**Florida’s Consumer-Owned Electric Cooperatives**

**Support Solar Energy but Oppose the Proposed**

**Constitutional Amendment**

Last December, Floridians for Solar Choice (FSC) filed a petition seeking to amend Florida’s Constitution. The Petition includes a Ballot Title, a Ballot Summary, and the Proposed Amendment. The Ballot Title is “Limits or Prevents Barriers to Local Solar Electricity Supply”, which sounds innocuous but is very misleading. The true effect of the Proposed Amendment would actually be: to limit electric utilities from competing in the two-megawatt and smaller solar market; to make permanent all subsidies for solar that currently exist; and to exempt non-utility solar generation from regulation. In order for the petition to be successful, FSC must acquire signatures from nearly 685,000 registered Florida voters from across the state by January 2016. It also must pass the Florida Supreme Court’s review. If both events occur, the Proposed Amendment would be placed on the November 2016 ballot. Once placed on the ballot, at least 60 percent of Florida’s voters will have to vote to approve the proposal for it to be cemented into the State’s Constitution.

The Florida Electric Cooperatives Association will participate in the Florida Supreme Court’s review of the Ballot to address issues of concern to electric cooperative consumer-members. Our initial brief is due on June 10, the answer briefs are due on June 30, and oral argument will be held on September 1.

As member-owned electric cooperatives, our first responsibility is providing our consumers safe, reliable, and affordable power. Even though it is an intermittent power source, electric cooperatives believe that solar power can be a viable generation option. We continue to search for ways to utilize more solar power without increasing electric rates for those members that cannot afford solar power, or that chose not to pay more for their electricity. However, we cannot support permanently cementing into our Constitution provisions that would prevent electric cooperatives from continuing to provide solar power to our members, or provisions that would allow unregulated solar utilities to operate with almost no oversight and in a manner that requires utilities to raise electric rates for non-solar customers in order to subsidize the solar industry and its customers.

**The Proposed Amendment**

**Is Not Consumer Friendly**

Upon a very careful reading of the Proposed Amendment, it is apparent that numerous provisions could be detrimental to the State, its citizens, and the environment, but at a minimum, they create uncertainty regarding consumer protections and laws that protect the environment, including:

Provisions that would prevent the adoption and enforcement of safety regulations needed to protect the public, first responders, utility linemen, and the electric grid from unregulated, for-profit, solar facilities.[[1]](#footnote-1)

Provisions that would prevent the adoption and enforcement of laws and regulations that protect unsuspecting purchasers of solar power from fraudulent and misleading practices and unfair electric rates.[[2]](#footnote-2)

Provisions that would prevent consumer advocates from representing customers that have been treated unfairly by an unregulated seller of solar electricity. [[3]](#footnote-3)

Provisions that would prevent the adoption and enforcement of health, safety, and welfare regulations needed to protect the public and the environment.[[4]](#footnote-4)

**The Ballot Summary and Proposed**

**Amendment Are Vague and Misleading**

The Ballot Summary and the Proposed Amendment use language that is vague and potentially misleading. The Ballot Summary and the Proposed Amendment also fail to mention key impacts of the Proposed Amendment, such as increasing electric rates for those that do not utilize solar power, and preventing small utilities like electric cooperatives from offering solar power to their member consumers.

The Ballot Summary would lead one to think that Florida is a hostile environment for solar facilities, when in fact Florida is a solar-friendly state. Florida promotes solar through the following:

* Tax Breaks - in addition to the federal tax credits and grants, Florida incentives include ad valorem tax, sales tax, and municipal service tax exemptions and exclusions for solar equipment and for electricity generated and consumed by the customer.[[5]](#footnote-5)
* Net metering - Florida’s net metering laws[[6]](#footnote-6) are among the most generous in the country for those that use solar power. Net metering provides electric rate subsidies for customers that self-generate with solar and other types of renewable generation. However, net metering also requires the utility to purchase power from net metered customers at almost twice the price of purchasing power on the open market.
* Limited regulations – For example, Florida law essentially prohibits local governments, homeowners associations, and condominium associations from regulating the installation of solar generators.[[7]](#footnote-7)
* Solar power already can be obtained from 3rd parties - Customers of regulated utilities already can choose to lease solar panels from third parties.[[8]](#footnote-8)

The Ballot Summary and Proposed Amendment also are misleading in what they do not say, including:

Increased electric rates - The Proposed Amendment would require increased electric rates for all ratepayers, and would exacerbate “cross-subsidies” that require all cooperative members to pay for the solar systems that are used by only a few, and allow solar customers to avoid paying their fair share of the cost of the electric grid.[[9]](#footnote-9)

Cooperatives prohibited from providing solar to members - The Proposed Amendment[[10]](#footnote-10) would prohibit electric utilities, including cooperatives, from selling solar power to their member consumers if that power is generated from solar facilities that are smaller than two megawatts.[[11]](#footnote-11) A two-megawatt facility costs approximately $5 million, and is an overwhelming investment for most small utilities. While the Petitioner’s claim to support competition for electric customers, they clearly do not want the consumer to have the choice of getting a better deal for solar power from their regulated utility. We believe cooperatives should not be prevented from continuing to sell solar power from small systems, and should have the option to build additional small solar facilities in the future to accommodate their member-owners requests.

2 megawatts is not small - The Proposed Amendment clearly refers to solar generation that is much larger than your neighbor’s rooftop solar system and is neither small nor “small-scale.” However, the Proposed Amendment refers to “small-scale” solar, which is not defined but appears to mean two megawatts.[[12]](#footnote-12) A two-megawatt solar facility covers approximately 12 acres. According to FSC, two megawatts is enough to power 714 customers.[[13]](#footnote-13) Most people would consider 714 customers to be a small utility, not “small-scale” solar.

**Bottom Line**

The Petition’s claim that the Proposed Amendment will “limit or prevent local barriers to solar electricity supply” appears to be designed to mislead the voters. In reality, there are very few, if any, legal or regulatory barriers to providing solar generation today in Florida, and Florida already is very accommodating to solar generation without sacrificing consumer protections, safety or the environment.

1. Section (b)(4) – health, safety and welfare regulations are prohibited if “they would prohibit or have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier as defined in this section.” [↑](#footnote-ref-1)
2. Section(b)(1) – “A local solar electricity supplier . . . shall not be subject to state or local government regulation with respect to rates, service, or territory”. [↑](#footnote-ref-2)
3. Section(b)(1) – “A local solar electricity supplier . . . shall not be subject to state or local government regulation with respect to rates, service, or territory”. [↑](#footnote-ref-3)
4. Section (b)(4) – “health, safety and welfare regulations, including, but not limited to, building codes, electrical codes, safety codes and pollution control regulations” are prohibited if “they would prohibit or have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier as defined in this section.” [↑](#footnote-ref-4)
5. Section 212.08(7)(hh), F.S. (solar energy systems are exempt from the sales tax); Section 193.624, F.S. (residential solar equipment is exempt from the valuation of real property for tax purposes); Section 166.231, F. S. (the municipal public service tax of up to 10% applies to sales of electricity, but not the use of customer generated electricity). [↑](#footnote-ref-5)
6. Section 366.91(2)(c), F.S. (Net metering “means a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer’s electricity consumption on site”); and Section 366.91(6), F.S. (“each rural electric cooperative that sells electricity at retail shall develop a standardized interconnection agreement and net metering program for customer-owned renewable generation.”). [↑](#footnote-ref-6)
7. Section 163.04, F.S. [↑](#footnote-ref-7)
8. FSC’s memorandum to the Financial Impact Estimating Conference dated April 8, 2015. [↑](#footnote-ref-8)
9. Solar power is primarily generated during off-peak hours; Section (b)(2) prevents utilities from charging solar purchasers for costs that are unique to purchasers of solar, so those unique costs must be borne by the other rate payers; existing co-op rate structures do not recover all of the fixed costs from members that self-generate and as solar use grows the subsidies are becoming more significant and need to be addressed but Section (b)(2) would prevent rate structure changes for solar purchasers. [↑](#footnote-ref-9)
10. 29(c)(1) and (3) – anyone that supplies solar from facilities of 2 MW or less must be a LSES, but electric utilities cannot be a LSES. [↑](#footnote-ref-10)
11. For example, in 2008, with the backing of its membership, the Florida Keys Electric Cooperative installed two solar generating facilities, a .097-megawatt array in Marathon, and a .021-megawatt array on Crawl Key. Portions of the arrays are leased to members and the electricity generated by the member’s portion of the array is credited to their account through the cooperative’s SimpleSolar program. The electricity generated from the remainder of the array is added to the cooperative’s generation mix for sale to all of the cooperative’s members. [↑](#footnote-ref-11)
12. Section 29(c)(1) of the Proposed Amendment (“a maximum rated capacity of no more than 2 megawatts). [↑](#footnote-ref-12)
13. According to FSC’s memorandum to the Financial Impact Estimating Conference dated April 8, 2015, a 2 MW solar generator “has the potential to service an estimated 714 residential customers.” [↑](#footnote-ref-13)