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Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Corbari, Lherisson)
Division of Economics (Harlow, Margolis)
Office of Industry Development and Market Analysis (Marr)

RE: Docket No. 150185-EI – Complaint by Erika Alvarez, Jerry Buechler, and Richard C. Silvestri against Florida Power & Light Company.

KFC *bx* *Kel*
RJA, *RM*
DM *MA*

AGENDA: 10/13/15 – Regular Agenda – Motion to Dismiss – Oral Argument Not Requested
– Participation at Commission's Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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Case Background

The instant docket is a complaint against Florida Power & Light Company (FPL) by three FPL customers, Erika Alvarez, Jerry Buechler, and Richard C. Silvestri (collectively referred to as Petitioners), who were unable to procure a residential solar photovoltaic (PV) rebate reservation during FPL's online residential solar PV rebate reservation offering in January 2015. Petitioners allege that FPL's administration of its online residential solar rebate reservation program was unfair and violated Florida Statutes and Commission Orders governing energy conservation goals and programs.

Conservation Goals and Solar Pilot Programs

Sections 366.80 through 366.85, and 403.519, Florida Statutes (F.S.), are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). Pursuant to Sections 366.81 and 366.82, F.S., the Commission is required to adopt energy conservation goals for Florida utilities subject to FEECA, as well as approve the plans and programs developed by each utility to meet the goals set by the Commission. FPL is one of seven utilities in Florida subject to FEECA.¹

By Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, the Commission adopted annual numeric conservation goals for each of the FEECA utilities, including FPL, for the period 2010 through 2019.² Due to revisions to Section 366.82, F.S., in 2008,³ the Commission requested the FEECA utilities to address demand-side renewable energy systems, such as solar PV systems, in their 2009 conservation goal-setting proceeding.⁴ At the conclusion of the 2009 goal-setting proceeding, the Commission found that demand-side renewables were not cost-effective.⁵ Based on evidence presented during the proceeding, however, the Commission ordered FPL and the other Investor Owned Utilities (IOUs)⁶ to develop and offer solar pilot programs to encourage such resources.⁷ In addition, the IOUs were directed to collect information relating to customer acceptance rates, energy production, and other data to refine potential future program offerings for solar technologies.⁸ The costs for these programs were limited to 10 percent of each IOU's five-year average for costs recovered through the Energy Conservation Cost Recovery (ECCR) Clause to minimize the rate impacts to all customers.⁹ Lastly, the Commission directed the IOUs to file pilot programs focused on encouraging solar water heating and solar PV technologies in the demand-side management (DSM) program approval process.¹⁰

¹ The seven utilities subject to FEECA are Florida Power & Light Company (FPL), Duke Energy Florida, Inc. (DEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), JEA, and Orlando Utilities Commission (OUC).

² See Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket Nos. 080407-EG, In re: Commission review of numeric conservation goals (Florida Power & Light Company); 080408-EG, In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.); 080409-EG, In re: Commission review of numeric conservation goals (Tampa Electric Company); 080410-EG, In re: Commission review of numeric conservation goals (Gulf Power Company); 080411-EG, In re: Commission review of numeric conservation goals (Florida Public Utilities Company); 080412-EG, In re: Commission review of numeric conservation goals (Orlando Utilities Commission); 080413-EG, In re: Commission review of numeric conservation goals (JEA).

³ In 2008, the Legislature amended Section 366.82, F.S., to require the Commission to establish appropriate goals to encourage the development of demand-side renewable energy systems. Section 366.82, F.S., defines "Demand-side renewable energy" as a system located on a customer's premises using Florida renewable energy resources with a capacity that does not exceed 2 MWs.

⁴ See Order No. PSC-09-0855-FOF-EG.

⁵ Id.

⁶ The investor-owned utilities in Florida are FPL, DEF, TECO, Gulf, and FPUC.

⁷ See Order No. PSC-09-0855-FOF-EG.

⁸ Id.

⁹ Id.

¹⁰ Id.

FPL Solar Pilot Programs

By Order No. PSC-11-0079-PAA-EG, the Commission approved FPL's solar pilot programs.¹¹ FPL offered three types of solar pilot programs: (1) solar water heating; (2) solar photovoltaic systems; and (3) research and demonstration. FPL's solar PV programs were designed for residential and business customers. All of FPL's solar pilot programs were implemented on a first-come first-served basis and assisted approximately 4,000 customers during 2011-2013, at a cost of approximately \$30 million.¹² The PV pilot programs had high participation rates and residential and business customers quickly submitted requests for reservations each time an offering was announced.¹³ Data presented during the 2014 conservation goal-setting proceeding showed that an average of 75 percent of FPL residential customers who received a pilot program reservation installed solar PV equipment, while FPL business customers had an average completion rate of 50 percent.¹⁴

In 2014, the Commission again reviewed the conservation goals of the FEECA utilities, pursuant to Section 366.82(6), F.S. By Order No. PSC-14-0696-FOF-EU, issued December 16, 2014, the Commission adopted new annual numeric conservation goals for the FEECA utilities, including FPL, for the period 2015 through 2024.¹⁵ The Commission found that the solar pilot programs were not cost-effective and should be allowed to expire on December 31, 2015.¹⁶ Specifically, the Commission found that:

The [solar pilot] programs are not cost-effective and experience gained since the last goals proceeding indicates that consumers have continued to install systems without any rebates. The current solar rebates represent a large subsidy from the general body of ratepayers to a very small segment of each utility's customers.¹⁷

¹¹ See Order No. PSC-11-0079-PAA-EG, issued January 31, 2011, in Docket No. 100155-EG, In re: Petition for approval of demand-side management plan of Florida Power & Light Company; See also Order No. PSC-11-0346-PAA-EG, issued August 16, 2011, in Docket No. 100155-EG (modifying and approving FPL's DSM plan and reaffirming Order No. PSC-11-0079-PAA-EG).

¹² See Order No. PSC-14-0696-FOF-EU, issued December 16, 2014, in Docket Nos. 130199-EI, In re: Commission review of numeric conservation goals (Florida Power & Light Company); 130200-EI, In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.); 130201-EG, In re: Commission review of numeric conservation goals (Tampa Electric Company); 130202-EI, In re: Commission review of numeric conservation goals (Gulf Power Company); 130203-EM, In re: Commission review of numeric conservation goals (JEA); 130204-EM, In re: Commission review of numeric conservation goals (Orlando Utilities Commission); 130205-EI, In re: Commission review of numeric conservation goals (Florida Public Utilities Company), at p. 51

¹³ Id.

¹⁴ Id.

¹⁵ See Order No. PSC-14-0696-FOF-EU.

¹⁶ Id., at p. 60; See also, Order No. PSC-14-0632-FOF-EG, issued on October 31, 2014, in Docket No. 140002-EG, In re: Energy conservation cost recovery clause., at p.3.

¹⁷ See Order No. PSC-14-0696-FOF-EU, at p. 60.

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On August 19, 2015, by Order No. PSC-15-0331-PAA-EG, the Commission approved FPL's DSM programs for the period 2015 through 2024.¹⁸

The Commission has jurisdiction pursuant to Chapter 366, F.S.

¹⁸ See Order No. PSC-15-0331-PAA-EG, issued August 19, 2015, in Docket No. 150085-EG, In re: Petition for approval of Florida Power & Light Company's demand-side management plan and request to cancel closed on call tariff sheets.

Discussion of Issues

Issue 1: Should Florida Power & Light Company's Motion to Dismiss be granted?

Recommendation: Yes. Staff recommends that the Commission grant FPL's Motion to Dismiss and dismiss the complaint without prejudice because the complaint fails to demonstrate a cause of action upon which the requested relief may be granted. (Corbari, Lherisson)

Staff Analysis:

Standard of Review

A motion to dismiss challenges the legal sufficiency of the facts alleged in a petition to state a cause of action.¹⁹ In order to sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition fails to state a cause of action for which relief may be granted.²⁰ The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations.²¹ A sufficiency determination should be confined to the petition and documents incorporated therein, and the grounds asserted in the motion to dismiss.²² Thus, "the trial court may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side."²³ All allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted.²⁴ Finally, pursuant to Section 120.569(2)(c), F.S., a petition shall be dismissed at least once without prejudice unless it conclusively appears from the face of the petition that the defect cannot be cured.²⁵

¹⁹ Meyers v. City of Jacksonville, 754 So. 2d 198, 202 (Fla. 1st DCA 2000); Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

²⁰ Varnes v. Dawkins, 624 So. 2d at 350.

²¹ Matthews v. Matthews, 122 So. 2d 571 (Fla. 2nd DCA 1960).

²² Barbado v. Green and Murphy, P.A., 758 So. 2d 1173 (Fla. 4th DCA 2000); Varnes v. Dawkins, 624 So. 2d at 350; and Rule 1.130, Florida Rules of Civil Procedure.

²³ Varnes v. Dawkins, 624 So. 2d at 350.

²⁴ See, e.g. Ralph v. City of Daytona Beach, 471 So. 2d 1, 2 (Fla. 1983); Orlando Sports Stadium, Inc. v. State of Florida ex rel Powell, 262 So. 2d 881, 883 (Fla. 1972); Kest v. Nathanson, 216 So. 2d 233, 235 (Fla. 4th DCA, 1986); Ocala Loan Co. v. Smith, 155 So. 2d 711, 715 (Fla. 1st DCA, 1963).

²⁵ See also, Kiralla v. John D. and Catherine T. MacArthur Found, 534 So. 2d 774, 775 (Fla. 4th DCA 1988)(stating that a dismissal with prejudice should not be ordered without giving the plaintiff an opportunity to amend the defective pleading, unless it is apparent that the pleading cannot be amended to state a cause of action); and Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company.

Petitioners' Complaint

On August 17, 2015, Petitioners filed a complaint with the Commission alleging FPL violated Sections 366.81 and 366.82(3)(a)-(c), F.S., and Order No. PSC-14-0696-FOF-EU, during the administration of its two online residential solar PV rebate reservation program offerings in January 2015.²⁶ Petitioners allege that, on January 14, 2015, FPL's online residential solar PV rebate reservation opening occurred earlier than the "publically announced opening time of 8:30 a.m." Due to the early opening, the allocated rebate funds were depleted earlier than had the opening occurred at the advertised time of 8:30 a.m. As a result, Petitioners contend that neither they nor other applicants were given an "equal and fair opportunity to compete for a rebate while others had additional opportunity by taking advantage of an opening that was not announced beforehand."

Petitioners allege that due to its "gross error" in meeting "the statutes and rules of the PSC" during the January 14, 2015 offering, FPL conducted a second online residential solar rebate reservation offering on January 21, 2015, at 8:30 a.m., using the same format and process as the prior offering. Petitioners state that during the second offering, FPL's website "locked up" and prevented them from completing the application process. Mr. Silvestri, one of the Petitioners, contacted FPL when the website "locked up" and spoke to a FPL representative. Petitioners state that the FPL representative "acknowledged the site had locked up" and provided Mr. Silvestri with instructions "which failed to resolve the problem." When Petitioners were finally able to continue on the website, the allotted rebate funds had been depleted and the rebate offering was closed. Petitioners state that when Mr. Silvestri contacted FPL to complain following the second online offering, FPL advised Mr. Silvestri that "some [customers] were able to overcome the website problem." Petitioners claim that because some applicants were able to overcome the "website glitch," FPL failed "to have a fair, impartial and nondiscriminatory" rebate process as required by Sections 366.81, 366.82(3)(a)-(c) and Order No. PSC-14-0696-FOF-EU.

Petitioners further assert that implied in Order No. PSC-14-0696-FOF-EU is the requirement that "the process implemented by FPL must be fair, impartial and non-discriminatory." Petitioners state that the "rebate reservation process became a 'game of chance' and possibly allowed favoritism rather than equal treatment." As a result, FPL acted in bad faith in administering both online residential solar rebate reservation offerings by not ensuring all applicants "were treated fairly as evidenced by the unfair treatment given" to them in violation of Section 366.81, F.S.

Petitioners request that the Commission order FPL to conduct another reservation process before midnight, December 31, 2015. In addition, Petitioners request the Commission "closely monitor FPL during the planning, development and deployment of" the future rebate reservation, especially the technical details to ensure "a fair, impartial and non-discriminatory computerized process, in lieu of the one used by FPL."

²⁶ See Document No. 05144-153, in Docket No. 150185-EI, Complaint by Erika Alvarez, Jerry Buechler and Richard C. Silvestri against Florida Power & Light Company.

FPL's Motion to Dismiss

On September 1, 2015, FPL filed a motion to dismiss Petitioners' complaint with prejudice.²⁷ FPL asserts Petitioners' complaint fails to allege sufficient facts to state a cause of action upon which relief could be granted by the Commission. Specifically, FPL asserts that Petitioners' complaint: (1) fails to state "how the early opening constitutes a violation of the 2014 DSM Goals Order" or "constitutes a violation of FEECA;" (2) fails to state "specific allegations as to how or whether the website 'lock up' was the result of any action by FPL;" and (3) fails to allege any actions that "FPL treated certain customers in a discriminatory manner" during either of the online residential solar PV rebate reservation offerings. Because Petitioners did "not allege any unfair, partial or discriminatory actions by FPL," FPL argues that Petitioners' complaint should be dismissed.

FPL attached an exhibit in support of its motion to dismiss that staff believes is evidentiary in nature because it provides facts not included in Petitioners' complaint and that dispute Petitioners' allegations. Therefore, FPL's exhibit is not discussed or considered in staff's analysis in this recommendation.²⁸

Mr. Silvestri and Ms. Alvarez's Response to FPL's Motion to Dismiss

On September 8, 2015, Mr. Silvestri and Ms. Alvarez filed a joint response to FPL's motion to dismiss.²⁹ In their response, Mr. Silvestri and Ms. Alvarez again assert that FPL's actions were unfair because certain applicants were able to complete the rebate process despite the technical issues that occurred during the online rebate offerings, "while others were barred from doing so based on technology on a machine by machine or computer by computer or IP by IP basis."³⁰ In addition, Mr. Silvestri and Ms. Alvarez's response spends a significant amount of time commenting on the information contained in the exhibit attached to FPL's motion to dismiss. Mr. Silvestri and Ms. Alvarez's comments on FPL's exhibit are not discussed or considered in staff's analysis herein for the reasons cited above.

Mr. Buechler's Response to FPL's Motion to Dismiss

On September 2, 2015, Mr. Buechler filed a request for extension of time to file a response to FPL's motion to dismiss, which was granted.³¹ Mr. Buechler timely filed his response to FPL's motion to dismiss on September 24, 2015.³² In his response, Mr. Buechler reiterates Petitioners'

²⁷ See Document No. 05465-15, in Docket No. 150185-EI, FPL's Motion to Dismiss Complaint and Response to Motion for Oral Argument.

²⁸ See Varnes v. Dawkins, 624 So. 2d at 350 (the court "may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side").

²⁹ See Document No. 05605-15, in Docket No. 150185-EI, Silvestri-Alvarez Response to FPL's Motion to Dismiss Complaint and Oral Argument.

³⁰ Id., at p. 12.

³¹ See Order No. PSC-15-0366-PCO-ES, issued September 9, 2015, in Docket No. 150185-EI.

³² See Document No. 06033-15, in Docket No. 150185-EI, Buechler respond to FPL motion to dismiss.

assertions that FPL's online reservation process was unfair. Mr. Buechler also commented on FPL's exhibit, which are not discussed or considered in staff's analysis for the reasons previously cited.

Analysis

The Commission grants a motion to dismiss upon a finding that the pleading failed to state a cause of action upon which relief can be granted.³³ Rules 25-22.036 and 28-106.201, F.A.C., outline the procedures for filing a formal complaint. A pleading that conforms to the rules provides the act or omission that constitutes the violation, the statute that is violated, injury suffered, and remedy or penalty sought.³⁴ In addition, Section 120.569(2)(c), F.S., provides:

Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b). Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition.

Here, staff believes that Petitioners' complaint fails to comply with the requirements of Rules 25-22.036(2) or 28-106.201, F.A.C., because the complaint contains no specific facts asserting an act or omission by FPL that resulted in a violation of a particular provision of a statute, rule or Commission Order affecting Petitioners' substantive interests.

Petitioners allege that FPL violated Sections 366.81 and 366.82(3)(a)-(c), F.S., and Commission Order No. PSC-14-0696-FOF-EU, during the administration of its online residential solar rebate reservation offerings in January 2015. Petitioners assert that FPL violated Section 366.81, F.S., and "acted in bad faith by not abiding by the goals delineated in the [statute]" during the administration of its online residential solar rebate reservation offerings. Pursuant to Section 366.81, F.S., the Florida Legislature directs the Commission to adopt energy conservation goals and approve the plans and programs each utility develops to meet the goals set by the Commission. In accordance with the Legislature's directive and the other FEECA statutes, the Commission adopted conservation goals for FPL and the other FEECA utilities, in 2009, and required FPL and the other IOUs to develop solar pilot programs.³⁵ In January 2011, the Commission approved FPL's solar pilot programs and set an annual expenditure cap of \$15,536,870 for FPL's solar pilot programs.³⁶

³³ See Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company; and Order No. PSC-11-0117-FOF-PU, issued on February 17, 2011, in Docket No. 100312-EI, Complaint against Florida Power & Light Company for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and FPL tariffs pertaining to billing of charges and collection of charges, fees, and taxes (granting motion to dismiss with prejudice).

³⁴ See, Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company.

³⁵ See Order No. PSC-09-0855-FOF-EG.

³⁶ See Order Nos. PSC-11-0079-PAA-EG, and PSC-11-0346-PAA-EG.

Petitioners' complaint fails to state how either the early opening of the reservation system during the first rebate offering or the website "lock up" that occurred during the second rebate offering, violated Section 366.81, F.S. In particular, Petitioners fail to allege any facts that FPL failed to: (1) meet the conservation goals set by the Commission, (2) fund its solar pilot programs within the expenditure cap set by the Commission, or (3) implement the solar pilot programs as approved by the Commission.

Petitioners also assert that FPL violated Section 366.82(3)(a)-(c), F.S., and Commission Order No. PSC-14-0696-FOF-EU. Section 366.82(3), F.S., sets out factors the Commission must consider when establishing conservation goals. Section 366.82(3)(a)-(c), F.S., states:

In developing the goals, the commission shall evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems. In establishing the goals, the commission shall take into consideration:

- (a) The costs and benefits to customers participating in the measure.
- (b) The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.
- (c) The need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems.

Pursuant to Section 366.82(3), F.S., the Commission adopted conservation goals for FPL and the other FEECA utilities, in 2009 and, again in 2014.³⁷ In both the 2009 and 2014 DSM goal-setting proceedings, the Commission considered the factors set out in Section 366.82(3), F.S. In Order No. PSC-14-0696-FOF-EU cited by Petitioners, the Commission found that the solar pilot programs were "not cost-effective" and that the "solar rebates represent[ed] a large subsidy from the general body of ratepayers to a very small segment of each utility's customers."³⁸ Therefore, the Commission's findings on the solar pilot program in Order PSC-14-0696-FOF-EU stemmed from the Commission's consideration of the very factors set out in Section 366.82(3)(a)-(c), F.S.

No statute, Commission rule or Commission Order prescribes a particular format or manner in which FPL, or any other utility, is required to administer its solar rebate reservations. Moreover, Commission practice has been not to micromanage the business decisions of regulated companies, but to instead focus on the end-product goal.³⁹ Sections 366.81 and 366.82(7), F.S., provide for Commission approval of a utility's conservation plans and programs prior to implementation, and FPL's residential solar rebate program was approved by the Commission.

³⁷ See Order Nos. PSC-09-0855-FOF-EG and PSC-14-0696-FOF-EU.

³⁸ See Order PSC-14-0696-FOF-EU.

³⁹ See Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, in Docket Nos. 020896-WS, In re: Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County, and 010503-WU, In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

While FPL's first online residential solar rebate offering may have opened earlier than the announced time of 8:30 a.m. on January 14, 2015, Petitioners allege no facts to suggest that FPL opened the reservation offering prematurely either to ensure particular customers received a rebate reservation or to prevent Petitioners, or other customers, from obtaining a rebate reservation. Additionally, while FPL may have acknowledged its website "froze" during the second online residential solar rebate offering on January 21, 2015, Petitioners allege no facts to suggest that FPL caused the website to "lock up" in order to ensure particular customers received a rebate reservation or to prevent Petitioners, or other customers, from obtaining a rebate reservation. As a result, Petitioners' complaint fails to state any facts alleging how any of the technical events that occurred during either of FPL's online residential solar rebate reservation offerings violated Section 366.82(3)(a)-(c), F.S., or Order PSC-14-0696-FOF-EU. Moreover, Petitioners' complaint fails to state any facts alleging that FPL violated any Commission Order approving FPL's solar pilot programs.⁴⁰

Despite Petitioners claims that FPL failed "to have a fair, impartial and nondiscriminatory" rebate process as required by Sections 366.81, 366.82(3)(a)-(c) and Order No. PSC-14-0696-FOF-EU, Petitioners' complaint fails to describe or provide any documentation of any specific FPL actions during the administration of the two online residential solar rebate reservation offerings to indicate that either of FPL's online rebate offerings was unfair, partial or discriminatory, or violated any statute, rule or Commission Order governing FPL's solar pilot programs.

Staff is sensitive to Petitioners' circumstances and, despite the lack of a legally sufficient pleading, staff conducted research into the substance of Petitioners' allegations in order to determine whether amendment of the complaint could lead to a situation where the Commission would have jurisdiction to grant Petitioners relief. When viewed within the "four corners of the complaint" exclusive of all affirmative defenses/responses, assuming all alleged facts are true, and in a light most favorable to Petitioners, staff does not believe Petitioners' complaint states a cause of action that would invoke the Commission's jurisdiction or permit the Commission to grant the requested relief. As previously set out, the Commission approved FPL's solar pilot programs with an annual expenditure cap.

Because Petitioners have not pled any specific facts, or produced any documentation, to support their claims that FPL violated any statute, rule, or other Commission requirement in the administration of its online residential solar PV rebate reservation offerings, staff recommends that the Commission grant FPL's motion to dismiss. Staff recommends, however, Petitioners' complaint be dismissed without prejudice in accordance with Section 120.569(2)(c), F.S., thus allowing Petitioners to file an amended complaint. Should Petitioners choose to file an amended complaint, staff recommends that the complaint conform to the pleading requirements of Rules 25-22.036 and 28-106.201, F.A.C., and request appropriate relief.

⁴⁰ See Order Nos. PSC-11-0079-PAA-EG and PSC-11-0346-PAA-EG.

Conclusion

Staff recommends that the Commission grant FPL's Motion to Dismiss and dismiss the complaint without prejudice because the complaint fails to demonstrate a cause of action upon which the requested relief may be granted.

Issue 2: Should this docket be closed?

Recommendation: No. If the Commission agrees with staff regarding Issue 1, then Petitioners' complaint should be dismissed without prejudice, and Petitioners should be permitted to file an amended complaint. Should Petitioners fail to timely file an amended complaint, the docket should be administratively closed. (Corbari, Lherisson)

Staff Analysis: If the Commission agrees with staff regarding Issue 1, then Petitioners' complaint should be dismissed without prejudice, and Petitioners should be permitted to file an amended complaint. Should Petitioners fail to timely file an amended complaint, the docket should be administratively closed.