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Florida's Proposed Constitutional Amendment on Local Solar Electricity Supply

A petition for a constitutional amendment that is circulating in Florida would remove barriers to local solar electricity supply. If it appears on the ballot and is ultimately approved by voters, this amendment would bypass the established regulatory process for determining cost allocation, establishing and enforcing service standards, and intervening in consumer-utility disputes, in one segment of the electricity market. These and other issues triggered by the Solar Amendment may, if the amendment is adopted, open the door to litigation and succeeding initiatives to 'tweak' the language if unforeseen consequences emerge.

Lynne Holt and Mary Galligan

I. Background

On Dec. 23, 2014, a constitutional amendment petition[1] was filed with the Florida Secretary of State by Floridians for Solar Choice, Inc., a coalition of the Southern Alliance for Clean Energy, the Florida Solar Energy Industries Association, the Florida Alliance for Renewable Energy, the Christian Coalition of America, the Libertarian Party of Florida, the Republican Liberty Caucus of Tampa Bay and the Republican Liberty Caucus of Florida. The proposed amendment

 1040-6190/ http://dx.doi.org/10.1016/j.tej.2015.03.015

(hereinafter ''Solar Amendment'') would authorize third-party local solar electricity suppliers to sell electricity from solar sources to retail customers in Florida. (See the Appendix for the text, some of which is referenced throughout the article.)

As stated in the petition, the intent of the proposed amendment is ''to encourage and promote local small-scale solar-generated electricity production and to enhance the availability of solar power to customers.'' States have taken many approaches to create incentives to expand the use of renewable energy, including solar sources. Such approaches include renewable portfolio standards, which require utilities to purchase a specified portion of electricity generated from renewable sources, found in 29 states and the District of Columbia, but not in Florida. (In addition, nine states have renewable portfolio goals.) Forty-three states, including Florida, have implemented net metering policies, which require utilities to purchase power from customer-generators. In some cases, net metering regulations require utilities to pay full retail rate for renewables purchased from such customers. In addition, over 40 states and the federal government offer tax credits for individuals, businesses, or both that purchase and install renewable technologies.

Some jurisdictions encourage solar development by altering the traditional utility service model to permit non-utilities to sell electricity in some instances. This is the approach encompassed in the Solar Amendment as explained further below.

A. Substance of the proposed Solar Amendment

Under current Florida law, only electric utilities are authorized to sell electricity in the retail market. The Solar Amendment would permit electricity sales by non-utilities dubbed ''local solar electricity suppliers.'' In the proposed amendment, the term ''local solar electricity supplier'' is defined as ''any person who supplies electricity generated from a solar electricity generating facility with a maximum rated capacity of 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] The capacity limit in the proposed Solar Amendment is the same limit imposed on facilities of net metering customers in Florida.

Under current Florida law, only electric utilities are authorized to sell electricity in the retail market.

State or local regulation of local solar electricity suppliers would be prohibited for the most part. Local solar electricity suppliers, however, could be subject to ''reasonable health, safety and welfare regulations, including, but not limited to, building codes, electrical codes, safety codes and pollution control regulations'' as long as those regulations do not effectively prohibit the local solar electricity provider from supplying such electricity. The electric utility that serves the area would be required to provide stand-by electricity to customers of the local solar electricity supplier and would be prohibited from subjecting the solar supplier's customers to different rates, charges, tariffs, and terms or conditions of service than those imposed on other similarly situated customers who purchase electricity only from the electric utility. ''Electric utility'' is broadly defined in the Solar Amendment to include virtually any entity in the state that provides electricity to customers, except local solar electricity suppliers.

In advocating for the Solar Amendment, the coalition cites frustration with its lack of success in the Florida legislature.[3] However, simultaneous with the circulation of the Solar Amendment petition, two bills are under consideration by the Florida Legislature.[4] A thorough

http://dx.doi.org/10.1016/j.tej.2015.03.015

discussion of the bills is beyond the scope of this article. However, two points highlight distinctions between the bills and the Solar Amendment. One difference is that the bills would apply to most renewable sources, using the same definition as Florida's current law on renewable energy.[5] The other distinction is that the bills would permit third-party sales only to businesses.

B. Organization of the article

This article is organized as follows: Section II describes the model used to regulate public electric utilities in Florida; Section III summarizes some other states' approaches toward third-party electricity suppliers; Section IV discusses some implications of the proposed amendment; and Section V concludes.

II. The Public Utility Model and Third-Party Retail Providers

The electricity infrastructure in Florida, as in most states in the U.S., is one in which power is provided by vertically integrated utilities.[6] Electric utilities in Florida are authorized under current law to own both centralized and distributed generation facilities, and are obligated to provide service to anyone in their service territories at regulated prices. This could be characterized as the traditional public utility model. This model developed over many years as a means of providing an opportunity for all similarly situated customers to receive utility service under the same terms and conditions. This model is intended to prevent gaps in service and disparate prices for similarly situated customers that would occur absent regulatory oversight. Under the existing regulatory model, distributed generation facilities owned by utilities may be operated on the customer's property by utilities or third parties. Specifically, a Florida Public Service Commission (PSC) rule on the interconnection and metering of customer-owned renewable generation states that customers' renewable generation can be owned by the customer or leased from a third party as long as electricity is not purchased from the third-party provider.[7]

This model is intended to prevent gaps in service and disparate prices for similarly situated customers that would occur absent regulatory oversight.

If a regulated utility sells electricity to and buys electricity from a customer who owns a renewable generation system in Florida, certain state statutory requirements apply. The net-metering statute governing customer-owned renewable generation defines customer-owned generation as "an electric generating system located on a customer's premises that is primarily intended to offset the customer's electricity consumption on site."[8] Under that statute, the utility enters into a purchase contract with the customer-generator for a term of at least 10 years and agrees to buy the electricity the customer does not need. In Florida, a third-party developer may enter into an agreement with a customer to lease solar equipment to that customer provided the lease price is fixed for the term of the lease and is not dependent upon operational variables of the facility.[9]

Currently in Florida, the terms of the purchase contract between a customer-generator and a utility are dictated by statutory provisions that tie the electric utility's payment to the customer for the purchase of the customer's excess electricity to the utility's full avoided cost, a requirement pertaining to all of Florida's electric utilities (investor-owned, municipal, and rural electric cooperatives).[10] The statute also allows the utility an opportunity to recover from its ratepayers the prudent and reasonable costs incurred by the utility in association with such purchase contracts.[11]

Thus, any transaction in Florida involving the retail sale and

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purchase of solar-generated power, unless the customer is the sole user of the solar unit, must involve the regulated electric utility as a party to the transaction.[12] In some states, but not Florida, solar power purchase agreements (PPA) involving small, decentralized suppliers are permitted similar to those envisioned by the proposed Solar Amendment. Such agreements allow customers to buy electricity from non-utility providers. The arrangement that would be authorized by the Solar Amendment would be consistent with the generally accepted definition of ''solar purchase power agreement.''[13] An advantage to customers of purchasing power from a utility or a third party, as opposed to the customer supplying his or her own power, includes the avoidance of costly capital outlay and the risks associated with system performance.

III. Other State Approaches and Initiatives

According to the Database of State Incentives for Renewables and Efficiency (DSIRE), at least five states disallow or otherwise restrict third-party solar PV power purchase agreements: Florida, Georgia, Kentucky, North Carolina, and Oklahoma.[14] DSIRE reports that third-party solar PPAs are authorized statewide or are in use in some jurisdictions in 24 states and Washington, DC, and that the status of the remaining 19 states in that regard is unclear or unreported.[15] DSIRE notes several differences among policies that permit third-party solar PPAs. For example, such agreements may be authorized in the service areas of investor-owned utilities, but may be prohibited by some municipal utilities. Similarly, while third-party providers may be exempt from general utility regulations, separate licensing requirements may apply. Further, laws and regulations permitting PPAs sometimes include provisions that limit capacity of individual installed solar systems to amounts based on the customer's average annual consumption or to a specified generation capacity.[16] Several states permit third-party solar PPAs for only certain customer types, or have special provisions for certain customers, such as Arizona and Utah where such agreements are limited to schools, governments, or other non-profit entities and Virginia where tax-exempt entities are exempt from the minimum capacity limits.[17]

The Solar Amendment initiative in Florida has not arisen in a vacuum.

The Solar Amendment initiative in Florida has not arisen in a vacuum. There has been activity to permit third-party PPAs in other states. For example, a recent Iowa Supreme Court decision determined that a third-party solar supplier, Eagle Point Solar, was not a public utility.[18] In that case Eagle Point sought to enter into a long-term financing agreement to construct a solar generation facility on city property and sell the electricity to the city. The Iowa Utilities Board concluded that such an arrangement would make Eagle Point a public utility. Eagle Point appealed the Commission's decision to the district court, which reversed the decision. In an appeal by the Utilities Board and other interveners, the Iowa Supreme Court sided with the district court.

In other states, advocates pushing for third-party PPA authorization often contend that such agreements present customers with choice and would expand solar energy capacity. Opponents on the other hand argue that distributed generation (which would be further enabled through third-party PPAs) would shift costs to other customers.[19]

Those arguments surfaced in testimony considered by the Wisconsin Public Service Commission in a rate case involving We Energies, the parent company of Wisconsin Electric

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Power Company (WEPCO) and Wisconsin Gas LLC.[20] Wisconsin does not expressly authorize or prohibit third-party PPAs. In the proceeding WEPCO requested that the Commission prohibit third-party-owned solar systems across the board. The Commission declined to do so, opting to consider them on a case-by-case basis but noted that the Legislature and not the Commission was best positioned to clarify the status of third-party agreements.[21] It was a decision that some advocates of third-party PPAs considered to be objectionable.[22]

Third-party sale of solar generated electricity also is contemplated in Georgia. A bill passed by the Legislature and under consideration by the Governor at the time of writing, ''The Solar Power Free-Market Financing Act,'' would authorize electric utility affiliates to provide financing for solar installations on the properties or contiguous properties of retail electricity customers. System capacity would be limited to peak generation of 10 kilowatts for residential customers and 125 percent of the actual or expected maximum annual peak demand for commercial customers.[23] A bill was also recently introduced in North Carolina, ''The Energy Freedom Act of 2015,'' that would authorize the third-party sale of electricity to customers from on-site renewable energy facilities. These facilities would have size limitations and would be eligible to participate in net-metering arrangements.[24]

IV. Potential Impacts of the Proposed Constitutional Amendment

There are several potential implications of the proposed Solar Amendment: (1) promotion of local small-scale solar-generation and availability of solar power to customers; (2) changing the model of utility regulation in the state which may result in, (3) differential impact on customer classes; and implications for (4) utility companies; (5) rates; and (6) customer protection. These are discussed in the following subsections.

The Commission noted that the Legislature and not the Commission was best positioned to clarify the status of third-party agreements.

A. Promotion and availability of small-scale solar power to customers

The promotion of small-scale solar generation, which is key part of the stated intent of the Solar Amendment, can only be realized through distributed generation, whether the generating facility is owned by a utility or by a third party. This is a different matter than making solar power available to customers, which can also be realized with the utility-provider model. For example, North Carolina ranked third among all states in PV solar installation capacity in the third quarter of 2014 but all of its solar capacity was utility-furnished; as noted, it is one of the five states that do not allow third-party solar PPAs.[25] Simply authorizing PPAs, however, may not be sufficient to ensure development of small third-party solar systems. Third-party solar PPAs are legal in Nevada, which ranked second after California in terms of installed solar PV capacity in the third quarter of 2014, but almost all of its capacity was utility-installed.[26] Colorado, on the other hand, allows use of PPAs and its mix of solar installations came from customers, not from utilities.[27]

While the Solar Amendment may reshape the electricity market for certain types of solar energy providers, other types of distributed renewable energy generation (for example, wind, geothermal, ocean energy, and biomass) would continue to be regulated under statute. A bifurcated regulatory landscape, one for small, distributed solar, and the other for distributed

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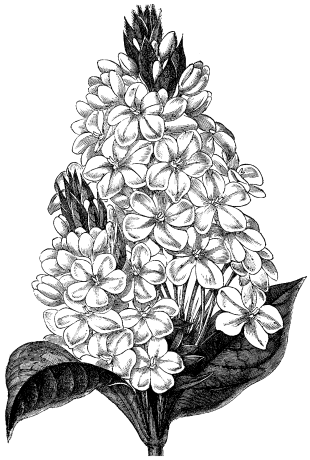
generation using other fuel sources, may have unintended consequences.

One aspect of the proposed Solar Amendment that may have an impact on achieving the articulated intent is the possibility that electric utility subsidiaries may enter into the distributed generation market under the authority of the Amendment. Such business arrangements involving subsidiaries of utilities have been made in the past, as seen in the PW Ventures case, discussed below, where PW Ventures was a Florida corporation originally owned by FPL Energy Services, Inc. (a wholly owned subsidiary of FPL Group, Inc.) and Impell Corporation (a wholly owned subsidiary of Combustion Engineering, Inc.).

The economics of utility subsidiaries becoming involved in providing distributed generation capacity would depend on many regulatory policies, such as those governing affiliate transactions, and so are beyond the scope of this article. However, the potential for utility-provided distributed solar generation is of concern to solar contractors. According to the director of the North Carolina Solar Center, ''The solar contractors I talk to are terrified of that concept. If a utility gets into the game, they are so big and have so much capital that the other companies wouldn't be able to compete.''[28]

B. Changing the model of electric utility regulation in the state

The Solar Amendment would authorize third-party local solar electricity suppliers to sell electricity at retail within the service territories of incumbent, regulated utilities via separate contracts with each customer specifying the



terms and conditions of the solar electrical service. Thus, each customer's situation vis-a-vis its provider could be very different. The traditional public utility model does not allow utilities to treat similarly situated customers differently[29]; discriminatory treatment is prevented by means of publicly disclosed tariffs that outline terms of service and associated charges.

Under the traditional public utility model, utilities are obligated to provide service to their customers in specified service areas in exchange for being monopolies. The Solar Amendment would allow competitors to sell electricity in utilities' assigned service territory, thus removing those customers from the revenue base of the utility, but would still require the utility to provide standby service and other regulated services to those customers. Pursuant to the Solar Amendment, a utility would not be able to recover any costs associated with providing services to those customers unless such cost recovery is spread across all its ''customers of the same type or class that do not consume electricity from a local solar electricity supplier,'' which may result in cost shifting.[30]

Changing the model of public utility regulation has implications for aspects of utility service as well as for the parties affected by the change as discussed below.

C. Implications for customer classes

California, unlike Florida, allows customers either to lease or enter into PPAs to buy electricity from solar sources. A recent market impact study conducted by Navigant for the California Public Utility Commission compared the proportion of cumulative solar energy installed under the California Solar Initiative from third-party contracts and customer-owned generation for the years 2007–2012.[31] For residential customers, cumulative installed capacity financed from third-party supplier contracts increased from 13 percent in 2007 to 40 percent in 2012, while the share from host customer-owned generation

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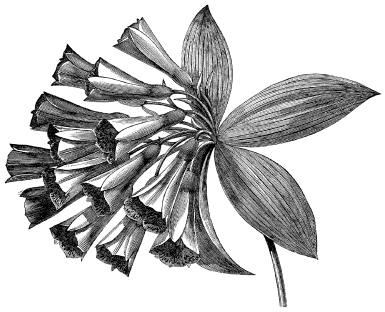
declined.[32] For non-residential customers the proportion of third-party contracts reflected the opposite shift: 64 percent in 2008 compared to 47 percent in 2012.[33]

It is hard to predict whether a similar dynamic would develop in Florida but upfront costs associated with solar installations are likely to be a relatively more costly proposition for residential customers than for commercial and industrial customers. Residential customers may therefore be more inclined to lease from or enter into PPAs with third-party suppliers than to own the generating systems themselves. Under current Florida law, if a customer owns the generating system rather than leases it, that customer may be eligible to receive the federal investment tax credit or engage in accelerated depreciation of the equipment. Both types of incentives can reduce the high initial costs associated with the purchase and installation of the renewable generation system, including solar.[34] However, certain customers may not be able to benefit directly from those incentives while the indirect benefit may be passed on to those customers through a PPA. For that reason the Solar Amendment may be more attractive to residential customers or certain non-profit or government customers that may not be able to benefit directly from tax incentives.

D. Implications for utility companies

If adopted, the Solar Amendment would override a 1988 decision by the Florida Supreme Court, at least to the extent it relates to solar providers. The Florida Supreme Court, in PW Ventures, Inc. v. Nichols (Fla 1988),[35] upheld the Florida PSC



finding that third-party suppliers are utilities and thus subject to regulation. The case involved the attempted sale by PW Ventures of electricity to a manufacturing plant from a cogeneration facility that was to be maintained on its customer's property.

The Court identified in that opinion potential impacts of allowing deregulated electricity providers to freely operate in Florida's retail market. First, the Court identified as problematic the potential duplication of facilities. ''If the proposed sale of electricity by [the third-party provider] is outside of PSC jurisdiction, the duplication of facilities could occur.''[36] The duplication of facilities was mentioned in the context of a Florida law that ''directs the PSC to exercise its powers to avoid 'uneconomic duplication of generation, transmission, and distribution facilities.'''[37] The Solar Amendment would override any existing, and prevent any future, state or local regulation to control duplication of facilities. Indeed, because of the requirement that utilities continue their obligation to serve, the Solar Amendment could result in duplication that the PSC is required to avoid.

Second, the Court acknowledged the potential for higher rates for customers that continue to be served by regulated utilities. Noting that PW Ventures proposed to ''go into an area served by a utility and take one of its major customers'' (citation omitted) and that allowing PW Ventures to take such action would allow other third-party providers to do the same, the Court found that the situation would ''drastically change the regulatory scheme in this state. The effect of this practice would be that revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers. This revenue would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems would not have been reduced.''[38]

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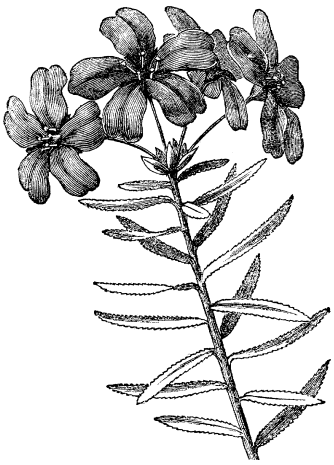
E. Implications for rates

Third-party solar PPAs are more likely to be attractive to customers if they can offset high rates. If rates are changed to reduce volumetric charges and increase fixed charges to make the rate structure flatter after a PPA has been entered, the subsequent value of electricity purchased through the agreement could be lower than anticipated thus reducing the value proposition for the customer.

There is ongoing debate about the optimal rate design for promoting solar expansion while at the same time protecting electric utilities from incurring stranded costs.[39] Recent regulatory commission and legislative actions have sought to shift more distributed generation costs directly to customers of distributed generation. For example, in 2013 the Arizona Corporation Commission authorized the imposition of standby fees for Arizona Public Service residential solar customers.[40] The establishment of a new rate class for distributed generation was authorized by the Oklahoma Legislature in 2014.[41] While such actions have pitted solar advocates against utilities, there has been, with few exceptions, little analysis of long-term effects on adoption of net metering and distributed generation on solar capacity expansion. Moreover, those impacts may be different based on the local situation. According to the executive director of the Regulatory Assistance Program, ''in places like California and New England, where the per kilowatt-hour electricity price is already high modest fixed cost initiatives may succeed. But in places like the Midwest, the Pacific Northwest, and the South, where variable charges are still low, they could produce a backlash.''[42] This statement is speculative, of course, but what is certain is the ongoing disagreement between distributed generation advocates and the electric utility sector over potential impacts on rates and their underlying assumptions. Third-party PPAs, to the extent they contribute to changes in the market in which regulated utilities operate, can be expected to play a role in those disagreements. Under the Solar Amendment, neither state nor local governmental entities would be authorized to mediate such disagreements through application of regulation or other binding policy.



F. Implications for customer protection

Local solar electricity suppliers who would be authorized by the Solar Amendment to sell electricity to Floridians would not be subject to regulatory oversight of the Florida PSC or any other state or local governmental entity, leaving any consumer protection mechanisms to be negotiated between the parties to the PPA. As recommended in the California solar market impact study, PPAs should disclose a standard, minimum set of financial terms, clear options in the event of home resale transactions, reroofing, default of the supplier, contract termination, sale or liquidation of the supplier or sale of its assets.[43] The study also recommends that prospective customers acknowledge understanding implications of policy changes to rate design and net metering that could potentially affect the value of the contract.[44] As noted above, other aspects of consumer protection, specifically related to health, safety, and welfare would continue to be subject to state or local regulation.

V. Conclusion

Numerous efforts around the country challenge the traditional utility model of franchise territories in which a captive market is served at regulated prices. The most recent effort in Florida is evidence of interest by some in

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expanding small-scale solar power provided by non-utilities. The effort raises many questions: How does the Amendment interact with other existing laws such a net metering? Who pays for a utility's fixed costs if the customer base is diminished? How should fixed costs be measured? What assumptions should govern the allocation of costs among customers who generate their own electricity or purchase it from non-utilities and those who continue to purchase electricity from regulated utilities? Who will protect the public interest in the local solar marketplace? Is a technology preference for solar energy established in the Constitution a cost-effective way of achieving objectives to promote renewable energy in Florida? Utility regulators have traditionally been tasked with weighing many variables to answer those questions. Florida's proposed Solar Amendment would bypass that established regulatory process for determining cost allocation, establishing and enforcing service standards, and intervening in consumer-utility disputes, among other things, in one segment of the electricity market. These and other questions triggered by the Solar Amendment may, if the Amendment is adopted, open the door to litigation and succeeding initiatives to ''tweak'' the language if unforeseen consequences emerge.

Appendix A

This Appendix can also be found in full in the online version http://dx.doi.org/10.1016/j.tej.2015.03.015.

Appendix

CONSTITUTIONAL AMENDMENT PETITION FORM

Note:

- *All information on this form, including your signature, becomes a public record upon receipt by the Supervisor of Elections.*
- *Under Florida law, it is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.08, Florida Statutes, to knowingly sign more than one petition for an issue. [Section 104.185, Florida Statutes]*
- *If all requested information on this form is not completed, the form will not be valid.*

Your Name: _____
(Please Print Name *as it appears on your Voter Information Card*)
Your Address: _____
City: _____ Zip: _____
County: _____

☐ *Please change my legal residence address on my voter registration record to the above residence address (check box, if applicable).*

Voter Registration Number: _____ **(or) Date of Birth** _____

I am a registered voter of Florida and hereby petition the Secretary of State to place the following proposed amendment to the Florida Constitution on the ballot in the general election:

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.

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(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.

Date:_____**X**_____
(Date of signature) *(Signature of registered voter)*

Initiative petition sponsored by Floridians for Solar Choice, Inc., 120 E. Oakland Blvd., Suite 105, Ft. Lauderdale, FL 33334

If paid petition circulator is used:	*For official use only:*
Circulator's Name_____	*Serial number:* 14-02
Circulator's Address_____	*Date approved:* 12/23/2014

Endnotes:

1. The sponsors of the Solar Amendment must collect at least 683,149 valid signatures (8 percent of the votes cast statewide in the 2012 U.S. presidential election), in order for the proposed amendment to be placed on the 2016 general election ballot. Those signatures must come from half the states' congressional districts – a minimum of 8 percent of the votes cast in each of those districts. The Constitution requires that an initiative amendment receive the votes of at least 60 percent of the electors voting on the measure in order to be adopted. If adopted by the voters at the November 2016 election, the Solar Amendment would become effective on Jan. 3, 2017.

2. One megawatt of electricity is enough to power approximately 100 homes in Florida with typical rate of usage. *See* Solar Energy Industries Association, *Average Number of Homes Powered by a MW of Solar PV*, at http://www.seia.org/policy/solar-technology/photovoltaic-solar-electric/whats-megawatt

3. The following statement posted on the Floridians for Solar Choice web site suggests that legislative inaction was the impetus for the sponsor's proposed measure: ''Past legislative efforts to overcome barriers to solar choice have been thwarted by large monopoly power companies like Florida Power and Light (FPL) and Duke Energy. These big power companies do not want to lose their exclusive hold on Florida's electric customers or their wallets.'' *See* http://www.flsolarchoice.org/about/

4. The 2015 Florida Legislature is considering two similar but not identical, bills that would authorize third-party sales of electricity generated from any renewable sources. However, those bills would establish different conditions for such sales than are proposed in the Solar Amendment. Florida S.B. 1118 and Florida H.B. 1077 would authorize both third-party suppliers and utilities to enter into renewable energy agreements with businesses and sell the renewable electricity to those customers. The bills do not define the term ''business.'' The renewable energy source device would not have to be located on the business's structure but could be on any property owned or leased by the business. The business would not be required to purchase the renewable electricity. Either the owner of the business or the other party could sell the renewable electricity to another nearby business. The bills also would authorize regulated utilities, upon approval of the Florida PSC, to recover costs from customers who are party to those agreements in a manner that would prevent adverse rate impacts on customers who are not involved in a renewable energy agreement. If the utility is required to provide additional services such as back-up generation or transmission services, the utility could recover all of the costs of providing those services.Provisions of these bills differ from the proposed Solar Amendment and to that extent serve to point out a potential complication if voters approve the Amendment and the Legislature enacts either of the bills in a form that

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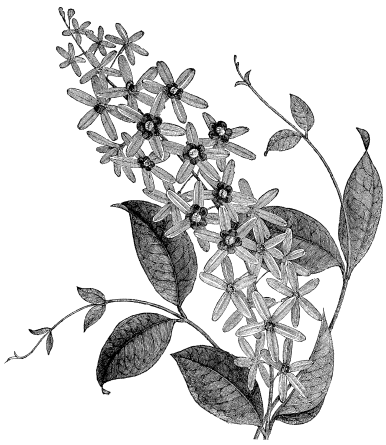
creates statutory language that differs from the constitutional language. So, while third-party sales of solar electricity would be authorized under either the proposed legislation or the proposed amendment, the scope of the change from current policy would be different. For example, the bills are more expansive than the Solar Amendment in that they would apply to all types of distributed renewable generation while the Amendment would apply only to solar generation. Second, the bills would relatively broadly permit non-utility sale of renewable electricity to businesses in a locale. In contrast to the Solar Amendment, these bills are more constrained in that they address only business customers while the proposed Amendment would apply to all customer classes. One might expect that the provisions of the Amendment would supersede directly conflicting provisions of enacted legislation. However, to the extent that a statute included provisions not clearly or directly addressed in the constitution, litigation might ensue to clarify various issues. For the bills, see SB 1118, at http://www.flsenate.gov/Session/Bill/2015/1118/BillText/Filed/PDF; and HB 1077, at http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h1077.docx&DocumentType=Bill&BillNumber=1077&Session=2015

5. FLA. STAT. § 366.91 (d) (2014) (Renewable Energy) (defining ''renewable energy'' as ''electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.'')

6. However, 20 of 35 municipal utilities, all but two of the 18 rural electric cooperatives, and a small investor-owned utility, Florida Public Utilities Corporation, purchase all or a portion of their generation from other utilities on the wholesale market, as well as transmission services to move the power to retail customers. *See* Florida Public Service Commission, *Facts and Figures of the Florida Utility Industry*, Mar. 2014, at 10–12, at http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf

7. FLA. ADMIN. CODE ANN. 25-6.065(2)(a) (2008) (Interconnection and Net Metering of Customer-Owned



Renewable Generation) (stating that ''the term 'customer-owned renewable generation' does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third party.'')

8. FLA. STAT. § 366. 91 (2014).

9. Fla. Pub. Serv. Comm'n, *In re* Petition of Monsanto Company for a Declaratory Statement Concerning the Lease Financing of a Cogeneration Facility, Docket No. 860725-EU, *Order*, Mar. 9, 1987.

10. FLA. STAT. § 366.91 (3) (2014), (defining the term ''full avoided cost' as: . . . the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source.'' *See also* FLA. STAT. § 366.051 (2014) (Cogeneration; Small Power Production; Commission Jurisdiction) (authorizing the Commission to establish rates for the purchase of a customer's electricity based on a utility's full avoided costs.) The payment to customers is typically a credit offsetting the amount owed by the customer for electricity provided by the utility.

11. *See* FLA. STAT. § 366.91 (3)(2014).

12. The distinction between retail and wholesale is important because certain non-utility generators, known as Exempt Wholesale Generators, as well as power marketers, are authorized to sell electricity to utilities in Florida at wholesale rates.

13. For example, the U.S. Environmental Protection Agency defines a solar purchase power agreement as ''a financial arrangement in which a third-party developer owns, operates, and maintains the photovoltaic (PV) system, and a host customer agrees to site the system on its roof or elsewhere on its property and purchases the system's electric output from the solar services provider for a predetermined period. This financial arrangement allows the host customer to receive stable, and sometimes lower cost electricity, while the solar services provider or another party acquires valuable financial benefits such as tax credits and income generated from the sale of electricity to the host customer.'' *See* U.S, U.S. Environmental Protection Agency, Green Power Partnership, *Solar Power Purchase Agreements*, http://www.epa.gov/greenpower/buygp/solarpower.htm

14. U.S. Department of Energy, Database of State Incentives for Renewables and Efficiency (DSIRE), *3rd-Party Solar PV Power Purchase Agreements*, Nov. 2014, at http://ncsolarcen-prod.s3.amazonaws.com/wp-content/uploads/2015/01/3rd_Party_PPA_Map.pdf

15. Of the 24 states identified by DSIRE that have authorized third-party PPAs statewide or in use in some jurisdictions, 10 do not have deregulated supply markets.

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16. *Id.*, *Authorities/References*.

17. *Id.*

18. *Eagle Point Solar v. Iowa Utilities Board*. Iowa Supreme Court. No. 13-0642. July 11, 2014; am. Sept. 30, 2014, 850 N.W.2d 441; 2014 Iowa Sup. LEXIS 78; 44 ELR 20155. LexisNexis Academic, at http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20140711/13-0642.pdf

19. *See, e.g.*, *In Indiana House Solar Debate, Echoes of Wisconsin Fight*, Midwest Energy News, Feb.18, 2015, at http://www.midwestenergynews.com/2015/02/18/in-indiana-house-solar-debate-echoes-of-wisconsin-fight/

20. Wisc. Pub. Serv. Comm'n, Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC, both d/b/a We Energies, for Authority to Adjust Electric, Natural Gas, and Steam Rates, Docket No. 5-UR-107, *Final Decision*, Dec. 23, 2014.

21. *Id.*

22. Kari Lydersen, *In Milwaukee, Critics Blast We Energies Rate Proposal*, Midwest Energy News, Oct. 9, 2014, at http://www.midwestenergynews.com/2014/10/09/in-milwaukee-critics-blast-we-energies-rate-proposal-wisconsin-solar/

23. H.B. 57, 2015-2016 Reg. Sess. (GA. 2015), at http://www.legis.ga.gov/Legislation/20152016/153399.pdf.

24. H.B. 245, 2015 Sess. (NC. 2015), at http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H245v0.pdf

25. Shayle Kahn, M.J. Shiao, Shyam Mehta, Cory Honeyman, Nicole Litvak, Jade Jones, GTM Research, and Tom Kimbis, Justin Baca, Shawn Rumery, and Aaron Holm, Solar Energy Industries Association (SEIA), *U.S. Solar Market Insight Report, Q. 3 2014, Executive Summary*, 2014, Fig. 2.2, at 8.

26. *Id.*

27. *Id.*

28. Kristi E. Swartz, *Electricity: Why Aren't Southern Utilities Jumping into the Solar Business*? ENERGYWIRE, Apr. 22, 2014, at http://www.eenews.net/stories/1059998197

29. *See*, e.g., FLA. STAT. § 366.03 (stating that "[n]o public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.")

30. Cost shifting could have potentially a larger impact on customers served by small municipal utilities and rural electric cooperatives. As compared to large investor-owned utilities, they would have a smaller customer base across which fixed costs could be spread.

31. Karen Corfee, Jack Cullen, Shannon Graham, Nicole Reed Fry, Beth Davis, Amy Meyer, Jane Hummer Shalom Goffri, and Charlie Bloch, *California Solar Initiative Third-Party Ownership Market Impact Study Prepared for California Public Utilities Commission*, Navigant, May 28, 2014, at http://www.cpuc.ca.gov/NR/rdonlyres/55A4BF20-875A-4B40-AD7C-3C768104211E/0/CSIThirdPartyOwnershipImpactReportFINAL.pdf

32. *Id.*, at xiii.

33. *Id.*, at xiv.

34. Another option in Florida for reducing upfront customer costs and operating risks is for the utility to develop solar farms. While this approach is not distributed generation, it can contribute to expanded solar generation capacity and costs can be rate-based. For example, FPL recently announced that it was planning to build three solar farms for an investment between $400 and $420 million. *See* Doreen Hemlock, *FPL to Invest $400 Million to Triple Solar Output*, *Orlando Sun-Sentinel*, Jan. 28, 2015, http://www.sun-sentinel.com/business/consumer/fl-fpl-solar-update-20150128-story.html

35. *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla 1988) (upholding a decision by the Florida Public Service Commission (Docket 860725-EU, Order 17009 (1987).)

36. *Id.*, at 283.

37. *Id.* (The law that was referenced in the decision is now FLA. STAT. § 366.04(5) (2014).)

38. *Id.*

39. *See, e.g.*, Jim Kennerly, Kathryn Wright, Chad Laurent, Wilson Rickerson, and Autumn Proudlove. *Rethinking Standby & Fixed Cost Charges: Regulatory & Rate Design Pathways to Deeper Solar PV Cost Reductions*, Solar Outreach Partnership and Sun Shot, U.S. Department of Energy, Aug. 2014, at. http://nccleantech.ncsu.edu/wp-content/uploads/Rethinking-Standby-and-Fixed-Cost-Charges_V2.pdf; *see also Memorandum to Arizona Corporation Commission from Utilities Division RE: Arizona Public Service Company – Application for Approval of Net Metering Cost Shift Solution (Docket No. E-01345A-13-0248)*, Sept. 30, 2013, at http://images.edocket.azcc.gov/docketpdf/0000148646.pdf

40. Ariz. Corp. Comm'n, Docket No. E-01345A-13-0248, Decision No. 74202, *Order*, Dec. 3, 2013, at http://images.edocket.azcc.gov/docketpdf/0000149849.pdf

41. S.B. 1456, 54th Leg., 2d Sess. (Okla. 2014).

42. Herman Trabish, *The Fight Over Solar Moves From Net Metering to Rate Design: Utilities Say Net Metering Isn't Fair; Solar Advocates Say Proposed Rate Changes Aren't Either*, UTILITYDIVE, Nov. 23, 2014, at http://www.utilitydive.com/news/the-fight-over-solar-moves-from-net-metering-to-rate-design/327742/

43. Corfee at al., *supra* note 31, at. 8-6.

44. *Id.*

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