

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: December 9, 2020

CITIZEN'S POST HEARING BRIEF

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, and Order No. PSC-2020-0477-PCO-EI, Issued December 1, 2020, hereby submit this Post Hearing Brief.

STATEMENT OF BASIC POSITION

Given the Commission's decision in Order No. PSC-2020-0084-S-EI ("SolarTogether Order"), issued in Docket No. 20190061-EI on the FPL SolarTogether tariff and program, the position of the Public Counsel (OPC) in this case is not one of active opposition to this filing by DEF. Notwithstanding this posture, the OPC position is not one of support for the Clean Energy Connection (CEC) program either. Our position on the subsidy-based structure of DEF's tariff and the similar FPL program was made abundantly known in Docket No. 20190061-EI. That position has not changed. Moreover, in the SolarTogether proceeding, the OPC did not then, and does not here, support the device of a "friendly," pre-filed settlement agreement that is intended to circumvent a hearing or staff recommendation on an issue of first impression for a utility, if ever. Unfortunately, the Commission allowed this practice in its approval and finding that the public interest exists with regard to FPL's SolarTogether transaction. Given OPC's concern and its objection to the so far unbridled and unrestricted use of friendly settlements, the OPC cannot offer a position in support of the pending settlement. While the OPC understands Duke's position that it expects to be able to rely on whatever precedential value the SolarTogether Order provides, 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. The fact of the OPC's lack of opposition to this DEF filing cannot be cited, viewed or relied upon as an endorsement of the CEC program.

At the hearing, the OPC asked the Commission to recede from the first two paragraphs of Section XIV of prehearing Order No. PSC-2020-0430-PCO-EI at 17. The Commission agreed to this during the hearing, and the OPC withdrew its *Ore Tenus* Motion for Reconsideration in reliance on that action. TR 10 – 27; 35. At this time, no order has been issued effectuating the removal of those paragraphs. Accordingly, the OPC reserves all rights with respect to the objections voiced at TR 10 - 27.

D. STATEMENT OF FACTUAL ISSUES AND POSITIONS

GENERIC ISSUES

ISSUE 1: Should the Commission approve the Stipulation for approval of the Duke Energy Florida, LLC, Clean Energy Connection Program and Tariff, when taken as a whole, as in the public interest?

OPC: **A settlement agreement that was filed along with the case in controversy should indicate the adversarial nature of the signatories in order to be considered as sufficient or proper evidence of the public interest as required by Chapter 366. While the Commission approved the SolarTogether program and tariff in Docket 20190061-EI based on a settlement with only one customer (out of the utility's 5 million customers) and two public interest groups (that do not represent any customers as ratepayers 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 and before any issues were manifested. The OPC does not concede that a settlement filed along with a petition that is only signed by one of the 1.8 million customers falls within the limits of settlement agreements approved by the Florida Supreme Court.**

The OPC's lack of active opposition to the CEC is based solely on the result of the SolarTogether Order that approved an inter-class set of subsidies among customers over the strong

objection of the Public Counsel and Commission Staff. The OPC does not endorse that order as ultimately being based on the law; however, we accept that it is final and therefor facially precedent for a similar outcome in this case. Beyond noting this “bare bones” indicia of precedence for the CEC that is signed by only one out of 1.8 million customers¹ (TR 137 - 139), the OPC has no further opinion on the merits of the CEC. It cannot be said that the OPC affirmatively supports the CEC.²

ISSUE 2: Is DEF’s proposed Clean Energy Connection Program and Tariff an appropriate mechanism to seek approval for the construction of 749 MW of new solar generation facilities?

OPC: **The proposed Clean Energy Connection Program and Tariff is only an appropriate mechanism for approval of the construction of the generation facilities if the Commission affirmatively determines that the program and tariff and associated costs and expenses are lawful.**

ISSUE 3: 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: **The OPC does not recede from its position taken in the Solar Together case that the program and tariff provided an undue or unreasonably prejudicial advantage to certain persons. No settlement can be unlawful and also in the public interest.**

Suffice it to say that the SolarTogether Order provided no analysis that rejected the Commission Staff’s recommendation that the SolarTogether Rider tariff granted an undue

¹ DEF witness Huber testified that Walmart was not representing any customer but itself. TR 139.

² Although Section 350.0611 authorizes the Public Counsel to urge any position that he deems to be in the public interest, the positions and arguments offered by the OPC in this case do not amount to an endorsement of the CEC as being in the public interest.

preference to participants and subjects the general body of ratepayers to an undue disadvantage. Instead, in the SolarTogether Order adopting the settlement, there is a single conclusory sentence that reads:

In addition, the Settlement Agreement comports with Section 366.06, F.S., by providing fair, just, and reasonable rates without undue preference.

Order No. PSC-2020-0084-S-EI at 5. There was, and has been, no analysis rejecting the Staff's analysis or affirmatively demonstrating that the SolarTogether tariff and program provide fair, just and reasonable rates without undue preference. The order is simply silent with regard to any explicating analysis that supports its holding. Without the analysis showing how the SolarTogether or CEC programs do *not* subject customers to an undue advantage, the SolarTogether order cannot be said to be dispositive. The OPC does not actively oppose the CEC program and tariff for the "bare bones" reason stated in Issue 1. However, the OPC cannot affirmatively acknowledge or concede that the CEC program and tariff have met the standards of the SolarTogether Order, given that order's lack of explanatory analysis.

ISSUE 4: 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 DEF?

OPC: **The expenses and costs submitted for recovery must be reasonable and prudent and lawfully allocated. The Public Counsel does not take a position regarding the lawfulness of the costs and expenses of the CEC. **

ISSUE 5: Should the Commission approve DEF's proposed Clean Energy Connection Program and Tariff?

OPC: **The Commission should only approve the Clean Energy Connection if it affirmatively determines that the program and tariff and associated costs and expenses are lawful. The Public Counsel does not take a position regarding the lawfulness of the costs and expenses of the CEC.**

ISSUE 6: Should this docket be closed?

OPC: **Yes.**

Dated this 9th day of December 2020

Respectfully submitted,

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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 Post-Hearing Brief has been furnished by electronic mail on this 9th day of December 2020, to the following:

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