BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Petition by Florida Power & Light Company for Approval of FPL SolarTogether Program and Tariff.	DOCKET NO. 20190061-EI FILED: October 16, 2019

RESPONSE BY THE CITIZENS OF THE STATE OF FLORIDA IN OPPOSITION TO THE JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT

The Citizens of the State of Florida ("Citizens"), by and through the Office of Public Counsel ("OPC"), pursuant to Rule 28-106.204(1), Florida Administrative Code, file this response in opposition to the Joint Motion to Approve Settlement Agreement filed by Florida Power and Light Company ("FPL"), Vote Solar, and the Southern Alliance for Clean Energy ("SACE"). In support of this Motion, Citizens state as follows:

1. OPC filed its Notice of Intervention in this matter on April 18, 2019. The PSC acknowledged OPC's Intervention on May 31, 2019.
2. The PSC granted intervention to SACE, Vote Solar, and the Florida Industrial Power Users Group (FIPUG) on July 31, 2019.
3. The parties conducted discovery on the case presented in FPL's Petition.
4. FPL subsequently filed rebuttal testimony of six witnesses on September 23, 2019. The SolarTogether Program (the "Program") and tariff proposed by FPL in rebuttal testimony were materially different from the program and tariff proposed by FPL during its case in chief. The new case presented by FPL on rebuttal rendered much of the discovery and analysis performed prior to the rebuttal case obsolete.
5. On September 27, 2019, the OPC filed a motion for continuance of the hearing, or in the alternative, a motion to strike portions of FPL's rebuttal testimony, to which FPL responded on October 1, 2019.
6. The Commission granted OPC's motion, in part, in the First Order Modifying Order Establishing Procedure issued on October 4, 2019 (the "First Modified OEP"). The First Modified OEP provides all parties the opportunity to conduct additional discovery; it further provides the opportunity for Intervenors to file supplemental testimony and for FPL

to file rebuttal to any supplemental testimony that is filed. The First Modified OEP also moved the hearing date to January 14-16, 2020.

7. On October 9, 2019, FPL, Vote Solar and SACE filed their Joint Motion to Approve Settlement (the "Joint Motion"), to which the Settlement Agreement ("the Agreement") was attached as Exhibit A.
8. OPC was not a party to the settlement discussions which resulted in the Agreement attached to the Joint Motion. The document filed with the Joint Motion was first presented to OPC as a completed document, already signed by FPL, SACE and Vote Solar, on October 3, 2019. Prior to October 3, 2019, OPC was unaware of any settlement discussions in this matter.[1] This is evident in the fact that the Settlement document makes no mention of the OPC.

Applicable Law

The Joint Motion repeatedly alleges that the Agreement "fully resolves all of the issues raised in this proceeding." Joint Motion, paragraphs 10 - 12.

Contrary to the Joint Movants' conclusory representations, the Settlement Agreement does not resolve or remedy the fundamental defects which render the proposed SolarTogether Program and tariff contrary to law. The Program and tariff would result in rates which are unfair and unreasonable, and which would give undue or unreasonable preference to some entities and subject some customers to undue or unreasonable disadvantage, which is prohibited by § 366.03, Fla. Stat. (2019). The statute requires that all rates and charges made by a public utility for any service rendered by it must be fair and reasonable. *Id*.

Additionally, the terms of the Program and tariff, as outlined in the Petition, Rebuttal testimony, and the Agreement, fail to comply with the statutory mandate that only prudent capital projects may be factored into the rates and charges demanded of customers. *See e.g.*, § 366.06(1), Fla. Stat.

[1] Joint Movants' citation to *South Fla. Hosp. & Healthcare Ass'n v. Jaber*, 887 So. 2d 1210 (Fla. 2004) is inapplicable because the instant case is distinguishable. In *Jaber*, the court said "SFHHA does not contend that it was denied notice regarding these negotiations, or was precluded from participating." *Id.* at 1213. This case is the exact opposite – OPC did not have notice of FPL's negotiations with SACE and Vote Solar, and OPC was precluded from participating in those negotiations which took place before the Agreement was first presented to OPC as a finished product – already signed by all three of the referenced parties.

Where a major element of a settlement agreement is prohibited by law, the Administrative Procedure Act prohibits disposition of the proceeding by settlement. *See* § 120.57(4), Fla. Stat.; *Sierra Club v. Brown*, 243 So. 3d 903, 910 (Fla. 2018)(stating the public interest standard of review applies only in those instances where no law precludes settlement).

The proposed Settlement and tariff are contrary to Commission precedent regarding community solar projects. All other community solar programs previously approved by the Commission are miniscule by comparison and have been structured such that the community which voluntarily participates in the programs actually pays the costs of the programs.

The SolarTogether Program forces non-participants to pay for the program, in exchange for speculative "benefits" which the non-participants are projected (not guaranteed) to realize on a net present value basis after roughly 24 plus years of paying for the Program's costs.[2] As such, the Settlement as proposed effectively removes the Program from the category of *bona fide* voluntary community solar. The Program is really in essence no more than a gold plated, rate base expanding generation capital project, albeit one which failed to satisfy the normally requisite demonstrations of need and prudence. The Program cannot in good faith be called voluntary community solar because it is fundamentally inconsistent with the concept ingrained in precedent. Furthermore, FPL intends to use this initial 1,497 MW of unneeded rate base additions as a springboard to add billions of dollars of future cookie cutter solar farms in the form of an as-yet undisclosed number of future "Phases" of the Program.

FPL failed to demonstrate compelling, extraordinary circumstances which would justify forcing non-participants to pay for a service from which they will not gain any net present value benefit for approximately 24-28 years (if ever) while a relatively small group of participants are guaranteed a simple payback benefit within 7 years.

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[2] Aside from the virtually non-existent financial benefit for non-participants, FPL has previously suggested non-participants also obtain some intangible benefit from the Program, possibly some tangential effects of clean energy, in the way everyone might benefit from clean air. However, at least one Joint Movant previously recognized that intangible benefits do not compare to the tangible economic benefit demonstrated on customer's bills: "[a] core design principle of a successful shared solar program is that it provide a **tangible economic benefit on electricity bills …**" https://cleanenergy.org/blog/fpl-developing-shared-solar-program-for-2019/ (last visited Oct. 15, 2019)(emphasis added). It follows that, if a ratepayer is expected to pay for a program like a "community solar" program, she should receive a tangible benefit, which is not the case for the non-participants in the instant case who help bear the costs of the Program at issue.

FPL's representation that the Program is the product of demand by customers for renewable energy is an insufficient basis on which to simply add shareholder-benefitting rate base and to justify approval of a blatantly discriminatory program. Customers have expressed interest in solar energy for many decades; however, FPL failed to act on that demand until relatively recently.

The Joint Movants allege (almost to the point of complaining) that discovery in this docket has been "extensive" and further suggest that having to attend meetings noticed by Commission Staff in addition to producing electronic discovery was burdensome. Joint Motion, para. 5. Repetition of complaints fails to address the reason and the primary driver of the need for "extensive" discovery. When a regulated monopoly plans to extract money from ratepayers who do not have a choice whether to use a particular provider, said monopoly should not complain about being required to show its math and provide sufficient and pertinent details. Additionally, where FPL has described the Program as "the largest community solar program in the United States" and "one of the world's largest solar expansions," which "will more than double the amount of community solar currently in the U.S.,"[3] one would hope that such a massive, possibly historic undertaking could be thoroughly investigated by the people who are expected to pay for it, and by the regulators who are statutorily obligated and responsible for protecting the public welfare. *See* § 366.01, Fla. Stat.

As to the primary driver of the need for discovery regarding the rebuttal case and the terms contained in the Agreement, FPL needs to recognize its chief role in creating the new questions. In the new case presented by FPL in rebuttal testimony and in the Agreement, FPL changed its economic analysis, presented testimony **for the first time** arguing the capacity provided by the SolarTogether generation facilities is needed to meet its minimum planning reserve margin targets, and made a number of modifications to its original proposal. Because FPL's recent changes rendered the pre-rebuttal discovery on FPL's old case-in-chief obsolete, the new case and wholly new claims regarding capacity and reserve margin targets require additional discovery and analysis, particularly with respect to the issues of: (i) how FPL changing its economic analysis increased the claimed CPVRR base case savings of the SolarTogether projects by $65 million; (ii) whether FPL has reasonably shown that the SolarTogether generation facilities are needed to meet its minimum planning reserve margin targets (or whether those generation facilities are actually

[3] https://newsroom.fpl.com/2019-03-13-FPL-announces-plans-for-the-largest-community-solar-program-in-the-U-S?mobile=No (last visited Oct. 15, 2019).

well in excess of what is needed to meet those targets); and (iii) whether the changed allocation of costs, benefits and risks under the program is reasonable assuming other aspects of proposal are found to be reasonable.

This case requires that all ratepayers have the opportunity for thorough discovery and analysis of the new case before a rush to approve the Agreement. By analogy to a rate case - it is irrelevant that a 50% rate increase is better for customers than a 100% rate increase, as a 50% rate increase may still be unreasonable for customers; therefore, Citizens must thoroughly analyze the factors behind any increase in rates and charges to determine whether it is fair, just, reasonable, and consistent with all statutory requirements.

The Joint Movants make an irrelevant comparison when they attempt to frame the issue on the disparity in benefits between ratepayer groups as being between the **"participants"** and the **"general body"** of ratepayers. Joint Motion para. 13. Under FPL's scheme, the term "general body" encompasses both participants and non-participants. As such, the term prevents an understanding of the accurate picture of the undue preference the Program grants to participants at the expense of non-participants. The more relevant comparison for purposes of understanding the discriminatory effect of the Program is the comparison of the risks and benefits projected for **"participants"** vs **"non-participants."**

Even if the Agreement could overcome the statutory defects discussed above, which it cannot, the Agreement is not in the public interest because of the extreme imbalance of risks and benefits between participants and non-participants. The disparity in risks and benefits between the groups is dramatically skewed to result in prejudice and negative effects for non-participants, who comprise a larger number of ratepayers. The nature of the Program dictates that even people who want to participate will not be able to do so because the opportunity to join is limited. Thus, the vast majority of ratepayers will be, by default, in the non-participant category, and the non-participants bear most of the risk, without being guaranteed any net present value payback benefit for at least 24 years. A program which is structured to cause tangible harm to the majority of ratepayers for decades while guaranteeing benefit to a small portion of ratepayers in a starkly shorter amount of time cannot be considered to positively serve the public interest.

Too many unanswered questions remain before the proposed tariff can be determined to meet the statutory requirement that it contain fair and reasonable rates and charges. The Commission should hold a hearing on the original Petition, as now modified. Whether the PSC

ultimately considers a settlement agreement between closely allied signatories is irrelevant to the responsibility of the Commission to discharge its statutory obligations. The proposed Agreement and tariff must not be even considered before the process of fully analyzing the consequences for all customers is complete.

Pursuant to the First Order Modifying Order Establishing Procedure, the discovery deadline is December 20, 2019. Consistent with § 120.57, Fla. Stat., OPC reserves its right to continue discovery and to cross-examine witnesses and present evidence at a full hearing of all issues in this docket.

WHEREFORE, for the foregoing reasons, Citizens respectfully oppose the proposed Settlement Agreement at this time.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response by the Citizens' of the State of Florida in Opposition to the Joint Motion to Approve Settlement Agreement has been furnished by electronic mail on this 16th day of October 2019, to the following:

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