

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory Statement
By Duke Energy Florida, LLC, Regarding
PURPA Solar Qualifying Facility Power
Purchase Agreements

DOCKET NO. 20180169-EQ
FILED: October 1, 2018

**AMENDED MOTION TO INTERVENE BY
SOUTHERN ALLIANCE FOR CLEAN ENERGY**

Southern Alliance for Clean Energy (“SACE”) filed a Motion to Intervene on September 28, 2018. It files this Amended Motion to Intervene to provide additional and clarifying information. Pursuant to sections 120.565, 120.569, 120.57, Florida Statutes, and Rules 28-106.204, 28-106.205 and 28-105.0027, Florida Administrative Code, Southern Alliance for Clean Energy (“SACE”), through its undersigned counsel, motions for leave to intervene in the above captioned docket and in support thereof states:

I. AGENCY AFFECTED

1. The name and address of the agency affected by this petition is

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

II. IDENTIFICATION OF THE INTERVENORS AND THEIR COUNSEL

2. The name and address of Petitioner is:

Southern Alliance for Clean Energy
P.O. Box 1842
Knoxville, Tennessee 37901
Telephone: (865) 637-6055

3. The name and address of counsel for Petitioners, authorized to receive all notices, pleadings, and other communications in this docket is:

George Cavros, Esq.
Southern Alliance for Clean Energy
120 E. Oakland Park Blvd., Suite 105
Fort Lauderdale, FL 33334
(954) 295-5714
george@cavros-law.com

III. RECEIPT OF NOTICE OF AGENCY’S PROPOSED ACTION

4. Petitioners received notice of the Florida Public Service Commission’s (“Commission”) action on September 7, 2018, on the Commission’s website through the Notice of Declaratory Statement.

IV. THE INTERVENOR’S SUBSTANTIAL INTERESTS

5. SACE is a non-profit clean energy corporation organized under the laws of the state of Tennessee and authorized to conduct operations in the State of Florida. The mission of SACE, as reflected in its bylaws, is to advocate for energy plans, policies and systems that best serve the environmental, public health and economic interest of communities in the Southeast, including Florida – which includes recovery of costs associated with such plans, policies and systems.

6. SACE has staff in Florida working to advance energy plans and policies that best serve the environmental, public health and economic interests of communities in Florida. SACE has over 40 members that reside in the service territory of Duke Energy Florida, LLC (“DEF”) and are DEF customers. This is a substantial number of SACE’s 328 Florida members. To further its mission, SACE has presented experts and provided technical and policy testimony in numerous forums throughout Florida, including before the Governor’s Climate and Energy Action Team, the Florida State Legislature, the Department of Environmental Protection, and this Commission, including comments submitted by SACE in 2015 on policies and plans to promote utility-scale solar development in Florida in response to the Commission’s request for

comments.¹ SACE has been granted intervention by this Commission in a number of proceedings, including *In re: Petition for rate increase by Gulf Power Company*: Docket No. 20160186; *In re: Nuclear Cost Recovery Clause*: Docket Nos. 20090009- 20180009; *Petition for determination of need for Okeechobee Clean Energy Center Unit 1, by Florida Power & Light Company*: Docket No. 20150196; *In re: Energy conservation cost recovery clause*: Docket No. 20110002- 20140002; *Request to opt-out of cost recovery for investor-owned electric utility energy efficiency programs by Wal-Mart Stores East, LP and Sam's East, Inc. and Florida Industrial Power Users Group*: Docket No. 20140226; *Petition for determination of need for Citrus County Combined Cycle Power Plant, by Duke Energy Florida, Inc.*: Docket No. 20140110; *Commission review of numeric conservation goals- 2014*: Docket Nos. 20130199, 20130200, 20130201, 20130202; *Commission review of numeric conservation goals - 2009*: Docket Nos. 20080407-13; *Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.*: Docket No. 20100437-EI; and *In re: Petition to determine need for Polk Unit 6 electrical power plant, by Tampa Electric Company*: Docket No. 20070467-EI.

7. SACE was also a party to the 2017 DEF Revised and Restated Settlement Agreement, Docket No. 2017-0813, which was approved by Order No. PSC-2017-0451-AS-EU. That agreement allows for rate recovery of up to 700 MW of cost-effective utility scale solar projects. SACE supports DEF's efforts to significantly add solar power to its resource mix. The policy question ultimately posed by DEF's request for declaratory statement in this docket is

¹ Southern Alliance for Clean Energy, *SACE Comments to the Florida Public Service Commission: Solar Energy in Florida*, June 23, 2015, at: <http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/SolarEnergy//Southern%20Alliance%20for%20Clean%20Energy.pdf>

how to most cost-effectively achieve not only the 700 MW target, but to also maximize other market-driven opportunities for solar development.

V. STATEMENT OF AFFECTED INTERESTS

8. As part of its mission in advocating for energy plans, policies and systems that best serve the environmental, public health and economic interest of communities in the Southeast, SACE supports policies and agency actions that accelerate the rate of development of cost-effective solar power in the residential sector, industrial and commercial sector, and at the utility-scale level. Solar power provides cost-effective and emission-free power which places downward pressure on rates over the long term, while reducing the energy sector's negative environmental impacts to air quality, and water quality and quantity. Utility-scale solar, projects interconnected directly to the transmission system and supplying the utility with power, are an important utility resource in providing cost-effective and emission-free power that drives down rates while also promoting clean, safe and healthy communities in the Southeast and nationally. Therefore, policies that help accelerate the adoption of utility-scale solar projects further the mission of SACE and its members. One such policy, The Public Utility and Regulatory Policies Act ("PURPA") was enacted in 1978 with a goal of encouraging increased energy independence in the United States by requiring, in part, states to establish the prices retail utilities must pay for power from third-party-owned renewable energy projects, known as qualifying facilities ("QF") – thus giving small renewable energy developers a market for their power.² The price is set at the utilities avoided cost.³ PURPA plays a critical role in advancing cost effective utility-scale solar

² 16 U.S.C. § 796(17)(A). Pursuant to PURPA, two types of facilities are eligible for QF status: small power production and cogeneration facilities. A small power production facility is a generating facility with capacity of 80 MW or less whose primary energy source is renewable energy, such as hydroelectric, wind, solar, biomass, waste or geothermal resources.

³ 16 U.S.C. § 824a-3(d). In keeping with PURPA requirements, § Section 366.051, Fla. Stat. states that a utility must purchase power from small power producers at the utilities' "full avoided cost." (Avoided cost is defined in PURPA as "the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or

development in states, such as Florida, that don't have a coordinated and comprehensive policy for solar development.⁴ While the Federal Energy Regulatory Commission ("FERC") determines QF status, state utility commissions, such as this Commission, have jurisdiction over the terms of QF contracts, power purchase agreements ("PPAs"), including how utilities calculate the avoided cost rate at which QFs are paid for purchased power. The QF terms, over which the Commission has jurisdiction, are critical to the success of PURPA and the development of QF solar projects in Florida.

9. The PPAs between the utility and the solar QFs under PURPA provide not only the terms under which power will be purchased by the utility, but the PPA terms also play a critical role in the QF's ability to attract capital from potential investors. DEF, in its petition for declaratory statement filed in this docket asks the Commission for a declaratory statement that it be permitted to "fix one hundred percent (100%) of the price for PURPA solar QF PPAs no more than two years at a time."⁵ If such a statement is indeed provided by the Commission, a 2-year fixed price term would be so short a length that, based on information and belief, it would cripple a QFs ability to attract capital from potential investors. If QFs cannot secure a PPAs of sufficient length and certainty to attract capital from potential investors, QF solar projects will not get built in Florida. Therefore, a favorable decision on the request for declaratory statement, by creating a hostile investment climate in Florida for solar QFs, effectively thwarts one of the intents of PURPA, which is to encourage the development of cost-effective renewable energy generation from non-utility third-party providers – including solar providers. This policy outcome is

small power producer, such utility would generate or purchase from another source).

⁴ Southern Alliance for Clean Energy, *SACE Comments to the Florida Public Service Commission: Solar Energy in Florida*, June 23, 2015, pp. 8-20 at: <http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/SolarEnergy//Southern%20Alliance%20for%20Clean%20Energy.pdf>

⁵ Duke Energy Florida, *Duke Energy Florida, LLC Petition for declaratory statement regarding PURPA solar qualifying facility power purchase agreements*, Docket No. 20180169-EQ September 7, 2018, p. 1.

contrary to the mission of SACE and its members. Additionally, granting the declaratory statement would establish a Commission precedent that will surely be relied upon by other similarly situated investor-owned utilities (“IOUs”) and regarded as generally applicable to their PURPA solar QF contracts as well. Moreover, based on information and belief, Solar QFs can often offer lower priced solar power than utility-owned solar installations. For instance, Ecoplexus, Inc., an established solar provider, states in its motion for intervention that it has “committed to sell DEF solar power, including all capacity, energy and other attributes . . . at costs less than DEF’s proposed cost for such power.”⁶ DEF appears to concede this point in its petition in alluding to the trend and rate of price declines of solar power – for instance, declining 50% in just the last five years.⁷ Ecoplexus, Inc. further states that it appears that DEF intends to use the declaratory statement, if issued by the Commission, 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.⁸ If a 2-year fixed price solar QF PPA term is in fact used to avoid dealing with QFs, or the effect is to suppress solar QF development in DEF’s territory, DEF customers, including SACE members who are DEF customers will pay more than necessary for solar power. Moreover, if DEF (and other IOUs) were to use a 2-year fixed price PPA to avoid or suppress QF development in Florida, it is reasonable to project negative impacts to solar development in Florida over time. If the Commission grants the declaratory statement, it would reduce market entry for cost-effective solar development, which in turn may lead to a greater reliance on existing fossil fuel plants, that would otherwise not be needed, but for the negative effect of a 2-year fixed price solar QF PPA. The consequence is that the natural environment in

⁶ Ecoplexus, Inc., *Motion to Intervene of Ecoplexus, Inc.*, Docket No. 20180169-EQ September 24, 2018, p.2.

⁷ Duke Energy Florida, *Duke Energy Florida, LLC Petition for declaratory statement regarding PURPA solar qualifying facility power purchase agreements*, Docket No. 20180169-EQ September 7, 2018, p. 1.

⁸ Ecoplexus, Inc., *Motion to Intervene of Ecoplexus, Inc.*, Docket No. 20180169-EQ September 24, 2018, p 9.

communities where SACE members reside in DEF's territory will not be as clean, safe and healthy as it could be. This would be contrary to the mission of SACE and its members.

10. Simply put, if the Commission grants the request for declaratory statement, members of SACE who are DEF customers, will pay for solar power in their bills that is higher priced than necessary because of the suppressed competition from cheaper-priced QF solar facilities. Members of SACE who are DEF customers will additionally bear the environmental impact of likely less solar development in DEF's territory than there would be under solar QF PPA terms that are consistent with the intent of PURPA and encourage development of solar QFs. Consistent with the mission of SACE, it wishes to ensure that a decision by the Commission in this docket advances the economic and environmental interests of SACE members who are DEF customers. As such, Commission actions and orders in this docket are inexorably intertwined with the substantial interest of SACE and its members.

11. SACE's interests are the type of interests that this proceeding is designed to protect and SACE has established that its injury is of sufficient immediacy to entitle SACE to a Section 120.57, Fla. Stat, hearing. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), reh. denied, 415 So.2d 1359. Additionally, SACE has established associational standing as a substantial number of SACE members will be substantially affected by the Commission's decision in this docket; the subject matter of the proceeding is well within SACE's scope of interest, and the relief requested is appropriate on behalf of SACE members. *Florida Home Builders Ass'n v. Department of Labor and Employment Security*, 412 So.2d 351, 353-54 (Fla. 1982).

12. SACE is authorized by its bylaws to represent its interests and the interests of its members in legal actions, including formal administrative actions such as these. The rights and

interests of SACE and its members cannot be adequately represented by any other party in this docket, and intervention will not unduly delay or prejudice the rights of other parties. SACE's intervention is timely and consistent with the Commission rules.

VI. STATEMENT OF DISPUTED ISSUES OF FACT

13. Section 120.565(3), Fla. Stat. provides that “[t]he petition seeking a declaratory statement shall state with particularity the petitioner’s set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.” DEF’s petition for declaratory statement, applies to DEF’s “particular set of circumstances,” as stated by DEF. Therefore, the Commission will not determine disputed issues of fact in this proceeding.

VII. STATEMENT OF ULTIMATE FACT

14. The requested declaratory statement would not provide a reasonable opportunity for solar QFs to attract capital and would suppress competition for cost-effective solar power.

15. The requested declaratory statement would be contrary to the economic and environmental interests to SACE members who are of DEF’s customers.

16. DEF’s petition suffers from certain legal deficiencies that will be addressed by SACE in a response in opposition to DEF’s petition it intends to file by October 8, 2018.

VIII. STATUTES AND RULES THAT REQUIRE THE RELIEF REQUESTED

17. The statutes and rules that entitle SACE to intervene and participate in this case include, but are not limited to, the following:

- a. Sections 120.569, 120.57, and 120.565, Fla. Stat.;
- b. R. 25-22.039 F.A.C.; and Chapter 28-106, F.A.C.

IX. CONFERRAL WITH OTHER PARTIES

18. Pursuant to Rule 28-106.204(3), F.A.C., undersigned counsel attempted to confer by email with both counsel for DEF and Ecoplexus, Inc. and is authorized to state that Ecoplexus, Inc. does not object, but was unable to obtain a position from DEF before filing this Amended Motion to Intervene. Undersigned counsel conferred verbally with Commission Staff and is authorized to state that the Staff takes no position with respect to this Amended Motion.

X. RELIEF SOUGHT

19. WHEREFORE, the Southern Alliance for Clean Energy respectfully requests that the Commission enter an order granting it leave to intervene in the above-styled docket as a full party, and further requests parties to provide the undersigned with all pleadings, testimony, evidence and discovery filed in said dockets.

RESPECTFULLY SUBMITTED this 1st day of October, 2018

/s/ George Cavros
George Cavros
Southern Alliance for Clean Energy
120 E. Oakland Park Blvd., Suite 105
Fort Lauderdale, FL 33334
(954) 295-5714
george@cavros-law.com

*Counsel for Petitioner
Southern Alliance for Clean Energy*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 1st day of October, 2018 via electronic mail on:

Roseanne Gervasi Florida Public Service Commission Office of the General Counsel 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850 rgervasi@PSC.STATE.FL.US	Dianne Triplett John Burnett Duke Energy Florida 106 East College Avenue, Suite 800 Tallahassee, FL 32301-7740 john.burnett@duke-energy.com
Matthew R. Bernier/Paul Lewis, Jr. 106 East College Avenue, Suite 800 Tallahassee, FL 32301 Matthew.bernier@duke-energy.com	Ecoplexus, Inc. c/o Robert Scheffel Wright/John T. LaVia, Gardner Law Firm 1300 Thomaswood Drive Tallahassee, FL 32308 Schef@gbwlegal.com
Ecoplexus, Inc. c/o Robert Fallon 1717 K Street, NW, Suite 900 Washington, DC2000 rfallon@energylaw.com	.R Kelly/Charles Rehwinkel Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 Rehwinkel.charles@leg.state.fl.us

/s/ George Cavros
George Cavros, Esq.