



# Floridians for Solar Choice

## MEMORANDUM

**TO:** Financial Impact Estimating Conference

**FROM:** Floridians for Solar Choice, Inc.

**SUBJECT:** Financial Impact Statement for the Amendment: Limits or Prevents Barriers to Local Solar Electricity Supply

**DATE:** April 8, 2015

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The Financial Impact Estimating Conference (FIEC) is statutorily charged with the responsibility of preparing a financial impact statement to the public regarding the probable financial impact of any amendment proposed by initiative. *See, § 5, Art. XI, Fla. Const. and § 100.371, Fla. Stat.* This memorandum is intended to provide information to the FIEC regarding the initiative entitled, "Limits or Prevents Barriers to Local Solar Electricity Supply" (Solar Amendment) from Floridians for Solar Choice, Inc., the Sponsors of the Solar Amendment. To put the Solar Amendment in context, this memorandum describes solar energy business models and explains the current Florida regulatory system of electric utilities and solar generated electricity, including the net metering requirements. Also included is a statement of the impact of the Solar Amendment on state and local revenues and costs.

## **The Solar Amendment**

**BALLOT TITLE:** Limits or Prevents Barriers to Local Solar Electricity Supply

**BALLOT SUMMARY:** Limits or prevents government and electric utility imposed barriers to supplying local solar electricity. Local solar electricity supply is the non-utility supply of solar generated electricity from a facility rated up to 2 megawatts to customers at the same or contiguous property as the facility. Barriers include government regulation of local solar electricity suppliers' rates, service and territory, and unfavorable electric utility rates, charges, or terms of service imposed on local solar electricity customers.

**ARTICLE AND SECTION BEING CREATED OR AMENDED:** Add new Section 29 to Article X

**FULL TEXT OF PROPOSED AMENDMENT:**

Section 29. Purchase and sale of solar electricity. –

(a) **PURPOSE AND INTENT.** It shall be the policy of the state to encourage and promote local small-scale solar-generated electricity production and to enhance the availability of solar power to customers. This section is intended to accomplish this purpose by limiting and preventing regulatory and economic barriers that discourage the supply of electricity generated from solar energy sources to customers who consume the electricity at the same or a contiguous property as the site of the solar electricity production. Regulatory and economic barriers include rate, service and territory regulations imposed by state or local government on those supplying such local solar electricity, and imposition by electric utilities of special rates, fees, charges, tariffs, or terms and conditions of service on their customers consuming local solar electricity supplied by a third party that are not imposed on their other customers of the same type or class who do not consume local solar electricity.

(b) **PURCHASE AND SALE OF LOCAL SMALL-SCALE SOLAR ELECTRICITY.**

(1) A local solar electricity supplier, as defined in this section, shall not be subject to state or local government regulation with respect to rates, service, or territory, or be subject to any assignment, reservation, or division of service territory between or among electric utilities.

(2) No electric utility shall impair any customer's purchase or consumption of solar electricity from a local solar electricity supplier through any special rate, charge, tariff, classification, term or condition of service, or utility rule or regulation, that is not also imposed on other customers of the same type or class that do not consume electricity from a local solar electricity supplier.

(3) An electric utility shall not be relieved of its obligation under law to furnish service to any customer within its service territory on the basis that such customer also purchases electricity from a local solar electricity supplier.

(4) Notwithstanding paragraph (1), nothing in this section shall prohibit reasonable health, safety and welfare regulations, including, but not limited to, building codes, electrical codes, safety codes and pollution control regulations, which do not prohibit or have the effect of

prohibiting the supply of solar-generated electricity by a local solar electricity supplier as defined in this section.

(c) DEFINITIONS. For the purposes of this section:

(1) "local solar electricity supplier" means any person who supplies electricity generated from a solar electricity generating facility with a maximum rated capacity of no more than 2 megawatts, that converts energy from the sun into thermal or electrical energy, to any other person located on the same property, or on separately owned but contiguous property, where the solar energy generating facility is located.

(2) "person" means any individual, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, government entity, and any other group or combination.

(3) "electric utility" means every person, corporation, partnership, association, governmental entity, and their lessees, trustees, or receivers, other than a local solar electricity supplier, supplying electricity to ultimate consumers of electricity within this state.

(4) "local government" means any county, municipality, special district, district, authority, or any other subdivision of the state.

(d) ENFORCEMENT AND EFFECTIVE DATE. This amendment shall be effective on January 3, 2017.

## **Purpose of the Constitutional Amendment**

The Solar Amendment is intended to limit or prevent barriers to local solar electricity supply by accomplishing the following:

1. Prohibit the Public Service Commission (PSC) from regulating small scale solar energy providers as an electric utility. This means that small scale solar providers cannot be subject to PSC rate regulation, service regulation, or territorial regulation.
2. Preserve the electric utility's current obligation to serve customers who use local solar generated electricity.
3. Prohibit an electric utility's impairment of its customers' ability to purchase electricity from third party local solar energy providers by imposing unique rates, fees, charges, or terms or rules of service for customers making this choice.

In short, the Solar Amendment prohibits PSC-type regulation of local solar electricity suppliers.

What the Solar Amendment does not do:

1. Require or prohibit a change in the law regarding state or local taxation of solar energy.
2. Remove the authority of the State and local governments to regulate local solar energy suppliers regarding health, safety and welfare. For example, the amendment does not prohibit the applicability of electrical codes, building codes, or environmental protection regulations, and the like.
3. Eliminate the PSC's ability to regulate a local solar electricity supplier's interconnection of its generation facility via a customer's net metering arrangement with the electric utility, as long as the regulation does not allow the electric utility to discriminate against its customers choosing to purchase electricity from a local solar electricity supplier.

The Solar Amendment does not eliminate the PSC's ability to regulate interconnection and net metering for a local solar electricity supplier's customer who is connected to the electric grid. Such regulations are not regulations of the local solar electricity supplier's service, which are prohibited by the Solar Amendment. Rather, such regulations are regulations governing the relationship between the electric utility and its customer, and are authorized under the Solar Amendment as long as the regulations do not require the electric utility to discriminate against the customer because of its purchase of electricity from a local solar electricity supplier.

## **Solar Business Models**

1. A property owner contracts for the purchase and installation of solar equipment that provides energy to the property. This model is currently authorized outside of PSC jurisdiction.
2. A property owner enters into a lease for the installation of solar equipment on the property with the solar energy being consumed on the property. The property owner pays the company for the use and maintenance of the solar equipment. This model is currently authorized outside of PSC jurisdiction.
3. A property owner allows a company to install equipment on the property and purchases some, but not necessarily all of the solar energy from the company. The purchase may be financed through a Power Purchase

Agreement which requires the purchaser to pay a monthly charge to the solar supplier based on the amount of solar electricity used at the property. This model is currently prohibited unless subjected to PSC jurisdiction.

4. A property owner provides solar generated electricity to itself and sells it to contiguous property owners. This model is currently prohibited unless subjected to PSC jurisdiction.

## **PSC Rate and Territorial Regulation of Electric Utilities**

The Florida PSC has broad supervisory authority over "public" electric utilities, defined in the statutes to include Florida's five investor-owned electric utilities and any other type of electric utility that is not municipally owned or a rural electric cooperative. This broad supervisory power includes authority over the rates the public utilities charge, the service they provide and the means they use to finance their operations. In addition to the supervisory authority the PSC exercises over public utilities, the agency exercises authority over all electric utilities, including municipally owned electric utilities and rural electric cooperatives, for the following purposes:

- To prescribe uniform accounting systems and classifications;
- To prescribe a rate structure which establishes how rates are charged to allocate the utility's costs among different classes of customers;
- To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes;
- To approve territorial agreements among all types of electric utilities;
- To resolve territorial disputes;
- To require the filing of periodic reports and other data the PSC needs to carry out its regulatory jurisdiction;
- To supervise the planning, development and maintenance of a coordinated electric power grid throughout the state to assure an adequate and reliable source of energy for operational and emergency purposes and the avoidance of uneconomic duplication of facilities; and
- To prescribe and enforce safety standards for transmission and distribution facilities.

In addition to rates and territory, the PSC also regulates the service of public electric utilities. "Service" regulation includes those relating to the quality, reliability, safety and availability of service. Some of the PSC service regulations include the following:

- Prescribing the preferred location of distribution facilities (Rule 25-6.034, F.A.C.);

- Prescribing standards for hardening against the impacts of hurricanes (Rule 25-6.0342, F.A.C.);
- Requiring the maintenance of a specified level of generating capacity above what is needed to meet reasonable load requirements (Rule 25-6.035, F.A.C.);
- Prescribing equipment standards (Rule 25-6.037, F.A.C.);
- Requiring the collecting and tracking and reporting of reliability and continuity of service data (Rule 25-6.044, F.A.C.);
- Prescribing standards for variances between current supplied and service demand ratings (Rule 25-6047, F.A.C.);
- Rules governing the extension of service to new customers (Rule 25-6.064, F.A.C.); and
- Regulation of construction practices (Rule 25-6.081, F.A.C.), among others.

### ***Barriers to Local Solar Electricity Supply***

A "public" electric utility is defined as any person or legal entity "supplying electricity ... to or for the public within this state . . . ." *See, § 366.02(1), Fla. Stat., attached as Appendix "A"*. The Florida Supreme Court has determined that any single person or entity supplying electricity to a single different person or entity, even pursuant to a private contract between them with no offer to sell or supply electricity to the general public, is a "public utility" for the purposes of the statute, and is under the full regulatory jurisdiction of the PSC. *See, PW Ventures, Inc. v. Katie Nichols, 533 So.2d 281 (Fla. 1988), attached as Appendix "B"*.

Therefore, under current law, any person or entity that owns a solar electric generating facility, such as an array of photo-voltaic solar panels, may not sell the electricity to another person, such as another homeowner, without coming under the full rate setting and service jurisdiction of the PSC and without being subject to existing PSC-enforced monopolies within established electric utility service territory. The exercise of rate, service, and territorial jurisdiction is intended to govern monopoly utilities with centralized power generation and sprawling networks of transmission and distribution power lines, and to prevent the uneconomic duplication of facilities. But the regulations also serve as a barrier in Florida to sales of locally generated solar electricity and to the use of Power Purchase Agreements, which are well-known small scale solar financing arrangements used in other states.

The Solar Amendment removes these regulatory barriers for the local sale of solar electricity generated on a limited scale. It prohibits rates, service and territorial regulation by the State and local governments except as otherwise provided in the Solar Amendment. The Solar Amendment's protection applies to local sales only: local sales include sales made to a customer on the same property as the facility generating the solar electricity, or sales made to a customer located on a property contiguous with the property where the facility generating the solar electricity is located. Further, it applies

to sales of solar electricity generated only on a limited scale: up to two megawatts (2 MW) which has the potential to service an estimated 714 residential customers.<sup>1</sup> The Solar Amendment's 2 MW limitation coincides with the current PSC net metering rule.

## **PSC Regulation of Net Metering**

Net metering is a system of metering electricity that allows a customer who connects an eligible renewable generation system, such as solar panels, to the electric grid to buy electricity from, and sell excess electricity back to, the electric utility. When a customer generates electricity from a solar array (for example) for his or her home or business, the amount of energy purchased from the electric utility is reduced, lowering the customer's monthly electric bills. If the solar array (used in this example) generates more electricity than can be used on the premises, the excess electricity flows through the two-way net meter onto the electric utility's distribution grid and is sold to the electric utility at a PSC-regulated price.

This activity is governed by the PSC's Interconnection and Net Metering of Customer-Owned Renewable Generation Rule. *See, Rule 25-6.065, F.A.C., attached as Appendix "C"*. Under the Rule, the utility is authorized to charge the customer only for the amount of electricity used by the customer in excess of the amount of electricity the customer supplies to the grid. If at the end of the customer's billing cycle, he or she delivers more electricity to the grid than he or she consumes from it, the excess amount is credited to the customer's consumption for the next billing cycle. If consumption credits remain following a year of billing, the utility must pay the customer for the unused credits. The rate paid to the customer is the same rate paid to certain independent small power producers (also known as co-generators or Qualifying Facilities) which qualify under federal and state laws for a standardized wholesale payment rate.

In addition to authorizing the use of net metering and requiring payment of credits, the Rule establishes standards for the interconnection of the renewable generation facility to the grid, and prescribes what fees, if any, the electric utility can charge to the customer. The standards and fees may vary depending on the size of the facility; however, the Rule prohibits interconnection with the electric utility if the rated capacity of the renewable generation facility exceeds 90 percent of the customer's service rating established by the utility.

The Rule recognizes three Tiers. Tier 1 consists of facilities rated 10 kW or less. Tier 2 consists of facilities rated greater than 10 kW up to 100 kW. Tier 3 consists of facilities rated greater than 100 kW up to 2,000 kW (2 MW). A customer interconnecting a Tier 1 or 2 facility may do so without additional design or testing. Additional design

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<sup>1</sup> 1 MW can serve the demand of 357 residential customers, based on an average demand of 2.8 kW, according to recent information provided by the PSC upon request of the Sponsor.

and testing standards to those included in the Rule may be imposed for a Tier 3 facility of sufficient size to require an interconnection study. The Rule also prohibits the utility from imposing any additional charge on a customer interconnecting a Tier 1 facility, but allows an application charge for Tiers 2 and 3 and an interconnection study charge for Tier 3.

Currently, a property owner who owns his own solar panels can net meter. A property owner who leases panels from a third party can net meter. These activities are permitted because the property owner is not purchasing solar electricity from a third party, but is instead purchasing or leasing the panels. A property owner who buys solar generated power from a company which has placed solar panels on his or her property cannot net meter.

### ***Interconnection Regulation Under the Solar Amendment***

Under the Solar Amendment, the PSC maintains the authority to regulate the interconnection between the customer who purchases electricity from a local solar electricity supplier and the customer's electric utility, as long as the regulations do not require the electric utility to impose any unique rules, rates, charges, or other conditions on the customer because of the customer's purchase of electricity from the local solar electricity supplier.

## **Effect on State and Local Revenues and Costs**

The Solar Amendment's intent is to limit or prevent barriers to local solar electricity supply. It does not alter the current rates or the application of State and local government taxes and fees on solar generated energy. Thus, the Solar Amendment will have no direct impact on State and local government revenues.

It is currently unknown and speculative, how many, if any, businesses or households may avail themselves of any new solar business models that may enter the Florida market as a consequence of the Solar Amendment.

With regard to costs of the State and local government as a potential purchaser of solar generated electricity, it would be speculative to predict future policy and purchasing decisions of the State and local governments.

## **LIST OF APPENDICES**

Section 366.02(1), Florida Statutes .....	A
<u>PW Ventures, Inc. v. Katie Nichols</u> , 533 So.2d 281 (Fla. 1988) .....	B
Rule 25-5.065, F.A.C.....	C

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## **APPENDIX A**

Select Year:

## The 2014 Florida Statutes

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[Title XXVII](#)

RAILROADS AND OTHER REGULATED UTILITIES

[Chapter 366](#)

PUBLIC UTILITIES

[View Entire Chapter](#)

**366.02 Definitions.**—As used in this chapter:

(1) “Public utility” means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term “public utility” does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; any dependent or independent special natural gas district; any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers; any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas transmission or distribution facilities within the state; or a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.

(2) “Electric utility” means any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

(3) “Commission” means the Florida Public Service Commission.

**History.**—s. 2, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 16, ch. 80-35; s. 2, ch. 81-318; ss. 1, 20, 22, ch. 89-292; s. 4, ch. 91-429; s. 14, ch. 92-284.

## **APPENDIX B**



**PW VENTURES, INC., Appellant, v. KATIE NICHOLS, Chairman of Florida Public Service Commission, and FLORIDA PUBLIC SERVICE COMMISSION, Appellees**

**No. 71,462**

**Supreme Court of Florida**

*533 So. 2d 281; 1988 Fla. LEXIS 1161; 13 Fla. L. Weekly 635*

**October 27, 1988**

**PRIOR HISTORY:**     [\*\*1] An Appeal from the Public Service Commission.

**COUNSEL:** Richard D. Melson of Hopping, Boyd, Green & Sams, Tallahassee, Florida, for Appellant.

Susan F. Clark, General Counsel, Florida Public Service Commission, Tallahassee, Florida, for Appellees.

Richard A. Zambo and Paul Sexton of Richard A. Zambo, P.A., Brandon, Florida, for Amici Curiae: C.F. Industries, Inc., IMC Fertilizer, Inc., The Monsanto Company and W. R. Grace & Co.

**JUDGES:** Grimes, J. Ehrlich, C.J., and Overton, Shaw, Barkett and Kogan, JJ., concur. McDonald, J., dissents with an opinion.

**OPINION BY: GRIMES**

**OPINION**

[\*282] PW Ventures, Inc. (PW Ventures) appeals from an adverse ruling of the Florida Public Service Commission (PSC). We have jurisdiction. *Art. V, § 3(b)(2), Fla. Const.*

PW Ventures<sup>1</sup> signed a letter of intent with Pratt and Whitney (Pratt) to provide electric and thermal power at Pratt's industrial complex in Palm Beach County. PW Ventures proposes to construct, own, and operate a cogeneration<sup>2</sup> project on land leased from Pratt and to sell its output to Pratt under a long-term take or pay contract.<sup>3</sup> Before proceeding with construction of the facility that would provide the power, PW Ventures sought a declaratory statement from the PSC that it would [\*\*2] not

be a public utility subject to PSC regulation. After a hearing, the PSC ruled that PW Ventures proposed transaction with Pratt fell within its regulatory jurisdiction.

1 PW Ventures is a Florida corporation which was originally owned by FPL Energy Services, Inc. (a wholly owned subsidiary of FPL Group, Inc.) and Impell Corporation (a wholly owned subsidiary of Combustion Engineering, Inc.). After the entry of the PSC order, FPL Energy Services, Inc. transferred its 50% interest to Combustion Engineering, Inc.

2 Cogeneration involves the use of steam power to produce electricity, with some of the energy from the steam being recaptured for further use. The PSC seeks only to regulate the sale of electrical power.

3 The power would be used by Pratt and several affiliated corporate entities and by the Federal Aircraft Credit Union which is also located on the property.

At issue here is whether the sale of electricity to a single customer<sup>4</sup> makes the provider a public utility. The decision hinges on the phrase "to the public," as it is used in *section 366.02(1), Florida Statutes* (1985). In pertinent part that subsection provides:

"Public utility" means every person, [\*\*3] corporation, partnership, association, or other [\*283] legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state . . . .

4 While the PSC reminds us that the power generated by the project will actually be passed on to several entities, we prefer to address the issue in the context argued by PW Ventures.

Distilled to their essence, the parties' views are as follows: PW Ventures says the phrase "to the public" means to the general public and was not meant to apply to a bargained-for transaction between two businesses. The PSC says the phrase means "to any member of the public." While the issue is not without doubt, we are inclined to the position of the PSC.

At the outset, we note the well established principle that the contemporaneous construction of a statute by the agency charged with its enforcement and interpretation is entitled to great weight. *Warnock v. Florida Hotel & Restaurant Comm'n*, 178 So.2d 917 (Fla. 3d DCA 1965), appeal dismissed, 188 So.2d 811 (Fla. 1966). The courts will not depart from such a construction unless it is clearly unauthorized or erroneous. [\*\*4] *Gay v. Canada Dry Bottling Co.*, 59 So.2d 788 (Fla. 1952).

Also, it is significant that the statute itself would permit the type of transaction proposed by PW Ventures and Pratt to be unregulated if it were for natural gas services. Section 366.02(1) provides the following exemption: "The term 'public utility' as used herein does not include . . . any natural gas pipeline transmission company making only sales of natural gas at wholesale and to direct industrial consumers. . . ." The legislature did not provide a similar exemption for electricity. The express mention of one thing implies the exclusion of another. *Thayer v. State*, 335 So.2d 815 (Fla. 1976).

This rationale is further illustrated in the statutory regulation of water and sewer utilities. As explained in the PSC order:

In parallel with Section 366.02(1), Section 367.021, Florida Statutes (1985), defines a water or sewer utility as every person "providing, or who proposes to provide, water or sewer service to the public for compensation." Section 367.022(6), Florida Statutes, expressly exempts from this definition "systems with the capacity or proposed capacity to serve 100 or fewer persons". There is not a parallel [\*\*5] numerical exemption to the statutory definition of a public utility supplying electricity. Yet the statutory interpretation advocated by PW Ventures

would require a line to be drawn somewhere between sales to some members of the public, as a presumably nonjurisdictional activity, and sales to the public generally and indiscriminately, an admittedly jurisdictional activity.

Moreover, the PSC's interpretation is consistent with the legislative scheme of chapter 366. The regulation of the production and sale of electricity necessarily contemplates the granting of monopolies in the public interest. *Storey v. Mayo*, 217 So.2d 304 (Fla 1968), cert. denied, 395 U.S. 909, 89 S. Ct. 1751, 23 L. Ed. 2d 222 (1969). Section 366.04(3), Florida Statutes (1985), directs the PSC to exercise its powers to avoid "uneconomic duplication of generation, transmission, and distribution facilities." If the proposed sale of electricity by PW Ventures is outside of PSC jurisdiction, the duplication of facilities could occur. What PW Ventures proposes is to go into an area served by a utility and take one of its major customers. <sup>5</sup> Under PW Ventures' interpretation, other ventures could enter into similar contracts with other high use [\*\*6] industrial complexes on a one-to-one basis and drastically change the regulatory scheme in this state. The effect of this practice would be that revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers. This revenue would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems would not have been reduced.

5 Initially, Florida Power and Light had an interest in PW Ventures and would, in effect, transfer its own client to a subsidiary. FP & L is not now involved. Yet, if the argument of PW Ventures is accepted, there might be nothing to prevent one utility company from forming a subsidiary and raiding large industrial clients within areas served by another utility.

[\*284] We do not believe that *Fletcher Properties v. Florida Public Service Commission*, 356 So.2d 289 (Fla. 1978), mandates a different result. In that case, we did approve a PSC order which included reasoning to the effect that service to the public meant service to the indefinite public or to all individuals within a given area. However, the case did not arise in the context [\*\*7] of a sale to a single customer. We simply affirmed the PSC's determination that the developer and owner of lines and lift stations who proposed to furnish water and sewer service to single family homes at the same rate as it was charged by the area water and sewer utility occupied the status of a public utility. <sup>6</sup>

6 The holding of that case actually supports the PSC's alternative position that PW Ventures will actually serve several customers at the Pratt facility.

The fact that the PSC would have no jurisdiction over the proposed generating facility if Pratt exercised its option under the letter of intent to buy the facility and elected to furnish its own power is irrelevant. The expertise and investment needed to build a power plant, coupled with economies of scale, would deter many individuals from producing power for themselves rather than simply purchasing it. The legislature determined that the protection of the public interest required only limiting competition in the sale of electric service, not a prohibition against self-generation.

We approve the decision of the Public Service Commission.

It is so ordered.

Ehrlich, C.J., and Overton, Shaw, Barkett and Kogan, JJ., concur. McDonald, J., dissents with an opinion.

**DISSENT BY: McDONALD**

**DISSENT**

McDONALD, J., dissenting.

I dissent. In doing so, [\*\*8] I accept the argument of PW Ventures, Inc. as set forth in its brief where it urges:

The cornerstone of "public utility" status and Commission jurisdiction under Chapter 366 is the provision of electric service "to the public". This phrase is not defined in Chapter 366, nor in any of the Commission's other jurisdictional statutes. Under Florida's rules of statutory construction, the phrase "to the public" must therefore be given either its plain and ordinary meaning or, if it is a legal term of art, its legal meaning. *City of Tampa v. Thatcher Glass Corporation*, 445 So.2d 578 (Fla. 1984); *Citizens v. Florida Public Service Commission*, 425 So.2d 534 (Fla. 1982); *Tatzel v. State*, 356 So.2d 787 (Fla. 1978); *Ocasio v. Bureau of Crimes Compensation*, 408 So.2d 751 (Fla. 3d DCA 1982). Under either test, a sale to a

single industrial host in the circumstances of this case is not a sale "to the public."

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The phrase "to the public" commonly connotes the people as a whole, or at least a group of people. Webster's Ninth New Collegiate Dictionary (1983) gives two relevant definitions for "public":

2: the people as a whole: POPULACE

3: a group of people having common interests or characteristics: [\*\*9] *specif*: the group at which a particular activity or enterprise aims

Black's Law Dictionary (Revised 4th ed.) similarly defines "public" to mean:

The whole body politic, or the aggregate of the citizens of a state, district, or municipality. . . . In one sense, everybody; and accordingly the body of the people at large; the community at large, without reference to the geographical limits of any corporation like a city, town, or county; the people. In another sense the word does not mean all the people, nor most of the people, nor very many of the people of a place, but so many as contradistinguishes them from a few.

Thus if *Section 366.02(1)* is given its plain and ordinary meaning, a person is not supplying electricity "to the public," if it supplies electricity only to a single [\*\*285] industrial customer on whose property the electric generating facility is located.

## **APPENDIX C**

### **25-6.065 Interconnection and Net Metering of Customer-Owned Renewable Generation.**

(1) Application and Scope. The purpose of this rule is to promote the development of small customer-owned renewable generation, particularly solar and wind energy systems; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on fossil fuels for the production of electricity; minimize the volatility of fuel costs; encourage investment in the state; improve environmental conditions; and, at the same time, minimize costs of power supply to investor-owned utilities and their customers. This rule applies to all investor-owned utilities, except as otherwise stated in subsection (10).

(2) Definitions. As used in this rule, the term.

(a) "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. The term "customer-owned renewable generation" does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third party.

(b) "Gross power rating" means the total manufacturer's AC nameplate generating capacity of an on-site customer-owned renewable generation system that will be interconnected to and operate in parallel with the investor-owned utility's distribution facilities. For inverter-based systems, the AC nameplate generating capacity shall be calculated by multiplying the total installed DC nameplate generating capacity by .85 in order to account for losses during the conversion from DC to AC.

(c) "Net metering" means a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on-site.

(d) "Renewable energy," as defined in Section 377.803, F.S., means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.

(3) Standard Interconnection Agreements. Each investor-owned utility shall, within 30 days of the effective date of this rule, file for Commission approval a Standard Interconnection Agreement for expedited interconnection of customer-owned renewable generation, up to 2 MW, that complies with the following standards:

(a) IEEE 1547 (2003) Standard for Interconnecting Distributed Resources with Electric Power Systems;

(b) IEEE 1547.1 (2005) Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems; and

(c) UL 1741 (2005) Inverters, Converters, Controllers and Interconnection System Equipment for Use With Distributed Energy Resources.

(d) A copy of IEEE 1547 (2003), ISBN number 0-7381-3720-0, and IEEE 1547.1 (2005), ISBN number 0-7381-4737-0, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE), 3 Park Avenue, New York, NY, 10016-5997. A copy of UL 1741 (2005) may be obtained from COMM 2000, 1414 Brook Drive, Downers Grove, IL 60515.

(4) Customer Qualifications and Fees.

(a) To qualify for expedited interconnection under this rule, customer-owned renewable generation must have a gross power rating that:

1. Does not exceed 90% of the customer's utility distribution service rating; and

2. Falls within one of the following ranges:

Tier 1 – 10 kW or less;

Tier 2 – greater than 10 kW and less than or equal to 100 kW; or

Tier 3 – greater than 100 kW and less than or equal to 2 MW.

(b) Customer-owned renewable generation shall be considered certified for interconnected operation if it has been submitted by a manufacturer to a nationally recognized testing and certification laboratory, and has been tested and listed by the laboratory for continuous interactive operation with an electric distribution system in compliance with the applicable codes and standards listed in subsection (3).

(c) Customer-owned renewable generation shall include a utility-interactive inverter, or other device certified pursuant to paragraph (4)(b) that performs the function of automatically isolating the customer-owned generation equipment from the electric grid in the event the electric grid loses power.

(d) For Tiers 1 and 2, provided the customer-owned renewable generation equipment complies with paragraphs (4)(a) and (b), the investor-owned utility shall not require further design review, testing, or additional equipment other than that provided for in

subsection (6). For Tier 3, if an interconnection study is necessary, further design review, testing and additional equipment as identified in the study may be required.

(e) Tier 1 customers who request interconnection of customer-owned renewable generation shall not be charged fees in addition to those charged to other retail customers without self-generation, including application fees.

(f) Along with the Standard Interconnection Agreement filed pursuant to subsection (3), each investor-owned utility may propose for Commission approval a standard application fee for Tiers 2 and 3, including itemized cost support for each cost contained within the fee.

(g) Each investor-owned utility may also propose for Commission approval an Interconnection Study Charge for Tier 3.

(h) Each investor-owned utility shall show that their fees and charges are cost-based and reasonable. No fees or charges shall be assessed for interconnecting customer-owned renewable generation without prior Commission approval.

(5) Contents of Standard Interconnection Agreement. Each investor-owned utility's customer-owned renewable generation Standard Interconnection Agreement shall, at a minimum, contain the following:

(a) A requirement that customer-owned renewable generation must be inspected and approved by local code officials prior to its operation in parallel with the investor-owned utility to ensure compliance with applicable local codes.

(b) Provisions that permit the investor-owned utility to inspect customer-owned renewable generation and its component equipment, and the documents necessary to ensure compliance with subsections (2) through (4). The customer shall notify the investor-owned utility at least 10 days prior to initially placing customer equipment and protective apparatus in service, and the investor-owned utility shall have the right to have personnel present on the in-service date. If the customer-owned renewable generation system is subsequently modified in order to increase its gross power rating, the customer must notify the investor-owned utility by submitting a new application specifying the modifications at least 30 days prior to making the modifications.

(c) A provision that the customer is responsible for protecting the renewable generating equipment, inverters, protective devices, and other system components from damage from the normal and abnormal conditions and operations that occur on the investor-owned utility system in delivering and restoring power; and is responsible for ensuring that customer-owned renewable generation equipment is inspected, maintained, and tested in accordance with the manufacturer's instructions to ensure that it is operating correctly and safely.

(d) A provision that the customer shall hold harmless and indemnify the investor-owned utility for all loss to third parties resulting from the operation of the customer-owned renewable generation, except when the loss occurs due to the negligent actions of the investor-owned utility. A provision that the investor-owned utility shall hold harmless and indemnify the customer for all loss to third parties resulting from the operation of the investor-owned utility's system, except when the loss occurs due to the negligent actions of the customer.

(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. The investor-owned utility shall not require liability insurance for Tier 1. The investor-owned utility may include in the Interconnection Agreement a recommendation that Tier 1 customers carry an appropriate level of liability insurance.

(f) Identification of any fees or charges approved pursuant to subsection (4).

(6) Manual Disconnect Switch.

(a) Each investor-owned utility's customer-owned renewable generation Standard Interconnection Agreement may require customers to install, at the customer's expense, a manual disconnect switch of the visible load break type to provide a separation point between the AC power output of the customer-owned renewable generation and any customer wiring connected to the investor-owned utility's system. Inverter-based Tier 1 customer-owned renewable generation systems shall be exempt from this requirement, unless the manual disconnect switch is installed at the investor-owned utility's expense. The manual disconnect switch shall be mounted separate from, but adjacent to, the meter socket and shall be readily accessible to the investor-owned utility and capable of being locked in the open position with a single investor-owned utility padlock.

(b) The investor-owned utility may open the switch pursuant to the conditions set forth in paragraph (6)(c), isolating the customer-owned renewable generation, without prior notice to the customer. To the extent practicable, however, prior notice shall be given. If prior notice is not given, the utility shall at the time of disconnection leave a door hanger notifying the customer that their customer-owned renewable generation has been disconnected, including an explanation of the condition necessitating such action. The investor-owned utility shall reconnect the customer-owned renewable generation as soon as the condition necessitating disconnection is remedied.

(c) Any of the following conditions shall be cause for the investor-owned utility to disconnect customer-owned renewable generation from its system:

1. Emergencies or maintenance requirements on the investor-owned utility's electric system;
2. Hazardous conditions existing on the investor-owned utility system due to the operation of the customer's generating or protective equipment as determined by the investor-owned utility;
3. Adverse electrical effects, such as power quality problems, on the electrical equipment of the investor-owned utility's other electric consumers caused by the customer-owned renewable generation as determined by the investor-owned utility;
4. Failure of the customer to maintain the required insurance coverage.

(7) Administrative Requirements.

(a) Each investor-owned utility shall maintain on its website a downloadable application for interconnection of customer-owned renewable generation, detailing the information necessary to execute the Standard Interconnection Agreement. Upon request the investor-owned utility shall provide a hard copy of the application within 5 business days.

(b) Within 10 business days of receipt of the customer's application, the investor-owned utility shall provide written notice that it has received all documents required by the Standard Interconnection Agreement or indicate how the application is deficient. Within 10 business days of receipt of a completed application, the utility shall provide written notice verifying receipt of the completed application. The written notice shall also include dates for any physical inspection of the customer-owned renewable generation necessary for the investor-owned utility to confirm compliance with subsections (2) through (6), and confirmation of whether a Tier 3 interconnection study will be necessary.

(c) The Standard Interconnection Agreement shall be executed by the investor-owned utility within 30 calendar days of receipt of a completed application. If the investor-owned utility determines that an interconnection study is necessary for a Tier 3 customer, the investor-owned utility shall execute the Standard Interconnection Agreement within 90 days of a completed application.

(d) The customer must execute the Standard Interconnection Agreement and return it to the investor-owned utility at least 30 calendar days prior to beginning parallel operations and within one year after the utility executes the Agreement. All physical inspections must be completed by the utility within 30 calendar days of receipt of the customer's executed Standard Interconnection Agreement. If the inspection is delayed at the customer's request, the customer shall contact the utility to reschedule an inspection. The investor-owned utility shall reschedule the inspection within 10 business days of the customer's request.

(8) Net Metering.

(a) Each investor-owned utility shall enable each customer-owned renewable generation facility interconnected to the investor-owned utility's electrical grid pursuant to this rule to net meter.

(b) Each investor-owned utility shall install, at no additional cost to the customer, metering equipment at the point of delivery capable of measuring the difference between the electricity supplied to the customer from the investor-owned utility and the electricity generated by the customer and delivered to the investor-owned utility's electric grid.

(c) Meter readings shall be taken monthly on the same cycle as required under the otherwise applicable rate schedule.

(d) The investor-owned utility shall charge for electricity used by the customer in excess of the generation supplied by customer-owned renewable generation in accordance with normal billing practices.

(e) During any billing cycle, excess customer-owned renewable generation delivered to the investor-owned utility's electric grid shall be credited to the customer's energy consumption for the next month's billing cycle.

(f) Energy credits produced pursuant to paragraph (8)(e) shall accumulate and be used to offset the customer's energy usage in subsequent months for a period of not more than twelve months. At the end of each calendar year, the investor-owned utility shall pay the customer for any unused energy credits at an average annual rate based on the investor-owned utility's COG-1, as-available energy tariff.

(g) When a customer leaves the system, that customer's unused credits for excess kWh generated shall be paid to the customer at an average annual rate based on the investor-owned utility's COG-1, as-available energy tariff.

(h) Regardless of whether excess energy is delivered to the investor-owned utility's electric grid, the customer shall continue to pay the applicable customer charge and applicable demand charge for the maximum measured demand during the billing period. The investor-owned utility shall charge for electricity used by the customer in excess of the generation supplied by customer-owned renewable generation at the investor-owned utility's otherwise applicable rate schedule. The customer may at their sole discretion choose to take service under the investor-owned utility's standby or supplemental service rate, if available.

(9) Renewable Energy Certificates. Customers shall retain any Renewable Energy Certificates associated with the electricity

produced by their customer-owned renewable generation equipment. Any additional meters necessary for measuring the total renewable electricity generated for the purposes of receiving Renewable Energy Certificates shall be installed at the customer's expense, unless otherwise determined during negotiations for the sale of the customer's Renewable Energy Certificates to the investor-owned utility.

(10) Reporting Requirements. Each electric utility, as defined in Section 366.02(2), F.S., shall file with the Commission as part of its tariff a copy of its Standard Interconnection Agreement form for customer-owned renewable generation. In addition, each electric utility shall report the following, by April 1 of each year.

- (a) Total number of customer-owned renewable generation interconnections as of the end of the previous calendar year;
- (b) Total kW capacity of customer-owned renewable generation interconnected as of the end of the previous calendar year;
- (c) Total kWh received by interconnected customers from the electric utility, by month and by year for the previous calendar year;
- (d) Total kWh of customer-owned renewable generation delivered to the electric utility, by month and by year for the previous calendar year; and
- (e) Total energy payments made to interconnected customers for customer-owned renewable generation delivered to the electric utility for the previous calendar year, along with the total payments made since the implementation of this rule.
- (f) For each individual customer-owned renewable generation interconnection:
  - 1. Renewable technology utilized;
  - 2. Gross power rating;
  - 3. Geographic location by county; and
  - 4. Date interconnected.

(11) Dispute Resolution. Parties may seek resolution of disputes arising out of the interpretation of this rule pursuant to Rule 25-22.032, F.A.C, Customer Complaints, or Rule 25-22.036, F.A.C., Initiation of Formal Proceedings.

*Rulemaking Authority 350.127(2), 366.05(1), 366.92 FS. Law Implemented 366.02(2), 366.04(2)(c), (5), (6), 366.041, 366.05(1), 366.81, 366.82(1), (2), 366.91(1), (2), 366.92 FS. History—New 2-11-02, Amended 4-7-08.*