

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by Florida Power & Light  
Company for Approval of FPL SolarTogether  
Program and Tariff

Docket No: 20190061-EI

Filed: July 3, 2019

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO OFFICE  
OF PUBLIC COUNSEL'S MOTION FOR ADMINISTRATIVE HEARING**

Florida Power & Light Company ("FPL") hereby responds to the Office of Public Counsel's ("OPC's") Motion for Administrative Hearing. As described below, OPC's motion is premature and misguided and should therefore be denied. In support, FPL states:

1. On March 13, 2019, FPL filed its Petition for Approval of FPL SolarTogether Program and Tariff. On April 22, 2019, the Florida Public Service Commission ("Commission") entered an order suspending the tariff in order to allow Commission Staff sufficient time to gather all pertinent information in order to present this Commission with an informed recommendation on the tariff proposal. Order No. 2019-0143-PCO-EI.

2. On June 26, 2019, OPC filed a Motion for Administrative Hearing on FPL's proposed SolarTogether Program and Tariff. As demonstrated below, OPC's motion is based on an apparent misunderstanding of both the nature of FPL's Petition and the Commission's process to evaluate it.

3. OPC asks the Commission to forgo the proposed agency action ("PAA") process currently underway for the consideration of FPL's SolarTogether Petition. Distilling OPC's motion to its core, OPC argues that a formal hearing process is "more appropriate" because the proposed program and tariff must be carefully evaluated, and it contends that the review mechanism requested by FPL will transform the regulatory review process. OPC misconprehends or misstates both the law and the facts.

## **I. The SolarTogether Program and Tariff is Subject to Full Review**

*Staff's evaluation under the PAA process has been and continues to be robust*

4. OPC manufactures a false dichotomy between the PAA process and a full evaluation. As contemplated in Order No. 2019-0143-PCO-EI, which suspended the tariff at issue in this proceeding, the Commission Staff is in the process of “review[ing] the petition and gather[ing] all pertinent information in order to present this Commission with an informed recommendation on the tariff proposal.”

5. Even OPC acknowledges the in-depth review Staff is performing. And OPC is likewise gathering details on the Program. (See OPC Mot. at pp. 2-3). Staff's evaluation process to date has been nothing short of robust. FPL has responded to 98 data requests (not including subparts) propounded in Staff's first and second sets of data requests, and is in the process of responding to an additional 61 (not including subparts) Staff data requests propounded in Staff's third set. In addition, FPL has responded to date to seven interrogatories and a corresponding request for production of documents served by OPC, with an additional 10 interrogatories and two document requests served by OPC on June 21, 2019.

6. Staff also duly noticed two informal meetings to address questions on various aspects of the proposed SolarTogether Program and Tariff. At least six FPL representatives appeared in person at each of those meetings to answer questions. A number of interested persons, including OPC, also participated and asked FPL questions.

7. The information FPL has provided in response to Staff's data requests, in response to OPC's discovery, and in response to questions posed at Staff's informal meetings together provide a substantial amount and range of data from which all interested persons and stakeholders can gather information and present positions to the Commission when the proposed tariff is considered at an agenda conference.

*OPC and others are not foreclosed from full participation assuming resolution of any conflict*

8. OPC asserts in its motion that “if this docket proceeds under the PAA format, all ... interested persons will be foreclosed from participating as a full party, ...” and notes that the PAA order might therefore be protested. OPC misses the point entirely.

9. The Commission’s rules expressly provide for a point of entry. Rule 25-22.029(1), F.A.C. provides:

After agenda conference, the Office of Commission Clerk shall issue written notice of the proposed agency action (PAA), advising all parties of record that . . . they have 21 days after issuance of the notice in which to file a request for a Section 120.569 or 120.57, F.S., hearing.

There is no ambiguity: OPC has the right to request a hearing at the prescribed time – after the Clerk issues a notice of the Commission’s proposed agency action. So OPC’s point of entry is preserved. The more difficult question is whether and how OPC intends to reconcile potential conflicts with the representation of all FPL customers, including subscribers, other customers waiting to subscribe, and other customers who generally support the program, while also representing any customers who do not support the program.

10. The Commission addressed the purpose of the PAA process in Order No. PSC-12-0139-PCO-WS, *In re: Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc.*, Docket No. 110264-WS, issued March 26, 2012 (“*Labrador*”). In that case, the Prehearing Officer recognized that the PAA process “provid[es]” an inexpensive and expedient proposed determination.” That order further stated “all interested persons have the ability to participate in the PAA process and may intervene if the matter goes to hearing.”

11. That is directly applicable here. In addition to OPC’s ability to exercise its discovery rights during the PAA process, it will also have the opportunity, subject to resolution

of any conflict issue as outlined above, to protest the Commission's PAA order and seek a hearing after the notice is issued if its concerns remain. As in *Labrador*, initiating a hearing at this point would frustrate the expedient process facilitated by the PAA track. Given that the PAA portion of the case will be concluded soon based on the currently scheduled July 25, 2019 Staff Recommendation, a point of entry shortly will be available.

12. To be sure, the point of entry will be available not only to OPC, but to all who have identified themselves as interested persons and those who appear for the first time after the Commission issues its PAA order, so long as they demonstrate standing.

13. In addition, as Rule 25-22.029(1), F.A.C. indicates, those who protest and meet the standards for intervention will be afforded all rights applicable under the Administrative Procedure Act. Thus, OPC's concerns that resolution of the issues in this docket require formal discovery and testimony and expert analysis (see OPC Mot. at pp. 2 and 5), while premature and speculative right now, will be addressed at the appropriate time.

*No purpose would be served by forgoing the PAA process*

14. As OPC observes in its Motion, Staff is scheduled to provide its recommendation on FPL's Petition on July 25, 2019. It is reasonable to assume that the Commission will vote on its proposed agency action on the Petition shortly thereafter. The significance of this is two-fold. First, it is premature for OPC to conclude that its concerns will not be addressed.<sup>1</sup> It is possible that, based on the PSC's decision, no hearing will be desired or necessary. If, however, OPC still has objections after the Commission issues the notice of its proposed agency action, and has adequately addressed conflicts in its role as counsel for all FPL customers, OPC will have a point of entry, *i.e.*, the right to file a protest of the proposed agency action and request a hearing.

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<sup>1</sup> *See also* Section II below, which addresses OPC's alleged concern over the nature of the approval sought by FPL.

Under that circumstance, if some form of SolarTogether Tariff is approved and a hearing is scheduled, any revenue collected pursuant to the tariff will be subject to refund. Therefore, participants and customers will be protected fully.

15. Second, the currently scheduled due date for Staff's recommendation suggests that the PAA portion of this docket will be concluded soon. OPC's Motion does not, and cannot, point to any prejudice it would suffer if the Commission proceeds to vote on and issue a proposed agency action. Simply put, there is no point in derailing the current process.

16. Instead, OPC's request to abruptly halt the current PAA process in this docket, if granted, would compromise the Commission's longstanding PAA process for future proceedings, rendering it less useful as a tool that has been effectively and efficiently used for decades, while at the same time affording the requisite due process to all substantially affected parties.

## **II. OPC Mischaracterizes FPL's Request**

17. In an effort to bolster its request, OPC makes an outrageous allegation that "FPL has indicated . . . that any tariff approval resulting from this proceeding should serve as the sole prudence review for this Program. . . . FPL does not expect it will be required to demonstrate prudence or need for any future phases, plant construction, or related expansion of the Program." Building on that misrepresentation, OPC then claims that "approval of the Program could set precedent which would dramatically change the regulatory process for all utilities and customers of the entire state going forward."

18. At best, OPC misunderstands FPL's Petition. At worst, OPC deliberately disregards the Petition's plain words, which state:

Once subscriptions reach the Program limit, interested customers will be waitlisted and upon availability will be offered the opportunity to complete their enrollment. FPL will actively evaluate enrollment levels and waitlisted customers to determine whether the construction of additional FPL SolarTogether Projects is warranted. FPL also would determine the timing, size, customer allocation and rates associated with additional FPL SolarTogether Centers, *all of which would be presented for Commission approval.*

19. FPL was clear and unambiguous in its representation. It is asking for approval of the 1,490 MW of capacity described in its Petition. Future capacity additions will be subject to the Commission's review.

20. OPC refers to a statement made during the Commission's informal meetings that approval resulting from this proceeding should serve as "the sole prudence review for this Program." That statement, too, addressed only the 1,490 MW of capacity that comprise Phase I of the SolarTogether Program.

21. FPL does not contemplate that approval of the Program, whatever form that tariff might ultimately take, will obviate Commission review of future capacity additions to the Program. OPC's hyperbolic statement that approval of the Program will dramatically change the regulatory process is baseless.

## CONCLUSION

As demonstrated above, OPC's Motion for Administrative Hearing should be denied as premature, unnecessary, and baseless. The Commission will soon receive its Staff's recommendation, which will be based on the information that Staff has gathered through a process that has included the participation of OPC and other interested persons. The Commission will then have an opportunity to make a decision regarding FPL's SolarTogether Program and Tariff. Any concerns regarding the Program are speculative at this point and could be mooted by the Commission's decision. Likewise, there is no basis underlying OPC's

allegation that approval of the Program will change the regulatory process. Anyone who objects to the Commission's PAA order will have the opportunity to request a hearing at the appropriate point of entry, to wit, the Commission's issuance of a PAA order memorializing its decision on FPL's SolarTogether Program. That same opportunity is available to OPC unless OPC determines that its representation of FPL customers with diametrically opposed interests is not viable in this proceeding. The Commission should decline OPC's invitation to disrupt this efficient regulatory process.

In the event the Commission determines it is best to proceed directly to an administrative hearing on FPL's Petition in this docket, without waiving any arguments or positions asserted herein or in response to a similar motion filed by Vote Solar, FPL will not oppose such a determination in the interest of moving forward expeditiously on this important program. If the Commission elects to do so, a ruling on OPC's Motion and this response (as well as the Vote Solar motion and FPL response) would not be required.

WHEREFORE, FPL respectfully requests that the Commission deny OPC's Motion for Administrative Hearing.

Respectfully submitted this 3rd day of July 2019.

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**CERTIFICATE OF SERVICE**  
**Docket No. 20190061-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service on this 3rd day of July 2019 to the following:

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