

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for declaratory statement )  
regarding PURPA solar qualifying facility ) DOCKET NO. 20180169-EQ  
power purchase agreements, by Duke )  
Energy Florida, LLC. ) FILED: SEPTEMBER 24, 2018  
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**MOTION TO INTERVENE OF ECOPLEXUS, INC.**

Ecoplexus, Inc. (“Ecoplexus”), an established developer and operator of solar-powered Qualifying Facilities (“QF”), pursuant to Chapters 120 and 366, Florida Statutes (“F.S.”),<sup>1</sup> and Rules 28-105.0027, 28-106.201, and 28-106.205, Florida Administrative Code (“F.A.C.”), hereby respectfully files this motion to intervene (the “Motion to Intervene”) in the above-styled docket.

In summary, on September 7, 2018, Duke Energy Florida, LLC (“DEF”), initiated this docket by filing with the Florida Public Service Commission (“PSC” or “Commission”) its “Petition for Declaratory Statement Regarding PURPA Solar Qualifying Facility Power Purchase Agreements” (the “Petition”). In the Petition, DEF asks the Commission to issue a declaratory statement that:

“A negotiated term of two (2) years is an appropriate contract length for a 100 percent levelized or fixed price in a PURPA solar QF power purchase agreement.”

<sup>1</sup> All references herein to the Florida Statutes are to the 2018 edition thereof.

In summary, Ecoplexus is entitled to intervene in this docket because Ecoplexus' substantial interests will be affected by the Commission's action on the Petition. Ecoplexus is an established developer, owner, and operator of solar-powered QFs, and Ecoplexus has been developing several projects in DEF's service area since 2016. Beginning in 2017, Ecoplexus specifically offered and committed to sell DEF solar power, including all capacity, energy, and other attributes thereof, equivalent to the output of solar facilities proposed by DEF in its 2018 Ten-Year Site Plan at costs less than DEF's proposed cost for such power. More recently, in July 2018, Ecoplexus specifically offered and committed to sell the output of Ecoplexus' solar QF projects to DEF at pricing expressly less than DEF's avoided costs – i.e., at pricing less than the revenue requirements of DEF's planned units. As such, Ecoplexus' substantial interests will be affected by the Commission's action on DEF's Petition, and Ecoplexus is entitled to intervene.

In further support of its Motion to Intervene, Ecoplexus states as follows.

### **PROCEDURAL BACKGROUND**

1. The name, address, and contact information of the Complainant are:  
  
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101 2<sup>nd</sup> Street  
San Francisco, California 94105  
Telephone (415) 626-1802
  
2. All pleadings, orders, notices, correspondence, and other materials should be directed to Ecoplexus' representatives as follows:

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3. Ecoplexus is an established developer and operator of solar-powered electrical generating facilities in the United States and other countries. Ecoplexus presently has more than 50 projects operating or under construction with total capacity of approximately 365 megawatts, alternating current ("MW-AC"). Ecoplexus also has contracted to provide approximately 438 MW-AC of additional solar capacity and energy from additional projects, for a total of 803 MW-AC. Ecoplexus has been developing and is continuing to develop nine solar-powered generating facilities in DEF's service area in Florida; Ecoplexus has submitted valid

interconnection applications for seven of these facilities. Ecoplexus has offered and committed to sell the output of five of its solar QF projects to DEF at prices less than DEF's cost of constructing, owning, and operating DEF-built-and-owned solar units as identified in its 2018 Ten Year Site Plan. Each of these five solar power facilities is a Qualifying Small Power Production Facility pursuant to applicable federal and state law and rules.<sup>2</sup>

4. DEF is a public utility, as defined in Section 366.02(1), Florida Statutes, subject to the plenary regulatory jurisdiction of the Commission. DEF presently serves approximately 1.8 million customers in its service area in Florida. Duke Energy Florida, LLC Ten-Year Site Plan, 2018-2027, dated April 2018 ("DEF 2018 TYSP" or "2018 TYSP") at 2-10, Schedule 2.3.1. According to its 2018 TYSP, between now and 2027, DEF plans to construct, own, and operate 16 new solar generating units with total capacity of approximately 1,148 MW-AC, and with in-

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<sup>2</sup> Ecoplexus' solar generating facilities are Qualifying Small Power Production Facilities pursuant to applicable rules of the U.S. Federal Energy Regulatory Commission ("FERC") and the Commission. 18 CFR § 292.204; Rule 25-17.080(1)-(2), F.A.C. All of Ecoplexus' solar generating facilities are already self-certified as QFs pursuant to PURPA and the PURPA Rules. The Public Utility Regulatory Policies Act of 1978 ("PURPA"), Public Law No. 95-617 tit. II § 210, 92 Stat. 3117, 3144, is codified as amended at 16 U.S.C. § 824a-3, and the implementing rules of the U.S. Federal Energy Regulatory Commission ("FERC") are found at 18 CFR Part 292, commonly referred to as the "PURPA Rules."

service dates projected to be between March 2019 and December 2027. DEF 2018 TYSP at 3-11 through 3-25, 3-29.

5. This declaratory statement proceeding was initiated by DEF filing its Petition on September 7, 2018. Accordingly, pursuant to Rule 28-105.0027, F.A.C., this Motion to Intervene is timely filed.

### **STATEMENT OF AFFECTED INTERESTS**

6. Ecoplexus is a substantial developer, owner, and operator of solar-powered generating facilities that are QFs under applicable law. In 2016, Ecoplexus began developing solar QFs in DEF's service area, and since July 2017, Ecoplexus has attempted to negotiate power purchase agreements with DEF for the purchase of solar power – i.e., for power purchase agreements (“PPAs”) – to be produced by five of Ecoplexus' solar QF projects in DEF's service area, at pricing based on – indeed, explicitly less than – DEF's projected costs of its planned solar units. DEF has refused to negotiate with Ecoplexus for any PPA based on the costs that DEF would avoid by not building its planned solar units but instead by obtaining needed solar energy, capacity, and other attributes from Ecoplexus. DEF's Petition alleges that “several potential solar QFs believe they are entitled” to PPAs with twenty- to thirty-year terms at fixed costs. Petition at 6. On information and belief, Ecoplexus states that it is one of the QFs referred to in DEF's Petition.

7. From DEF's Petition, it appears that DEF's intention is to use the requested declaratory statement, if it were issued, to avoid even negotiating with Ecoplexus for solar power that Ecoplexus has offered and committed to provide to DEF **at pricing below the avoided costs of DEF's planned solar units.** Accordingly, Ecoplexus' substantial interests will be affected by the Commission's actions on DEF's Petition, such that Ecoplexus is entitled to intervene in this docket.

#### **STATEMENT OF DISPUTED ISSUES OF MATERIAL FACT**

8. With regard to this Motion to Intervene, Ecoplexus believes that there are no disputed issues of material fact as to its standing to participate. Ecoplexus has attempted for well over a year to negotiate power purchase agreements with DEF for the purchase of solar power to be produced by Ecoplexus' solar QF projects in DEF's service area, at pricing based on (indeed, explicitly less than) DEF's projected costs of its solar units. Accordingly, Ecoplexus' substantial interests will be affected by the Commission's actions on DEF's Petition, such that Ecoplexus is entitled to intervene in this docket.

9. With regard to DEF's request for a declaratory statement, Section 120.565, F.S., provides that the declaratory statement applies to DEF's "particular set of circumstances." Accordingly, the Commission does not determine disputed issues of fact in this proceeding.

## STATEMENT OF ULTIMATE FACTS ALLEGED

10. Ecoplexus recognizes that declaratory statements are limited to the facts presented by a petitioner. As the Commission stated in a recent case,

In accordance with Rule 28-105.003, F.A.C., we are relying on the facts contained in Indian River County's Petition without taking a position on the validity of those facts. This Order will be controlling only as to the facts relied upon and not as to other, different or additional facts. As our conclusion is limited to the facts described above, any alteration or modification of those facts could materially affect the conclusions reached in this declaratory statement.

In re: Petition for declaratory statement or other relief regarding the expiration of the Vero Beach electric service franchise agreement, by the Board of County Commissioners, Indian River County, Florida, Docket No. 140142-EM, Order No PSC-2015-0101-DS-EM (F.P.S.C., February 12, 2015) at 26.

11. In this instance, DEF has omitted significant facts from its Petition, and these omissions would render the requested statement meaningless relative to the real issue at hand, which is this:

Whether DEF is obligated by the Commission's rules and relevant orders, and by PURPA and the PURPA Rules, to negotiate with QFs that offer solar power to DEF for the purchase of solar power based on such QFs' enabling DEF to cost-effectively avoid the cost of constructing DEF-owned solar generating facilities.

12. With respect to Ecoplexus' standing to intervene in this proceeding, Ecoplexus alleges the following ultimate facts:

A. Ecoplexus is an established developer of solar electric generating facilities that are Qualifying Facilities under PURPA.

- B. Ecoplexus is developing nine solar QFs in DEF's service area. Ecoplexus has made a valid interconnection application for seven of its solar QF projects in DEF's service area.
- C. Beginning in 2017, Ecoplexus has offered to sell, and has expressly committed to sell, all of the capacity, energy, and attributes (including Renewable Energy Credits and ancillary services capabilities) produced by five of its solar QFs to DEF. Each of these five solar projects is certified with the FERC as a Qualifying Facility. In its efforts to negotiate with DEF, Ecoplexus initially sought pricing based on DEF's "avoided costs" of DEF's planned solar units. These efforts included specific offers and commitments made to DEF shortly after DEF announced its Solar Base Rate Adjustment plans in its settlement agreement filed with the PSC in September 2017.
- D. Subsequently, Ecoplexus continued to offer and commit to sell to DEF all of the output and attributes of the five Ecoplexus QFs in DEF's service area at pricing based on the costs of DEF's planned solar units. Ecoplexus sought information from DEF regarding the costs of DEF's planned solar units, but DEF refused to provide that requested information.
- E. Ecoplexus made further offers and commitments to sell DEF all of the output and attributes of the five Ecoplexus solar QFs in DEF's service area at specific pricing terms that Ecoplexus believed, and still believes, were and are less than DEF's solar costs. In making those offers, Ecoplexus made reasonable assumptions that DEF's costs would be similar to the costs reported by other Florida utilities in their solar base rate adjustment filings, and substantially less than the "cost cap" established for DEF's planned SOBRA projects.
- F. Ecoplexus continued to request pricing for PPAs with DEF based on DEF's costs for DEF's planned solar units, but DEF continued to refuse to provide that information and further continued to refuse to negotiate toward PPAs on the basis of DEF's solar unit costs.



- G. On July 16, 2018, Ecoplexus further specifically offered to sell all of the output and attributes of its five specified solar QFs in DEF's service area at the "lesser of" Ecoplexus' specifically offered pricing or a specified discount below DEF's estimated revenue requirements— i.e., the revenue requirements that DEF would impose on its customers – of DEF's planned solar generating units, including the two projects that are the subject of DEF's pending petition in PSC Docket No. 20180149-EI, In re: Petition for a Limited Proceeding to Approve First Solar Base Rate Adjustment, by Duke Energy Florida, LLC.
- H. DEF's refusals have been express and in writing.
- I. DEF continued to refuse, and still refuses, to negotiate with Ecoplexus for any PPA based on Ecoplexus providing the same amount of solar power that DEF plans to obtain through DEF self-build units, as shown in its 2018 Ten Year Site Plan.
- J. DEF claims in its Petition that other developers of solar QFs have made similar proposals to DEF.
- K. DEF failed to tell the Commission in its Petition that at least Ecoplexus, and probably other solar developers, have offered to provide solar power to DEF at the "avoided costs" of DEF's planned solar units for the same term in years as the life of DEF's planned solar units.
- L. From this fact, it appears that DEF intends to use the requested declaratory statement, if the Commission were to issue it, to continue to avoid negotiating with solar QFs for PPAs that would provide the same amounts of solar power that DEF plans to generate from its self-built units, at costs to customers less than DEF's self-build costs, even though Ecoplexus has expressly offered to provide the same amounts of power at prices below DEF's costs.

M. As a matter of fact,<sup>3</sup> this would be contrary to the best interests of DEF's customers and contrary to the public interest by forcing DEF's customers to pay more than necessary for solar power that DEF claims it needs.

13. The requested declaratory statement would violate Section 366.051, Florida Statutes, Commission Rule 25-17.0832(2), F.A.C., and related Commission orders, PURPA, and the PURPA Rules, including specifically 18 CFR § 292.303(a)-(b), (d), and 18 CFR § 304(d)(2)(ii) . See also 16 U.S.C. 824a-3(d).

14. With regard to this Motion to Intervene, Ecoplexus has demonstrated that its substantial interests will be affected by the Commission's decisions herein, and accordingly, Ecoplexus is entitled to intervene in this docket.

15. With regard to DEF's Petition, Ecoplexus asserts that many of DEF's assertions are legally incorrect. These legal deficiencies will be addressed in Ecoplexus' response in opposition to DEF's Petition, which will be filed no later than Monday, October 1, 2018.

#### **STATUTES AND RULES THAT ENTITLE ECOPLEXUS TO RELIEF**

16. The applicable statutes and rules that entitle Ecoplexus to intervene in this docket include, but are not limited to, Sections 120.565, 366.051, 366.91, and 366.92, Florida Statutes, Rule 28-105.0027, F.A.C., and Chapter 28-106, F.A.C.

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<sup>3</sup> The procedural and substantive deficiencies of DEF's positions will be addressed in Ecoplexus' response in opposition to DEF's Petition.

The cited rules provide that persons whose substantial interests will be affected by agency action, including declaratory statements, are entitled to intervene, and specifically to intervene in this declaratory statement proceeding. The cited sections of Chapter 120 provide that persons whose substantial interests will be affected are entitled to participate in this type of proceeding. The cited sections of Chapter 366, Florida Statutes, protect the substantive interests of solar QF developers such as Ecoplexus, including ensuring such QFs' right to be paid a public utility's full avoided cost for power offered for sale from a solar QF to any purchasing public utility.

**CONFERRAL WITH OTHER PARTIES**

17. Pursuant to Rule 28-106.204(3), F.A.C., undersigned counsel attempted to confer by email with counsel for DEF but was unable to obtain a position from DEF before filing this Motion to Intervene. Undersigned counsel conferred verbally with Commission Staff and is authorized to state that the Staff take no position with respect to this Motion.

**CONCLUSION AND RELIEF REQUESTED**

WHEREFORE, Ecoplexus respectfully requests the Commission to enter its order GRANTING this Motion to Intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents to Ecoplexus' representatives indicated in paragraph 2 above.

Respectfully submitted this 24th day of September, 2018.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic delivery, on this 24th day of September, 2018.

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