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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20190061-EI

PETITION FOR APPROVAL OF
FPL SOLARTOGETHER PROGRAM
AND TARIFF, BY FLORIDA
POWER & LIGHT COMPANY.
_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 6

COMMISSIONERS
PARTICIPATING: CHAIRMAN GARY F. CLARK
COMMISSIONER ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, March 3, 2020

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS WRAY
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN CLARK: All right. We are going to
3 back up and catch Item No. 5 -- six, I'm sorry.
4 Let me put my glasses on and I'll tell you.

5 (Discussion off the record.)

6 CHAIRMAN CLARK: Before we begin Item No. 6, I
7 just want kind of lay out what I -- what I see and
8 I think the expectations may be here today. We
9 want to have just a very brief introduction of the
10 item. I think, we've all had plenty of -- we're
11 quite familiar with what we're going to be
12 discussing today. And I think Mr. Ballinger is
13 probably going to give us that opening overview of
14 the item.

15 But, from the Commission's perspective, we're
16 going to have a Bench discussion on the item and
17 how we take this up. There's been lots of ideas
18 proffered as to how we should proceed. And I think
19 that, in light of the way I see things falling out,
20 if we took a look at the settlement agreement and
21 looked at the consideration of the settlement
22 agreement, using the issues that are inside of the
23 recommendation as kind of a checklist to go down to
24 see how those comport with what's in the settlement
25 agreement, what's -- what the Commission's opinion

1 is regarding that, we may can come to a quick and
2 easy consensus there, but I am certainly open to
3 the Commission's recommendation on how we would
4 proceed in that regard.

5 Commissioner Brown, comment? Thought?

6 COMMISSIONER BROWN: Mr. Chairman, I think
7 your suggestion is spot-on. I think we can talk
8 about the substantive issues as we talk about the
9 settlement agreement.

10 CHAIRMAN CLARK: Great. Thank you.

11 Commissioner Polmann.

12 COMMISSIONER POLMANN: Mr. Chairman, I would
13 support that approach. In fact, what I see here is
14 we -- we have a pending motion before us. So, I
15 think taking up the -- taking up the settlement
16 agreement is -- would be the appropriate thing to
17 do.

18 CHAIRMAN CLARK: Great. Thank you. All
19 right. Seems like we have a little bit of
20 consensus there.

21 So, Mr. Ballinger, if you will, introduce the
22 item and we'll open the Bench for discussion.

23 MR. BALLINGER: Good morning, Chairman Clark
24 and Commissioners. It's a bit unusual that I'm
25 here today before you leading off the discussion

1 today, but this case has been anything but typical
2 from the beginning.

3 As you know, staff's role is ensure a complete
4 record and to provide recommendations on issues
5 agreed-to -- upon by the parties. I would like to
6 start by thanking my staff, who endured multiple
7 hours of discussions and numerous requests from me
8 to help bring clarity to this item.

9 Also, based on briefings that we have had, the
10 Commissioners, their advisers and staff -- I'm
11 confident you have the information before you today
12 with which to make some very important policy
13 decisions; therefore, I don't think it's necessary
14 to provide an overview of staff's recommendation at
15 this time.

16 As you discussed earlier, as a preliminary
17 matter, you have to decide whether to take up the
18 settlement agreement or go issue by issue as laid
19 out in the staff recommendation. The staff is
20 prepared to answer any questions you may have.

21 CHAIRMAN CLARK: Thank you, Mr. Ballinger.

22 All right. I will open up to the Commission
23 for discussion and options.

24 Commissioner Brown.

25 COMMISSIONER BROWN: Well, first, thank you,

1 staff, for all the work that you've put forth. I
2 know this is, like you said, Mr. Ballinger, a
3 unique case. So, thank you so much for all your
4 time and your thoughtful and analytical
5 recommendation that we have to consider.

6 I don't have any questions, but I do have some
7 points that I'd like to talk about that I think
8 will maybe get us to where we need to be. While
9 this is a case about the benefits of solar in our
10 state, it also goes beyond that, as Mr. Ballinger
11 alluded. This is a policy -- implications here
12 that may be obscure to understand for many
13 Floridians, for even reporters reporting on it, for
14 the average FPL customer as well.

15 I think it's fair to say that the details of
16 the implications of this project from a rate-making
17 standpoint have not really been the cornerstone of
18 the PR handle for this project.

19 SolarTogether is being championed as a
20 community solar project. The advocates have been
21 championing that. Traditional community solar, for
22 those folks who don't understand -- it has the
23 participants fully paying for the project and then
24 getting the subscription credits associated
25 therewith. That's the prototype of community solar

1 around the country.

2 This project, though, is distinct. And I will
3 say we have to look at it a little bit differently
4 as such. It's almost a hybrid of a GBRA. This
5 project does appear to have ample, though,
6 systemwide benefits. And I want to acknowledge a
7 few of those here today. In -- in addition to
8 advancing the public welfare and renewables in our
9 state, there are some that I don't want to gloss
10 over, but really want to underscore.

11 First one, the fact that it reduces our
12 dependency on fossil fuels -- which, by the way, is
13 creeping up to 70 percent, is tremendous.
14 Tremendous. That, with the discontinuance of fuel
15 hedging across the utilities -- we have very
16 limited alternatives to provide the lowest fuel
17 costs. And this project helps to mitigate fuel
18 fluctuations.

19 And then, looking at the pool of the 206
20 subscribers of the -- the big commercial/industrial
21 government folks, already subscribed, it's clear to
22 me that folks want to be responsible. Businesses
23 in Florida want to be sus- -- responsible,
24 sustainable, environmentally-sensitive companies.
25 This is an intangible asset that benefits our

1 entire economy and all Floridians.

2 But, to me, the highlight of the project here
3 is the reduced emissions portfolio -- profile,
4 which helps to overall reduce our carbon footprint,
5 which benefits and provides clean energy and
6 decreases the annual average use of natural gas
7 substantially. I love that of the project. I
8 think that's tremendous.

9 But I do want to point out some things about
10 this project. It was presented to us as an all-or-
11 take-nothing approach. And that's never really
12 attractive to a regulatory body. From all the
13 years that we've served here, we've seen there's
14 always way to improve and to provide enhancements.
15 And this regulatory body does that and we've done
16 that.

17 And I do think there are areas that we can
18 enhance upon here and I'd like to cover a few of
19 those. The first one, I believe having an
20 affirmative duty of annual reporting of savings and
21 actualized costs will be vital to the overall
22 success of this program and, really, to the
23 transparency of the process in general.

24 I think any future phases past the estimated
25 1,500 megawatts should also require further

1 consideration of the Commission, including any
2 reallocation of the participants which FPL desires
3 to have full discretion over to approve.

4 This is being couched as a community project
5 and, therefore, PSC shall ensure that the pre-
6 allocation is presented in a global fashion and so
7 that we have a balanced approach to what is fair to
8 all the customers.

9 I do want to point out that I do have some
10 concerns about the vagueness of the bill impact on
11 the general body of ratepayers because it's
12 speculative at this point. While the participants
13 are getting line items on the bill for their
14 credits as well as their -- their payment into the
15 program, the -- the general body of ratepayers are
16 getting it through a fuel charge.

17 There are a few approaches that we can take.
18 I know there's an impact to all customers if they
19 have a line item, but I think knowing what that
20 amount is to the general body of ratepayers through
21 annual reporting to the Commission will be helpful
22 so that customer knows what they're paying for this
23 community project.

24 Now, a few other points I do want to make as
25 well: Yes, there is an advantage. I know the

1 Commission -- the -- the staff recommendation talks
2 a lot about whether there is an undue preference,
3 an undue -- and I want to say, there is an
4 advantage to participants getting -- because
5 they're getting -- they're subscribing to the
6 program, they're getting subscription credits;
7 however, it is not undue. This case is very unique
8 and there are notable and significant factors.

9 They're accelerating solar. The subscribers
10 and participants are paying \$1.3 billion to a
11 project and they're advancing solar in a way that
12 pro- -- may not have been done.

13 I also want to point out to utilities here,
14 including FPL, that a customer need, in and of
15 itself, should not be a driver for approving any
16 type of capital project. That is a very dangerous
17 and slippery slope for us.

18 This project passes review on various other
19 factors, public-interest factors, and -- but
20 customer need is not one of them in this case, and
21 we should not solely or substantially rely on that
22 in approving a capital project.

23 And finally, this case has been complex, not
24 because solar is attractive, cost-effective, and a
25 public magnet for so many, but because of the

1 ratemaking implications here.

2 The end result has put forth fair, just, and
3 reasonable rates that do not have an undue rate
4 impact and are not discriminatory; but that being
5 the case for FPL, it may not be the case for other
6 utilities who are watching.

7 This case is unique on its own facts and
8 circumstances, as any future cases that come before
9 us will be evaluated for several factors, including
10 any undue rate impact.

11 So, with all that, Mr. Chairman, I am
12 supportive of the proposal.

13 CHAIRMAN CLARK: Thank you, Commissioner
14 Brown.

15 Other comments, other Commissioners?
16 Commissioner Fay.

17 COMMISSIONER FAY: Thank you, Mr. Chairman.
18 And I have a few points, but I do want to build off
19 some things that Commissioner Brown said, mainly
20 her last -- last point.

21 So, when I -- when I looked at this item
22 originally, the challenge I had was -- was,
23 basically, you've got a new -- a com- -- almost an
24 entirely-new program and you're applying 1951
25 statutes to determine what that program may do or

1 not -- not do. And that makes it difficult.

2 In addition to that, I mean, there is no --
3 there's no bill analysis to go pull on that.
4 There's -- there's no specifics from the history.
5 So, you start looking at the facts of what the
6 program does to try to make a decision if it
7 satisfies the legal requirements in front of you.

8 And I think one thing Commissioner Brown said
9 that I fully agree with is a -- a case like this
10 does create a case-by-case analysis. And I think
11 that occurs at different times within the
12 Commission, but I think, for something like this,
13 the reality that this decision either approves
14 anything that looks like this or vice versa is
15 just -- it's not a reality.

16 It's something where, depending on what comes
17 forward next, if it's another utility, if it's
18 another program, we're going to have to look at it
19 based on the facts that are in front of us. And
20 that -- that, I think, is consistent with what
21 the -- the statutes say.

22 Some of the other points that I'd like to hit
23 on is Commissioner Brown talked about that undue
24 and unreasonable preference. I think the
25 recommendation does a really good job of pointing

1 out that the preference, in itself, isn't a
2 violation, and we have to go to look into this,
3 undue and unreasonable, to make that -- look at the
4 facts to decide what would satisfy that. And I
5 don't believe there is undue or unreasonable
6 preference here.

7 And I think the recommendation also does a
8 good job of emphasizing that it's not sufficient
9 legally just to make a determination if something
10 is in the public interest without making that
11 determination if there is an undue or unreasonable
12 preference.

13 So, I -- I think part of the -- the record
14 distinguished those decisions, and I don't think
15 that's necessarily the case.

16 I do agree that there's a number of components
17 of this that, I think, satisfy what the Legislature
18 has intended us to do, what -- what we've been put
19 here to do.

20 I looked at 366.92, and there's a -- a list of
21 intent at the beginning of that section that talks
22 about some of the things Commissioner Brown has
23 mentioned as far as cleaner energy, diversification
24 of fuel types, reducing dependency on fossil fuels,
25 fuel-price volatility, and one that I wouldn't

1 necessarily think I'd see there, which is incurred
2 investment in our state, right.

3 And I think that's something -- when companies
4 take into consideration the opportunity to have a
5 hundred-percent green portfolio, that's something
6 that they will -- they'll think long and hard about
7 when they're considering moving to our state. So,
8 I think all those variables are extremely important
9 in addition to that undue-and-unreasonable
10 decision.

11 And then, probably, the -- the last thing and
12 my conclusion is just that, when we take these
13 types of things as a whole, I think the public-
14 interest standard is a good way to allow for new
15 types of programs that satisfy what the Legi- --
16 Legislature has sent us here to do.

17 (Phone ringing.) Excuse me. Someone is
18 calling me. They must have known I'm in a meeting.

19 So, when we look at those -- those bigger
20 tests as to the pub- -- the public-interest
21 standard and we get programs that are new to make
22 these assessments on, we have to look at the facts
23 of the program to make those decisions.

24 And I don't think that the Commission wants to
25 be any sort of barrier, hindrance, fortress to any

1 decision we make, but I think that we have to spend
2 time looking at each specific fact and detail
3 that's put in front of us before we make that
4 decision. And that's why I believe it's in the
5 public interest. And that's why I believe there is
6 no undue or unreasonable preference, and support
7 this program.

8 But I have a strange feeling this might not be
9 the last of the type of programs we see in this,
10 and so we'll continue to make that evaluation when
11 they come forward. Thank you.

12 CHAIRMAN CLARK: Thank you, Commissioner Fay.
13 Commissioner Graham.

14 COMMISSIONER GRAHAM: Well, my colleagues, the
15 legal minds, handled the -- the legal side of all
16 that stuff. So, I guess I'll do the simple part
17 and move the settlement as proposed by the utility.

18 CHAIRMAN CLARK: I have a motion. Do I have a
19 second?

20 COMMISSIONER FAY: I'll second.

21 CHAIRMAN CLARK: I have a second -- yep, I'm
22 coming to you. Commissioner Polmann.

23 COMMISSIONER POLMANN: Thank you,
24 Mr. Chairman.

25 I understand we have a motion on the floor. I

1 would like to make some comments following comments
2 that were made by my colleagues. I would agree
3 with Commissioner Brown on -- on the points that
4 she raised; one, the first being the reallocation
5 of the participant pool that the utility has
6 proposed.

7 I do have some parallel concerns on that, the
8 uncertainty on how that would be done in the
9 future. I'm not quite sure that we want to -- the
10 Commission wants to control that, but I think we
11 would -- we would like to know something more about
12 that, how that -- that might be reported in
13 advance. I -- I'm not quite sure that we want to
14 get our fingers into it, but it's of concern to me.
15 Whether we do something specific as for that, in an
16 order, I'd just like to reinforce what Commissioner
17 Brown indicated.

18 The other items she raised, which I do have a
19 similar concern, is the -- the non-participants,
20 the line item of the fuel charge having incomplete
21 information. I -- I would also like to see that be
22 addressed in our -- in our response back to the
23 utility.

24 The notion -- again, I'm just reinforcing the
25 Commissioner's comments on customer need not being

1 a basis for project approval and making sure that
2 the Commission is not defining that as a term,
3 nor -- nor intending to use it in any regard as a
4 term of art and not making any finding that that is
5 a basis for project approval. I want to ensure
6 that that is not something that we rely upon or
7 that is not a basis of a precedent.

8 And as has been indicated here, this project,
9 in fact -- it stands on it -- on its own merit.
10 And that, as I've indicated in many other cases, we
11 are here -- we have the obligation, as I see it, as
12 well as the authority to -- to approve a project,
13 to approve a settlement on the basis of the public
14 interest of the state of Florida.

15 There's been a lot of discussion -- a lot of
16 information put into the record comparing
17 customers, customer types and so forth. Our
18 purview is -- is much further beyond that. We are
19 considering public interest of the state of Florida
20 in every regard. And that's how I'm viewing this.

21 We are certainly concerned about the
22 customers, the participants, non-participants as
23 they've been referred to, but as we examine this, I
24 would encourage the Commission to keep in mind that
25 our public-policy interest is the entire state in

1 every regard.

2 The -- the question that -- and the comment
3 that Commissioner Fay pointed to -- and this was
4 addressed, to -- to a significant degree, in the
5 staff presentation here, is the -- the issue of
6 undue preference or advantage.

7 And I will point out -- and I'll rely upon the
8 notion that, when comparing groups with regard to
9 undue preference or advantage, the key issue there
10 in that comparison is that the groups must be
11 similarly situated.

12 And in the case where we have groups that --
13 again, using the language in this case, the
14 participant groups and the non-participant groups
15 are not similarly situated. By definition, they
16 are either participating or not participating.
17 Underlying that, they are all in the general body
18 of ratepayers, but those who are participating and
19 those who are not are not similarly situated.

20 So, the issue of undue preference or
21 advantage, in its simplest regard, and as I view
22 it -- and I would encourage the Commission to
23 review it -- there is no undue preference or
24 advantage. We cannot make that comparison or
25 judgment because they are two distinctly-different

1 groups.

2 So, we have to -- I would encourage that we
3 look at this again in the broader public interest
4 and the project as proposed, and the program as is
5 brought forward on -- on the basis of the merits of
6 the project and the program.

7 And the issue of undue preference or advantage
8 may be interesting, may be debatable, but I don't
9 think it applies because we -- those -- those
10 customers are not in the same group.

11 Also, of -- of significant importance -- and a
12 lot of this is in the record -- is Florida's
13 renewable-energy policy. Commissioner Brown made
14 reference to this. And the Legislature has made
15 very, very clear that the state policy is moving
16 forward aggressively -- my word -- embracing
17 renewable energy.

18 And I see the SolarTogether program as very
19 strong in that regard. This utility has brought
20 forward a major effort, been creative in some
21 regard with the nature of the program. And I see
22 this as -- as a significant move, large capacity in
23 community solar. And I think that that's very
24 significant, again, for the state of Florida.

25 I don't have any issue with the size of the

1 program, the capacity being brought on rather
2 aggressively in time. Again, back to the question
3 of need, I don't -- I don't see that as -- as
4 problematic because simply how you view that, then,
5 becomes a public-interest question.

6 The -- the issue of how this is going to
7 compare in -- to other -- other future projects
8 and -- and precedent and so forth -- I've commented
9 on that. I think other Commissioners have
10 commented on that.

11 So, in simple words, I'll -- I'll be happy to
12 support the program as presented by the utility.
13 Thank you, Mr. Chairman.

14 CHAIRMAN CLARK: Thank you, Commissioner
15 Polmann.

16 Mr. Ballinger would you like to address the
17 fuel-charge issue that we were --

18 MR. BALLINGER: I think I have a -- you both
19 had questions of line-item reporting of non-
20 participants and allocation. I think both of those
21 will be handled through or could be discerned
22 through our Fuel Clause because the utility is
23 going to report every year how many -- how much
24 credits, the cost of the credits going through.
25 From there, we can determine what it is. So, I

1 don't think you need a separate reporting
2 requirement because --

3 CHAIRMAN CLARK: Okay. Great. Thank you very
4 much.

5 Commissioner Brown.

6 COMMISSIONER BROWN: Thank you. Thank you.
7 Thank you, Tom.

8 The only other consideration I would just
9 have -- and I guess that goes without even adding
10 it to our order -- would be that any future phases
11 past what we're considering here shall be
12 considered by the Commission on a stand-alone,
13 separate basis, but I guess that goes without
14 saying.

15 MR. BALLINGER: I think that was contained in
16 the settlement agreement that future ones would
17 come before the Commission.

18 COMMISSIONER BROWN: With that, I'm ready --
19 call the motion.

20 CHAIRMAN CLARK: Any other discussion?

21 All right. On the motion to approve the
22 settlement agreement, all in favor, say aye.

23 (Chorus of ayes.)

24 CHAIRMAN CLARK: Opposed?

25 Settlement agreement is approved.

1 Now, just for a quick clarification, are there
2 any fallout issues that -- that we need to address
3 that have not been discussed regarding the issues?
4 I think settlement -- taking the settlement
5 agreement answered all the questions on the issues,
6 correct? Mr. Ballinger.

7 MR. BALLINGER: I don't believe so. I think
8 just closing the docket.

9 CHAIRMAN CLARK: Okay.

10 MR. BALLINGER: But I'll look up and down here
11 to make sure of that.

12 CHAIRMAN CLARK: Ms. Simmons?

13 MS. SIMMONS: I think we're good to go.

14 CHAIRMAN CLARK: Think we're good. All right.
15 Thank you very much. Thank you, staff.

16 All right. I believe that concludes the
17 agenda. We will adjourn.

18 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS WRAY, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 11th day of March, 2020.



ANDREA KOMARIDIS WRAY
NOTARY PUBLIC
COMMISSION #GG365545
EXPIRES February 9, 2021