



Dianne M. Triplett
Deputy General Counsel

October 9, 2018

VIA ELECTRONIC FILING

Ms. Carlotta Stauffer, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Duke Energy Florida, LLC's Petition for Declaratory Statement regarding PURPA solar qualifying facility power purchase agreements*; Docket No. 20180169-EQ

Dear Ms. Stauffer:

Enclosed for filing in the above-referenced Docket on behalf of Duke Energy Florida, LLC ("DEF") is DEF's Response to Solar Energy Industries Association's Petition to Intervene and Response in Opposition to Petition for Declaratory Statement.

Thank you for your assistance in this matter. Please feel free to call me at (727) 820-4692 should you have any questions concerning this filing.

Sincerely,

/s/ Dianne M. Triplett

Dianne M. Triplett

DMT/cm
Enclosure

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory Statement
by Duke Energy Florida, LLC, Regarding
PURPA Solar Qualifying Facility Power
Purchase Agreements

Docket No. 20180169-EQ

Filed: October 9, 2018

**DUKE ENERGY FLORIDA, LLC'S RESPONSE TO SOLAR ENERGY
INDUSTRIES ASSOCIATION'S PETITION TO INTERVENE AND
RESPONSE IN OPPOSITION TO PETITION FOR DECLARATORY STATEMENT**

Duke Energy Florida, LLC (“DEF” or “the Company”), pursuant to Rules 28-105.003 and 28-105.0027(1), F.A.C., hereby responds to the Solar Energy Industries Association’s (“SEIA”) Petition to Intervene and Response in Opposition to DEF’s Petition for Declaratory Statement (“Response in Opposition”) filed on October 2, 2018, with the Florida Public Service Commission (“Commission”) in the above-referenced docket regarding DEF’s Petition for Declaratory Statement (“Petition”).

DEF does not oppose SEIA’s Petition to Intervene, provided that SEIA be required to prove the facts and allegations upon which they claim to meet the Commission standard for intervention in this docket. However, given that SEIA included several other statements of fact and law in its Petition to Intervene, as well as its Response in Opposition, with which DEF does not agree and which were unnecessary to assert standing to intervene, DEF is compelled to provide a response to those statements.

Many of the arguments made by SEIA in its Petition to Intervene and Response in Opposition have been raised by other parties/interested persons in their filings in this docket. Accordingly, and for efficiency, DEF will not repeat its responses to those arguments here; rather, it incorporates by reference its previous responses, including its Reply to Ecoplexus’

Response in Opposition, which will be filed the same day as this Response. As to SEIA's filings:

1. DEF disagrees with SEIA's assertion that granting DEF's Petition will deny consumers access to competitively priced generation, that it would prevent companies from developing solar projects in Florida, or that it will create economic harm to SEIA's members. *See Petition to Intervene at para 12.* DEF would first note that SEIA's allegation implies that PURPA PPA contracts establish Florida market prices for electric power. To the contrary, the Florida QF avoided cost methodology for PURPA PPAs is derived using a specific utility's incremental system cost and the cost of a specific utility's next avoided fossil-fueled unit (the Standard Offer) and how it would operate on a specific utility's supply-side resource portfolio. It is not related to open-market competition, the Florida electric power brokering system, or even Florida market drivers, because a specific utility must purchase any and all power produced by that solar QF at the utility's full QF avoided cost. *See Rule 25-17.082(1) F.A.C., 25-17.230 F.A.C., and 25-17.0889 F.A.C. for required obligations.* Furthermore, the QF chooses the energy "product" (i.e. firmness) to be delivered to the targeted or host utility, not the market. Finally, the solar QF has the right to choose QF avoided cost payments at either the time of energy delivery or when the obligation between the solar QF and the host utility is established by the solar QF. This is one of the reasons, as discussed in DEF's Petition, that it seeks to mitigate the customer risk and potential impact to grid reliability from unaccounted for "must-take" solar energy. To hold customers, including SEIA's members, truly harmless from the potential bill impacts from PURPA, DEF must plan and anticipate solar QF energy deliveries. Fixing rates for a two year period for solar QF PPAs allows customers a chance to not pay more than QF avoided costs.

2. DEF also notes that SEIA has taken the Duke Energy Corporation comments (“Duke Energy comments”) before the FERC out of context, leading to an inaccurate depiction of those comments.¹ DEF concedes that the Duke Energy comments quoted the case law that SEIA included in its Petition to Intervene; however, here is the full quote:

In its Notice, the Commission also inquires, “are there other minimum terms and conditions that a developer needs to secure financing?” Congress has stated that QFs are not guaranteed a profitable rate of return. Instead, for potential investors to make decisions, the QF is entitled to know the rate and expected rate of return on the potential investment. As one Court noted, ‘Congress thought it important to encourage investment in small power producing projects ... and one way to do so was to set firm rates to be paid for power generated by the [QF] over the life of typical financing arrangement. Doing so permits an assessment of the economic viability of such projects at the front end’ (citing *Greenwood v. N.H. PUC*, 2007 U.S. Dist. LEXIS 52524 at 9-10 (D.N.H. 2007)). See also *Applied Energy Servs. v. Oklahoma Corp. Comm’n*, 31 FERC 61,313 at 61709 (1985)). Courts and the Commission have emphasized sanctity of contract (citing *New York State Elec. & Gas Corp.*, 71 FERC 61,027 at 61115 (1995).) and predictability of income, in finding that contracts are to be respected, even if actual system costs declined after the contract was signed. (citing *Brazos Electric v. FERC*, 205 F. 3d 235, 245-46 (5th Cir. 2000)). The rights to know the rate of return and to expect performance of signed contracts are not a right or entitlement to a profitable rate of return.

Mandating contractual duration and requirements would impair the States’ ability and flexibility to balance the variety of local conditions affecting the purchasing utility and State policy, and would therefore, after 40 years of precedent, intrude into how each State has chosen to address its different local circumstances and regulate each different utility under its jurisdiction.

As stated in the Duke Energy comments, PURPA does not require that any QF, including a solar QF, earn a particular rate of return on its projects. Rather, it has the right to know in advance on a forecasted basis what the energy pricing and project returns may be over the life of a financing arrangement which may be a one or two year period. In fact, this Commission has already determined how best to “facilitate third-party financing of renewable generating

¹ SEIA also takes other Duke Energy comments to the FERC, made June 7, 2016, out of context in a similar fashion on page 6 of the Response in Opposition.

facilities” while encouraging renewable investments by ensuring the utility provides fixed energy payment options to renewable QFs under Rule 25-17.250(6) F.A.C., and this is what DEF has provided in its declaratory statement with fixed pricing for two years, with a priority renewal. The Duke Energy comments also support this Commission’s right to set the appropriate length of PURPA PPAs or fixed price periods to balance all interests - customers, QFs, and utilities. This Commission, understanding its 30-year history with PURPA, is best suited to determine the policy that should apply to Florida’s unique situation. SEIA argues to create a new standard for the required length of a PURPA PPA term by arguing that it is “mathematically impossible to repay a project’s entire cost over a two-year term at an avoided cost rate.” *See Response in Opposition at p. 11.* Again, the standard is whether there is a reasonable opportunity for an investor to assess the economic viability of a solar QF project, not whether utility customers can pay for the QF’s project costs over some specific period. Clearly, other states, as cited in DEF’s Petition, have imposed shorter terms for fixed price periods for PURPA PPAs, so there is precedent for setting a fixed price for QF payments for a one or two year period.

3. DEF agrees with SEIA that it is important to any utility to have a diverse mix of generating resources with which to serve its customers. *See Response in Opposition at pp. 1-2.* However, allowing solar QFs to inundate DEF’s system with thousands of megawatts of solar energy, produce excess solar energy without regard to grid reliability, and insist upon 30 year solar QF PPA contracts as part of their business model is not consistent with PURPA, this Commission’s implementation of PURPA rules, nor is it a way to maximize the amount of solar generation in the state. A diverse mix of supply-side resources, including emission-free resources, will provide DEF’s balancing authority operational flexibility, fuel diversity, and a balanced mix of optimized efficient generators to serve DEF customers at equitable rates.

4. Finally, DEF is not attempting to utilize this declaratory statement in lieu of a rulemaking or to set general policy, contrary to SEIA's argument. *See Response in Opposition at p. 5.* DEF has clearly set forth, in its Petition, the rule and order that have given rise to DEF's uncertainty as to the equivalent customer risk of paying more than avoided cost compared to the customer risk that this Commission has deemed acceptable in DEF's Standard Offer Contract. Compared to the Standard Offer Contract's floating or variable energy price, DEF is uncertain about the length of time for a one hundred percent fixed price period within a solar QF PPA. DEF, acting on behalf of its customers, is uncertain in particular given the unprecedented increase in the number of solar QFs in its state and FERC generator interconnection queues, and the changing landscape of solar interest, pricing, and market. The controversy that existed, and still exists, is that many of the solar QFs in DEF's interconnection queues, including at least one SEIA member (and perhaps others, which DEF cannot confirm because SEIA did not disclose the other members on the basis of confidentiality) have requested 20 to 30 year solar QF PPA prices that are entirely fixed price contracts without the obligation to perform. DEF does not believe this is consistent with the Commission's interpretation of PURPA and seeks Commission guidance on the length of time to fix the QF payment price period. DEF further disagrees with SEIA's assertion that DEF's requested Petition can only be granted by the Florida or federal legislatures, or by FERC. As explained above and in other DEF filings in this docket, PURPA and FERC leave a great deal of discretion to the state commissions to determine how to implement PURPA, including the length of time for a one hundred percent fixed price period within a PURPA contract. That is why contract lengths vary across the country, per rulings by state commissions. The Florida Commission therefore does have the ability to grant DEF's

request, or if it felt that another avenue was appropriate, it could also establish a rulemaking workshop to consider the issues and uncertainty described in DEF's Petition.

Respectfully submitted,

/s/ Dianne M. Triplett

DIANNE M. TRIPLETT
299 First Avenue North
St. Petersburg, FL 33701
T: 727.820.4692; F: 727.820.5519
E: Dianne.Triplett@Duke-Energy.com

MATTHEW R. BERNIER
106 East College Avenue, Suite 800
Tallahassee, FL 32301
T: 850.521.1428; F: 727.820.5519
E: Matthew.Bernier@Duke-Energy.com

Attorneys for Duke Energy Florida, LLC

CERTIFICATE OF SERVICE
(Dkt. No. 20180169-EQ)

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following by electronic mail this 9th day of October, 2018, to all parties of record as indicated below.

/s/ Dianne M. Triplett
Attorney

<p>Rosanne Gervasi Office of General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 rgervasi@psc.state.fl.us</p> <p>J. R. Kelly / C. Rehwinkel Office of Public Counsel c/o The Florida Legislature 111 West Madison St., Rm. 812 Tallahassee, FL 32399 kelly.jr@leg.state.fl.us rehwinkel.charles@leg.state.fl.us</p> <p>Robert Scheffel Wright / John T. LaVia, III (Ecoplexus) 1300 Thomaswood Dr. Tallahassee, FL 32308 jlavia@gbwlegal.com schef@gbwlegal.com</p> <p>Paul Esformes (Ecoplexus, Inc.) 807 East Main St., Ste. 6-050 Durham, NC 27701 pesformes@ecoplexus.com</p> <p>Robert Fallon (Ecoplexus) Engleman Fallon, PLLC 1717 K St., N.W., Ste. 900 Washington, DC 20006 rfallon@efenergy.com</p> <p>Marsha E. Rule (Vote Solar / SEIA) 119 South Monroe St., Ste. 202 Tallahassee, FL 32301 marsha@rutledge-ecenia.com</p>	<p>Rich Zambo (Vote Solar / SEIA) Rich Zambo, P.A. 2336 S.E. Ocean Blvd., No. 309 Stuart, FL 34966 richzambo@aol.com</p> <p>George Cavros, Esq. (SACE) 120 E. Oakland Park Blvd., Ste. 105 Fort Lauderdale, FL 33334 george@cavros-law.com</p> <p>Heather Curlee (SEIA) Wilson Sonsini Goodrich & Rosati, P.C. 701 Fifth Ave., Ste. 5100 Seattle, WA 98104 hcurlee@wsgr.com</p> <p>Dylan Casey (Hardee Dydo Solar) P.O. Box 59225 Birmingham, AL 35259 dcasey@beaufortrosemary.com</p> <p>Lindsay Latre (esaSolar) 108 Commerce St., Ste. 105 Lake Mary, FL 32746 Llatre@esa-solar.com</p> <p>Daniel Ros / Justin Vandenbroeck (Renergetica) 108 Commerce St., Ste. 105 Lake Mary, FL 32746 daniel.ros@renergetica.com justin@renergetica.cloud</p>
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