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Via e-mail to LTan@psc.state.fl.us

June 23, 2015

Lee Eng Tan, Senior Attorney
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399

Re: Solar Energy in Florida- Request for Comments: Comments of The Alliance for Solar Choice

Dear Ms. Lee Eng Tan:

On behalf of The Alliance for Solar Choice ("TASC"), I appreciate the opportunity to submit the attached comments for Staff's consideration in gathering information related to the development of solar technologies in Florida. Please do not hesitate to contact me if you have any questions regarding this submission.

With best regards,

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Enclosures

COMMENTS OF THE ALLIANCE FOR SOLAR CHOICE ON STAFF'S REQUEST FOR COMMENTS ON SOLAR ENERGY IN FLORIDA

The Alliance for Solar Choice ("TASC") appreciates the opportunity to submit these comments in response to the Florida Public Service Commission ("PSC") Staff's request for comments on demand-side and supply-side policies and programs to support the development of solar technologies in Florida. While the call of Staff's request is quite broad, TASC limits its comments here to express its support for the continuation of state policies regarding net metering of customer-sited renewable energy systems, as these policies have set the groundwork necessary to support long-term, sustainable growth of the customer-sited solar market in Florida.

TASC leads advocacy across the country for the rooftop solar industry. Founded by the largest rooftop solar companies in the United States, TASC represents the vast majority of the rooftop solar market nationwide. Its members include Demeter Power, Silevo, SolarCity, Solar Universe, Sunrun, Verengo, and ZEP.

INTRODUCTION

The future of solar energy in Florida, and the ultimate size of the market, is going to be cast by demand-side renewable energy systems. While there is certainly a role for utility-scale solar in utilities' generation portfolios, and as a procurement option, the best path toward a sustainable market for solar will follow consumer preferences and respect

customer choices to exercise control over how they consume electricity from the grid. As the solar market in Florida develops, TASC suggests that the most efficient and sustainable path to reach Florida's immense solar potential is through policies that enable customer-driven adoption of solar. This path is one that leverages private investment to further state goals and provides (in the long term) for market-based solutions to state policy priorities. Such an approach does not rest on government mandates or the setting of specific demand-side goals for these resources.

Net metering is unquestionably the dominant policy across the United States for creating a customer-driven market for solar energy. As of the date of these comments, 44 states and the District of Columbia have statewide net metering policies, with Florida falling in the middle range of these states in terms of best practices.[1] While net metering alone has not always been enough to guarantee solar market success,[2] net metering is the foundation upon which a customer-focused solar market is always built. In Florida, the existing net metering policies are strong and will provide a good foundation for the market to flourish once other factors appropriately align to create the right market conditions.

Indeed, many factors affecting market development are beyond the control and the jurisdiction of the PSC. But no single factor is more important than the continuing viability of a state's net metering policies. The PSC has sufficient authority and

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1 According to *Freeing the Grid*, an annual publication that grades state interconnection and net metering policies according to objective policy criteria, Florida earns a solid "B" grade for its net metering rules. This suggests that Florida has adopted best practices for at least several of the grading categories. *Freeing the Grid* is available at *www.freeingthegrid.org*.

2 There are a number of factors that impact solar uptake in any given state: tax policy, permitting costs, costs of labor, and competition in the market for solar services (including the availability of third-party financing and ownership models).

jurisdiction to ensure that net metering continues to provide the strong foundation for solar market growth in the state.

NET METERING IS THE PSC's PREFERRED POLICY TOOL TO SUPPORT DEMAND-SIDE RENEWABLES.

Florida law and policy favors the increased use of demand-side renewable energy systems. A demand-side renewable energy system is defined as "a system located on a customer's premises generating thermal or electric energy using Florida renewable energy resources and primarily intended to offset all or part of the customer's electricity requirements provided such system does not exceed 2 megawatts."[3] With amendments to the Florida Energy Efficiency and Conservation Act ("FEECA") effective in 2009, the Legislature specifically required the PSC to consider and set goals for encouraging the development of demand-side renewable energy systems. Prior to 2009, the FEECA statute encouraged the use of cogeneration and small power production for reducing growth rates of weather-sensitive peaks and reducing consumption. The Legislature's FEECA amendments refocused the means of achieving these objectives to demand-side renewable energy systems. In implementing these changes, the PSC considered solar rebates and incentives as a mechanism to further the demand-side renewable objectives, but found that only a limited pilot program was prudent, given the concerns around cost-effectiveness of the solar rebate programs.[4]

Despite finding a limited solar rebate program to be reasonable in the 2009 FEECA Order, the PSC found in 2014 that net metering is an appropriate means to

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[3] Fla. Stat. § 366.82(1)(b).

[4] PSC Order No. PSC-09-0855-FOF-EG.

further the purposes of FEECA to encourage demand-side renewable energy systems and, therefore, pursuing direct solar incentives may not be necessary.

> "Each of the IOUs should continue to implement the provisions of Rule 25-6.065, F.A.C., Interconnection and Net Metering of Customer-Owned Renewable Generation. The rule is an appropriate means to encourage the development of demand-side renewable energy, as it expedites the interconnection of customer-owned renwable energy systems and benefits participating customers through net metering."[5]

TASC agrees that the pairing of net metering with demand-side renewable objectives is reasonable, as the eligibility definition for net metering tracks closely with the definition of demand-side renewable energy systems.[6] TASC agrees with the PSC's 2014 FEECA Order that net metering is a means of supporting demand-side renewable goals, but notes that increased reliance on this policy tool makes it imperative for the PSC to maintain its fair treatment of net-metered customers, now and into the future.

TASC recognizes that this off-docket process is the first step in helping the PSC consider the most appropriate path forward, as it concerns programs that support both demand-side and supply-side solar resources. While there is a role for utility-scale and supply-side solar projects in any policy portfolio, TASC suggests that it is important to recognize that a large percentage of utility customers have the desire to install onsite solar generation to meet part or all of their own electricity requirements. A self-sustaining solar market is by its very nature driven by customer needs and does not depend on the utility's appetite for or willingness to include additional solar generation in its procurement activities. Accordingly, any plan for the future of solar in Florida should seek to encourage, not to inhibit, personal customer decisions to invest in onsite solar and should

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5 Order No. PSC-14-0696-FOF-EU ("2014 FEECA Order) at p 48.

6 Fla. Stat. § 366.91; Rule 25-6.065, F.A.C.

build in sufficient headroom to account for likely customer contributions to overall capacity goals.

To that end, competitive market forces are essential to realizing a sustainable demand-side solar market. A free and fair market will respond to customer demand, as private firms must adapt to fill the needs of customers if they wish to survive. The required nimbleness of the rooftop market stands in sharp contrast to the traditional way of doing business of regulated monopolies, which are structurally insulated from competitive pressures and ill-suited to quickly respond to market forces and customer preferences. TASC encourages the PSC to resist programs that might undermine the proper functioning of the market by allowing regulated utilities to use their incumbent advantages (i.e., data on customers, ability to rate base generation equipment) to enter and distort the competitive marketplace for demand-side renewable energy systems in Florida.

NET METERING IS THE PRIMARY DRIVER FOR DEMAND-SIDE SOLAR RESOURCES ACROSS THE COUNTRY

Customer choice is a cornerstone to a sustainable solar market. Customers desire a viable alternative to purchasing all electricity requirements from their respective utilities. Net metering has been the primary and only effective means of providing customers this choice nationally. There are a number of other policy models that seek to encourage customer-sited solar resources, but none match the simplicity, efficacy, and customer acceptance of net metering. Moreover, it is important in terms of Florida legislative policy to encourage demand-side resources that help in "reducing and controlling the growth rates of electric consumption and reducing the growth rates of

weather-sensitive peak demand…".[7] Net metering is really the only available policy that effectively encourages customers to use generation onsite to reduce their own electricity demands on the grid, often at times coincident with system peak.[8]

Florida is one of 44 states that have adopted a statewide net metering policy. Net metering has been a foundational policy in each of the nation's leading small-scale solar markets, including California, Arizona, Hawaii, and New Jersey. While net metering policies come in all shapes and sizes, these states share many of the same characteristics that make the policy a successful driver of customer investment in onsite solar. Each of these states offer some form of protection against discriminatory rates against net-metered customers, treat monthly excess generation as a full retail kWh credit, and, with the exception of Hawaii, allow systems up to 1 MW to engage in net metering. Additionally, in some fashion, each of these solar markets allow for customers to enter agreements with third-party owners of the onsite generation, enabling those customers to avoid facing part or all of the capital costs of a solar facility at the outset. As discussed in the next section, Florida's net metering policy already has many of these favorable components in place, with the most substantial departure from best practices being Florida's apparent prohibition on certain third-party-owned systems.

A key reason for the success of net metering, as compared to other options, is its simplicity and understandability.[9] Customers can intuitively understand that net metering

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7 Fla. Stat. § 366.81.

8 While PURPA gives customers the right to self-generate and consume onsite, the wholesale structure put upon all electricity exports under PURPA has not created any meaningful amount of customer adoption of onsite solar in its over thirty-year history.

9 In contrast to the simplicity and certainty of proven net metering policies, novel, wholesale approaches to encouraging customer-sited solar generation—e.g., feed-in tariffs ("FiT") and value of solar tariffs ("VOST")—inject uncertainty and complexity

allows them to offset the amount of electricity that they consume with the amount of electricity that they produce. As the PSC noted in its 2014 FEECA Order, under net metering "[a] customer primarily benefits from a renewable energy system by using the energy for his own purposes and thus reducing electricity purchases from the utility."[10] As a billing practice, and not a wholesale purchase agreement, customers engaged in net metering do not face income taxes for the portion of their generation that they are able to use (either by consuming instantaneously onsite or by applying excess kWh credits to offset usage in future months).[11] Indeed, the Federal Energy Regulatory Commission has consistently held that net metering does not involve a sale where there is no excess generation at the end of a billing period.[12] Net metering is a simple solution for customers that want to use their own electricity and have little interest of getting into the "for profit" solar generation business.[13]

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into the market. Unlike net metering, which applies to the customer's specific rate schedule, a VOST or FiT relies on an administratively set "value of solar" and functions as a "buy-all, sell-all" arrangement where the customer purchases all of the electricity they consume from the utility and **sells** all output from their system and receives a bill credit or direct payment reflecting the monetary value of the wholesale generation to the utility. This arrangement raises questions about a customer's tax liability for all value received from the sale of electricity to the utility for generation produced onsite.*See* Energy Manager Today. "IRS Reviews Tax Implications of Value of Solar Tariffs" (Sept. 26, 2014). http://www.energymanagertoday.com/irs-reviews-tax-implications-value-solar-tariffs-0105242/.

10 Order No. PSC-14-0696-FOF-EU at p. 46.

11 The South Carolina Department of Revenue issued an advisory opinion in 2010 (Revenue Ruling 10-10) where it concluded that the net metering mechanism neither "represent[ed] a sale of electricity to the customer by the public utility nor [did] it represent consideration paid by the customer for the public utility's electricity."

12 *See, e.g., MidAmerican Energy Company*, 94 FERC ¶ 61,340 (2001); *SunEdison*, 129 FERC ¶ 61,146 (2009).

13 Beyond the conceptual differences between net metering and purchase arrangements, there are potential tax consequences based on the distinction of whether the customer is "using" their own electricity. The IRS is currently considering the letter ruling

Lastly, TASC suggests that one of the most important aspects of Florida's net metering policy is the statutory protection of customers with generation from discriminatory charges and rate designs that undermine conservation. The Legislature's intent to protect users of such systems from discriminatory charges is explicit:

> "Accordingly, in exercising its jurisdiction, the commission shall not approve any rate or rate structure which discriminates against any class of customers on account of the use of such facilities, systems, or devices."[14]

Florida, like many states, recognizes that rate design can be used as a barrier to customer use of demand-side renewable systems, and provided this strong principle of anti-discrimination.[15] Such explicit protections are important to prevent bad rate design from countering good incentive design. Such protections are even more important in light of the potential discontinuance of solar rebates in Florida.

CONCLUSION

TASC appreciates the opportunity to submit comments in response to the Staff's questions regarding the future of solar in Florida. Consistent with the PSC's finding in 2014 FEECA Order, TASC recommends that the PSC continue to rely on its current net metering rules to support development of demand-side renewable energy systems.

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request of a customer of Austin Energy to determine whether this type of VOST arrangement constitutes taxable personal income. *See* fn 8, *supra*.

[14] Fla. Stat. § 366.81.

[15] Even in a state like South Carolina that lacks such explicit protections for customer-generators in statute, the utilities there, including Duke Energy, entered a settlement agreement with stakeholders providing protection against discriminatory charges for net-metered customers until the end of 2025.

Respectfully submitted this 23th day of June, 2015,

/s/

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