



Village of Biscayne Park Commission Agenda Report

Village Commission Meeting Date: August 4, 2015

Subject: Resolution 2015-42
Solar Initiative

Prepared By: Commissioner Barbara Watts

Sponsored By: Commission

Background

This resolution supports the 2016 ballot initiative that, if successful, would open the door to solar energy choices for Floridians by mitigating the constitutional restraint that gives ultimate control of solar power sales to the monopoly of its state sanctioned utilities.

The Solar Initiative Constitutional Amendment Petition/Movement has generated wide support in the state, so much so, that recently, there has been a push-back to the initiative by entities that perceive themselves to be threatened by the initiative and by organizations that are under the influence of such entities. Therefore, it is a timely matter that the Village of Biscayne Park join other municipalities (among others, the City of South Miami, the Village of Coconut Grove, North Bay Village, and the Village of Pinecrest) in support of this Solar Initiative. If passed, it will give Floridians a choice in the matter and, in so doing, enable the Sunshine State to be in the forefront of Sunshine Energy States.

To guard against disseminating “misinformation” I here include several direct quotations:

www.flsolarchoice.org: **Floridians for Solar Choice** is a grassroots citizens’ effort working to help more homes and businesses to generate electricity by harnessing the power of the sun. After Governor Deal signed Georgia’s solar law in May 2015, Florida became [one of only four states that prohibit citizens](#) from buying electricity from anyone other than a utility. This prohibition limits customer choice and blocks the growth of this abundant, clean homegrown energy source. Because we believe the choice to

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harness solar power should be available to everyone, ***our coalition is working to place a constitutional amendment on the 2016 ballot that would give Florida's families and businesses the right to choose solar power.***

Public News Service, July 7, 2015:

Stephen Smith, board member with Floridians for Solar Choice and executive director of the nonprofit [Southern Alliance for Clean Energy](http://www.southernallianceforcleanenergy.org), says the amendment would invalidate a law that gives utility companies a monopoly on the sale of solar electricity.

"Florida is one of only four states that explicitly prohibits what are called third-party sales, or allows somebody besides the monopoly utility to sell you electricity generated from solar power," he says. "This would correct that barrier by removing it." - See more at: <http://www.publicnewsservice.org/2015-07-07/energy-policy/florida-solar-initiative-moving-forward/a47033-1#sthash.YnEqPCEj.dpuf>

From the Southern Alliance for Clean Energy Action Fund (www.cleanerenergyactionfund.org): [Floridians for Solar Choice](http://www.floridiansforsolarchoice.org) is a grassroots citizens' effort to allow more homes and businesses to generate electricity by harnessing the power of the sun. Floridians for Solar Choice is promoting a Florida constitutional amendment ballot initiative that would give Florida's families and businesses the right to choose solar power

Fiscal / Budget Impact

A relatively small amount of staff time.

Recommendation

Pass the resolution.

Attachments

- Resolution 2015-42
- From the [www.flsolarchoice](http://www.flsolarchoice.org) website: "Fact and Fiction"
- Miami Herald Article – Fred Grimm: Florida voters aren't the ones confused about solar power
- Solar Petition
- Florida League of Cities Resolution to rescind
- Florida League of Cities Sign on Letter
- Florida League of Cities Brief

As this has become a controversial issue, I encourage all to do a google news search (Florida Solar Initiative) so as to read about the issue from all sides. The news articles and editorials on this issue are numerous.

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www.fl.solarchoice.org

The Solar Initiative petition for a Constitutional Amendment has been endorsed by the following organizations:

[All WoMen Rising](#)

[Clean Water Action](#)

[The Cleo Institute](#)

[Collier Citizens for Sustainability](#)

[Conservancy of Southwest Florida](#)

[Conservatives for Responsible Stewardship](#)

[Earthjustice](#)

[Ecology Party of Florida](#)

[Environmental Coalition of Miami & the Beaches \(ECOMB\)](#)

[Environmental Defense Fund](#)

[Environment Florida](#)

[Evangelical Environmental Network](#)

[Florida Green Chamber of Commerce](#)

[Florida Renewable Energy Association \(FREA\)](#)

[Florida Restaurant and Lodging Association](#)

[Friends of the Everglades](#)

[Green Party of Florida](#)

[Greenpeace USA](#)

[H & H Design and Construction Inc.](#)

[Hands Across the Sand](#)

[IDEAS for Us](#)

[Interfaith Justice League](#)

[League of Women Voters of Florida](#)

[Physicians for Social Responsibility, Florida](#)

[ReThink Energy Florida](#)

[Sanibel-Captiva Conservation Foundation](#)

[SEIA](#)

[Sierra Club Florida](#)

[South Florida Audubon Society](#)

[South Florida Wildlands Association](#)

[Space Coast Climate Change Initiative](#)

[Stewards Of Sustainability \(SoS\)](#)

[The Tea Party Network](#)

[Tropical Audubon Society](#)

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RESOLUTION 2015-42

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**A RESOLUTION OF THE VILLAGE OF
COMMISSION OF THE VILLAGE OF
BISCAYNE PARK, FLORIDA,
ENCOURAGING THE FLORIDA
LEGISLATURE TO REMOVE BARRIERS TO
CUSTOMER-SITED SOLAR POWER AND
EXPRESSING SUPPORT FOR THE
FLORIDIANS FOR SOLAR CHOICE
BALLOT PETITION; PROVIDING FOR AN
EFFECTIVE DATE.**

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WHEREAS, solar power generates electricity with zero air emissions and no water use, thereby moving the county, state, and country to a cleaner and more sustainable energy future; and,

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WHEREAS, Florida has the greatest potential for rooftop solar power of any state in the eastern United States but lags in realizing that potential; with 9 million electric utility customer accounts, Florida has only 6,000 customer-sited solar systems.ⁱ Less sunny states like New Jersey have over 30,000 customer-sited solar systems but only half the population of Florida; and,

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WHEREAS, Florida is one of only five states in the United States that by law expressly denies citizens and businesses the freedom to buy solar power electricity directly from someone other than a power companyⁱⁱ; and,

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WHEREAS, allowing non-utility solar providers to provide solar generated electricity, through a Power Purchase Agreement (PPA), directly to customers can remove the upfront cost for solar power systems to homeowners and expand solar power options to residential and commercial tenants – thereby expanding the choice for solar power to all Floridians; and,

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WHEREAS, in states, such as New York or New Jersey, where non-utilities can provide solar generated power directly to customers, there has been significant solar development in the residential sector. Such arrangements have driven anywhere from 67% (New York) to 92% (New Jersey) of residential installations in those states;ⁱⁱⁱ and,

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WHEREAS, Florida spends about \$58 billion each year buying carbon-based fuels from other states and countries to power our homes, businesses and cars, while solar power will keep energy dollars here at home and create good paying local jobs; and,

WHEREAS, in a recent poll, 74% of Florida voters said they support a proposal to change the state’s current law and allow Floridians to contract directly with solar power providers for their electricity. Removing barriers to solar choice will allow more Floridians to take advantage of the power of the sun.^{iv}

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AS FOLLOWS:

From the www.flsolarchoice website: “Fact and Fiction”

Americans for Prosperity (AFP) has attacked the proposed ballot initiative to open solar markets in Florida, and is trying to discredit the coalition of conservatives and clean energy groups that support the initiative. AFP has confused the sole purpose of the initiative—expanding customer choice and free commerce in solar—with unrelated policy issues that no conservative group has endorsed in Florida. AFP’s claims are inaccurate, misleading, and short on facts.

The ballot initiative does one thing, and one thing only: it removes a government-created barrier to customers’ right to buy solar energy, so solar can compete in the market against other forms of energy. The Florida government’s current policy is to make commerce in solar energy illegal, which puts solar energy at an unfair disadvantage by denying customers the right to buy solar products available in most state markets.

This ballot initiative has nothing to do with subsidies or handouts for the solar industry. This initiative will not create any subsidies, incentives, mandates, or tax breaks for solar companies, solar customers, or anyone else. There is nothing in the language to suggest otherwise. The initiative doesn’t require the State of Florida to spend any taxpayer dollars to prop up solar energy. AFP is confusing this initiative with other issues that aren’t relevant to this ballot initiative.

What you see is what you get. The ballot language is very straightforward and cannot be changed without beginning the process of collecting signatures all over again. There is no opportunity to add any subsidies, mandates, or anything else before Floridians vote on it in 2016.

The initiative is a first step toward opening up free markets for all energy in Florida. Coalition groups decided to choose one regulatory barrier for the ballot initiative, so voters can understand it easily and decide whether or not to support it based on this one issue. There are other barriers to free markets in energy not addressed by this initiative, and conservatives in the coalition believe that we should eliminate those as well. But we have to start somewhere, and opening markets for solar energy in the Sunshine State is a good first step.

The ballot initiative will not give solar energy an advantage over other types of energy. It simply legalizes free-market options for financing or purchasing solar energy that would otherwise remain illegal in Florida. There is currently no free market in energy, and the government-protected monopolies have all the advantage to make choices for customers about what types of energy they are required to pay for.

The ballot initiative will not permit large retailers, like Home Depot, from becoming ‘mini utilities’ by selling excess power. The Amendment limits the size and scope to 2MW and further only allows the sale of excess energy to be sold to contiguous properties. Thus a large retailer could not become a utility company nor could any one else.

Solar must prove to be cost-competitive in the market for customers to choose to buy it. The cost of solar is plummeting across the country, and is now price-competitive with utility power in many states. The claims that solar is too expensive aren’t supported by recent facts. And if it does prove to be too expensive, customers don’t have to buy it. Floridians should be allowed to decide for themselves whether or not they can save money on their power bill with solar, without the state telling them they can’t.

Letting people voluntarily pay for their own solar energy won’t raise anyone else’s rates. AFP’s argument is the same as saying anyone who decides to save money by buying a more efficient refrigerator or A/C system will raise rates on other customers. Utilities use this as a scare tactic, but states from Mississippi to Maine have studied the question of whether solar forces other customers to pay more, and they concluded that solar customers actually provide a net benefit to the utility’s system. In neighboring Georgia, the Public Service Commission determined that solar power would not put upward pressure on rates. Southern Company’s Georgia Power pledged their full support to a third party sales and leasing bill that passed unanimously in Georgia’s 2015 Legislative session and awaits the governor’s signature.

AFP argued in 2013 that more solar would lead to higher rates and blackouts in Georgia, and they were proved wrong. Solar proved to be cheaper than the utility’s energy costs over time. An all-Republican PSC and the utility itself both concluded that expanding solar will not increase rates one penny, and will actually put “downward pressure” on rates. Georgia customers are saving money with solar energy.

The statement that “there aren’t regulatory barriers in place blocking solar” is simply false. The government gives utilities the exclusive right to sell any energy to customers in their territories. The government has ruled that right excludes companies from offering customers an option to pay for energy from solar panels without paying the up- front costs required to buy the panels themselves, an option that is popular with customers in other states. This ballot initiative removes that regulatory barrier.

AFP cherry-picks language from the ballot initiative to misrepresent its purpose. AFP suggests the initiative is intended to promote the solar industry. But anyone who reads the full language in context can see it promotes customers, not the industry, and does so by removing market barriers for customers. AFP takes its excerpt from the following section, which makes the true purpose clear:

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.

Including legal language like “encourage and promote” is common for this type of constitutional amendment, to make the broader intent of the amendment clear, so voters can understand it and legislators and regulators know they shouldn’t create new versions of the same barriers in the future. It also changes the government’s current policy of discouraging and obstructing solar commerce.

Free-market conservatives are leading the coalition that supports the ballot initiative. Tory Perfetti is the Chairman of Floridians for Solar Choice, which includes Conservatives for Energy Freedom, Christian Coalition, Florida Libertarian Party, Florida Republican Liberty Caucus, and The Tea Party Network. All these groups have judged the facts on their own and determined the initiative is consistent with conservative principles. It’s wrong for AFP to suggest these conservatives are being duped and can’t see “the real story” on their own, or that they’re letting Tom Steyer and radical environmentalists “take over the conservative grassroots.” Conservatives should hear from all sides and decide for themselves what the real story is.

Pd. Pol. Adv. paid for by Floridians for Solar Choice, Inc.
120 E. Oakland Park Blvd, Suite 105, Fort Lauderdale, FL 33334

Floridians for Solar Choice, Inc. is a non-profit 501 (c)(4) organization.
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Fred Grimm: Florida voters aren't the ones confused about solar power

Fred Grimm fgrimm@MiamiHerald.com

Miami Herald, July 10, 2015:

One can understand Pam Bondi's worry that certain Floridians might misunderstand the solar power ballot initiative.

Not that she need concern herself with ordinary citizens. They know they'll be voting on a constitutional amendment that would allow consumers to generate electricity from their own or leased solar panels and sell the excess — up to two megawatts a day — to adjacent businesses and property owners.

Voter comprehension won't be the problem if the referendum makes it to the ballot in 2016.

But Attorney General Bondi has damn good reason to worry that some less ordinary Floridians might be confused. The state's political leadership has often been flummoxed by citizen initiatives.

The gang in Tallahassee never quite understood the "polluter pay" amendment voters approved in 1996. The voter intent, obvious to anyone outside the Capitol chambers, was that Big Sugar, not taxpayers, should pay to repair the environmental damage that phosphorus-laced fertilizer runoff from sugar cane fields caused the Everglades.

Apparently, the concept was just too bewildering for lawmakers. The polluter pay amendment has never been enforced.

The class-size amendment approved in 2002 seemed similarly straightforward, but legislators have since [contrived](#) all sorts of ploys to cram more kids into classrooms.

Last fall, when 75 percent of the electorate voted for Amendment 1, voters [understood](#) the measure was meant to channel something like \$300 million a year toward the acquisition of conservation land. Legislators took it to mean \$17.4 million.

On Thursday, the Florida Supreme Court [ruled](#) that when the not-so-good old boys in the Legislature drew the latest congressional district maps, they seemed to forget about the 2010 Fair Districts Amendment approved by 63 percent of the voters. The 5-2 court majority said the new districts had been "tainted by unconstitutional intent."

Bondi could hardly have been thinking of us when she filed her [objections](#) with the state Supreme Court last month complaining that the solar power ballot initiative was "unclear and misleading." We don't suffer comprehension problems. Ordinary Floridians not only understand the solar power issue, they grasp the urgent need to curtail dependence on fossil fuels. We know what a "yes" vote would mean. Bondi must have been referring to those dunderhead state legislators who never seem to fathom democratic intent.

A less charitable interpretation was that Bondi was only interested in protecting the profit margins of her good friends and political contributors from Florida's electric utilities, who can't abide solar power upstarts challenging their monopolies. On the very same day that the attorney general's office filed Bondi's anti-solar brief, similar objections were filed by Florida Power & Light Co., Duke Energy, Tampa Electric Co. and Gulf Power Co.

The timing could have been just a coincidence. It also could have been a coincidence that, [according to](#) the Florida Center for Investigative Reporting, those same utilities have contributed \$12 million to the campaigns of state elected officials since 2010.

Such political influence has helped keep Florida one of only four states that inhibit homeowners and businesses from striking lease deals with solar panel installers (leases can help consumers avoid prohibitive upfront purchase and installation costs), which explains why the Sunshine State derives such a piddling share of its electricity — less than 1 percent — from solar power. Only 6,600 homes and businesses in Florida are equipped with solar panels.

Voters, at least for the moment, understand what approval of the solar power amendment would mean. By Election Day, after utilities and their economic allies spend millions distorting the issue, who knows? The solar initiative may come to look like a commie conspiracy.

Last month, the Florida League of Cities added its own brief to the objections to the solar amendment piling up at the state Supreme Court. The Herald's Mary Ellen Klas [reported](#) last week that the league's legal stand set off protests from at least 17 elected officials from 13 cities who seemed stunned that the league would kowtow to the electric monopolies without consulting its members.

The utilities also persuaded the Florida Chamber of Commerce and (with the help of some generous contributions) a [number of groups](#) representing Hispanics and blacks to help them beat down the ballot measure. So now we have outfits like the National Black Caucus of State Legislators complaining that the solar power amendment would disadvantage poor minorities, who'll be forced to pay extra to maintain the electric grid when rich white folks, their homes festooned with solar panels, go off-line.

Of course, in the two dozen states with less restrictive solar power laws, that hasn't happened. Arturo Carmona, director of Presente.org, the nation's largest online Latino organizing group, [wrote](#) in the Sacramento Bee last fall that in California laws encouraging solar power have "brought jobs and clean energy to our communities. Two-thirds of all rooftop solar installations are in middle- and low-income neighborhoods, creating more than 47,000 jobs in our state, 20 percent of them Latino."

If the ballot measure survives the Supreme Court review, backers of the amendment will still need 683,149 valid signatures on their petition. (Last week, The Associated Press reported that they've gathered 94,000 so far.)

But voters will be barraged with advertising from utilities and fossil fuel interests worried that solar power will undo their very lucrative business plan. All that big money only needs to convince 41 percent of the electorate that solar is somehow a bad idea.

Even if the amendment passes — a long-shot proposition — the utilities can always count on the governor, the attorney general and their buddies in the Legislature to protect their interests and sabotage the solar power industry.

Up in Tallahassee, they have a long, ugly history of putting big money ahead of voter intent.

Read more here: <http://www.miamiherald.com/news/local/news-columns-blogs/fred-grimm/article26991379.html#storylink=cpy>

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.

(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:

Circulator's Name _____

Circulator's Address _____

For official use only:

Serial number: 14-02

Date approved: 12/23/2014

FLORIDA LEAGUE OF CITIES, INC.
RESOLUTON NO. 2015-__

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
FLORIDA LEAGUE OF CITIES, INC. TO RECEDE FROM
OPPOSITION BRIEF FILED AT THE FLORIDA SUPREME
COURT AGAINST THE FLORIDIANS FOR SOLAR CHOICE
BALLOT PETITION**

WHEREAS, On June 10, 2015, the Florida League of Cities, in conjunction with the Florida Municipal Electric Association, filed an initial brief with the Florida Supreme Court in opposition to the Floridians for Solar Choice ballot initiative.

WHEREAS, Members of the Florida League of Cities find that the submission of the brief was filed outside of the appropriate League protocol

WHEREAS, Members of the Florida League of Cities find the arguments presented in the brief are alarmist, unsupported and speculative.

WHEREAS, As a threshold matter, such legal filings should be subject to a vote of the Florida League of Cities and be reviewed and approved by the Energy, Environment and Natural Resources Committee.

WHEREAS, The solar petition language would allow the sale of power from an entity other than a utility limited to solar power systems with a size limitation of 2 megawatts (MW). This would provide more solar ownership and financing options to allow for solar development in the state.

WHEREAS, Arguments related to material future negative impacts to local municipalities due to reduced utility revenue and the local fees dependent on such revenue, such as franchise fees and public service tax is again, highly speculative and unfounded.

WHEREAS, The Florida Financial Impact Estimating Conference (FIEC), an entity that specialized on impacts and costs to state and local governments, found - after weeks of study and consideration of input from a number of interested parties including the Florida League of Cities - that as it relates to reduced revenue: "the timing and magnitude of these decreases cannot be determined because they are dependent on various technological and economic factors that cannot be predicted with certainty."

WHEREAS, Utility revenue can be influenced by any number of factors, including the economy and weather. It is uncertain any reduced revenue may take place, and should be considered in the context of additional fees and economic development increased solar development will create in our communities.

WHEREAS, Florida is one of only four states in the United States that by law expressly denies citizens and businesses the freedom to buy solar power electricity directly from someone other than a power company¹; and

WHEREAS, Florida utilities have approximately 60,000 MW of generating capacity. The capacity of customer-sited solar power currently stands at a mere 60 MW. In fact, only 6,600 customers of the 9 million Florida electricity customers currently generate some other their power from solar systems. This represents 0.07 percent of all customers. At these levels, negative impacts to municipalities from reduced utility revenue are so marginal as to not be measurable.

WHEREAS, Florida spends about 58 billion dollars each year buying carbon-based fuels from other states and countries to power our homes, businesses and cars, while solar power will keep energy dollars here at home and create good paying local jobs; and

WHEREAS, In a recent poll, 74% of Florida voters said they support a proposal to change the state's current law and allow Floridians to contract directly with solar power providers for their electricity. Removing barriers to solar choice will allow more Floridians to take advantage of the power of the sun;²

NOW, THEREFORE BE IT RESOLVED by the Florida League of Cities, Inc.:

Section 1. That the Florida League of Cities, Inc. recede from the opposition statements made without an official position being taken by action of the membership, direct the staff to file a motion seeking to withdraw the initial brief in opposition to the Amendment to remove a barrier to customer-sited solar power, but giving the opportunity to the Municipal Electric Association to refile the same brief deleting any reference to the League.

Section 2. This resolution shall become effective upon adoption.

APPROVED AND ADOPTED by the Board of Directors of the Florida League of Cities, Inc. at regular meeting assembled this ____ day of _____, 2015

ATTEST:

¹ Department of Energy, et. al, *Database of State Incentives for Renewables and Efficiency*, at http://www.dsireusa.org/documents/summarymaps/3rd_Party_PPA_Map.pdf

² Northstar Opinion Research, Survey of Florida Registered Voters, October 2014, at: http://www.cleanenergy.org/wp-content/uploads/FL_Energy_Presentation_for_Release.pdf

June 25, 2015

On June 10, 2015, the Florida League of Cities, in conjunction with the Florida Municipal Electric Association, filed an initial brief with the Florida Supreme Court in opposition to the Floridians for Solar Choice ballot initiative. We, the undersigned members of the Florida League of Cities find that the submission of the brief was filed outside of the appropriate League protocol and that the arguments presented in the brief are alarmist, unsupported, and speculative. As such, we call for the League to withdraw the initial brief filed with the Court.

As a threshold matter, such legal filings should be vetted and approved by the League's Board and the Energy and Environment Committee. Neither was done in this case. We are disturbed that the League's established leadership structures were bypassed. Did League staff file the opposition brief to the solar amendment, an amendment vigorously supported by many member cities, absent approval from the leadership?

The solar petition language would allow the sale of power from an entity other than a utility limited to solar power systems with a size limitation of 2 megawatts (MW). This would provide more solar ownership and financing options that can promote solar development in the state. The solar petition, if it passes the Court's constitutional review, and receives the appropriate number of verified signatures will appear on the ballot in 2016 for voter approval.

The substantive arguments in League's brief, are aggressive, speculative, and some are well outside the League's scope or expertise. For instance, the brief argues that the amendment might create inequitable rate structures between solar and non-solar customers. When did the League's interest include utility regulatory rate-making design and policy? Nothing could convince us that increased generation of solar power is against the long-term interests of the Florida's cities, those with the most to lose from sea level rise.

Moreover, arguments related to material future negative impacts to local municipalities because of reduced utility revenue and the local fees dependent on such revenue, such as franchise fees and public service tax is again, highly speculative and unfounded. In fact, the franchise agreement between FPL and the City of South Miami specifically includes a provision for leveling fees and taxes between regulated utilities and small-scale solar producers.

This issue has already been addressed by the state's Financial Impact Estimating Conference (FIEC) statement after weeks of study and consideration of input from a number of interested parties. That statement will appear on the ballot for voters to view, should the petition make it

on the ballot in 2016. The FIEC, an entity that specialized on impacts and costs to state and local governments, concluded the following as it relates to reduced revenue: *“the timing and magnitude of these decreases cannot be determined because they are dependent on various technological and economic factors that cannot be predicted with certainty.”* Utility revenue can be influenced by any number of factors, including the economy and weather. It is uncertain any reduced revenue may take place, and should be considered in the context of additional fees and economic development increased solar development will create in our communities.

Secondly, Florida’s utilities have approximately 60,000 MW of generating capacity. The capacity of customer-sited solar power currently stands at a mere 60 MW. In fact, only 6,600 customers of the 9 million Florida electricity customers, less than one in a thousand, currently generate some of their power from solar systems. This level represents a possible loss of seven cents per hundred dollars of municipal utility tax & fee revenue. At these trivial levels, loss of municipal tax & fee revenue from non-utility-generated solar power pales against municipal benefits of job creation, climate protection, and energy reliability enhancements.

We exist not to charge taxes, but to serve the interests of our people. Florida is only one of five states in the country that currently prohibits third party sales of solar power. Rather than aggressively attacking a solar ballot initiative intended to expand the benefits of solar power that municipalities, businesses, and citizens in other states already enjoy, the League should support innovative ways to promote solar power and help Florida catch up with the rest of the nation. The League’s brief is alarmist, short-sighted, and not approved through proper protocol. As such, we support immediate withdrawal of the initial brief.

Sincerely,

IN THE SUPREME COURT OF FLORIDA

Case Numbers SC15-780 and SC15-890

**ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: LIMITS OR PREVENTS BARRIERS TO
LOCAL SOLAR ELECTRICITY SUPPLY**

**ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: LIMITS OR PREVENTS BARRIERS TO
LOCAL SOLAR ELECTRICITY SUPPLY (FIS)**

**BRIEF OF INTERESTED PARTIES
FLORIDA LEAGUE OF CITIES, INC., and
FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, INC.**

IN OPPOSITION TO THE PROPOSED AMENDMENT

LINDA LOOMIS SHELLEY
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STATEMENT OF THE CASE AND FACTS

The Florida Attorney General has requested this Court's advisory opinion on the validity of an initiative petition titled, "Limits or Prevents Barriers to Local Solar Electricity Supply," which has been assigned Case No. SC15-780 by the Court. The Attorney General also has requested the Court's review of the Financial Impact Statement prepared for the amendment, assigned Case No. SC15-890. The Court will determine (1) Whether the ballot title and summary are clear and unambiguous and thus comport with the requirements of Section 101.161(1), Florida Statutes; and (2) Whether the proposed amendment violates Article XI, section 3 of the Florida Constitution, which requires that the proposed amendment embrace but one subject.

STANDARD OF REVIEW

The issues before the Court are questions of law, and therefore the review is *de novo*.

SUMMARY

The Solar Initiative does not comport with the requirements of the Florida Constitution or the Florida Statutes. It does not reveal its impacts to municipalities, electric utilities, utility customers, and the public at large. Moreover, it violates the single-subject requirement of the Florida Constitution by impacting multiple layers of government and, in particular, the Legislature.

The proposed amendment will disrupt contractual relationships between and among municipalities and utilities that enter into franchise agreements to provide electric utilities to municipal citizens. The Solar Initiative will reduce revenues available to municipalities and utilities under Florida law and, as a result, municipalities will curtail services to citizens or will be forced to pass additional fees inequitably onto non-solar customers in order to recoup revenue losses. These impacts are not disclosed to the electors in the ballot title and summary, as required.

The Solar Initiative will significantly impact the ability of the state and local governments from protecting the health, safety, and welfare. Irrespective of how reasonable or necessary such protections are, if they have the effect of prohibiting in a particular instance the generation or supply of solar energy, the protections will be disallowed.

The Solar Initiative violates the constitutional single-subject requirement by engaging in logrolling in that it forces a voter to balance a preference for solar power against the adverse fiscal impacts that the Initiative may have by resulting in inequitable rate structures between solar and non-solar utility customers. The Solar Initiative also performs multiple functions of government, including local governments and the state, and impairs the lawmaking power of the Florida

Legislature. The impacts are unauthorized and therefore the Solar Initiative should not be placed on the ballot for elector consideration.

STATEMENT OF INTEREST

A. THE FLORIDA LEAGUE OF CITIES, INC.

The Florida League of Cities, Inc. (“League”) has a special interest in the ballot initiative titled, “Limits or Prevents Barriers to Local Solar Electricity Supply” (“Solar Initiative”) as a result of the anticipated financial and operating impacts of the Solar Initiative on Florida municipalities.

The League is a voluntary organization whose membership consists of municipalities and other units of local government rendering municipal services in the State of Florida. The League membership comprises more than 400 municipalities. Under its Charter, its purpose is to work for the general improvement of municipal government and its efficient administration, and to represent its members before various legislative, executive, and judicial branches of government on issues pertaining to their general and fiscal welfare.

The issues of interest to the League with respect to the Solar Initiative are:

- The material financial impact to municipalities based upon a reduction in franchise fees and public service tax revenues that will be received by Florida’s municipalities.

- The financial impact on Florida’s municipally-owned electric utilities because the proposal appears to prohibit a municipal utility from charging fees and conditioning service on solar energy customers that are rationally related to a utility’s cost of accommodating the solar energy customer.
- The lack of clarity in the Solar Initiative language that will cause confusion and require litigation in order to ascertain its parameters.

The League does not oppose solar energy. In fact, the League currently is appearing as an amicus in a pending case in this Court in support of a law that permits cities to loan money to citizens to fund energy efficiency and renewable energy improvements to their homes. See, *Florida Bankers Association v. Florida Development Finance Corporation*, Case No. SC14-1603. For the reasons indicated above, however, the League brings to the attention of the Court the significant financial and operating impacts the Solar Initiative will have on Florida’s municipalities.

B. THE FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, INC.

The Florida Municipal Electric Association, Inc. (“FMEA”), is the statewide trade association for 33 of Florida’s public power retail electric utilities.¹ Founded in 1942 in response to the WWII fuel shortages, for more than 70 years FMEA has been committed to supporting its public power members in their goals for reliable

¹ General information concerning FMEA as well as specific data about its public power members can be found at its website: www.publicpower.com.

and low-cost electric service to their communities. FMEA's member utilities provide approximately 15 percent of Florida's electric load, which translates to serving approximately three million Floridians.

Like the League, the FMEA is not opposed to solar energy. As the League has done, the FMEA also currently is appearing as an amicus in a pending case in support of a law that permits cities to loan money to citizens to fund energy efficiency and renewable energy improvements to their homes. See, *Florida Bankers Association v. Florida Development Finance Corporation*, Case No. SC14-1603.

If the Solar Initiative is approved, however, the retail customers of FMEA's members will be greatly incentivized to develop local solar facilities. This is an untenable position for FMEA's members, as they would be deprived of the right or ability under law to mitigate an ever-increasing cost shift to non-solar customers. Should more homes and businesses become solar customers as a result of the Solar Initiative, cost-shifting between solar and non-solar customers – as explained in greater detail, infra – could become quite substantial, particularly if municipal utilities are not allowed to fully recoup the cost of accommodating these solar customers.

C. EFFECT OF SOLAR INITIATIVE ON MUNICIPALITIES AND ELECTRIC UTILITIES

The Solar Initiative would permit a “local solar electricity supplier” to use solar energy to generate up to two megawatts of electricity and to either consume it on the supplier’s property to sell it to the owners of “contiguous” property. The amendment prohibits electric utilities, including municipal electric utilities, from charging any fee or placing any service condition on the solar-generated electricity supplier’s customers that are not imposed on the utility’s other customers. The amendment permits laws designed to protect the public’s health, safety, and welfare so long as the laws don’t prohibit “the supply of solar-generated electricity by a local solar electricity supplier.”

(1) Effect on Franchise Agreements and Fees

Many Florida municipalities charge franchise fees to electric utilities to permit the electric utility to provide electric service within the municipality’s jurisdiction. For the Fiscal Year ending September 30, 2012 (the most recent information available), Florida’s municipalities derived approximately \$563 million in franchise fees.²

Franchise fees are negotiated fees that are charged to the electric utility to provide electric service within the municipality. See, *Florida Power Corporation v. City of Winter Park*, 887 So. 2d 1237 (Fla. 2004); *City of Plant City v. Mayo*,

² See, edr.state.fl.us/content/local-government/data/revenues.expenditures/munifiscal.cfm.

337 So. 2d 966 (Fla. 1976). The consideration from the municipality in exchange for the fees consists of three parts: (1) the privilege of using the municipality's rights-of-way, (2) the municipality's agreement not to compete with the electric utility, or to not allow others to compete with the electric utility, during the term of the franchise, and (3) a fee paid to the municipality to offset the costs incurred by the municipality as a result of the electric utility's disparate and exclusive use of public property. *City of Hialeah Gardens v. Dade Cnty.*, 348 So. 2d 1174 (Fla. 3rd DCA 1977); *Santa Rosa Cnty. v. Gulf Power Co.*, 635 So. 2d 96 (Fla. 1st DCA 1994), rev. denied, 645 So. 2d 452 (Fla. 1994); *Flores v. City of Miami*, 681 So. 2d 803 (Fla. 3rd DCA 1996). The electric utility collects the franchise fee from the customers who receive service within the municipality. See, Rule 15-6.100, F.A.C.

The prevailing practice in the electric industry is to account for solar-generated electricity through the use of a "net meter" installed by the electric utility. As electricity flows from the utility to the solar power generator, the meter records the amount of electricity flowing to the generator. When solar-generated electricity flows from the solar power generator to the electric utility, the meter literally "spins backwards." If the meter reads more than it did the last time it was read, this indicates that the solar generator has used more electricity than it generated, and the electric utility bills the owner the "net amount." For example,

assume that a customer's bill ordinarily would be \$200, but that customer generates \$125 in solar-generated electricity. In this case, the customer would only be billed \$75, the difference between the ordinary bill and the solar-generated electricity.

If the meter reads less than the last time it was read, that indicates that the solar energy generator generated more electricity than was used. In that case, the net amount is "banked" in the generator's account and is applied to the electric bill for the following month. As an example, if the customer's bill ordinarily would be \$125, and the same customer generates \$200 in solar energy, a \$75 credit will be banked to the customer's account. In either case, the generator results in lower revenues to the electric utility than otherwise as a result of the solar-generated electricity.

It is clear that the primary purpose of the Solar Initiative is to increase the amount of electricity generated by solar power. In doing so, the Solar Initiative undoubtedly will reduce the revenue streams of electric utilities. As a result, franchise fee revenues to municipalities will likewise be reduced, as franchise fees are based on a percentage of an electric utility's gross revenues. There will be impacts to the electric utility customer as a result. The electric rates will increase for those who cannot or do not generate solar energy, which would include seniors and middle-income citizens, and those who are not permitted to install solar

electric facilities, such as renters. Alternatively, municipalities will decrease services to accommodate the reductions in revenue occasioned by the Solar Initiative.

The Solar Initiative also will impair the consideration that the municipality provides to the electric utility in return for the franchise fee, as the municipality will no longer be able to prohibit others from providing electric services within the municipality. It therefore is likely that extant franchise agreements will no longer be valid due to decreased consideration, in that the franchise fee will no longer bear a reasonable nexus to the cost of using municipal rights-of-ways. See, *Alachua Cnty. v. State*, 737 So. 2d 1065 (Fla. 1999); see also, *Santa Rosa Cnty. v. Gulf Power Co.*, *supra*.

Further, franchise agreements often contain provisions that permit the electric utility to terminate the franchise agreement if any other person is permitted to provide electric services within the municipality, whether authorized by the municipality or through enactment of any law authorizing the same. Candidly, these provisions may be ameliorated somewhat by other provisions that may be contained in franchise agreement that give a municipality the right to purchase the electric utility's infrastructure upon termination of the agreement.

Notwithstanding, it is clear that the Solar Initiative will disrupt the current

contractual relationships between municipalities and the electric utilities, as well as the franchise fee revenue that municipalities derive from the relationships.

(2) Effect on Public Service Tax

Florida law permits municipalities to levy a tax on the purchase of electricity in an amount not to exceed ten percent of the payments received by the electric utility. The tax is paid by customers who receive service from an electric utility within a municipality. Section 166.231, Fla. Stat. For the fiscal year ending December 30, 2012 (the most recent information available), municipalities received approximately \$666 million from the public service tax on electricity.³ The Solar Initiative undoubtedly will cause a reduction in the public service tax revenues that municipalities currently derive from the public service tax on electricity.

The clear purpose of the Solar Initiative is to increase the production of solar-generated electricity. As stated above in “(1) Effect on Franchise Agreements and Fees,” the prevalent practice in the industry is to use “net metering” to account for solar-generated electricity. Those municipalities that levy the public service tax on electricity undoubtedly will experience a reduction in public service tax revenues as a result of the Solar Initiative.

³ See, edr.state.fl.us/content/local-government/data/revenues.expenditures/munifiscal.cfm.

In that case, it is likely that municipalities will be faced with two options. The municipality either will absorb the loss in revenues by decreasing municipal services, or recoup the lost revenues by increasing the public service tax – to the extent authorized by law – on all of its citizens. In the latter instance, the effect will be to shift a portion of the solar generator’s tax burden to those citizens who cannot install solar energy facilities, including those who are unable to afford the capital costs of the facilities, such as seniors and middle-income citizens, as well as those not allowed to install solar-electric facilities, such as renters.

(3) Effect on Non-Solar Generating Customers

The Solar Initiative seeks to limit or prevent

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.

“Contiguous property” is not defined in the proposed amendment, but clearly it includes individual parcels of real property that abut each other, large developments wherein real parcels abut one another, and shopping centers and shopping malls containing multiple businesses. Its impact therefore impacts a greater number of properties than may be inferred from its language.

The “regulatory and economic barriers” that are included within the terms of the Solar Initiative include “rate, service and territory regulations” that may be imposed by the state or local governments. Further, the “regulatory and economic