

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sunrun Inc. for
Declaratory Statement Concerning
Leasing of Solar Equipment

Docket No. _____

Filed: December 29, 2017

**PETITION FOR DECLARATORY STATEMENT
BY SUNRUN INC.**

Pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, Sunrun Inc. (“Sunrun”) petitions the Florida Public Service Commission (“Commission”) for a declaratory statement that: (1) Sunrun’s residential solar equipment lease does not constitute a sale of electricity; (2) offering its solar equipment lease to consumers in Florida will not cause Sunrun to be deemed a public utility under Florida law; and (3) the residential solar equipment lease described in this petition will not subject Sunrun or Sunrun’s customer-lessees to regulation by this Commission. Sunrun’s proposed residential solar equipment lease will consist of a standard equipment lease agreement for the lease of solar generating equipment to customer-lessees and will include basic maintenance and warranty service to cover repair or replacement of malfunctioning equipment. In support of its petition, Sunrun states as follows:

1. The name and address of the agency affected by this Petition are:

Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850

2. The name and address of Petitioner are:

Sunrun Inc.
5208 Tampa West Boulevard
Tampa, FL 33634

3. All notices, pleadings, documents and other communications filed in this docket are to be directed to:

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I. DESCRIPTION OF SUNRUN'S FLORIDA RESIDENTIAL SOLAR EQUIPMENT LEASE OFFERING

4. Sunrun is the nation's largest dedicated residential solar, storage, and energy services company with over 160,000 customers in 22 states and the District of Columbia. Sunrun leads the industry in providing homeowners with a means to generate their own clean, renewable energy with little to no upfront cost, often improving the reliability of electricity and with the potential for cost savings as compared to a customer-lessee's traditional utility bill.

5. Sunrun can also provide customer-lessees the option of home battery storage integrated into the solar energy generation system.

6. Currently in Florida, Sunrun offers only its cash solar product, which homeowners must purchase and pay for in full, upfront.

7. Sunrun plans to add leasing as a financing option in the Florida market for potential customer-lessees who prefer not to, or cannot, purchase and pay upfront for residential solar systems. Sunrun's Florida residential solar equipment lease, which will conform to Florida law and be consistent with prior Commission precedent regarding permissible leases of electric generating equipment by non-utilities, will consist of a 20-year lease of solar panels (with or without batteries at the customer-lessee's option) intended to provide the owner of a single residence with the means to potentially generate enough solar electricity for that residence. The residential solar equipment lease will include the following non-exhaustive material terms or conditions:

- Lease payments will be fixed throughout the term of the 20-year lease. These payments, based on a negotiated rate of return on Sunrun's investment, will be independent of electric generation, production rates, or any other operational variable of the leased equipment.
- Sunrun will hold legal title to the leased equipment and receive Investment Tax Credits and depreciation benefits associated with the investment.
- Sunrun will have no control over the use of the equipment other than as the beneficiary of covenants requiring the customer-lessee to maintain the equipment in good repair.
- At the lease expiration, the customer-lessee may purchase the solar equipment at fair market value, renew the lease on an annual basis, or request removal of the equipment.

- Sunrun will provide customary workmanship warranties to protect the customer-lessee’s home from damage during the installation process. The customer-lessee will bear the cost for ongoing system maintenance through their monthly lease payments. The equipment warranties and maintenance services are triggered by damage to or malfunction of the system or its components, and are not dependent upon electric generation or system production rates.
- The customer-lessee will be responsible for the cost of non-warranty maintenance, repair, and replacement.
- Once the system is installed and interconnected, the operational burden and risk of maintaining the equipment and assuring adequate solar exposure conditions are all borne by the customer-lessee.
- The customer-lessee will be responsible for the cost of applicable property taxes and insurance.
- Lease terms and conditions will be compliant with applicable IRS and accounting standards.

II. DECLARATORY STATEMENT REQUESTED

8. Section 120.565, Florida Statutes, states:

Any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.

The declaratory statement procedure can assist persons to plan their future conduct and “avoid

costly administrative litigation by selecting the proper course of action in advance.”¹ Sunrun will offer and market its residential solar equipment lease in Florida contingent upon the Commission granting, in the affirmative, this request for a declaratory statement. Sunrun thus is a “substantially affected person” and has standing to bring this petition.

9. Sunrun respectfully requests that the Commission make the following affirmative declarations:

- a. Sunrun’s residential solar equipment lease will not be deemed to constitute the sale of electricity.
- b. Sunrun will not be deemed to be a public utility, as defined under Florida law, by virtue of leasing its residential solar equipment to residential customer-lessees in Florida.
- c. Customer-lessees who enter into Sunrun’s residential solar equipment lease in Florida will not be subject to regulation by the Commission.

II. APPLICABLE STATUTES, RULES AND ORDERS OF THE COMMISSION

10. The statutory provisions and Commission rules or orders applicable to the narrow jurisdictional question raised in this petition are:

- a. Section 366.02, Florida Statutes.
- b. Order No. 17009, Docket No. 860725-EU (Dec. 22, 1986) (“*Monsanto*”) *Declaratory Statement Order, In re: Petition of Monsanto Company for a declaratory statement concerning the lease financing of a cogeneration facility.*

¹ *Chiles v. Dep’t of State, Div. of Elections*, 711 So.2d 151, 154 (Fla. 1st DCA 1988); *Adventist Health System/Sunbelt, Inc. v. Agency for Health Care Admin.*, 955 So.2d 1173 (Fla. 1st DCA 2007).

- c. Rule 25-6.065, F.A.C. - *Interconnection and Net Metering of Customer-Owned Renewable Generation Definition.*

IV. ANALYSIS

A. The Florida Legislature has defined a jurisdictional public utility.

11. In Section 366.02(1), Florida Statutes, the Legislature defines a Commission-jurisdictional public utility as “every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers *supplying electricity* or gas . . . to or for the public within this state.” (emphasis added) Thus, in order to be deemed a public utility subject to regulation by this Commission, Sunrun’s residential solar equipment lease must constitute a sale of electricity.

B. The Florida PSC has held that an equipment lease is not a sale of electricity.

12. In *Monsanto*, the Commission held that no sale of electricity occurred, and therefore Commission jurisdiction did not attach, when a non-utility cogenerator (Monsanto) entered into a lease financing arrangement for the financing and construction of its electricity-producing cogeneration facility, where Monsanto retained the risks of production associated with the facility. In 2013, this Commission reiterated its holding in *Monsanto* that an equipment lease does not constitute a jurisdictional sale of electricity, stating: “[i]n *Monsanto*, the owner of the electrical generating equipment was not the same as the consumer, Monsanto, who leased the equipment. However, we determined that no sale to an unrelated entity would occur because Monsanto was leasing equipment that produced electricity rather than buying electricity that the equipment generated.”²

² Order No. PSC-13-0652-DS-EQ, *Order Denying Petition for Declaratory Statement, In re: Petition for declaratory statement regarding co-ownership of electrical cogeneration facilities in*

13. Sunrun’s residential solar equipment lease is intentionally and specifically designed to be consistent with the Commission’s holding in *Monsanto* and as such, will avoid any implication of a sale of electricity. Like Monsanto, Sunrun’s residential customer-lessees will lease residential solar equipment that they will use to generate their own electricity and, if elected as an option, may also lease batteries in which they can store some or all of the electricity produced by the solar equipment.

14. Consistent with the lease in *Monsanto*, Sunrun’s Florida residential solar equipment lease requires fixed payments throughout the 20-year lease term. The amount of the payment is based on a negotiated rate of return on Sunrun’s investment, and is independent of electric generation, production rates, or any other operational variable of the equipment. As is common with equipment leases (and like the lessor in *Monsanto*), Sunrun will hold legal title to the equipment and receive Investment Tax Credits and depreciation benefits associated with the investment. Sunrun will have no control over the customer-lessee’s use of the solar equipment, other than as the beneficiary of covenants requiring the customer-lessee to maintain the equipment in good repair.

15. As in *Monsanto*, Sunrun’s customers will be “leasing equipment which produces electricity rather than buying electricity that the equipment generates.”³

Hendry County by Southeast Renewable Fuels, LLC, Docket No. 130235-EQ (Dec. 11, 2013) at p. 6.

³ *Monsanto*, Issue 2.

C. **Rule 25-6.065, F.A.C. confirms that self-generation using leased equipment does not, by itself, constitute a sale of electricity.**

16. The logic, policies and legal directives embodied in the *Monsanto* lease decision are now directly reflected in the Commission’s Rule 25-6.065, F.A.C., which confirms that self-generation using leased equipment does not, by itself, constitute a sale of electricity:

The term “customer-owned renewable generation” does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third party.

The above-referenced terms and conditions of Sunrun’s residential solar equipment lease are entirely consistent with Rule 25-6.065 as well as the lease-financing arrangement in *Monsanto*, which the Commission determined did not constitute a sale of electricity, did not cause the lessor to be deemed a public utility, and did not subject either the lessor or lessee to the Commission’s regulation.

V. **CONCLUSION**

As the Florida Supreme Court noted in *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (1988), “[t]he legislature determined that the protection of the public interest required only limiting competition in the sale of electric service, not a prohibition against self-generation.” Sunrun’s leasing arrangements assist consumers in self-generation, are not a sale of electricity, and are fully consistent with Florida law.

For the reasons described above, the terms and conditions of Sunrun’s residential solar equipment lease confirms that it is not a retail sale of electricity; rather, it is a lease for an on-site renewable generation system with a third-party customer-lessee. Sunrun respectfully requests that the Commission make the following affirmative declarations: Sunrun’s residential solar

equipment lease will not be deemed to constitute the sale of electricity; Sunrun will not be deemed to be a public utility, as defined under Florida law, by virtue of leasing its residential solar equipment to residential customer-lessees in Florida; and customer-lessees who enter into Sunrun's residential solar equipment lease in Florida will not be subject to regulation by the Commission.

Respectfully submitted this 29th day of December, 2017.

BY: /s/ Marsha E. Rule

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail on December 29, 2017:

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