

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: November 26, 2019

TO: Office of Commission Clerk (Teitzman)

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

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

AGENDA: 12/10/19 – Regular Agenda – Motion for Reconsideration – Oral Argument Requested – Participation is Dependent on the Commission’s Vote on Issue 1

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES None

SPECIAL INSTRUCTIONS: None

Case Background

On September 3, 2019, Achim Ginsberg-Klemmt, Christopher Pierce, Darrell Prather, Geoffrey P. Dorney, Jeffrey L. Hill, John Bachmeier, J. Robert Barnes, Paul Romanoski, Terry Langlois, and Robert Winfield filed a Joint Petition for Approval of Regulatory Improvements for Decentralized Solar Net-Metering Systems in Florida (Joint Petition). Joint Petitioners asked the Commission to take certain action relating to the interconnection and net metering of customer-owned renewable generation by electric utilities in Florida. Specifically, Joint Petitioners requested that the Commission revise certain terms and requirements related to interconnection and net metering.

On September 30, 2019, five of the Joint Petitioners, Achim Ginsberg-Klemmt, Christopher Pierce, Jeffrey L. Hill, Paul Romanoski, and Robert Winfield, filed a Memorandum in Opposition to FPSC Staff’s Recommendation to Deny the Joint Petition for Approving

Improvements for Decentralized Net-Metering Systems in Florida (Memorandum in Opposition). In addition, on October 1, 2019, Mr. Ginsberg-Klemmt and Mr. Chris E. Pierce filed Petitioners' Response Opposing Staff Recommendation to Deny (Response in Opposition). Mr. Ginsberg-Klemmt addressed the Commission at the October 3, 2019 Agenda Conference at which the Joint Petition was heard. By Order No. PSC-2019-0410-FOF-EI, issued October 10, 2019 (Final Order), the Commission ordered that the Joint Petition be treated as a petition to initiate rulemaking to amend Rule 25-6.065, Florida Administrative Code (F.A.C.), Interconnection and Net Metering of Customer-Owned Renewable Generation. Further, the Commission denied the Joint Petition.

On October 21, 2019, Mr. Ginsberg-Klemmt (Petitioner) filed a timely Motion for Reconsideration of the Final Order. Also on that date, Petitioner filed a Request for Oral Argument. On November 4, 2019, Petitioner filed a Notice of Appeal with the Florida Supreme Court. By the November 13, 2019 Order of the Florida Supreme Court, the appeal is being held in abeyance until the Commission issues and files with the Commission Clerk its order disposing of Petitioner's Motion for Reconsideration. The Commission has jurisdiction pursuant to Sections 120.54(7), 350.127(2), and 366.91, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission grant Petitioner's Request for Oral Argument?

Recommendation: No. The Commission should deny Petitioner's Request for Oral Argument. (DuVal, Cowdery)

Staff Analysis: Petitioner filed a Request for Oral Argument on his Motion for Reconsideration.¹ Petitioner states that oral argument "would provide sufficient time for the Petitioner to discuss and rebut the faulty conclusions contained in the Commission Staff's written recommendation which were merged almost verbatim into the Final Order." Petitioner requested that he be granted 15 minutes for oral argument.

Rule 25-22.0022(1), F.A.C., states that the request for oral argument must state with particularity why oral argument would aid the Commissioners in understanding and evaluating the issues to be decided. Petitioner's request for oral argument does not explain why oral argument would aid the Commission's understanding and evaluation of the issues raised in the Motion for Reconsideration.

Petitioner's Motion for Reconsideration fully sets forth the Petitioner's arguments. Staff does not believe that oral argument would aid the Commission in understanding and evaluating Petitioner's Motion for Reconsideration. Thus, staff recommends that Petitioner's Request for Oral Argument be denied.

¹ Petitioner erroneously cited Rule 25-22.022, F.A.C., as the oral argument rule. The correct citation is Rule 25-22.0022, F.A.C. Rule 25-22.0022(3), F.A.C., states that the Commission has the sole discretion to grant or deny oral argument.

Issue 2: Should the Commission grant Petitioner’s Motion for Reconsideration of the Final Order Denying Petition to Initiate Rulemaking?

Recommendation: No. Petitioner’s Motion for Reconsideration should be denied because it does not meet the required standard for a motion for reconsideration. Petitioner has failed to identify a point of fact or law that was overlooked or that the Commission failed to consider in rendering Order No. PSC-2019-0410-FOF-EI, Order Denying Petition to Initiate Rulemaking. (DuVal, Cowdery, Vogel)

Staff Analysis:

Standard of Review

The appropriate standard of review in a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Final Order. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958).

Petitioner’s Motion for Reconsideration

Petitioner asserts that he was given insufficient time to discuss and rebut the “faulty conclusions” in the staff recommendation. Petitioner states that the Commission misconstrued Joint Petitioners’ request “to allow net-metering customers or their contractors to freely choose the size of their net-metering systems providing that the existing electric grid connection supports the requested size and the requested solar system fully complies with the applicable technical standards controlled and verified by the current building permit inspection process at the County level.” Petitioner states that he agrees that net-metered solar systems should not be allowed to exceed transformer capacity, but that Florida Power & Light Company should not be allowed “to unilaterally impose arbitrary limitations on solar net-metering systems.”

The Motion for Reconsideration states that the Commission should, but is not required to, change Rule 25-6.065, F.A.C., to “mitigate negative effects” caused by the 10kW Tier 1 provision. Petitioner states that the Tier 1 threshold should be increased to 50kW because the 10 kW provision is not powerful enough to cover the needs of a larger home with electric vehicles. The Motion for Reconsideration also states that the Commission could “simply waive” the insurance requirement of one million dollars or grant a variance for all residential solar installations.² Petitioner further alleges that the core problem is “the missing enforcement and missing oversight capabilities of existing rules during the permitting process” and that Commission staff lacks technical expertise concerning net-metering.

² Rule 25-6.065(4)(a)2., F.A.C., defines Tier 1 as customer-owned renewable generation with a gross power rating of 10kW or less. That rule also defines Tier 2 as customer-owned renewable generation with a gross power rating greater than 10 kW and less than or equal to 100 kW. Pursuant to Rule 25-6.065(5)(e), F.A.C., Tier 1 customers are not required to have liability insurance and Tier 2 customers are required to have general liability insurance or sufficient guarantee and proof of self-insurance in the amount of no more than \$1 million.

Petitioner argues that the Joint Petition's request to increase minimum compensation for surplus solar electricity to a minimum of \$0.08 per kWh was a "simple request for a rate increase" that was inappropriately treated as a petition to initiate rulemaking, but if the treatment of the request as a petition to initiate rulemaking was proper, the rule should be modified. Petitioner maintains that because Rule 25-6.065(2)(a), F.A.C., defines customer-owned renewable generation as a system that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy, it follows that there exists a secondary purpose that allows customers' net-metering systems to produce surplus power based on future usage.

Analysis

Staff disagrees with Petitioner's claim that he had insufficient time to address the staff recommendation. Petitioner responded to and addressed the staff recommendation in the Memorandum in Opposition, the Response in Opposition, and at the October 3, 2019 Agenda Conference. Further, Petitioner's Motion for Reconsideration sets out in detail Petitioner's reasons for requesting reconsideration. As explained below, the Motion for Reconsideration does not cite to any point of fact or law that was overlooked or that the Commission failed to consider in rendering its decision to deny the Joint Petition. Instead, Petitioner reargues the three points raised in the Joint Petition that have already been considered by the Commission in rendering the Final Order.

Petitioner's first argument on reconsideration is that the Commission misconstrued its request in the Joint Petition for net-metering customers or their contractors to be allowed to "freely choose the size of their net-metering systems" subject to proper standards. The Motion for Reconsideration does not identify a point of fact or law that was overlooked or that the Commission failed to consider. Instead, Petitioner makes the same argument that he addressed in the Memorandum in Opposition, citing legal analysis in Docket No. 20190167-EI³ and Exhibit D.⁴ Petitioner likewise addressed this point at the October 3, 2019 Agenda Conference, specifically raising Docket No. 20190167-EI. The Final Order addressed Joint Petitioners' arguments and concluded that the Joint Petitioners' suggested amendment would not promote the development of small customer-owned renewable generation or otherwise meet the purpose of Rule 25-6.065, F.A.C.

Petitioner's second argument on reconsideration is that the 10kW Tier 1 provision of Rule 25-6.065(4)(a)2., F.A.C., should be increased to 50kW to allow more economical and less bureaucratic installation of solar systems for larger homes with electric vehicles. The Motion for Reconsideration does not identify a point of fact or law that was overlooked or failed to be considered by the Commission. Instead, Petitioner makes the same arguments that were made in the Joint Petition, the Memorandum in Opposition, the Response in Opposition, and at the October 3, 2019 Agenda Conference. The Final Order addressed the 10kW Tier 1 provision arguments and concluded that the allowable range for Tier 1 customers should not be amended.

³ Docket No. 20190167-EI is the Petition to Compel Florida Power & Light to Comply with Section 366.91, F.S., and Rule 25-6.065, F.A.C., by Floyd Gonzales and Robert Irwin.

⁴ Exhibit D to the Memorandum in Opposition, correspondence between Petitioner and Public Counsel J.R. Kelly, was provided in support of Joint Petitioners' position in that memorandum that the "Commission currently allows and encourages utility companies like Florida Power & Light to enact and enforce their own rules based on their corporate policies."

Likewise, the Motion for Reconsideration does not allege that the Commission overlooked or failed to consider any facts or law concerning insurance requirements, rule enforcement, or staff expertise. Further, the Final Order does not address these points because the Joint Petition did not ask the Commission for relief on these matters.

Petitioner's third point for reconsideration concerns surplus power production. The Motion for Reconsideration does not identify a point of fact or law that was overlooked or failed to be considered by the Commission. The Joint Petition argued that "compensation for surplus solar electricity generated by decentralized solar net-metering systems" should be increased to a minimum of \$0.08 per kWh. Although Petitioner makes a general statement that this was a "simple request" for a rate increase and it was not appropriate to treat this request as a petition to initiate rulemaking, this argument was not raised in the Joint Petition, Memorandum in Opposition, Response in Opposition, or at the October 3, 2019 Agenda Conference. The Motion for Reconsideration's general argument that increased compensation is needed to encourage the production of surplus solar electricity reargues the same points raised in the Joint Petition and in the Response in Opposition. The Final Order addressed the issue of amending Rule 25-6.065(8)(f) and (g), F.A.C., to change the amount by which unused credits are purchased by a utility and concluded that the current amount is appropriate because it is consistent with the rate paid by investor-owned utilities to all other power producers in Florida.

Finally, the Motion for Reconsideration does not identify a point of fact or law that was overlooked or failed to be considered by the Commission in rendering the Final Order's conclusion that if the purpose of the Joint Petition was to allow individuals to generate and sell electricity on a wholesale basis, the request was outside the scope of Rule 25-6.065, F.A.C. Instead, Petitioner's argument that the Rule 25-6.065(2)(a), F.A.C., definition of customer-owned renewable generation should be read to allow customers to produce surplus power based on future usage, is the same argument that was made in the Joint Petition, the Response in Opposition, and at the October 3, 2019 Agenda Conference, and is repeated almost verbatim from the Memorandum in Opposition. The Commission considered this argument and rejected it.

Conclusion

Staff recommends that Petitioner's Motion for Reconsideration be denied because it does not meet the required standard for a motion for reconsideration. Petitioner has failed to identify a point of fact or law that was overlooked or that the Commission failed to consider in rendering Order No. PSC-2019-0410-FOF-EI, Order Denying Petition to Initiate Rulemaking.

Issue 3: Should this docket be closed?

Recommendation: No, this docket should remain open in litigation status until the pending appeal is resolved by the Court. (DuVal, Cowdery)

Staff Analysis: This docket should remain open in litigation status until the pending appeal is resolved by the Court.