

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** January 2, 2020

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Office of Industry Development and Market Analysis (Vogel, Cordell, Mtenga) *DBC*  
Office of the General Counsel (Murphy, Passidomo) *Can GJ TM* *gt*

**RE:** Docket No. 20190167-EI – Petition to compel Florida Power & Light to comply with Section 366.91, F.S. and Rule 25.6-065, F.A.C., by Floyd Gonzales and Robert Irwin.

**AGENDA:** 01/14/20 – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On August 26, 2019, Floyd Gonzales and Robert Irwin (Petitioners) filed a Petition to Compel Florida Power & Light Company (FPL) to Comply with Section 366.91, Florida Statutes (F.S.) and Rule 25-6.065, Florida Administrative Code (F.A.C.) (Petition). Petitioners assert they are permitted by law to be included in FPL's net metering program and FPL's requirement that customer-owned renewable generation must be sized not to exceed 115 percent of the customer's annual kWh consumption violates Rule 25-6.065, F.A.C.

On September 16, 2019, FPL filed a Motion to Dismiss the Petition or in the Alternative to Treat the Petition as a Request for a Declaratory Statement (FPL Motion and Alternative Request). On September 23, 2019, the Petitioners filed a Response in Opposition to FPL's Motion to Dismiss and Alternative Request.

By email dated October 21, 2019, from FPL attorney, Ken Rubin, to the Petitioners' attorney, Kyle Egger, FPL expressed that based upon a review of Petitioners' increased electricity usage, such usage was within FPL's 115% guideline and Petitioners' application for interconnection as a tier 2 net metered customer could proceed for approval. Specifically, FPL stated that "[o]ur goal is to interconnect your client's system as soon as possible so that he may begin to net meter."

Presented with the suggestion that the Petition had become moot, the attorney for the Petitioners responded to FPL's attorney on November 20, 2019, that "at this point and with all resources spent on trying to get FPL to do what it was supposed to do from the outset, [Petitioners] still want a formal opinion on their petition." Net metering for Petitioners became operational on December 5, 2019. In this recommendation, staff addresses the merits of the Petition and does not make a recommendation on the FPL Motion and Alternative Request.

## Discussion of Issues

**Issue 1:** Should the Commission grant Floyd Gonzales and Robert Irwin’s Petition to Compel FPL’s Compliance with Section 366.91, F.S., and Rule 25-6.065, F.A.C., and request for a refund?

**Recommendation:** No. FPL is currently providing net metering to the Petitioners and granting Petitioners’ request for a refund is inappropriate and not warranted under the circumstances presented. (Murphy)

### Staff Analysis:

#### Net Metering

Petitioners argue that FPL improperly rejected their application for inclusion in FPL’s net metering program in violation of Section 366.91, F.S., and Rule 25-6.065, F.A.C. Petitioners aver that the intent of both the applicable rule and statute is to encourage customers to install solar panels. Petitioners contend that, in accordance with Rule 25-6.065(4), F.A.C., the only size limit on a customer’s renewable power generation is that it may not exceed 90% of the customer’s utility distribution service rating. Petitioners conclude that if a customer-owned renewable generation project does not exceed 90% of that customer’s utility distribution service rating, the project qualifies and should be accepted into any utility’s net metering program. Petitioners argue that their anticipated renewable power generation is well within the foregoing limits and, as a result, Petitioners’ application should have been immediately approved as the Rule requires.

Petitioners assert that FPL imposes limits based on a customer’s historical energy consumption and not capacity. Specifically, Petitioners aver that FPL’s net metering portal instructs its customers that their “[s]ystems should not be sized so large that energy produced by the renewable generator would be expected to exceed 115 percent of the customer’s annual kWh consumption.” Petitioners argue that FPL’s arbitrary limitations violate Section 366.91, F.S., and Rule 25-6.065, F.A.C., and that FPL must be compelled to comply with same and approve Petitioners’ application for inclusion in its net metering program.

Petitioners ask that the Commission order FPL to approve Petitioners’ application for inclusion in FPL’s net metering program and refund to Petitioners all money unnecessarily spent on electricity because of FPL’s wrongful rejection of their net metering application.

Petitioners argue that the only limitation on net metering is the 90% of the customer’s utility distribution service rating. However, staff recommends that Petitioners’ arguments ignore the definition of “net metering” in both Rule 25-6.065(2)(c), F.A.C., and Section 366.91(2)(c), F.S. Net metering is defined as “a metering and billing methodology whereby customer-owned renewable generation *is allowed to offset the customer’s electricity consumption onsite.*” (Emphasis added). Customer-owned renewable generation is “an electric generating system located on a customer’s premises that is primarily intended to offset part or all of the customer’s electricity requirements with renewable energy.” Rule 25-6.065(2)(a), F.A.C., and Section 366.91(2)(b), F.S. Thus, while “customer-owned renewable generation” *might have* a secondary

purpose other than to offset part or all of a customer's electricity requirements, "net metering" is only allowed to offset the customer's electricity consumption onsite.<sup>1</sup> FPL does permit net metering of 115% of consumption because each unique system is assessed on a range of values using photovoltaic watts resulting in some fluctuation.<sup>2</sup> Staff recommends that this is a reasonable implementation of Rule 25-6.065(2)(c), F.A.C.

In addition to the offsetting limitation for net metering, Commission Rules also limit interconnection by providing that a customer-owned renewable generation system is not to exceed 90% of the customer's utility distribution rating.<sup>3</sup> That is, a customer-owned renewable generation system does not qualify for expedited interconnection to the utility's facilities for net metering if it exceeds 90% of a utility's capacity to service the customer. Staff recommends that Rule 25-6.065(4)(a)1, F.A.C. is intended to provide a safety buffer for the utility distribution system, ensuring that the capacity of utility facilities interconnected to customer-owned renewable generation will not be over-loaded. For example, a customer with a load that reaches 95% of its utility distribution rating is only permitted to interconnect a customer-owned renewable generation system that reaches 90% of the customer's utility distribution rating, notwithstanding greater electric consumption on site. In sum, there are two limitations associated with net metering: (1) net metering of customer-owned renewable generation is to offset electricity consumption, and (2) customer-owned renewable generation may not exceed 90% of the customer's utility distribution rating.

Staff recommends that FPL has complied with the applicable rule and statute governing net metering, has processed the Petitioners' application for inclusion in the net metering program, and is net metering the Petitioners' usage; therefore, the Commission should deny the Petition.

#### Requested Refund

The Petitioners have asked the Commission to order FPL to refund Petitioners for "all money unnecessarily spent on electricity because of FPL's wrongful rejection of their net metering application, and such other relief as deemed just and proper." However, because staff recommends that FPL has not wrongfully rejected the Petitioners' net metering application, the premise underlying the request is unfounded.

In its Motion to Dismiss, FPL addressed the merits of Petitioners' demand for a refund. FPL asserts that a refund is inappropriate because FPL billed Petitioners consistent with a tariffed rate. FPL avers that the refunds Petitioners request are "purely speculative, retroactive, and

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<sup>1</sup> In this context, staff notes that energy produced by a customer-owned renewable system may fluctuate from month to month, and that a system designed to offset a customer's usage may produce more energy than is needed in any given month. Thus, Rule 25-6.065(8)(e), F.A.C., provides that during any billing cycle, excess energy delivered to the grid shall be used to offset the customer's energy consumption in the following month. Rule 25-6.065(8)(f) and (g), F.A.C., provide that any energy credits remaining at the end of the year, or when the customer leaves the utility's system, shall be purchased at the utility's as-available energy rate. Although the rules address the reality that excess energy may be produced by a system designed to offset customer usage, pursuant to Rule 25-6.065(2)(c), F.A.C., the purpose of net metering remains to offset usage, not to purposefully create excess energy by building a system larger than needed to offset usage.

<sup>2</sup> FPL Motion and Alternative Request at fn. 2.

<sup>3</sup> Rule 25-6.065(4)(a)1, F.A.C.

uncertain” and would be “entirely dependent on a guess as to what Petitioners would have generated and what their usage would have been had they been net metering.” FPL argues that while Rules 25-6.103 and 25-6.106(2), F.A.C., do provide refund mechanisms for customers impacted by ascertainable metering or billing errors, there are no metering or billing errors in this case. Staff recommends that FPL is persuasive in the foregoing arguments regarding refunds. To the extent that Petitioners intend to request damages, staff recommends that the Commission has no jurisdiction to make such an award.<sup>4</sup>

Staff recommends that FPL’s actions do not warrant a refund, refunds are inappropriate under the circumstances presented, and the Commission has no authority to award damages; therefore, staff recommends that the Petitioners’ request for a refund be denied.

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<sup>4</sup> See *Southern Bell Telephone & Telephone Co. v. Mobile America Corp.*, 291 So.2d 199 (Fla. 1974) and Order No. PSC-02-1344-FOF-TL, issued October 3, 2002, in Docket No. 20020595-TL, *In Re: Complaint of J. Christopher Robbins against BellSouth Telecommunications, Inc. for violation of Rule 25-4.073(1)(c), F.A.C., answering time.*

Issue 2: Should this docket be closed?

**Recommendation:** Yes, if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and the docket should be closed. (Murphy)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and the docket should be closed.