DUKE ENERGY® FLORIDA

Dianne M. Triplett
Deputy General Counsel

October 8, 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's ("DEF") is DEF's Response to Vote Solar's Amicus Curiae Memorandum.

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/cmk
Enclosure

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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 8, 2018

DUKE ENERGY FLORIDA, LLC'S RESPONSE TO VOTE SOLAR'S MOTION FOR LEAVE TO FILE AMICUS CURIAE MEMORANDUM AND AMICUS CURIAE MEMORANDUM

Duke Energy Florida, LLC ("DEF" or "the Company"), pursuant to Rules 28-105.003 and 28-105.0027(1), F.A.C., hereby responds to Vote Solar's Motion for Leave to File Amicus Curiae Memorandum ("Motion") and Amicus Curiae Memorandum ("Memorandum") filed on October 1, 2018 with the Florida Public Service Commission ("Commission") in the above referenced docket regarding DEF's Petition for Declaratory Statement ("Petition").

Given that interested parties are typically permitted to make amicus filings with the Commission, DEF does not officially oppose Vote Solar's Motion or its ability to file the Memorandum. However, DEF does disagree with several of the allegations included in Vote Solar's Motion and Memorandum, and thus files this response.

In its Motion and Memorandum, Vote Solar argues that declaratory relief is not the appropriate procedural mechanism for deciding the issues raised in the Petition and that the relief sought by DEF will result in discrimination against PURPA solar QFs. For the reasons explained in greater detail below, declaratory relief is the appropriate mechanism for the Commission to provide clarity on the issues raised in the Petition and granting the relief sought in the Petition will not result in discrimination against PURPA solar QFs.

The Commission is authorized to issue the declaratory statement, and it is the appropriate mechanism for DEF, on behalf of its customers, to gain clarity applicable to all PURPA Solar QFs.

1. DEF's Petition provides a detailed analysis of the applicable statutes, rules, and orders relevant to the issue of the length of time DEF, on behalf of its customers, must offer a solar Qualifying Facility ("QF") a fixed price under a PURPA purchased power agreement, (PPA) considering the amount of solar in DEF's state and FERC generator interconnection queue, ("queue[s]"). DEF has been thoughtful in reviewing these various requirements to ensure that its customers are adequately protected, while also complying with these various requirements. Contrary to the various allegations made by Vote Solar (*see, e.g. Motion at para. 4 and 10; Memorandum at p. 2 and para. 1, 2, and 6*), Florida's law in this area, as applied to the unprecedented amount of solar QF power in DEF's queue, is not well settled. Likewise, DEF is not trying to change a law with which it disagrees. *Memorandum at pp. 1-2 and para. 2 and 6.* The Commission is well within its right to grant DEF's Petition under the existing rules and its orders interpreting those rules. Specifically, Vote Solar's reliance on the Standard Offer Contract rule for firm capacity and energy purchases from renewable QFs and its ten year term with variable pricing as support for a negotiated long-term solar QF PPA with limited customer protections and a fixed price is misplaced.[1] As explained on page 15 of its Petition, the Standard Offer Contract provides a minimum ten year term with various customer protections, subscription limits, performance standards, and assurances that all of the QF's output is only delivered to DEF customers, and all in exchange for a variable energy payment. The solar QFs

[1] DEF did not fail to mention that standard offers were intended by the Commission to provide a starting point from which negotiations could take place. *See Memorandum at para. 1.* To the contrary, DEF is well aware that all rates, terms, and other conditions in its Schedule COG-2 is the starting point, as it has been using the Tariff Schedule COG-2 as such for years in its negotiations and clearly cited the very same order that Vote Solar referenced on page 4 and footnote 10 of the Petition.

have been requesting a one hundred percent fixed payment. So in fact, there is no requirement in Florida law that a *negotiated* QF PPA have at least a ten year term like DEF's Schedule COG-2, especially when other terms and conditions have been changed from the COG-2 applicability, specifically, the 100 percent fixed price that transfers risk back to DEF customers without bilateral negotiations. Finally, if the ten year term is in fact a condition that is considered transferrable content directly from the Standard Offer Contract to a negotiated QF contract, then negotiated QF contracts may not be for any term less than 10 years[2] and the 10-year term shall only start "from the in-service date of the [DEF Standard Offer Contract] avoided unit" which is June 1, 2027 for the DEF's Standard Offer fossil-fired combustion turbine. Any solar QF that comes on-line prior to the in-service date of the Standard Offer Contract avoided unit in-service date shall be eligible for DEF's year-by-year as-available energy payment projection per Rule 25-17.250, F.A.C.

2. Contrary to Vote Solar's allegation about DEF's motives in making this filing, a declaratory statement is an acceptable way for anyone to gain clarity where it is uncertain as to the application of statutes, rules, or orders. Here DEF has clearly explained the rule and order about which it is uncertain and has requested clarification. DEF, on behalf of its customers, is not attempting to contravene the dispute resolution process contained in Section 25-17 of the rules. DEF notes that Rule 25-17.0834, F.A.C. does not state that a party is NOT allowed to file a declaratory statement; in fact, it does not even reference declaratory statements at all. A declaratory statement makes more sense than a dispute resolution provision in a case such as this, where DEF has several counterparties with which it is negotiating and must obtain a response from the Commission that applies beyond the negotiations of just one party. DEF is not trying to

[2] *See* Order No. PSC-2002-1296-PAA-EQ, in which the FPSC approved a negotiated QF contract with Jefferson Power, LLC for 42 months at the election by the QF.

avoid any penalty that may be assessed by the Commission. Even if a counterparty were to file for a dispute resolution, DEF is comfortable that, given the uncertain nature of the rule and order it cites in its Petition, the Commission would find that DEF has acted in good faith with respect to negotiations with solar QFs. DEF actively negotiates with all renewable energy companies, and has a strong history of doing so on behalf of its customers.

PURPA Solar QF PPAs are not priced based on avoidable solar units.

3. It is clear from Vote Solar's various arguments about DEF-owned solar units compared to PURPA solar QF PPAs that Vote Solar does not fully understand the differences between PURPA required contracts that are "forced" upon utility customers, like DEF, on behalf of its customers, and are subject to various requirements imposed by FERC, and other resources that DEF or other utilities may select to meet generating needs. As more fully explained in DEF's Petition, a PURPA solar QF PPA can never provide the same attributes of a utility-owned solar unit, because FERC does not permit the inclusion of certain contract terms, including but not limited to the ability to curtail/dispatch the unit for economic reasons, buy-out rights, and provisions for the disposition of environmental attributes from the facility. Vote Solar makes a similar point in several different ways, which is essentially that the declaratory statement would result in discrimination against solar QFs in favor of DEF-owned solar facilities, therefore DEF, on behalf of its customers, is obligated to offer the same terms to PURPA solar QFs, or at least test the market to determine if solar QFs could fill the need in a less costly way. *See, e.g., Motion at para. 5 and 7; Memorandum at para. 4, 8, and 9.* The arguments about DEF's 2017 Settlement and the solar to be built under that agreement are addressed further below. However, with respect to PURPA PPAs, there is no formal mechanism under Florida law for a utility to bid out or otherwise allow potential solar QFs an alternate or sole path to compete for some limited

number of wholesale solar PPAs. To the contrary, DEF must negotiate in good faith, using DEF's QF avoided cost, defined by its methodology in its Standard Offer Contract with all solar QFs seeking to obtain a PURPA QF PPA. With DEF studying more than 6,000 MW of potential solar QFs in its queue, it is easy to see how DEF and its customers could become overwhelmed by the number of PPAs it is required to accept under PURPA. In summary, and as more fully explained in DEF's Petition, that DEF is seeking clarification of the risk transfer between the customer and the solar QF. DEF is uncertain on the year-by-year length requirement for a rigid solar QF PPA, to ensure that DEF customers maintain just and reasonable rates when potentially impacted by long-term QF contracts at prices that are fixed.

4. Vote Solar alleges that solar QFs could be or potentially are lower cost than DEF-owned solar facilities. *Memorandum at para. 4 and 9.* First, this argument wrongly assumes that the appropriate avoided cost methodology for determining PURPA QF PPAs under Commission QF rules is based on avoiding solar units. While DEF did not raise this issue in its declaratory statement, because it does not believe the Commission rules are vague or unclear as to how QF avoided costs are calculated, it will provide a response. Commission rules, orders, and prior history all require that DEF base its QF avoided cost calculation for firm capacity and energy PURPA purchases on the in-service date and operation of its next *fossil fueled* generating unit, not the next planned solar unit. *See* Rule 25-17.250(1), F.A.C. Since PURPA was first implemented by the Commission in its Chapter 25-17 rules, DEF has used the pricing methodology set forth in the Standard Offer Contract as the starting point for negotiating negotiated PURPA contracts. Rule 25-17.250(1), F.A.C., provides that "[a] separate standard offer contract shall be based on the next avoidable *fossil fueled* generating unit of each technology type identified in the utility's Ten-Year Site Plan. . ." (emphasis added).

Accordingly, in offering prices to renewable QFs, or any other QF facilities, DEF currently calculates its incremental avoided cost on the methodology set forth in its Standard Offer Contract, which for 2018 is a combustion turbine, (CT) fossil-fired unit scheduled to go in service in 2027.

5. The Commission's rules do not obligate DEF, on behalf of its customers, to provide a fixed-price PURPA PPA based on the cost DEF may be setting forth for DEF-owned solar facilities pursuant to its Settlement. It is not appropriate under the FPSC's rules to use a non-fossil-fueled generating unit to derive the QF avoided cost payment given the factors the Commission shall consider under Rule 25-17.0832(3), F.A.C. Furthermore, it would be inconsistent with the intended purpose of PURPA and Section 366.91, Florida Statutes, which is to encourage renewable energy development and decrease the state and country's dependence on fossil fuels. It therefore follows that the proposed renewable QF PPA should be based on the cost needed to avoid fossil-fueled generating units, not other renewable energy facilities. To do otherwise would have the illogical result of avoiding or deferring other renewable energy facilities and may actually decrease the overall amount of renewable energy developed in the state, in direct conflict with the stated objectives of Section 366.91, Florida Statutes.

6. DEF recognizes that the rule regarding negotiated contracts, (25-17.240, F.A.C.) does not reference fossil fueled generating units; rather, it only references "planned utility generating units." However, that rule reference is to the analysis of whether the negotiated terms and other conditions of the proposed negotiated renewable QF PPA will defer or avoid the next planned generating unit; it does not address the QF avoided cost payment computation. So if the proposed renewable QF were to avoid or defer DEF-owned solar under its 2017 Settlement, that may be a factor in determining whether to enter into a negotiated QF contract setting forth the

terms and conditions under Rule 25-17.240, F.A.C. However, the QF avoided cost upon which that contract would be based is set forth in Rule 25-17.250, F.A.C., which references the operation and cost of a fossil-fueled generating facility.

7. Vote Solar also references Value of Deferral (VOD). Vote Solar states that "a QF entering into a contract for capacity would only be paid the 'full avoided cost' if the QF contracted for and performed in accordance with contract terms for a PPA duration equal to the useful life of the 'avoided unit' on which the VOD calculation is based." *Memorandum at pp*. 4-6. This is a complete technical misunderstanding of the VOD. The VOD is a method to calculate the value of deferring the avoided unit capacity one year at time. If a QF contract includes VOD capacity payments for some number of years then the intent is to compensate the QF for deferring the need to construct that avoided unit for the same period of years. This is reflected in the FPSC Rules. Rule 25-17.0832(4)(g)(1), F.A.C. states "Capacity payments under this option shall consist of monthly payments escalating annually of the avoided capital and fixed operation and maintenance expense associated with the avoided unit and shall be equal to the value of a *year-by-year* deferral of the avoided unit, calculated in accordance with paragraph (6)(a) of this rule (emphasis added). Rule 25-17.032(6)(a), F.A.C. states "Calculation of year-by-year value of deferral. The year-by-year value of deferral of an avoided unit shall be the difference in revenue requirements associated with deferring the avoided unit one year and shall be calculated as follows:. . ." (emphasis added).

Vote Solar's assertion that a QF would only be paid the full avoided cost if the PPA duration of the QF is equal to the economic life of the avoided unit leads to an illogical conclusion that any QF PPA with VOD capacity payments and with a term shorter than the economic life of the avoided unit is below the utility's full avoided cost. That is contrary to the

language of the QF rules cited above. Finally, the flawed conclusion Vote Solar makes on VOD would suggest that DEF's Commission-approved Standard Offer Contract (Tariff Schedule COG-2) with numerous customer protections including a variable rate for QF payments that shall be for a minimum of 10 years from the in service date of the COG-2 avoided unit (that has a 35-year useful life) has violated PURPA. Vote Solar's argument, if accepted, would mean that a minimum 10-year contract duration, as has been approved for years in the Company's Standard Offer Contract, would violate PURPA because it does not compensate the QF at DEF's full avoided cost. This is an illogical and incorrect outcome, where the QF at its own election, would agree to lower QF payments than it is entitled to under PURPA.

DEF should not be required to bid for PPAs under the 2017 Settlement, nor should this proceeding be consolidated with the pending solar base rate adjustment docket.

8. Although DEF is permitted to develop and own solar facilities pursuant to its recently approved 2017 Settlement, as explained above, the Commission's rules and practice do not require DEF, on behalf of its customers, to provide pricing to a solar QF based on those solar units. There are many benefits to DEF-owned solar facilities as compared to solar QF contracts. Therefore, the comparison of solar QF contract pricing to DEF-owned solar is misplaced. PURPA contracts are "must take" agreements forced upon utility customers, including DEF's customers, as long as certain minimum requirements are met. Accordingly, DEF has no control over where the solar QFs are located on its system. In addition, as explained above, the FERC rules implementing PURPA ensure QFs are protected from burdensome provisions which in turn limit DEF's ability to adjust the solar QF facilities to benefit DEF customers over time. Examples of this include having solar QFs maintain facilities with emerging and more efficient technologies, controlling the dispatch and availability of solar QF facilities. As solar technology

becomes more integral on DEF's system, DEF needs commitments on solar QF energy deliveries and the ability to guide installations where it is most efficient on the DEF system. DEF has almost 6,000 MW of solar facilities in its grid interconnection queues. An influx of that amount of new solar QF energy would overflow DEF's system. By comparison, DEF can develop its own solar facilities in locations that will minimize system impacts, dispatch and curtail its solar generation, count on the associated fuel diversity to the overall DEF system, and rely on all environmental attributes for the benefit of all of its customers. Furthermore, DEF customers cannot be assured that the solar QFs will install, operate, and maintain their facility or business practices prudently and in a manner that is consistent with the contractual terms. While there may be some contractual terms that can protect DEF customers on solar energy production performance, there is no guarantee that solar QFs, often out of state single-purpose business entities, will remain in business, be dependable, contribute to the fuel price stability, and perform over the next thirty years in the same way that DEF will. DEF has a regulatory obligation to provide an essential service to its customers, something that solar QFs do not have. Given this regulatory obligation, DEF's plans all of its system needs carefully and recovers the costs of all prudently-developed utility owned assets, including emission free solar generating facilities, in a different way than a solar QFs' assets where the Commission has no planning oversight to determine the need for the generating facility nor the authority to regulate the revenues/profits of the QF. Under PURPA, the Commission has no authority to supervise the profitability of QFs or to review their books and records to confirm they are managing their revenue streams appropriately and the return their investors require/are receiving is reasonable.[3] Indeed, as solar

[3] *See* 18 C.F.R. § 292.601 (2018) (exempting QFs under 30 MW from most sections of the Federal Power Act); 18 C.F.R. § 292.602 (exempting QFs under 30 MW from the Public Utility Holding Company Act of 2005, 42 U.S.C. 16,451-63 and state laws and regulations on electric utility rates and financial and organizational regulation of electric utilities); *see also Order Establishing Standard Rates and Contract Terms for Qualifying Facilities*, NCUC,

pricing continues to decline and tax subsidies remain in place, solar QFs are generally solely motivated by immediate or near-term economic incentives.

9. In addition, although DEF is authorized to petition for cost recovery of new solar generating facilities in its 2017 Settlement, that settlement does not require DEF's customers to take on PPAs, PURPA or otherwise, in lieu of its DEF-owned projects. The 2017 Settlement sets forth very clear requirements that must be met, including a showing that DEF's solar costs are reasonable and cost effective. Indeed, in DEF's own cost effectiveness analysis (which compares DEF's projected system cumulative present value revenue requirement ("CPVRR") with and without the proposed solar projects), DEF demonstrates that the proposed solar projects are more cost effective than a portfolio made up of the same fossil fired technologies used to set the avoided cost for the purposes of the PURPA solar QF contracts.

10. Vote Solar seeks to impose a new and different requirement to the 2017 Settlement, namely that DEF be required to conduct a Request for Proposals for PPAs to meet the 700 MW included in the 2017 Settlement. *See, e.g., Memorandum at para. 4.* Vote Solar seeks the imposition of this additional requirement despite its acknowledgement, that current Florida law does not require using a bidding process for its 2017 Settlement proposed self-builds, and admits that DEF complies with the Commission's bidding rules. *See Memorandum at para. 14.* In effect, Vote Solar seeks to make changes to the Commission's bidding and QF avoided cost rules by suggesting that utilities like DEF be required to bid for self-build projects that are not subject to the Power Plant Siting Act ("PPSA"), which is clearly beyond the scope of a declaratory

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Docket No. E-100, Sub 148 at 35 (Oct. 11, 2017) ("Sub 148 Order") (comparing new, utility-owned generation to a QF and noting that "[i]n contrast, a QF has no limit on, and the Commission has no right to review, the amount of debt QFs may use for financing, the return on equity, or the overall rate of return"); *Petition to Modify Terms and Conditions of PURPA Purchase Agreements*, Idaho PUC Order No. 33357 at 24 (Aug. 20, 2015) (finding that "QFs differ from utility resources in several significant and material ways" as utility resources are subject to cost scrutiny and must establish the need for such new generation).

statement proceeding that is limited to a single issue regarding the proper period of a fixed price solar QF PPA. The 2017 Settlement clearly sets forth criteria for the 700 MW of new solar generation to be in-service during the term (plus one year) of the Settlement. It states that if a project is subject to the PPSA, the procedure for gaining approval of that project would be governed by that statute. To the contrary, if a project is not subject to the PPSA, then DEF must use competitive solicitation only for the selection of its contractors and to procure equipment.[4] And the issues for determination in a non-PPSA project are limited to the reasonableness and cost-effectiveness of the projects, the revenue requirements, and whether DEF needs the projects.[5] DEF has a system need for cost-effective generation that will dependably contribute to fuel diversity in DEF's supply-side resource portfolio. The 2017 Settlement, in its entirety, was approved by the Commission as being in the public interest. DEF provided significant value to its customers in that settlement by agreeing to take certain write-offs and take on risks to its shareholders. As part of the quid pro quo of that agreement, DEF is permitted the opportunity to build, own and operate up to 700 MW of new solar generation, for the benefit of all of its customers, provided that it can meet the requirements included in the 2017 Settlement as discussed above. Notably absent from the 2017 Settlement is a requirement that DEF consider PURPA solar QF contracts, which do not provide the same value to DEF's customers, in lieu of its self-build facilities.

11. DEF recognizes, however, that some solar companies may be uniquely positioned to offer value to its customers in a non-PURPA context. That is why, as discussed in the Petition,

[4] *See* Order No. PSC-2017-0451-AS-EU (approving the Settlement), specifically Paragraph 15a: "In implementing potential solar projects, DEF will utilize a reasonable competitive solicitation process(es) to select its contractors and to procure equipment and materials, and DEF will also consider buying out existing potential projects in any stage of development, as long as those projects meet DEF's reasonable standards, the cost cap, and the cost differential requirements of this Paragraph."
[5] *Id.* at para. 15c.

DEF is considering an annual market survey for its solar and renewable needs beyond the 2017 Settlement period. Contrary to Vote Solar's argument that DEF is acting in a non-competitive manner, DEF is not seeking to own all the solar generation and exclude companies wanting to own solar QF projects. Rather, DEF is trying to strike the appropriate balance between dispatchable and dependable utility-owned solar generation, flexible non-PURPA wholesale renewable generation, and strict solar QF generation in peninsular Florida, while being mindful of bill impacts on its customers. Phasing in the commercial operation and costs of all such facilities (just like DEF agreed to do under its 2017 Settlement) is prudent and will promote more solar generation in Florida than otherwise would be developed under PURPA alone, as Vote Solar represents. Customers will see the benefits of cost-effective solar energy, optimistically declining in cost each year, and grid reliability will be maintained in a step-wise process. DEF is not obligated to conduct such a market survey, as Vote Solar itself recognizes. But DEF is considering the option, because it recognizes that some established solar companies that are financially stable with viable renewable projects may be willing to provide equivalent value that a utility-owned facility provides at a lower cost to its customers. However, and this is an important distinction, such a market survey would not be lieu of PURPA, and would only apply to companies willing to engage in non-PURPA renewable PPAs, because under PURPA, DEF could not impose the limitations on PURPA solar QF PPAs that would be necessary to ensure that the project and PPA rates, terms, and other conditions provided the same benefits to DEF customers as a DEF-owned solar facility. Vote Solar wants to mistakenly conflate the PURPA solar QF PPA with a non-PURPA wholesale renewable PPA and insist that solar QFs receive all the benefits as exempt wholesale renewable generators without having to make the same commitments to DEF customers.

12. As demonstrated above, there is no justification for the Commission to consolidate the pending approval for DEF's first set of projects under the 2017 Settlement (Docket No. 20180149) with this request for declaratory statement. The basis of the pricing for PURPA solar QF PPAs is not based on solar generating units under Commission rules because a solar unit is not a fossil fuel generating unit. Further, the 2017 Settlement, by its very terms, does not contemplate or require a bidding process for non-PPSA facilities. Finally, a PURPA solar QF PPA does not provide the same attributes as a utility-owned facility, nor can such a PPA provide the same contractual attributes that a non-PURPA wholesale renewable PPA can provide.

DEF's Declaratory Statement does not discourage solar investment, nor does it place potential solar QFs at a competitive disadvantage

13. As stated in DEF's Petition (see pp. 18-21), FERC does not require that a utility offer a PURPA PPA rate or term that guarantees solar QFs can obtain financing. Vote Solar speculates that setting the price in a solar QF PPA at two years will make solar projects economically unfeasible and would therefore be contrary to the Florida legislature's intent to promote the development of renewable energy. *Memorandum at para. 8.* First, the Florida legislature clearly also requires that impact to customer rates be considered in the analysis, so it is not an unlimited promotion of renewable resources, irrespective of the costs. Second, potential solar companies have several ways in which they can develop solar projects in the Florida market. They can immediately execute an as-available tariffed contract, negotiate with DEF to sell their solar project to DEF as a universal solar facility under the 2017 Settlement for the benefit of all of DEF customers, take advantage of the two-year fixed price period under a PURPA PPA with a priority renewal as currently being offered by DEF to solar QFs as set forth in the declaratory statement, or participate as a flexible wholesale renewable generator in the

market survey discussed in DEF's Petition. Solar development is not stifled in Florida, given that 6,000 MW waits in the various interconnection queues, with more potential projects frequently added.[6] DEF recognizes that no solar QF projects in DEF's service area have reached commercial operation and are delivering to DEF to date. DEF believes this is related to timing, more recent solar price declines, and the varied interests of Florida solar development for non-utility solar generators. DEF is seeking guidance on policies implementing PURPA that are already allowed and are contemplated under the Commission's rules; however there is a need to address appropriate value exchanges and customer risk and effectively address the large influx of potential new solar development in the state ahead of commercial operation as many lessons have been learned from Duke Energy's other jurisdictions as discussed further below.

Vote Solar mischaracterizes Duke Energy's filings in other jurisdictions

14. Vote Solar's concluding effort to support its arguments that DEF's requested declaratory action is somehow improper seems premised upon alleging a Company-wide failure by Duke Energy to reasonably implement PURPA in other states. *Memorandum at para. 15.* Specifically, Vote Solar cites recent filings in North Carolina and mentions in passing Indiana "and one or more other states," notably without providing *any* additional details. *Id.* While PURPA clearly provides that each state regulatory authority has "great latitude" in implementing PURPA and should consider the "economic and regulatory circumstance [that] vary from State to State . . ." *Petition* at 3, Duke Energy's recent experience implementing PURPA in North Carolina—as now raised by Vote Solar in this docket—may warrant further consideration by the Commission. As described in an Order recently issued by the North Carolina Utilities

[6] *See Petition to Modify Terms and Conditions of PURPA Purchase Agreements*, Idaho PUC Order No. 33357 at 15-16 (Aug. 20, 2015) (acknowledging that "PURPA was intended to encourage the development of renewable resources" and determining that PURPA solar PPAs with two year terms would not "result in a substantial decline of renewable resources").

Commission ("NCUC") in October 2017, significantly reforming PURPA implementation in that state, "the implications of the pace and level of QF development continuing unabated [in North Carolina] poses serious risk of overpayment by utility ratepayers and operational soundness of utility electric systems, and, ultimately, calls into question the State's continued compliance with PURPA's requirements."[7]

The need for this PURPA reform arose because North Carolina's existing regulatory and legislative policies implementing PURPA failed to effectively address the large influx of new solar development in the state, which resulted in 60% of all PURPA solar QFs nationally being located in North Carolina.[8] The NCUC recognized that its PURPA policies led to a "distorted marketplace" for solar QFs and "artificially high costs being passed on to North Carolina ratepayers."[9] Areas of the state were inundated with uncontrolled QF solar projects which the NCUC determined was "inhibiting the [Duke] Companies' ability to fulfill its public service mission and statutory obligation to provide safe and reliable energy to its customers at reasonable rates."[10]

15. While the NCUC declined to accept Duke Energy's request to re-set avoided energy prices every 2 years, this decision was largely a result of broader PURPA reform in the state.[11] North Carolina 2017 Session Law 192 ("HB 589") was enacted after Duke Energy's 2016 Petition to update it standard offer avoided cost rates, but before the NCUC had issued an order ruling on that filing. As a result, the NCUC's decision on the term for standard offer PURPA solar PPAs was part of a broader regulatory reform initiated by the legislature, not, as Vote Solar implies, a rejection of such a term viewed in isolation. *Memorandum at para 15*. In fact,

[7] Sub 148 Order at 15.
[8] Sub 148 Order at 16.
[9] *Id.*
[10] *Id.*
[11] *See* 2017 N.C. Sess. Laws 192 ("HB 589").

without a similar legislative initiative, DEF has made this filing to prevent a similar "distorted marketplace" from occurring in Florida, where reliability issues would be even more problematic given the peninsular nature of Florida's transmission system.

16. DEF is also unsure what reference Vote Solar is making to Indiana and other states that "Duke's proposed short term contracts have been rejected," since the Indiana Utility Regulatory Commission actually affirmed Duke Energy Indiana's tariff in which pricing is refreshed on an annual basis. In addition, as DEF pointed out in its Petition, other states have taken different approaches to the length of contract term for these types of PURPA PPAs. The PURPA implementation policies and economic and regulatory circumstances that exist in other states is certainly informative to the Florida Commission, but as always, the Florida Commission will need to evaluate what is best for Florida and its unique circumstances. DEF believes that its declaratory statement strikes the appropriate balance between protecting customers and complying with federal and state law, but it is asking the Commission to provide guidance on the application of these laws to DEF's current situation, given the uncertainty it faces with the unprecedented amount of solar QF generation in its grid interconnection queues.

WHEREFORE, DEF respectfully requests the Commission to issue the declaratory statement requested in its Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE
(Dkt. 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 8th day of October, 2018, to all parties of record as indicated below.

/s/ Dianne M. Triplett
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