BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Petition for a limited proceeding to approve clean energy connection program and tariff and stipulation, by Duke Energy Florida, LLC. | DOCKET NO. 20200176-EI  ORDER NO. PSC-2021-0059-S-EI  ISSUED: January 26, 2021 |

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman

ART GRAHAM

JULIE I. BROWN

ANDREW GILES FAY

MIKE LA ROSA

APPEARANCES:

DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St. Petersburg, Florida 33701 and MATTHEW R. BERNIER, ESQUIRE, 106 E. College Avenue, Suite 800, Tallahassee, Florida 32301

On behalf of Duke Energy Florida, LLC (Duke or Company).

J.R. KELLY and CHARLES REHWINKEL, ESQUIRES, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400

On behalf of Office of Public Counsel (OPC).

Bradley Marshall and Jordan Luebkemann, ESQUIRES, 111 S. Martin Luther King Jr. Blvd., Tallahassee, Florida 32301 and Dominique Burkhardt, ESQUIRE, 4500 Biscayne Blvd., Ste. 201, Miami, Florida 33137

On behalf of League of United Latin American Citizens of Florida, a/k/a

LULAC Florida Educational Fund, Inc. (LULAC).

STEPHANIE U. EATON, ESQUIRE, 110 Oakwood Drive, Suite 500, Winston-Salem, North Carolina 27103 and DERRICK PRICE WILLIAMSON and BARRY A. NAUM, ESQUIRES, 1100 Bent Creek Boulevard, Suite 101, Mechanicsburg, Pennsylvania 17050

On behalf of Walmart Inc. (Walmart).

GEORGE CAVROS, ESQUIRE, 120 E. Oakland Park Blvd., Suite 105, Oakland Park, Florida 33334

On behalf of Southern Alliance for Clean Energy (SACE).

KATIE CHILES OTTENWELLER, ESQUIRE, 838 Barton Woods Road NE, Atlanta, Georgia 30307

On behalf of Vote Solar (Vote Solar).

JON C. MOYLE, JR. and KAREN PUTNAL, ESQUIRES, 118 North Gadsden Street, Tallahassee, Florida 32312

On behalf of Florida Industrial Power Users Group (FIPUG).

SHAW STILLER, BIANCA LHERISSON, and JENNIFER CRAWFORD, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff).

SAMANTHA CIBULA, ESQUIRE, Senior Attorney, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Florida Public Service Commission General Counsel

FINAL ORDER APPROVING STIPULATION

BY THE COMMISSION:

Background

On July 1, 2020, Duke Energy Florida, LLC (Duke or Company) filed a petition for approval of a Stipulation regarding the Clean Energy Connection (CEC) Program and associated tariffs. Duke’s CEC Program is a voluntary community solar program that allows participating customers to pay a subscription fee in exchange for receiving bill credits related to the solar generation produced by the CEC Program solar facilities. The Company plans to build 10 projects totaling 750 MW of solar generation as part of the CEC Program. These projects will be placed in-service between 2022 and 2024. Duke has allocated the capacity of the CEC Program solar facilities among commercial, residential, and local government customer groups, with approximately 27.7% of the residential allocation carved out for low-income customers. The Stipulation and associated tariffs, which together comprise the CEC Program, are appended hereto as Attachment A.

The signatories to the Stipulation are Duke, Vote Solar, Southern Alliance for Clean Energy (SACE), and Walmart Inc. (Walmart). The Stipulation and proposed tariffs contain a series of compromises and agreements among its signatories regarding the structure, funding, construction, and operation of the CEC Program.

On July 25, 2020, the League of United Latin American Citizens of Florida (LULAC) filed a Petition to Intervene. As set forth in its Petition, LULAC contends that Duke’s proposed solar program is not in the public interest, is not fair, just, and reasonable, and is unjustly discriminatory. The Florida Industrial Power Users Group (FIPUG) also filed a Petition to Intervene, and therein took no position regarding the Stipulation. Vote Solar, Walmart, and SACE filed Petitions to Intervene in support of the Stipulation. We granted each of these Petitions by separate order. The Office of Public Counsel (OPC) filed its notice of intervention, which we acknowledged.

An Order Establishing Procedure was entered, discovery deadlines established, and dates for an evidentiary hearing set. The parties engaged in extensive written discovery, timely pre-filed testimony, deposed all witnesses who would ultimately appear at the evidentiary hearing, and participated in a Prehearing Conference.

On November 17 and 18, 2020, we conducted a hearing on Duke’s petition. At the hearing, counsel for Duke, Walmart, Vote Solar, and SACE presented arguments in favor of the Stipulation. Duke introduced into evidence the testimony of witnesses Lon Huber, Matthew G. Stout, Thomas G. Foster, and Benjamin M. H. Borsch. Walmart introduced into evidence the testimony of witness Steve W. Chriss. Counsel for OPC and LULAC presented arguments in opposition to the Stipulation. LULAC introduced into evidence the testimony of witness Karl Rabago. Duke also entered into evidence the rebuttal testimony of witnesses Foster, Huber, and Borsch. FIPUG and OPC counsel presented no witness testimony at the hearing. The parties had the opportunity to cross-examine each of the witnesses. All materials on the Comprehensive Exhibit List, consisting of exhibits sponsored by the witnesses and responses to discovery requests, were admitted without objection into the record.

At the conclusion of the hearing, we established December 1, 2020, later extended to December 9, 2020, as the deadline for parties wishing to file a post-hearing brief. Duke, SACE, Walmart, Vote Solar, OPC, LULAC, and FIPUG timely filed post-hearing briefs.

In its brief, Duke argues that the Stipulation to approve the CEC Program is in the public interest. Duke asserts that the CEC Program is a voluntary solar program that is designed such that 87.3% of the cumulative net present value revenue requirement benefits will go to the general body of ratepayers. Duke further argues that the CEC Program costs are reasonable and that the associated solar generation is cost-effective and is in response to customer demand to increase renewable energy.

In their briefs, SACE, Walmart, and Vote Solar support the Stipulation, arguing that the Stipulation is in the public interest and its execution improved the CEC Program. The signatories of the Stipulation further argue that the CEC Program provides economic benefits to all Duke customers, meets system need, and addresses customer demand for solar power in Florida.

In its brief, LULAC counters that the CEC Program will provide the majority of its benefits to the large commercial and industrial users who participated in the negotiations to the Stipulation, while costs and risks are shifted to the general body of ratepayers. LULAC argues that the CEC Program will result in increased rates for non-participants, including low-income customers, which LULAC asserts are underrepresented in the program allocation. LULAC notes it supports solar generation if cost-effective, but the associated solar facilities should be constructed without the CEC Program and with a determination of need under the Power Plant Siting Act.[[1]](#footnote-1) LULAC also avers that the contested Stipulation does not represent a proper legal settlement and the public interest standard does not apply.

In its brief, OPC takes no position regarding the Clean Energy Connection Program, but states that it does not support the Stipulation, which it describes as “friendly.” OPC attaches this label to the Stipulation because it was filed with the petition, prior to discovery and issue identification, and, therefore, allegedly does not reflect agreement among demonstrated adversaries. On these bases, OPC argues that the Stipulation is not a proper legal settlement of a litigated docket and the public interest standard is not applicable. OPC further states its lack of active opposition to the Clean Energy Connection Program on the merits is based solely on the result of the SolarTogether docket, in which the Commission entered an Order[[2]](#footnote-2) rejecting arguments raised by OPC in opposition to a proposal by the Florida Power & Light Company that is similar in many respects to CEC. While maintaining its position that the Solar Together Order is contrary to the law, OPC “accept[s] that it is final and therefor facially precedent for a similar outcome in this case.”

In its brief, FIPUG takes no position regarding the Clean Energy Connection Program and Stipulation, except noting that it is Duke’s responsibility to demonstrate that it is in the public interest and that the CEC Program is cost-effective and needed.

We have jurisdiction over this matter pursuant to Sections 366.03, 366.05, and 366.06, Florida Statutes.

Decision

The standard for approval of a settlement agreement is whether it is in the public interest.[[3]](#footnote-3) We are not persuaded by the legal arguments forwarded by LULAC and OPC that the public interest standard should not be applied to the instant Stipulation because it was filed with the initial petition and not after some period of adversarial docket activity. The parties to the Stipulation demonstrated that they negotiated improvements to Duke’s original CEC Program and that litigation was avoided based on the agreements they reached. Whether negotiation and agreement among adverse parties occurs prior or subsequent to the filing of a petition and opening of a docket, the question before us is whether the resulting Stipulation is in the public interest.

A determination of whether a settlement is in the public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole.[[4]](#footnote-4) The Stipulation aligns with the Florida Legislature’s expressed intent to promote renewable energy in Section 366.92, F.S., and provides ample system-wide benefits, including: promoting the development of renewable energy, encouraging investment within the state, diversifying the types of fuel used to generate electricity, lessening the state’s reliance on fossil fuels, and decreasing carbon emissions. In addition, the Stipulation comports with Section 366.06, F.S., by establishing fair, just, and reasonable rates without undue preference.

Also important to the public interest are the benefits projected to flow to the Company’s ratepayers from the CEC Program. Assuming mid-fuel costs and including carbon costs, Duke projects that 87.3% of the cumulative net present value revenue requirement benefits from the CEC Program will go to the general body of ratepayers. We find that the significant benefits reasonably expected to be realized by the general body of ratepayers over a long period of time support our finding that approval of the CEC Program is in the public interest. We also note that approximately 27.7% of the residential allocation within the CEC Program has been carved out for low-income customers.

Having carefully reviewed the Stipulation, the exhibits entered into the record, and the testimony provided, we find that, taken as a whole, the Stipulation establishes rates that are fair, just, and reasonable, is supported by the record evidence, and is in the public interest, and we hereby approve it. The Stipulation, Program, and associated tariffs are effective upon the issuance date of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Stipulation and tariffs attached hereto as Attachment A, and incorporated by reference, are hereby approved. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of January, 2021.

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|  | /s/ Adam J. Teitzman |
|  | ADAM J. TEITZMAN  Commission Clerk |

Florida Public Service Commission

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SPS

DISSENT

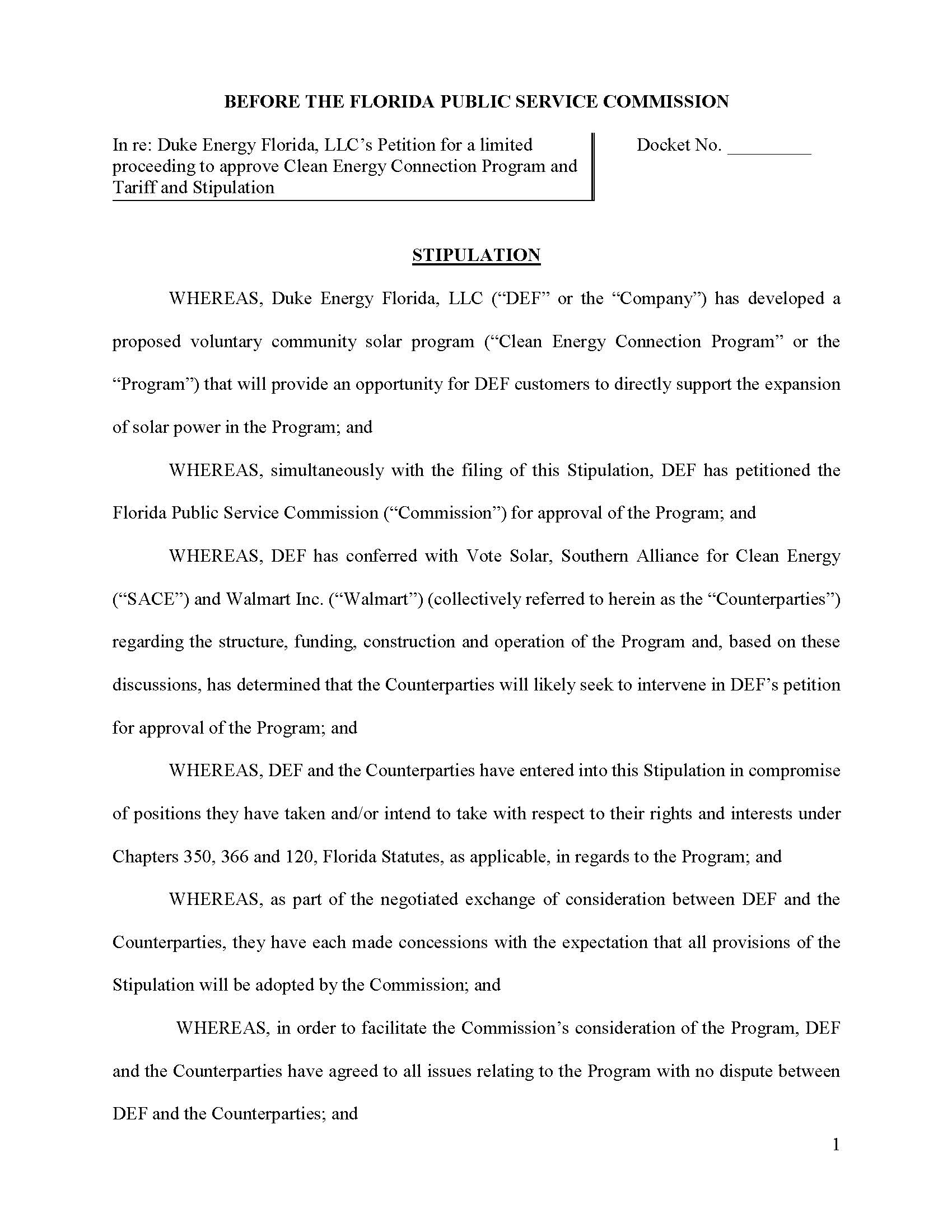
Commissioner Julie I. Brown dissents from the Commission’s decision.

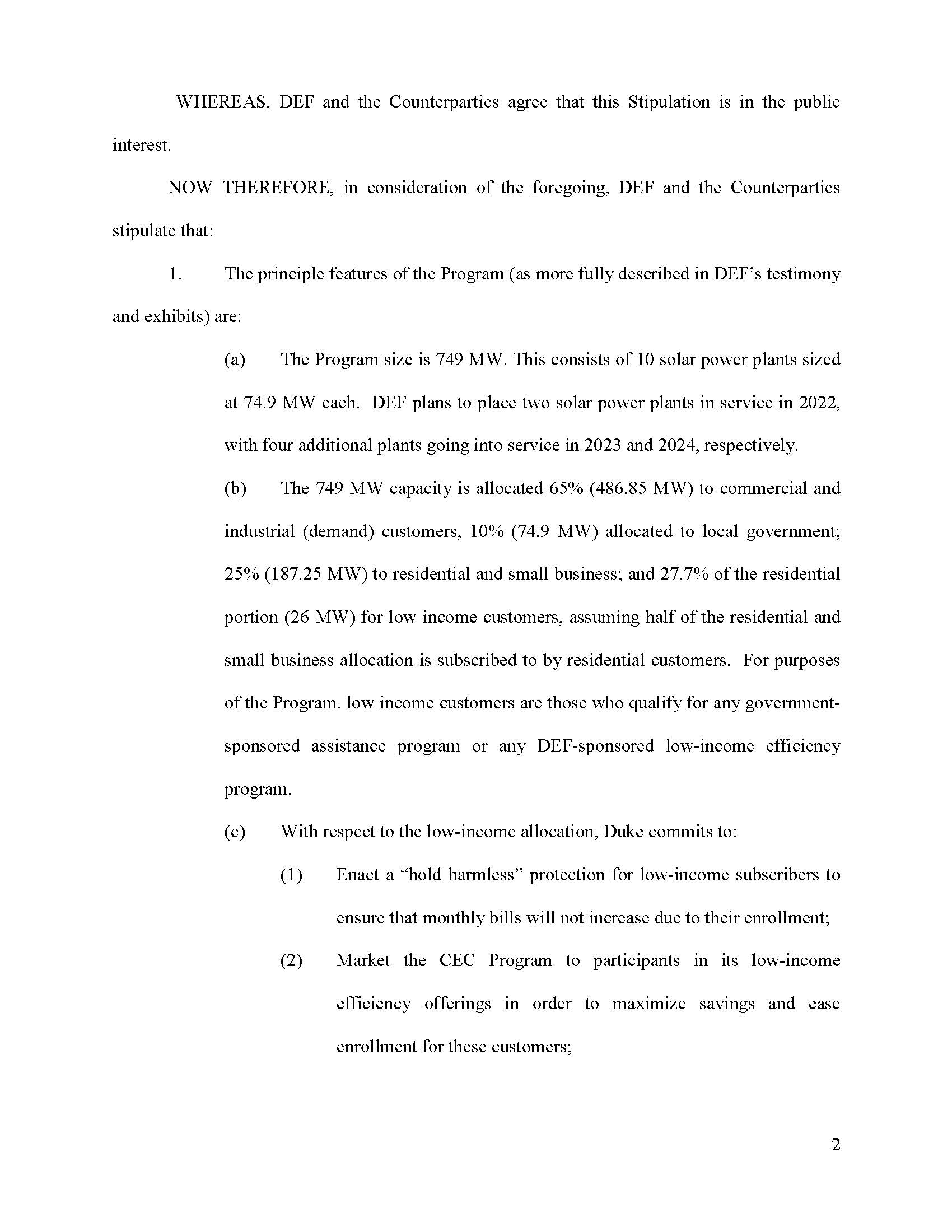
NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

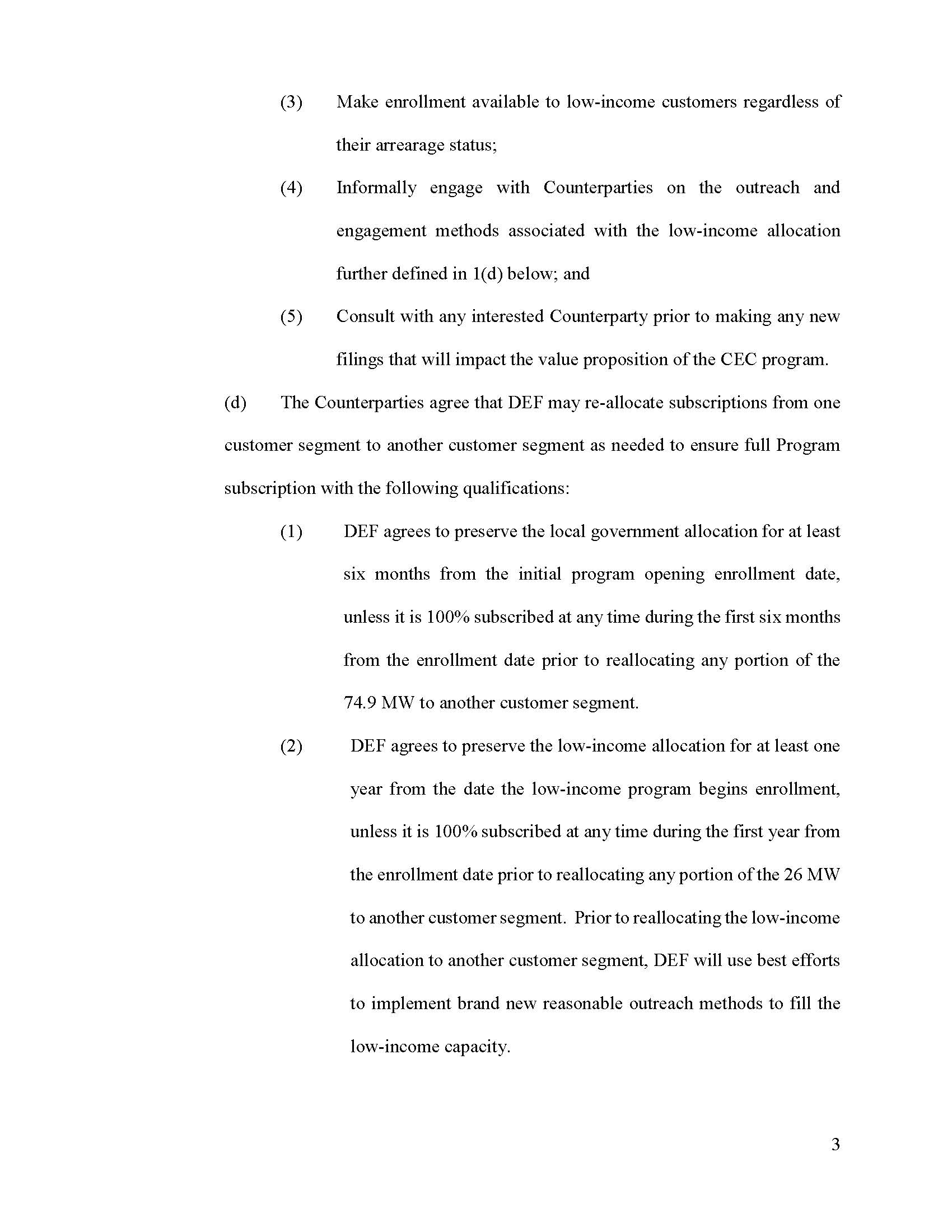
The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

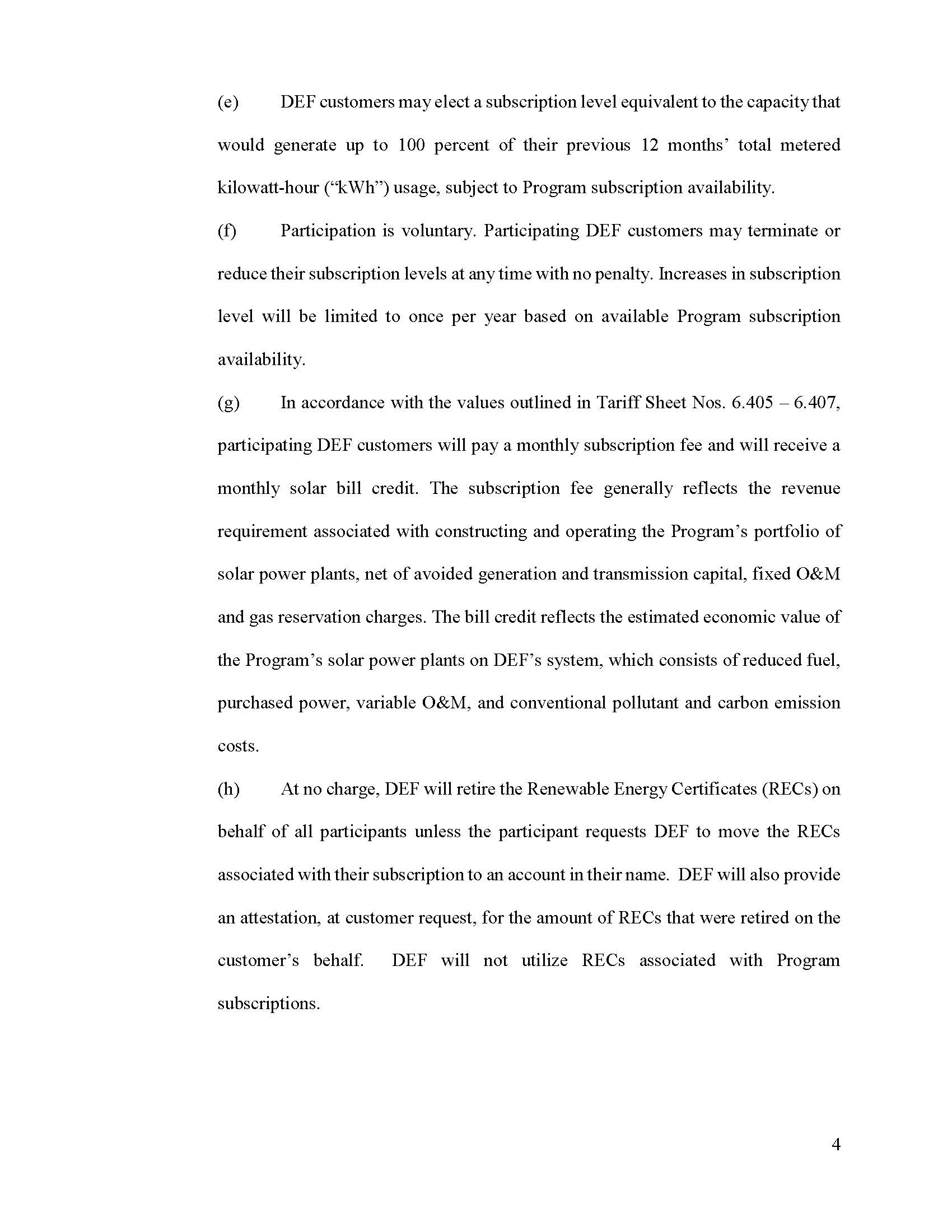
Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

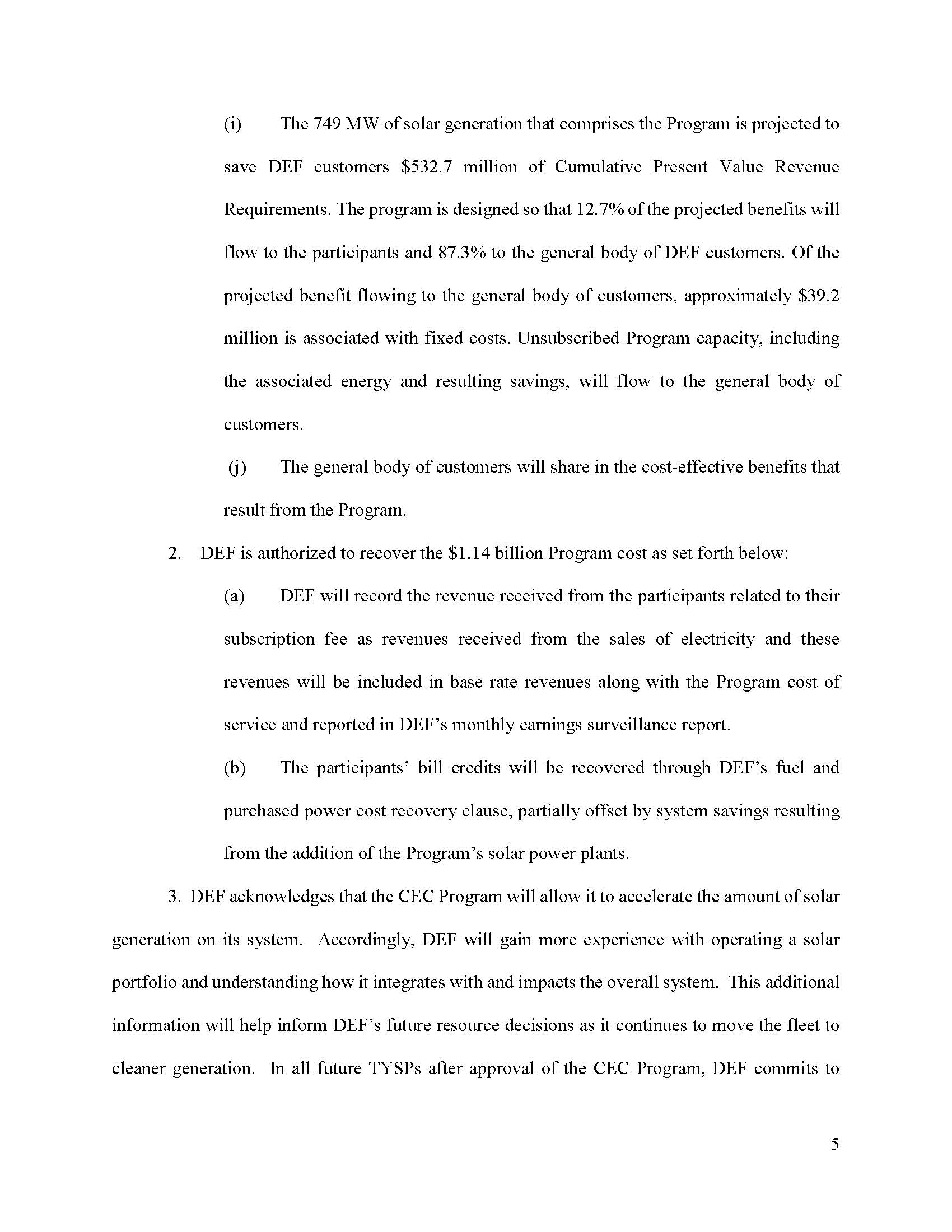
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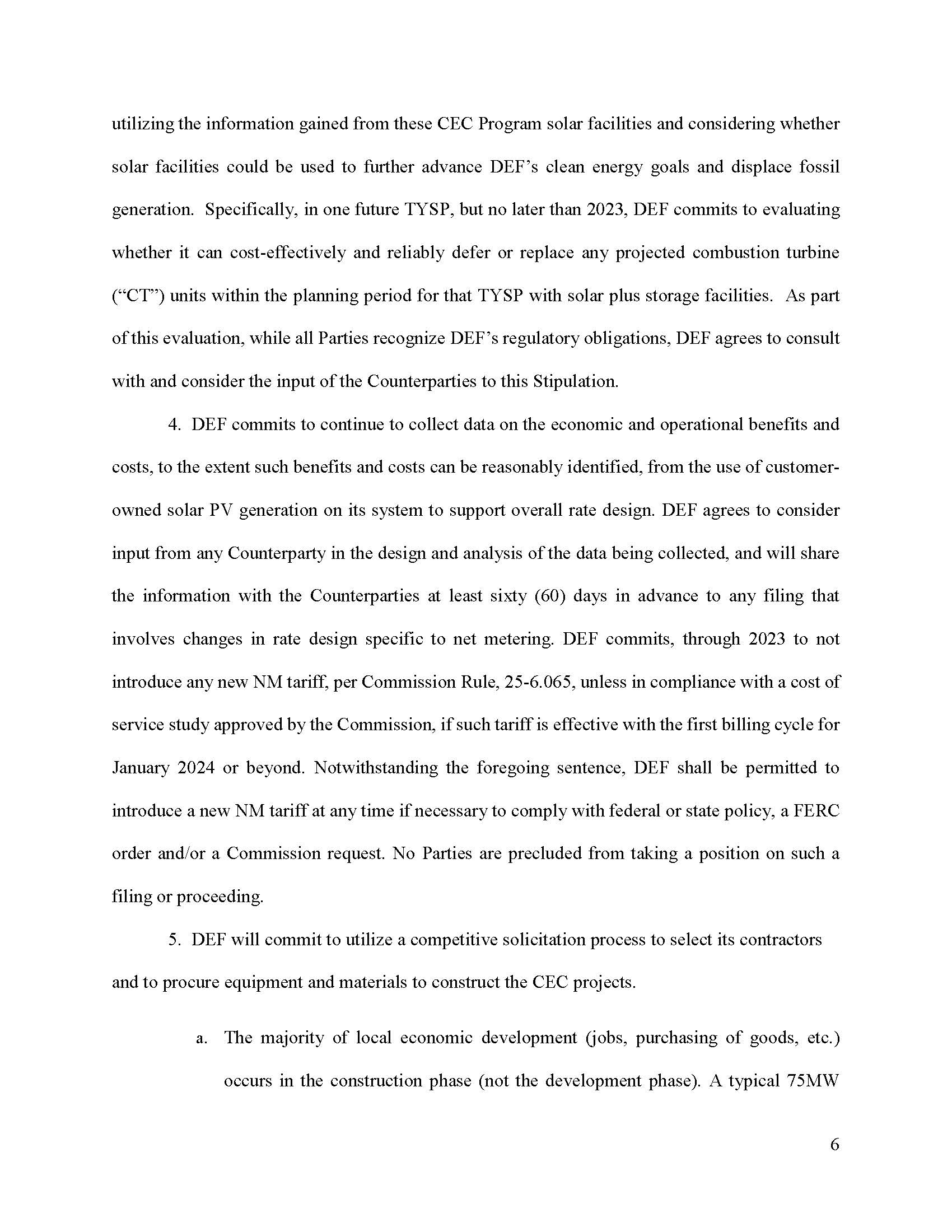


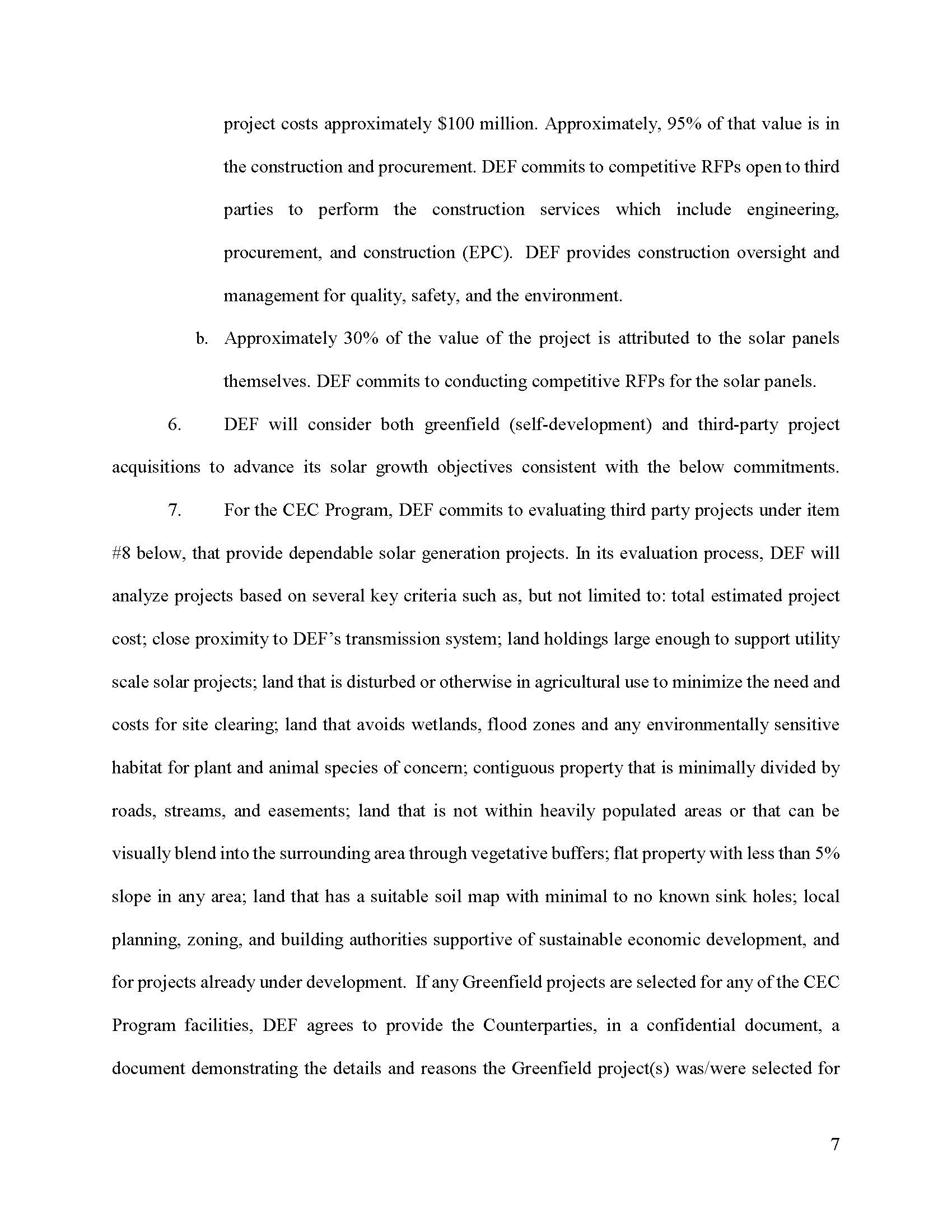


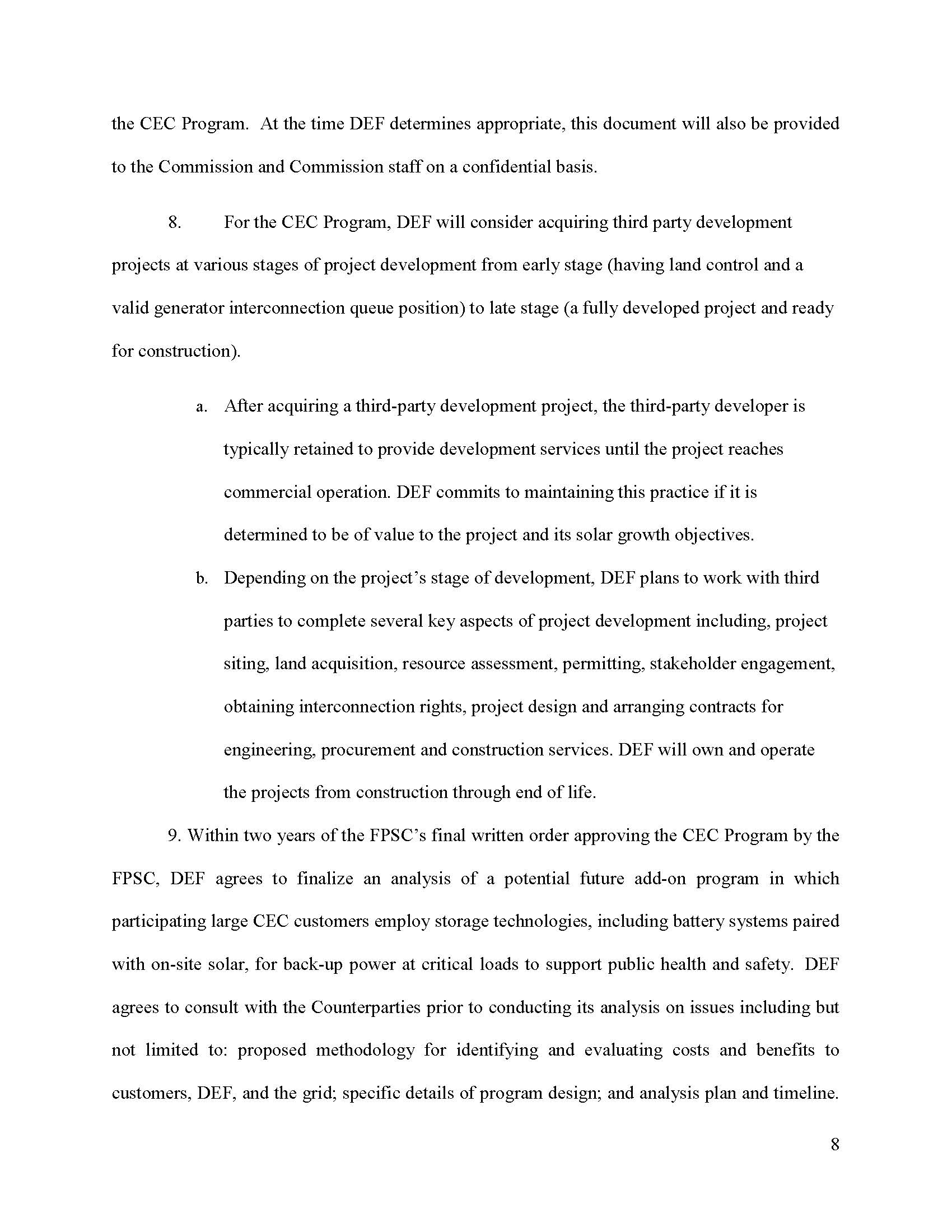


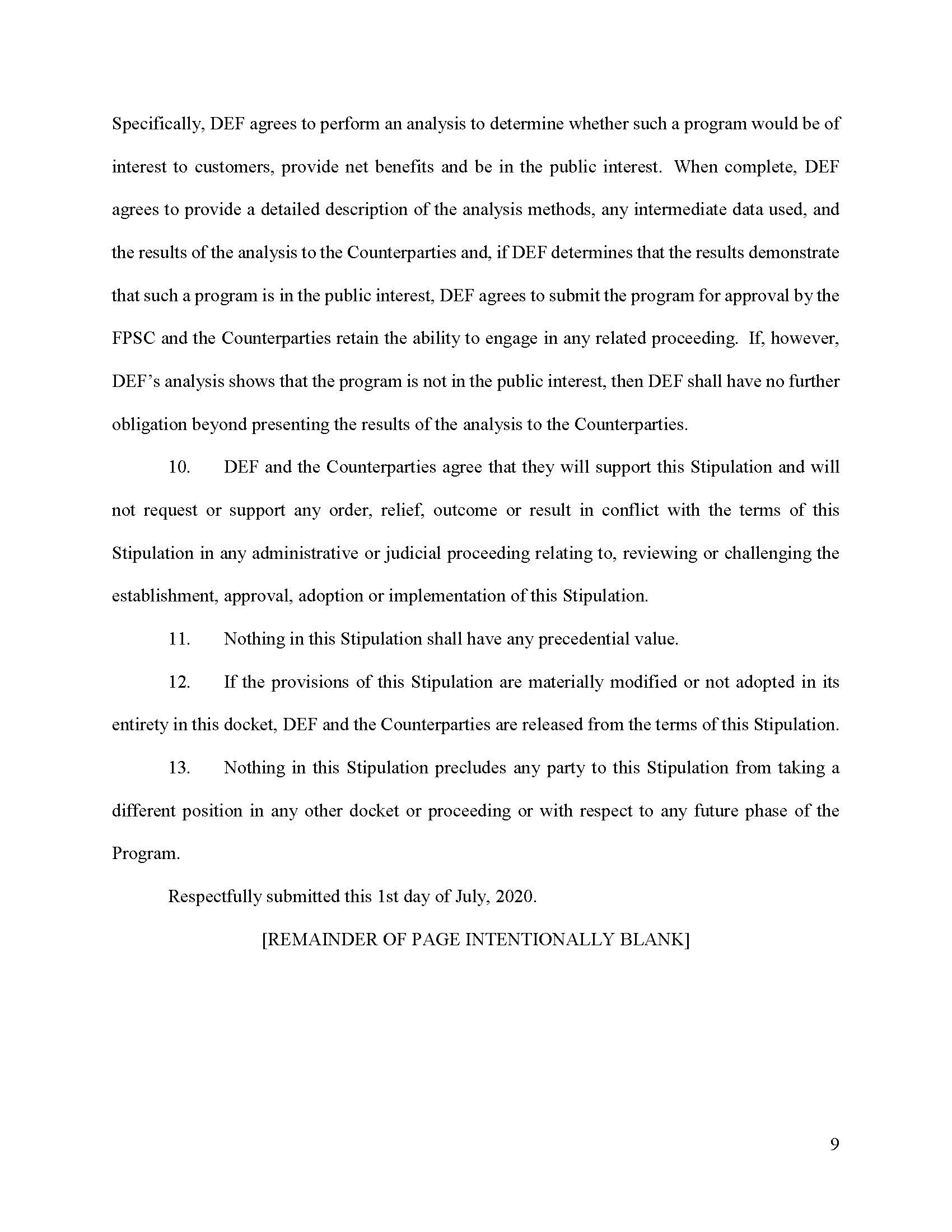
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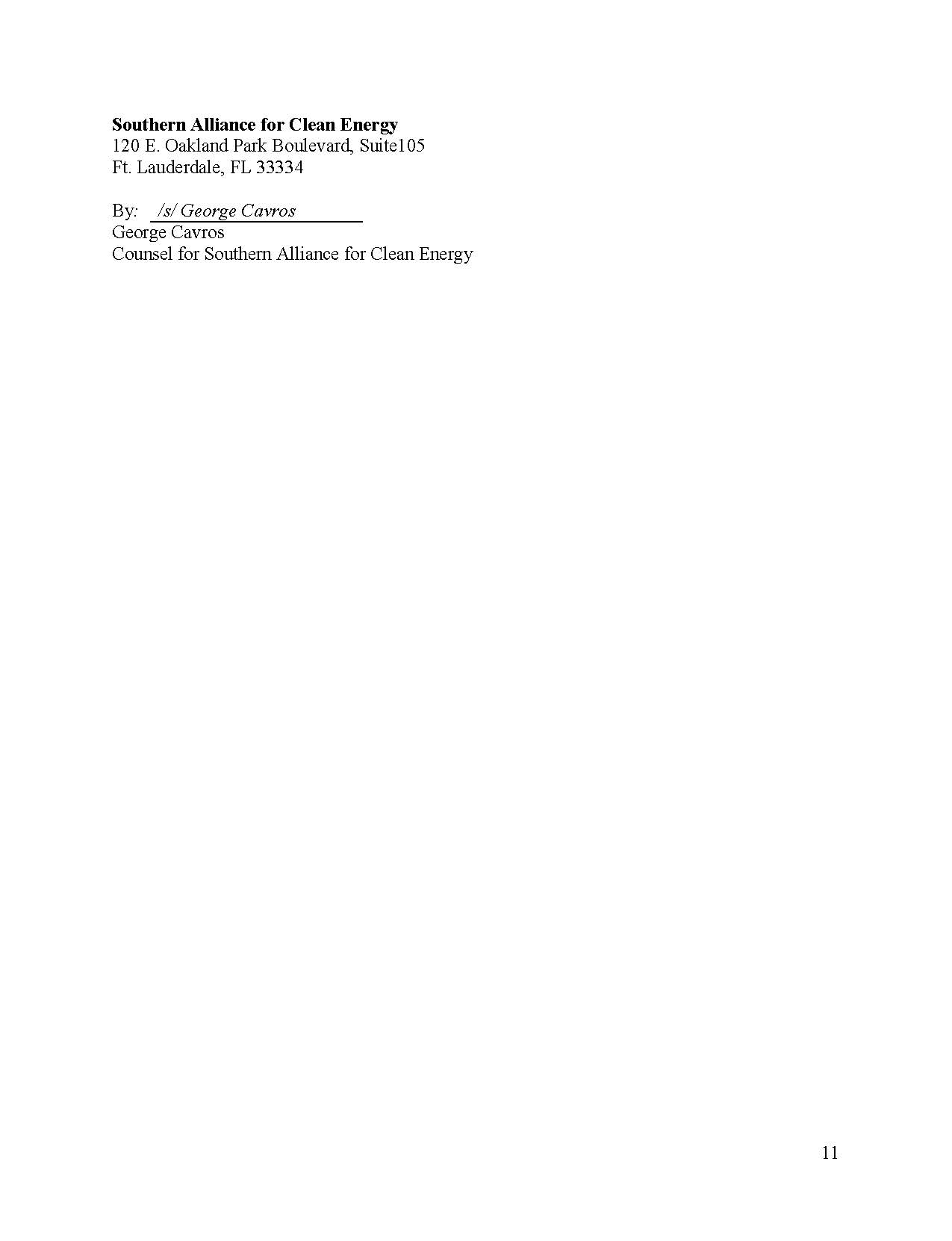


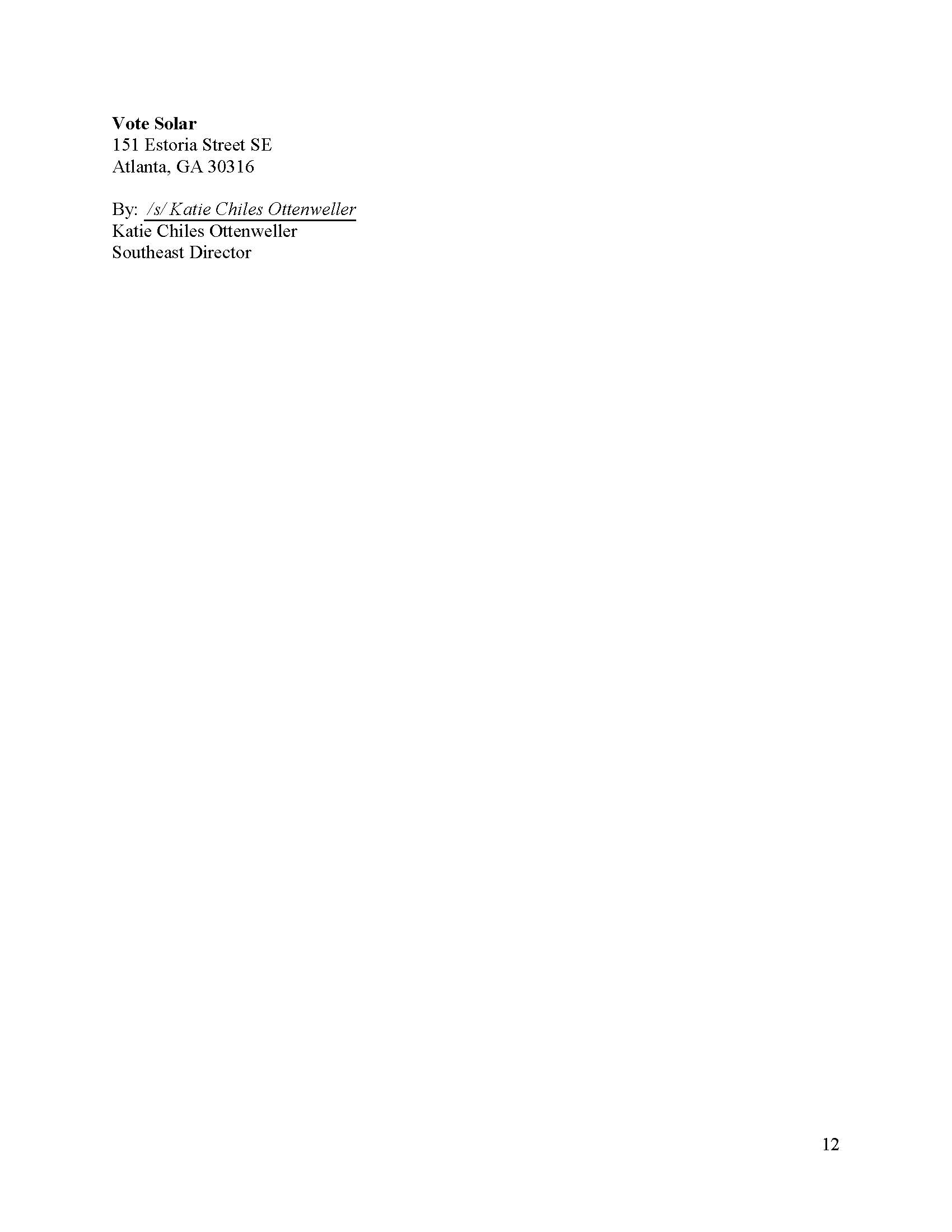




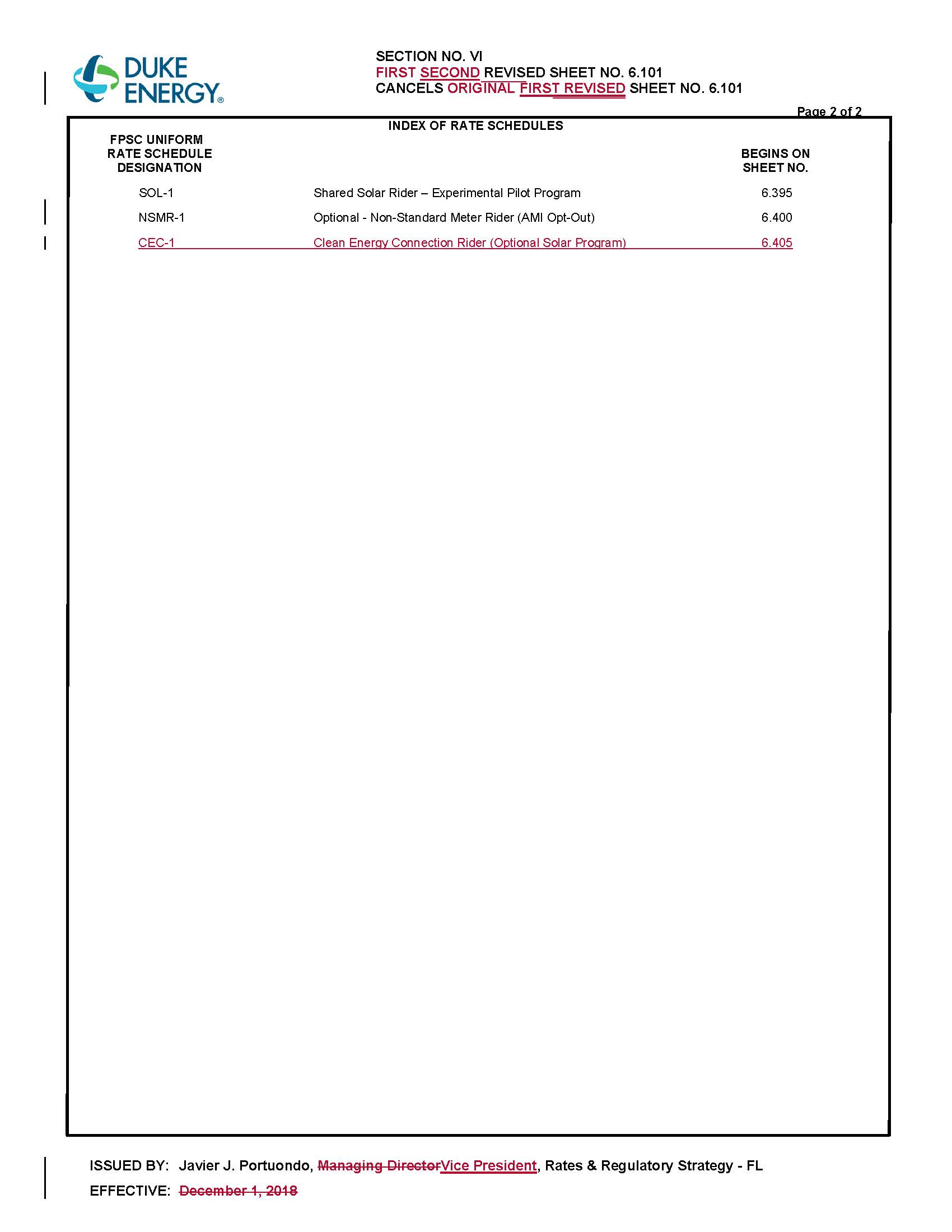


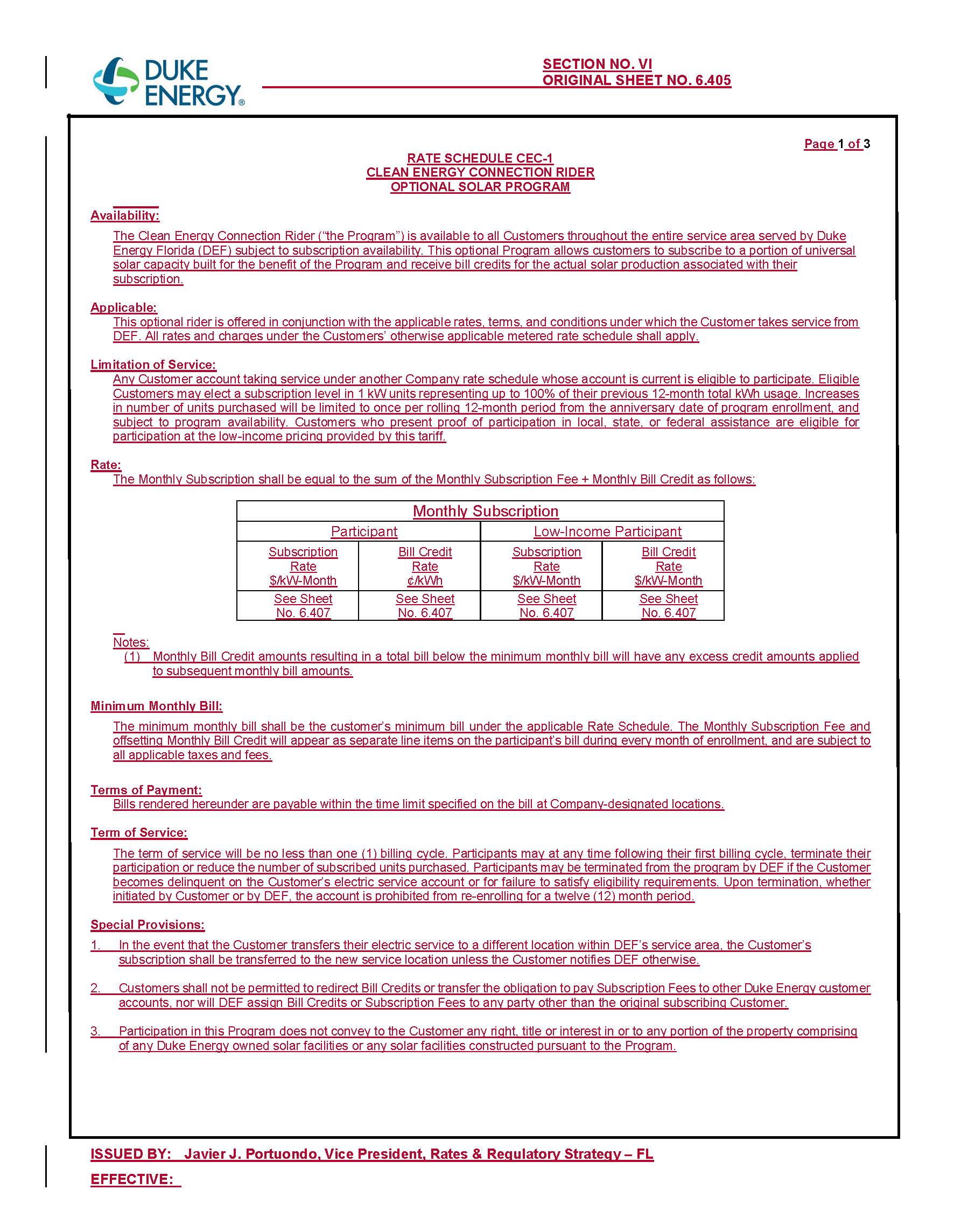


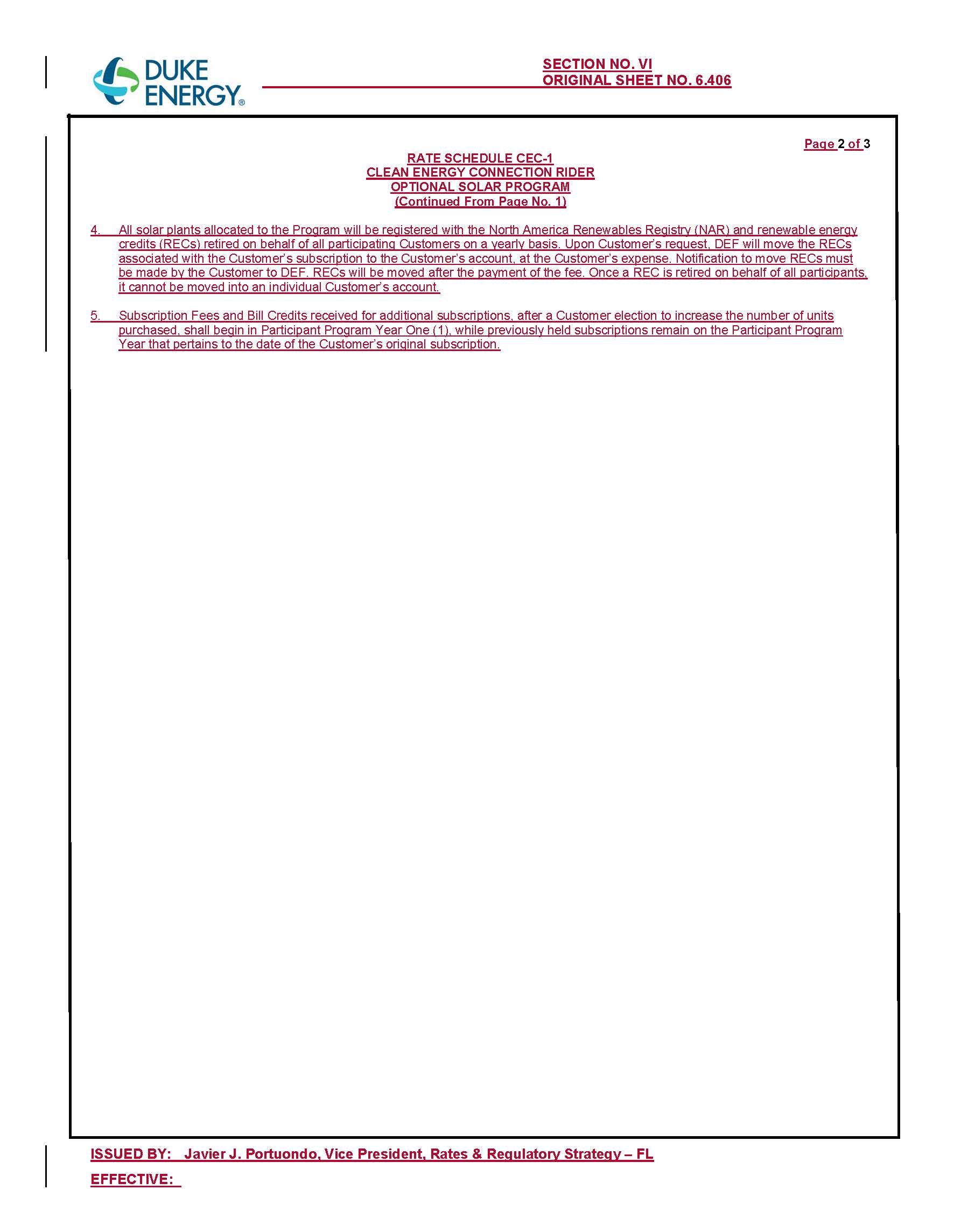


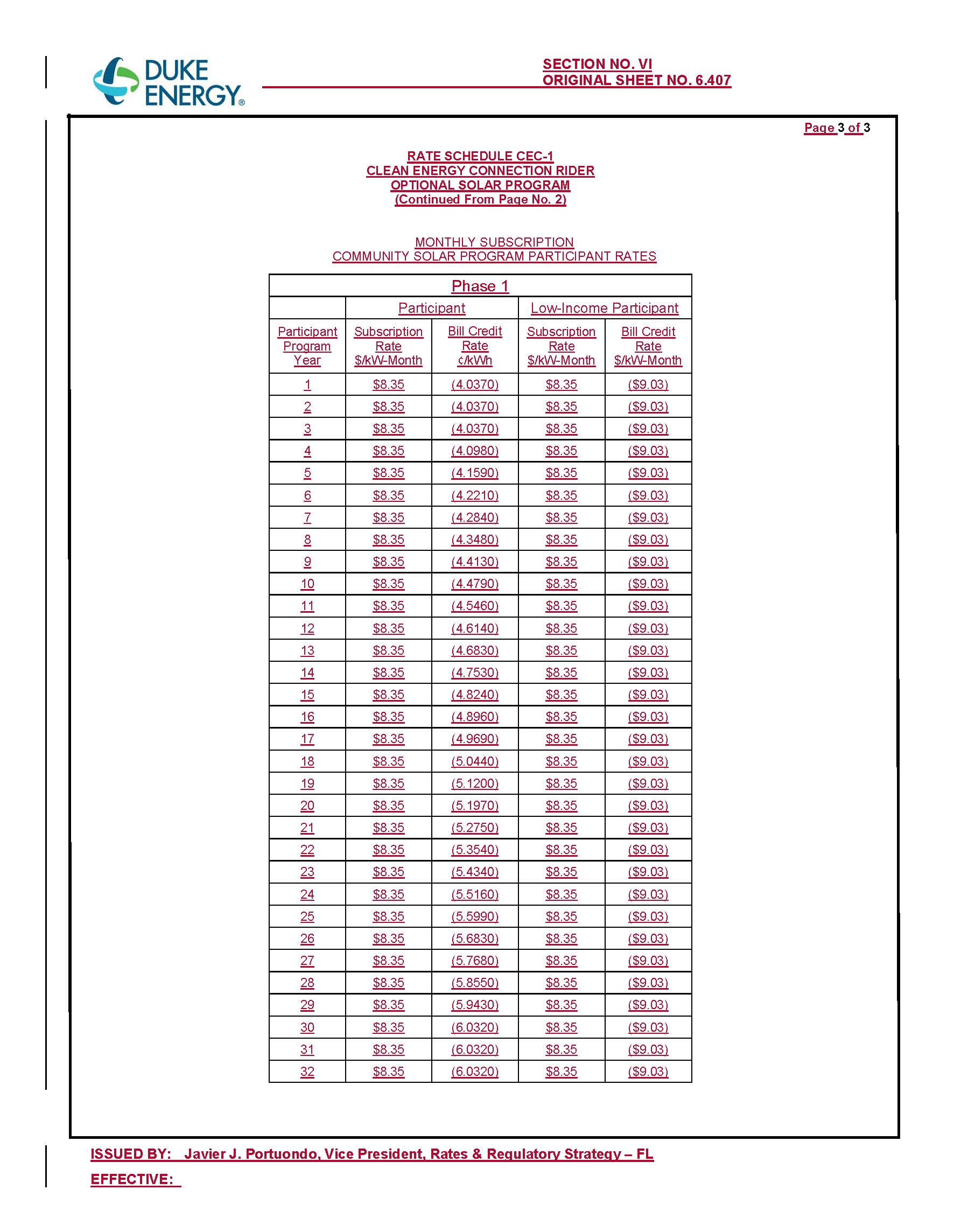












1. The Power Plant Siting Act consists of Sections 403.501 through 403.518, Florida Statutes. [↑](#footnote-ref-1)
2. *See* Order No. PSC-2020-0084-S-EI, issued March 20, 2020, in Docket No. 20190061-EI, *In re: Petition for approval of FPL SolarTogether program and tariff, by Florida Power & Light Company.* [↑](#footnote-ref-2)
3. Sierra Club v. Brown, 243 So. 3d 903, 910-913 (Fla. 2018); Order No. PSC-13-0023-S-EI, issued on January 14, 2013, in Docket No. 120015-EI, In re: Petition for increase in rates by Florida Power & Light Company; Order No. PSC-11-0089-S-EI, issued February 1, 2011, in Docket Nos. 080677-EI and 090130-EI, In re: Petition for increase in rates by Florida Power & Light Company and In re: 2009 depreciation and dismantlement study by Florida Power & Light Company; Order No. PSC-10-0398-S-EI, issued June 18, 2010, in Docket Nos. 090079-EI, 090144-EI, 090145-EI, and 100136-EI, In re: Petition for increase in rates by Progress Energy Florida, Inc., In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc., In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc., and In re: Petition for approval of an accounting order to record a depreciation expense credit, by Progress Energy Florida, Inc.; Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc. [↑](#footnote-ref-3)
4. Order No. PSC-13-0023-S-EI, at p. 7. [↑](#footnote-ref-4)