

January 9, 2015

TO: FECA Board and Alternates, General Managers, Craig Dennis,
Member Services listserv

FROM: Bill Willingham

RE: Proposed Constitutional Amendment to Promote 3rd party sales of
solar electricity

A group called Floridians for Solar Choice is leading a petition drive to amend Florida's Constitution to allow third party solar sales. It would allow those who generate solar electricity to sell solar power directly to other consumers, and would prevent electric utilities from disconnecting or imposing any special charges on those customers that buy solar power from third parties. The petition is attached. We are still evaluating the nuances of their chosen words, and we will be prepared to discuss the petition in detail and options for addressing at the February FECA meetings and at next week's lobby clinic. In the meantime, here are our initial thoughts and the process for amending the Constitution.

1. The amendment only applies to sales by third parties and does not mention discrimination against those that self-generate. Not only does this open the door for a constitutional challenge based on equal protection or other grounds by those that self-generate, but it tells us this is probably being backed by folks like SolarCity. It also may include operations like Walmart and Publix that have promoted similar policies in the past.
2. The meat of the petition is in subsection 2, which states:
 - (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.

We read this to mean that utilities would not be able to impose a charge that only applies to those ratepayers that also purchase power from third party solar generators. Interestingly, it would not preclude special charges on those that self-generate. It also is silent on wheeling charges. One aspect that is particularly concerning is the use of the word “impair”. This could be construed to mean that those that purchase from third parties are forever entitled to the subsidies that exist in the rates that are in effect when the amendment is adopted.

3. The process for placing an amendment on the ballot is fairly difficult and expensive, but this group apparently has the resources and we anticipate they will get the necessary signatures and can pay to have the signatures verified:
 - a. They must get signatures from eight percent of the number of voters that voted in the last presidential election, which is 683,149, and the signatures must come from at least 14 of the 27 congressional districts.
 - b. The petitioners must submit the necessary signatures to the Supervisors of Elections, who will verify the signatures and forward the petitions to the Department of State. It can cost up to \$.10 per signature.
 - c. When they have collected and verified ten percent of the required eight percent (68,314) of the signatures, the proposed amendment is automatically forwarded to the Attorney General’s office and the Financial Impact Estimating Conference (“FIEC”). The Attorney General has 30 days to petition the Supreme Court for an advisory opinion regarding the compliance of the text of the proposed amendment with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with F.S. 101.161 (single subject, clear ballot title, not misleading, review of

fiscal impact statement, etc.). The FIEC will evaluate the impact on state and local government revenues, which in this case should include franchise fees and sales, public service, property and gross receipts taxes.

- d. There must be a determination of constitutionality by February 1, 2016 in order for the Secretary of State to place the amendment on the ballot for the November 2016 elections.
4. There will be several opportunities for us to participate in this process, both formally and informally. We recommend hiring counsel to represent our interest when this is considered by the Supreme Court, which will require a special assessment. In addition, we probably will need outside counsel to help us explain our issues to the Attorney General. Staff should be able to handle the representation before the FIEC without assistance.
 5. The hardest part may be educating your members about this issue. In February we can discuss what resources may be needed to explain such a complicated issue to the public. One possibility is to educate your members and ask them to sign a card that says they don't want to subsidize their neighbor's decision to use solar power. If we get enough signatures this could be very helpful when we meet with the Attorney General and when we present them to the Supreme Court.
 6. Note that there will be a related side show at the PSC, which will hold a workshop this year to discuss solar initiatives that probably will include the related subsidy issues.