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Comments

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

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Date: March 5, 2026

Re: **Docket Nos. 24-035-43, 25-R318-01** Utah Division of Public Utilities' Initial Comments re: Suggested Scope and Principles of Potential Large Load Flexible Tariff and Possible Changes to R746-318

Summary

The Division submits these Initial Comments in the consolidated Docket Nos. 24-035-43 and 25-R318-01 (Consolidated Dockets). These Initial Comments provide some general scoping considerations for: (1) Possible rules regarding a large load flexible tariff; and (2) Potential amendments to Utah Administrative Rule R746-318 (the Rule).

Issue and Background

The Public Service Commission (Commission or PSC) initiated rulemaking regarding large load customers in Docket No. 25-R318-01 in 2025.¹ After several stakeholder meetings and multiple rounds of comments from stakeholders, the Commission issued a Notice of Proposed Rule on October 31, 2025.² Stakeholders submitted another round of comments that recommended revisions to the Proposed Rule (Stakeholder Proposed Rule

¹ *Proposed Rulemaking Concerning Utah Code §§ 54-26-101 to -901, Large-Scale Electric Service Requirements*, Docket No. 25-R318-01, Notice of Virtual Scheduling Conference (May 9, 2025).

² Notice of Proposed Rule (October 31, 2025).



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Comments). The Commission submitted the final version of the new rule and made it effective January 1, 2026, as required by the enabling statute.³

The Commission consolidated Docket No. 25-R318-01 (the Rulemaking Docket) and Docket No. 24-035-43 (the docket in which the Division requested an investigation in large load connection policies) on January 15, 2026.⁴ The Commission stated that “the process for considering a large load flexible tariff and potential amendments to the Rule are sufficiently related that all parties and stakeholders will be best served by consolidating these issues.”⁵ After a scheduling conference, the Commission issued a Scheduling Order.⁶ That Scheduling Order called for Initial Comments from stakeholders regarding Suggested Scope and Principles of Potential Large Load Flexible Tariff.⁷

The present Initial Comments from the Division describe: (1) Principles and suggested topics to be addressed by a Large Load Flexible Tariff; and (2) Recommendations regarding suggested revisions to the Rule.

Legal Background for Flexible Load Tariff

Utah Code section 54-26-701 directs the Commission to investigate a large load flexible tariff and lists factors the Commission should consider in doing so. “Large load flexible tariff” is defined in section 54-26-101(8) (Definition) as follows:

- (8) "Large load flexible tariff" means a tariff:
 - (a) pursuant to which a large load customer:
 - (i) will receive components of electric services from a large-scale service provider; or
 - (ii) will reduce demand at periods specified by a large-scale service provider; and
 - (b) under which a large load customer receives components of available electric services from a qualified electric utility to the extent:
 - (i) the qualified electric utility's resources are reasonably expected to be available and sufficient; and
 - (ii) as determined by:

³ Notice of January 1, 2026 Effective Date, Docket No. 25-R318-01 (Dec. 29, 2025). The enabling statute was Utah Senate Bill 132, Electric Utility Amendments (the “Act”), which was signed into law March 25, 2025, and codified as Utah Code Title 54, Chapter 26, Large-Scale Electric Service Requirements.

⁴ Notice of Consolidation and Scheduling Conference at 2.

⁵ *Id.*

⁶ Scheduling Order, Notice of Virtual Technical Conference, and Notice of Virtual Scheduling Conference.

⁷ *Id.* at 1.

- (A) agreement with the qualified electric utility; or
- (B) tariffs approved by the commission.⁸

As a preliminary matter, the Division notes that some features of the Definition are confusing. The definition of large load flexible tariff (LLFT) provides that a tariff is an LLFT if it meets both of the following:

- a. Either of the conditions in 54-26-101(8)(a), and
- b. Both of the conditions in 54-26-101(8)(b).

Note that either 54-26-101(8)(a)(i) or 54-26-101(8)(a)(ii) needs to be met, but both do not need to be met—this is due to the “or” between subsection (8)(a)(i) and (8)(a)(ii). Therefore, a tariff can meet 54-26-101(8)(a) simply by being a tariff “pursuant to which a large load customer ... will receive components of electric services from a large-scale service provider”.

In the Division’s understanding, under a plausible reading of section 54-26-101(8)(a)(i), the definition could be met by any large-load contract approved by the Commission, whether under a LLFT or not—this is because any large load tariff approved by the Commission could count as a tariff “pursuant to which a large load customer ... will receive components of electric services from a large-scale service provider.” Any large load operating under a current tariff (not just an LLFT) can also plausibly meet the conditions in section 54-26-101(8)(b). However, the Division assumes this was not the intent of the statute. The Division is unsure whether this situation requires some revised Rule language to clarify what counts as an LLFT or perhaps even a legislative amendment of the statute.⁹

The Division also expects the stakeholders will discuss the implications of section 54-26-101(8)(b)(i), which states that a condition for a tariff counting as an LLFT is that “the qualified electric utility’s resources are reasonably expected to be available and sufficient.” The Division expects that most tariffs would meet this condition and is unsure of its implications.

⁸ Utah Code Ann. § 54-26-101(8).

⁹ Changing the “or” after 54-26-101(8)(a)(i) to an “and” would eliminate much of the ambiguity.

Large Load Flexible Tariffs—General Considerations

The Division expects to provide more comments on specific LLFT language in its reply comments in this docket. The Division is interested to hear what other stakeholders are looking for in an LLFT. Stakeholders who are current or prospective large load customers (or who represent such customers) might indicate desired features of LLFTs in their initial comments. The Company might present considerations related to what types of flexible tariffs it is willing and able to consider. The Division will comment on these more specific issues in its reply comments as needed. For these Initial Comments, the Division offers the following issues that it expects would be addressed by an LLFT, or by Commission rules addressing an LLFT.

Types of Flexible Loads

The Division's understanding is that much of the interest in an LLFT is due to the expected increase in data center/artificial intelligence (AI) loads. However, other large load customers, such as industrial/manufacturing/mining (Heavy Industry) or electric vehicle charging (EV) customers, may be interested in an LLFT, and so any rules should consider other types of loads aside from data centers/AI, even if such potential large load customers do not intervene in this docket.

When it comes to data center/AI loads, there are at least a couple different kinds of flexibility. A recent whitepaper from the Duke Nicholas Institute stated:

The central hypothesis is that the evolving computational load profiles of AI-specialized data centers facilitate operational capabilities that are more amendable to load flexibility. Unlike the many real-time processing demands typical of conventional data center workloads, such as cloud services and enterprise applications, the training of neural networks that power large language models and other machine learning algorithms is deferrable. This flexibility in timing, often referred to as temporal flexibility, allows for the strategic scheduling of training as well as other delay-tolerant tasks, both AI and non-AI alike. These delay-tolerant tasks are also referred to as batch processing and are typically not user-prompted.

This temporal flexibility complements the developing interest in spatial flexibility, the ability to dynamically distribute workloads across one or multiple

data centers in different geographic locations, optimizing resource utilization and operational efficiency.¹⁰

A prospective LLFT or rules governing LLFTs should be informed by what kind of flexibility stakeholders in this docket are capable of, while keeping in mind that data centers/AI are just one kind of possible flexible load. Such flexibility can serve the system and other ratepayers if designed properly.

Types of Flexible Load Tariffs

In general, a customer desires an LLFT because its expected or typical hourly load meets at least one of the following conditions: (1) The load is somewhat cyclical, either on an hourly/daily or monthly/annual basis, and/or is somewhat flexible, so that the load can be scheduled or temporarily reduced at times of high system demand to ease stress on the utility's system, in exchange for a certain tariff rate; (2) The load can be reduced or even curtailed completely at certain hours or on certain days when "events" are called, in exchange for a certain tariff rate or other payment from the utility; or (3) The customer has some behind-the-meter (BTM) generation that it can use at designated times to offset its load to the utility (in exchange for a certain tariff rate or other payment from the utility). Stakeholders may also envision other types of scenarios.

Note that these types of scenarios can call for different tariff structures. For example, scenario (1) noted above (the load is cyclical and can be managed on a long-term basis by the customer to be higher or lower at certain hours) might result in a tariff with static time of use pricing, where the customer's energy charge might be (for example) lower during the night hours and higher during the utility's expected peak hours (e.g., 3 p.m. to 8 p.m.). Scenario (2) might call for something similar to a direct load control program, wherein in exchange for a lower overall energy rate, the utility can directly curtail the customer's load during times of acute system stress.

¹⁰ Tyler H. Norris et al for Nicholas Institute for Energy, Environment & Sustainability, Rethinking Load Growth: Assessing the Potential for Integration of Large Flexible Loads in US Power Systems, at 11 (2025), <https://nicholasinstitute.duke.edu/sites/default/files/publications/rethinking-load-growth.pdf>. Another discussion of data center/AI large load classifications, workload types, and characteristics is found in: EPRI, Grid Flexibility Needs and Data Center Characteristics (2025), <https://www.epri.com/research/programs/063638/results/3002031504>.

It might be helpful for stakeholder discussion to follow the categories and terminology of dynamic pricing programs as laid out by the U.S. Energy Information Administration (EIA) in its Form EIA-861S.¹¹ That form lists five types of dynamic pricing programs, with definitions.

The types are:

1. Time of Use Prices (TOU)
2. Real Time Pricing (RTP)
3. Variable Peak Pricing (VPP)
4. Critical Peak Pricing (CPP)
5. Critical Peak Rebate (CPR)

To this the Division would add two more types:

6. Direct Load Control (DLC) and other Demand Response (DR)
7. Behind the Meter Generation (BTM)

Direct load control may not typically be considered as part of a flexible load tariff, but it should be included, at least in initial discussions, as: (i) the reason a customer might sign up for DLC is that its load is flexible for short periods (in that a curtailment with little or no warning is judged to be worth a reduced rate), and (ii) some parties in this docket may desire a DLC option. BTM generation, while technically not necessarily reflecting flexible load on the customer side of the meter, can appear as flexible load from the utility's side. The Division's understanding is that CPP, CPR, and DLC programs are "event-based," in that the Company or other party calls an "event" (typically due to expected system load being high), which then the customer can respond to with a reduction in load.

Therefore, the Division suggests that parties provide recommendations regarding which categories of dynamic pricing (items (1) through (7) listed above) should be considered in this docket. Stakeholders should also propose other types of programs that are not covered by this list. Similarly, the Company should indicate what kinds of pricing and programs it

¹¹ See https://www.eia.gov/survey/form/eia_861s/instructions.pdf for the EIA's descriptions of these program types.

believes are feasible for this tariff—some programs may require more technology or billing system changes than the Company wishes to implement.

Terminology and Flexible Tariffs

Although the program types and terminology described above may be helpful, the Commission should be aware that there does not yet seem to be an accepted terminology for describing the types of flexible load tariffs across the country. In July of 2024, the U.S. Department of Energy (DOE) issued “Recommendations on Powering Artificial Intelligence and Data Center Infrastructure” (DOE Report).¹² Among the DOE Report’s findings were:

- Hyperscalers and technology providers state that temporal and spatial computational flexibility is possible if they are given appropriate signals. Despite this perception of technical capability, we identified no examples of grid-aware flexible operation at data centers today [other than a few isolated exceptions]
- There is no standard terminology in the U.S. for flexible operation of any type of assets, including data centers, which is a significant impediment to [the] rapid ... scale-up of flexibility programs even when multiple parties want to cooperate.
- In transmission-constrained locations, electricity providers often can accommodate the energy and capacity requests of a data center for (say) 350 days but need to find a win-win solution for the remaining 15 days.¹³

The lack of standard terminology is one reason why parties should consider using the EIA program names and definitions, as mentioned above. The last bullet from the DOE Report indicates that event-based programs should be considered.

¹² See <https://www.energy.gov/sites/default/files/2024-08/Powering%20AI%20and%20Data%20Center%20Infrastructure%20Recommendations%20July%202024.pdf>

¹³ DOE Report at 6.

Issues to Consider

The Division believes discussion of the following issues may help parties coalesce around a draft version of a LLFT or rules regarding LLFTs to submit to the Commission for consideration.

- **Rate-Based vs. Event-Based Programs.** Should the tariff be rate-based, event-based, or both? Rate-based flexible tariff rates, such as static time-of-use rates, will tend to cause load to shift to non-peak times. However, such rates will not necessarily provide firm reductions in times of high system stress. A tariff wherein the customer pays energy costs based on (for example) the Extended Day-Ahead Market (EDAM) Locational Marginal Price (LMP) would probably fall under a TOU category. Note that input from the Company can help clarify this issue. For example, if the Company is in general agreement with the third finding from the DOE Report described above (for 350 days of the year, data center load can be served comfortably), maybe an event-based tariff could work.
- **Event-Based Issues.** If the tariff is event-based, who calls the event? One possibility is that the Company could call the event; another is that the event could be based on market prices or conditions. If the tariff is event-based, will reduction be more at the customer's discretion (as is the case with CPP programs) or would the Company directly control the customer's load (as would be the case with DLC programs)? Will there be a limit on the number of events that can be called per year? What will be the duration of the events? How much warning will be given in the case of a called event?
- **Measurement and Verification (M&V).** If a customer is receiving a lower energy rate in exchange for reducing load during a called event, there should be M&V provisions in place to ensure that the Company is actually seeing the load reduction at the desired time. In the case of DLC, this M&V should be relatively straightforward. In the case of an LLFT based on other programs such as CPP or TOU rates, it may be more difficult to establish what the customer would have used in the absence of an event (or in the absence of a rate based on time of day). M&V may involve requiring customers to submit expected hourly load profiles as a condition of receiving a flexible tariff rate. The Division notes that a customer on an

LLFT should not be able to transfer load during peak hours or an event to another customer owned by it, or by the same parent company, that is on the Company's system.¹⁴

- **Streamlined Approval.** The Division is wary of any shortening of the already tight timelines of Utah Code section 54-26-302(4). Section 54-26-302(5) allows the Commission to establish rules for an expedited application review, although it is not clear if an expedited process could change the section 54-26-302(4) timelines as they may apply to a customer on an LLFT. If those timelines could be altered, the Division's position is that more large load contract dockets should be processed before an expedited timeline is considered. Experience may show that an expedited timeline is not feasible. Alternatively, there may be other Rule requirements that can be expedited aside from the timeline.
- **Tailoring of Incentives.** Should the types and magnitudes of incentives be determined ahead of time, with customers picking from a menu of options? Or can the exact magnitude and type of incentive vary according to each particular customer's load profile and needs?
- **Ancillary services.** Should ancillary services such as frequency regulation be considered?

Suggested Revisions to Utah Administrative Code R746-318

In its Notice of Consolidation and Scheduling Conference in this docket, the Commission stated "the PSC believes the comments it received on December 15, 2025, warrant additional consideration."¹⁵ The Division submitted comments on December 15, 2025 (Division Proposed Rule Comments); the Division restates in the present Consolidated Docket its recommendations in the Division Proposed Rule Comments, which dealt largely with wording and minor language revisions. Other parties submitted more substantive

¹⁴ The scenario envisioned to be avoided here is the following: customer Beta is a data center that handles artificial intelligence (AI) queries. Beta is owned by parent company Omega. Omega owns two such centers on the Company's system in Utah, Beta and a similar data center Delta. Beta is on an event-based flexible tariff; Delta is not. If Omega can direct AI queries to Delta during an event, Beta is receiving a benefit for load reduction that does not actually materialize on a system-wide basis, since Delta's load increases.

¹⁵ Notice of Consolidation and Scheduling Conference at 1-2.

recommended changes; to cite just one example, NRG Energy and Tract Capital Management, LP stated:

This NDA clause [in in R746-318-103(6)(a)-(b)] should be removed from the Proposed Rules, and the Commission should require a much higher threshold for access to “regulator access only” documents. This higher threshold should include requiring the person requesting access prove that their desire for access outweighs the protection “regulator access only” material deserves.¹⁶

NRG Energy and Tract Capital Management, LP also submitted several other substantive recommendations for changing provisions of R746-318. Calpine Solutions also had substantive recommendations regarding the Proposed Rule. For example, it states: “Calpine Solutions recommends deletion of the requirement to obtain a declaration from the Qualified Electric Utility in support of an application for approval of a Private Generation Contract.”¹⁷ The Division believes the stakeholders could benefit from guidance from the Commission regarding which of the more substantive comments may warrant additional consideration.

Conclusion

The Division recommends that the following issues be considered when determining the scope of, and rule changes involving, an LLFT.

- Large load stakeholders can indicate which kinds of flexible tariff rates they would be willing and able to participate in. The EIA list of alternate rate designs can be a starting point for categorizing types of flexible load tariff rates.
- The Company can give guidance as to which rate designs would be most helpful for system optimization and reliability and indicate which rate designs may be unworkable.
- Stakeholders can indicate any preference for static rate-based programs or event-based programs. For the latter, parties can discuss the number and duration of events that might be appropriate and how such events will be called.

¹⁶ NRG Energy and Tract Capital Management, LP’s Joint Comments at 5-6.

¹⁷ Calpine Energy Solutions, LLC’s Comments on Notice of Proposed Rule at 7. The Division is not advocating for or against this and NRG Energy and Tract Capital Management’s proposals; these proposals are simply examples of substantive changes to the Rules recommended by stakeholders in the Stakeholder Proposed Rule Comments.

- Stakeholders should consider M&V issues.
- Stakeholders should consider Heavy Industry loads, EV loads, and others in addition to data center/AI loads.
- The Division does not believe that the already tight timelines of Utah Code section 54-26-302(4) can be shortened, although it is open to other methods of streamlining flexible load tariff applications.

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