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(850)413-6199

Public Service Commission

January 4, 2018

Kenneth J. Plante, Coordinator
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1400

Re: Docket No. 20170273-EQ - Petition for declaratory statement concerning leasing of solar equipment.

Dear Mr. Plante:

The Florida Public Service Commission received a Petition for Declaratory Statement from Sunrun Inc. on December 29, 2017. A copy of the petition is enclosed. A notice was published in the Florida Administrative Register on Thursday, January 4, 2018.

Sincerely,

A handwritten signature in cursive script that reads "Adria E. Harper".

Adria E. Harper
Senior Attorney

cc: Office of Commission Clerk

Enclosures

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2018 JAN -4 AM 9:39
COMMISSION
CLERK

Notice of Declaratory Statement

PUBLIC SERVICE COMMISSION

RULE NO.: RULE TITLE:

25-6.065: Interconnection and Metering of Customer-Owned Renewable Generation

NOTICE IS HEREBY GIVEN that the Florida Public Service Commission has received the petition for declaratory statement from Sunrun, Inc., on December 29, 2017. The petition seeks the agency's opinion as to the applicability of Section 366.02, F.S., Rule 25-6.065, F.A.C., as it applies to the petitioner.

The petition asks the Florida Public Service Commission to declare pursuant to Section 366.02, F.S., Rule 25-6.065, F.A.C., and Order No. 17009, issued December 22, 1986, in Docket No. 860725-EU, that Sunrun Inc.'s residential solar equipment lease does not constitute a sale of electricity; that Sunrun Inc.'s solar equipment consumer leases do not cause Sunrun Inc. to be deemed a public utility under Florida law; and that residential solar lease equipment as described by Sunrun Inc. will not subject Sunrun Inc. to regulation by the Commission. Docket No. 20170273-EQ.

A copy of the Petition for Declaratory Statement may be obtained by contacting: Carlotta Stauffer, Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, clerk@psc.state.fl.us, (850)413-6770.

Please refer all comments to: Adria E. Harper, c/o Carlotta Stauffer, Office of Commission Clerk, Docket No. 20170273-EQ. Ms. Harper's contact information is aharper@psc.state.fl.us, (850)413-6082. Except for good cause shown, motions to intervene pursuant to Rule 28-105.0027, F.A.C., or petitions for administrative hearing must be filed within 21 days after publication of this notice.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sunrun Inc. for
Declaratory Statement Concerning
Leasing of Solar Equipment
_____ /

Docket No. _____

Filed: December 29, 2017

**PETITION FOR DECLARATORY STATEMENT
BY SUNRUN INC.**

Pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, Sunrun Inc. ("Sunrun") petitions the Florida Public Service Commission ("Commission") for a declaratory statement that: (1) Sunrun's residential solar equipment lease does not constitute a sale of electricity; (2) offering its solar equipment lease to consumers in Florida will not cause Sunrun to be deemed a public utility under Florida law; and (3) the residential solar equipment lease described in this petition will not subject Sunrun or Sunrun's customer-lessees to regulation by this Commission. Sunrun's proposed residential solar equipment lease will consist of a standard equipment lease agreement for the lease of solar generating equipment to customer-lessees and will include basic maintenance and warranty service to cover repair or replacement of malfunctioning equipment. In support of its petition, Sunrun states as follows:

1. The name and address of the agency affected by this Petition are:

Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850

2. The name and address of Petitioner are:

Sunrun Inc.
5208 Tampa West Boulevard
Tampa, FL 33634

5. Sunrun can also provide customer-lessees the option of home battery storage integrated into the solar energy generation system.

6. Currently in Florida, Sunrun offers only its cash solar product, which homeowners must purchase and pay for in full, upfront.

7. Sunrun plans to add leasing as a financing option in the Florida market for potential customer-lessees who prefer not to, or cannot, purchase and pay upfront for residential solar systems. Sunrun's Florida residential solar equipment lease, which will conform to Florida law and be consistent with prior Commission precedent regarding permissible leases of electric generating equipment by non-utilities, will consist of a 20-year lease of solar panels (with or without batteries at the customer-lessee's option) intended to provide the owner of a single residence with the means to potentially generate enough solar electricity for that residence. The residential solar equipment lease will include the following non-exhaustive material terms or conditions:

- Lease payments will be fixed throughout the term of the 20-year lease. These payments, based on a negotiated rate of return on Sunrun's investment, will be independent of electric generation, production rates, or any other operational variable of the leased equipment.
- Sunrun will hold legal title to the leased equipment and receive Investment Tax Credits and depreciation benefits associated with the investment.
- Sunrun will have no control over the use of the equipment other than as the beneficiary of covenants requiring the customer-lessee to maintain the equipment in good repair.
- At the lease expiration, the customer-lessee may purchase the solar equipment at fair market value, renew the lease on an annual basis, or request removal of the equipment.

costly administrative litigation by selecting the proper course of action in advance.”¹ Sunrun will offer and market its residential solar equipment lease in Florida contingent upon the Commission granting, in the affirmative, this request for a declaratory statement. Sunrun thus is a “substantially affected person” and has standing to bring this petition.

9. Sunrun respectfully requests that the Commission make the following affirmative declarations:

- a. Sunrun’s residential solar equipment lease will not be deemed to constitute the sale of electricity.
- b. Sunrun will not be deemed to be a public utility, as defined under Florida law, by virtue of leasing its residential solar equipment to residential customer-lessees in Florida.
- c. Customer-lessees who enter into Sunrun’s residential solar equipment lease in Florida will not be subject to regulation by the Commission.

II. APPLICABLE STATUTES, RULES AND ORDERS OF THE COMMISSION

10. The statutory provisions and Commission rules or orders applicable to the narrow jurisdictional question raised in this petition are:

- a. Section 366.02, Florida Statutes.
- b. Order No. 17009, Docket No. 860725-EU (Dec. 22, 1986) (“*Monsanto*”) *Declaratory Statement Order, In re: Petition of Monsanto Company for a declaratory statement concerning the lease financing of a cogeneration facility.*

¹ *Chiles v. Dep’t of State, Div. of Elections*, 711 So.2d 151, 154 (Fla. 1st DCA 1988); *Adventist Health System/Sunbelt, Inc. v. Agency for Health Care Admin.*, 955 So.2d 1173 (Fla. 1st DCA 2007).

13. Sunrun's residential solar equipment lease is intentionally and specifically designed to be consistent with the Commission's holding in *Monsanto* and as such, will avoid any implication of a sale of electricity. Like Monsanto, Sunrun's residential customer-lessees will lease residential solar equipment that they will use to generate their own electricity and, if elected as an option, may also lease batteries in which they can store some or all of the electricity produced by the solar equipment.

14. Consistent with the lease in *Monsanto*, Sunrun's Florida residential solar equipment lease requires fixed payments throughout the 20-year lease term. The amount of the payment is based on a negotiated rate of return on Sunrun's investment, and is independent of electric generation, production rates, or any other operational variable of the equipment. As is common with equipment leases (and like the lessor in *Monsanto*), Sunrun will hold legal title to the equipment and receive Investment Tax Credits and depreciation benefits associated with the investment. Sunrun will have no control over the customer-lessee's use of the solar equipment, other than as the beneficiary of covenants requiring the customer-lessee to maintain the equipment in good repair.

15. As in *Monsanto*, Sunrun's customers will be "leasing equipment which produces electricity rather than buying electricity that the equipment generates."³

Hendry County by Southeast Renewable Fuels, LLC, Docket No. 130235-EQ (Dec. 11, 2013) at p. 6.

³ *Monsanto*, Issue 2.

equipment lease will not be deemed to constitute the sale of electricity; Sunrun will not be deemed to be a public utility, as defined under Florida law, by virtue of leasing its residential solar equipment to residential customer-lessees in Florida; and customer-lessees who enter into Sunrun's residential solar equipment lease in Florida will not be subject to regulation by the Commission.

Respectfully submitted this 29th day of December, 2017.

BY: /s/ Marsha E. Rule

Marsha E. Rule
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and

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Stuart, Florida 34966
Email: richzambo@aol.com
Phone: 954.224.5863

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail on December 29, 2017:

Keith Hetrick
General Counsel
Florida Public Service Commission
Office of the General Counsel
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399
Email: kherrick@psc.state.fl.us