BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Compel Florida Power & Light to Comply With Fla. Stat. § 366.91 and Rule 25-6.065	Docket No: 20190167-EI Date: September 16, 2019

FLORIDA POWER & LIGHT COMPANY'S MOTION TO DISMISS PETITION TO COMPEL COMPLIANCE WITH FLA. STAT. § 366.91 AND RULE 25-6.065, OR IN THE ALTERNATIVE TO TREAT THE PETITION AS A REQUEST FOR A DECLARATORY STATEMENT

Pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), Florida Power & Light Company ("FPL") hereby files its Motion to Dismiss the petition ("Petition") filed by Floyd Gonzales and Robert Irwin (the "Petitioners"), or, in the alternative, requests that the Florida Public Service Commission ("Commission") treat the Petition as a request for a declaratory statement pursuant to Section 120.565, Florida Statutes ("Fla. Stat.") and Rule 28-105.001, F.A.C., and states as follows:

I. INTRODUCTION AND BACKGROUND

1. In accordance with Section 366.91, Fla. Stat., Rule 25-6.065(3), F.A.C., each investor-owned utility is required to file and maintain a standard interconnection agreement approved by the Commission for the expedited interconnection of customer-owned renewable generation of up to two megawatts.

2. FPL's tariffs incorporating net metering for customer-owned renewable generation and standard interconnection agreements were approved by Order No. PSC-08-0624-TRF-EI, issued September 24, 2008, in Docket No. 080265-EI, *In re: Petition for approval of net metering tariff and standard interconnection agreements, by Florida Power & Light Company*. The Commission specifically determined that FPL's tariffs, including the standard interconnection agreement, are in compliance with Rule 25-6.065, F.A.C.

3. FPL has continued to administer its Commission-approved interconnection agreement for Customer-Owned Renewable Generation, Tier 1 - 10 kW or Less (FPL Tariff Sheet Nos. 9.050-9.054), continuously since 2008, interconnecting thousands of net metered customers since that time.[1]

4. On January 31, 2019, Petitioners submitted a request to FPL to interconnect a net metering system, but were notified that the request was rejected due to the fact that Petitioners' proposed installation had a projected annual level of production that significantly surpassed Petitioners' electricity requirements.

5. On August 26, 2019, the Petition which is the subject of this motion was filed with the Commission. Petitioners ask the Commission to compel FPL to comply with § 366.91, Fla. Stat., and Rule 25.6-065, F.A.C. In addition, the Petition requests a refund for the Petitioners of "all money unnecessarily spent on electricity". Petition at 3. For the reasons more fully addressed below, FPL respectfully seeks dismissal of the Petition. Alternatively, FPL asks that the Commission treat the Petition as a Request for Declaratory Statement in accordance with Section 120.565, Fla. Stat., and Rule 28-105.001, F.A.C.

II. ARGUMENT

A. Motion to Dismiss

1. Standard for Motion to Dismiss

6. A motion to dismiss questions whether the complaint alleges sufficient facts to state a cause of action as a matter of law. *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). In order to determine whether a petition states a cause of action upon which relief may be granted, it is necessary to examine the elements needed to be alleged under the substantive law on the

[1] *See* FPL's Annual Report on the Interconnection and Net Metering of Customer-Owned Renewable Generation for the year 2018 at 1.

matter. All of the elements of a cause of action must be properly alleged in a pleading that seeks affirmative relief. If they are not, the pleading should be dismissed. *Kislak v. Kredian*, 95 So. 2d 510 (Fla. 1957); *see also, John Charles Heekin v. Florida Power & Light Company*, Docket No. 981923-EI, Order No. PSC-99-1054-FOF-EI (issued May 24, 1999). In determining the sufficiency of a complaint, the Commission should limit its consideration to the complaint and the grounds asserted in the motion to dismiss. *Barbado v. Green and Murphy, P.A.*, 758 So. 2d 1173 (Fla. 4th DCA 2000). In reviewing a motion to dismiss, the Commission should take all allegations in the petition as though true, and consider the allegations in the light most favorable to the petitioner in order to determine whether the petition states a cause of action upon which relief may be granted. *See, e.g., Ralph v. City of Daytona Beach*, 471 So. 2d 1, 2 (Fla. 1983). In the event this analysis results in a determination that the petition does not state a cause of action, the petition must be dismissed.

2. Petitioners Fail to State a Cause of Action as a Matter of Law

7. Petitioners contend that FPL has violated Section 366.91, Fla. Stat., and Rule 25.6-065, F.A.C., by purportedly adding additional criteria for acceptance into its net metering program. The Petitioners misapprehend the Commission's net metering rules and thereby fail to allege facts sufficient to state a cause of action.

8. The Petition fails in three primary respects. First, the Petition entirely ignores the legal definition of "customer-owned renewable generation", which is a term that is foundational to the Commission's net metering rules. Section 366.91(2)(b), Fla. Stat., and Rule 25.6-065(2)(a), F.A.C., define "customer-owned renewable generation" as "an electric generation 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." (Emphasis added). The only logical

interpretation of the phrase "part or all" of a customer's electricity requirements is that the customer's system should not exceed 100% (or "all") of the customer's kilowatt hour ("kWh") consumption.[2] Any other interpretation would completely ignore the specific words chosen by both the legislature and the Commission in defining "customer-owned renewable generation" for purposes of net metering. Further, ignoring this definition and allowing customers to send large, unknown, and unplanned excess amounts of electricity back to the grid would result in operational and safety issues, as FPL would have limited visibility into the energy being delivered to its system. Moreover, there is nothing in the legislative history of Section 366.91(2)(b), Fla. Stat., to suggest that a different interpretation of "customer-owned renewable generation" is warranted.[3] Therefore, Petitioners' claim that FPL goes beyond the scope of Rule 25.6-065, F.A.C., lacks merit, and ignores the clear meaning of the definition of "customer-owned renewable generation" provided in statute and regulation.

9. Second, notwithstanding their claims that FPL administered its net metering tariff arbitrarily, Petitioners had notice of the permitted size of systems qualifying as customer-owned renewable generation, both through a plain reading of Rule 25-6.065, F.A.C., and the FPL communication attached to the Petition as Exhibit A. Throughout the Commission-approved tariff pages that Petitioners include with their Petition, there are capitalized references to "Customer-owned renewable generation" as well as a provision advising that capitalized terms have the meaning provided in Rule 25-6.065, F.A.C. *See* Petition, Exhibit B, page 1. This language made clear that the interconnected customer-owned renewable generation could only supply "part or all"

[2] FPL allows a customer-owned electric generation system to generate up to 115% of the customer's kWh consumption since each unique system is assessed on a range of values using photovoltaic watts, which thereby allows for some fluctuation.

[3] *See* Florida House of Representatives Staff Analysis (HB 7135) (2008); *available at:* http://archive.flsenate.gov/data/session/2008/House/bills/analysis/pdf/h7135.ENRC.pdf.

of the customer's electricity requirements, not an amount well in excess of those requirements. Therefore, Petitioners' claim that "FPL's standardized interconnection agreement… makes no mention of its arbitrary limitation" is misplaced, conflicts with the attachments to the Petition, and is contrary to the very rule upon which Petitioners rely. The size requirements embedded within the tariff are foundational and have been a consistent feature of Section 366.91, Fla. Stat., and Rule 25-6.065, F.A.C., for over 10 years. Further, the very first paragraph of the document that Petitioners have attached to their Petition as Exhibit A includes the following statement: "The goal of net metering is to offset all or part of the customer's energy use at the customer's metered service account. Systems 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."

10. Third, Petitioners' request for a refund of "all money unnecessarily spent on electricity" is unjustified, speculative, and outside the scope of potential refunds available under the Commission's rules. Rules 25-6.103 and 25-6.106(2), F.A.C., provide refund mechanisms for customers who are impacted by ascertainable metering or billing errors. Here, despite having been accurately billed by FPL consistent with a tariffed rate, Petitioners seek a purely speculative, retroactive, and uncertain level of refunds that would be entirely dependent on a guess as to what they would have generated and what their usage would have been had they been net metering.

11. Based upon the foregoing, FPL respectfully requests dismissal of the instant Petition. However, in the event the Commission finds that Petitioners have raised a justiciable issue in their Petition, FPL respectfully suggests that this matter should be treated as a request for a declaratory statement.

12. Section 120.565, Fla. Stat., provides that "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."

13. Additionally, Rule 28-105.001, F.A.C., Purpose and Use of Declaratory Statement, reads as follows:

> 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. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

14. What Petitioners actually seek in this matter is an interpretation of Rule 25-6.065, F.A.C., insofar as it relates to size requirements of net metered customer-owned renewable generation systems. This is precisely the type of question that may be addressed through the Commission's application of Rule 28-105.001, F.A.C.

III. CONCLUSION

15. Petitioners' position regarding the allowable size of customer-owned renewable generation systems, as that term is defined in Section 366.91, Fla. Stat., and Rule 25-6.065, F.A.C., and applied by FPL, does not give rise to a cause of action as asserted in the Petition. As such, FPL respectfully requests that the Commission dismiss the Petitioners' Petition. Should the Commission allow the Petition to proceed forward, FPL requests that the Commission treat the Petition as a request for a declaratory statement, and confirm that Rule 25-6.065, F.A.C., requires a customer-owned renewable generation system to be sized such that it does not exceed the customer's kWh consumption.

Respectfully submitted,

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CERTIFICATE OF SERVICE
Docket No. 20190167-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service on this 16th day of September 2019 to the following:

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