

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: September 20, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (DuVal, Cowdery) *MS ke S.M.C.*
Office of Industry Development and Market Analysis (Vogel) *CV CA*

RE: Docket No. 20190176-EI – Joint petition for approval of regulatory improvements for decentralized solar net-metering systems in Florida.

AGENDA: 10/03/19 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: 10/3/19 (30-Day Statutory Deadline)

SPECIAL INSTRUCTIONS: None

Case Background

On September 3, 2019, Achim Ginsberg-Klemmt, Chris Pierce, Darrell Prather, Geoffrey P. Dorney, Jeffrey L. Hill, John Bachmeier, J. Robert Barnes, Paul Romanoski, Terry Langlois, and Robert Winfield (collectively referred to herein as “Petitioners”) filed a Joint Petition for Approval of Regulatory Improvements for Decentralized Solar Net-Metering Systems in Florida (“Petition”). Petitioners request that the Commission take certain action relating to the interconnection and net metering of customer-owned renewable generation by electric utilities¹ in Florida. Specifically, Petitioners request that the Commission revise certain terms and requirements related to interconnection and net metering. Although not styled as such, the Petition amounts to a petition to initiate rulemaking to amend Rule 25-6.065, Florida

¹ Section 366.02, Florida Statutes, defines an “electric utility” as any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within Florida.

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Administrative Code (F.A.C.), Interconnection and Net Metering of Customer-Owned Renewable Generation.

Pursuant to Section 120.54(7)(a), Florida Statutes (F.S.), any person regulated by an agency or having substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. That section requires the Commission to either initiate rulemaking proceedings or deny the petition with a written statement of its reasons for the denial no later than 30 calendar days following the date of the filing of the petition. This recommendation addresses whether the Commission should grant the Petition. The Commission has jurisdiction pursuant to Sections 120.54(7), 350.127(2), and 366.91, F.S.

Discussion of Issues

Issue 1: Should the Commission grant Petitioners' Joint Petition for Approval of Regulatory Improvements for Decentralized Solar Net-Metering Systems in Florida?

Recommendation: No. Staff recommends that the Commission treat the filing as a petition to initiate rulemaking to amend Rule 25-6.065, F.A.C., Interconnection and Net Metering of Customer-Owned Renewable Generation. Staff further recommends that the Petition be denied. (DuVal, Cowdery, Vogel)

Staff Analysis: Although not styled as a petition to initiate rulemaking, the Petition amounts to a Section 120.54(7)(a), F.S., petition to initiate rulemaking to amend Rule 25-6.065, F.A.C. While Petitioners do not cite a specific rule, their requested action would require amending the Commission's rule on interconnection and net metering. Therefore, staff recommends that the Commission treat the filing as a petition to initiate rulemaking to amend Rule 25-6.065, F.A.C.

Applicable Law

Petition to Initiate Rulemaking

Section 120.54(7)(a), F.S., states that any person regulated by an agency or having substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. The petition is required to specify the proposed rule and action requested. Although Petitioners do not specify the rule they wish to amend, it is obvious from the Petition that they are referring to Rule 25-6.065, F.A.C., as they cite to specific language from the rule. Section 120.54(7)(a), F.S., further requires the Commission to either initiate rulemaking proceedings or deny the petition with a written statement of its reasons for denial no later than 30 days from the date the petition was filed.

Interconnection and Net Metering

Section 366.91, F.S., Renewable energy, reflects the Legislature's finding that it is in the public interest to promote the development of renewable energy resources in this state. Pursuant to Section 366.91(5), F.S., electric utilities must have standardized interconnection agreements and net metering programs for customer-owned renewable generation. That statute further requires the Commission to establish requirements related to such agreements and programs and permits the Commission to adopt rules necessary to administer the provisions of Section 366.91(5), F.S.

Customer-owned renewable generation is defined in Section 366.91(2)(b), F.S., as "an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy." Section 366.91(2)(c), F.S., defines net metering as "a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on site."

Rule 25-6.065, F.A.C., sets forth the Commission's requirements for interconnection and net metering of customer-owned renewable generation.² The purpose of the rule includes promotion

² While the bulk of Rule 25-6.065, F.A.C., applies only to Florida investor-owned electric utilities, the reporting requirements set forth in subsection (10) also apply to municipal electric utilities and rural electric cooperatives within the state.

of the development of small customer-owned renewable generation, particularly solar and wind generation, and to minimize costs of power supply to investor-owned utilities and their customers. Rule 25-6.065(4)(a), F.A.C., requires that in order to qualify for interconnection, Tier 1 customer-owned renewable generation must have a gross power rating that is less than 90% of the customer's utility distribution service rating and generate 10kW or less. Further, Rule 25-6.065(8)(e)-(g), F.A.C., provides the process by which customers may accumulate and use the energy credits produced through the use of customer-owned renewable generation.

In addition to regulating the interconnection and net metering of customer-owned renewable generation, the Commission regulates Florida electric utilities' purchase of electricity from cogenerators and small power producers. Under Section 366.051, F.S., Florida electric utilities must purchase all electricity offered for sale by a small power producer within its service area or the small power producer may sell such electricity to any other electric utility in the state. Chapter 25-17, F.A.C., contains the Commission's rules regarding small power producers and the utilities' purchase of the electricity they generate.

Petition

Petitioners assert that they operate or plan to install "solar net-metering systems" within the Commission's jurisdiction and contend that the general public should be able to operate such systems without any utility-imposed limitations. The Petition also states that Florida electric utilities' ability to benefit from exclusive service areas and from the use of utility easements on public land without just compensation should be "rescinded."³ Petitioners make three specific requests for Commission action. Each of these requests would require amending Rule 25-6.065, F.A.C.

First, Petitioners request that the Commission raise the maximum range for a Tier 1 customer's generating capacity from 10 kW to 50 kW. In support, Petitioners maintain that the 10 kW maximum is an unjustifiably strict limitation because interconnection agreements in other states' jurisdictions contain limitations for Tier 1 customers that range from 100 kW to 1,000 kW.

Second, Petitioners request that the Commission allow net metering customers or their contractors to choose the size of their net metering systems, provided that the electric power grid can support the system and the system complies with county codes and permit standards. Petitioners state that electric utilities in Florida commonly limit the size of new solar net-metering installations to the past year's electricity usage measured at a particular account. They further state that Florida Power & Light Company requires potential customers or contractors to submit technical components of their desired system in order to determine whether or not the system will be approved for interconnection. Petitioners assert that these limitations and processes unfairly prevent customers from attaining their desired system size and result in additional costs when customers wish to enlarge their systems due to increased future usage.

³ The Legislature has made a policy decision, through Chapter 366, F.S., that limiting competition in the sale of electric service is in the public interest. *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 283-84 (Fla. 1988). Changing the regulatory scheme in Chapter 366, F.S., is not within the Commission's jurisdiction. Further, the procurement or use of easements is not relevant to the Commission's implementation of Section 366.91, F.S., or to the provisions of the Commission's interconnection and net metering rule.

Third, Petitioners request that the Commission raise the minimum compensation for surplus solar electricity generated by “decentralized solar net-metering systems” to a minimum of \$0.08 per kWh. Petitioners allege that “decentralized solar electric systems” have the potential to raise “the amount of clean, regenerative electric power production” without requiring the additional land needed for utility-sized solar farms and that homeowners should be encouraged to construct “powerful decentralized solar net-metering systems in residential areas.” They further assert that these systems will avoid transmission loss due to their proximity to the consumers and will contribute to general grid resilience through the use of battery backup systems or micro-grid capable inverter systems. Accordingly, Petitioners maintain that the requested compensation is needed to encourage the production of surplus solar electricity and to reflect the actual value of the peak-power generated by those systems during the daytime.

Analysis & Conclusion

Petitioners’ first request appears to seek an amendment to the allowable range for Tier 1 customer-owned renewable generation as provided in Rule 25-6.065(4)(a), F.A.C. Petitioners do not provide any specific reasoning as to why the suggested amendment would promote the development of small customer-owned renewable generation or otherwise meet the purpose of the rule. Although Petitioners argue that other states’ jurisdictions contain limitations for Tier 1 customers that range from 100 kW to 1,000 kW, there are other state jurisdictions that limit net metering eligibility to systems that have generating capacities that are less than those provided in the Commission’s rules, and still others that do not offer net metering at all. Additionally, the rule already contains provisions for customer-owned renewable generation up to 2 MW through its Tier 2 and Tier 3 ranges.

Staff does not agree that the allowable range for Tier 1 customers should be amended. The tiers were developed to carve out different levels of customer-owned renewable generation that can be treated differently for purposes of fees, testing, interconnection studies, and insurance. Staff believes that the current allowable range for Tier 1 captures the vast majority of residential systems within the state. Moreover, customer-owned renewable generation within Florida has grown from 577 customers in 2008, when the provisions of Rule 25-6.065, F.A.C., were adopted, to 37,862 customers in 2018; the majority of which are Tier 1 customers. The increasing number of small customer-owned renewable generation indicates to staff that the purpose of the rule is being met under the current tier structure.

Petitioners’ second request appears to seek an amendment to Rule 25-6.065, F.A.C., to add a new provision that would allow net metering customers or their contractors to choose the size of their net metering systems, to be limited only by whether the electric power grid can support the system and whether the system complies with county codes and permit standards. Pursuant to the rule, customer-owned renewable generation is limited to 2 MW. Although Petitioners maintain that industry imposed limitations unfairly prevent customers from attaining their desired net metering system size and result in additional future costs, staff does not agree that the suggested amendment would promote the development of small customer-owned renewable generation or otherwise meet the purpose of the rule. The Commission has promulgated separate rules in Chapter 25-17, F.A.C., that address electricity produced and sold by small power producers under 80MW.

Based on their arguments, it appears that Petitioners may be seeking to generate electricity at a capacity that is beyond what is currently needed to offset part or all of their individual electricity requirements. If the intent of this surplus generation is to become supply-side independent power producers by installing systems that are intended to generate in excess of customer load, Petitioners' request would be outside of the purpose of the Commission's interconnection and net metering rule. In fact, during the rulemaking proceedings to amend Rule 25-6.065, F.A.C., staff stated that certain provisions of the rule were meant to ensure that customers will not intentionally oversize their systems for the primary purpose of selling energy to the utility or becoming an independent power producer.⁴

Petitioners' third request is "to raise the minimum compensation for surplus solar electricity generated by decentralized solar net-metering systems to a minimum of \$0.08 per KWh [sic]." This request appears to seek an amendment to Rule 25-6.065(8)(f) and (g), F.A.C., that would change the amount by which unused credits are purchased by the customer's utility at the end of the year or when a customer leaves the system. Rule 25-6.065(8)(f) and (g), F.A.C., currently reflects that this amount should be calculated "at an average annual rate based on the investor-owned utility's COG-1, as-available energy tariff." Staff believes that the current amount is appropriate because it is consistent with the rate paid by investor-owned utilities to all other power producers within the state.

Petitioners' argue that encouraging homeowners to construct "powerful decentralized solar net-metering systems in residential areas" is in the public interest. As discussed earlier, customer-owned renewable generation has substantially increased under the current rule. Therefore, staff believes the purpose of the rule is being met using the current amount by which unused credits are purchased by the customer's utility at the end of the year or when a customer leaves the system. If, by reference to "powerful decentralized solar net-metering systems," Petitioners intend to generate electricity at a capacity that is beyond what is needed to offset part or all of their individual electricity requirements, their requested relief is outside of the scope and purpose of the Commission's interconnection and net metering rule. If the purpose of this Petition is to allow individuals to generate and sell electricity on a wholesale basis, the provisions of Section 366.051, F.S., concerning cogeneration and small power production, and Chapter 25-17, F.A.C., would apply to such generation, not the Commission's interconnection and net metering rule.

Based on the foregoing, staff believes it is not necessary to open the interconnection and net metering rule for rulemaking at this time. Accordingly, staff recommends that the Commission deny the Petition for the reasons stated above.

⁴ Docket No. 20070674-EI, *In re: Proposed amendment of Rule 25-6.065, F.A.C., Interconnection and Net Metering of Customer-Owned Renewable Generation*.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed.

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.