
IN THE SUPREME COURT OF FLORIDA

Case No. SC15-2150; SC16-12

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: RIGHTS OF
ELECTRICITY CONSUMERS REGARDING SOLAR CHOICE

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: RIGHTS OF
ELECTRICITY CONSUMERS REGARDING SOLAR CHOICE
(FINANCIAL IMPACT STATEMENT)

CORRECTED ANSWER BRIEF IN SUPPORT OF INITIATIVE PETITION
BY DUKE ENERGY FLORIDA, FLORIDA POWER & LIGHT CO.,
GULF POWER COMPANY, and TAMPA ELECTRIC COMPANY

Upon Request from the Attorney General for an Advisory
Opinion as to the Validity of an Initiative Petition and FIS

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FLORIDA SUPREME COURT

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INTRODUCTION

The “Rights of Electricity Consumers Regarding Solar Energy Choice” Initiative (the “Initiative”), promotes a sensible, fair and safe expansion of solar energy. The Initiative stands on its own merits and must be evaluated by the Court on its own merits.

The opponents of the Initiative, nonetheless, are insistent upon interjecting their own earlier solar petition into the analysis (“Limits or Prevents Barriers to Local Solar Electricity Supply”) (the “Barriers Petition”)¹, suggesting that the Initiative is essentially intended to confuse the voters or to impact voting in such a manner that neither proposed amendment receives sufficient votes to be adopted.

To be clear, the Barriers Petition did provide an impetus of sorts for the Initiative. Not because of any “transformational” impact the Barriers Petition might have, as its proponents describe it, and not because it posed some ominous threat to these proponents of the Initiative. Instead, the Barriers Petition illuminated an issue that must be addressed if solar energy is to develop in Florida in a productive, systematic fashion.

¹ See *Advisory Opinion to the AG re: Limits or Prevents Barriers to Local Solar Elec. Supply*, 177 So. 3d 235, 240 (Fla. 2015).

The Barriers Petition raised the prospect of an unlimited number of solar arrays, each capable of serving 750 customers, springing up individually or in clusters anywhere in the State, unregulated and unsupervised by the Florida Public Service Commission (the “PSC”) or any local or state governmental agency or authority. With no meaningful rationale for liberating this one segment of the solar power industry (self-styled “Local Solar”) from customary and essential oversight, so they might operate anywhere and any way they might choose. The risks to the existing electric grid, to the well-established, essential territorial allocations among existing providers and, most of all, to consumers with no access to the protective umbrella of the PSC and local consumer agencies were obvious and disturbing.

It appears that the Sponsor of the Barriers Petition has been unable to secure the necessary signatures to have that proposed amendment placed on the ballot this fall.² Were it to have appeared alongside the Initiative, there would have been little risk of the voters being confused about the essential difference between the two.

² The Sponsor of the Barriers Petition was required to collect 683,149 valid signatures by February 1, 2016. It has fallen significantly short of this goal. <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64491&sequenm=1> (showing 287,938 valid signatures as of 02/01/2016); *see also* Jim Turner, *Solar Choice ballot initiative targets 2018*, Sun-Sentinel, January 11, 2016, <http://www.sun-sentinel.com/business/consumer/fl-nsf-solar-choice-2018-ballot-20160111-story.html>. (Explaining that Floridians for Solar Choice “formally shifted its focus [] toward trying to pass a ballot initiative in 2018” and quoting Stephen Smith, the executive director of the Southern Alliance for Clean Energy, who stated that the “coalition is not going away.”).

Both encourage and support the development of solar power in the state. The Barriers Petition eliminates all consumer protections and regulatory oversight. The Initiative preserves them.

The absence of the Barriers Petition from the ballot does not diminish the need for and the importance of this Initiative. The growth and development of solar energy are essential to Florida's future. For that reason, these proponents of the Initiative are heavily invested in a wide range of solar projects and will continue to expand those efforts.³ Of equal importance is the requirement that the expansion of solar energy occur in an orderly, well-regulated and carefully

³ Duke Energy Florida plans to add up to 500 MW of new utility-scale solar photovoltaic facilities by 2024, with four (4) company-owned solar facilities currently under development; FPL has been working to advance solar affordably in Florida for more than a decade. FPL has installed 110 MWs of solar within its service territory to date, and by the end of 2016, FPL expects to add more than another 225 MWs of solar capacity to its generation portfolio; In April 2015, Gulf Power Company received PSC approval for purchases of the entire energy output from three utility scale photo-voltaic generating plants to be built on military bases in Northwest Florida. *See* Order No. PSC-15-0155-PAA-EI in PSC Docket No. 150035-EI. On November 19, 2015, Gulf Power petitioned the PSC to approve Gulf's proposed community solar pilot program under which it will build and operate a photo-voltaic generating plant to supply electricity to subscribing customers. The petition is still pending PSC review. *See* PSC Docket No. 150248-EI; and lastly, Tampa Electric recently announced plans to build the largest community solar project in the Tampa Bay area – a 23-megawatt (MW) facility with more than 200,000 thin-film solar panels on 125 acres of company-owned land at the Big Bend Power Station in Apollo Beach. This project should go into service in early 2017 with the capacity to power up to 3,500 homes; *see also* PSC Memorandum dated November 18, 2015 re: Existing and Planned Solar Energy Facilities as of December 31, 2015 (“PSC Memo”) attached as Exhibit A, at p. 3 (showing planned solar additions for 2015-2024).

considered framework. The Initiative ensures a constitutional foundation for these components, essential to the sensible, fair and safe development of solar power in Florida.

ARGUMENT

I. The Proposed Amendment Has a Oneness of Purpose

The oneness of purpose requirement of article XI, section 3 of the Florida Constitution is met in the Initiative. *See* Art. XI, § 3, Fla. Const. (requiring that citizen petitions “embrace but one subject and matter directly connected therewith.”) The two elements of the Initiative – the need for solar expansion and the need for orderly and reasoned expansion – “may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. . .” *Limits or Prevents Barriers to Local Solar Elec. Supply*, 177 So. 3d at 243 (quoting *Fine v. Firestone*, 448 so. 2d 984, 990 (Fla. 1994); *see also* *Advisory Opinion to Atty. Gen.-Ltd. Political Terms in Certain Elective Offices*, 592 So. 2d 225, 227 (Fla. 1991). The Initiative has the necessary “oneness” of purpose. *Right to Treatment & Rehab. for Non-Violent Drug Offenses*, 818 So. 2d 491, 495 (Fla. 2002) (citing to *City of Coral Gables v. Gray*, 19 So. 2d 318, 320 (Fla. 1944) for the proposition that “[u]nity of object and plan is the universal test”).

The Initiative is intended to ensure that the development and expansion of solar power within the state is consistent with – and not disruptive of – the long-standing, carefully designed structure and operation of Florida’s electric grid. It is intended to keep the PSC’s rate and terms oversight in place, with full public participation. It is intended to ensure that essential consumer protections are not abandoned, ignored, or overridden – as the Barriers Petition requires – for no apparent legitimate purpose.

Opponents of the Initiative challenge its unity of purpose by attempting to deconstruct the ballot summary, sentence by sentence. The Title and Summary must be read as a whole. *See Advisory Op. to Att’y Gen. re Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 166 (Fla. 2002) (“[T]he ballot title and summary may not be read in isolation, but must be read together in determining whether the ballot information properly informs the voters.”); *Advisory Opinion to the AG re: Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 804 (Fla. 2014) (“when determining whether the ballot title and summary are misleading, it is appropriate to consider both together.”). As this Court noted in analyzing the Barriers Petition,

“Although the proposed amendment contains a number of provisions – some dealing with economic barriers to supply of solar electricity and others dealing with government regulation...the logical and natural oneness of purpose of the amendment remains the same...”

Limits or Prevents Barriers to Local Solar Elec. Supply, 177 So. 3d at 243. The same reasoning applies to this Initiative. There is a unity of purpose in expanding solar energy with reasonable and coordinated oversight.

The state's regulation of the electric grid and state and local consumer protections are a fundamental part of the oneness of purpose of the Initiative. The sensible, fair and safe expansion of solar energy cannot be achieved without these prophylactic components of the Initiative. They are "incidental and reasonably necessary to effectuate the purpose of the proposed amendment." *Advisory Opinion to the Atty. Gen. Re Casinos*, 644 So. 2d 71, 74 (Fla. 1994); *see also Advisory Opinion to the Ag Re Local Trs. & Statewide Governing Bd. to Manage Fla.'s Univ. Sys.*, 819 So. 2d 725, 730 (Fla. 2002).

II. The Opponents Demonstrate the Need for the Initiative

The concept of regulation, especially by the PSC, is a particularly nettlesome issue for the opponents of the Initiative. Their Barriers Petition sought to do away with all meaningful regulation for one segment of the energy industry. That self-serving objective was a principal driving force behind this Initiative. Regulatory protections must be elevated to constitutional status to ensure their continuous availability to consumers of electricity, both solar and non-solar. The opposition to the Initiative confirms the prudence of this approach.

The opponents express concerns, among other things, that the Initiative will result in subsidies that will make solar power options uneconomic,⁴ that there will be a loss of net-metering⁵ and that arcane accounting concepts will be adopted to the disadvantage of solar consumers.⁶ These concerns clearly misapprehend or ignore the very regulatory protections being preserved by the Initiative.

The PSC has the power to prescribe fair and reasonable rates, charges, classifications and standards of quality. § 366.05, Fla. Stat. (2015). More specifically, whenever the PSC, after public hearing, finds that rates, charges or classifications charged or demanded by any public utility are unjust, unreasonable, excessive or unjustly discriminatory or preferential, the PSC has the authority to fix fair and reasonable rates. § 366.07, Fla. Stat. (2015). Thus, the Initiative provides the means by which these opponents' concerns, to the extent they are legitimate and can be established, may be resolved, fairly and reasonably.⁷ Thus,

⁴ See Initial Brief of Opponent: Florida Solar Energy Industries Association filed on February 12, 2016 (“Industries Association Brief”) at pp. 23, 24.

⁵ See Industries Association Brief, at p. 12.

⁶ See Interested Parties Progress Florida, Inc., Environment Florida Inc., and the Environmental Confederation of South West Florida, Inc. Opposition to the Initiative Petition filed on February 12, 2016 (“Progress Brief”) at pp. 4, 10, and 12.

⁷ § 366.041(1), Fla. Stat. (2015) (“the commission shall have authority, and it shall be the commission’s duty, to hear service complaints, if any, that may be presented by subscribers and the public during any proceedings involving rates, charges, fares, tolls, or rentals . . .”).

rather than a basis for rejecting the Initiative, these speculative problems confirm the need to protect and maintain this resource for consumer relief.

Curiously, Initiative opponent Florida Solar Energy Industries Association (“Industries Association”) appears to share this view of the protective scope and function of the PSC. It recites that the PSC has the authority to regulate rates for the state’s investor owned utilities. *See* Industries Association Brief, at p.19. It adds that the PSC has a well-established process for addressing rate issues and is the appropriate venue in which to have them resolved. *Id.* at p. 20. It holds a similar view of the boards governing municipal utilities, whose authority is also preserved by the Initiative. *Id.* In fact, this opponent devotes significant portions of its brief to descriptions of the manner in which various state utility commissions have rejected power company efforts to limit solar rights. *Id.* at 14-15.

The Industries Association concludes its endorsement of this useful regulatory oversight with the somewhat confusing assertion that the Initiative should not be allowed to become the vehicle for “enshrining rate making policy that will limit solar rights.” *Id.*

The Initiative “enshrines” no policy of any kind. It does not require, preclude or even address a particular subsidy or accounting methodology. No action is required by any state or local regulatory authority. *See e.g. Casinos*, 644

So. 2d at 74 (“[t]here is no directive in the petition for an override of local or state environmental, land use, or regulatory policies.”); *see also Advisory Opinion to the Attorney General English--The Official Language of Florida*, 520 So. 2d 11, 13 (Fla. 1988) (“The opponents of the proposed amendment argue that it is so broad that it may impact on other portions of the Florida Constitution. They suggest the possibility that legislation might be passed to implement the amendment which could, for example, abridge the freedom of speech or the press, violate due process or invade the right of privacy. The difficulty with these arguments is that there has been no such legislation, and the proposed amendment does not mandate any legislation.”) The Initiative merely institutionalizes, at the constitutional level, the regulatory agencies and powers by which consumers, public utilities and the solar industry itself may address issues of concern, with the objective of achieving a fair and reasonable result. It assures that those powers that the Industries Association found essential and compelling will continue to be available to the Industries Association and all other consumers in the state.

III. The Ballot Summary is Clear and Unambiguous and Adequately Informs Voters of its Chief Purpose

A. The Initiative does not duplicate or misrepresent existing rights

The Initiative creates specific constitutional rights that do not exist in Florida’s current constitution. Nor is there any specific statutory provision under Florida law creating similar rights to the ownership of solar equipment.

The opponents' offer creative interpretations of the Initiative's language leading to conclusions that the Initiative and its summary simply do not support. These constructions are intended to demonstrate that the voters are somehow being misled because the rights addressed in the Initiative already exist under Florida law. However, as distinct from the circumstances in *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982), upon which the opponents rely, where lobbying was already constitutionally banned, there is no express constitutional provision establishing the solar equipment ownership rights addressed in the Initiative. Nor do the opponents identify any specific provisions of Florida law pertaining to solar equipment ownership of a nature similar to the specific provisions relied upon by the Supreme Court in *Advisory Op. to the Att'y Gen. re Casino Authorization*, 656 So. 2d 466 (Fla. 1996) and *Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984).⁸

This topic is addressed in useful detail in the Sponsor's Answer Brief. That discussion will not be duplicated here. These proponents adopt and incorporate by reference Section II.A. of the Answer Brief of Sponsor Consumers for Smart Solar, Inc.

⁸ The provisions of the Barriers Petition themselves suggest, in admittedly ambiguous language, existing limitations on the ownership of solar equipment that will in fact be resolved by the Initiative.

B. The Initiative's reference to local governments is not misleading

1. *Local governments have rate-setting authority*

The Initiative's ballot summary provides, in pertinent part, that "State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs . . . to those who do." By failing to quote the summary itself and by omitting all of the key, relevant language regarding state government, as well as the language referencing consumer rights, public health and safety, the Floridians for Solar Choice⁹ suggest that the summary "falsely implies" that local governments have some power over utility rates and charges. See The Initial Brief of Opponent Floridians for Solar Choice filed January 11, 2016 ("Floridians Brief") at p.15. It is this criticism, rather than the Initiative, which is misleading.

This misrepresentation and manipulation of the language of the summary is unfortunate and serves no useful purpose in these proceedings. Even adopting the opponent's truncated revision of the summary, there are no false implications. There are 34 municipal utilities in Florida, all of the rates and charges of which are

⁹ Sponsor of the Barriers Petition.

controlled by the local municipal governments. These powers will be retained at the constitutional level pursuant to the Initiative.¹⁰

2. *Consumer rights require constitutional protection*

This same opponent argues that the ballot summary falsely suggests that “government’s authority to guard consumers’ rights and health, safety and welfare of the public is at risk due to ownership or leasing of solar electricity generating equipment...” Floridian’s Brief at p. 23. It argues that this aspect of the Initiative is “unnecessary for the ongoing protection of the public in these regards.” *Id.*

The Initiative “suggests” nothing. As to this issue, it recites that state and local governments retain their abilities to protect consumers in the context of consumer ownership of solar equipment. It does not require any action by these governments nor say that any action will necessarily occur. If action is required, for any number of reasons, pertaining to health, safety, welfare or rates, state and local governments will be in a position to take protective or corrective measures.

¹⁰ Moreover, as noted in the PSC Memo, Ex. A, at p. 4 (“The Florida Legislature currently has the power to pass legislation that allocates the authority to regulate matters related to solar between state governmental entities . . . and local governments. Proposed Section 29(b) would leave that existing power of the Legislature in place, which means that the legislature could change through legislation the allocation of regulatory authority between and among state and local governments.”)

The Initiative assures voters that these historic protections will continue to be available.

The Barriers Petition demonstrates why constitutional protection is required. It provided that, among other things, Local Solar was not subject to state or local regulation with respect to rates or service. Thus, while customers of public utilities with service problems would have access to the PSC, Local Solar customers would have none. Additionally, that petition took out of the hands of state and local regulators all decisions regarding compliance with laws, ordinances or regulations regarding consumer rights, public health, safety and welfare. If such compliance, in the view of Local Solar, would prohibit or have the effect of prohibiting the supply of solar-generated electricity, it would not be required.¹¹

In contrast to the Barriers Petition, rather than strip the PSC of its power to prescribe fair and reasonable rates, charges, classifications and standards of quality, the Initiative elevates this ability to a constitutional level. In this manner,

¹¹ Barriers Petition, at (b)(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”); Barriers Petition, at (b)(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.”).

whatever regulatory accommodations or adjustments may be required, if any, as solar use expands in Florida, it will be the product of a rational, thoroughly documented and considered public determination by the agency with the statutory mandate to address these issues. This provides protection for consumers of Local Solar as well as all other consumers of electricity in the state.

C. The use of the word “subsidy” is commonplace in Florida law and does not carry a positive or negative connotation

Opponents of the Initiative Petition also contend that the word “subsidy” or “subsidize” is misleading and that it constitutes political rhetoric.¹² However, the use of the word subsidy in this Initiative is both clear and accurate and carries no risk of confusing the voters, the state and local governments or the PSC.

As to the term’s interpretation by the voters, the definitions of the term “subsidy” readily available on the internet are consistent with the use of the term in this Initiative. For example, “subsidy” is defined in Wikipedia as “a form of financial aid or support extended to an economic sector (or institution, business, or individual) generally with the aim of promoting economic and social policy.” <https://en.wikipedia.org/wiki/Subsidy>. This definition also provides that “[a]lthough commonly extended from Government, the term subsidy can relate to

¹² Floridian’s Brief at p. 18; Industries Association Brief at p.17; Progress Brief at p.7.

any type of support” and it explains that “[w]hether subsidies are positive or negative is typically a normative judgment.” *Id.*

State and local governments and the PSC are also familiar with the terms “subsidy” and “subsidize” given that these terms are commonly used in Florida law.¹³ Moreover, review of the use given to the terms reveals that, contrary to the opponents’ contention, the term subsidy/subsidize many times carries a positive or neutral connotation. *See e.g.* § 366.82 (7), Fla. Stat. (2015) (“Utility programs may include variations in rate design, load control, cogeneration, residential energy conservation subsidy, or any other measure within the jurisdiction of the commission which the commission finds likely to be effective . . .”); *see also* § 409.508 (2), Fla. Stat. (2015) (“The Department of Economic Opportunity is authorized to provide home energy assistance benefits to eligible households which may be in the form of cash, vouchers, certificates, or direct payments to electric or natural gas utilities or other energy suppliers and operators of low-rent, subsidized housing in behalf of eligible households. . .”); *see also* § 743.046 , Fla. Stat. (2015) (“For the sole purpose of ensuring that a youth in foster care will be able to secure utility services at a residential property upon the youth’s 18th birthday, the disability of nonage of minors is removed for all youth who have reached 17 years

¹³ A search for the term “subsidy” in the Florida Statutes provides 52 results. Similarly, the terms “subsidize” and “subsidized” produce 12 and 24 returns respectively. A search within the Florida Regulations provides over 150 results.

of age, have been adjudicated dependent, and are in the legal custody of the Department of Children and Families through foster care or subsidized independent living.”)

D. The opponents misstate, mischaracterize or misapprehend the purpose and impact of the Initiative.

Opponents of the Initiative have imputed meanings or consequences to the Initiative that have no foundation in the Initiative, the title or the summary. Instead of an informed discussion and analysis of the Initiative, they add a pernicious gloss neither intended by the sponsor nor suggested by a fair reading of the language involved.

1. *Net-metering is not impacted*

Nothing in the Initiative signals the end of net-metering as that term is understood under Florida law. The opponents suggest that if at the end of any year, a consumer has generated more electricity from that customer’s solar equipment than the customer utilizes, the Initiative prevents that customer from “selling” that excess electricity back to the customer’s utility provider.

That result does not follow from the Initiative. The key here is that the solar equipment is installed for the customer’s own use as distinct from a commercial use. If the equipment is installed for the customer’s own use, nothing precludes the sale of excess electricity back to the utility. It is the actual purpose of the

installation that governs. A sale of electricity back to the provider utility does not change the fundamental purpose of the customer's installation of solar equipment. It was and continues to be for the customer's own use. The incidental sale back to the utility does not alter that characterization.

Of equal importance, as noted at length by the Industries Association, the PSC has ample authority to address net metering issues to ensure fairness to consumer owners of solar equipment. Nothing in the Initiative leads to the opponents' misleading conclusion.

2. *Ample "rights" are implicated by the Initiative.*

Employing a somewhat Libertarian definition of "rights" (the "freedom to engage in certain activities without government interference" – Industries Association Brief at p. 8), the Industries Association argues, with considerable vigor, that the rights offered by the Initiative are misleading and an "illusion." This is because, according to the opponent, there may be some constraints on consumers who may avail themselves of these rights.

That, of course, can be said of many "rights" which citizens in a free society such as ours enjoy every day. Few, if any, rights, are boundless.

More to the point, the Initiative clearly addresses essential "rights" for the protection of both solar and non-solar consumers. The Initiative, by preserving

access to the PSC, ensures the right for all consumers to have rates that are fair and reasonable and, importantly to the solar consumers, non-discriminatory. Essential consumer protection rights, including those regarding health, safety and welfare are similarly preserved. These are the “rights” clearly enunciated in the Initiative and the title and summary.

3. *There is nothing misleading about the use of the word “choice” in the Ballot Title.*

This may be the most baseless criticism offered by the opponents. The Sponsor of the Barriers Petition argues that the ballot title is misleading because nothing in the proposed amendment “creates the ability for electricity consumers to make a choice regarding solar energy . . .” Floridian’s Brief at p. 13.

The Initiative addresses rights of consumers “regarding” solar energy choice. It is not intended to provide or even encourage a choice regarding solar. It preserves health, safety and welfare rights for both solar and non-solar consumers when the solar energy option is “chosen” by a consumer; when that choice is made, it preserves the right of the PSC to oversee the fair, equitable, non-discriminatory and orderly implementation of solar power in the state, because that choice will increasingly be made.

This is in direct contrast to the Barriers Petition which effectively eliminated all consumer protections as well as PSC and local regulation for both solar and

non-solar consumers. The Initiative encourages the availability of solar choice by assuring all consumers that this development will take place within a framework in which all consumers rights will be available and enforceable. Unlike the Barriers Petition, this Initiative ensures that solar consumers with complaints about their service or rates will have access to regulatory bodies which can provide meaningful relief to those who have made that choice.

CONCLUSION

As this Court has stated many times before, its “duty is to uphold the proposal unless it can be shown to be ‘clearly and conclusively defective.’” *Limits or Prevents Barriers to Local Solar Elec. Supply*, 177 So. 3d at 246. As demonstrated, the Petition complies with all the requirements of Florida law. Accordingly, these proponents respectfully request that it be approved for placement on the ballot.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this Brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced and in compliance with Florida Rule of Appellate Procedure 9.210.

/s/ Alvin B. Davis

ALVIN B. DAVIS

EXHIBIT A

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: November 18, 2015

TO: Amy Baker, Office of Economic and Demographic Research, Florida Legislature
Don Langston, Florida House of Representatives
Jose Diez-Arguelles, Florida Senate
Holger Ciupalo, Executive Office of the Governor

FROM: Mark Futrell, Office of Industry Development and Market Analysis, Florida Public Service Commission *MF*

RE: Existing and Planned Solar Energy Facilities as of December 31, 2014

As requested during the November 9th, 2015 meeting of the Financial Impact Estimating Conference, I have attached current data on existing and planned solar energy facilities as of December 31, 2014.

The attached information was reported to the Florida Public Service Commission by the electric utilities through the Ten-Year Site Plans and reports on customer-owned renewable energy generation. Information on existing resources may vary slightly from year to year, depending on how a utility records and reports the data to the Florida Public Service Commission.

Existing Utility-Owned Solar - December 31, 2014

			Gross MW
FPL	DeSoto	PV	25.0
FPL	Space Coast	PV	10.0
FPL	Martin Solar	Thermal	75.0
FPL	FPL Juno Beach Living Lab	PV	0.1
FPL	Business PV for Schools	PV	0.6
DEF	Econlockhatchee PV Array	PV	0.007
TECO	Museum of Science & Industry	PV	0.0182
TECO	Walker Middle School	PV	0.0034
TECO	Manatee Viewing Center	PV	0.0372
TECO	Middleton High School	PV	0.0089
TECO	Tampa's Lowry Park Zoo	PV	0.0128
TECO	Florida Aquarium	PV	0.0086
TECO	Legoland	PV	0.0254
FMPA	NOAA Eco-Discovery Center	PV	0.03
GRU	GRU Administration Building	PV	0.00530
GRU	Kanapaha Middle School	PV	0.00168
GRU	Westwood Middle School	PV	0.00168
OUC	OUC Reliable Plaza PV System	PV	0.032
TAL	TAL Multiple PV Installations	PV	0.21
Total Existing Utility-Owned Solar			111.1

Existing Non-Utility-Owned Solar - December 31, 2014

			Gross MW
All	Customer-owned	PV	74
GRU	Solar Feed-In Tariff	PV	18.6
JEA	Juwi	PV	12.5
LAK	SunEdison	PV	0.25
LAK	SunEdison	PV	2.3
LAK	SunEdison	PV	3
LAK	PosiGen	Thermal	0.4
OUC	Duke Energy	PV	5.1
OUC	ESA Renewables	PV	0.335
OUC	ESA Renewables	PV	0.268
Total Existing Non-Utility-Owned Solar			116.8

Total Existing Solar - December 31, 2014 227.9

Acronyms:

MW - Megawatts

PV - Photovoltaic

FPL - Florida Power & Light Company

DEF - Duke Energy Florida, LLC

TECO - Tampa Electric Company

FMPA - Florida Municipal Power Agency

GRU - Gainesville Regional Utilities

JEA - Jacksonville Electric Authority

LAK - Lakeland Electric

OUC - Orlando Utilities Commission

TAL - City of Tallahassee

Planned Utility-Owned Solar Additions - 2015-2024

Gross MW

FPL	Citrus	PV	74.5
FPL	Babcock	PV	74.5
FPL	Manatee	PV	74.5
FPL	Commercial & Industrial Solar Partnership	PV	3.7
FPL	FPL SolarNow	PV	0.2
FPL	Business PV for Schools	PV	0.2
DEF	Solar 1 & 2	PV	5
DEF	Solar 3, 4 & 5	PV	10
DEF	Solar 6 & 7	PV	10
DEF	Solar 8	PV	10
DEF	Solar 9	PV	50
DEF	Solar 10 & 11	PV	130
DEF	Solar 12	PV	35
DEF	Solar 13	PV	50
DEF	Solar 14 & 15	PV	75
DEF	Solar 16 & 17	PV	125
TECO	Tampa International Airport	PV	1.6
TAL	TAL PV 1,2,3	PV	0.12
Total Planned Utility-Owned Solar Additions			729.3

Planned Non-Utility Solar Additions - 2015-2024

Gross MW

DEF	Blue Chip Energy LLC	PV	10
DEF	Blue Chip Energy LLC	PV	40
DEF	National Solar	PV	50
DEF	National Solar	PV	50
DEF	National Solar	PV	50
DEF	National Solar	PV	50
DEF	National Solar	PV	50
DEF	National Solar	PV	50
GPC	Gulf Coast Solar Center I	PV	30
GPC	Gulf Coast Solar Center II	PV	40
GPC	Gulf Coast Solar Center III	PV	50
LAK	SunEdison	PV	6
LAK	SunEdison	PV	6
LAK	SunEdison	PV	3.15
OUC	To Be Determined	PV	12
TAL	Solar Developers of America 1,2,4	PV	1.7
TAL	SunnyLand 2,3,4	PV	0.4
TAL	SolarSink 3,4	PV	0.85
Reedy Creek	Purchase from DEF	PV	5
Total Planned Non-Utility Solar Additions			455.1

Total Planned Solar Additions - 2015-2024

1,184.4

Acronyms:

MW - Megawatts

PV - Photovoltaic

FPL - Florida Power & Light Company

DEF - Duke Energy Florida, LLC

GPC - Gulf Power Company

TECO - Tampa Electric Company

LAK - Lakeland Electric

OUC - Orlando Utilities Commission

TAL - City of Tallahassee

Reedy Creek - Reedy Creek Energy Services

Follow-up Answers to Questions Posed at FIEC Nov. 9, 2010 Public Workshop

[Nov. 19, 2015]

Question 1: Would the proposed amendment lock-in the existing allocation of governmental power between State and local governments related to the regulation of solar equipment?

Answer: The proposed amendment is intended to preserve the ability of Florida governments to protect the health, safety and welfare of the public through regulation of services and equipment provided by those in the solar industry, not to interfere in how state and local governments exercise their powers. Proposed Section 29(b), entitled "Retention of State and Local Governmental Abilities," provides that "State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare." The Florida Legislature currently has the power to pass legislation that allocates the authority to regulate matters related to solar between state governmental entities (e.g., the Public Service Commission, the Florida Department of Agriculture and Consumer Services) and local governments. Proposed Section 29(b) would leave that existing power of the Legislature in place, which means that the Legislature could change through legislation the allocation of regulatory authority between and among state and local governments.

Question 2: Under the proposed amendment, could the Legislature allow consumers to sell electricity generated by solar equipment to a person other than a utility?

Answer: Yes. The Legislature would retain its authority to pass legislation related to solar, as it sees fit.

Question 3: Does the definition of "lease" in the proposed amendment include an arrangement by which a consumer would pay to use solar equipment based on the amount of electricity generated by the equipment?

Answer: No. Proposed Section 29(c)(4) defines "lease" in that context to mean "an agreement under which the consumer pays the equipment owner/lessor a stream of periodic payments for the use of such equipment, which payments do not vary in amount based on the amount of electricity produced by the equipment and used by the consumer/lessee."

Question 4: Would the proposed amendment prevent the Legislature or local governments from passing any legislation that otherwise might be enacted?

Answer: Proposed Section 29(a) of the proposed amendment would prohibit the Legislature and local governments from passing laws which would bar consumers from owning or leasing solar equipment installed on their property to generate electricity for their own use. Proposed Section 29(b) would preserve the abilities of State and local governments to otherwise regulate solar equipment to protect consumer rights and public health, safety and welfare. Taken together, this means that the Proposed Amendment would not prevent the Legislature or local governments from taking any action related to solar, other than action which would prohibit consumers from owning or leasing such equipment on their property for their own use. The Legislature would be free to regulate the sale of solar-generated electricity and the installation of solar equipment, as it sees fit.