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STATE & FEDERAL ENERGY REGULATION  
SOLAR & RENEWABLE ENERGY

July 22, 2019

***VIA ELECTRONIC FILING***

Mr. Adam J. Teitzman  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 20190061-EI -- Petition for approval of FPL SolarTogether program and tariff, by Florida Power & Light Company

Dear Mr. Teitzman:

On behalf of Vote Solar, attached for filing in the captioned Docket, please find Vote Solar's Additional Comments in Support of its Motion to Intervene

If you have any questions regarding this filing, or require anything further in this regard, please contact me at (772) 225-5400 or Marsha Rule at (850) 445-1166.

Sincerely,

/s/ *Rich Zambo*

Richard A. Zambo, P.A.  
*Attorney for Vote Solar*

RAZ/bms

Attachment

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

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Docket No. 20190061-EI

Filed: July 22, 2019

**VOTE SOLAR'S ADDITIONAL COMMENTS  
IN SUPPORT OF ITS MOTION TO INTERVENE**

On June 14, 2019, Vote Solar, pursuant to sections 120.569, 120.57(1), Florida Statutes and Rule 28-106.205, Florida Administrative Code, moved to intervene in the above-styled proceeding. On July 12, 2019, Florida Power & Light Company (hereinafter "FPL" or "Petitioner") submitted an amended response in opposition to Vote Solar's motion to intervene. On July 17, 2019, the Florida Public Service Commission (hereinafter "Commission") issued an order requesting additional comments concerning whether Vote Solar meets the three prong associational standing test set out in *Florida Home Builders v. Dept. of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982), and *Farmworkers Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services*, 417 So. 2d 753 (Fla. 1st DCA 1982).

Specifically, the Commission requested comments concerning whether Vote Solar can demonstrate: (1) how its members will be substantially affected by the Commission's decision in Docket No. 20190061-EI; (2) how the subject matter of the proceeding is within Vote Solar's general scope of interest and activity; and (3) how the relief requested is of a type appropriate for Vote Solar to receive on behalf of its members.

Vote Solar thanks the Commission for the opportunity to file additional comments in support of its associational standing to intervene on behalf of its members in this important proceeding. In support thereof, Vote Solar respectfully states as follows:

**A. Vote Solar's members will be substantially affected by the Commission's decision in Docket No. 20190061-EI.**

1. Vote Solar has at least 5,000 members<sup>1</sup> who are substantially affected by this decision because they receive electric service from Florida Power & Light Company. Over 200 Vote Solar members have already taken action and demonstrated their interest in this docket by sending emails encouraging the Commission to hold a hearing on Petitioner's filing.<sup>2</sup> Vote Solar's members are individuals who voluntarily join and sign up to receive information regarding Vote Solar's activities. Members also have the right to give input into Vote Solar's activities. By selecting "Join Us" on Vote Solar's website, an individual is brought to a page that allows them to provide contact information and sign up as Vote Solar members. Vote Solar has established channels, including regularly recurring member surveys that inform Vote Solar's policy priorities, to incorporate its members' concerns and interests into its work.

2. The substantial number of Vote Solar's members who are FPL customers will be substantially affected by the Commission's decision in several key ways. First, in this docket the Commission will determine the rates, terms and conditions under which Petitioner may offer the SolarTogether program to its customers, including customers who are Vote Solar members. All FPL customers, including Vote Solar members, are substantially affected by proceedings that determine the rates, terms and conditions of the services that are offered to them by their serving utility. *See, e.g.*, Order PSC 11-0148-PCO-EU<sup>3</sup> (FPL customers permitted to intervene in proceeding to determine need for expansion of an existing renewable energy electrical power plant when the issue of whether the proposed generating addition would impact rates would be

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<sup>1</sup> In *Hillsborough County v. Florida Restaurant Ass'n, Inc.*, 603 So. 2d 587, 589 (Fla. 2nd DCA 1992), the Court found standing where 37 of 2,766 members were affected -- a much smaller number and percentage than in Vote Solar's case.

<sup>2</sup> <http://www.psc.state.fl.us/ClerkOffice/DocketFiling?docket=20190061>.

<sup>3</sup> Order No. PSC-11-0148-PCO-EU, issued March 3, 2011, in Docket No. 110018-EU, *In re: Joint petition for modification to determination of need for expansion of an existing renewable energy electrical power plant in Palm Beach County by Solid Waste Authority of Palm Beach County and Florida Power & Light Company, and for approval of associated regulatory accounting and purchased power agreement cost recovery.*

addressed at hearing; Order notes the Commission's "long history of granting intervention to residential customers of utilities under its regulation."). In this case, Vote Solar's members who wish to subscribe to the program have a substantial interest in determinations the Commission will make in this proceeding including the percentage of overall capacity made available to residential customers, the premium to be paid by subscribers and length of time it must be paid in order to achieve the savings alleged by FPL. The amount of subscribing customer savings is impacted by many decisions and assumptions that this Commission will either approve, amend or deny, including the reasonableness of Petitioner's assumptions underlying the value proposition of this program such as cost and timing of carbon compliance costs; natural gas prices; solar panel efficiency and production; weather fluctuations; allocation of only 25 percent of program capacity to residential customers, and other factors.

3. Further, if the program is not properly structured, Vote Solar members may seek to participate in the program but be unable to. Some of Vote Solar's members may be blocked from participating in the program as proposed by FPL due to over-subscription by other customers; inadequate capacity allocated to meet residential customer demand; or participation barriers due to FPL's program design. For instance, some Vote Solar members are likely to be unable to enroll because FPL requires customers to pay a premium for several years in order to access solar savings in the out years; this could be cost prohibitive for lower income customers.

4. Additionally, all of Vote Solar's members who are FPL customers will be substantially affected by this decision, regardless of whether they ultimately elect to participate in the program. FPL seeks to add **all** costs and expenses associated with the SolarTogether program as base rate recoverable costs<sup>4</sup>, with unsubscribed capacity costs defaulting to rate base and thus borne by FPL's general body of ratepayers – including the substantial number of Vote

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<sup>4</sup> See FPL's March 13, 2019 Petition at paragraph 28, page 11

Solar members who are FPL customers, and who will be directly impacted by bearing the cost, risk or benefit of the program at issue.<sup>5</sup> FPL's program design creates both risks and benefits for non-subscribing ratepayers. The nature of the risks to non-subscribers (due to undersubscription of the program or failure of utility's assumptions to materialize (carbon costs, gas projections, etc.) is one of the central points of contention in this proceeding. Moreover, FPL itself states in response to a Staff Data Request<sup>6</sup> that 20 percent of the net benefits of the solar resources that it proposes to build as part of this program will be allocated to non-participants, creating a financial interest on the part of all customers – whether or not they participate directly in the SolarTogether program – in how these benefits are being calculated, what assumptions underlie them, whether that allocation represents a fair distribution of net benefits across subscribing and non-subscribing customers, and how negative impacts will be allocated. Additionally, as ratepayers who have a demonstrable and substantial interest in programs and policies that advance solar, Vote Solar's members seek to maximize the efficiency and impact of program spending to increase solar investments and ensure successful implementation.

5. Lastly, but importantly, all of Vote Solar's members who are FPL customers desire to see more cost-effective clean energy on the utility's system. Put simply, Vote Solar members want more cost-effective solar; and for that reason, are interested in this program being designed in a way that ensures additionality; leads to future commitments to new cost-effective solar; is fully subscribed; and ensures access for all customers. Vote Solar seeks to ensure that the full range of clean energy options are being competitively priced and delivered to customers

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<sup>5</sup> See Order No. PSC-2017-0448-PCO-EI, *Order Granting Intervention of Sierra Club*, issued November 17, 2017 in Docket No. 20170225-EI, *In re: Petition for determination of need for Dania Beach Clean Energy Center Unit 7*, by Florida Power & Light Company: finding that Sierra Club's members were substantially affected where they would be directly impacted through their rates if the Commission approved a new generating resource.

<sup>6</sup> See FPL response to Staff Data Request No. 59 Page 1 of 1: "Recognizing the variable nature of fuel pricing and forecasting, FPL designed the program such that 20% of the forecasted system benefits are reserved for the non-participants to protect them from the unknown potential decline in future fuel prices versus the forecast utilized in the analysis." (E.S.)

to maximize cost-effective solar on the grid, giving Vote Solar a specific interest in the outcome of this proceeding.

6. For these reasons, Vote Solar and its members have a substantial interest in voluntary programs that expand (or limit) customers' options for relying on solar to meet their electricity needs. Vote Solar's members have an interest in ensuring that the subscription solar program proposed by Petitioner is designed to fully and fairly value solar resources, maximize opportunities for participation, and bring the lowest cost, most competitively priced solar resources to customers.

7. Denial of Vote Solar's motion to intervene as a full party to this proceeding will prevent it from representing its member's interest on the important issues presented in this Docket, and will force its members to intervene separately to address their concerns; contrary to the intent of Rule 28-106.211, Florida Administrative Code, and the Commission's stated intent "to prevent delay" and "to promote the just, speedy and inexpensive determination of all aspects of this case."<sup>7</sup>

**B. The subject matter of this proceeding is within Vote Solar's general scope of interest and activity.**

8. Vote Solar, Inc., a California corporation authorized to do business in Florida, is a 501(c)(3) nonprofit corporation that is authorized to have members under the organization's bylaws. *See Attachment 1*, Vote Solar's Bylaws. Established in 2002, Vote Solar has over 80,000 members nationally, including over 30,000 members in Florida, at least 5,000 of whom reside within FPL's service territory.

9. As a nonprofit public benefit corporation, Vote Solar engages in charitable and educational activities under Section 501(c)(3) of the Internal Revenue Code, specifically to

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<sup>7</sup> See first paragraph of Order No. PSC-2019-0285-PCO-EI in this Docket: "This request is made under Rule 28-106.211, Florida Administrative Code, "to prevent delay" and "to promote the just, speedy, and inexpensive determination of all aspects of the case.".

promote solar energy. See Attachment 2, Vote Solar's Articles of Incorporation, at page 1, Article II B.<sup>8</sup> Vote Solar works to foster economic opportunity, promote energy security and ensure that cost-effective solar becomes a mainstream energy resource.<sup>9</sup>

10. In order to achieve its mission, Vote Solar focuses on several critical program areas on behalf of its members, two of which are directly at issue in this proceeding: low-income solar access and community (shared) solar.

11. Vote Solar's Access & Equity Program is dedicated to expanding access to solar technology, savings and jobs to the approximately 22 million low-income households nationwide, and in doing so accelerate progress for all. Vote Solar puts a particular focus on engaging and empowering low-income families and communities who are disproportionately impacted by the negative effects of the fossil fuel economy and have the most to gain from a transition to affordable clean energy. As part of this program area, Vote Solar has partnered with the Center for Social Inclusion and Grid Alternatives to produce and launch a Low Income Solar Policy Guide.<sup>10</sup> Vote Solar has also synthesized emerging best practices to increase low income access to community solar, in order to educate policymakers and other stakeholders.<sup>11</sup>

12. Another core program area of Vote Solar is promoting community (shared) solar. A large number of Floridians – including those who rent, have shaded or unsuitable roofs, or live in multifamily housing – face barriers to going solar through the traditional rooftop model. In addition to these physical barriers, many low-income consumers lack financing options, facing

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<sup>8</sup>Vote Solar's purpose of fostering economic opportunity through solar power allows it to address the interests of members in advancing cost-effective clean energy, and the economic opportunities that are afforded (or hindered) by programs such as FPL's. As such, contrary to FPL's assertion, the economics around the SolarTogether program and the benefits for both participants and non-participants are critically important to Vote Solar and its members. Vote Solar therefore has an interest in how customers will benefit (including analysis of the "benefit rate" that constitutes the financial benefit for participants and the benefit sharing arrangement between participants and non-participants); how the timing of when customers sign up will impact the benefits they receive; how the program will be marketed; and whether there are adequate measures in place to ensure customer satisfaction, retention, and protection, including from the risk of bearing additional costs due to FPL's benefit assumptions not materializing.

<sup>9</sup> <https://votesolar.org/about-us/mission/>.

<sup>10</sup> Low Income Solar Policy Guide available online at <https://www.lowincomesolar.org/>.

<sup>11</sup> Available online at [https://votesolar.org/files/6415/0722/6580/Community\\_solar\\_low-income\\_access.pdf](https://votesolar.org/files/6415/0722/6580/Community_solar_low-income_access.pdf).

yet another barrier to solar access. A well-designed community (shared) solar program promises to break down those barriers. For that reason, Vote Solar works to promote community solar programs and policies that remove those barriers and increase solar access for all.<sup>12</sup> This is a critical part of Vote Solar's core mission of bringing solar to the mainstream. Vote Solar produces educational materials to assist its members, policymakers and utilities in program design and development; these include a Community (Shared) Solar Toolkit with resources for designing shared solar programs; a *Checklist for Voluntary Utility-Led Community Solar Programs*;<sup>13</sup> and other resources.

13. As stated in its motion to intervene, Vote Solar's policy experts review regulatory filings, perform technical analyses, and participate in legislative and regulatory proceedings across the country related to community solar, including in California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Nevada, New Mexico, Pennsylvania and Virginia.

14. Through these activities and others, Vote Solar has demonstrated a deep and constructive engagement in the issues that are at the center of this proceeding. The subject matter of this proceeding therefore is squarely within Vote Solar's scope of interest and activity.

**C. The relief requested of the Commission is of a type within its jurisdiction and is appropriate for Vote Solar to receive on behalf of its members.**

15. Vote Solar is explicitly authorized by its bylaws to intervene before local, state and federal agencies and courts to represent the interests of its members who receive residential electric service in proceedings related to its purpose. See Attachment 1, Section 6, at page 12.

16. One of Vote Solar's primary purposes, as stated in Vote Solar's Articles of Incorporation, is to foster economic opportunity by promoting solar energy resources.

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<sup>12</sup> See <https://votesolar.org/policy/policy-guides/shared-renewables-policy/>.

<sup>13</sup> Checklist for Voluntary Utility-Led Community Solar Programs available online at <http://www.votesolar.org/cschecklist>.

17. As stated in its motion to intervene, Vote Solar seeks to intervene as a full party in this proceeding in order to represent its members' interests. Vote Solar intends to address disputed issues of material fact including, but not limited to, whether the Petitioner's program appropriately reflects the costs and benefits to customers participating in the program; appropriately reflects the costs and benefits to the general body of ratepayers as a whole; utilizes the most cost-effective and competitively priced solar energy resources available; and properly values solar energy resources. Such relief is within the Commission's jurisdiction, appropriate for FPL customers who are Vote Solar members, and equally appropriate for Vote Solar to seek and receive on behalf of its members. *See* Order No. PSC-2019-0137-PCO-EG, *Order Granting Intervention*, issued April 17, 2019 (third prong of *Florida Home Builders* test for associational standing is met where organization is seeking a decision that considers [its] interests and the interests of [its] members" and "asserts that its authorized by its bylaws and to represent its interests and the interests of its members in formal proceedings....")<sup>14</sup>; *see also* Order No. PSC-2017-0448-PCO-EI, *Order Granting Intervention to Sierra Club*, issued November 17, 2017 (intervention sought to advocate on behalf of members that there was no need for a new generating unit satisfied requirement that relief requested must be a type appropriate for the association to receive on behalf of its members).<sup>15</sup>

18. Moreover, the interests of Vote Solar's members are of the type that this proceeding is designed to protect. *Ameristeel Corp. v. Clark*, 691 So.2d 473 (Fla. 1997); *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), *reh'g. denied*, 415 So.2d 1359 (Fla. 1982). The purpose of this proceeding is to (a) consider

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<sup>14</sup> Order No. PSC-2019-0137-PCO-EG, *Order Granting Intervention*, issued April 17, 2019, in Docket Nos. 20190015-EG, 20190016-EG, 20190018-EG, 20190019-EG, 20190020-EG, and 20190021-EG, *Commission review of numeric conservation goals*.

<sup>15</sup> Order No. PSC-2017-0448-PCO-EI, *Order Granting Intervention of Sierra Club*, issued November 17, 2017 in Docket No. 20170225-EI, *In re: Petition for determination of need for Dania Beach Clean Energy Center Unit 7*, by Florida Power & Light Company.

whether to approve or deny FPL's program and accompanying tariff, which will then be available to a substantial number of Vote Solar's members; and (b) approve all costs and expenses associated with the program as base rate recoverable costs, with unsubscribed capacity costs defaulting to rate base and paid by the general body of ratepayers, including a substantial number of Vote Solar members.

19. The outcome will significantly impact these members' clean energy options, the terms, rates and conditions at which such options are available, and the economic efficiency of the program, including the costs borne by both participating and non-participating members. Accordingly, Vote Solar has an interest in ensuring that the program as approved is fair, just and reasonable.

20. Based on the foregoing, Vote Solar has articulated and proven allegations to show substantial interest as legally necessary to demonstrate that Vote Solar is entitled to participate in this proceeding.

**WHEREFORE**, Vote Solar respectfully requests that the Commission enter an order granting it leave to intervene and to participate as a full party in this docket.

**RESPECTFULLY SUBMITTED** on this 22<sup>nd</sup> day of July, 2019 by **Attorneys for Vote Solar**.

/s/ [Rich Zambo](#)

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**CERTIFICATE OF SERVICE**

**I hereby certify** that a true and correct copy of the above motion has been furnished to the following by electronic mail on the 22nd day of July, 2019:

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/s/ **Rich Zambo**

**ATTACHMENT 1**

**Vote Solar's Bylaws**

**THIRD AMENDED AND RESTATED BYLAWS**

**of**

**VOTE SOLAR**

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**SECOND AMENDED AND RESTATED BYLAWS**  
**of**  
**VOTE SOLAR**

**ARTICLE I**  
**PRINCIPAL OFFICE**

The principal office of this corporation shall be located in California at such location as determined from time to time by the Board of Directors.

**ARTICLE II**  
**MEMBERSHIP**

This corporation shall have no voting members, but the Board of Directors may, by resolution, establish one or more classes of nonvoting members and provide for eligibility requirements for membership and rights and duties of members, including the obligation to pay dues.

**ARTICLE III**  
**BOARD OF DIRECTORS**

Section 1. Powers. This corporation shall have powers to the full extent allowed by law. All powers and activities of this corporation shall be exercised and managed by the Board of Directors of this corporation directly or, if delegated, under the ultimate direction of the Board.

Section 2. Number of Directors. The number of directors shall be not less than two nor more than eleven, with the exact authorized number of directors to be fixed from time to time by resolution of the Board of Directors.

Section 3. Limitations on Interested Persons. At all times, not more than 49% of the directors of this corporation may be interested persons. An interested person means either:

(a) any person currently being compensated by this corporation for services rendered to it within the previous twelve months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director in his or her capacity as director; or

(b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

Section 4. Election and Term of Office of Directors. The directors then in office shall elect their successors. Each director shall be elected for a term of two years. Each director shall hold office until a successor has been elected.

Section 5. Vacancies. A vacancy shall be deemed to exist on the Board in the event that the actual number of directors is less than the authorized number for any reason. Vacancies may be filled by the remaining directors for the unexpired portion of the term.

Section 6. Resignation and Removal. Resignations shall be effective upon receipt in writing by the Chair of the Board (if any), the President, the Secretary, or the Board of Directors of this corporation, unless a later effective date is specified in the resignation. A majority of the directors then in office may remove any director at any time, with or without cause.

Section 7. Annual Meetings. A meeting of the Board of Directors shall be held at least once a year. Annual meetings shall be called by the Chair of the Board (if any), the President, or any two directors, and noticed in accordance with Section 9.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the Chair of the Board (if any), the President, or any two directors, and noticed in accordance with Section 9.

Section 9. Notice. Notice of the annual meeting and any special meetings of the Board of Directors shall state the date, place, and time of the meeting and shall be given to each director at least four days before any such meeting if given by first-class mail or forty-eight hours before any such meeting if given personally or by telephone, including a voice messaging system, or by other electronic transmission such as e-mail, in compliance with Article IX, Section 5 of these Bylaws.

Section 10. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed and wherever held, shall be valid as though taken at a meeting duly held after proper call and notice, if a quorum is present, and if, either before or after the meeting, each of the directors not present provides a waiver of notice, a consent to holding the meeting, or an approval of the minutes in writing. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting the lack of adequate notice before the meeting or at its commencement.

Section 11. Quorum. A majority of the total number of directors then in office shall constitute a quorum, provided that in no event shall the required quorum be less than one-fifth of the authorized number of directors or two directors, whichever is larger. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except as otherwise provided in Article III, Sections 5 (filling board vacancies), 6 (removing directors) and 12 (taking action without a meeting); Article IV, Section 1 (appointing Board Committees); Article VI, Section 3 (approving self-dealing transactions); Article VII, Section 2 (approving indemnification); and Article IX, Section 7 (amending Bylaws), of these Bylaws or in the California Nonprofit Public Benefit Corporation Law. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 12. Action Without a Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively consent to such action in writing. Such written consents shall be filed with the minutes of the proceedings of the Board, and shall have the same force and effect as the unanimous vote of such directors.

Section 13. Telephone and Electronic Meetings. Directors may participate in a meeting through use of conference telephone, electronic video screen communication, or other electronic transmission in compliance with Article IX, Section 5 of these Bylaws so long as all of the following apply:

(a) each director participating in the meeting can communicate with all of the other directors concurrently, and

(b) each director is provided with the means of participating in all matters before the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

Section 14. Standard of Care.

A. General. A director shall perform the duties of a director, including duties as a member of any Board Committee on which the director may serve, in good faith, in a manner such director believes to be in the best interest of this corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(i) one or more officers or employees of this corporation whom the director believes to be reliable and competent as to the matters presented;

(ii) counsel, independent accountants, or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(iii) a committee upon which the director does not serve that is composed exclusively of any combination of directors or persons described in (i) or (ii), as to matters within the committee's designated authority, provided that the director believes such committee merits confidence;

so long as in any such case, the director acts in good faith after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

Except as provided in Article VI below, a person who performs the duties of a director in accordance with this Section shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a director, including, without limiting the

generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated.

B. Investments. Except with respect to assets held for use or used directly in carrying out this corporation's public or charitable activities, in investing, reinvesting, purchasing or acquiring, exchanging, selling, and managing this corporation's investments, the Board shall adhere to the standards set forth in the preceding paragraph, and shall: (a) consider the charitable purposes of this corporation; (b) avoid speculation, looking to the permanent disposition of the funds, considering the probable income as well as the probable safety of this corporation's capital; and (c) consider:

- (1) General economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences, if any, of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall portfolio;
- (5) The expected total return from income and appreciation of investments;
- (6) This corporation's other resources;
- (7) The needs of this corporation to make distributions and to preserve capital;
- (8) An asset's special relationship or special value, if any, to the charitable purposes of this corporation.

Board decisions about an individual investment shall be made not in isolation but rather in the context of this corporation's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to this corporation.

Notwithstanding the above, no investment violates this section where it conforms to: (a) the intent of the donor as expressed in a gift instrument; or (b) provisions authorizing such investment contained in an instrument or agreement pursuant to which the assets were contributed to this corporation.

Section 15. Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties of this corporation.

Section 16. Director Compensation. The Board of Directors may authorize, by resolution, the payment to a director of reasonable compensation for services as a director. The Board may authorize the advance or reimbursement to a director of actual reasonable expenses

incurred in carrying out his or her duties as a director, such as for attending meetings of the Board and Board Committees.

Section 17. Executive Compensation Review. The Board of Directors (or a Board Committee) shall review any compensation packages (including all benefits) of the President or the chief executive officer and the Treasurer or chief financial officer, regardless of job title, and shall approve such compensation only after determining that the compensation is just and reasonable. This review and approval shall occur when such officer is hired, when the term of employment of such officer is renewed or extended, and when the compensation of such officer is modified, unless the modification applies to substantially all of the employees of this corporation.

#### **ARTICLE IV COMMITTEES**

Section 1. Board Committees. The Board of Directors may, by resolution adopted by a majority of the directors then in office, create any number of Board Committees, each consisting of two or more directors, and only of directors, to serve at the pleasure of the Board. Appointments to any Board Committee shall be by a majority vote of the directors then in office. Board Committees may be given all the authority of the Board, except for the powers to:

- (a) set the number of directors within a range specified in these Bylaws;
- (b) elect directors or remove directors without cause;
- (c) fill vacancies on the Board of Directors or on any Board Committee;
- (d) fix compensation of directors for serving on the Board or any Board Committee;
- (e) amend or repeal these Bylaws or adopt new Bylaws;
- (f) adopt amendments to the Articles of Incorporation of this corporation;
- (g) amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- (h) create any other Board Committees or appoint the members of any Board Committees; or
- (i) approve any merger, reorganization, voluntary dissolution, or disposition of substantially all of the assets of this corporation.

Section 2. Advisory Committees. The Board of Directors may establish one or more Advisory Committees to the Board. The members of any Advisory Committee may consist of directors or non-directors and may be appointed as the Board determines. Advisory

committees may not exercise the authority of the Board to make decisions on behalf of this corporation, but shall be restricted to making recommendations to the Board or Board Committees, and implementing Board or Board Committee decisions and policies under the supervision and control of the Board or Board Committee.

Section 3. Committee Supervision and Reliance. If a committee is composed and appointed as required by Section 1 above (concerning Board Committees), it may act with the authority of the Board to the extent and with the scope provided by the Board. Otherwise, the Board of Directors shall remain responsible for oversight and supervision of the committee as an Advisory Committee. If a committee meets the criteria of Article III, Section 14.A.(iii), the individual directors may rely on it in discharging their fiduciary duties as provided in that Section.

Section 4. Audit Committee. For any tax year in which this corporation has gross revenues of \$2 million or more, this corporation shall have an Audit Committee whose members shall be appointed by the Board of Directors, and who may include both directors and non-directors, subject to the following limitations: (a) members of the finance committee, if any, shall constitute less than one-half of the membership of the Audit Committee; (b) the chair of the Audit Committee may not be a member of the Finance Committee, if any; (c) the Audit Committee may not include any member of the staff, including the President or chief executive officer and Treasurer or chief financial officer; (d) the Audit Committee may not include any person who has a material financial interest in any entity doing business with this corporation; and (e) Audit Committee members who are not directors may not receive compensation greater than the compensation paid to directors for their Board service.

The Audit Committee shall: (1) recommend to the full Board of Directors for approval the retention and, when appropriate, the termination of an independent certified public accountant to serve as auditor, (2) subject to approval of the full Board, negotiate the compensation of the auditor on behalf of the Board, (3) confer with the auditor to satisfy the Audit Committee members that the financial affairs of this corporation are in order, (4) review and determine whether to accept the audit, and (5) approve performance of any non-audit services provided to this corporation by the auditor's firm.

Section 5. Meetings.

A. Of Board Committees. Meetings and actions of Board Committees shall be governed by and held and taken in accordance with the provisions of Article III of these Bylaws concerning meetings and actions of the Board of Directors, with such changes in the content of those Bylaws as are necessary to substitute the Board Committee and its members for the Board of Directors and its members. Minutes shall be kept of each meeting of any Board Committee and shall be filed with the corporate records.

B. Of Advisory Committees. Subject to the authority of the Board of Directors, Advisory Committees may determine their own meeting rules and whether minutes shall be kept.

The Board of Directors may adopt rules for the governance of any Board or Advisory Committee not inconsistent with the provisions of these Bylaws.

## **ARTICLE V OFFICERS**

Section 1. Officers. The officers of this corporation shall be a President, a Secretary, and a Treasurer. The corporation may also have, at the discretion of the directors, a Chair of the Board and such other officers as may be appointed by the Board of Directors. Any number of offices may be held by the same person, except that the Secretary, the Treasurer, or the Chief Financial Officer, if any, may not serve concurrently as the President or Chair of the Board, if any. The Chair of the Board, if any, shall be elected from among the directors of this corporation.

Section 2. Election. The officers of this corporation shall be elected annually by the Board of Directors, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Removal. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board of Directors or by an officer on whom such power of removal may be conferred by the Board of Directors.

Section 4. Resignation. Any officer may resign at any time by giving written notice to this corporation. Any resignation shall take effect on receipt of that notice by any other officer than the person resigning or at any later time specified by that notice and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

Section 5. Vacancies. A vacancy in any office for any reason shall be filled in the same manner as these Bylaws provide for election to that office.

[Section 6.](#) Chair of the Board. The Chair of the Board, if any, shall preside at all meetings of the Board of Directors, shall be the primary liaison between the Board and the President, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

[Section 7.](#) President. The President shall be the chief executive officer of this corporation and shall, subject to control of the Board, generally supervise, direct and control the business and other officers of this corporation. In the absence of the Chair of the Board, or if there is no Chair of the Board, the President shall preside at all meetings of the Board of Directors. The President shall have the general powers and duties of management usually vested in the office of president of the corporation and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 8. Secretary. The Secretary shall supervise the keeping of a full and complete record of the proceedings of the Board of Directors and its committees, shall supervise the giving of such notices as may be proper or necessary, shall supervise the keeping of the minute books of this corporation, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 9. Treasurer. The Treasurer shall be the chief financial officer of this corporation and shall supervise the charge and custody of all funds of this corporation, the deposit of such funds in the manner prescribed by the Board of Directors, and the keeping and maintaining of adequate and correct accounts of this corporation's properties and business transactions, shall render reports and accountings as required, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

## **ARTICLE VI CERTAIN TRANSACTIONS**

Section 1. Loans. Except as permitted by Section 5236 of the California Nonprofit Public Benefit Corporation Law, this corporation shall not make any loan of money or property to, or guarantee the obligation of, any director or officer; provided, however, that this corporation may advance money to a director or officer of this corporation or any subsidiary for expenses reasonably anticipated to be incurred in performance of the duties of such director or officer so long as such individual would be entitled to be reimbursed for such expenses absent that advance.

Section 2. Self-Dealing Transactions. Except as provided in Section 3 below, the Board of Directors shall not approve, or permit the corporation to engage in, any self-dealing transaction. A self-dealing transaction is a transaction to which this corporation is a party and in which one or more of its directors has a material financial interest, unless the transaction comes within California Corporations Code Section 5233(b).

Section 3. Approval. This corporation may engage in a self-dealing transaction if the transaction is approved by a court or by the Attorney General. This corporation may also engage in a self-dealing transaction if the Board determines, before the transaction, that (a) this corporation is entering into the transaction for its own benefit; (b) the transaction is fair and reasonable to this corporation at the time; and (c) after reasonable investigation, the Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances. Such determinations must be made by the Board in good faith, with knowledge of the material facts concerning the transaction and the director's interest in the transaction, and by a vote of a majority of the directors then in office, without counting the vote of the interested director or directors.

Where it is not reasonably practicable to obtain approval of the Board before entering into a self-dealing transaction, a Board Committee may approve such transaction in a manner consistent with the requirements above; provided that, at its next meeting, the full Board determines in good faith that the Board Committee's approval of the transaction was consistent with the requirements above and that it was not reasonably practical to obtain advance approval

by the full Board, and ratifies the transaction by a majority of the directors then in office without the vote of any interested director.

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

Section 1. Right of Indemnity. To the fullest extent allowed by Section 5238 of the California Nonprofit Public Benefit Corporation Law, this corporation shall indemnify its agents, in connection with any proceeding, and in accordance with Section 5238. For purposes of this Article, “agent” shall have the same meaning as in Section 5238(a), including directors, officers, employees, other agents, and persons formerly occupying such positions; “proceeding” shall have the same meaning as in Section 5238(a), including any threatened action or investigation under Section 5233 or brought by the Attorney General; and “expenses” shall have the same meaning as in Section 5238(a), including reasonable attorneys’ fees.

Section 2. Approval of Indemnity. On written request to the Board of Directors in each specific case by any agent seeking indemnification, to the extent that the agent has been successful on the merits, the Board shall promptly authorize indemnification in accordance with Section 5238(d). Otherwise, the Board shall promptly determine, by a majority vote of a quorum consisting of directors who are not parties to the proceeding, whether, in the specific case, the agent has met the applicable standard of conduct stated in Section 5238(b) or Section 5238(c), and, if so, shall authorize indemnification to the extent permitted thereby.

Section 3. Advancing Expenses. The Board of Directors may authorize the advance of expenses incurred by or on behalf of an agent of this corporation in defending any proceeding prior to final disposition, if the Board finds that:

- (a) the requested advances are reasonable in amount under the circumstances;
- and
- (b) before any advance is made, the agent will submit a written undertaking satisfactory to the Board to repay the advance unless it is ultimately determined that the agent is entitled to indemnification for the expenses under this Article.

The Board shall determine whether the undertaking must be secured, and whether interest shall accrue on the obligation created thereby.

Section 4. Insurance. The Board of Directors may adopt a resolution authorizing the purchase of insurance on behalf of any agent against any liability asserted against or incurred by the agent in such capacity or arising out of the agent’s status as such, and such insurance may provide for coverage against liabilities beyond this corporation’s power to indemnify the agent under law.

## **ARTICLE VIII GRANTS ADMINISTRATION**

Section 1. Purpose of Grants. This corporation shall have the power to make grants and contributions and to render other financial assistance for the purposes expressed in this corporation's Articles of Incorporation.

Section 2. Board of Directors Oversight. The Board of Directors shall exercise itself, or delegate, subject to its supervision, control over grants, contributions, and other financial assistance provided by this corporation. The Board shall approve a process for reviewing and approving or declining all requests for funds made to this corporation, which shall require such requests to specify the use to which the funds will be put, and include a mechanism for regular Board review of all grants made. The Board shall similarly approve a process for authorizing payment of duly approved grants to the approved grantee.

Section 3. Refusal; Withdrawal. The Board of Directors, in its absolute discretion, shall have the right to refuse to make any grants or contributions, or to render other financial assistance, for any or all of the purposes for which the funds are requested. In addition, the Board, in its absolute discretion, shall have the right to withdraw its approval of any grant at any time and use the funds for other purposes within the scope of the purposes expressed in this corporation's Articles of Incorporation, subject to any rights of third parties under any contract relating to such grant.

Section 4. Accounting. The Board of Directors shall determine under what circumstances to require that grantees furnish a periodic accounting to show that the funds granted by this corporation were expended for the purposes that were approved by the Board.

Section 5. Restrictions on Contributions. Unless otherwise determined by resolution of the Board of Directors in particular cases, this corporation shall retain complete control and discretion over the use of all contributions it receives, subject only to any charitable trust restrictions that apply to such contributions, and all contributions received by this corporation from solicitations for specific grants shall be regarded as for the use of this corporation and not for any particular organization or individual mentioned in the solicitation.]

## **ARTICLE IX MISCELLANEOUS**

Section 1. Fiscal Year. The fiscal year of this corporation shall end each year on December 31.

Section 2. Contracts, Notes, and Checks. All contracts entered into on behalf of this corporation must be authorized by the Board of Directors or the person or persons on whom such power may be conferred by the Board from time to time, and, except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of this corporation shall be signed by the person or persons on whom such power may be conferred by the Board from time to time.

Section 3. Annual Reports to Directors. The chief executive officer shall furnish an annual written report to all directors of this corporation containing the following information about this corporation's previous fiscal year:

(a) the assets and liabilities, including the trust funds of this corporation, as of the end of the fiscal year;

(b) the principal changes in assets and liabilities, including trust funds, during the fiscal year;

(c) the revenue or receipts of this corporation, both unrestricted and restricted to particular purposes, for the fiscal year;

(d) the expenses or disbursements of this corporation, for both general and restricted purposes, for the fiscal year; and

(e) any transaction during the previous fiscal year involving more than \$50,000 between this corporation (or its parent or subsidiaries, if any) and any of its directors or officers (or the directors or officers of its parent or subsidiaries, if any) or any holder of more than ten percent of the voting power of this corporation or its parent or subsidiaries, if any, or any of a number of such transactions in which the same person had a direct or indirect material financial interest, and which transactions in the aggregate involved more than \$50,000, as well as the amount and circumstances of any indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any director or officer of this corporation. For each transaction, the report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to this corporation, the nature of such person's interest in the transaction and, where practicable, the value of such interest.

The foregoing report shall be accompanied by any report thereon of independent accountants or, if there is no such report, the certificate of an authorized officer of this corporation that such statements were prepared without an audit from the books and records of this corporation. The report and any accompanying material may be sent by electronic transmission in compliance with Article IX, Section 5 of these Bylaws.

Section 4. Required Financial Audits. This corporation shall obtain a financial audit for any tax year in which it receives or accrues gross revenue of \$2 million or more, excluding grant or contract income from any governmental entity for which the governmental entity requires an accounting. Whether or not they are required by law, any audited financial statements obtained by this corporation shall be made available for inspection by the Attorney General and the general public within nine months after the close of the fiscal year to which the statements relate, and shall remain available for three years (1) by making them available at this corporation's principal, regional, and district offices during regular business hours and (2) either by mailing a copy to any person who so requests in person or in writing or by posting them on this corporation's website.

Section 5. Electronic Transmissions. Unless otherwise provided in these Bylaws, and subject to any guidelines and procedures that the Board of Directors may adopt from time to time, the terms "written" and "in writing" as used in these Bylaws include any form

of recorded message in the English language capable of comprehension by ordinary visual means, and may include electronic transmissions, such as facsimile or email, provided (i) for electronic transmissions from the corporation, the corporation has obtained an unrevoked written consent from the recipient to the use of such means of communication; (ii) for electronic transmissions to the corporation, the corporation has in effect reasonable measures to verify that the sender is the individual purporting to have sent such transmission; and (iii) the transmission creates a record that can be retained, retrieved, reviewed, and rendered into clearly legible tangible form.

Section 6. Representing the Interest of Residential Ratepayers. This corporation is authorized to intervene before local, state and federal agencies and courts to represent the interests of its members who receive residential electric service in proceedings related to this corporation's purpose.

Section 7. Amendments. Proposed amendments to these Bylaws shall be submitted in writing to the directors at least one week in advance of any Board meeting at which they will be considered for adoption. The vote of a majority of the directors then in office or the unanimous written consent of the directors shall be required to adopt a bylaw amendment.

Section 8. Governing Law. In all matters not specified in these Bylaws, or in the event these Bylaws shall not comply with applicable law, the California Nonprofit Public Benefit Corporation Law as then in effect shall apply.

CERTIFICATE OF SECRETARY

I, Anna Lappé, certify that I am presently the duly elected and acting Secretary of Vote Solar, a California nonprofit public benefit corporation, and that the above Third Amended and Restated Bylaws, consisting of twelve pages, are the Bylaws of this corporation as adopted by the Board of Directors at a duly called and noticed meeting at which a quorum was at all times present on December 4, 2018.

DATED: December 4, 2018

A handwritten signature in cursive script that reads "Anna Lappé". The signature is written in black ink and is positioned above a horizontal line.

Anna Lappé, Secretary

**ATTACHMENT 2**

**Vote Solar's Articles of Incorporation**

**FILED**  
Secretary of State  
State of California

**DEC 20 2013**

Zcc

**ARTICLES OF INCORPORATION  
OF  
VOTE SOLAR**

**ARTICLE I**

The name of this corporation is Vote Solar.

**ARTICLE II**

A. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes.

B. The specific and primary purpose of this corporation is to engage in charitable and educational activities within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States internal revenue law (the "Code"), including but not limited to fighting climate change and fostering economic opportunity by promoting solar energy.

**ARTICLE III**

The name and address in this state of this corporation's initial agent for the service of process is:

Adam Browning  
101 Montgomery Street, Suite 2600  
San Francisco, CA 94104

**ARTICLE IV**

The initial street and mailing address of the corporation is 101 Montgomery Street, Suite 2600, San Francisco, CA 94104.

**ARTICLE V**

A. This corporation is organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code. Notwithstanding any other provision of these

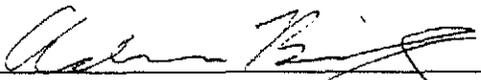
Articles, this corporation shall not carry on any activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code, or (2) by a corporation, contributions to which are deductible under Sections 170(c)(2), 2055(a)(2), 2106(a)(2)(A)(ii), 2522(a)(2), or 2522(b)(2) of the Code.

B. Except as permitted by law, no substantial part of the activities of this corporation shall consist of the carrying on of propaganda or otherwise attempting to influence legislation, nor shall this corporation participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

#### ARTICLE VI

The property of this corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer, or member, if any, of this corporation, or any other private person. Upon the winding up and dissolution of this corporation and after paying or adequately providing for the debts and obligations of this corporation, the remaining assets shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and that has established its tax-exempt status under Section 501(c)(3) of the Code.

DATED: December 7<sup>th</sup>, 2013

  
Adam Browning, Incorporator



I hereby certify that the foregoing transcript of 2 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

DEC 23 2013 65

Date: \_\_\_\_\_

*Debra Bowen*

DEBRA BOWEN, Secretary of State