IN THE SUPREME COURT OF FLORIDA

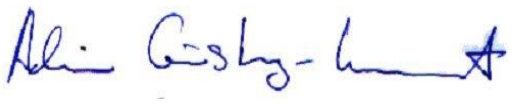
ACHIM GINSBERG-KLEMMT	)	
	)	
Appellant,	)	
	)	SC19-1873
v.	)	Lower Case Docket No. 20190176-EI
	)	
ART GRAHAM, ETC., ET AL.,	)	
	)	
Appellees.	)	

REGULATORY IMPROVEMENTS FOR DECENTRALIZED SOLAR NET-METERING SYSTEMS IN FLORIDA

APPELLANT'S AMENDED INITIAL BRIEF

ON APPEAL FROM THE Order No. PSC-2019-0410-FOF-EI

Unopposed amended version to improve hyperlinks in compressed PDF files.



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Florida Public Service Commission Order PSC-2020-0029-PAA-EI
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FLORIDA STATUTES

§163-04	Energy Devices based on Renewable Resources
§288.0415	Solar energy; advancement; economic development strategy
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FLORIDA ADMINISTRATIVE CODE

Rule 25-6.065 Interconnection and Net Metering of Customer-Owned Renewable Generation.
https://www.flrules.org/gateway/RuleNo.asp?ID=25-6.065

Rule 25-17.0825 As-Available Energy
https://www.flrules.org/gateway/ruleno.asp?id=25-17.0825

CASES

CF Industries, Inc. v. Nichols, 536 So. 2d 234 (1988)

Citizens v. Graham, 213 So 3d 703, 710-11 (Fla. 2017)

Gulf Coast Elec. Co-op, Inc. v. Johnson, 727 So. 2d 259, 262 (Fla. 1999)

Legal Envtl. Assistance Found,. Inc. v. Clark, 668 So. 2d 982, 986-97 (Fla. 1996)

Sierra Club v. Brown, ect., et al., SC17-82 (Fla. 2018)

OTHER AUTHORITIES

A Primer on Florida's Administrative Procedure Act
https://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf

SEIA Solar Cost Factsheet
https://www.seia.org/sites/default/files/2019-05/Solar-Soft-Costs-Factsheet.pdf

SEIA Percentage of State's Electricity from Solar – State by State
https://www.seia.org/states-map

Florida's Utilities Keep Homeowners From Making the Most of Solar
https://www.nytimes.com/2019/07/07/business/energy-environment/florida-solar-power.html

TERMS AND ABBREVIATIONS

Unless otherwise specified, in this Initial Brief, Appellant will use the following terms and abbreviations:

"APA" refers to the Florida Administrative Procedure Act

"Appellant" refers to the Appellant Achim Ginsberg-Klemmt

"As-Available Energy Rate" refers to the rate used by utilities to compensate for demand-side generated solar electricity which is not subject to the net-metering rate.

"Commission" refers to the Appellee, Florida Public Service Commission

"demand-side" refers to power generating systems on customers premises which offset the need for utility owned power plants.

"FPSC" refers to the Appellee Florida Public Service Commission

"FPL" refers to Florida Power & Light

"IOU" refers to Investor Owned Utilities

"OUC" refers to the Orlando Utilities Commission

"Peaker Power Plants" refers to fossil fuel-burning gas turbines which generate electricity during high demand "on-peak" hours.

"SEIA" refers to the organization Solar Energy Industry Associates

The Record will be cited as R[P. ###], while documents contained in the Appendix will be cited as App[P. ###]. Appellant will cite referenced orders and documents not included in the record or appendix using the internet website Universal Resource Locators (URL's) with PDF page numbers.

STATEMENT OF THE CASE AND OF THE FACTS

Appellant is one of ten original Petitioners who filed this appeal Pro Se. Because of the Pro Se crafting of this appeal, Appellant apologizes that the form of this initial brief might not always follow legal decorum or language.

In 2017, Appellant designed and installed a solar system on his homestead in Sarasota Florida. An electrical engineer with a masters degree in energy systems, Appellant has developed cost effective methods to install solar systems without involving a dedicated solar contracting firm. With the guidance of a state licensed electrician, innovative technologies and joint family efforts over the weekend, Appellant completed two building code compliant solar system installations for a fraction of the usual cost. This "*Amish Style*" solar installation method has allowed Appellant to reach a financial break-even point after 4-5 years of operation, as illustrated in the following link:

https://www.s-5.com/testimonial/thanks-s-5-for-helping-us-get-it-done-the-right-way/

A. Appellant experienced three FPL solar net-metering applications: One was approved, the second one had the approval withdrawn and the third one was denied.

Appellant's single story "Old-Florida" ranch style residence was originally built in 1960 and recently equipped to generate a minor surplus of 2736 kWh in 2018 (Surplus of $59.29) and 2342 kWh (Surplus of $47.38) in 2019.

Appellant's second rental solar home generated 1193 kWh (Surplus of $24.13) during the first year of operation in 2019. Both homes can therefore be considered net-zero and carbon neutral.

Due to alleged "oversizing," Florida Power & Light withdrew the net-metering approval for Appellant's second carbon neutral solar home on March 1st 2019:

"***[..]we cannot approve the interconnection of a renewable system that is essentially oversized."*** R[P. 51]

FPL based their categorization of "oversized" on their *"115% annual*

consumption" policy:

> ***"[..]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.[1]"*** App[P. 14]

As designed and expected, the solar system at Appellant's second carbon-neutral home has continued to generate solar electricity without FPL's approval for over a year now[2]. R[P. 51]

FPL denied Appellant's third net-metering application based on the same *"115% annual consumption"* policy. Hence, construction of the system never commenced. Upon being denied the third permit, on February 24th 2019, Appellant requested the following from FPL Staff:

> *"[..] I have prepared a few electric heaters to heat the outside air at Leeann Road to generate the necessary electricity "usage" that my FPL account needs to show in order to pass the officially endorsed Net-Meter permitting requirements.*
>
> *Please specify the exact minimum amount of kilowatt hours our FPL bill needs to show and also the duration in months this minimum electricity usage must show on our FPL bill in order for us to pass Florida Power & Light's official net-meter application process.[..]"* R[P. 52]

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[1] https://www.fpl.com/clean-energy/net-metering/guidelines.html

[2] Appellant suggests that the formal regulatory necessity of net-metering approvals performed by Investor Owned Utilities (IOU) like Florida Power & Light is overrated and should be discontinued in the near future.

On March 1st 2019 FPL Staff responded as follows:

"[..] While the primary purpose of this communication relates to the Leeann Road property, your note also references the discussions we have had regarding the 3107 Grafton Road property. As we have discussed, our process requires us to have the information necessary to project the estimated annual kilowatt-hour usage in order to advise you of the acceptable size of your renewable system for net metering purposes. You indicated that your tenants don't yet have the electric vehicles you anticipate them having, so without any information about projected load associated with charging electric vehicles, ***we cannot approve the interconnection of a renewable system that is essentially oversized. (emphasis added)*** *Please recall that both section 366.91, Florida Statutes, and Rule 25-6.065 state that renewable systems such as the one you propose are intended to offset "part or all of the customer's electricity requirements with renewable energy."*

With reference to your questions about the Leeann Road property, I understand from your note that while there is currently no usage at that location, you intend to install some electric heaters to generate usage. If you can provide me a copy of the permitted plans for the proposed electric heaters, I would be happy to review them and assist in determining the projected kilowatt hours the heaters would produce. And if you have plans to build or construct anything else at that location that will result in the use of electricity, I will also be happy to review any permitted plans for that construction and to work with you to determine the projected kilowatt hours that use would produce. The bottom line is this – whatever you have in mind as the intended use of that property, I will work with you to help determine the projected annual kilowatt-hour usage that will determine an acceptable size of a solar or other renewable system for net metering purposes.

On that point, you have asked me to "specify the exact minimum amount of kilowatt hours our FPL bill needs to show and also the duration in months this minimum electricity usage must show on our FPL bill in order for us to pass Florida Power & Light's official net-meter application process."

Hopefully what I have explained above ***makes clear that there is no minimum electricity usage required to net meter. The ability to net meter is based on projected usage gleaned from our review of permitted plans in cases where there is insufficient history of electric usage upon which to base our projections****.[..]" (emphasis added)* R[P. 51]

The questionable approval process for solar net-metering systems in the FPL service area lead Appellant to file PSC petition 20190176-EI, the *"Joint Petition for Approval of Regulatory Improvements for Decentralized Solar Net-Metering Systems in Florida"* R[P. 3]

On the other side of the state, simultaneously facing the same questionable approval process, Mr Floyd Gonzales & Mr Robert Irwin filed PSC petition 20190167-EI, the *"Petition to Compel Florida Power & Light to comply with Section 366.91, F.S. and Rule 25.6-065, F.A.C.[3]"*

B. Appellant was barred twice from presenting evidence and argument during the Commission's conference.

On October 3rd 2019, Commission Chair Graham prevented Appellant twice (at 4:31 minutes and at 7:06 minutes into the hearing) from presenting evidence and argument on all issues involved[4]. R[P. 73-74]:

> MR. GINSBERG-KLEMMT: -- and power stations were mostly owned by public entities --
>
> CHAIRMAN GRAHAM: Mr. Klemmt, I'm going to cut you off here. I don't want for you to get into a long speech.

[3] http://www.floridapsc.com/ClerkOffice/DocketFiling?docket=20190167
[4] http://www.floridapsc.com/library/filings/2019/09361-2019/09361-2019.pdf

R[P. 76]:

> ..NextEra Energy's stock chart demonstrates that the official FPSC goal to assure –
>
> CHAIRMAN GRAHAM: Mr. Klemmt –
> MR. GINSBERG-KLEMMT: -- NextEra –
> CHAIRMAN GRAHAM: -- I'm going to cut you off there.

SUMMARY OF ARGUMENT

Appellant has standing to maintain this appeal. This appeal is not in any way a request to re-weigh the evidence. Rather, this appeal is based on the Commission's failures and refusals to effectively promote demand-side regenerative energy systems and solar net-metering in Florida and in doing so, misconstrues the intent of Florida Statutes.

I. With its corporate 115% annual consumption policy, FPL acts as a regulatory agency with the open approval of the Commission. R[P. 25 – 55] App[P. 46-138]

The Commission exceeds its delegated authority under section 366.91, Florida Statutes, by endorsing FPL's practice to enforce their 115% annual consumption policy during the net-metering application process, and by deferring to the corporation to arbitrarily and capriciously decide which cases should be exempt from that policy.

FPL's corporate policy does not account for increased future electricity

demand caused by the potential purchase of electric vehicles and should, for this reason alone, not be treated like an officially adopted rule. App[P. 14]

Florida Power & Light is a private, investor-owned utility and not a governmental agency. It should not be authorized to permit or deny anything, especially based on unadopted corporate policies. Such deference is tantamount to an abdication of the Commission's responsibility to create effective and uniform rules.

Customers should be authorized to define and articulate their own electricity requirements subject to the limitations and rating of their permitted IEEE conform electric panel, while FPL should not be authorized to determine the maximum wattage of solar net metering systems below 90% of the permitted electric panel rating.

In addition, the Commission grants FPL substantial discretion to deviate from this unadopted 115% annual consumption rule. This questionable practice effectively grants FPL the regulatory authority to downsize, deny or approve solar net-metering systems.

II. The insurance requirement for Tier 2 net-metering systems above 10KW is unnecessarily burdensome and results in non-uniform policies state-wide.

Homeowners in Florida who wish to install and operate solar systems which are adequately sized to power their electric cars and cover most or all of their electricity needs are obliged to select the "Tier 2" category as their choice of interconnect agreements with FPL. Tier 2 net-metering category ranges from 10KW to 100KW and homeowners within FPL's jurisdiction are obliged to add a costly liability insurance to the economic equation of their Tier 2 solar systems, which inevitably drags the economical break-even point further into the future.

The Commission's vague liability insurance requirements for Tier 2 solar net-metering systems over 10KW defined in Rule 25-6.065 (5)(e) enable FPL and other utilities to impose excessive and unnecessary costs on their customers who want to install powerful and robust solar net-metering systems. The current rule language results directly in unnecessary and non-uniform costs for net-metering customers.

III. The current usage of the Commission's rule 25-17.0825 *"As-Available -Energy"* to compensate demand-side solar electricity generation beyond self consumption ignores the facts that carbon-neutral solar electricity is generated without the emission of greenhouse gases and that solar electricity is generated during Florida's on-peak demand hours.

ARGUMENT

A. Standard of Review

Orders of the Commission come to the Florida Supreme Court clothed with the presumption that they have been made within the Commission's jurisdiction and powers, and that they are reasonable and just and such as ought to have been made. *Gulf Coast Elec. Co-op, Inc. v. Johnson*, 727 So. 2d 259, 262 (Fla. 1999). To prevail on appeal, a party challenging orders of the Commission must show that the orders departed from the essential requirements of law and the legislation controlling the issues. *Sierra Club v. Brown*, 243 So. 3d 903, 907 (Fla. 2018).

Where a question of statutory interpretation is at issue, the appellants must show that the Commission interpretation or application was clearly erroneous. Id. at 908.

B. Appellant has Standing to Maintain this Appeal

Appellant's standing to maintain this appeal is straightforward and not subject to legitimate challenge. Appellant meets the requirements for appellate standing prescribed in *Legal Envtl. Assistance Found,. Inc. v. Clark,* 668 So. 2D 982, 986-97 (Fla. 1996): (1) the Commission's Final Order is final; (2) the

Commission is subject to the Florida Administrative Procedure Act ("APA"), *see, e.g. Citizens v. Graham,* 213 So 3d 703, 710-11 (Fla. 2017) Thus as "*a party who is adversely affected by final agency action*", Appellant has standing to maintain this appeal, 120.68(1)(a), Fla.Stat.

C. Reality vs. the noble legislative intent of the Florida Statutes

Florida's Statutes were established and refined over many decades with the wise and future-oriented intent to encourage **demand-side** regenerative power generation. Florida Statute 366.81 specifically demands:

> *"The Legislature further finds that the Florida Public Service Commission is the appropriate agency to adopt goals and approve plans related to the* ***promotion of demand-side renewable energy systems*** *and the conservation of electric energy and natural gas usage. (emphasis added)*

In 2005 and 2008, net-metering was established as a statutory right in Florida and the Public Service Commission was directed by statute 366.91(5) *Renewable Energy* to establish regulations to expedite interconnections of customer-owned demand-side renewable power generation systems.

According to data current through Q4 2019 provided by Solar Energy Industry Associates, only 1.87% of Florida's electricity is generated by solar systems. The "Sunshine State" trails behind the following contestants: https://www.seia.org/states-map

	Q3 2019	Q4 2019	Q3-Q4 2019
Washington DC	13.31%	64.99%	+51.68
California	19.51%	19.89%	+ 0.38%
Vermont	11.94%	14.03%	+ 2.09%
Nevada	13.28%	13.71%	+ 0.43%
Massachusetts	12.59%	13.65%	+ 1.06%
Hawaii	11.91%	12.57%	+ 0.66%

Arizona	6.62%	6.63%	+ 0.01%
Utah	6.35%	6.58%	+ 0.23%
North Carolina	5.54%	5.73%	+ 0.19%
New Mexico	4.56%	4.67%	+ 0.11%
NewJersey	4.45%	4.66%	+ 0.21%
Idaho	3.45%	3.64%	+ 0.19%
Maryland	3.39%	3.64%	+ 0.07%
Colorado	3.14%	3.24%	+ 0.10%
Delaware	2.84%	3.24%	+ 0.40%
Rhode Island	2.44%	3.13%	+ 0.69%
Minnesota	2.39%	2.27%	- 0.12%
Connecticut	1.86%	1.91%	+ 0.05%
Florida	**1.65%**	**1.87%**	**+ 0.22%**
New York	1.67%	1.86%	+ 0.19%

Comparing the summer months July/August/September in Q3 with the winter months October/November/December in Q4 places the northerly States at a disadvantage due to the seasonal heating activity. It is therefore not surprising that Florida has passed up New York during Q4. The clear winner, Washington DC, possibly leads the pack due to the trailblazing regulatory policy improvements outlined on this website: https://doee.dc.gov/solarforall

Driven by substantial usage of electric vehicles and population growth, electricity consumption in Florida will hopefully increase considerably during the next few years. If we would continue to increase solar electricity generation efforts at the current sluggish rate of 0.22% per quarter, Florida would reach 75% solar electricity production in about 83 years during the year 2103.

83 years appears much too long to successfully avoid oil drilling operations along Florida's Gulf Coast.

D. The Commission has exceeded its delegated authority under section 366.91, Florida Statutes, by endorsing FPL's practice to enforce their 115% annual consumption policy during net-metering applications and by deferring to the corporation to decide which cases should be exempt from that policy.

Chapter 350, Florida Statutes. grants the Public Service Commission exclusive jurisdiction to regulate Florida's electricity monopolies, but the Commission has unlawfully delegated the rulemaking authority regarding the denial and approval of solar net-metering systems based on sizing to Florida Power & Light[5].

The Commission vests unbridled discretion in FPL by endorsing this corporation's practice to act like a regulatory agency concerning the sizing of solar systems, and allows FPL full discretion as to which customers should be exempt from compliance.

[5] Electricity consuming appliances like AC units, washers and dryers operate just fine without dedicated FPL approval. Installing electricity generating systems like small solar net-metering systems is as benign as installing electrical appliances, and solar systems should therefore not be burdened with an onerous bureaucratic approval process controlled and dominated by the utility corporations.

Gonzales-Irwin filed PSC petition 20190167-EI, *"Petition to Compel Florida Power & Light to comply with Section 366.91, F.S. and Rule 25.6-065, F.A.C."* to oppose the same arbitrary and capricious net-metering application process which Appellant had to face. On October 4th 2019, Commission Staff requested FPL to produce the following[6]:

1.a. Please provide each algorithm used to address interconnection applications, if any.
2. If an interconnection application is denied, is there an appeals process?
2.b If yes, please identify the standards that apply at each stage of the review process
2.c If not, why not? App[Page 47]

In response to the document request filed on October 4th 2019, Commission Staff had only 11 months of data available and therefore never had the necessary mathematical basis to determine if FPL's automatic net-metering denial algorithm used by the online web portal complies with FPL's unadopted "*115% **annual** consumption*" rule. The Commission should have disregarded their flawed Staff recommendation which was not based on factual data.

Florida Power & Light never produced any of the pass/fail algorithms used by the FPL online permitting software to the Commission, and Commission Staff never complained that the Defendant failed to produce the requested algorithms.

Florida Power & Light provided no answers in response to Commission Staff's questions regarding the existing appeals process or the lack thereof.

[6] http://www.floridapsc.com/library/filings/2019/09207-2019/09207-2019.pdf

Commission Staff did not compel Florida Power & Light to provide the missing responses regarding information request 2., 2.b. & 2.c. See FPL's Response to Commission Staff's Data Request[7]. App[P. 52-89]

In the midst of this petition, on October 21st 2019, FPL Attorney Mr. Ken Rubin informed Mr. Gonzales' & Mr Irwin's attorney Mr. Kyle Egger that FPL Staff had approved the disputed net-metering application:

> "*[..]I have been advised that based upon the **past 3 months' electricity usage**, including the most recent billing cycle that ends today, October 21, 2019, your client's usage now falls within the 115% guideline and his application for interconnection as a tier 2 net metered customer may now proceed through the process for approval."* App[P. 85]

In contrast to Appellant's net-metering applications, where the time period of one year seemed to be a relevant factor, FPL discretely shortened the time period to only three months for the above mentioned net-metering applicants, and only after the customers filed their PSC petition[8].

On November 15th 2019, after having been approved, Gonzales-Irwin continued their petition and produced FPL power bills showing the monthly electric power consumption for 11 months, from October 2018 to September 2019. No power bill or electric consumption data was provided for the 12th month to the

[7] http://www.floridapsc.com/library/filings/2019/09503-2019/09503-2019.pdf

[8] http://www.floridapsc.com/library/filings/2019/09503-2019/09503-2019.pdf

Commission's Staff for October 2019[9]. App[P. 108-122]

On January 2nd 2020, Commission Staff denied Mr Gonzales' & Mr Irwin's request for a monetary refund, stating in the Final Order:

> [..]*FPL does permit net metering of 115% of consumption because each unique system is assessed on a range of values using photovoltaic watts resulting in some fluctuation. Staff recommends that this is a reasonable implementation of Rule 25-6.065(2)(c), F.A.C. "* App[P. 42]

Rule 25-6.065(2)(c), F.A.C. points to the definition of "net metering:"

Rule 25-6.065(2)(c):

> *"Net metering" means a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption onsite.*

Let us generously say that this logic is forgivable. This recent ruling demonstrates that the Commission and FPL both agree that 15% surplus generation would be an acceptable "implementation of the rule," but it still does not specify the relevant time period, or whether 115% *past* consumption or 115% *future* consumption would be relevant.

It is Appellant's position that the current application of FPL's "115% annual consumption" policy qualifies as an *"Invalid exercise of delegated legislative authority"* which is defined in Florida Statute 120.52 (8)(a-f).

Florida Statute 120.52 (8) states:

[9] http://www.floridapsc.com/library/filings/2019/10945-2019/10945-2019.pdf

> *"Invalid exercise of delegated legislative authority" means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:*
> *(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;*
> *(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;*
> *(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;*
> *(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;*
> *(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or*
> *(f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.*

FPL's *"115% annual consumption"* policy (App[P.14]) pertains directly to conditions a, b, d, & e.

In summary, neither the Commission, nor the 90% electric panel rating, nor FPL's unadopted rule based on 115% annual consumption appear to be final deciding factors in determining the maximum permissible wattage for solar net-metering systems within the FPL service area. The deciding factors in determining the maximum permissible wattage of solar net-metering installations under FPL's control are **arbitrary and capricious** and are therefore not compliant with Florida Statute 120.57 (3):

"[..] An unadopted rule shall not be presumed valid. The agency must

demonstrate that the unadopted rule:
c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency.

d. Is not arbitrary and capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; A rule is capricious if it is adopted without thought or reason or is irrational."

E. The Commission misconstrues the term "primarily intended" used in rule 25-6.065 as "solely intended" to unlawfully limit solar power generating capacities.

The Public Service Commission was and still is tasked by Florida Statute 366.91(5) *Renewable Energy* to implement the following:

"*[..]The commission shall establish requirements relating to the expedited interconnection and net metering of customer-owned renewable generation by public utilities and may adopt rules to administer this section."*

In response to the given task, the Commission adopted Rule 25-6.065, *Interconnection and Net Metering of Customer-Owned Renewable Generation.* Rule 25-6.065 (2) (a) F.A.C. states as follows:

"Customer-owned renewable generation" means an electric generating 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)*

It seems fair to assume that Rule 25-6.065 uses the term ***"primarily intended"*** to include secondary intentions; Otherwise, the term "*solely intended*" or "*exclusively intended*" would have been used to define this rule. The

Commission is the rulemaking authority who drafted and adopted the definition of customer-owned renewable generation, including this qualification of primary intent, which implies the existence of a secondary intent.

One secondary intention of a suitably sized net-metering solar system would be the incidental production of some surplus electricity over the course of time. Simple logic implies that surplus power generation would only become the primary intent of a solar system if the surplus power generation would **exceed** the amount of **self-consumed electricity** in kilowatt hours.

Nevertheless, today's Public Service Commissioners appear to harbor substantial resentments against solar net-metering systems with minor or incidental surplus power generation. The Commission acts as if minor, incidental solar surplus generation by carbon-neutral solar homes would be a criminal activity, as can be seen in the following comments by commissioners during the public conference.

R[P. 80]:

> COMMISSIONER POLMANN: You have, apparently, requested of your utility an opportunity to generate additional electricity. What is your purpose for generating additional electricity beyond what you are currently generating? Is it your intent to generate that power, that electricity, in excess of your own demand?

R[P. 81]:

> COMMISSIONER POLMANN: And I'm inferring from your answer, with your simple use of the word "surplus," that you want

> to generate surplus energy. And that answers my question, even though you have not done an adequate job to inform me. I stand down, Mr. Chairman. That's all I have. And hopefully, we can close this matter. Thank you, sir.

R[P. 82]:

> COMMISSIONER CLARK: Thank you, Mr. Chairman, I debated getting into the -- thought, in my own mind, about getting into this debate. I -- I don't think we want to. This is -- I don't think we want to -- I don't think anybody here wants to open the net-metering issue because I don't think a lot of folks are going to like where I stand on that issue.

Appellant hopes that Commissioner Polmann & Commissioner Clark feel more adequately informed by the detailed information provided in this initial brief, and hopes that demand-side solar net-metering systems sized like the systems described in this brief will become a role model for Florida's future energy supply.

Since many decades, Florida Statutes aim to provide Florida citizens with protection against any adverse rules or regulations which would intend to curb or limit the installation of energy devices based on renewable resources. According to Florida Statutes 366.81 and 163.04, surplus solar electricity generated by demand-side solar systems must be encouraged and not discouraged or criminalized:

Florida Statute 366.81 **Legislative Findings and Intent**:

> [...] *The Legislature directs the commission to develop and adopt overall goals and authorizes the commission to require each utility to develop plans and implement programs for* ***increasing energy efficiency and conservation and demand-side renewable energy systems*** *within its service area, subject*

> *to the approval of the commission. Since solutions to our energy problems are complex, the* ***Legislature intends that the use of solar energy, renewable energy sources, highly efficient systems, cogeneration, and load-control systems be encouraged.****" (emphasis added)*

Florida Statute 163.04 **Energy devices based on renewable resources**.

> *(1) Notwithstanding any provision of this chapter or other provision of general or special law, the adoption of an ordinance by a governing body, as those terms are defined in this chapter, which prohibits or has the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources is expressly prohibited.*
>
> *(2) A deed restriction, covenant, declaration, or similar binding agreement may not prohibit or have the effect of prohibiting solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restriction, covenant, declaration, or binding agreement. A property owner may not be denied permission to install solar collectors or other energy devices by any entity granted the power or right in any deed restriction, covenant, declaration, or similar binding agreement to approve, forbid, control, or direct alteration of property with respect to residential dwellings and within the boundaries of a condominium unit.*

Nevertheless, the Commission's final order PSC-2019-0410-FOF-EI draws the following conclusion:

> *"Our staff stated that certain provisions of the rule were meant to ensure that customers will not intentionally oversize their systems for the primary purpose of selling energy to the utility or becoming an independent power producer." App[P.18]*

Commission Staff's vague speculations concerning the *meaning of certain provisions in the rule* to prevent *oversizing* might have merit, but they remain unsubstantiated by law. Such malicious meaning might be misconstrued into the rules by Commission Staff on a regular basis, but it cannot be found in the Florida Statutes. Rule 25-6.065 should be amended because language and intent of the Florida Statutes require the polar opposite from the Commission as the rulemaking authority:

> Florida Statute 366.82 (3) **Definition; goals; plans; programs; states:**
>
> *[..]In developing the goals, the* ***commission shall evaluate the full technical potential of all available demand-side*** *and supply-side conservation and efficiency measures,* ***including demand-side renewable energy systems.***

Commission Staff seems to inadvertently suggest that Appellant might seamlessly combine a powerful demand-side net-metering system with some surplus solar electricity production, compensated as would be an independent power producer. That would actually be a great idea, and Florida would potentially become a leader in new and innovative technologies as required by Florida Statute 366.91:

> **Renewable energy.**
> *(1) The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the*

> *volatility of fuel costs, encourage investment within the state, improve environmental conditions, and* ***make Florida a leader in new and innovative technologies.***

F. The Commission's liability insurance requirements for solar net-metering systems over 10KW defined in Rule 25-6.065 (5)(e) impose excessive costs on customers and were adopted without thought or reason.

According to http://www.psc.state.fl.us , economic regulation is one of the three key areas where the Commission is tasked to assure that Florida's consumers receive electric service in a safe, reasonable, and reliable manner.

The term *reasonable* implies the existence of a logical reason to substantiate regulatory actions which affect net-metering applicants.

The optional liability insurance requirement outlined in rule 25-6.065 (5)(e) triggers unnecessary, wasteful expenses for the solar system owners inside the FPL service area, while solar systems in other service areas are exempt from this burden.

Adequately sized and IEEE conform solar net-metering systems protected by circuit breakers cannot damage the electric grid, therefore the 10KW Tier1 limitation is unknown in other States and remains unique to some large and highly populated electric service areas in Florida mainly controlled by FPL.

In Sarasota County, Appellant's insurance company does not offer homeowner's insurance over $500,000, so Appellant would need to switch to a different insurance company who would charge at least $900 more per year to upgrade to $1,000,000 coverage. An equivalent umbrella insurance upgrade would be a better deal since it would cost an additional $677.00 annually.

With 2.5c/kWh "As-Available-Energy" compensation for generated surplus electricity, Appellant's solar system would need to generate an additional **27080 kWh** per year to offset the $677.00 additional insurance cost. Therefore the insurance requirement imposes excessive regulatory costs and hinders additional installation of regenerative demand-side solar capacity.

Florida Statute 120.57 (3) states:

> *"[..] An unadopted rule shall not be presumed valid. The agency must demonstrate that the unadopted rule:*
>
> *f.* ***Does not impose excessive regulatory costs on the regulated person****, county or city." (emphasis added)*

It is regrettable that Commission Chair did not follow through with his announcement in the New York Times interview[10] on July 7th 2019: App[P. 35-36]

> *"I think we definitely could do some things differently" — like revising the policy that will cost Mr. Shields as much as $6,000 in insurance premiums over the life of his system, potentially more than 30 years.*

Circuit Breakers protect FPL Transformers

In order to protect the electric grid inside any home, any construction site or any business, circuit breakers were invented and successfully deployed worldwide.

To protect FPL's transformers and the high-voltage electric grid, every electric panel must be equipped with a main circuit breaker, otherwise it would not pass building inspection.

Circuit breakers function in both directions, so if a circuit breaker supports a 100A 240V electric load, it can support the same amount of electric power generating capacity from a demand-side solar system. Should the solar system power generation exceed the main circuit breaker rating, the connection will automatically be cut off by the circuit breakers to protect the FPL transformer.

Circuit breakers are agnostic and do not distinguish between an electric current being fed into the grid or an electric current being drawn from the grid.

[10] https://www.nytimes.com/2019/07/07/business/energy-environment/florida-solar-power.html

Circuit breakers in homes equipped with solar systems are not an exception to this norm.

The final order PSC-2019-0410-FOF-EI grasps at straws and does not offer any valid reason or technical justification for the unnecessary liability insurance. Bewildering excuses are offered instead of professional risk assessment based on scientific facts:

"[..]There are other state jurisdictions that limit net metering eligibility to systems that have generating capacities that are less than those provided in our rule, and still others that do not offer net metering at all. Additionally, the rule already contains provisions for customer-owned renewable generation up to 2 MW through its Tier 2 and Tier 3 ranges." " R[P.103-104]

"The current allowable range for Tier 1 captures the vast majority of residential systems within the state." R[P.104]

IEEE conforming solar system installations with less generating capacity than the permitted panel rating cannot harm the electric grid, therefore there is no technical reason to limit Tier 1 solar systems to 10KW generating capacity or require a costly additional liability insurance for Tier 2 solar systems.

G. The liability insurance requirements for solar systems larger than 10KW result in non-uniform interconnection policies throughout the Sunshine State

Solar net-metering systems from 10KW to 100KW are forced to carry a 1 million Dollar liability insurance in FPL's service area, while systems from

10KW-20KW situated inside the Orlando Utility Corporation (OUC) service area are not burdened with this unnecessary expense.

Compared to Florida Power & Light, Orlando Utility Corporation took the lead towards a more solar friendly policy and incorporated a voluntary liability insurance waiver into the text of their Interconnect Agreements for net-metering systems up to 20KW:

> "*b. Tier 2 (greater than 10 kW and less than or equal to 100 kW) [..]* ***For residential customers with systems between 10 kW and 20 kW, OUC recommends that the customer maintains an appropriate level of general liability insurance for personal injury and property damage." (Emphasis added)*** App[P. 31]

While 120.54(1)(a), Florida Statute demands that all Florida citizens are subjected to an agency's policies at the same time and in the same manner, the Commission failed to assure that solar net-metering customers receive equal opportunities and are subjected to the same rules in the Sunshine State.

The Florida Administrative Procedure Act was created and amended to provide that rulemaking is not a matter of agency discretion, thus requiring an agency to adopt its policies that meet the definition of a rule through formal rulemaking (see 120.54(1)(a), F.S.) in order that **all Florida citizens are subject to an agency's policies at the same time and in the same manner**[11].

[11] https://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf

Florida Statute 120.54(1)(a) requires:

> *"Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable."*

Rule 25-6.065 (5) concerning Interconnection and Net Metering states:

> *"Contents of Standard Interconnection Agreement. Each investor-owned utility's customer-owned renewable generation Standard Interconnection Agreement shall, at a minimum, contain the following:*
>
> *(e) A requirement for general liability insurance for personal and property damage, or sufficient guarantee and proof of self-insurance, in the amount of **no more** than $1 million for Tier 2, and **no more** than $2 million for Tier 3." (emphasis added)*

The language used in rule 25-6.065 (5)(e) **"*no more than $1 million for Tier 2, and no more than $2 million for Tier 3.*"** defers the final regulatory authority to the utility corporations to determine the actual amount of insurance premium. The only state-wide uniformity this rule provides is the unbridled discretion which is granted to the utility corporations. FPL choses to apply the maximum possible burden for its Tier 2 customers, while OUC imposes the restriction upon a smaller group of customers.

In summary, rule 25-6.065 (5)(e) directly results in avoidable regulatory interconnection expenses which are not uniformly applied sunshine state-wide.

H. The current usage of the Commission's rule 25-17.0825 *"As-Available -Energy"* to compensate demand-side solar electricity generation beyond self consumption ignores the facts that carbon-neutral solar electricity is generated without the emission of greenhouse gases and that solar electricity is generated during Florida's daily and yearly peak demand times.

Tasked by the Florida legislature, Appellee adopted rule 25-17.0825

> 25-17.0825 *As-Available-Energy:*
>
> *(1) [..]As-available energy sold by a qualifying facility shall be purchased by the utility at a rate, in cents per kilowatt-hour,* ***not to exceed the utility's avoided energy cost****. [..]*
>
> *(3)(c) For qualifying facilities with standard kilowatt-hour meters, monthly payments for as-available energy shall be calculated based on the average of the utility's* ***actual hourly avoided energy rate for the off-peak periods*** *during the month. (emphasis added)*

Solar panels do not generate electricity at night during **off-peak** periods, because the sun does not shine. Solar panels generate electricity during the day and most efficiently in summer during high demand **on-peak** periods when the sun shines and our air conditioners have to operate under full load.

Rule 25-17.0825 therefore does not comply with the legislative directives provided in Florida Statute 366.051 and Florida Statute 366.82 (3).

Florida Statute 366.051 states:

> *"[..] In fixing rates for power purchased by public utilities from cogenerators or small power producers, the commission shall authorize a* ***rate equal to the purchasing utility's full avoided costs****. A utility's "full avoided costs" are*

> *the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source. The commission may use a statewide avoided unit when setting full avoided capacity costs." (emphasis added)*

Florida Statute 366.82 (3) Definition; goals; plans; programs; states:

> *[..]In developing the goals, the **commission shall evaluate the full technical potential of all available demand-side** and supply-side conservation and efficiency measures, **including demand-side renewable energy systems**. In establishing the goals, the commission shall take into consideration:*
> *(d) The costs imposed by state and federal regulations on the **emission of greenhouse gases**. (emphasis added)*

Demand-side solar systems without dedicated storage batteries cannot serve as "Peaker" power plants, because they cannot increase electricity generation on demand, but demand-side solar systems without storage batteries effectively reduce the costly operation hours of so-called "Peaker Power Plants" during most high demand **on-peak** hours.

Solely applying the "*As-Available-Energy*" rate or the "*Fuel Cost Recovery Clause*" to calculate a just compensation rate for generated solar electricity is biased in favor of the utility companies and does not comply with Florida Statute 366.82 (3)(d).

A just monetary compensation rate per kilowatt hour for surplus electricity generated by demand-side solar systems should therefore:

a) include the hourly operating cost for a "Peaker Power Plant" which does not need to operate thanks to the demand-side solar system,

b) be increased due to the ecological benefit for reducing the greenhouse gases emitted by Peaker Power Plants and

c) be increased due to the "avoided fuel cost" for the saved fossil fuel combined together.

The Commission has or should have the obligation to initiate the rulemaking process to declare Rule 25-17.0825 (3) (c) F.A.C. as invalid and establish a just compensation rate which combines a), b) & c) above in an amended rule. *CF Industries, Inc. v. Nichols,* 536 So. 2d 234 (1988) ("*PSC is required to determine and by order fix fair and reasonable rates or classifications and reasonable rules, regulations, or services. Section 366.81 expresses legislative intent to encourage the use of solar energy, renewable energy sources, highly efficient systems, and load control systems, and directs the PSC not to approve any rates or rate structures which discriminate against any class of customers because of the use of such systems or devices*.")

Using analogies from the world of cattle ranching, demand-side solar systems produce the equivalent of USDA Prime Graded Beef on privately owned lands without governmental subsidies, while solar electricity generated without the emission of greenhouse gases during high demand on-peak hours is compensated by entitled and subsidized utility corporations for chicken feed.

I. Solar Net-Metering is a Statutory Right in Florida, not a Subsidy

Florida Statute 366.91(5) Renewable energy states:

> *"On or before January 1, 2009, each public utility **shall** develop a standardized interconnection agreement and net metering program for customer-owned renewable generation. [..]"* (emphasis added)

Florida's electricity grid is mostly built on land which is communally owned by the general public, but supply and demand in Florida's electricity market is not regulated by competition between players exposed to the same rules or equal opportunities.

A planned economy with one sole supplier per service area and fixed prices established by an appointed central committee, the Public Service Commission, has been the historical choice for this important section of our economy.

Grazing cattle on public lands without paying just compensation to the public land owners is similar to selling electricity while exclusively using public

lands without paying just compensation.

The Bundy Cattle Ranchers in Nevada rose to fame proposing the same entitlement based business model when they refused to pay a "grazing fee" for the public lands they used without being the owners or lessees.

The Commission has never asked Florida Power & Light to pay the equivalent of a "grazing fee" for their permanent usage of vast acreages. In result, this corporation never had to face the National Guard.

In contrast to the Bundy Cattle Ranchers in Nevada, FPL's business model relies on further entitlements:

a) FPL is entitled to exclusive service areas where their guaranteed revenue is protected from competition by third party vendors.

b) FPL can count on the Commission as their dedicated governmental agency to assure that business related expenses like subsidized land purchases for solar farms, operational costs and nuclear decommission expenses must be covered by the general public to assure profitable business conditions.

Such entitled business conditions appear especially bewildering during times of extreme economical hardships like these.

Floridia's citizens deserve more than just a qualified statutory right to net-metering from FPL in return for these vast and unwarranted entitlements.

J. The Commission did not comply with F.S. 120.57 (1)(b) when Appellant was barred twice from speaking during the public Conference on October 3rd 2019.

The protection of free speech is held high by the First Amendment of the United States Constitution.

In Addition, Florida Statute 120.57 (1)(b) requires:

> *"All parties shall have an opportunity to respond, to* ***present evidence and argument on all issues involved****, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order, and to be represented by counsel or other qualified representative". (emphasis added)*

The Commission did not comply with Chapter 120.57 (1)(b) during the October 3rd 2019 public conference to save approximately 10 minutes of time. R[P. 74-76]

CONCLUSION

Appellant respectfully asks this honorable Court to:

a) declare that the Commission has exceeded its delegated authority under section 366.91, F. S., by endorsing FPL's practice to enforce their "115% annual consumption policy" during net-metering applications and by deferring to FPL to decide which cases should be exempt from that policy.

b) declare that FPL's policy qualifies as an invalid rule as defined in chapter 120.57 (3) F.S. and declare that this policy qualifies as an "*Invalid exercise of*

delegated legislative authority" defined in chapter 120.52 (8) F.S.;

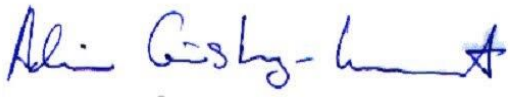
c) declare that the insurance requirements for solar systems larger than 10KW outlined in rule 25-6.065 (5)(e) result in unnecessary and excessive costs, therefore do not comply with chapter 120.57(3)(f) and 120.54(1)(d) F.S;

d) declare that rule 25-6.065 (5)(e) does not result in uniform policies state-wide and was adopted without thought or reason and therefore does not comply with chapter 120.52 (8)(e) and 120.57 (3)(d) F.S.;

e) declare that the Commission violated section 366.82 (3), F.S., by not amending Rule 25-17.0825 to include greenhouse gas emissions costs and the high value of solar electricity generated during **on-peak** hours in determining the "*As-Available-Energy*" rate;

f) reverse the Commission's Final Order PSC-2019-0410-FOF-EI denying petition to initiate rulemaking, and remand with instructions that the Commission amend the above mentioned administrative rules to comply with Florida Statutes.

Respectfully submitted,



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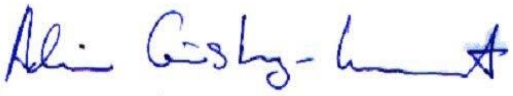
Achim Ginsberg-Klemmt, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served electronically on Ms Margo DuVal. Esq., mduval@psc.state.fl.us, counsel for Mr Art Graham et.al., Ms Kathryn Cowdery Esq., kcowdery@psc.state.fl.us, counsel for Mr Art Graham et.al.; Chris Pierce, pierce781@gmail.com, Darrell Prather, dprather6of10@gmail.com, Geoffrey P. Dorney, dorneygp@gmail.com, Jeffrey Hill, jeffreyhill@comcast.com, John Bachmeier, jb40411@gmail.com, J. Robert Barnes jrobertbm@gmail.com, Paul Romanoski paulromanoski@gmail.com, Terry Langlois, dogonejack77@gmail.com, Robert Winfield winfield100@yahoo.com, Petitioners,

on this 13rd day of May, 2020.

Respectfully submitted,



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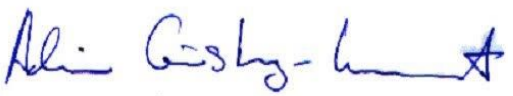
CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, pursuant to Rule 9.210(a)(2), Florida Rules of Appellate Procedure, that this brief was prepared using Times New Roman 14-point typeface or Courier New 12-point.



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