



Dianne M. Triplett
Deputy General Counsel

October 5, 2018

VIA ELECTRONIC FILING

Ms. Carlotta Stauffer, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Duke Energy Florida, LLC's Petition for Declaratory Statement regarding PURPA solar qualifying facility power purchase agreements*; Docket No. 20180169-EQ

Dear Ms. Stauffer:

Enclosed for filing in the above-referenced Docket on behalf of Duke Energy Florida, LLC ("DEF") is DEF's Response to Southern Alliance for Clean Energy's ("SACE") Motion to Intervene.

Thank you for your assistance in this matter. Please feel free to call me at (727) 820-4692 should you have any questions concerning this filing.

Sincerely,

s/ Dianne M. Triplett

Dianne M. Triplett

DMT/mw
Enclosure

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-EI

Filed: October 5, 2018

**DUKE ENERGY FLORIDA, LLC'S RESPONSE TO
SOUTHERN ALLIANCE FOR CLEAN ENERGY'S
ORIGINAL AND AMENDED MOTIONS TO INTERVENE**

Duke Energy Florida, LLC (“DEF” or “the Company”), pursuant to Rule 28-105.003, F.A.C., hereby responds to Southern Alliance for Clean Energy” (“SACE”) Motion to Intervene (“Motion”) filed on September 28, 2018 with the Florida Public Service Commission (“Commission”) in the above referenced docket regarding DEF’s Petition for Declaratory Statement (“Petition”), as well SACE’s Amended Motion to Intervene (“Amended Motion”) filed on October 1, 2018. DEF has filed this response within seven days of the original motion, and has noted where relevant any changes made in the Amended Motion. This response therefore applies to both the Motion and the Amended Motion, but is being filed together to avoid an unnecessary filing in the docket.

With respect to whether SACE has met the standards to gain standing in this proceeding, DEF is uncertain whether SACE has plead sufficient facts to meet those standards. Nevertheless, without waiving any rights DEF may have in this or future proceedings to challenge SACE’s standing, and given the unique nature of this proceeding, DEF does not oppose SACE’s Motion, provided that SACE be required to prove the facts and allegations upon which they claim to meet the Commission standard for intervention in this docket. However, given that SACE included several other statements of fact and law in its Motion with which DEF does not agree and which

were unnecessary to assert standing to intervene, DEF is compelled to provide a response to those statements.

1. DEF disagrees with the allegation in Paragraph 7 of the Motion, in which SACE claims that the ultimate policy question set forth in DEF's Petition "is how to most cost-effectively achieve not only the 700 MW target [included in the 2017 Settlement Agreement], but to also maximizing other customer or market-driven opportunities for solar development." The 700 MW of DEF-owned solar included in the 2017 Settlement Agreement cannot be avoided or deferred under PURPA, PURPA was never intended to replace other renewables, and is separate and apart from the issue presented in this docket; i.e., the reasonable time period to fix an avoided cost payment rate for solar QFs under inflexible PURPA requirements pursuant to FERC and long-standing Commission rules and orders. The 2017 Settlement Agreement includes specific parameters and requirements that DEF must prove for the opportunity to build and own solar pursuant to that agreement. The 2017 Settlement Agreement does reference DEF's ability to negotiate with projects that are in its service territory for potential buy-out and inclusion as part of the 700 MW, and DEF has been (and continues to be) actively engaged in those negotiations. Finally, DEF has no policy question on how to maximize market-driven opportunities for solar development. DEF was very clear about its intent to engage the real market through the issuance of a market survey to obtain the most flexible, cost-effective and least-cost renewable projects in Florida. Solar QFs that are using PURPA as their business model and utilize the rigid contractual requirements afforded to them under PURPA are not the "market" as represented by SACE.

2. DEF also disagrees with SACE's assertion in Paragraph 8 that Florida does not have a "coordinated and comprehensive policy for solar development." The Commission provides oversight of Florida's policy on solar development through its review of the utilities' Ten Year Site Plans, along with various ratemaking proceedings in which utilities request approval of discreet projects. The Commission also approves standard offer contracts and other renewable negotiated contracts under Chapter 25-17. Taken together, the Commission does in fact have a comprehensive policy for solar development. Furthermore, DEF disagrees with SACE that PURPA plays a critical role in advancing cost-effective utility-scale solar in states like Florida. *See* Para 8. Solar advancements in peninsular Florida are advancing faster than most states and now ranks 8th in the nation for its amount of installed solar.¹

3. In several places, SACE alleges that a two-year PPA term would impact a QF's ability to attract capital from potential investors. *See* Motion at Para. 9 and 15, Amended Motion at Para. 14. The implication is that potential QFs would be unable to develop solar projects in Florida. However, as DEF noted in its Petition (see pp. 18-21), FERC does not require that a PURPA contract be financeable. There is also no proof that it would be impossible for potential solar QFs to develop solar projects in Florida. Neither PURPA nor the Commission rules are intended to allow potential solar QFs unlimited ability to develop solar QF projects with guaranteed financing and profits, irrespective of the impact on customers. Likewise, DEF disputes the allegation in Paragraph 9 that granting the declaratory statement "would create a hostile business climate in Florida for solar QF investment and effectively thwart one the [sic] intents of PURPA, which is to encourage the development of cost-effective renewable energy

¹ *See* https://seia.org/sites/default/files/2018-09/Factsheet_State_Florida_2018Q2.pdf (last visited Oct. 5, 2018).

generation from non-utility third-party providers – including solar providers.”² First, PURPA was designed to lessen the country’s dependence on foreign oil.³ Second, SACE incorrectly states PURPA’s current applicability to “non-utility third-party providers;” where ownership limitations by electric utilities for QFs were eliminated by FERC over 13 years ago⁴ despite FPSC Rule 25-17.080(2)(c), F.A.C. And, finally, approving DEF’s requested declaratory statement would actually ensure that the purpose of PURPA is implemented in a reasonable manner, balancing all interests and assuring that customers are not at risk for the next 20 to 30 years and paying too much for inflexible solar QF power.

4. In Paragraph 10, SACE discusses at length another party, Ecoplexus, Inc.’s, motion to intervene in this docket and restates several allegations included in that filing.⁵ DEF disputes SACE’s allegation in that same paragraph that DEF “concedes” the point that Ecoplexus made in its motion about offering solar pricing that is less than DEF’s solar costs. These types of “cheaper-priced” statements only represent a single snapshot as of today with usually idealistic assumption and fail to take into account QF facility performance over time and the regulatory framework for utility-owned solar that may change over the next twenty to thirty years. The general point DEF made in its Petition about solar prices declining is completely irrelevant to what Ecoplexus is offering or not offering to DEF customers. DEF further disputes that a 2-year fixed price period is being used to avoid negotiations with QFs, on behalf of DEF customers, or to suppress solar QF development in DEF’s territory. *See* Para. 10. As stated in DEF’s Petition,

² The Amended Motion is worded slightly differently, but the concept is the same: “by creating a hostile investment climate in Florida for solar QFs, effectively thwarts one of the intents of PURPA...”

³ *See* FERC Docket No. QF88-61-004, sec. 2, www.ferc.gov/CalendarFiles/20051025143325-QF88-61-004.pdf.

⁴ *Id.* at Sec. 5.

⁵ DEF will not repeat its response to those allegations here; rather, it incorporates by reference its Response to the Ecoplexus Motion, filed October 1, 2018. DEF also notes that the Amended Motion combines Paragraphs 9 and 10, but essentially makes the same points regarding the Ecoplexus Motion.

the overwhelming amount of solar QFs in DEF's interconnection queue has resulted in DEF, on behalf of its customers, needing to seek guidance from the Commission as to how best protect DEF's customers, including members of SACE who are DEF customers, while still fairly balancing PURPA mandates. DEF fully supports solar generation for the benefit of all of its customers (as evidenced by the amount of solar generation included in its planning documents), but the development of solar must be done in a stepwise fashion to ensure safe reliable power grid operations, long-term clean energy is available in Florida, and that customers are protected.

5. DEF also disputes SACE's allegations that granting the declaratory statement will result in customers paying higher prices for solar generation.⁶ *See, e.g.,* Para. 10, 11 and 16. Likewise, DEF disputes the allegation, made in the Amended Motion, that the declaratory statement "would suppress competition for cost-effective solar power." *See* Amended Motion at Para. 15. Potential solar QFs that are using the rigid contractual requirements under PURPA are not promoting competition or reflect the real market.

Customers will be protected, and the public interest will be served, by granting DEF's Petition and setting the period of time of a one hundred percent fixed price solar QF payment rate to two years. As discussed in DEF's Petition, in addition to 2-year fixed price periods in solar QF PPAs with priority renewal, there are other non-QF options that would promote competition for cost-effective renewable power and may be available for solar companies. Robust customer rights and protections can be negotiated without the rigid constraints of PURPA and DEF customers will be ensured to receive the fuel diversity, fuel price stability and energy security value streams from fair and transparent negotiated wholesale renewable PPAs. This is why, as laid out in DEF's Petition, DEF, on behalf of its customers, is anticipating the issuance

⁶ As noted in the previous footnote, the paragraph numbering in the Amended Motion is changed but the substantive arguments are similar to the Motion.

of a market survey to determine whether there are such third party wholesale renewable PPAs that could be equivalent to DEF-owned solar units and will provide that same value to DEF customers.

6. Finally, DEF understands that SACE intends to file a substantive response in opposition to DEF's Petition.⁷ DEF reserves its right to respond to that filing, and does not waive its right to respond by making this filing. DEF will more fully respond to the merits of SACE's arguments at that time.

Respectfully submitted,

s/ Dianne M. Triplett

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Attorneys for Duke Energy Florida, LLC

⁷ DEF also disagrees with the allegation in Paragraph 17 that its Petition “suffers from certain legal deficiencies.”

CERTIFICATE OF SERVICE
Docket No. 20180169-EQ

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following by electronic mail this 5th day of October, 2018, to all parties of record as indicated below.

s/ Dianne M. Triplett

Attorney

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