

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 21, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Harper) *rect smc.*
Office of Industry Development and Market Analysis (Crawford) *BC at*

RE: Docket No. 20190040-EQ – Petition for declaratory statement regarding leasing of residential solar equipment, by IGS Solar, LLC.

AGENDA: 04/02/19 – Regular Agenda – Declaratory Statement – Parties May Participate at the Commission’s Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 5/9/19 (Final Order must be issued by this date pursuant to Section 120.565(3), Florida Statutes)

SPECIAL INSTRUCTIONS: None

Case Background

On February 8, 2019, IGS Solar, LLC (IGS Solar), filed a petition for a declaratory statement (Petition). IGS Solar asks the Commission to declare that based on the facts presented by IGS Solar:

- (1) IGS Solar’s proposed residential solar equipment lease, as described by the Petition, will not be deemed to constitute the sale of electricity;
- (2) IGS Solar will not be deemed a public utility under Florida law by virtue of leasing its residential solar equipment to residential consumer-lessees in Florida;

- (3) Florida customer-lessees who enter into IGS Solar’s proposed residential solar lease equipment will not be subject to the jurisdiction of, or regulation by, the Commission; and
- (4) IGS Solar’s customer-lessees who enter into the proposed lease will be entitled to electrically interconnect with electric utilities and be deemed net metering customers, under Rule 25-6.065, F.A.C.¹

The Commission’s 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)*; 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)*; and in Order No. PSC-2018-0065-DS-EQ, issued February 21, 2019, in Docket No. 20180221-EQ, *Petition by Tesla Inc., for a declaratory statement concerning the leasing of solar equipment (Tesla)*, state the Commission does 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 February 11, 2019, edition of the Florida Administrative Register, informing interested persons of the Petition. There were no requests to intervene filed. This recommendation addresses IGS Solar’s Petition for Declaratory Statement. The Commission has jurisdiction pursuant to Section 120.565, F.S., and Chapter 366, F.S.

¹Throughout its Petition, IGS Solar phrases requested declarations differently and pages 6-7 of its Petition discuss a question that is not included in other parts of its Petition. Staff’s recommendation only addresses IGS Solar’s questions (1)-(4) as set forth in the Petition’s “wherefore” paragraph on pages 11-12, where IGS Solar specifically states that the Commission make the “following affirmative declarations” on questions (1)-(4).

Discussion of Issues

Issue 1: Should the Commission grant IGS Solar's Petition for Declaratory Statement?

Recommendation: Yes. Based on the facts presented by IGS Solar, the Commission should grant IGS Solar's Petition and declare: (1) IGS Solar's proposed residential solar equipment lease, as described in its Petition, will not be deemed to constitute the sale of electricity; (2) IGS Solar will not be deemed a public utility under Florida law by virtue of leasing its residential solar equipment to residential consumer-lessees in Florida as described in its Petition; (3) Florida customer-lessees who enter into IGS Solar's proposed residential solar equipment lease, as described in its Petition, will not be subject to the jurisdiction of, or regulation by, the Commission; and (4) Customer-lessees will be allowed to become net metering customers if the customer-lessees meet the requirements of Rule 25-6.065, F.A.C. The Commission should also state that its declaration is limited to the facts described in IGS Solar's Petition and would not apply to different, alternative facts. (Harper, Crawford)

Staff Analysis: Questions (1)-(3) of IGS Solar's Petition ask the Commission to declare that IGS Solar's solar leasing program as described in its Petition will not make IGS Solar or its customer-lessees public utilities subject to the Commission's jurisdiction under Section 366.02(1), F.S. Staff did not review any part of the Petition's proposed draft lease, which starts on page 14 of the Petition, because as the Commission stated previously in the *Sunrun*, *Vivint*, and *Tesla* orders, approving IGS Solar's draft lease does not fall within the Commission's jurisdiction. Thus, review of the lease is not necessary for the Commission's determination of the Petition.²

Rule 28-105.001, F.A.C., Purpose and Use of Declaratory Statement, provides that a 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. As the Commission declared in *Sunrun*, *Vivint*, and *Tesla*, Rule 25-6.065, F.A.C., allows leases for solar equipment without triggering the Commission's jurisdiction, so long as the lease payments do not depend on electric generation. Questions (1)-(3) of IGS Solar's Petition are virtually identical to the facts set forth in *Sunrun*'s, *Vivint*'s, and *Tesla*'s Petitions. For this reason, IGS Solar's Petition as to questions (1)-(3) should be granted affirmatively.

Question (4) of IGS Solar's Petition is unclear. IGS Solar seems to ask the Commission to state that customer-lessees, by virtue of entering into a proposed lease with IGS Solar will automatically be entitled to electrically interconnect with electric utilities and be deemed net metering customers under Rule 25-6.065, F.A.C. If that is the question asked by IGS Solar, then Question (4) of the declaratory statement should be denied because a solar lease by itself does

²Staff's analysis is limited solely to the jurisdiction question raised by the Petition, not the draft lease. Provisions in IGS Solar's draft lease that involve statutes and rules that are outside our jurisdiction are not relevant and were not considered in staff's 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 the Commission's 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."

not entitle a customer to electrically interconnect with electric utilities and net meter. Instead, the Commission should declare that customer-lessees will be allowed to become net metering customers if the customer-lessees meet all of the requirements of Rule 25-6.065, F.A.C.

Conclusion

For the reasons set forth above, staff recommends that the Commission grant IGS Solar's Petition for Declaratory Statement and declare: (1) IGS Solar's proposed residential solar equipment lease, as described in its Petition, will not be deemed to constitute the sale of electricity; (2) IGS Solar will not be deemed a public utility under Florida law by virtue of leasing its residential solar equipment to residential consumer-lessees in Florida as described in its Petition; (3) Florida customer-lessees who enter into IGS Solar's proposed residential solar equipment lease, as described in its Petition, will not be subject to the jurisdiction of, or regulation by, the Commission; and (4) Customer lessees will be allowed to become net metering customers if the customer-lessees meet the requirements of Rule 25-6.065, F.A.C. The Commission should also state that its declaration is limited to the facts described in IGS Solar's Petition and would not apply to different, alternative facts. However, for those with an identical fact pattern to *Sunrun's*, *Vivint's*, *Tesla's* or IGS Solar's Petitions, these declarations have precedential significance and individual declaratory statements are not necessary.

Issue 2: Should this docket be closed?

Recommendation: Yes, if the Commission votes to either grant or deny the Petition for Declaratory Statement, the docket should be closed. (Harper)

Staff Analysis: Whether the Commission grants or denies IGS Solar's Petition, a final order will be issued. Upon issuance of the final order, the docket should be closed.