

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to Compel Florida Power ) Docket No: 20190167-EI  
& Light to Comply With Fla. Stat. §366.91 )  
and Rule 25-6.065 ) Filed: January 6th, 2020  
\_\_\_\_\_ )

**PETITION TO INTERVENE**

Pursuant to sections §120.569, §120.57, Florida Statutes, and Rule 28-106.205, Florida Administrative Code, Achim Ginsberg-Klemmt (“Petitioner”) hereby petitions for leave to intervene in the above proceedings, and in support thereof states:

**I. AGENCY AFFECTED**

1. The name and address of the agency affected by this petition is:  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**II. IDENTIFICATION OF THE INTERVENOR**

2. The name and address of the Petitioner is:  
Achim Ginsberg-Klemmt  
3364 Tanglewood Drive  
34239 Sarasota FL 34239

**III. RECEIPT OF NOTICE OF AGENCY’S PROPOSED ACTION**

3. Petitioner received notice of the Florida Public Service Commission’s (“Commission”) action by email from the Commission Clerk on January 2<sup>nd</sup> 2020.

#### **IV. THE PETITIONER'S SUBSTANTIAL INTERESTS**

4. Petitioner participated in Docket No. 20190167-EI, the "*Joint Petition for Approval of Regulatory Improvements for decentralized Solar Net-Metering Systems in Florida*" and currently operates two rooftop solar net-metering systems in Sarasota County, Florida.

5. Petitioner applied for the permission to operate a third solar net-metering system and was denied to operate this system due to the same questionable corporate doctrine which is based on 115% Past Power Consumption. The Gonzales/Irwin net-metering application in this case is affected by the same questionable corporate guideline or doctrine.

#### **V. STATEMENT OF AFFECTED INTERESTS**

6. In the above-captioned proceedings, the Commission will determine the legality and rule compliance of FPL's corporate 115% Past Power Consumption doctrine.

7. The Commission will issue an opinion if the term "*a customer's electricity requirements*" used in Florida Statute §366.91 2b) can be equated with FPL's corporate doctrine of "115% Past Power Consumption".

8. The Commission will also determine the legality and rule compliance of FPL's current practice to substantially deviate from the above mentioned 115% Past Power Consumption doctrine by approving or denying net-metering applications based on FPL Staff's arbitrary discretion.

9. At the same time, the Commission will vote in this case if the Commission itself is authorized to delegate regulatory and discretionary powers to deny or approve net-metering systems to Florida Power & Light.

#### **VI. STATEMENT OF DISPUTED ISSUES OF FACT**

10. On October 21<sup>st</sup> 2019 FPL council Mr. Ken Rubin informed Mr. Gonzales' & Mr Irwin's council Mr. Kyle Egger that FPL Staff had approved the disputed net-metering application: "*I have been advised that based upon the past 3 months' electricity usage, including the most recent billing cycle that ends today, October 21, 2019, your client's usage now falls within the 115% guideline and his application for interconnection as a tier 2 net metered customer may now proceed*"

through the process for approval.” (See <http://www.floridapsc.com/library/filings/2019/10731-2019/10731-2019.pdf> Page 4)

11. On November 15th 2019, Gonzales-Irwin produced FPL power bills showing the monthly electric power consumption from October 2018 to September 2019. No power bill or electric consumption data was provided to the Commission’s Staff for October 2019. (See <http://www.floridapsc.com/library/filings/2019/10945-2019/10945-2019.pdf> Page 30)

12. Commission Staff never received sufficient data in response to the document request filed on October 4<sup>th</sup> 2019 to verify if Defendant FPL’s assertions concerning the compliance with the corporate 115% power consumption doctrine are factual or not. The Commission should therefore disregard the flawed Staff recommendation which is not based on factual data.

13. On January 2<sup>nd</sup> 2020, Commission Staff denied Mr Gonzales’ & Mr Irwin’s request for a monetary refund stating “..FPL does permit net metering of 115% of consumption because each unique system is assessed on a range of values using photovoltaic watts resulting in some fluctuation.<sup>2</sup> Staff recommends that this is a reasonable implementation of Rule 25-6.065(2)(c), F.A.C. “

14. As a private corporation, Florida Power & Light should not be authorized to permit or deny anything. Florida Power & Light’s actions should be governed and strictly regulated by the Florida Public Service Commission’s precise directives. No Florida rule or statute authorizes this private corporation to act as a regulatory agency and no Florida rule or statute authorizes the Public Service Commission to delegate their regulatory powers and discretionary authority affecting the denial or approval of net-metering applications to a private corporation.

15. On October 4<sup>th</sup> 2019, Commission Staff requested Defendant Florida Power & Light to produce the following:

*1.a. Please provide each algorithm used to address interconnection applications, if any.*

*2. If an interconnection application is denied, is there an appeals process?*

*2.b If yes, please identify the standards that apply at each stage of the review process*

*2.c If not, why not?*

16. Defendant Florida Power & Light never provided any of the algorithms used by the FPL online permitting web-portal and the Commission Staff never complained that the Defendant omitted to produce the requested algorithms.

17. Commission Staff does not have the necessary mathematical basis to determine if FPL's automatic net-metering denial algorithm actually complies with FPL's "115%" corporate guideline.

18. Defendant Florida Power & Light provided no answers in response to Commission Staff's questions regarding the existing appeal process or the lack thereof.

19. Commission Staff did not compel Defendant Florida Power & Light to provide the missing responses regarding information request 2., 2.b. & 2.c.

#### **VII. STATEMENT OF ULTIMATE LEGAL FACTS ALLEGED**

20. Petitioner's interest as a small multi-account operator of two and aspiring operator of at least ten solar net-metering systems in Florida is sufficient to warrant intervention. The nature of Petitioner's interest in having the Commission verify the compliance of Florida Power & Light's net-metering approval procedures with the current rules and statutes are exactly the interests that this proceeding is designed to protect. Accordingly, Petitioner is entitled to intervene in this docket.

#### **VIII. STATUTES AND RULES THAT JUSTIFYING THE RELIEF REQUESTED**

21. The rules and statutes that entitle Petitioner to intervene and participate in this case include, but are not limited to the following:

- a. Rule 25-22.039 F.A.C.
- b. Rule 28-106.201, F.A.C.
- c. Rule 28-106.205, F.A.C.
- d. Florida Statute §120.569
- e. Florida Statute §120.57
- f. Florida Statute §366.80-.83

## **VII. RELIEF SOUGHT**

22. Petitioner is requesting intervenor status to request the Commission to continue the scheduled public hearing of this case for January 14<sup>th</sup> 2020. Petitioner would otherwise not have sufficient time to rectify the Commission Staff's oversights concerning the missing responses to Staff's October 4<sup>th</sup> 2019 information request. Petitioner and the general public have the right to know and verify in person how the active algorithms used by Defendant Florida Power & Light arrive at pass/fail decisions which are affecting their solar systems. Defendant FPL will be asked to provide copies of the relevant computer code sections which automatically determine the denial or approval of all net-metering systems in FPL's service area.

23. Pursuant to Rule 28-106.204(3) F.A.C., Petitioner has conferred with the parties regarding this intervention. FPL has objected instantaneously against Petitioner's request to intervene while counsel for Mr Gonzales and Mr Irwin did not respond to Petitioner's inquiries.

Respectfully submitted this 6th of January 2020



Achim Ginsberg-Klemmt

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing *Petition to Intervene* has been furnished via electronic mail to Mr Kenneth M. Rubin Esq., [ken.rubin@fpl.com](mailto:ken.rubin@fpl.com), counsel for FPL, and to Mr Kyle P. Egger [kyle.egger@nearingfirm.com](mailto:kyle.egger@nearingfirm.com), counsel for Mr Floyd Gonzales & Mr Robert Irwin on this 6th day of January 2020.

Respectfully submitted,

/s/ Achim Ginsberg-Klemmt

3364 Tanglewood Drive

Sarasota FL, 34239

Email: [achim@srqus.com](mailto:achim@srqus.com)