

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a limited proceeding to approve clean energy connection program and tariff and stipulation, by Duke Energy Florida, LLC.

DOCKET NO. 20200176-EI
ORDER NO. PSC-2020-0430-PHO-EI
ISSUED: November 10, 2020

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on November 2, 2020, in Tallahassee, Florida, before Commissioner Donald J. Polmann, as Prehearing Officer.

APPEARANCES:

DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St. Petersburg, Florida 33701 and MATTHEW R. BERNIER, ESQUIRE, 106 E. College Avenue, Suite 800, Tallahassee, Florida 32301
On behalf of Duke Energy Florida, LLC (DEF).

J.R. KELLY and CHARLES REHWINKEL, ESQUIRES, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of Office of Public Counsel (OPC).

BRADLEY MARSHALL AND JORDAN LUEBKEMANN, ESQUIRES, 111 S. Martin Luther King Jr. Blvd., Tallahassee, Florida 32301 and DOMINIQUE BURKHARDT, ESQUIRE, 4500 Biscayne Blvd., Ste. 201, Miami, Florida 33137
On behalf of League of United Latin American Citizens of Florida, a/k/a LULAC Florida Educational Fund, Inc. (LULAC).

STEPHANIE U. EATON, ESQUIRE, 110 Oakwood Drive, Suite 500, Winston-Salem, North Carolina 27103 and DERRICK PRICE WILLIAMSON and BARRY A. NAUM, ESQUIRES, 1100 Bent Creek Boulevard, Suite 101, Mechanicsburg, Pennsylvania 17050
On behalf of Walmart Inc. (Walmart).

GEORGE CAVROS, ESQUIRE, 120 E. Oakland Park Blvd., Suite 105, Oakland Park, Florida 33334
On behalf of Southern Alliance for Clean Energy (SACE).

KATIE CHILES OTTENWELLER, ESQUIRE, 838 Barton Woods Road NE, Atlanta, Georgia 30307
On behalf of Vote Solar (Vote Solar).

JON C. MOYLE, JR. and KAREN PUTNAL, ESQUIRES, 118 North Gadsden Street, Tallahassee, Florida 32312

On behalf of Florida Industrial Power Users Group (FIPUG).

SHAW STILLER, BIANCA LHERISSON, and JENNIFER CRAWFORD, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Florida Public Service Commission General Counsel

I. CASE BACKGROUND

On July 1, 2020, Duke filed a Petition for a Limited Proceeding to Approve The Clean Energy Connection Program and Tariff and Stipulation. The Clean Energy Connection Program is proposed by Duke as a voluntary community solar program that would allow participating customers to pay a subscription fee in exchange for receiving bill credits related to solar generation produced by solar facilities.

Walmart, Vote Solar, and SACE are signatories to the Stipulation submitted by Duke, and intervened in support of Duke and approval of the Stipulation, Tariff, and Program. LULAC intervened and opposes Commission approval. OPC has intervened and its position is set forth below.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

State buildings are currently closed to the public and other restrictions on gathering remain in place due to COVID-19. Accordingly, the hearing will be conducted remotely, and all parties and witnesses shall be prepared to present argument and testimony by communications media technology. The Commission shall act as the host of the hearing and will use a combination of technologies to ensure full participation. The Commission will employ GoToMeeting as an audio and video platform for the hearing, and will provide for simultaneous, audio-only participation by telephone.

A GoToMeeting invitation shall be provided to counsel for each party. It shall be the responsibility of counsel to provide their clients, client representatives, and witnesses with the invitation, which will allow them to access the hearing. Counsel for each party will also be provided the call-in number for audio participation.

Any member of the public who wants to observe or listen to the proceeding may do so by accessing the live video broadcast on each day of the hearing, which is available from the FPSC website. Upon completion of the hearing, the archived video will also be available.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must follow the procedures for providing confidential electronic exhibits to the Commission Clerk prior to the hearing.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to three minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Each witness whose name is followed by a plus sign (+) will present direct and rebuttal testimony together.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Lon Huber+	DEF	1
Matthew Stout	DEF	1
Thomas G. Foster	DEF	1
Benjamin M. H. Borsch	DEF	1
Steve W. Chriss	WALMART	1
Karl Rábago	LULAC	1
<u>Rebuttal</u>		
Benjamin M. H. Borsch	DEF	1
Thomas G. Foster	DEF	1
Lon Huber+	DEF	1

The parties have stipulated that DEF Witness Huber will present both his direct and rebuttal testimony on November 17, 2020.

VII. BASIC POSITIONS

DEF: The Clean Energy Connection (CEC) Program is a community solar program through which participating customers can voluntarily subscribe to shares of new solar power plants. The CEC Program would allow DEF to satisfy increasing customer demand for renewable energy and will enable DEF to provide affordable clean, carbon-free energy to all of its customers. After engaging with key stakeholders in advance of the filing, DEF was successful in executing a Stipulation in which Vote Solar, Southern Alliance for Clean Energy, and Walmart (parties that would have otherwise intervened in and challenged DEF's filing), came to agreement on the components of DEF's CEC Program. The Stipulation fairly and reasonably balances the various positions of the Parties on the issues resolved by the Stipulation and serves the public interest and DEF's customers.

The CEC Program aligns with the Florida Legislature's intent in Section 366.92, F.S. and provides ample system wide benefits, including: promoting the development of renewable energy, encouraging investment within the state,

diversifying the types of fuel used to generate electricity, lessening the state's reliance on fossil fuels, and decreasing carbon emissions. Additionally, the Stipulation comports with Section 366.06 by providing fair, just, and reasonable rates without undue preference.

The CEC Program represents the next evolution of DEF's commitment to increasing cost-effective renewable generation and providing innovative pricing solutions for our customers. The CEC program is structured to maximize the benefits to the entire DEF system and to minimize the costs to non-participating customers. On a cumulative present value revenue requirement ("CVPPR") basis, the CEC Program is projected to save DEF customers an estimated \$533 million when compared to DEF's overall system without the CEC Program. The CEC Program is designed to be cost-effective for both participating and non-participating customers and will enable DEF customers to support the expansion of solar power.

The primary driver of the value to DEF customers is the savings in fuel, operating and maintenance costs and projected emissions costs primarily from reductions in CO₂ emissions. DEF customers will also realize a significant benefit from the generating capacity associated with these solar facilities. The proposed addition of the Clean Energy Connection projects results in the deferral of the need for multiple gas fired peaking projects and the displacement of the need for 230 MW of gas fired peakers entirely along with deferral or displacement of the associated gas transportation. Operation of the proposed facilities displaces more than 51 million MWh of fossil fired generation over the life of the CEC Program.

DEF designed the CEC Program so that the subscription fees more than cover the fixed revenue requirements of the Program. Specifically, the projected subscription fee revenues are greater (104.9%) than the fixed revenue requirements. By allocating more than 100% of the fixed revenue requirements to participants, some of the benefits that accrue to the general body of customers are fixed. DEF also designed the CEC Program in such a way that resulted in 87.3% of the CPVRR net benefit being allocated to the general body of DEF's customers, and the remaining 12.7% being allocated to the CEC Program participants.

DEF is proposing the CEC Program to meet the substantial demand from DEF customers who are wanting to advance or seeking access solar energy in Florida, but do not have the ability or the desire to construct it at their premise. The CEC Program will add approximately 750 MW of solar photovoltaic generation to DEF's system for the benefit of all customers. DEF will allocate 27.7% percent from the Program's residential customer allocation, or approximately 26 MW for low income customers. These customers will receive a bill credit rate that ensures that in no year will their subscription charge increase their total bill.

Accordingly, for all the reasons included in DEF's Petition, Testimony, and Exhibits, the Commission should approve DEF's proposed CEC Program.

OPC: Given the Commission's decision in Docket No. 20190061-EI on the FPL SolarTogether tariff and program, the position of Public Counsel (OPC) in this case is not one of active opposition to this filing by DEF. Notwithstanding this posture, the OPC is not in support of the Clean Energy Connection (CEC) program either. Our position on the structure of DEF's tariff and the similar FPL program was made abundantly known in Docket No. 20190061-EI. Moreover, the OPC did not in the SolarTogether proceeding, and does not now, support the use of a friendly settlement on an issue of first impression for a utility. Unfortunately, the Commission allowed this practice in its approval and finding that the public interest exists with regard to FPL's SolarTogether transaction. Given this concern and its reservations regarding the unrestricted use of friendly settlements, the OPC cannot offer a position in support of the pending settlement. At the same time, the OPC understands Duke's position that it expects to rely on whatever precedential value Order No. PSC-2020-0084-S-EI provides to its filing, including the specific facts and circumstances accompanying the pre-filed settlement in this case. The OPC nevertheless contends that, to the extent the facts and circumstances of the DEF filing differ from the SolarTogether circumstances, any substantially affected party is, at a minimum, entitled to raise and litigate issues related to the economics and/or public interest associated with the CEC filing without regard to the prior precedent. Any lack of the OPC's active opposition to this DEF filing cannot be cited, viewed or relied upon as an endorsement of the CEC program.

LULAC: 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.

WALMART: Walmart believes it is in the public interest for the Commission to approve DEF's CEC Program and accompanying Tariff and Stipulation filed July 1, 2020. As stated in the Petition, Walmart, Southern Alliance for Clean Energy ("SACE"), and Vote Solar signed a Stipulation with DEF supporting the proposed CEC Program. Walmart believes the CEC Program, as proposed by DEF, is designed to fully and fairly value solar resources, maximize opportunities for participation in the CEC Program -- including opportunities for low income customers, small businesses, and governmental entities -- and bring the lowest cost solar resources to customers over the life of the Program. In fact, 87.3% of the CEC Program's projected savings flow to the general body of DEF customers. As such, the CEC Program and Tariff are in the public interest, and the Stipulation represents a fair, just, and reasonable resolution of issues that otherwise would have been litigated in this Docket.

SACE: The Duke Energy Florida ("DEF") Clean Energy Connection ("CEC") proposed shared solar program provides an innovative design to meet the enormous demand for solar power in Florida in a cost effective fashion that is consistent with state statute. The program will accelerate the development of clean, abundant and low cost solar power and consists of ten solar installations totaling 749 megawatts ("MW"). The installations will decrease Florida's over-reliance on fossil gas that is a driver of climate change. A stipulation ("Stipulation") between DEF and SACE, Vote Solar and Walmart was filed along with the program petition and tariff on July 1, 2020. The Stipulation in its totality is fair, just and reasonable, is in the public interest, and deserves approval by the Commission.

The CEC program is projected to save DEF customers \$532.7 million of cumulative present value revenue requirement over the economic life of the ten solar installations that support the program. The program builds on the similarly designed SolarTogether shared solar program previously approved by the Commission, but it allocates a significantly higher share of benefits (87%) to the general body of customers, and has a significantly higher low-income

participation provision (27.7% of the residential section). To highlight the significant size of the CEC low-income provision, it's projected to be 26 MW, which makes it larger than the total size of the Tampa Electric Company shared solar program approved by the Commission in 2017. The Stipulation provides that DEF will market the CEC program to participants in its low-income energy efficiency programs to maximize savings, will allow participation regardless of arrearage status, and continue to review outreach and engagement strategies to maximize participation.

The legislature has spoken on the benefits of renewable resources, such as solar power, by stating that it has “the potential to help diversify fuel types to meet Florida’s growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.” The CEC program is consistent with the statute as it will obviate the need for two natural gas combustion turbine units – displacing 230 MW of fossil gas with solar power – which diversifies fuel types in Florida. The Stipulation additionally requires DEF to analyze displacing even more planned fossil gas units with solar and storage development and provides a framework for data collection and engagement on customer-owned solar. The CEC solar installations will help reduce the state’s dependence on fossil gas not only because of the displacement of the units, but because it will reduce the burning of fossil fuels as soon as the solar installations come into service – this if of course reflected in the fuel cost savings that drive the economic benefits of the program. With reduced fuel use, the general body of customers, including low-income families, is insulated from fuel price spikes on monthly bills. Development of the solar installations will create jobs and stimulate economic development in the local communities that will host the installations while supporting Florida’s growing leadership on solar power. The Stipulation additionally ensures that DEF will use competitive solicitation to construct projects and will consider acquiring third party projects at various stages of development.

Both utility scale and rooftop solar installations continue to grow in Florida, yet some residential customers cannot directly access the economic benefits of solar power because they may rent their homes, live in multi-unit dwellings, or have shaded roofs. Likewise there are commercial customers that may not own their business property, or may not want the ownership responsibility of rooftop solar. The DEF CEC program provides these customers the option to participate in the program and realize a direct economic benefit from solar power.

It prioritizes the customer experience by allowing participation with no upfront subscription fees, flexible subscription amounts, no cancellation fees, and allows the subscription to stay with the customer if they move within DEF’s service territory. The large amount of capacity already committed to through the CEC presubscription process evidences enormous customer demand for solar power in

Florida. The CEC program is particularly important to local governments for meeting sustainability goals. The program provides a realistic pathway, given the state's regulatory structure, in meeting critically important goals to reduce carbon emission or move to 100% renewable energy. To date, seventeen cities or counties have signaled their desire to participate in the program, and have filed comments in support of the program in the docket.

It is well established that the impacts of climate change are more profoundly borne by communities of color and low-income communities. The burning of fossil fuels in the electricity sector is a significant driver to a changing climate. The CEC program will lead to reduced fossil fuel combustion and displacement of future fossil gas units thereby reducing carbon dioxide and other harmful emissions. This benefits all Floridians, but particularly those customers least able to relocate to avoid climate change impacts and harmful air pollution.

The Commission is afforded great deference to determine that the Stipulation between parties is in the public interest, and it will be presented with substantial, competent evidence during the hearing upon which to make a public interest determination. Taken as a whole, the tariff and program provisions embodied in the Stipulation strike a reasonable balance in the sharing of economic benefits of the CEC program between the general body of customers and participants, expands opportunities for participation to low-income families, and promotes a host of economic and environmental benefits to the state and its residents. As such, SACE requests that the Commission find the Stipulation in the public interest and approve it in its entirety.

VOTE

SOLAR:

Vote Solar supports the Clean Energy Connection program and tariff as reflected in the Stipulation entered into by Duke Energy Florida ("DEF"), Southern Alliance for Clean Energy, Walmart and Vote Solar as a reasonable resolution of the issues raised by this filing (Stipulation attached to DEF's petition as Exhibit A). According to DEF, the Clean Energy Connection program will provide an estimated \$533 million dollars in economic benefits, which are allocated so that 12.7% flow to participants and 87.3% flow to the general body of DEF customers. Vote Solar believes that this benefit-sharing arrangement is both an innovative and a fair way to apportion the benefits of the program, and reflects the specific needs and interests of various customer segments.

The program will diversify Florida's energy mix with clean, fuel-free electricity, and will provide a much-needed option for customers seeking more access to solar power. The provisions in the Stipulation strengthen DEF's Clean Energy Connection program by securing a separate capacity allocation for local government customers that face unique barriers to accessing clean energy and need longer lead time to enroll in solar offerings. The importance of this offering for local government clean energy access is evident from letters of support that

have been filed in Docket 20200176-EI by the City of St. Petersburg, the City of New Port Richey, the City of Tarpon Springs, the City of Clearwater, the City of DeLand, the City of Dunedin, the City of Treasure Island, Pinellas County, Orange County and the Southeast Sustainable Directors Network. The program also contains significant benefits for low income subscribers, including a capacity set-aside that will create immediate savings for these customers; a “hold harmless” to ensure their bills do not increase due to enrollment; co-marketing of the program with existing energy efficiency programs; and ability to enroll regardless of a customer’s arrearage status.

The Stipulation also includes commitments from DEF to glean information gained from the program to evaluate future deferment of planned gas infrastructure; to collect and share data with stakeholders on customers’ own investments in solar PV; to utilize a competitive solicitation process in its development of the solar resources; and to conduct an analysis of a potential future add-on program mobilizing battery storage paired with on-site solar for back-up power at critical loads. Vote Solar believes that these commitments will continue to advance DEF’s, stakeholders’ and the Commission’s experience and knowledge concerning solar resources.

For all these reasons, Vote Solar asks the Commission to approve the Clean Energy Connection program and tariff as reflected in the Stipulation.

FIPUG: FIPUG supports renewable energy provided it is cost-effective and needed. Duke must meet its burden of proof to establish that the additional resources it seeks to build are in the public interest.

STAFF: Staff’s positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff’s final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

ISSUE 1: **Should the Commission approve the Stipulation for approval of the Duke Energy Florida, LLC, Clean Energy Connection Program and Tariff, when taken as a whole, as in the public interest?**

DEF: Yes. As demonstrated by DEF’s Petition, Testimony, and Exhibits, and the Stipulation to approve the CEC Program, the CEC Program adds additional cost-effective solar generation to DEF’s system while allowing customers, including low-income customers, to participate and contribute to the fixed costs of the solar units. The Stipulation fairly and reasonably balances the various positions of the parties to the Stipulation on the issues resolved by the Stipulation and serves the public interest and DEF’s customers. DEF believes that the Stipulation in its

totality is fair, just, and reasonable and that it is in the public interest. Approval of the Stipulation promotes administrative efficiency and avoids the time and expense associated with litigating the settled issues in this docket and is further consistent with the Commission's long-standing practice of encouraging parties to settle contested proceedings whenever possible. The CEC Program aligns with the Florida Legislature's intent in Section 366.92, F.S. and provides ample system wide benefits, including: promoting the development of renewable energy, encouraging investment within the state, diversifying the types of fuel used to generate electricity, lessening the state's reliance on fossil fuels, and decreasing carbon emissions. Additionally, the Stipulation comports with Section 366.06 by providing fair, just, and reasonable rates without undue preference.

(Witnesses: Huber, Stout, Foster, Borsch)

OPC: A settlement agreement that was filed along with the case in controversy should indicate the adversarial nature of the signatories in order to be considered as sufficient or proper evidence of the public interest as required by Chapter 366. While the Commission approved the SolarTogether program and tariff based on a settlement with only one of their 5 million customers and two public interest groups that do not represent any customers in their associational status, the sufficiency of such an arrangement was not subjected to appellate review, nor was it filed along with the petition for relief. The OPC is contemplating the impact of these differences on the case and may brief this issue regarding what it perceives to be the limits of settlement agreements analogous to the one filed in this case.

LULAC: No. The Commission should not approve the stipulation for approval of the Duke Energy Florida's proposed Clean Energy Connection Program and Tariff. As a matter of law, the "public interest, when taken as a whole" standard for approving a universal settlement does not and cannot apply to a pre-filed stipulation that was not the result of an actual adversarial proceeding, especially when two of the supposedly adverse parties to the pre-filed stipulation stand to make millions of dollars off of public ratepayers upon its approval. Even though it is LULAC's position that it is inappropriate to collapse a full evaluation of Duke's program into a simple yes or no, in this case, the stipulation and proposed tariff are against the public interest. Approving Duke's program would lead to unfair and discriminatory rate structures that harm the majority of Duke's customer base, particularly low income customers, while awarding participating customers hundreds of millions of dollars of energy credits, paid for by the general rate base. As designed, the program depends on allocating all risk to non-participants, while only guaranteeing concrete financial rewards to participants. Other program designs could alleviate these concerns, such as by limiting energy credits to the total fees paid by participants, or by eliminating the subscription program entirely, and equitably allocating 100% of the costs and benefits of the proposed solar arrays to the general rate base. If Duke finds the construction of the proposed solar to be cost effective to ratepayers, it does not require this inverse Robinhood program to achieve it. (Witness Rábago)

WALMART: Yes. The Commission should approve the Stipulation, DEF's CEC Program and Tariff, as filed on July 1, 2020, because, when taken as a whole, approval of DEF's CEC Program and Tariff is in the public interest.

SACE: Yes. The Stipulation is in the public interest.

VOTE

SOLAR: Yes. The Stipulation for approval of the Clean Energy Connection program and tariff, when taken as a whole, is in the public interest, and should be approved by the Commission.

FIPUG: The Commission should receive evidence and hold the Petitioner to its burden of proof in the matter.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 2: Should this docket be closed?

DEF: Yes.

OPC: Yes.

LULAC: Yes, after the Commission denies approval of the proposed program.

WALMART: Yes, if the Stipulation, Program, and Tariff are approved as submitted on July 1, 2020.

SACE: Yes.

VOTE

SOLAR: Yes.

FIPUG: *No position provided.*

STAFF: Staff has no position pending evidence adduced at the hearing.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Benjamin M. H. Borsch	DEF	(BMHB-1)	Load Forecast
Benjamin M. H. Borsch	DEF	(BMHB-2)	Fuel Forecasts
Benjamin M. H. Borsch	DEF	(BMHB-3)	Cost Effectiveness (CPVRR) Analysis Results
Benjamin M. H. Borsch	DEF	(BMHB-4)	Resource Plans
Benjamin M. H. Borsch	DEF	(BMHB-5)	Cumulative Present Value Revenue Requirements (CPVRR)
Thomas G. Foster	DEF	(TGF-1)	Summary of CEC Program Revenue Requirements, Subscription Fees, and Bill Credits
Lon Huber	DEF	(LH-1)	Clean and Legislative Versions of Tariff sheets 6.101, 6.405, 6.406, and 6.407
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
Karl Rábago	LULAC	KRR-4	FPL/Gulf Power Ten Year Site Plan Excerpts
Karl Rábago	LULAC	KRR-5	Duke Energy Florida Ten Year Site Plan
Steve W. Chriss	WALMART	SWC-1	Witness Qualifications Statement
Steve W. Chriss	WALMART	SWC-2	Stipulation (July 20, 2020, filed in connection with Storm Protection Plan Dockets)

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
<u>Rebuttal</u>		
Lon Huber	DEF (LH-2)	IREC Community Solar Checklist

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

On November 6, 2020, LULAC filed a Motion to Compel Discovery Responses from Walmart, Inc.

XII. PENDING CONFIDENTIALITY MATTERS

On October 13, 2020, DEF submitted a Notice of Intent to Request Confidential Classification of certain information contained within DEF's Response to LULAC's 1st Request for Production of Documents. DEF submitted the Request for Confidential Classification on November 3, 2020.

On October 14, 2020, DEF submitted a Notice of Intent to Request Confidential Classification of certain information contained within DEF's Response to LULAC's 2nd set of Interrogatories. DEF submitted the Request for Confidential Classification on November 4, 2020.

On November 3, 2020, Walmart filed a letter sending its Confidential Response to LULAC's First Set of Interrogatories, No. 4. Walmart intends to seek a Confidential Designation as to the same.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 100 words, it must be reduced to no more than 100 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Commissioner Polmann has ruled that the contested issues presented by LULAC and OPC will not be included as separate issues in this proceeding. The contested issues presented by LULAC and OPC are all specific arguments as to why they believe the stipulation is not in the public interest. Commissioner Polmann finds Issue 1 to be the broadest issue that would allow for a range of arguments to be addressed by the parties. Commissioner Polmann finds that specific issues presented by LULAC and OPC may inadvertently constrain the parties' ability to include arguments the Commission should examine when reviewing the proposal as a whole and the full spectrum of public interest. Therefore, Commissioner Polmann has found that the contested issues are subsumed.

OPC separately argued that an issue should be included regarding whether it is appropriate to compare the Duke Clean Energy Program to a separate solar program approved under a stipulation and settlement when making the public interest determination in this docket. Commissioner Polmann finds that the relevance of the other stipulation in this proceeding is a position on an evidentiary issue and should be addressed as such, and therefore not listed as a contested issue.

Opening statements, if any, shall not exceed five minutes per party.

Witnesses have 5 minutes to present a summary of their testimony. Witnesses who are also offering rebuttal testimony have an additional 5 minutes to summarize that testimony.

The parties shall provide cross-examination exhibits, including impeachment exhibits, to the Commission Clerk by the close of business on November 10, 2020, following the procedures set forth in Attachment A. The exhibits that are pre-filed and designated as cross-examination or impeachment exhibits shall not be viewed by opposing witnesses or opposing counsel or otherwise have their contents or identity communicated to such witnesses or counsel.

It is therefore,

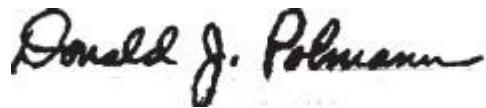
ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

ORDER NO. PSC-2020-0430-PHO-EI

DOCKET NO. 20200176-EI

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By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 10th day of November, 2020.



DONALD J. POLMANN, Ph.D., P.E.
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SPS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ATTACHMENT A

Requirements related to providing Cross-Examination Exhibits prior to Hearing

By November 10, 2020, each party must provide the Commission Clerk an electronic copy of all cross-examination exhibits, including impeachment exhibits, the party plans to use during the hearing. All cross-examination exhibits must be provided to the Clerk's Office on either USB flash drives or CDs. Confidential documents must be placed on one USB flash drive or CD, and non-confidential exhibits must be placed on a different or separate USB flash drive or CD. This is because the Clerk's Office will process the confidential exhibits, and will transmit all non-confidential exhibits to the General Counsel's Office for processing. All USB flash drives or CDs provided to the Clerk's Office must be clearly labeled as confidential or non-confidential, and the label must also include the Docket Number(s) and the name of the party providing the exhibits.

Each party must also provide to the Clerk by November 10, 2020, a table listing the exhibit numbers and short titles of each cross-examination exhibit provided to the Clerk. Pursuant to Rule 25-22.006(3), F.A.C., a notice of intent to request confidential classification must be filed for all confidential information.

Each party must pre-number each exhibit with the following sequential numbering system that clearly denotes confidential exhibits. For example, DEF will pre-identify its cross-examination exhibits DEF-1, DEF-2, DEF-3, etc. All confidential exhibits must include the letter "C" placed after the number. Thus, if DEF's third exhibit is confidential, it will be labeled DEF-3C.

Each exhibit must be saved as a separate electronic file, and each file must be labeled with the exhibit number that reflects the information contained in the exhibit. The exhibit number will serve as the filename in the virtual folder during the hearing. Each exhibit must also include a cover page that includes the exhibit number. In addition, each exhibit must include sequentially numbered pages. The page numbers must be placed in the upper right-hand corner of each page.

The confidential and non-confidential cross-examination exhibits will be made available to the parties in virtual folders the day before the hearing. The cross-examination exhibits will be made available to the parties for the sole purpose of providing the witnesses and their counsel with the opportunity to print the exhibits or download them to their electronic devices for use during the hearing.¹ The parties must not view or read the exhibits prior to the hearing. Parties will be provided usernames and passwords by Commission staff that will give them access to the confidential exhibits and any other confidential information that will be used during the hearing. By November 10, 2020, parties must provide the Commission Clerk with the list of names of those persons who should be given a user name and password to access confidential information.

¹ Microsoft Chrome is the best internet browser to use to access the virtual folder.