

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Duke Energy Florida, LLC's Petition
for a limited proceeding to approve Clean
Energy Connection Program and Tariff and
Stipulation

DOCKET NO. 20200176-EI

LEAGUE OF UNITED LATIN AMERICAN CITIZENS' PREHEARING STATEMENT

League of United Latin American Citizens of Florida ("LULAC"), by and through its undersigned counsel, and pursuant to Order No. PSC-2020-0324-PCO-EI, Order Establishing Procedure, hereby submits its Prehearing Statement.

I. Witnesses

All Known Witnesses:

<u>LULAC Direct Witnesses:</u>	<u>Subject Matter:</u>	<u>Issue Nos.:</u>
Karl Rábago	Appropriateness of Duke's proposed Clean Energy Connection tariff, allocation of risks and benefits of proposed program, program effects on general body of ratepayers, fuel and carbon forecasting methodology, appropriateness of recovering capital costs through the fuel clause, and all other matters addressed in pre-filed testimony.	1-4, 6-7

All witnesses listed or presented by any other party or intervenor

Impeachment and rebuttal witnesses as needed

Any witness revealed during continuing discovery or other investigation

Authentication witnesses or witnesses necessary to lay a predicate for the admissibility of evidence as needed

Standing witnesses as needed

II. Pre-filed Exhibits

LULAC will sponsor the direct exhibits as set out below. However, LULAC reserves the right to use other exhibits during cross examination of any other party's or intervenor's witnesses, and will file a notice in accordance with the orders governing procedure identifying any documents that the utilities claim to be confidential which LULAC may use during cross examination.

Witness	Proffered By	Exhibit No.	Description	Issue Nos.
Karl Rábago	LULAC	KRR-1	Karl Rábago Resume	
Karl Rábago	LULAC	KRR-2	Karl Rábago Prior Testimony	
Karl Rábago	LULAC	KRR-3	SolarTogether CPVRR Summary	1-7
Karl Rábago	LULAC	KRR-4	FPL/Gulf Power Ten Year Site Plan Excerpts	1-7
Karl Rábago	LULAC	KRR-5	Duke Energy Florida Ten Year Site Plan	1-7

All exhibits listed or introduced into evidence by any other party or intervenor

Standing documents as needed

Impeachment exhibits

Rebuttal exhibits

Exhibits determined necessary by ongoing discovery

All deposition transcripts, and exhibits attached to depositions

All documents produced in discovery

Blow ups or reproductions of any exhibit

Demonstrative exhibits

All pleadings, orders interrogatory answers, or other filings

All documents or data needed to demonstrate the admissibility of exhibits or expert opinion

Maps and summary exhibits

III. Statement of Basic Position

The Clean Energy Connection (CEC) program and tariff proposed by Duke Energy Florida (Duke) will unjustly and unreasonably benefit participating customers, like Walmart, at the expense of non-participants through hundreds of millions of dollars of essentially guaranteed direct subsidies through bill credits paid for by the general body of customers, including low-income customers and LULAC's members. The CEC program as proposed is an inappropriate and fundamentally unfair means to increase solar generation on Duke's grid, and the Commission should accordingly reject Duke's petition. Any purported benefits from the proposal to the general body of ratepayers come from the cost-effectiveness of building and relying on solar as compared to additional fossil-fuel generation, and unlike the benefits to program participants, are not guaranteed. The structure of the CEC program will increase costs to the general body of ratepayers by over \$300 million as compared to if Duke just rate-based the proposed 749 MW of solar without the proposed subscription model.

This Commission is responsible for ensuring the rates and rate structures charged by monopoly utilities are fair, just, reasonable, and not unjustly discriminatory. However, Duke's proposed program is entirely predicated on substantial cross-subsidies between participants and non-participants. Participants in the program, 65% of which are large commercial and industrial users (defined by the utility as those whose energy purchases from Duke exceed a quarter of a million dollars per year), will receive 290.6 million dollars over the program life, paid by the general body of ratepayers. Considering that residential customers represent 53% of Duke's total sales, and 27.7% of its residential customers qualify as "low income" by Duke's own definition, the program is necessarily regressive, transferring hundreds of millions of dollars from hardworking families to large corporations. Walmart alone stands to make over \$35 million from

this program through bill credits paid for by the general body of customers. While Duke's proposed program unfairly prejudices all non-participants, the proposed tariff would particularly harm low-income customers, only 1.1% of whom would be able to participate in the program, despite accounting for roughly 15% of Duke's total energy sales.

At the same time, participating customers do not contribute meaningfully to the cost of the program. In fact, the total contribution of all participating customers accounts for less than 1% of the program's true cost. Duke's repeated contention that participants pay 104.9% of total program costs is flatly wrong, because this figure fails to account for the hundreds of millions in bill credits charged to the general body of ratepayers that are guaranteed to be paid to subscribers despite the speculative nature of the savings to the general body of ratepayers, as explained further below. Moreover, even if looking solely at the fixed revenue requirements and subscription fees—through which Duke claims that participants cover the total costs of the program—the system benefits that go into calculating the fixed revenue requirements are assumptions that may or may not play out. Duke admits that they have not committed to deferring on the construction of combustion turbines, and apparently may construct these regardless of energy generated by the CEC solar units. Therefore, the true system benefits, and in turn, the fixed revenue requirements of the CEC program are unknown, further casting the 104.9% figure into doubt.

Another fundamentally unjust element of the proposed CEC program is that virtually all risk is assigned to non-participating customers, while only participants are guaranteed to receive the promised benefits. Duke guarantees participants' benefits through the use of a 1.5% escalator of participant bill credits every year, regardless of actual energy produced (after the first three years), avoided fuel purchases, and carbon compliance costs. In stark contrast, the supposed

benefits to the general body of ratepayers would come in the form of savings derived entirely from assumptions and predictions about future prices for fuel and carbon dioxide emissions (there is no current or planned price on carbon in Florida or at the federal level). It is possible that actual avoided costs will match Duke's forecasts (if Duke otherwise refuses to build cost-effective solar), but if those savings fail to materialize, the general body of ratepayers will still be on the hook to pay hundreds of millions in rising energy credits to participants. Duke does not, and cannot deny that neither Duke nor participating subscribers bear any meaningful risk under the structure of the proposed CEC program.

The purpose of a true community solar program is to provide the benefits of solar generation to those who would not otherwise be able to access it, whether due to financial barriers, lack of home ownership, or physically incompatible characteristics, like a shady roof. Duke's proposed tariff turns real community solar on its head, by subsidizing large commercial and industrial users—which are likely to be better resourced and more able to install their own solar arrays—at the expense of general ratepayers who are not guaranteed any of the benefits of a system they will pay for. Increasing the amount of solar on the grid is in the public interest, but Duke's CEC program is not. LULAC respectfully asks that the Commission reject Duke's proposed tariff program.

IV. Statement of Proposed Issues and Positions

ISSUE 1: Is Duke's proposed Clean Energy Connection tariff an appropriate mechanism to seek approval for the construction of 749 MW of new solar generation facilities?

POSITION: No. Duke plans to construct 749 MW of new arrays as a single program, but treats the individual sites as discrete to evade a determination of need for this new generation. (Witness Rábago)

ISSUE 2: Does Duke's proposed Clean Energy Connection tariff give any undue or unreasonable preference or advantage to any person or locality or subject the

same to any undue or unreasonable prejudice or disadvantage in any respect, contrary to Section 366.03, Florida Statutes?

POSITION: Yes. Duke’s proposed program would involve fees to subscribers that do not meaningfully contribute to the cost true cost of the program, while simultaneously forcing non-participating ratepayers to pay participants \$290,600,000 in energy credits. While Duke’s proposed program unfairly prejudices all non-participants, the proposed tariff would particularly harm low-income customers, only 1.1% of whom would be able to participate in the program, despite comprising roughly 15% of Duke’s total sales. Conversely, 65% of the program is carved out for large commercial and industrial users, even though these segments represent less than 39% of Duke’s total sales. (Witness Rábago)

ISSUE 3: Should the Commission allow recovery of all costs and expenses associated with Duke's proposed Clean Energy Connection program in the manner proposed by Duke?

POSITION: No. It is fundamentally inappropriate to recover the cost of a “community” solar program from the general body of ratepayers, while the only benefits that are guaranteed—292 million in bill credits—flow exclusively to participants. In addition, Duke stands to add billions of dollars to the rate base. The Commission should not allow Duke to add any generating asset to the rate base unless its benefits and burdens are equitably distributed. This could be achieved by eliminating all subscription fees and credits, charging the general body of ratepayers for the full value of the proposed solar arrays, and discounting all customers for avoided fuel and carbon costs as they materialize. (Witness Rábago)

ISSUE 4: Should the Commission approve Duke's proposed Clean Energy Connection program and associated tariff?

POSITION: No. Not only does the Commission’s approval of FPL’s somewhat similar program SolarTogether have no precedential value in the present docket, FPL’s program is distinguishable because in the near-term Duke’s proposed tariff would roughly double the impact on ratepayers as compared to FPL’s program. (Witness Rábago)

ISSUE 5: What relevance, if any, does the Stipulation have on the question of whether the Commission should approve the Duke Energy Florida, LLC, Clean Energy Connection Program and Tariff, when entered into by non-adverse parties prior to the filing of the Petition?

POSITION: None. Unlike a settlement agreement where adverse parties have had an opportunity to engage in the litigation process and reach an agreement on contested issues, this stipulation was pre-filed and not the product of an adversarial proceeding. At least as to two of its signatories, the settlement reflects

an agreement between parties whose financial interests were already completely aligned, as each stands to make millions of dollars if the settlement is approved.

ISSUE 6: Are Duke's assumed costs and benefits reasonable and fairly allocated?

POSITION: No. Duke's proposed program allocates all the risk to non-participants and guarantees benefits only to participants. Bill credits to participants are guaranteed to steadily increase over the life of the program, and do not depend on any external factors, such as carbon costs. The supposed benefits in avoided fuel and carbon costs to the general body of ratepayers rely on assumptions and forecasts that may or may not come to pass and are based on the premise that Duke will double-down on fossil-fuel generation in the future rather than investing in solar for all of its customers. If Duke's predictions are off, the benefits to non-participants will evaporate, even as they are forced to continue to pay participants' bill credits. (Witness Rábago)

ISSUE 7: Is it appropriate and fair to include the costs for solar credits as part of the "fuel" clause on customers' electric bills?

POSITION: No. It is inappropriate to use the fuel clause to recover costs other than that of fuel purchases. Payments to solar subscribers to cover their guaranteed bill credits are not a fuel. (Witness Rábago)

ISSUE 8: Should this docket be closed?

POSITION: The Commission should reject Duke's proposed program and tariff and then close this docket.

V. **Stipulated Issues**
None.

VI. **Pending Motions or Other Matters**
None.

VII. **Pending Request or Claims for Confidentiality**
None.

VIII. **Objections to Witness' Qualifications as an Expert**
None.

IX. **Request for Sequestration of Witnesses**
None.

X. Compliance with Order Establishing Procedure

LULAC has complied with all applicable requirements of the order establishing procedure in this docket.

RESPECTFULLY SUBMITTED this 28th day of October, 2020

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 28th day of October, 2020, via electronic mail on:

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DATED this 28th day of October, 2020.

/s/ Bradley Marshall
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