

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20170273-EQ

PETITION BY SUNRUN INC.
FOR DECLARATORY STATEMENT
CONCERNING LEASING OF
SOLAR EQUIPMENT.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW G. FAY

DATE: Thursday, March 1, 2018

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DANA W. REEVES
Court Reporter and
Notary Public in and for
the State of Florida at Large

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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. Item No. 3.

3 MS. HARPER: Good morning, Commissioners.

4 Adria Harper with Commission Staff. I have Item
5 No. 3. Item No. 3 concerns a petition by Sunrun
6 for a declaratory statement concerning a leasing of
7 solar equipment. In this petition, Sunrun is
8 asking for a declaratory statement from the
9 Commission to declare that Sunrun's proposed
10 residential solar equipment lease does not
11 constitute a sale of electricity and that Sunrun in
12 its consumer lessees will not be subject to
13 regulation by the Commission. No request to
14 intervene were filed. However, Gulf Power Company
15 and Florida Public Utilities Company filed a motion
16 to participate as amicus. The motion was granted
17 by Commission order. Sunrun filed a response to
18 this memorandum of law and provided additional
19 information in its response.

20 Staff is recommending that the Commission
21 grant Sunrun's petition and issue the declaratory
22 statement. Pursuant to statute, the Commission
23 must issue its final order by March 29th, 2018.

24 Staff is available for any questions.

25 CHAIRMAN GRAHAM: Sunrun, any comments?

1 MS. RULE: Marsha Rule, Rutledge Ecenia here
2 with Sunrun and introducing Becca Polisuk, senior
3 legal counsel. We're here to answer questions if
4 you have any.

5 CHAIRMAN GRAHAM: Thank you. Commissioner
6 Polmann.

7 COMMISSIONER POLMANN: Thank you, Mr.
8 Chairman. I found the item to be very clear.
9 Something new to me. I think the analysis was
10 excellent. I don't have any substantive questions.
11 I would ask Ms. Harper if looking at -- this is
12 just a clarification for me on page eight of the
13 item. The first full paragraph down to the
14 next-to-the-last line, the item -- the words in
15 italics.

16 MS. HARPER: Yes.

17 COMMISSIONER POLMANN: There is a reference to
18 Hendry County by southwest.

19 MS. HARPER: It's supposed to be southeast.
20 My apologies. Yes.

21 COMMISSIONER POLMANN: Thank you. That was my
22 only comment, Mr. Chairman. I would move Staff
23 recommendation.

24 CHAIRMAN GRAHAM: Okay. I guess it dies for
25 lack of a second. So let's go to Commissioner

1 Brown.

2 COMMISSIONER BROWN: Thank you, Mr. Chairman.
3 I do have a lot of questions, actually. I do not
4 think the analysis is as clear as Commissioner
5 Polmann, with all due respect to our Staff and
6 Commissioner Polmann.

7 So to get a clearer understanding -- and I
8 really have to thank Gulf Power and FPUC for
9 bringing the memorandum understanding because it
10 shed some things that were not clear in the
11 petition. So I'm happy that you all are here
12 today. And, first, I just want to say at the
13 outset, I think it's a great opportunity for
14 consumers to be able to generate their own
15 electricity. We know they're doing it across the
16 state, but I do want to get a better idea of the
17 Sunrun and the petition. So, with that, first I
18 want to ask you a question about the maintenance
19 and operation. So looking at the memorandum of
20 understanding, there were materials attached to it.
21 I don't know if you had opportunity to see it.
22 They were, I guess, from Sunrun's website, is that
23 correct?

24 MS. HARPER: Yes, ma'am, that's correct.

25 CHAIRMAN BROWN: Is that the business model

1 that Sunrun has throughout the country?

2 MS. POLISUK: So we have -- currently our
3 business model is to focus on third-party-owned
4 solar systems, and because we operate in 22 states
5 and the District of Columbia, there are very
6 different shades of what those products look like
7 in each state. And currently we do offer
8 third-party-owned lease or PPA product in other
9 states that does have a production guarantee that
10 is tied to output. So if you have solar panels on
11 your house, we guarantee that they produce a
12 certain amount per month, and if those fall short,
13 we will either credit the customer financially or
14 replace them or repair them or what have you. We
15 would not be doing that in Florida because we're
16 divorcing everything from the output of the system.

17 COMMISSIONER BROWN: So are you doing that
18 because that violates Monsanto and the Commission's
19 regulations?

20 MS. POLISUK: Yes. We are doing that because
21 tying any of the variables of the panels'
22 performance to output, we felt -- fell in a gray
23 area with Commission precedent and so divorcing any
24 of those variables from the actual output of the
25 systems clarified that issue for us.

1 COMMISSIONER BROWN: So you don't have a lease
2 agreement that would accomplish what it is you are
3 trying to do currently in Florida?

4 MS. POLISUK: No. We do not sell any lease
5 products in Florida. The only product that we sell
6 in Florida is a cash-only product.

7 COMMISSIONER BROWN: No. I'm trying to get an
8 understanding of the -- you said that it's not
9 going to be tied to output, energy output. So the
10 current structure that you have for the company
11 around the country, with the leases, are tied to
12 output. Do you have any type of lease agreement
13 that's not tied to output?

14 MS. POLISUK: No. Florida would be our only
15 one.

16 COMMISSIONER BROWN: Okay. Can you talk to us
17 about the operation and maintenance? And my
18 understanding from your petition is that the cost
19 would be included in the lease agreement.

20 MS. POLISUK: Correct. Correct. So when a
21 customer would hypothetically enter into a lease
22 agreement with us for this Florida equipment lease,
23 included in that price would be a maintenance plan.
24 If the panels were somehow defective or were
25 somehow not correctly performing or the customer

1 had a complaint about their performance, they would
2 then call us as part of that maintenance plan and
3 we would send either our Sunrun employee direct --
4 direct employee or perhaps a local installer that
5 we had partnered with to come and fix the problem.
6 So that would be included in the price of the
7 lease.

8 COMMISSIONER BROWN: So what would the
9 customer then do to maintain and operate their
10 panels, the equipment?

11 MS. POLISUK: So with the solar equipment,
12 there really is very little operation required.
13 They really just have to eat sun. And so the
14 operational burden associated with solar panels is
15 very, very little compared to, hypothetically, a
16 cogeneration facility where you have to procure
17 fuel. So the operational burden is what we call
18 maintaining solarity, which is essentially not
19 planting a tree in front of your panels, making
20 sure that those panels can soak up the sun in a way
21 that's going to generate electricity for you, and
22 that really is the operational burden associated
23 with them once they're installed.

24 COMMISSIONER BROWN: I just wish that our
25 Staff would have had an opportunity to look a

1 little bit more thoroughly analyzing the operation
2 and maintenance part of the lease agreement and as
3 it relates to the Monsanto case, which is the
4 leading case that I guess you have structured this
5 relationship under, correct?

6 MS. POLISUK: Correct.

7 COMMISSIONER BROWN: And that's why it gives
8 me a little uncomfort because I don't think that
9 the recommendation delved into the O&M portion as
10 thoroughly as I would like, since under Monsanto,
11 one of the chief components that this Commission
12 found was the operation and maintenance of the
13 facility. So I would like to see the
14 recommendation a little bit more thorough, kind
15 of -- and I think if we had a lease agreement, I
16 think it would have been a little bit more helpful
17 for you all. Are you able to provide a lease
18 agreement?

19 MS. POLISUK: We currently do not have a lease
20 for Florida because it's our intention to not sell
21 if we don't receive a blessing from the Commission.
22 So if we were to -- I mean, we would have to do
23 that before we sold in Florida, certainly. We
24 don't currently have a lease. And I can say that
25 any lease product that we do have would very, very

1 closely abide to all the material terms, you know,
2 that were laid out in Staff's recommendation or an
3 order, hypothetically, and would not vary in any
4 way from those terms. And I'll say that the reason
5 why we don't have a lease agreement is because it
6 takes a lot of time to come to a Florida-specific
7 product --

8 COMMISSIONER BROWN: You could have created a
9 form agreement so that we could have analyzed this
10 a little bit more thoroughly.

11 MS. POLISUK: And --

12 MS. RULE: If I may respond to this,
13 Commissioner. This isn't a tariff filing where it
14 has to be approved.

15 COMMISSIONER BROWN: I know.

16 MS. RULE: And we would have to provide a
17 lease had it been in existence, but the process of
18 taking it from lease through investor and legal
19 approval is substantial and we wanted the
20 Commission's blessing first.

21 I'd also like to address the O&M issue. Your
22 own net metering rule basically says you can
23 contract out operation and maintenance and still
24 have it customer-owned. So we believe that
25 adequately covers it, as well.

1 COMMISSIONER BROWN: Thank you.

2 CHAIRMAN GRAHAM: Commissioner Fay.

3 COMMISSIONER FAY: Thank you, Mr. Chairman.

4 My questions are similar to Commissioner Brown in
5 that -- first of all, I think that coming before
6 the Commission for a dec statement, you should be
7 commended on that because you want to get some
8 direction up front and I think that makes sense.
9 When I initially read this, I don't know if I was
10 as concerned as I am after hearing some of your
11 comments. As I look at the Staff's analysis, it
12 states that Sunrun stated that they do not require
13 that the relevant statutes and rules do not require
14 it to provide a contractual agreement. And so I
15 think what you're -- what I get what you're saying
16 is it's not that you're not required to do it, it's
17 that you feel the cost would be excessive to
18 bringing it forward. And, of course, with that
19 said, that information obviously is significant in
20 any sort of analysis, and I think the issue for me
21 is just the recognition that the dec statement
22 would be limited to the petitioner's facts that
23 have been presented to it, and that law in
24 Monsanto, you know, guideline or platform that's
25 there to try to operate under, I would think you'd

1 want to bring forward as much information that's at
2 your, you know, fingertips as possible to get in
3 any of that clarification and dec statement. So is
4 it the cost, the time, the investment or is it just
5 that under this process you didn't need to, you
6 weren't mandated to do so?

7 MS. RULE: I think the purpose of a
8 declaratory statement is to take a hypothetical to
9 the Commission and say, if this, then what? So
10 we're saying if we make a lease that has A, B and C
11 in it, will those factors allow you to issue the
12 declaratory statement we're asking for? We're not
13 saying that -- we're not asking you to approve a
14 contract because simply I'm never -- I'm not aware
15 that that has ever been the case in a declaratory
16 statement. That sounds more like a contract
17 approval and it's not a hypothetical at that point.
18 If it causes you deep concern, I'm certain we could
19 show it to Staff if you go ahead and approve the
20 declaratory statement as a hypothetical and allow
21 Staff to administratively approve the contract
22 afterwards.

23 We're not trying to withhold anything from
24 you. It's just, you know, the process is as a
25 hypothetical followed by an implementation with the

1 risk on the company. If they don't do what they
2 said they were going to do, I'm sure Gulf Power or
3 FPUC will have us in here in no time flat.

4 COMMISSIONER FAY: And maybe just as a
5 follow-up, because I'm still -- I'm just trying to
6 pin down. So it's -- you would be able to provide
7 an agreement for a review that would be
8 significant, obviously, from what you're saying,
9 that would be outside of this -- the facts that are
10 provided in this dec statement, or the petition for
11 this dec statement and so that would change the
12 evaluation that we would be making on this issue.
13 I think what you're saying is you feel as though,
14 when you move forward at some point obviously an
15 agreement would occur between the consumer and the
16 entity and if somebody had an issue with it at that
17 point they would be able to file a petition for
18 their own clarification related to that?

19 MS. RULE: Well, what I'm saying is obviously
20 the company will have a contract with its customers
21 and the company was not required to come to you for
22 a declaratory statement. They're doing it in an
23 abundance of caution. But assuming that a company
24 comes to you and says, we would like to do this
25 hypothetical process and you bless it and they go

1 forth and do something different, I am absolutely
2 certain that in this case Gulf Power or FPUC would
3 be asking you to show cause the company, saying
4 that they are selling electricity or otherwise
5 violating the rules and would ask you to take
6 charge of that case.

7 MS. POLISUK: I'll just add to what Marsha
8 said. It truly was not us trying to hide the ball.
9 We looked at Commission precedent and really tried
10 to scrutinize everything that Monsanto did and
11 provide it to the Commission and so we really tried
12 to mirror that sort of process because it looked
13 like that was the last time the Commission had
14 ruled on something similar and so we tried our very
15 best to replicate the type of information that was
16 provided in that case and it's no way us trying to
17 be misleading at all.

18 COMMISSIONER FAY: Yeah, and I just -- I'm the
19 new guy here so I'm figuring it all out. So it
20 seems to me when you look at the purpose of the
21 Commission, the relationship to the product that's
22 provided, that the information between the customer
23 and the entity would be significant in an analysis
24 like this, and from what I hear you saying is
25 you're not denying any of that. It may very well

1 be relevant and it might show information that's
2 persuasive one way or another depending on how it's
3 drafted, but at this point you didn't feel it was
4 necessary to include it just based on the facts
5 provided to the Commission, you think a dec
6 statement can be provided with direction at this
7 time without that.

8 MS. RULE: In fact, I think that's the purpose
9 of a declaratory statement is to allow the
10 Commission to review a hypothetical to allow the
11 company to plan its actions, as opposed to bless
12 something that's already basically tied up in a
13 package.

14 COMMISSIONER FAY: Yeah, and I always think
15 it's significant to have the hypothetical inclusive
16 of all the facts, right. So when go you through
17 procedurally the performance of a dec statement,
18 you'd want to have all the relevant information in
19 front of you.

20 MS. RULE: We believe the facts that are
21 relevant to your jurisdiction and to the question
22 of whether this is a sale of electricity are before
23 you. Now, I think what you're asking is what if we
24 implement it differently. Then the burden is on us
25 to follow the declaratory statement. The burden is

1 on us to do what you have blessed. If we're doing
2 something else that does not constitute the
3 hypothetical, then we're vulnerable and subjecting
4 ourselves to Commission jurisdiction for sale of
5 electricity if, in fact, what the company actually
6 does implicates that. Now, as I said earlier,
7 we're not trying to hide anything. If you approve
8 the declaratory statement and you want your Staff
9 to review the contract when it's in existence,
10 we'll bring it in.

11 COMMISSIONER FAY: Okay. Thank you, Chairman.

12 CHAIRMAN GRAHAM: Commissioner Clark.

13 COMMISSIONER CLARK: Thank you, Mr. Chairman.

14 Mr. Fay, you only get to use the I'm-the-new-guy
15 one time. Yours is over now. Four months, it's
16 ended for me.

17 I thank you both for your line of questions.
18 You've answered a lot of the things that were on my
19 mind that are in my notes. I do have a couple of
20 observations. I'm an advocate for consumer-owned
21 solar. I think that is a very good logical
22 approach to addressing renewable energy. However,
23 I have some concerns about approving a declaratory
24 statement that is very specific about Sunrun's
25 lease that we haven't seen, that I don't know the

1 content of. And I realize your position in
2 relation to your not selling electricity. You're
3 not going to be a reseller, but I think there are
4 some provisions that relate to the maintenance
5 contract and a performance guarantee. I went
6 through your marketing materials. I went through
7 your website at length and there's a lot of
8 discussion about the performance guarantee. I know
9 you say that would not be a part of your lease, but
10 would you have -- would you entertain a lease that
11 had a -- that did not have a maintenance contract
12 associated with it?

13 MS. POLISUK: We prefer to either contract out
14 the maintenance obligations or maintain them
15 internally as part of the lease payment for the
16 customer experience, just like if we were to -- you
17 know, if I were to rent an apartment and my
18 refrigerator broke. I don't imagine many
19 apartments would be rented if that weren't included
20 in the lease payment. That's how we view this
21 equipment lease, as well. You know, the solar
22 industry is incredibly competitive and the only way
23 that we can get ahead of our competitors is keeping
24 our customers happy. And that is the intent behind
25 having a maintenance agreement for panels that we

1 own wrapped into the lease payment, and so I don't
2 know that we would entertain allowing folks to
3 rent -- to lease panels from us without any sort of
4 maintenance agreement, whether it was through us or
5 through a third party because I can't imagine that
6 being sustainable.

7 COMMISSIONER CLARK: Would the failure of the
8 device to produce the estimated number of kilowatt
9 hours per month trigger a maintenance call at that
10 point?

11 MS. POLISUK: So the maintenance call would be
12 for a defect of the product. So if a customer was
13 concerned that it wasn't working, or if they looked
14 at their electricity bill and said, hey, I'm still
15 paying exactly what I was to the utility that I was
16 before I had these solar panels on my roof and
17 thought I was generating my own electricity, we
18 would then come out and test the panels to make
19 sure that they were performing correctly, but we
20 would not guarantee any certain -- any kilowatt
21 hours per month coming from those panels because we
22 would not attach any sort of a variable guarantee
23 to output.

24 COMMISSIONER CLARK: So I go back to my
25 question. Would your lease, would you entertain a

1 lease that had a component -- that had a lease
2 amount that was separate from a maintenance
3 contract?

4 MS. POLISUK: Would we entertain having those
5 be two separate agreements?

6 COMMISSIONER CLARK: Yes.

7 MS. POLISUK: I think so.

8 MS. RULE: I can't speak for the company, but
9 I can say that the net metering rule, your rule,
10 allows customers to contract out both the operation
11 and the maintenance. So the fact that Sunrun would
12 be doing it or any third party would be doing it
13 does not flip it into a sale of electricity
14 category. The question is whether any of that is
15 tied to output, and I think we clearly said in our
16 petition, it's divorced.

17 COMMISSIONER CLARK: And my question would be,
18 if you send a maintenance technician to a
19 customer's house because the customer says it is
20 not producing, then it is a performance contract.
21 Is it -- I won't make that statement. Is it a
22 performance contract at that point?

23 MS. RULE: Well, if it's not working, if
24 something happened in the panel so it no longer
25 absorbs energy, that's not a performance of

1 electricity. That's not a guarantee of output.
2 That's making the equipment work the way it's
3 supposed to work. The output depends. And as long
4 as they're guaranteeing any output, as long as
5 they're not guaranteeing or maintaining that the
6 equipment works as it's supposed to, we believe
7 that to be an operation and maintenance contract.

8 COMMISSIONER CLARK: When you recommend a
9 solar system to a consumer, on what basis do you
10 recommend? Typically, I understand that's done in
11 wattage which can be equated back to kilowatt hours
12 that the unit would produce. So if you came to my
13 house and I had a very small house and a minimal
14 number of appliances versus a mansion with two
15 swimming pools out back, what size units would you
16 recommend for those two locations?

17 MS. POLISUK: I mean, I don't know what we
18 would recommend off the top of my head, but --

19 COMMISSIONER CLARK: Let me rephrase. So how
20 would you recommend it, in terms of its KW output?
21 Would you size the system to the house based on KW
22 output?

23 MS. POLISUK: We would work with the customer
24 to try to understand how much electricity they want
25 to generate for themselves and make sure they have

1 the right equipment for it.

2 COMMISSIONER CLARK: Okay. And my last
3 question, Mr. Chairman, is somewhat a statement in
4 the Monsanto. I know this is the case that's been
5 referenced a number of times here, and I understand
6 that Monsanto was entering into a lease without
7 providing the lease agreement. I think the
8 difference in my opinion, in this case, is that
9 Monsanto had remedy if they were not happy with the
10 lease results. And the case we're looking at here,
11 we're talking about hopefully thousands of
12 consumers that are going to be taking advantage of
13 a solar lease that may not have the same resources
14 to challenge any type of improprieties or any issue
15 that might exist between the terms of the lease
16 agreement and the lease holder. I have some
17 serious concerns.

18 When you look at the declaratory statement,
19 again, it's very specific that it is Sunrun's
20 residential solar equipment lease, and you're
21 asking me does that lease constitute a sale of
22 electricity. I don't know. I haven't seen it. If
23 you made a more generic statement that says, a
24 lease does not constitute the sale of electricity,
25 I can agree with that statement, but the specifics

1 of this declaratory statement -- I shared this with
2 our legal Staff yesterday and I don't think we had
3 a solution or an answer, but that's my concerns,
4 Mr. Chairman.

5 CHAIRMAN GRAHAM: Well, it's interesting --

6 MS. RULE: If I may address that. We're
7 forced to do that in the context of declaratory
8 statement because it relates only to the petitioner
9 and their particular circumstances. It would be
10 inappropriate for us to ask generally.

11 CHAIRMAN GRAHAM: Well, it's interesting that
12 it seems like we all had questions and concerns
13 about this issue in our own individual briefings,
14 because I know we spent quite a bit of time in my
15 briefing talking about this. And most of my
16 concern was potential problems, looking for it.
17 Knowing some of the problems that other states have
18 had, maybe out west, other entities have had, and
19 so I guess I tried to put my arms around all that
20 and want to fix it collectively, and Staff, through
21 a lot of time, beat me off that position saying
22 that this is a dec statement and you've got to
23 go -- I keep wanting to go beyond the scope of the
24 question they're asking and Staff keeps wanting to
25 push me back in to specifics of what they're asking

1 me.

2 And specifically what they're asking is, does
3 this constitute selling of electricity, and that's
4 pretty much the question that's before us. I want
5 to get into the lease, just like everybody else is
6 trying to get into to lease. I want to get into
7 the maintenance, but the lease and the maintenance
8 is not what we do here, just like if it was
9 somebody that bought the system themselves and put
10 it on the roof. We don't get involved in the
11 maintenance of that.

12 And, you know, things popped into my head, is
13 it going to be a general contractor that puts it on
14 the roof? You know, who's going to pull the
15 permits and that kind of stuff, and that's all
16 beyond what our scope is here and that's the one
17 that's difficult for me to let go of and -- but I
18 finally got to the point where -- and I did have a
19 problem, just as Commissioner Clark had talked
20 about, well, in the question it says, according to
21 the lease, but -- and you mention a lease, but I
22 don't get to see a lease, but then you run into
23 issues, do you want to be -- are we in a position
24 to approve a lease?

25 And so that's kind of the dilemma that I got

1 myself into and dec statements are difficult.
2 They're definitely difficult for me, but I got
3 myself in the path where I think we can -- that I
4 can move forward with Staff recommendation, but
5 we're still in debate here, and I still have two
6 lights on. So let's go back to Commissioner
7 Polmann.

8 COMMISSIONER POLMANN: Thank you, Mr.
9 Chairman. I appreciate all the questions by
10 others. When I indicated, I thought this was well
11 done. I was speaking to our legal Staff and I
12 appreciate, Mr. Chairman, your remarks here about
13 the dec statement. Speaking to the petitioner,
14 you've made a variety of remarks that I can take
15 issue with, and let me caution you from the bench.
16 You apparently have opinions about the purpose of a
17 dec statement and you're certainly entitled to
18 that. I don't -- I don't take that to influence
19 me. I take our legal Staff's position on the
20 purpose of a dec statement. That's well written in
21 this document, to my reading.

22 As to your business model, the concepts and
23 whatever hypothetical you want to bring forward, we
24 take -- in my mind, I take absolutely no position
25 on that in regard to the dec statement. Your

1 reference to an abundance of caution, quite
2 frankly, that's an abundance of caution for your
3 own benefit as a company. That does not influence
4 the dec statement, to me, in any regard. I'm just
5 making a statement as to how I read this or
6 position I may take on this.

7 Your reference to the Commission blessing
8 something, for me, that's not what we're doing here
9 at all. You're asking for a declaratory statement
10 on three particular points and this is a legal
11 matter, as far as I'm concerned. It's coming to us
12 from general counsel's office.

13 As to whether or not you're trying to hide
14 anything, that's -- I don't have an opinion on
15 that. If you're hiding something, that's at your
16 risk. So it's -- to me, it doesn't matter if
17 you're hiding anything or not. That will come back
18 later in whatever business transaction or whatever
19 regulatory issue you confront.

20 Whether or not a lease is necessary, we have a
21 legal position on that. I'm taking advice from
22 Staff. The statement as to the dec statement, the
23 recommendation here as to the dec statement and to
24 the Chairman's comments, I think that's very
25 narrowly defined, and that was my point in terms of

1 the work from legal Staff.

2 To me, and it's in the conclusion on page
3 nine, there are three points that are made, Ms.
4 Harper, and your recommendation is that the
5 Commission should also state this declaration is
6 limited to the facts described and would not apply
7 to different alternative facts. I'm resting on
8 that position.

9 Now, how do we follow up on that? You know,
10 there are questions stated. There's a
11 recommendation that we make a declaration on three
12 individual points. What is the follow-up to that?
13 Whatever it is that this company does in the
14 future, how do we follow up and identify whether or
15 not something is outside of that limit? That would
16 be my only concern. Thank you.

17 MS. HARPER: Thank you, Commissioner Polmann.
18 That language comes from the statutes and the
19 constructs of the dec statement and it technically
20 doesn't have to be part of the order because it's
21 already sort of understood. However, we kind of
22 put that in there as a warning, so I understand
23 where your question is coming from. On the other
24 hand, it's really our role to sort of police it.
25 So the way it would come before us would be in

1 terms of maybe a territorial dispute by a company,
2 let's say a utility company that interconnected
3 with a customer of Sunrun's, or even a customer
4 themselves just calling us directly. That's how we
5 would probably find out, and probably very quickly,
6 I would assume, if somebody went outside and, say,
7 perhaps crossed a line into selling electricity.

8 COMMISSIONER POLMANN: Thank you.

9 CHAIRMAN GRAHAM: Commissioner Brown.

10 COMMISSIONER BROWN: Thank you. And I don't
11 even know if I have any more questions after
12 Commissioner Clark. I thought those were really
13 nicely-prepared questions and I appreciate your
14 responses. They did elucidate some of the concerns
15 I had, but I still feel that there's some ambiguity
16 with the lease and the maintenance and operation of
17 the equipment as your petition was presented to the
18 Commission, and, therefore, as Staff analyzed what
19 they had.

20 And taking into account your business model
21 and advertising materials of the monitoring and the
22 maintenance of the home's solar system, as you even
23 attested to here, I know you're trying to structure
24 it so that this Commission doesn't have
25 jurisdiction over your new business model in

1 Florida, but based on everything that's presented,
2 I'm still hazy and not comfortable voting in favor
3 of it based on the facts. And the petition, of
4 course, you could always come back and present more
5 clear facts with the lease agreement, but this --
6 I'm not comfortable voting in favor of it today.

7 MS. RULE: Commissioner, I'll reiterate our
8 offer that if you were to approve it as
9 hypothetical, we would be happy to bring back in
10 the contract for Staff's administrative approval.

11 COMMISSIONER BROWN: Mr. Chairman. I think
12 maintenance and operation are a critical component
13 here. I would like to see that and I'd like to see
14 the Staff analysis after we get an opportunity to
15 evaluate it, but this is just one Commissioner
16 here. It may move forward or not. Thank you.

17 CHAIRMAN GRAHAM: Commissioner Brown, I am --
18 I have to agree with you. I am -- it's still hard
19 for me to let go of this. And specifically -- and
20 I think Commissioner Polmann pulled it up and we
21 keep talking about a generic lease, but -- and
22 everything we read says in Sunrun's residential
23 solar equipment lease and their equipment lease and
24 they're -- even though we're not specifically going
25 to approve a lease, we're approving something and

1 there's no lease in front of us.

2 And I guess when I'm arguing this case in
3 front of somebody else down the road, they're going
4 to say, well, your dec statement says according to
5 their lease, what does the lease say? And we don't
6 have any specifics on what that lease says.

7 Now, I guess my question is, and the offer
8 coming from the -- from Sunrun was they can put
9 together a lease and Staff can approve that
10 administratively, and I don't think we necessarily
11 want to approve your lease, but I wouldn't mind --
12 and I don't know what the time frame is on this, if
13 there's a time frame on this, or if we can get them
14 to waive a designated time frame so then we can at
15 least look at the lease and then let the dec
16 statement free because we said according to your
17 lease it does not violate our rules. And we're not
18 approving the lease, but according to this lease
19 you put in front of us specifically, this lease
20 specifically does not violate our rules.

21 Now, first question I have is to Staff. Is
22 there a time frame on this dec statement?

23 MS. HARPER: Yes. Chairman, there is a time
24 frame per statute. However, to your point, if
25 Sunrun was willing to waive the time frame that we

1 have, the 90-day period in order for them to have
2 the opportunity to provide whatever documentation
3 the Commission needs, that would be up to them to
4 do.

5 CHAIRMAN GRAHAM: So this goes right back to
6 what Sunrun said. Rather than it coming back to
7 Staff for Staff approval, if you can just submit it
8 and then it will come back to us and, once again,
9 we won't be approving the lease, but we'll be
10 approving the dec statement to a specific lease and
11 not to a generic lease.

12 MS. RULE: And we'll waive that time frame.

13 CHAIRMAN GRAHAM: Okay. Staff, now, what do
14 we need to do as far as -- are we just going to
15 table this? Are we going to waive it? What do we
16 need to do to handle this item so they don't have
17 to come back with a whole 'nother --

18 MR. HEDRICK: You can defer it.

19 CHAIRMAN GRAHAM: Just defer it? Okay. So
20 with the waiver coming from Sunrun, we're going to
21 defer this until we get the lease in from them.
22 And, once again, we're not going to be approving
23 their lease, but we're going to be approving the
24 dec statement to a specific lease.

25 MR. HEDRICK: That works, as long as we're not

1 approving the lease.

2 CHAIRMAN GRAHAM: Commissioner Clark.

3 COMMISSIONER CLARK: I was going to say that,
4 Mr. Chairman. You took the words out of my mouth.
5 I want to be perfectly clear that there is nothing
6 that prevents Sunrun -- let me rephrase that in the
7 form of a question. There's nothing that prevents
8 Sunrun from proceeding with their business plan and
9 their business model as-is. They are doing so at
10 risk of someone coming back and saying, no, that is
11 the sale of electricity.

12 Again, my thoughts, as well. I would not be
13 in any favor of approving a lease, but in order to
14 approve a declaratory statement that includes
15 language in the lease, I would at least like to see
16 it and feel comfortable that, you know, for the
17 consumers in the state of Florida, this is what
18 we're looking at. This is what we're going for --

19 CHAIRMAN GRAHAM: I think it goes right back
20 to what Commissioner Fay said from the beginning,
21 that it's a safe way for them to move forward
22 before they start spending a lot of money. You
23 know, they're saying, okay, we're asking you a
24 question, we don't want to violate your rule, but
25 does this idea violate your rule, and our comfort

1 level is we just would really like to see a lease
2 in front of us before we give you that specific.
3 And your willingness to help us with that is
4 definitely appreciated.

5 With that being said, we're going to defer
6 this item until further notice. Thank you.

7 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DANA W. REEVES, Professional Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 12th day of March, 2018.



DANA W. REEVES
NOTARY PUBLIC
COMMISSION #FF968527
EXPIRES MARCH 22, 2020