

**Jacob Veaghn**

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**From:** Jacob Veaghn on behalf of Records Clerk  
**Sent:** Thursday, September 24, 2020 2:18 PM  
**To:** 'Terrell Arline'  
**Cc:** Consumer Contact  
**Subject:** RE: Letter regarding Duke Energy Archer Solar Facility

Good afternoon, Terrell K. Arline

We will be placing your comments below in consumer correspondence in Docket No. 20200153 and forwarding your comments to the Office of Consumer Assistance and Outreach.

**Jacob Veaghn**

Commission Deputy Clerk I  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
[Jacob.Veaghn@psc.state.fl.us](mailto:Jacob.Veaghn@psc.state.fl.us)  
850.413.6656

**From:** Terrell Arline <tkarlinelaw@gmail.com>  
**Sent:** Thursday, September 24, 2020 10:09 AM  
**To:** Records Clerk <CLERK@PSC.STATE.FL.US>  
**Cc:** Corbin Hanson <cfhanson@alachuacounty.us>; Vinette Godelia <VinetteG@hgslaw.com>; Dianne.Triplett@duke-energy.com; Matt.Bernier@duke-energy.com  
**Subject:** Letter regarding Duke Energy Archer Solar Facility

Hello Mr. Teitzman,

Attached is correspondence regarding Duke Energy Florida, LLC's Petition for a limited proceeding to approve third solar base rate adjustment. My clients are residents who are opposed to the Archer Solar Facility that is part of the request for rate increase.

Thank you.

Terrell K. Arline  
Office: (850) 262-7928  
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1819 Tamiami Drive  
Tallahassee, FL 32301  
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Terrell K. Arline  
Attorney at Law

September 24, 2020  
(Via Electronic Mail)

Mr. Adam Teitzman, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Duke Energy Florida, LLC's Petition for a limited proceeding to approve third solar base rate adjustment.

Dear Mr. Teitzman,

I represent the Saint Peter-Saint Paul Community Council, Inc. and its members, including the following people and their family who live near Duke Energy's proposed Archer Solar Project: Betty Durdley, James McGee and Susan McGee, Cindy Wonders, Connie Lee, Trustee, December and Lee McSherry and the McSherry Farms, Ltd., Delores Clyde Young, Gerie R. Crawford, Trustee, Gerry Williams, Rosa Rutledge, Trustee and Michelle Rutledge, Peggy Hood, Sarah Beachboard, Eddie and Nora Nattiel, and the Mariah Nattiel heirs. Their family homesteads are located either within ½ mile of the site or are located on Pecan Road or Black Angus Road which border the site; the Nattiels own land along the area proposed for a new powerline and substation.

On May 29, 2020, Duke Energy Florida, LLC filed papers to seek approval for a rate increase from the Florida Public Service Commission ("PSC"). One of the solar facilities it claimed as a basis for the rate increase was a 74.9 MW Archer Project, which Duke claimed in its filing "will come into service in the fourth quarter of 2021."

This statement was quite upsetting to my clients when they learned out about it as they were organizing the community to oppose issuance of the special exception permit to First Solar for the solar facility by Alachua County. You should know that the Alachua County Planning Commission voted to recommend denial of the permit on August 19, 2020. The application for the special exception, which is a legal condition precedent to construction of the solar facility is scheduled to be heard by

the Alachua County Board of County Commissioners on September 29, 2020. So, a permit had not even been issued for the Archer Solar Facility when Duke filed its paperwork with the PSC.

One of the principle objections my clients raise against the proposed Archer Solar facility is that it violates the principle of environmental justice. Policy 5.2.2 of the Institutional Policies contained in the County's Comprehensive Plan creates a special land use policy for institutional land uses that Duke Energy must meet to build the Solar Facility. It states:

*“Institutional facilities shall be designed and located for integration into the surrounding community. Land use decisions concerning location of institutional uses **shall take into consideration environmental justice.**”*

(Emphasis added.) There are other policies requiring “*compatibility*” between uses.

The PSC should know that the area surrounding the site where the Archer Solar Facility is proposed to be constructed goes back to the time after the Civil War when former slaves and freed persons moved to this area to live on small farms and homesteads. In fact, we believe the very site of the proposed Solar Facility was once contained in a plantation called Cottonwood that was owned by the Yulee family. Many of these old lots continue to this day, and some are still owned by family members of the former slaves and freed people, including specifically the Nattiel family.

Unfortunately, First Solar, which is the applicant for Duke Energy failed to even mention this fact to the County, nor did its consultants acknowledge that the surrounding community was a historic, African American community. When prodded about this fact, First Solar actually denied that the site was contained within the former cotton plantation.

For Duke to presume that the project “will come into service in the fourth quarter of 2021” is offensive to my clients. It also unfairly pressures Alachua County to approve the special exception. It is a type of environmental injustice to totally ignore the fact that this site is contained within a historic, African American community and to presume that the community will just have to live with a 600-acre solar facility because Duke Energy wishes it so.

Attached is my letter to the Alachua County Board of County Commissioners setting forth my clients' strenuous objection to the approval of the Archer Solar Facility, which as of this moment **has not been approved** by Alachua County. Please make a copy of this letter available to the members of the PSC as you deem appropriate.

Sincerely,



Terrell K. Arline

Copy:

Clients

Dianne M. Triplett, Deputy General Counsel

Matthew R. Bernier, Associate General Counsel

Vinette D. Godelia, Esquire

Patrice Boyce, Esquire

Corbin Hanson, Esquire

Terrell K. Arline  
Attorney at Law

September 23, 2020  
(via electronic mail)

Alachua County Board of County Commissioners  
c/o Gerald L. Brewington, Senior Planner  
Dept. of Growth Management  
Office of Planning and Development  
Administration Annex  
10 S.W. Second Avenue, 3<sup>rd</sup> Floor  
Gainesville, FL 32601

Re: Zoning Application #ZOX-01-20 Archer Solar Project

Hello:

I represent the Saint Peter-Saint Paul Community Council, Inc. and its members, including the following people and their family who live near the proposed Archer Solar Project: Betty Durdley, James McGee and Susan McGee, Cindy Wonders, Connie Lee, Trustee, December and Lee McSherry and the McSherry Farms, Ltd., Delores Clyde Young, Gerie R. Crawford, Trustee, Gerry Williams, Rosa Rutledge, Trustee and Michelle Rutledge, Peggy Hood, Sarah Beachboard, Eddie and Nora Nattiel, and the Mariah Nattiel heirs. Their family homesteads are either within ½ mile of the site or are located on Pecan Road or Black Angus Road; the Nattiels own land along the area proposed for the new powerline and substation.

To begin, please understand that my clients desire to participate directly as a party in any quasi-judicial public hearing held on this project. Many of them have previously submitted comments to the County on this proposal, which comments should be included in the record. Also, the Commission should know that we previously requested that this matter be postponed until the pandemic is over so that

my clients may attend the public hearings in person. Unfortunately, the County and the applicant have decided to move forward anyway with a digital, “virtual” quasi-judicial hearing. We understand the County will set up a video conference room in Gainesville for people to attend. I have told my clients about this “accommodation,” but many of them have advised that due to their age or health concerns, they have elected to attempt to participate online or on the phone. Some had difficulty communicating during the Planning Commission meeting and could not request party status. Without waiving our objections to holding this public hearing now during the pandemic, online and not in person, we submit the following comments on the proposed special exception for the Archer Solar Facility.

First, my clients have standing to object to the project as adversely affected persons. Each either lives, or their family lives, or they own land, adjacent to the site of the development, and they will suffer direct adverse impacts to property values, their quality of life, threats to groundwater, and negative impacts to environmental resources. Also, the Saint Peter-Saint Paul Community Council, Inc. was specifically organized to represent the interests of the historic, African American community that surrounds the site of the proposed Solar Facility. The Council and its members will be directly and adversely affected by its construction and operation of the Solar Facility.

My clients oppose Zoning Application #ZOX-01-20 for Archer Solar Project and request that the Alachua County Board of County Commissioners (“Commission”) deny the request for the special exception for the following reasons, which are backed up by the testimony and evidence that has been previously submitted and which may be submitted by my clients and members of the Community Council at the final hearing on September 29, 2020.

Inconsistency with the Alachua County Comprehensive Plan (“Plan”) and Unified Land Development Code (“ULDC”). The special exception for the Archer Solar Project is not consistent with the Plan and the ULDC. The applicant submits that the project is authorized within the Rural Agriculture land use category and Agricultural zoning category because the Solar Facility constitutes an “*institutional use,*” which is allowed as a “*special exception.*” Accepting for the moment the logic that the solar project is an “*institutional use,*” clearly, that alone does not justify approval. The proposed development of the “*institutional use*” must still be consistent with all other applicable provisions of the Plan and ULDC.

We submit that the proposed Solar Project is not consistent with the following provisions of the Plan.

Principle 1 of the Future Land Use Element states:

*“Promote sustainable land development that provides for a balance of economic opportunity, social equity **including environmental justice,** and protection of the natural environment.”*

(See FLUE at 5, emphasis added.)

Policy 5.2.2 of the Institutional Policies in the Plan creates a special land use policy for institutional land uses and states:

*“**Institutional facilities shall be designed and located** for integration into the surrounding community. Land use decisions concerning location of **institutional uses shall take into consideration environmental justice.**”*

(See FLUE at 78 emphasis added.)

The Plan defines the terms “*environmental justice*” as follows:

*“**No group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the cumulative negative social or environmental consequences resulting from land use decisions.**”*



(See FLUE at page 123.)

The applicant claims that the proposed solar array constitutes “*energy generating facilities*” under FLUE Policy 5.1.2. Presumably, its argument is that the solar project is a “*Public utility*” under FLUE Policy 5.1.2(c). We can also assume the applicant reads FLUE Policy 5.5 to include an “*energy generation and distribution facility*” as a “*public utility.*” Assuming this argument is correct for the moment, which for the record **we do not believe the applicant is a “public utility,”** to allow an “**energy generation and distribution facility**” to be located in the heart of a historic, primarily African American community is a blatant example of the **lack of “environmental justice.”**

We recall that in recent years the County has located a landfill within the rural, African American neighborhoods of Archer, not too far from the current site. Other industrial uses have been proposed for the Archer community, which fortunately were not constructed. This Solar Facility is but one more such incompatible land use. Given that the 643-acre parcel will serve Duke Energy’s entire system, we have urged it to find another location in Alachua County and not force this on a rural community of color. You might know that Duke Energy has assumed in filings with the Florida Public Service Commission (“PSC”) in May and in newspapers as recent as June that the Archer Solar project is a done deal. This false assumption by the utility unfairly puts the County Commission on the spot. More importantly, it is seen by my clients as further evidence that the system does not care about them. It is no wonder that they do not trust the promises and representations of these big, nationwide corporations. Their plea to you, their elected officials, is that the proposed Solar Facility be built somewhere else in Alachua County.

As my clients have stated and will testify at the hearing, the land and areas surrounding the site where the Solar Facility is proposed go back to the time after the Civil War when former slaves and freed persons moved to this area to live on small farms.<sup>1</sup> In fact, this area was once contained in a plantation called Cottonwood, which was owned by the Yulee family.<sup>2</sup> Many of these old lots continue to this day, and some are still owned by family members of the former slaves and freed people, including specifically the Nattiel family.

While First Solar's "Cultural Resource Assessment Survey" failed to even mention the plantation and the company's representatives actually told the Planning Commission that the site is not located within the area of the former plantation, our review of the public land records shows to the contrary. The section of land which is proposed for the site of the proposed solar facility was formerly owned by the Yulee family, which operated the plantation. This evidence will be provided to the Commission. The fact that First Solar wants to evade this issue tells volumes.

More to the point, my clients and their experts will testify at the hearing about this important historic neighborhood, and demonstrate that it should be protected, not destroyed with the development of a solar "*energy generation and distribution center.*"

Based on this, we believe that the Commission will come believe, that while this Solar Project may be a "good" land use, there is no doubt that locating it in the heart of a historic, African American community is the "wrong place" to put it.

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<sup>1</sup> See, Katherine M. Padula, "Re-Placing the Plantation Landscape at Yulee's Margarita Plantation," University of South Florida (Oct. 2017), which is incorporated herein by reference.

<sup>2</sup> See, <http://www.explorehistoricalachuacounty.com/location/david-yulee-and-cotton-wood-plantation>, which is incorporated herein by reference.

The project also violates FLUE Policy 5.2.1(h), which requires that institutional uses approved by special use permits demonstrate:

**“Preservation and strengthening of community and neighborhood character through design.”**

(FLUE at 78 emphasis added.)

We would also cite to Policy 5.2.1(d), which requires:

**“Compatibility of the scale and intensity of the use in relationship to surrounding uses, taking into account impacts such as, noise, lighting, visual effect, traffic generation, and odors.”**

(FLUE at 78 emphasis added.)

The construction and operation of over six hundred plus (600+) acres of solar panels cannot be said to **preserve** or **strengthen** the community character of this area. The huge solar project is, in fact, inconsistent with the community character. It will encourage the dissolution of the community over time as the external effects of the project and its long-term negative impacts on property values come to be. Much was said by staff and the applicant about other solar facilities in Alachua County. However, as demonstrated by the Applicant’s own appraiser, Kirkland, 41.58% of the land surrounding the Archer site is “residential,” where only 5% of the land around the Hawthorne site is residential. Thus, to compare them is simply not fair.

In other parts of the state, once a solar development is in place, or even planned, adjacent landowners are motivated to switch land use from agriculture to solar. Apparently, this has occurred near a solar array already constructed in Alachua County. The point is, the historic African American community of Saint Peter and Saint Paul will not be “strengthened” by this project, rather it will be weakened over time as existing land uses convert from farms and homesteads to solar arrays or simply wither away.

We also believe that the solar energy facility is not “*compatible*” with the large lot single family homes and small farms located on all sides of the facility. The Community Planning Act at Section 163.3164(9), Florida Statutes defines the term “*compatibility*” as follows:

(9) “*Compatibility*” means a condition in which **land uses** or conditions **can coexist** in relative proximity to each other in a stable fashion over time **such that no use or condition is unduly negatively impacted** directly or indirectly by another use or condition.

(Emphasis added.)

As discussed above, the Solar Facility will negatively impact the surrounding residential homesteads and small farms. The proposed land use is totally different from the surrounding land uses. Not only is the place where First Solar wants to construct the Solar Project a historic, African American community, it is also a farming community. The area is designated on the Future Land Use Map as Rural Agriculture and on the zoning map as Agriculture. The area is composed of small farms, and homesteads with some on-site farming activities. There have been hay and cattle operations here for years, currently farming takes place on lands adjacent to the site.

Rural agricultural activities are to be “*protected*” under the Plan. Objective 6.0 is entitled “*Rural and Agricultural Policies.*” Objective 6.1 states:

**Rural and agricultural areas shall be protected** in a manner consistent with the **retention of agriculture**, open space, and rural character, and the preservation of environmentally sensitive areas, and efficient use of public services and facilities.

(See, FLUM at 83, emphasis added.)

There is evidence that solar arrays reduce land values. A recent study by the University of Texas’ LBJ School of Public Affairs entitled “*An Exploration of Property-Value Impacts Near Utility-Scale Solar Installations*” shows property values will decrease up to 3 miles of a 120 mega-watt (MW) size solar power plant.<sup>3</sup> While the proposed solar power plant in Archer is 74.9 MW, we would still expect it to cause a decrease in property values as demonstrated by this report. Additionally, the researchers who did the report surveyed 37 city and county assessors across the country who had at least one solar site in their jurisdiction. That survey showed that houses within 100 feet take the biggest hit to home value — sometimes up to 30%. It is understandable that if land values fall, at some point this takes with it the ability of the farmer to succeed.

Notably, this report also speaks to the concerns raised above about environmental justice; the authors wrote:

While not definitive, these findings **raise preliminary concerns regarding equity** in the locating of utility-scale solar. Our analyses suggest that the largest **utility-scale solar facilities are most likely to be located in areas where residents earn lower incomes** than the national average.

(Id. at 10, emphasis added.) Some of my clients are small farmers. They will appear at the hearing and explain that there will be adverse impacts to farming if this special exception for the Solar Facility is approved.

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<sup>3</sup> See, [https://emp.lbl.gov/sites/default/files/propertyvalue\\_impacts\\_near\\_utility-scale\\_solar\\_installations.pdf](https://emp.lbl.gov/sites/default/files/propertyvalue_impacts_near_utility-scale_solar_installations.pdf), which is incorporated herein by reference.

While the Plan's Energy Element does discuss solar, it is mostly to encourage roof top solar panels, not large solar arrays. There is also a recognition in Policy 3.2.1 that from an energy standpoint the County should:

**Promote retention of sustainable agriculture** *and conservation land uses that serve as stable carbon sinks.*

(Emphasis added.) **Clearing the land which is currently in silviculture to “plant” solar panels in place of the trees is hardly a way to sustain agriculture.** To locate the solar array in an area of small farms, as we explained above, will not “*promote retention*” of such farms. On the contrary, it will further their demise over time.

Finally, we would recognize that the Energy Element encourages the development of “*renewable energy*,” and while it specifically mentions “*solar*” this is stated in the context that the “*energy*” being produced by the solar system would be **used “by county residents, businesses and agricultural operations.”** (See Objective 7.2, FLUM at 423, emphasis added.) While First Solar has claimed that Duke Energy will make the energy available to Clay Electric, we have not seen any proof, such as a power purchase agreement, that the solar energy produced at the site will directly benefit my clients or their community.

**The Application does not meet the criteria for approval of a special exception.** We note that the Applicant has taken the position that this solar project is an “*institutional use*,” which can only be approved on lands zoned Agriculture by “*special exception*.” It is our belief, based on the reasons set forth above, and as testified to by my clients previously and at the hearing, that the Zoning Application #ZOX-01-20 Archer Solar Project does not meet the criteria for approval as a special exception.

Section 402.113 of the ULCD requires that:

*“The board of county commissioners shall, as part of a decision to approve an application for special exception, make a finding that an application complies with both the general criteria and the review factors listed below.*

*(a) The proposed use **is consistent with the comprehensive plan and ULDC;***

*(b) The proposed use **is compatible with the existing land use pattern** and future uses designated by the comprehensive plan;*

*(c) The proposed use **shall not adversely affect the health, safety, and welfare of the public;** \*\*\**

For the reasons discussed previously in this letter, it is our contention that the Applicant has not met these criteria for issuance of the special exception. Additionally, this provision of the ULDC requires that the applicant prove that “Satisfactory provisions and arrangements have been made concerning” a list of specific concerns. (See ULDC Section 402.113(d)(1-10.) My clients will testify that many of these specific elements have not been met.

I have attempted here to focus on the land use arguments against approval of the Solar Project to provide the Commission a legitimate way to deny the special exception for Zoning Application #ZOX-01-20 Archer Solar Project. My clients have filed written evidence and will present testimony directed to the impact of the solar facility on their historic community, environmental justice, the loss of property values, sinkholes, chemical contamination, environmental impacts, farming, and other concerns, which shall supplement this letter and the record before the County on this matter.

To conclude, on behalf of my clients and the Saint Peter-Saint Paul Community Council, Inc. and its members, I humbly request that the Alachua County Board of County Commissioners vote to deny the solar project, ZOX 01-20.

Sincerely,



Terrell K. Arline

Cc: Clients  
Sylvia E. Torres, County Attorney  
Corbin Hanson, Senior Assistant County Attorney  
Patrice Boyes, Esquire