

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Duke Energy Florida, LLC's Petition for a limited proceeding to approve clean energy connection program and tariff and stipulation

DOCKET NO. 20200176-EI

FILED: October 28, 2020

PRE-HEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel ("OPC"), pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2020-0324-PCO-PU, issued September 22, 2020, hereby submit this Prehearing Statement.

APPEARANCES:

JR Kelly
Public Counsel

Charles Rehwinkel
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
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On behalf of the Citizens of the State of Florida

A. **WITNESSES:**

None.

B. **EXHIBITS:**

None.

C. STATEMENT OF BASIC POSITION

Given the Commission's decision in Docket No. 20190061-EI on the FPL SolarTogether tariff and program, the position of Public Counsel (OPC) in this case is not one of active opposition to this filing by DEF. Notwithstanding this posture, the OPC is not in support of the Clean Energy Connection (CEC) program either. Our position on the structure of DEF's tariff and the similar FPL program was made abundantly known in Docket No. 20190061-EI. Moreover, the OPC did not in the SolarTogether proceeding, and does not here, support the device of a friendly settlement agreement circumventing a hearing on an issue of first impression for a utility. Unfortunately, the Commission allowed this practice in its approval and finding that the public interest exists with regard to FPL's SolarTogether transaction. Given this concern and its objection to the unbridled and unrestricted use of friendly settlements, the OPC cannot offer a position in favor of the pending settlement. At the same time, the OPC understands Duke's position that it expects to rely on whatever precedential value Order No. PSC-2020-0084-S-EI provides to its filing, including the pre-filed settlement in this case. The OPC nevertheless contends that, to the extent the facts and circumstances of the DEF filing differ from the SolarTogether circumstances, any substantially affected party is, at a minimum, entitled to raise and litigate issues related to the economics and/or public interest associated with the CEC filing without regard to the prior precedent. Any lack of the OPC's active opposition to this DEF filing cannot be cited, viewed or relied upon as an endorsement of the CEC program. ***This position and is subject to revision based on receipt of ongoing discovery responses and completion of deposition testimony and receipt of the transcript of the deposition of the DEF panel of Borsch, Huber and Foster.***

D. STATEMENT OF FACTUAL ISSUES AND POSITIONS

GENERIC ISSUES

ISSUE 1: Is DEF's proposed Clean Energy Connection Program and Tariff an appropriate mechanism to seek approval for the construction of 750MW of new solar generation facilities?

OPC: No position at this time. ***This position and is subject to revision based on receipt of ongoing discovery responses and completion of deposition testimony and receipt of the transcript of the deposition of the DEF panel of Borsch, Huber and Foster.***

ISSUE 2: Does DEF's proposed Clean Energy Connection Program and Tariff give any undue or unreasonable preference or advantage to any person or locality or subject the same to any undue or unreasonable prejudice or disadvantage in any respect, contrary to Section 366.03, Florida Statutes?

OPC: No position at this time. *This position and is subject to revision based on receipt of ongoing discovery responses and completion of deposition testimony and receipt of the transcript of the deposition of the DEF panel of Borsch, Huber and Foster.*

ISSUE 3: Should the Commission allow recovery of all costs and expenses associated with DEF's proposed Clean Energy Connection Program and Tariff in the manner proposed by FPL?

OPC: No position at this time. *This position and is subject to revision based on receipt of ongoing discovery responses and completion of deposition testimony and receipt of the transcript of the deposition of the DEF panel of Borsch, Huber and Foster.*

ISSUE 4: Should the Commission approve DEF's proposed Clean Energy Connection Program and Tariff?

OPC: No position at this time. *This position and is subject to revision based on receipt of ongoing discovery responses and completion of deposition testimony and receipt of the transcript of the deposition of the DEF panel of Borsch, Huber and Foster.*

ISSUE 5: [OPC renumbering and rephrasing of the Staff formulation of this issue]
Should the Commission approve the Stipulation for approval of the Duke Energy Florida, LLC, Clean Energy Connection Program and Tariff, as being in the public interest when taken as a whole?

OPC: A settlement agreement that was filed along with the case in controversy may well lack indicia of adversarial nature of the signatories and may not be sufficient or proper evidence of the public interest as required by Chapter 366. While the Commission approved the SolarTogether program and tariff based on a settlement with only one of their 5 million customers and two public interest groups that do not represent any customers in their associational status, the sufficiency of such an arrangement was not subjected to appellate review, nor was it filed along with the petition for relief. The OPC is contemplating the impact of these differences on the case and evaluating any need to brief or seek clarification about the limits of such friendly settlement agreements. *This position and is subject to revision based on receipt of ongoing discovery responses and completion of deposition testimony and receipt of the transcript of the deposition of the DEF panel of Borsch, Huber and Foster.*

ISSUE 6: Should this docket be closed?

OPC: Yes.

E. STIPULATED ISSUES:

None at this time.

F. PENDING MOTIONS:

None.

G. REQUESTS FOR CONFIDENTIALITY:

OPC have no pending requests for claims for confidentiality.

H. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

OPC has no objections to any witness' qualifications as an expert in this proceeding.

I. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 28th day of October, 2020

Respectfully submitted,

J.R. Kelly
Public Counsel

/s/ Charles Rehwinkel
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CERTIFICATE OF SERVICE

Docket No. 20200176-EI

I HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel's Prehearing Statement has been furnished by electronic mail on this 28th day of October 2020, to the following:

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