



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

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 25-6.047, 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.¹ 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

¹ 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.