

## Backgrounder on the “Smart Solar” and “Shady Solar” Constitutional Amendments

### Timing and Logistics as of October 29, 2015:

Last December, Floridians for Solar Choice (“Shady Solar”) filed a petition seeking to amend Florida’s Constitution, which sacrifices safety and consumer protections in order to maximize profits of big solar companies. In July, Consumers for Smart Solar (“Smart Solar”) filed a petition that takes a different approach to promoting solar power in Florida, and expressly preserves government’s ability to protect the public from any solar providers that are unscrupulous. Both petitions need 683,194 signatures from Florida voters by February 1, 2016 before they can be placed on the ballot for the November 2016 elections. As of this morning Shady Solar has 197,256 verified signatures, but Smart Solar only has 97,287 verified signatures. The Smart Solar amendment also must be reviewed by the Supreme Court before it can be added to the ballot, but based upon the recent Supreme Court order that failed to reject the Shady Solar amendment, the Smart Solar amendment should easily pass the Court’s review. If either or both amendments are on the ballot, it will take approval of at least 60 percent of Florida’s voters for the amendment to be cemented into Florida’s Constitution. If they both pass, the courts will have to resolve the inherent conflicts.

We are disappointed that the Supreme Court did not reject the Shady Solar petition. Surprisingly, the Court stated the decision was made “without considering or addressing the merits or wisdom of the proposed amendment.”<sup>1</sup> The Court’s refusal to consider the merits is disappointing as the amendment would create a new class of unregulated solar utilities that are generally immune from consumer protection laws, and would place the profits of corporate solar providers ahead of the safety of cooperative employees, first responders and the general public.

There are 2 ways to protect Florida’s consumers from the unsavory elements of the Shady Solar amendment. One is to offer an alternative choice at the ballot box that is more attractive to the voters. If both amendments pass, the courts should resolve the differences in favor of allowing safety and consumer protections. If Smart Solar does not gather enough signatures to make the ballot, our only hope will be to defeat Shady Solar, which will not be easy as they apparently have unlimited funds from a front organization based in Tennessee. **Therefore, at this point we encourage everyone to help gather signatures for the Smart Solar petition, but to be mindful of the restrictions on spending limits.**

### Electric Cooperative Overview:

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<sup>1</sup> No. SC15-780 at page 8.

Florida's electric cooperatives are not-for-profit electric utilities and have one central mission – providing safe, affordable, and reliable power to our member-consumers. To accomplish our mission we use diverse mixes of energy generation, and we continue to invest in research and development so that we can continue to do what is best for our members and stay up to date as solar and other power options evolve. 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 choose not to pay more for their electricity. Florida's electric cooperatives support solar energy development without constitutional mandates – when it makes sense for their member-consumers.

As member-owned utilities, Florida's cooperatives will work to make solar safe and reliable. However, the cooperatives ability to make solar safe and reliable would be significantly restricted by the Shady Solar amendment, which allows new Unregulated solar utilities to ignore safety regulations they deem undesirable to their business model. The Shady Solar amendment also would require cooperatives to raise electric rates for non-solar customers in order to subsidize the solar industry and its customers. Electric cooperatives believe that safety and other consumer protections do not have to be cast aside in order to utilize solar power.

#### Shady Solar Amendment Overview:

The Shady Solar amendment would permanently cement a number of provisions into Florida's Constitution that are detrimental to consumers, and that only benefit the bottom line of the solar providers. It would create gaping loopholes that allow newly created solar utility companies to operate predominantly unregulated, and sideline long-established reasonable health, safety, and welfare standards if those standards inhibit the supply of electricity generated by a solar utility company. In addition, the proposal bars electric cooperatives from charging solar customers their fair share of the costs incurred by the cooperative to supply power when solar energy is unavailable, such as, a cloudy day or at night. This will result in increased electric rates for all of the other cooperative members. Specifically, the amendment would:

- prevent the adoption and enforcement of reasonable safety regulations needed to protect the public, first responders, utility linemen, the electric grid and the environment from unregulated, for-profit, solar facilities.<sup>2</sup>

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<sup>2</sup> Section (b)(4) – “reasonable health, safety and welfare regulations including, but not limited to, building codes, electrical codes, safety codes and pollution control regulations” cannot be enforced by the state or local governments 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.”

- 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.<sup>3</sup>
- prevent consumer advocates from representing customers that have been treated unfairly by an unregulated seller of solar electricity.<sup>4</sup>

Shady Solar has been misleading voters on several issues:

Shady Solar claims the amendment is required to allow third parties to provide solar power to Florida's homes and businesses. However, Shady Solar freely admits that current law allows customers of regulated utilities to lease solar panels from third parties.<sup>5</sup> In addition, there are few, if any, legal or regulatory barriers to solar energy in Florida. Clearly, there are ways to promote solar that do not require the public to sacrifice safety or consumer protections.

Shady Solar claims 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.<sup>6</sup>
- Net metering - Florida's net metering laws<sup>7</sup> 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 a cost that can be more than twice the price of purchasing power on the open market.

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<sup>3</sup> 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”.

<sup>4</sup> 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”.

<sup>5</sup> Shady Solar's memorandum to the Financial Impact Estimating Conference dated April 8, 2015.

<sup>6</sup> 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).

<sup>7</sup> 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.”).

- Limited regulations – For example, Florida law essentially prohibits local governments, homeowners associations, and condominium associations from regulating the installation of solar generation.<sup>8</sup>

Shady Solar claims that 2 megawatts is “small-scale solar”.<sup>9</sup> The Amendment applies to solar generation that is much larger than your neighbor’s rooftop solar system and is neither small nor “small-scale.” A two-megawatt solar facility covers approximately 12 acres. According to Shady Solar, two megawatts is enough to power 714 customers.<sup>10</sup> Most people would consider 714 customers to be a small utility, not “small-scale” solar.

Shady Solar acknowledged in the oral argument before the Supreme Court that the amendment would require utilities to impose a surcharge on customers to recover costs for serving customers that purchase from third party solar providers. In fact, the Shady Solar 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.<sup>11</sup>

#### Smart Solar Amendment Overview:

The Smart Solar amendment is very straight forward. It would essentially add existing law to Florida’s Constitution. This includes cementing the consumer’s right to install their own solar or to lease solar from a third party, and ensuring that “State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare.” The amendment also would ensure “that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.” These provisions ensure that governments can impose reasonable regulations for health, safety and welfare on all solar electricity, and consumers can support the solar movement without placing undue burdens on those that cannot afford solar or that don’t want to pay more for another consumer’s choice to use solar power.

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<sup>8</sup> Section 163.04, F.S.

<sup>9</sup> Section 29(c)(1) of the Proposed Amendment (“a maximum rated capacity of no more than 2 megawatts).

<sup>10</sup> According to Shady Solar’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.”

<sup>11</sup> 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.

### Conflicts:

The Smart Solar amendment conflicts with two significant provisions of the Shady Solar initiative. If both amendments make the ballot and pass, it probably would be the first time in Florida that two competing amendments passed at the same time on the same ballot. In this case, it would be up to the Courts to synchronize the two amendments where possible, but there does not appear to be any precedent for how they would resolve the direct conflicts. Therefore, if we are not able to defeat the Shady Solar amendment at the ballot, it may be possible to minimize the damage the Shady Solar amendment would cause to our members by passing the Smart Solar amendment so that the Courts can use the conflict to do the right thing for consumers.

The most significant conflict pertains to regulation of health, safety and welfare. The Shady Solar petition would preclude state and local governments from enforcing even “reasonable” health, safety or welfare regulations if they would “have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier,” which probably would prohibit any regulations that have a significant cost or inconvenience to the solar generator. As set forth above, the Smart Solar amendment would retain the government’s right to regulate solar generators for health, safety and welfare. The Shady Solar amendment also includes a provision that would prohibit utilities from having rates that “impair” the sale of solar, which appears to remove any future option for the Legislature to address subsidies. As set forth above, the Smart Solar amendment would expressly retain the government’s right to prevent subsidies and would clarify the consumer’s right to not be forced to subsidize someone else’s solar.