself admits the current customers could ramp up their peak demand after qualifying for grandfathering without losing that status, allowing grandfathered customer to expand their operations and demand to supply a data center without the LLCA and LLCP being applicable. (FL Rising BR 11)

Staff believes that grandfathering the two existing customers, who have been on DEF's system for at least 20 years, is reasonable because the customers have been paying DEF's base rates and contributing to the system costs. However, the grandfather clause should only apply to the existing load of the two grandfathered customers. As stated by OPC in its brief and confirmed by witness Chatelain, the grandfathered customers could increase their monthly peak load and any additional investments to serve the customer would potentially be at the expense of the general body of ratepayers. Therefore, staff recommends that if a grandfathered customer increases their monthly peak load (beyond the peak load that exists on DEF's system as of December 31, 2025), the customer should lose the grandfather exception and be subject to the LLCP and associated LLCA.

System Impact Study Fee

Section 13.01 also requires applicable customers to pay a non-refundable system impact study fee of $150,000. (EXH 2, MPN C1-19) DEF asserted that the system impact study fee is not negotiable, and a customer must pay it. (EXH 21, MPN E38) DEF states the purpose of the

system impact study is to "support the Company's initial analysis and engineering costs to determine the investments and upgrades necessary to serve the Customer's proposed load." (EXH 2, MPN C1-19) In response to interrogatories from staff, DEF explained that "A primary purpose of the required system impact study is to identify any interconnection upgrades needed to maintain system reliability before service is provided." (EXH 21, MPN E37) In response to OPC interrogatories, DEF explained that the utility does not track internal costs to complete the system impact study. (EXH 58, MPN F2-5)

To date, DEF has completed 14 system impact studies for retail large loads. (EXH 58, MPN F2-5) DEF provided the cost of third-party resources for the studies in discovery. The response shows that one study cost $254,000 and the remaining 13 studies cost between $130,000 and $139,997. (EXH 58, MPN F2-5 - F2-6). Based on DEF's actual costs for studies incurred to date, staff recommends that DEF's proposed $150,000 fee is reasonable and should be approved.

Conclusion for Section 13.01

Based on the above, staff recommends that DEF's proposed tariff be denied with leave to modify Section 13.01 to remove the word "firm" to include all customers with anticipated monthly peak load of 50 MW or more. Staff recommends approval of all other provisions of Section 13.01 of the proposed LLCP.

Section 13.02 Term

Section 13.02 in the proposed Tariff Sheet No. 4.130 pertaining to the LLCP, defines the minimum term of the Large Load Customer Agreement (LLCA) to be 20 years (EXH 2, MPN C1-19), commencing on the date when permanent electric service is received. This 20-year minimum term may also include a load ramp period. After the minimum term, electric service under the LLCA shall continue until terminated by the customer or the Company upon written notification.

DEF witness Wishart testified that the proposed contract term is at the high end of the large load tariffs reviewed, which range from 8 to 20 years. (TR 186) In his testimony, Witness Wishart provided a table comparing minimum contract terms and load ramp periods for utilities in other states. (TR 182) Witness Wishart further asserted that the long term of the contract also ensures that only customers with strong financial backing would be attracted to the LLCA. (TR 186) With respect to the load ramp period, Witness Wishart explained a load ramp period would allow customers the opportunity to grow into their maximum forecasted demand levels. (TR 186) Witness Chatelain explained that a load ramp period would be a contractually negotiated time schedule between the customer's service requested and DEF's obligation to serve the expected load. (TR 140)

During cross-examination, DEF witness Chatelain testified that the customer's requested load ramp period would be part of an executed LLCA Agreement, with the details agreed to by DEF and the large load customer specified in Exhibit A of the LLCA. (TR 93) Witness Chatelain further testified that "a longer load ramp period provides the company runway to effectively plan what investments may be needed depending on the service request from the large load customer." (TR 94) DEF's proposed tariff does not contain a fixed load ramp period. (TR 94) Witness Chatelain stated that DEF's proposal to negotiate the load ramp period would allow

DEF "to invest prudently to serve the requested load at the time the customer needs the load." (TR 95)

OPC stated that the 20-year minimum term may initially seem reasonable as it is one of the longer terms contemplated by large load tariffs nationally. (OPC BR 17) However, OPC asserted that, 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. (OPC BR 17) Instead, the customer-requested load ramp exhibit attached to the LLCA is completely blank. (OPC BR 18)

Conclusion for Section 13.02

Staff believes that DEF's proposed 20-year minimum term and negotiated load ramp period is reasonable. As shown by Witness Wishart's comparison of other states, minimum contract terms range from 8 to 20 years, indicating the DEF's proposed 20-year long term initial commitment is a reasonable measure to insure cost recovery and protections to the general body of ratepayers. Load ramp period provisions vary, with some states specifying that load ramp period not to exceed a certain number of years, while other states allow for a negotiated load ramp period. Staff finds DEF's position regarding the needed flexibility to negotiate a load ramp period persuasive and recommends approval.

LLCP Section 13.03 Determination of Minimum Monthly Bill

Section 13.03 in the proposed LLCP Tariff Sheet No. 4.130 defines how DEF would determine a large load customer's monthly bill. (EXH 2, MPN C1-19) The minimum monthly bill calculation would be the sum of the customer charge, minimum demand multiplied by the base demand charges per the applicable base rate schedule, the minimum billing energy volume (kWh calculated based on the minimum demand assuming an agreed upon projected load factor), multiplied by the base energy charges of the applicable rate schedule, all applicable billing adjustments, such as fuel, taxes, and/or fees. (TR 53)

The proposed minimum demand ranges from 75 to 85 percent of the annual contract capacity. The minimum demand would be applied to the applicable demand charge. DEF witness Chatelain explained that DEF would utilize a minimum demand of 75 percent for all qualifying customers. If DEF determines in the future that a higher minimum demand percentage is warranted, it will apply the increased percentage on a going forward basis for all customers. (TR 52; TR 96) The LLCP does not prescribe at what point DEF would begin contracting large load customers with a higher minimum demand. (TR 86) In response to discovery, DEF explained the minimum demand would begin at 75 percent and the range included in the tariff provides flexibility in the event minimum demand needs to be adjusted, driven by costs that arise from the Company's obligation to serve large load customers. (EXH 4, MPN C3-168; EXH 62, MPN F2-34-35) The tariff further provides that billing demand would be the higher of the monthly maximum demand in the current month, 90 percent of the grid demand (defined as the highest monthly demand in the last 12 months), or the minimum demand (i.e., 75 to 85 percent of contract capacity).

The calculation of the minimum billing energy volume would also include a minimum load factor assumption of at least 60 percent, as agreed upon between DEF and the customer. (TR 53; TR 102; TR 142) Witness Chatelain asserted that the minimum monthly bill provision creates

accountability for the large load customer by establishing a baseline required energy usage level and discourages over-estimation of capacity needs when approaching the Company with potential projects. (TR 52) Witness Chatelain testified that the minimum monthly bill provisions add a minimum demand and minimum billing energy volume component that is above and beyond the current DEF rate schedule minimum bill requirements. (TR 52) DEF witness Wishart testified that, based on other large load tariffs reviewed, the proposed minimum demand for billing purposes is in the mid-range of other large load tariffs. (TR 187) To support that statement, witness Wishart provided a table comparing minimum bill requirements in other states, which range from 60 to 100 percent of contract demand. (TR 184)

OPC argued that DEF's proposed minimum monthly bill calculation is deficient because the percentage would ultimately be multiplied by the base demand charge of the applicable base rate schedule, which under DEF's current proposal would be either the GSD-1 or GSDT-1 rates, which were designed in the 2024 Settlement before SB 484 had been introduced. (OPC BR 19; TR 114) OPC concludes that until DEF implements a large load-specific rate, DEF's minimum monthly bills do not cover the full costs of serving large load customers. (OPC BR 19) This failure to recover large load customer costs shifts the risk of nonrecovery of such costs to DEF's general body of ratepayers in violation of Section 366.043, F.S. (OPC BR 19) OPC further states that by proposing a range of percentages to determine minimum monthly bills and 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. Nothing in DEF's proposal requires DEF to increase the minimum demand percentage to recover those costs. (OPC 18-19)

FL Rising's witness Rábago testified by putting the large load customers on the GSD-1 and GSDT-1 rates, the minimum bill would be nowhere near the revenue needed to match the costs associated with the incremental and embedded transmission, generation, operating, and maintenance costs. (TR 372) FL Rising reiterated the position in its brief, stating that the GSD-1 and GSDT-1 rates do not reasonably ensure that such large customers pay for all costs required to serve. (FL Rising BR 9)

Conclusion for Section 13.03

DEF committed to filing a large load rate schedule for Commission approval effective January 1, 2028, at which point the GSD-1 and GSLD-1 rate schedules would no longer be the applicable rate schedules for a large load customer. Witness Chatelain testified that DEF would file a cost of service study in its next rate case that would include projections for large load customers. (TR 138) A minimum demand charge should incentivize accurate load estimates and provide protections to the general body of ratepayers. As DEF witness Wishart testimony shows, large load tariffs in other states demonstrate a range of minimum billing demands from 60 to 100 percent. DEF's proposed minimum bill provisions for the interim period are reasonable and staff recommends that they should be approved, because they fall within the range of minimum billing demand requirements in utility proposals in other states.

LLCP Section 13.04 Security Requirement

DEF's proposed security requirements are incorporated in Section 13.04 of the proposed LLCP. (EXH 2, BSP C1-21, Tariff Sheet No. 4.131) Generally, a security requirement, or collateral, is

an essential risk management tool to protect the general body of ratepayers and the utility's exposure.

Witness Chatelain explained in direct testimony DEF's proposed security requirement:

> The proposed security provisions will require that potential large load customers secure their financial obligations to the Company by providing certain financial amounts (the "Security Amount"). The Security Amount is calculated by applying a certain percentage of the applicable termination payment (the "Security Percentage") to the Termination Fee. The Security Percentage generally depends on the size of the required Termination Fee and the customer's creditworthiness (i.e., customers with a higher credit rating will receive a lower Security Percentage). However, if the Termination Fee is greater than $100M, the Security Percentage will be no less than 10 percent.

(TR 55) The security requirement can be provided in the form of an irrevocable letter of credit or cash. Customers also have the option to provide a parent guaranty in order to reduce the security percentage. The security amount required could change if any of the formulaic variables change. Possible changes include a change in the customer's credit rating, which could change the security percentage, or a change in rates, which could change the applicable termination fee calculation. (EXH 16, BSP E4)

DEF witness Wishart provided a summary of collateral/security requirement provisions for utility proposals in certain other states. (TR 183) Witness Wishart testified that DEF's proposed variable security percentage, which is applied to the termination payment, is "a unique aspect of their LLCP." (TR 187) Witness Wishart recognized that most other proposals reviewed required a specific security amount, with some exceptions for customers with high credit ratings and sufficient liquidity. (TR 187) Witness Wishart testified that the ". . . Company's approach retains some flexibility in its contract terms that will allow it to tailor security requirements to each prospective customer." (TR 187) Staff believes that, based on the security requirement provisions for utility proposals provided by witness Wishart, other states include less flexibility and are more specific.

OPC witness Nelson disagreed with DEF's proposed security requirement. Witness Nelson advocated that the Commission direct DEF to refile the large load proposal to "require DEF to replace its open-ended, negotiated security collateral provision with clear and specific parameters set at a higher level-security collateral equal to 24 months of minimum bills based on the customer's planned post-ramp peak demand." (TR 258) Witness Nelson contended that DEF's proposed security policy allows far too much case-by-case negotiation and too much discretion by DEF and the only detail in the policy is the 10 percent security percentage threshold at an early termination fee of $100 million. (TR 311) Witness Nelson asserted that "the Company can set whatever security percentage it negotiates with the customer, with no input from the Commission, outside stakeholders, or other customer groups." (TR 311)

Witness Nelson testified that while other large load tariffs include a broad range of security collateral provisions, certain utilities have specific security policies that have significantly higher

requirements. (TR 312) Therefore, OPC advocates that the LLCP be amended to require security collateral equal to months of minimum bills, based on a customer's planned peak post-ramp period demand. (TR 313) OPC asserted that 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. (OPC BR 20)

Witness Rábago similarly testified that DEF's security provision does not provide sufficient assurance that the stranded costs of a potential early termination are fully recoverable from the large load customer. (TR 379)

DEF witness Chatelain rebutted OPC's testimony by testifying that the security provision is not intended to serve as the sole mechanism for securing recovery, but "rather to provide reasonable financial assurance that is aligned with the customer's risk profile and existing protections." (TR 76)

Conclusion for Section 13.04

Staff agrees with OPC that the tariff does not specify the percentage of the applicable termination payment DEF would seek as security. The only fixed term is that the security percentage threshold would be 10 percent at an early termination fee of $100 million. The percentage would depend on the size of the termination fee and the customer's credit worthiness, which provides no transparency to the Commission as to what the security amount would be. While staff acknowledges DEF's emphasis on the need for flexibility, staff believes the tariff as proposed provides DEF with too much flexibility. The security requirement is an essential contract structure to ensure that the general body of ratepayers is adequately protected if large-load customers disconnect early, before the expiration of the minimum term.

Therefore, staff recommends that the security provision be denied as filed. DEF should be given the option to refile the LLCP tariff and include a security provision as recommended by OPC witness Nelson, which would be a collateral equal to 24 months of minimum bills based on the customer's planned post-ramp peak demand.

LLCP Section 13.05 Early Termination

Section 13.05 in the proposed LLCP Tariff Sheet No. 4.131 defines the early termination provisions that would apply to large load customers. (EXH 2, MPN C1-21) DEF witness Chatelain testified that under the early termination provisions of the LLCP, once the customer begins taking service, the customer shall provide written notice to the Company no later than two years prior to the requested date of termination of service. (TR 54) The tariff provides that in such event, service under the LLCA shall automatically terminate on the date following the second annual anniversary of the date of the customer's termination notice. DEF witness Chatelain testified that the written notice helps "ensure that the Company has sufficient time to plan for the load reduction in a manner that minimizes impacts on existing customers and non-participants." (TR 54)

If the customer terminates service before expiration of the original 20-year contract term and provides the required 2-years notice, after reaching full load ramp, the customer shall be responsible for payment of a termination fee. The termination fee is calculated based on a

formula. (TR 103) Specifically, the termination fee is equal to three years, or 36 months, of minimum monthly bills, plus the net book value of new facilities referenced in section 13.07 of the LLCP, less any refundable portion of the upfront CIAC payment, which has not yet been refunded. (TR 54; TR 103) The new facilities referenced in section 13.07 are any facilities that were subject to the CIAC provision. (TR 103) Witness Chatelain further testified that "Together, the early termination and minimum monthly bill provisions help protect the Company's other customers from bearing the burden of potential stranded costs or underutilized assets due to the potential disappearance of or reduction in load if a large load customer project does not materialize or maintain its load as expected." (TR 55)

If a customer terminates the LLCA before reaching full load ramp, the customer must pay the Company its actual costs incurred to provide service, referred to as "Termination Payment Obligation" in the tariff. (EXH 2, MPN C1-21; TR 102-103) The proposed LLCA (original sheet No. 7.512) refers to actual costs incurred or committed by the Company as costs associated with the work in preparing to provide electric service to the site. (EXH 2, MPN C1031) In response to discovery, DEF explained that actual costs may include customer-specific facilities, service-extension costs, and incremental generation, transmission, or other system investments undertaken to accommodate the customer's anticipated load. (EXH 22, E43; EXH 28, MPN E179) If the customer terminates service before the end of the required 2-year notice period, the customer would be subject to "Termination Delay Damages" in addition to the termination fee described above. (TR 54)

Section 13.05 of the LLCA tariff further provides that if a customer is permitted to change rate schedules and selects to receive service under another applicable Company firm rate schedule, no termination fee shall be applied, but the terms of the LLCA with respect to the minimum monthly bill shall apply until the expiration of the original contract term; at the end of the original contract term, the LLCA should be amended to reflect the appropriate minimum monthly bill under the new firm rate schedule. (EXH 2, MPN C1-21) The customer could not avoid the calculation of the minimum monthly bill or the other requirements set forth in its initial LLCA by changing rate schedules. Additionally, the Company may terminate service under the LLCA at any time if the customer materially breaches the terms and conditions of its rate schedule, this policy, the LLCA, or the Company's tariff on file with the Commission.

In his testimony, DEF witness Wishart provided a table comparing security requirements and exit-fee provisions for other utilities in other states. (TR 183-184) Witness Wishart testified that most proposals combine credit/security requirements – often tied to parent-company guarantees, letters of credit, or cash collateral – with exit fees equal to a fixed number of months' minimum charges, commonly 36 months. (TR 183) Witness Wishart further testified that:

> The Company's requirement that customers pay 36 months of minimum bills, plus the net book values of the new facilities subject to the CIAC rule, for early termination, is a strong deterrent against customers who do not have the expectation of long-term financial viability. This requirement is common across the other large load tariffs that I reviewed and will help the Company recover the cost of investments needed to serve new large load customers.

(TR 187) The Joint Customers argued that there is no rationale for requiring a 20-year service contract, with early termination and exit fees, of an existing customer that has been contributing to DEF's cost of service for years or decades. (Joint Customers BR 17) The Joint Customers further stated that since an existing load is not imposing any material incremental utility infrastructure costs, there is no justification for requiring financial security guarantees or minimum bill provisions because there are no identified incremental infrastructure costs that could be shifted or stranded. (Joint Customers BR 17) The Joint Customers finally state that if the Commission decides to adopt modifications that would result in the LLCP applying to existing customers, the LLCP must be revised to create an existing customer tier. Specifically, the Commission should make changes that there should not be an early termination fee of any kind. The Joint Customers argued that these revisions are necessary to ensure that the LLCP, if applicable to existing customers, is just and reasonable. (Joint Customers BR 25)

OPC argued that DEF's early termination fees are, by design, structured not to recoup the full cost of serving an early terminating customer. (OPC BR 6) OPC further stated that the early termination fees are more lenient than those of many other utilities. (OPC BR 21) OPC additionally asserted that 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. (OPC BR 21) Furthermore, OPC stated that 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 is included in the CIAC and minimum bill provisions. (OPC BR 21) As such, "DEF's proposed early termination fees do not comply with Section 366.043, F.S., 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." (OPC BR 21-22)

OPC witness Nelson recommended a termination fee equal to customer's minimum monthly bills for the entire remaining contract term, regardless of the contract year in which the customer elects to terminate service. (TR 258) Witness Nelson compared DEF's proposed early termination provisions to other large load policies review, and concluded DEF's proposal is more lenient than most other policies reviewed. (TR 309) OPC asserted that an insufficient termination fee creates risk to existing customers when the physical grid assets built to serve the customer remain in rate base and "if the company can not quickly repurpose those assets, their costs will be socialized to customer groups that do not receive any benefits from them." (OPC BR 21-22; TR 310)

FL Rising witness Rábago testified that in the event of early termination of service, the tariff is inadequate to prevent cost shifting onto other customer classes, with stranded costs borne by the general body of ratepayers. (TR 363) Witness Rábago additionally testified that the termination payment obligation and termination fee leave unrecovered costs on the table to fall onto the general body of ratepayers in other customer classes. (TR 378) Witness Rábago asserted that by enforcing the collection of only those costs associated with the preparation of a site, the additional costs for construction of new power facilities, operation and maintenance, fuel, and devaluation in investments, among others, remain unaccounted for. (TR 378)

Conclusion for Section 13.05

There is consensus among the parties supporting the general practice of exit or early termination fees. As shown by witness Wishart's comparison of other states, early termination fees range from 36 months of minimum charges to early termination fees equal to the remaining minimum-bill obligations for the term of the contract. Therefore, the record supports the 36-month minimum bill obligation, as proposed by DEF. Based on the testimony provided by DEF, staff recommends that the proposed early termination fee, two-year notice of termination, and termination delay damages are reasonable measures of protections to the general body of ratepayers and provide DEF with a mechanism with adequate planning time for capacity adjustments, should a customer terminate service prior to the 20-year minimum contract term. Therefore, staff recommends approval of Section 13.05 of the LLCP. Therefore, staff recommends approval of Section 13.05.

LLCP Section 13.06 Special Terms

Section 13.06 in the proposed LLCP Tariff Sheet No. 4.132 states that:

> The Company may negotiate different non-material terms than reflected in this policy, if those terms do not result in fewer customer protections than was included in the Large Load Customer Policy. If the terms in the LLCA differ materially from the approved form tariff, then Company must submit the executed LLCA to the Commission for review and approval.

(EXH 2, MPN C1-22) Examples of non-material terms provided by DEF are changes in how the parties will be notified under the LLCA (paragraph 17), changes to how long the parties must negotiate in good faith to avoid disputes (paragraph 21), or changes to the nature of the interconnection (paragraph 3c). (TR 75; TR 132; EXH 16, MPN E1) However, DEF did not define what the term "non-material" means in the LLCP or in the LLCA. (TR 106) Furthermore, DEF is the one who decides what non-material means. (TR 106-107) During cross examination, DEF witness Chatelain admitted that it would be up to the Company to decide if a negotiated term would result in fewer customer protections (and therefore be material). (TR 108)

Witness Chatelain testified that if the Company deviated from the LLCA in a material way, it would submit the negotiated LLCA to the Commission for approval. (TR 58) Examples of material terms are the rate paid, system study impact fee, the size of the large load customer, the 20-year initial minimum term, minimum monthly bill calculation (within 75 to 85 percent), security requirements, requirement to pay full CIAC upfront, foreign entity restrictions, and early termination (TR 75; TR 133; EXH 21, MPN E38-39). During cross examination, witness Chatelain testified that he does not believe anything in the LLCP would be considered non-material and that the non-material terms are limited to terms contained in the LLCA. (TR 133) He further stated that the Utility will be willing to revise the proposed tariff to provide an exhaustive list of nonmaterial terms subject for negotiation to comply with the Commission's ultimate decision in this docket. (TR 135)

In its brief, OPC stated that DEF has allowed "itself sweeping and unconstrained discretion to amend the terms of the LLCP and the LLCA." (OPC BR 5) OPC asserts that allowing DEF to negotiate any term that DEF deems non-material if it does not result in fewer customer

protections is "the worst example of this self-serving discretion." (OPC BR 5) OPC further asserts that Section 366.03, F.S., requires that utilities provide "service upon terms as required by the commission." (OPC BR 12) 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. (OPC BR 22) OPC recommends that the Commission should therefore deny DEF's petition. (OPC BR 13)

FL Rising provides a similar position to OPC, disagreeing with DEF's proposal to negotiate different non-material terms, if those terms do not result in fewer customer protections. (FL Rising BR 11-12)

The Joint Customers state that if the non-material term is adequately defined, DEF's flexibility should not be a barrier for its approval. (Joint Customers BR 11)

Conclusion for Section 13.06

Consistent with the analysis and staff recommendation provided in Issues 1A and 1C, staff recommends that the Commission deny DEF's proposed tariff provision allowing the Company to negotiate different non-material terms without Commission approval. Staff believes the DEF should only be allowed to negotiate different terms that are purely administrative in nature. Staff believes that changes in how the parties will be notified under the LLCA (paragraph 17) and changes to how long the parties must negotiate in good faith to avoid disputes (paragraph 21) would fall under "administrative" changes; however, any changes in the interconnection agreement, for instance, would fall outside the administrative nature and should require Commission approval.

LLCP Section 13.07 Contribution in Aid of Construction (CIAC)

As discussed in Issue 3, staff recommends that if the Commission approves the proposed LLCP and LLCA tariffs as filed, the CIAC tariff modifications should be approved. If the Commission denies the proposed LLCP and LLCA tariffs this issue is moot. Staff's recommendation to deny the LLCP tariff with leave to refile does not impact the CIAC issue.

LLCP Section 13.08 Customer Rate

The proposed LLCP provides that until the Commission next resets the Company's rates and approves a new large load rate schedule which reasonably ensure that a customer bears its own full cost of service, the customer shall take service under the Company's existing GSD-1 or GSDT-1 rate. Once the new large load rate schedule is approved, the Customer would be moved to that new rate schedule.

In its brief, DEF stated that the 2024 Settlement fixes DEF's existing base rates through December 31, 2027, while Section 366.043, F.S., requires DEF to have a compliant large load tariff on file by October 1, 2026. DEF has therefore proposed an interim framework under which qualifying large load customers will take service under the existing GSD-1 or GSDT-1 rate schedule through the end of the Settlement term, subject to the additional cost-responsibility and financial-risk protections contained in the LLCP and LLCA. (DEF BR 7) DEF committed to proposing a dedicated large load rate schedule in its next rate case, or in the absence of a rate

case filing, in a separate standalone filing for approval of a new large-load specific rate effective January 1, 2028. (TR 197) Such a filing would have to be presented to the Commission no later than spring 2027. On rebuttal, DEF witness Chatelain testified that if:

> DEF does incur costs, and the GSD-1 and GSDT-1 rates are not adequate to cover them during the settlement period, those costs will fall to the bottom line and be borne by DEF shareholders. To be clear, to the extent such costs are incurred and resulting in DEF falling below its authorized ROE band, it commits that it will not seek to adjust rates during the settlement period.

(TR 72) Witness Wishart asserted that the rates under the GSD-1 and GSDT-1 tariffs are based on a traditional embedded cost-of-service methodology. (TR 196) Witness Wishart further testified that there is nothing inherent in the existing GSD-1 and GSDT-1 rates that makes them inappropriate simply because a customer's demand exceeds 50 MW. (TR 197) Witness Wishart does not agree that allowing large load customers to temporarily take service under the existing GSD-1 and GSDT-1 tariffs in inconsistent with the requirements of SB 484. (TR 197)

FL Rising witness Rábago testified that the existing GSD-1 and GSDT-1 are already below parity and subsidized by residential and small business customers. (TR 363) Specifically, the parity index approved in the 2024 Settlement for the GSD-1 and GSDT-1 rate classes is 0.91 or 91 percent. (EXH 10, MPN C6-440) Parity is the concept of a rate class covering its costs to serve. (TR 145) Furthermore, witness Rábago asserted that the rates were not designed with DEF's duties under the new legislation to the general body of ratepayers. (TR 363) By putting large load customers on the GSD-1 and GSDT-1 rates, witness Rábago concluded that DEF is almost guaranteeing that large load customers will not be covering the costs needed to serve them.

OPC argues a similar position, stating that DEF's proposal is not fair and reasonable because DEF is proposing to serve large load customer using rates that were approved in the 2024 Settlement before SB 484 "had even been introduced in the Legislature." (OPC BR 8) Furthermore, the GSD-1 and GSDT-1 rates reflect traditional embedded cost revenue allocation and do not recover incremental costs. (OPC BR 8; TR 105) Finally, OPC also asserts that GSD-1 and GSDT-1 rates are unfair and unreasonable because they are below parity. (OPC BR 8, TR 145)

In response to FL Rising witness Rábago's assertions, DEF witness Chatelain rebutted that DEF has not committed to serving large load data center customers and the "practical realities of siting, interconnection studies, and infrastructure development all point to a longer time for large-scale builds." (TR 402)

Staff agrees with OPC and FL Rising that the GSD-1 and GSDT-1 rates were approved as part of the 2024 Settlement and were not specifically designed for large load customers. However, the GSD-1 and GSDT-1 rates represent Commission-approved rates for commercial/industrial customers, regardless of minimum peak demand. The GSD-1 tariff is applicable to any customer, other than residential. (EXH 90, MPN F2-538)

Need for New Generation and Transmission

For each large load customer, DEF must systematically evaluate specific capacity and energy needs against its existing grid infrastructure to determine the exact generating assets required for integration. This process ensures the Utility maintains adequate reserve margins and complies with all Commission- and North American Electric Reliability Corporation-mandated reliability requirements. (EXH 18, MPN E16) For example, according to FL Rising witness Rábago, under the Commission's approved 20 percent reserve margin, a 1.0 gigawatt data center requires 1.2 GW of capacity. (TR 369) DEF witness Borsch testified that the Utility is currently capable of serving a single 55 MW large load customer before the 2024 Settlement Agreement expires at the end of 2027. (TR 401-402) In discovery, DEF noted it had received requests for system impact studies from 13 customers above the 50 MW threshold, but the smallest of these was 160 MW, which is above the 55 MW currently available. (EXH 58, MPN F2-5 – F2-6) Therefore, it is likely that new generation would be required as a result of a new large load customer under the proposed tariff.

Beyond assessing generation capacity, DEF must perform steady-state contingency analyses to protect grid reliability from these large loads. (EXH 101, MPN F4-547) As testified by DEF witness Chatelain, for each large load customer, DEF plans and builds its network as an integrated grid to support both system-wide and customer-specific infrastructure needs. (TR 77) According to DEF witness Wishart, large load customers must initially fund their own customer-specific interconnection facilities via a refundable CIAC mechanism. The witness further testified this ensures fair cost allocation to specific users while keeping the grid adaptable should those assets eventually benefit the broader network. (TR 192) While DEF's completed load hosting analysis outlines several substations and transmission lines that can absorb up to 200 MW of new capacity, demand exceeding this threshold will trigger system upgrades that are not covered under the CIAC mechanism. (EXH 18, MPN E15)

Conclusion for Section 13.08

As discussed in the executive summary and in Issue 1B, one option for the Commission could be to find that DEF’s existing rates and proposed protections satisfy the statue. Pursuant to the 2024 Settlement, base rates are frozen until the last billing cycle of 2027. Therefore, even if DEF were to sign an LLCA with a large load customer before December 31, 2027, the general body of ratepayers would not be impacted. DEF’s approach to temporarily serve any potential large load customer under the GSD-1 and GSDT-1 rates is reasonable and should be approved. The new large load rate schedule(s) DEF plans to propose in 2027 should provide for rates that reflect the full cost of service to serve large load customers. DEF’s proposal for new large load rate schedule(s) should also address how investments in new generation and transmission to serve a large load customer would be recovered.

Conclusion for Issue 1

The Commission has three options in this proceeding: (1) approve DEF’s proposed tariff as filed; (2) deny the tariff; or (3) deny the tariff with leave for DEF to file modifications. The recommendation addresses these alternatives, including staff’s recommended tariff modifications concerning the limitation to “firm” load, the distinction between material and non-material negotiable terms, and the security requirement.

If the Commission in Issue 1B votes that DEF's petition and associated tariffs do not meet the requirements of Section 366.043, F.S., this issue is moot.

If the Commission in Issue 1B votes that DEF's petition and associated tariffs do meet the requirements of Section 366.043, F.S., staff recommends that the Commission should deny the tariffs with leave to refile the Large Load Customer Policy with the following three tariff modifications. First, DEF should remove the word "firm" from Section 13.01. Second, DEF's proposed calculation of the security amount should be denied. DEF's security amount should be based on two months of minimum bills (Section 13.04). Finally, DEF's proposed provision that would allow the Company to negotiate different non-material terms without Commission review and approval should be denied (Section 13.06). DEF should only be allowed to negotiate different terms that are purely administrative in nature. Staff recommends approval of all other LLCP provisions.

If the Commission approves DEF's LLCP as proposed, without modifications, no changes would be needed to the tariffs.

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?

Recommendation: The Commission's vote on the LLCA should be consistent with the Commission's vote on the LLCP in Issue 1. The LLCA and LLCP tariffs are together structured to include terms and conditions applicable to large load customers and any LLCP customers would need to execute an LLCA. If the Commission denies the proposed LLCP with leave to refile in Issue 1, the Company should make the corresponding changes to the LLCA (Ward)

Position of the Parties

DEF: The Commission should approve, without modifications, DEF's proposed LLCA. The Company's proposal ensures that large load customers bear appropriate costs in the near term through CIAC requirements, minimum bill obligations, termination provisions, and related contractual protections. These mechanisms provide meaningful cost responsibility without requiring the Commission to adopt a rigid, customer-specific allocation model that does not reflect system realities.

OPC: 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.

FL Rising: 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.

Joint Customers: The Commission should approve the as-filed LLCA. However, if the Commission decides to adopt modifications that would result in an LLCA applying to existing DEF customers, then the LLCA needs to be revised as to those existing customers.

Staff Analysis: The LLCA is an agreement between the Company and a customer who is seeking retail electric service for a proposed facility projected to have new or incremental load of 50 MW or more at a single location. (EXH 2, MPN C1-21) A customer taking service under the LLCP tariff must execute an LLCA. (TR 58)

DEF witness Chatelain testified that the LLCA specifies certain provisions of electric service, including load characteristics, customer-specific terms, applicable construction cost recovery terms, and other service details, including definition of operating procedures based on the Company's proposed LLCP. (TR 57-58) The LLCA also requires a customer to provide an affidavit to the Company attesting that it is not a "foreign entity" as defined in Section 366.043(2)(c), F.S. (TR 117)

Attached to the LLCA are Exhibits A-F which would be included in a completed and signed agreement. Exhibit A is the customer-requested load ramp schedule. (EXH 2, MPN C1-42)

Witness Chatelain explained at the hearing that Exhibit A is blank as it would be filled in on an executed contract with the timing associated with the customer's specific requested load ramp period. (TR 93) Exhibit B are the estimated company costs incurred in preparing to provide electric service to the site. (EXH 2, MPN C1-43) Exhibit C is the form letter of credit that is discussed in the security requirements section of the LLCA. (EXH 2, MPN C1-44) Exhibit D is the form parent guaranty that is also discussed in the security requirements section of the LLCA. (EXH 2, MPN C1-50) Exhibit E is space for additional facilities if the customer requests an enhanced level of service, if applicable. (EXH 2, MPN C1-56) Finally, Exhibit F is space for additional provisions, if any. (EXH 2, MPN C1-57)

DEF witness Chatelain testified that the LLCA appropriately establishes a uniform framework that allows the Company to negotiate in good faith with prospective large load customers to accommodate project specific priorities and service objectives. (TR 58) Witness Chatelain additionally asserted that the LLCA terms protect the Company and existing customers from undue risk of stranded investment. (TR 58)

OPC argues that throughout the proposed LLCP and LLCA, DEF has arrogated itself sweeping and unconstrained discretion to amend the terms of those documents. (OPC BR 5) OPC further stated that 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." (OPC BR 5) Staff addresses the non-material provisions of the LLCP and LLCA in Issue 1 of this recommendation.

The Joint Customers state that with respect to compliance with Section 366.03, F.S., the primary concern seems to be whether DEF can be allowed any leeway under the LLCP "Special Terms" to negotiate "non-material" terms of the LLCA contract. (Joint Customers BR 11) They further state that as long as the category of non-material term is adequately defined, DEF's flexibility should not be a barrier to approval of the DEF proposal. (Joint Customers BR 11) Lastly, the Joint Customers state that the Commission should find that DEF's petition and associated tariffs are consistent with Section 366.043, F.S. (Joint Customers BR 11)

Conclusion

The Commission's vote on the LLCA should be consistent with the Commission's vote on the LLCP in Issue 1. The LLCA and LLCP tariffs are together structured to include terms and conditions applicable to large load customers and any LLCP customers would need to execute an LLCA. If the Commission denies the proposed LLCP with leave to refile in Issue 1, the Company should make the corresponding changes to the LLCA.

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?

Recommendation: If the Commission approves the proposed LLCP and LLCA tariffs as filed, the CIAC tariff modifications should be approved. If the Commission denies the proposed LLCP and LLCA tariffs, this issue is moot. Staff's recommendation to deny the LLCP tariff with leave to refile does not impact the CIAC issue. (Nguyen)

Position of the Parties

DEF: The Commission should approve, without modifications, DEF's proposed modifications to the CIAC tariff. Customer-funded, refundable Contributions in Aid of Construction ("CIACs") appropriately assign the cost of customer-specific interconnection facilities while recognizing that those facilities may subsequently provide value to other customers.

OPC: 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.

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

Joint Customers: The Commission should approve the as-filed proposed CIAC tariff modifications. If the Commission adopts modifications to the DEF proposal, it should specify that existing customers will remain subject to the currently approved CIAC provisions of the existing General Rules and Regulations Governing Electric Service (Tariff Sheet No. 4.030, part 3.01).

Staff Analysis: Section 13.07 in proposed Tariff Sheet No. 4.132 defines the terms of CIAC. (EXH 2, MPN C1-22) Pursuant to the proposed CIAC provision, the customer would be required to pay 100 percent of the total estimated costs to extend service in advance. The payments would be refunded over a period of up to five years, less CIAC that would normally be paid by the customer. Any customer funds not refunded by the end of the 5-year period because of an insufficient load become nonrefundable and would be retained by DEF. (TR 51) DEF witness Chatelain testified that these changes are designed to protect the general body of customers from incurring costs to serve new load if that load does not materialize. (TR 50) Witness Chatelain also asserted that there is no flexibility in the CIAC provision, and all customers must pay CIAC up front, subject to refund over five years. (TR 59)

The proposed CIAC provision differs from Rule 25-6.064, F.A.C., (CIAC Rule). The CIAC calculation pursuant to the rule estimates expected base rate revenues over a 4-year period and subtracts the revenues from the cost for the facilities. The CIAC rule does therefore not include refunds. (TR 113)

DEF stated that the proposed CIAC provision includes advance payment of all estimated costs to extend service for customer-specific distribution and/or transmission facilities, dedicated substation facilities (including transformers, breakers, protection, and control equipment), interconnection facilities, engineering, design, and construction support, site-specific costs for non-standard or extraordinary facilities, and cost of removal and/or upgrade of existing facilities (as applicable). (EXH 16, MPN E2)

DEF stated that the utility could request additional payment for any additional facilities installed, particularly if it is included as part of upfront site-specific costs. (EXH 17, MPN E10) During cross examination, DEF witness Chatelain testified that the proposed CIAC tariff would not include incremental generation and some transmission costs that are not site-specific. (TR 103) Witness Chatelain clarified that the minimum bill calculation, which would be effective if a customer terminates after reaching their full load ramp, would include incremental generation and transmission costs in the applicable rate schedule at the time. (TR 104)

OPC witness Nelson testified that the proposed CIAC policy includes "an extremely limited amount of connection costs, especially when applied to large load customers." (TR 300) Witness Nelson further asserted that the CIAC would not cover all upgrades needed for the new customer's interconnection or any of the system upgrade costs, resulting in those costs being socialized among all customers which would be in direct violation of SB 484. (TR 300) In its brief, OPC argued the CIAC policy leaves the costs of incremental transmission and generation uncovered. (OPC BR 6)

FL Rising took a similar position as OPC. (FL Rising BR 12) Witness Rábago testified that DEF's proposal would refund the CIAC costs to the large load customer, but by refunding those costs, the general body of ratepayers is 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)

Witness Wishart rebutted the arguments made by OPC and FL Rising, testifying that the refund of qualifying CIAC payments has been an established component of DEF's line extension policy and is reflected in DEF's existing revenue requirement and base rates. (TR 197) Stated differently, the cost included in the refund of qualifying CIAC payments is already embedded in the GSD-1 and GSDT-1 rates which a large load customer would pay. (TR 197) Staff believes that the requirement to pay 100 percent of the cost upfront is designed to protect the general body of ratepayers if the revenues from the large load customer do not materialize as projected.

The CIAC Rule is applicable to customers who request new facilities or upgraded facilities in order to receive electric service. Under the CIAC rule and DEF's existing CIAC policy, the general body of ratepayers would bear the risk if an applicant's projected electric load and estimated revenue—used to calculate their CIAC obligation—fails to fully materialize over the standard four-year calculation period. To protect the general body of customers from carrying this financial risk to extend service, staff believes that DEF's proposal to request the total estimated cost to extend facilities up-front shifts the risk directly to the applicant/cost-causer should revenues not materialize as projected as the large load customer controls whether their projected load materializes. Therefore, DEF's proposed CIAC provision adds an additional layer of protection to the general body of ratepayers.

Staff believes if facilities only serve and benefit the new load, they should be funded through a CIAC payment. However, if upgrades are to be used to serve and benefit other customers, they should be rolled into rate base for recovery through base rates charged to all customers, including any large load customers.

Conclusion

If the Commission approves the proposed LLCP and LLCA tariffs as filed, the CIAC tariff modifications should be approved. If the Commission denies the proposed LLCP and LLCA tariffs, this issue is moot. Staff's recommendation in Issue 1 to deny the LLCP tariff with leave to refile does not impact the CIAC issue.

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

Recommendation: If the Commission approves the proposed Large Load Customer Policy, Large Load Customer Agreement, and CIAC tariffs as filed, they should be effective on the date of the Commission vote. If the Commission denies the proposed tariffs, this issue is moot. If the Commission denies the proposed tariffs with leave to refile, DEF should have the option to refile tariffs that comply with the Commission vote for review and administrative approval by staff within 10 business days of the issuance of the order. The tariffs should be filed with the Clerk's Office in the docket. Staff should be given administrative authority to review any refiled tariffs to confirm that they are consistent with the Commission's decision. The refiled tariffs should become effective on the date staff administratively approves them. (Nguyen)

Position of the Parties

DEF: The LLCP, LLCA, and CIAC tariffs should be effective immediately upon Commission approval in this docket.

OPC: 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.

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

Joint Customers: Not Provided.

Staff Analysis/Conclusion: If the Commission approves the proposed Large Load Customer Policy, Large Load Customer Agreement, and CIAC tariffs as filed, they should be effective on the date of the Commission vote. If the Commission denies the proposed tariffs, this issue is moot. If the Commission denies the proposed tariffs with leave to refile, DEF should have the option to refile tariffs that comply with the Commission vote for review and administrative approval by staff within 10 business days of the issuance of the order. The tariffs should be filed with the Clerk's Office in the docket. Staff should be given administrative authority to review any refiled tariffs to confirm that they are consistent with the Commission's decision. The refiled tariffs should become effective on the date staff administratively approves them.

Issue 5: Should this docket be closed?

Recommendation: If staff's recommendation to deny certain portions of DEF's tariffs with leave to refile is granted, the docket should remain open to allow time for any refiled tariffs to be received, reviewed, and approved by staff. In that event, the docket should be closed administratively. If DEF's tariffs are granted or denied in their entirety, the docket should be closed upon the expiration of the time for filing an appeal. (Thompson, Crawford)

Position of the Parties

DEF: Not Provided.

OPC: No.

FL Rising: 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.

Joint Customers: Not Provided.

Staff Analysis: If staff's recommendation to deny certain portions of DEF's tariffs with leave to refile is granted, the docket should remain open to allow time for any refiled tariffs to be received, reviewed, and approved by staff. In that event, the docket should be closed administratively. If DEF's tariffs are granted or denied in their entirety, the docket should be closed upon the expiration of the time for filing an appeal.