

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Tesla, Inc. for declaratory statement concerning leasing of solar electric equipment.

DOCKET NO. 20180221-EQ  
ORDER NO. PSC-2019-0065-DS-EQ  
ISSUED: February 21, 2019

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
JULIE I. BROWN  
DONALD J. POLMANN  
GARY F. CLARK  
ANDREW GILES FAY

DECLARATORY STATEMENT

BY THE COMMISSION:

I. BACKGROUND

On December 3, 2018, Petitioner, Tesla, LLC (Tesla), filed a petition for a declaratory statement (Petition). Tesla asks us to declare that based on the facts presented by Tesla's Petition that:

- (1) Tesla's leasing of solar electric equipment to residential lessees, pursuant to Tesla's standard form lease known as Tesla's SolarLease, does not constitute a sale of electricity;
- (2) Tesla's offering to lease solar electric equipment to residential electricity users will not cause Tesla to be deemed a public utility under Florida Law; and
- (3) The residential solar equipment lease described in its Petition (Tesla's SolarLease) will not subject either Tesla or Tesla's customer-lessees to our regulation.

Our recent decisions in Order No. PSC-2018-0251-DS-EQ, issued May 17, 2018, in Docket No. 20170273-EQ, *In re: Petition of Sunrun Inc. for a declaratory statement concerning the leasing of solar equipment (Sunrun)*, and Order No. PSC-2018-0413-DS-EQ, issued August 21, 2018, in Docket No. 20180124-EQ, *In re: Petition of Vivint Solar Developer, LLC. for a declaratory statement concerning the leasing of solar equipment (Vivint)*, state we do not have jurisdiction over an individual company that offers residential leases for solar equipment when the lease payments do not vary based on generation.

Pursuant to Rule 28-105.0024, Florida Administrative Code (F.A.C.), a Notice of Declaratory Statement was published in the December 4, 2018, edition of the Florida

Administrative Register, informing interested persons of the Petition. There were no requests to intervene filed. We have jurisdiction pursuant to Section 120.565, F.S., and Chapter 366, F.S.

## II. ANALYSIS

Tesla's Petition asks us to declare that Tesla's solar leasing program as described in Tesla's Petition will not make Tesla or its lease customers a public utility subject to our jurisdiction under Section 366.02(1), F.S. Tesla's Petition also asks us to apply Rule 25-6.065, F.A.C., which allows leases for solar equipment that include a maintenance agreement so long as the lease payments do not depend on electric generation. According to Tesla's facts, the customer will be the end-user, and the lease payments do not depend on electric generation. Tesla's proposed solar equipment lease program shows that the lease customers must utilize their utility's service and interconnection and net metering provisions.

Tesla's Petition also states that it is aware that the facts in Sunrun's and Vivint's Petitions are substantively the same as the facts in Tesla's request for declaratory statement. According to Tesla, the *Sunrun* and *Vivint* orders were limited only to the specific facts described in *Sunrun* and *Vivint*'s petitions and are therefore not binding or applicable to Tesla.

We believe that the *Sunrun* and *Vivint* orders are applicable to any individual entity where the alleged facts show that the company offers residential solar lease programs with lease payments that do not vary based on generation. Both of these orders applied the facts presented in the petitions to Rule 25-6.065, F.A.C, which states that "customer-owned renewable generation does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third party." The notice provision in Section 120.565, F.S., suggests that a declaratory statement, although not binding as precedent, has precedential significance. *Chiles v. Dep't of State, Div. of Elections*, 711 So. 2d 151, 155 (Florida 1st DCA 1998).

Tesla also states that requirements of investors who will provide financing for Tesla's SolarLease program in Florida compel Tesla to seek the declaratory statement. Tesla's Petition states it is requesting a declaratory statement as a "real-world business necessity" to meet the "requirements of investors." The purpose of a declaratory statement is to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances.<sup>1</sup> We believe that there is no controversy because the facts in Tesla's Petition are virtually identical to the facts set forth in both the Sunrun's and Vivint's Petitions. Thus, a company's financing or investor requirements are irrelevant to the determination of whether a declaratory statement should be granted.

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<sup>1</sup>Rule 28-105.001, F.A.C., Purpose and Use of Declaratory Statement, provides that declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.

Nonetheless, an agency has an obligation to issue a declaratory statement explaining how a statute or rule applies in the petitioner's particular circumstances, even if the explanation would have a broader application than to the petitioner. *Soc'y for Clinical & Med. Hair Removal, Inc. v. Dep't of Health*, 183 So. 3d 1138, 1144 (Fla. 1st DCA 2015). Thus, we believe that Tesla's petition for declaratory statement should be granted.<sup>2</sup>

### III. CONCLUSION

For the reasons set forth above, we hereby grant Tesla's Petition for Declaratory Statement and declare that: (1) Tesla's leasing of solar electric equipment to residential lessees, pursuant to Tesla's standard form lease known as Tesla's SolarLease, and as described in its Petition, will not be deemed to constitute a sale of electricity; (2) Tesla's offering to lease solar electric equipment to residential electricity users, as described in its Petition, will not cause Tesla to be deemed a public utility under Florida Law; and (3) The residential solar equipment lease, as described in its Petition (Tesla's SolarLease), will not subject either Tesla or Tesla's customer-lessees to our regulation. Our declaration is limited to the facts described in Tesla's Petition and would not apply to different, alternative facts. However, for those with an identical fact pattern to Sunrun's, Vivint's, or Tesla's Petitions, these declarations have precedential significance and individual declaratory statements are not necessary.

It is therefore,

ORDERED by the Florida Public Service Commission that Tesla's Petition for Declaratory Statement is granted as set forth in the body of this order. It is further

ORDERED that this docket shall be closed.

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<sup>2</sup>As we stated previously in the *Sunrun* and *Vivint* orders, approving Tesla's draft lease does not fall within our jurisdiction and review of the lease is not necessary for our determination of Tesla's Petition. Our analysis is limited solely to the jurisdiction question raised by the Petition, not the draft lease. Provisions in Tesla's draft lease that involve statutes and rules that are outside our jurisdiction, such as those provisions that relate to Tesla's compliance with the consumer protection laws, are not relevant and were not considered in our analysis. See *Deltona Corp. v. Mayo*, 342 So. 2d 510 (Fla. 1977), wherein the Florida Supreme Court held that consumer protection was outside the bounds of our jurisdiction: "If Deltona engaged in an unfair business practice or committed fraud, however, it may be a concern of other state agencies or the basis for private law suits (on which we express no opinion), but it is not a matter of statutory concern to the Public Service Commission."

By ORDER of the Florida Public Service Commission this 21st day of February, 2019.



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ADAM J. TEITZMAN  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

AEH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.