

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement
regarding leasing of residential solar
equipment, by IGS Solar, LLC.

DOCKET NO. 20190040-EQ
ORDER NO. PSC-2019-0144-DS-EQ
ISSUED: April 23, 2019

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
JULIE I. BROWN
DONALD J. POLMANN
GARY F. CLARK
ANDREW GILES FAY

DECLARATORY STATEMENT

BY THE COMMISSION:

I. BACKGROUND

On February 8, 2019, IGS Solar, LLC (IGS Solar), filed a petition for a declaratory statement (Petition). IGS Solar asks us to declare that based on the facts presented by IGS Solar:

- (1) IGS Solar's proposed residential solar equipment lease, as described by the Petition, will not be deemed to constitute the sale of electricity;
- (2) IGS Solar will not be deemed a public utility under Florida law by virtue of leasing its residential solar equipment to residential consumer-lessees in Florida;
- (3) Florida customer-lessees who enter into IGS Solar's proposed residential solar lease equipment will not be subject to the jurisdiction of, or regulation by, the Commission; and
- (4) IGS Solar's customer-lessees who enter into the proposed lease will be entitled to electrically interconnect with electric utilities and be deemed net metering customers, under Rule 25-6.065, F.A.C.¹

¹Throughout its Petition, IGS Solar phrases requested declarations differently and pages 6-7 of its Petition discuss a question that is not included in other parts of its Petition. We are only addressing IGS Solar's questions (1)-(4) as set forth in the Petition's "wherefore" paragraph on pages 11-12, where IGS Solar specifically asks that we make the "following affirmative declarations" on questions (1)-(4).

Our recent decisions in Order No. PSC-2018-0251-DS-EQ, issued May 17, 2018, in Docket No. 20170273-EQ, *In re: Petition of Sunrun Inc. for a declaratory statement concerning the leasing of solar equipment (Sunrun)*; Order No. PSC-2018-0413-DS-EQ, issued August 21, 2018, in Docket No. 20180124-EQ, *In re: Petition of Vivint Solar Developer, LLC. for a declaratory statement concerning the leasing of solar equipment (Vivint)*; and in Order No. PSC-2018-0065-DS-EQ, issued February 21, 2019, in Docket No. 20180221-EQ, *Petition by Tesla Inc., for a declaratory statement concerning the leasing of solar equipment (Tesla)*, state that we do not have jurisdiction over an individual company that offers residential leases for solar equipment when the lease payments do not vary based on generation.

Pursuant to Rule 28-105.0024, Florida Administrative Code (F.A.C.), a Notice of Declaratory Statement was published in the February 11, 2019 edition of the Florida Administrative Register, informing interested persons of the Petition. There were no requests to intervene filed. We have jurisdiction pursuant to Section 120.565, F.S., and Chapter 366, F.S.

II. ANALYSIS

Questions (1)-(3) of IGS Solar's Petition ask us to declare that IGS Solar's solar leasing program as described in its Petition will not make IGS Solar or its customer-lessees public utilities subject to our jurisdiction under Section 366.02(1), F.S. We did not review any part of the proposed draft lease, which starts on page 14 of the Petition, because as we stated previously in the *Sunrun*, *Vivint*, and *Tesla* orders, approving IGS Solar's draft lease does not fall within our jurisdiction. Thus, review of the lease is not necessary for our determination of the Petition.²

Rule 28-105.001, F.A.C., Purpose and Use of Declaratory Statement, provides that a declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. As we declared in *Sunrun*, *Vivint*, and *Tesla*, Rule 25-6.065, F.A.C., allows leases for solar equipment without triggering our jurisdiction, so long as the lease payments do not depend on electric generation. Questions (1)-(3) of IGS Solar's Petition are virtually identical to the questions and facts set forth in *Sunrun's*, *Vivint's*, and *Tesla's* Petitions. For this reason, IGS Solar's Petition as to questions (1)-(3) is granted.

Question (4) of IGS Solar's Petition is unclear. IGS Solar seems to ask us to state that customer-lessees, by virtue of entering into a proposed lease with IGS Solar, will automatically be entitled to electrically interconnect with electric utilities and be deemed net metering customers under Rule 25-6.065, F.A.C. If that is the question asked by IGS Solar, then Question (4) of the declaratory statement is denied because a solar lease by itself does not entitle a

²Our analysis is limited solely to the jurisdiction question raised by the Petition, not the draft lease. Provisions in IGS Solar's draft lease that involve statutes and rules that are outside our jurisdiction are not relevant and were not considered in our analysis. See *Deltona Corp. v. Mayo*, 342 So. 2d 510 (Fla. 1977), wherein the Florida Supreme Court held that consumer protection was outside the bounds of the Commission's jurisdiction: "If Deltona engaged in an unfair business practice or committed fraud, however, it may be a concern of other state agencies or the basis for private law suits (on which we express no opinion), but it is not a matter of statutory concern to the Public Service Commission."

customer to electrically interconnect with electric utilities and net meter. Instead, customer-lessees are allowed to become net metering customers if the customer-lessees meet all of the requirements of Rule 25-6.065, F.A.C.

III. CONCLUSION

For the reasons set forth above, we grant IGS Solar's Petition for Declaratory Statement and declare: (1) IGS Solar's proposed residential solar equipment leasing arrangement, as described in its Petition, will not be deemed to constitute the sale of electricity; (2) IGS Solar will not be deemed a public utility under Florida law by virtue of leasing its residential solar equipment to residential consumer-lessees in Florida as described in its Petition; (3) Florida customer-lessees who enter into IGS Solar's proposed residential solar equipment leasing arrangement, as described in its Petition, will not be subject to the jurisdiction of, or regulation by, the Commission; and (4) Customer lessees will be allowed to become net metering customers if the customer-lessees meet the requirements of Rule 25-6.065, F.A.C.

IGS Solar's draft lease involves statutes and rules outside our jurisdiction and therefore the lease was not reviewed or considered by us. This declaration is limited to the facts described in IGS Solar's Petition and would not apply to different, alternative facts. However, for those with an identical fact pattern to *Sunrun's*, *Vivint's*, *Tesla's* or IGS Solar's Petitions, these declarations have precedential significance and individual declaratory statements are not necessary.

It is therefore,

ORDERED that IGS Solar's Petition for Declaratory Statement is granted as set forth in the body of this order; It is further

ORDERED by the Florida Public Service Commission that IGS Solar's draft lease involves statutes and rules outside the Commission's jurisdiction and therefore the lease was not reviewed or considered by this Commission; It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 23rd day of April, 2019.



ADAM J. TEITZMAN

Commission Clerk

Florida Public Service Commission

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

AEH

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.