

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Re: Petition by Florida Power & Light Company  
for Approval of FPL SolarTogether Program and  
Tariff.

DOCKET NO. 20190061-EI

FILED: June 26, 2019

**CORRECTED CITIZENS' MOTION FOR ADMINISTRATIVE HEARING**

The Citizens of the State of Florida, by and through the Office of Public Counsel, pursuant to Rule 28-106.204, Florida Administrative Code, hereby submit their Motion for Administrative Hearing, and in support thereof, state as follows:

1. On March 13, 2109 Florida Power & Light (FPL) filed its Petition for Approval of FPL SolarTogether Program and Tariff.
2. According to the Petition, Phase 1 of the SolarTogether Program (“SolarTogether” or “the Program”) will be comprised of twenty 74.5 MW solar power plants which will add 1,490 megawatts of generation to FPL’s system. (Petition at 3.)
3. SolarTogether Phase 1 is projected to cost approximately \$1.79 billion. (Petition at 7.)
4. According to the Petition, participation in the Program is optional and there are a limited number of subscriptions available. (Petition at 2, 6; FPL’s Response to Staff’s First Data Request No. 90.) Therefore, it appears not all of FPL’s customers can or will be participants. In addition, the Petition indicates that participants in the SolarTogether Program will receive a credit on their bills every month of enrollment. (Petition at 9.)
5. To date, Commission Staff has issued three sets of data requests to FPL; responses to the third set are due on or about July 10, 2019. OPC has issued three sets of interrogatories and two

requests for production of documents to FPL; responses to OPC's third set of interrogatories are due on or about July 22, 2019.

6. The PSC's current online docket time schedule indicates the Staff Recommendation is due on July 25, 2019.

7. The extraordinary size of the Program, coupled with the complexity of the engineering, capacity and financial issues, as well as the significance of any tariff filing in future proceedings, must be carefully evaluated, making the formal hearing process a more appropriate procedure for this case than the Proposed Agency Action (PAA) process. Additionally, the issues raised in the instant Petition have generated concern and interest from numerous persons and entities across Florida. Finally, approval of the Program in the form proposed in the Petition has the potential to set new precedent for the regulatory oversight of electric utilities in the state. For all of the foregoing reasons, the Citizens submit that a formal administrative hearing process would best serve the public interest, and the Citizens request the Commission forego the PAA process in order to proceed directly to a full administrative hearing in this docket.

### **Discussion**

This is an exceptionally large case, both in terms of the financial exposure and risk for all of FPL's customers, and in terms of the megawatt capacity being added to the utility's system. Additionally, this case is very complex, in that it involves highly technical engineering and capacity issues which require sophisticated, in-depth expert analyses. An indication of the complexity is that the Commission's Staff has issued 159 data requests to date, 61 of which are currently outstanding and for which responses will not be due until shortly before the Staff Recommendation is due to be issued. The stakes of this investigative effort are heightened because

FPL has indicated in statements during the Commission's informal meetings that any tariff approval resulting from this proceeding should serve as the sole prudence review for this Program. Thus far, the SolarTogether Program is projected to be at least a \$1.79 billion dollar undertaking. Moreover, the Program's full cost may expand, as the cost estimate provided by FPL in its Petition relates to Phase 1 of an as-yet undetermined number of Phases to come. (Petition, at 3.) FPL suggested it intends to offer future Phases of the Program based on customer demand. (FPL's Response to Staff's Data First Request No. 67.) In addition, the utility stated in responses to Staff's Data Requests that there has been increased interest in its existing solar-related programs in the last 12-18 months, which is indicative of market demand. (FPL's Response to Staff's First Data Request No. 53.) Therefore, it is reasonable to expect that the Program will be expanded in the foreseeable future.

The current phase of the SolarTogether Program is structured as 20 individual plants of 74.5 megawatts each, which is just below the 75 megawatt statutory threshold at which power plants must go through a more rigorous statutory review and need determination pursuant to the Florida Electrical Power Plant Siting Act, § 403.501, et seq., Florida Statutes. The Program outlined in the Petition is projected to represent a total of 1,490 megawatts in new generation for FPL.<sup>1</sup>

While the projected cost for the Program is almost two billion dollars and the planned generation is 1,490 megawatts, both of which may be expanded, the indications are that once the current phase of the Program is approved, FPL does not expect it will be required to demonstrate

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<sup>1</sup> Because 20 plants are being presented as a single Phase of the singular SolarTogether Program, the 1,490 megawatts of generation could be viewed as a whole rather than being evaluated through an artificial lens as 20 individual, unrelated plants. (Interestingly, it does not appear that FPL considered whether multiple 74.5 MW projects in certain definitive vicinities could or should be construed as meeting the Power Plant Siting Act threshold of 75 MW.)

prudence or need for any future phases, plant construction, or related expansion of the Program. This prospect triggers larger public interest ramifications, in that approval of the Program could set precedent which would dramatically change the regulatory process for all utilities and customers of the entire state going forward. As a result, a full, thorough hearing, rather than a PAA process, is the appropriate vehicle for the Commission to consider such a radical transformation of the state's regulatory framework. Any other project comprising over 1,400 MW of new capacity being added to a system would normally go through a need determination process involving multiple state agencies and the Cabinet. The Program proposed in the instant Petition is by FPL's own description a history-making endeavor; as such, the people of the State deserve a more robust, contemplative procedure than the PAA process provides.

Furthermore, the substantial public interest in this docket is evidenced by the large number of parties (ten) who have filed for "interested person" status in this case. The interested persons listed to date include several consumer groups whose members are likely comprised of material numbers of FPL's customers. If this docket proceeds under the PAA format, all of those interested persons will be foreclosed from participating as a full party, which heightens the possibility of any PAA order being protested. This proceeding has implications for all of FPL's ratepayers because, pursuant to the plan outlined in the Petition, the costs of the Program will be shared (and guaranteed) by all ratepayers, not simply those who participate in the Program and thus receive credits on their bills: "[a]ll Program costs and expenses will be reflected as base rate recoverable costs." (Petition at 10-11).

Due to the huge financial exposure for customers, coupled with the utility's intent that the pending PAA tariff consideration process would effectively foreclose the potential for any future prudence evaluation or need determination which would otherwise be required for a project of a

similarly large cumulative size, a formal hearing process is the most appropriate way to fully evaluate the request outlined in the Petition for the protection of the public welfare.

The most effective use of administrative time and resources going forward is to conduct formal discovery, including the use of sworn testimony and cross examination, as opposed to the unsworn and untested evidence garnered through the PAA process. Even though the current schedule provides that the Staff Recommendation will be issued July 25, it is already clear that the month ahead would be most efficiently used in a hearing posture, rather than being consumed in the process of drafting a recommendation for an order that will likely be protested.

The undersigned counsel for OPC has conferred with the other party to this case and was advised that FPL objects to OPC's motion.

WHEREFORE, the Citizens request the Commission proceed directly to a full administrative hearing in this docket and forego the PAA process.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Citizens' Motion for Administrative Hearing has been furnished by electronic mail on this 26<sup>th</sup> day of June, 2019, to the following:

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