

Distributed Generation Policy/Net Metering: Florida Appellate Court Addresses Whether Organization Has Standing to Challenge



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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A District Court of Appeal of Florida (First District) (“Appellate Court”) addressed in a September 9th Opinion an issue arising out of an organization’s challenge of a utility’s Distributed Generation Policy (“DGP”). See *Community Power Network Corporation v. JEA*, 2021 WL 4097789.

The question was whether the challenging organization had standing to argue that the DGP failed to provide a net metering program as required by Florida law.

Net-energy metering (i.e., net metering) is typically described as a metering and billing arrangement designed to compensate distributed energy generation system owners for generation that is exported to the utility grid. It generally applies to small distributed generation systems such as renewable technologies [such as solar] and small combined heat and power systems. Such systems can allow owners to receive credit for excess electricity produced on-site.

A key issue associated with net-metering can be the rate of electricity that the utility pays to a net-metering customer.

The specific aspects of net metering can vary from state to state.

The Florida Legislature in 2008 enacted legislation requiring municipal electric utilities to:

... develop a standardized interconnection agreement and net metering program for customer-owned renewable generation. § 366.91(6), Fla. Stat. (2018).

The legislation defines “net metering” as:

... a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer’s electricity consumption on site.

JEA is described in the Opinion as a “nonprofit, community-owned municipal electric utility.”

JEA is stated to have previously used a net metering methodology with a 1 to 1 ratio. If a solar customer transmitted excess energy to JEA’s electric grid, it would provide credit for that excess power at the retail rate. As a result, the solar customer would pay only for the net difference between the energy consumed and the energy generated.

JEA is stated to have considered revisions to this policy. It determined that while customer-generated solar energy reduced its cost of electric generation by negating fuel purchases, it did not address the

capacity cost to operate and maintain the electric grid. As a result, the 2018 JEA DGP reduced the offset credit rate:

. . . from the full rate to the “fuel charge rate,” that is, the rate representing fuel-related costs.

This resulted in a lower fuel charge for the total kilowatt-hours generated and sent to the grid.

Solar United Neighbors (“SUN”) was preparing to establish a solar cooperative. However, the organization cancelled its establishment because of JEA’s change in policy. It argued that there was no longer a financial incentive for JEA customers to install solar equipment.

SUN filed a lawsuit arguing that the revised DGP violated the previously referenced Florida legislation. It sought an injunction requiring JEA to provide a lawful net metering program.

JEA’s arguments in response included a Motion to Dismiss based on SUN’s lack of standing. The Motion was granted.

The Appellate Court viewed the standing inquiry as seeking to “gauge whether a party has enough of a stake in a particular controversy.” The elements addressed include:

- Injury
- Causation
- Redressability

By way of summary, the Appellate Court states that standing exists when a plaintiff can identify an injury caused by the defendant’s conduct that the court can remedy.

The Appellate Court viewed SUN as having to demonstrate that the revised DGP caused the organization harm. It also stated that:

. . . in doing so, it had to rely on clear and ascertainable facts, not speculation.

The Appellate Court held that SUN did not meet such burden because of its failure to give sufficient detail about the planned cooperative. It noted that the cooperative was cancelled before the scheduled launch and a failure to:

. . . identify, with any degree of certainty, a customer base who, but for the 2018 Policy, would have participated in the cooperative.

Therefore, the Appellate Court upholds the lower court’s finding of an absence of standing.

A copy of the Opinion can be downloaded [here](#).