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March 1, 2019

The Honorable Charles Canady
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Canady and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is my responsibility as Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On January 30, 2019, this office received a letter from the Secretary of State (a copy of which is attached) advising that the initiative petition entitled "Right to Competitive Energy Market for Customers of Investor-Owned Utilities; Allowing Energy Choice" had met the registration, submission, and signature criteria set forth in section 15.21, Florida Statutes.

The full text of the proposed amendment, which would add a new section to Article X of the Florida Constitution, states:

(a) **POLICY DECLARATION.** It is the policy of the State of Florida that its wholesale and retail electricity markets be fully competitive so that electricity customers are afforded meaningful choices among a wide variety of competing electricity providers.

(b) **RIGHTS OF ELECTRICITY CUSTOMERS.** Effective upon the dates and subject to the conditions and exceptions set forth in subsections (c), (d), and (e), every person or entity that receives electricity service from an investor-owned electric utility (referred to in this section as "electricity customers") has the right to choose their electricity provider, including, but not limited to, selecting from multiple providers in competitive wholesale and retail

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electricity markets, or by producing electricity themselves or in association with others, and shall not be forced to purchase electricity from one provider. Except as specifically provided for below, nothing in this section shall be construed to limit the right of electricity customers to buy, sell, trade, or dispose of electricity.

(c) IMPLEMENTATION. By June 1, 2023, the Legislature shall adopt complete and comprehensive legislation to implement this section in a manner fully consistent with its broad purposes and stated terms, which shall take effect no later than June 1, 2025, and which shall:

(1) implement language that entitles electricity customers to purchase competitively priced electricity, including but not limited to provisions that are designed to (i) limit the activity of investor-owned electric utilities to the construction, operation, and repair of electrical transmission and distribution systems, (ii) promote competition in the generation and retail sale of electricity through various means, including the limitation of market power, (iii) protect against unwarranted service disconnections, unauthorized changes in electric service, and deceptive or unfair practices, (iv) prohibit any granting of either monopolies or exclusive franchises for the generation and sale of electricity, and (v) establish an independent market monitor to ensure the competitiveness of the wholesale and retail electric markets.

(2) Upon enactment of any law by the Legislature pursuant to this section, all statutes, regulations, or orders which conflict with this section shall be void.

(d) EXCEPTIONS. Nothing in this section shall be construed to affect the existing rights or duties of electric cooperatives, municipally-owned electric utilities, or their customers and owners in any way, except that electric cooperatives and municipally-owned electric utilities may freely participate in the competitive wholesale electricity market and may choose, at their discretion, to participate in the competitive retail electricity market. Nothing in this section shall be construed to invalidate this State's public policies on renewable energy, energy efficiency, and environmental protection, or to limit the Legislature's ability to impose such policies on participants in competitive electricity markets. Nothing in this section shall be construed to limit or expand the existing authority of this State or any of its political subdivisions to levy and collect taxes, assessments, charges, or fees related to electricity service.

(e) EXECUTION. If the Legislature does not adopt complete and comprehensive legislation to implement this section in a manner fully consistent with its broad purposes and stated terms by June 1, 2023, then any Florida citizen shall have standing to seek judicial relief to compel the Legislature to comply with its constitutional duty to enact such legislation under this section.

The ballot title for the proposed amendment is: "Right to Competitive Energy Market for Customers of Investor-Owned Utilities; Allowing Energy Choice." The ballot summary for the proposed amendment states:

Grants customers of investor-owned utilities the right to choose their electricity provider and to generate and sell electricity. Requires the Legislature to adopt laws providing for competitive wholesale and retail markets for electricity generation and supply, and consumer protections, by June 1, 2025, and repeals inconsistent statutes, regulations, and orders. Limits investor-owned utilities to construction, operation, and repair of electrical transmission and distribution systems. Municipal and cooperative utilities may opt into competitive markets.

Pursuant to Rule 9.510(b), Florida Rules of Appellate Procedure, this petition provides the following information:

1. The name and address of the sponsor of the initiative petition:

James A. Patton Jr., Chairperson
Citizens for Energy Choices
Post Office Box 1101
Alachua, Florida 32616

2. Name and address of the sponsor's attorney, if the sponsor is represented: Unknown.

3. A statement as to whether the sponsor has obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot: As of January 30, 2019, the sponsor has not obtained the requisite number of signatures to have the proposed amendment placed on the ballot. A total of 766,200 valid signatures are required for placement on the 2020 general election ballot.

4. The current status of the signature-collection process: As of January 30, 2019, Supervisors of Elections have certified a total of 79,132 valid petition signatures to the Division of Elections for

this initiative petition. This number represents more than 10% of the total number of valid signatures needed from electors statewide and in at least one-fourth of the congressional districts in order to have the initiative placed on the 2020 general election ballot.

5. The date of the election during which the sponsor is planning to submit the proposed amendment to the voters: Unknown. The earliest date of election that this proposed amendment can be placed on the ballot is November 3, 2020, provided the sponsor successfully obtains the requisite number of valid signatures by February 1, 2020.

6. The last possible date that the ballot for the target election can be printed in order to be ready for the election: Unknown.

7. A statement identifying the date by which the Financial Impact Statement will be filed, if the Financial Impact Statement is not filed concurrently with the request: The Secretary of State forwarded a letter to the Financial Impact Estimating Conference in the care of the coordinator on January 30, 2019.

8. The names and complete mailing addresses of all of the parties who are to be served: This information is unknown at this time. Section 16.061(2), Florida Statutes, requires that a copy of the petition be provided to the Secretary of State and to the principal officer of the sponsor:

Laurel M. Lee
Secretary of State
Florida Department of State
R.A. Gray Building
500 S. Bronough St.
Tallahassee, Florida 32399-0250

James A. Patton Jr., Chairperson
Citizens for Energy Choices
Post Office Box 1101
Alachua, Florida 32616

While not required by law, this office provides copies of the petition to:

The Honorable Ron DeSantis
Governor, State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

The Honorable Bill Galvano
President, The Florida Senate
Senate Office Building
404 S. Monroe St.
Tallahassee, FL 32399-1100

The Honorable Jose Oliva
Speaker, Florida House of Representatives
The Capital, Room 420
402 S. Monroe St.

In accordance with the provisions of Article IV, section 10, Florida Constitution, I respectfully request this Honorable Court's opinion as to whether the proposed amendment "Right to Competitive Energy Market for Customers of Investor-Owned Utilities; Allowing Energy Choice" complies with the single-subject requirement of Article XI, section 3, Florida Constitution, and whether the ballot title and summary of the amendment complies with the substantive and technical requirements in section 101.161(1), Florida Statutes.

Additionally, the Attorney General requests the opportunity to present argument in opposition to placement of this proposed amendment on the ballot. The proposed amendment's title and summary are not clear and unambiguous and do not comply with the requirements of section 101.161(1), Florida Statutes. Indeed, the title and summary should not be lawfully submitted to Florida voters because the title and summary fail to inform voters of the chief purpose of the proposed amendment and are affirmatively misleading.

While phrased both in its title and in its summary as a purportedly pro-consumer choice measure, the proposed amendment does the opposite. The undisclosed chief purpose of the proposed amendment is to eliminate the main providers of electricity service to Floridians, the investor-owned utilities.¹ It "hides the ball"² as to its "true meaning, and ramifications,"³ which this Court's precedent forbids.

The ballot summary fails to apprise voters that it requires the enactment of laws forcing all investor-owned utilities to divest their

¹ While this Court does not consider the policy of a proposed amendment, this change, which means the elimination of investor-owned utilities' electricity generation and sales, will have a profound effect on Florida and Florida's consumers. According to the 2018 Facts & Figures of the Florida Utility Industry published by the Florida Public Service Commission, investor-owned utilities provide electricity to 7,846,761 customers, of which 6,937,595 are residential customers.

<http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/May%202018.pdf>. The number of customers does not capture the

number of Floridians who live in a customer's household. As of the 2010 Census, there were 2.58 persons per household.

<https://www.census.gov/prod/cen2010/briefs/c2010br-14.pdf>. Assuming a similar number of persons per household, this amendment would affect upwards of 17 million Floridians.

² *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000).

³ *Advisory Opinion to the Attorney Gen. re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994) (quoting *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982)).

ownership of all facilities that generate electricity. The title indicates that it grants the “Right to Competitive Energy Market for Customers of Investor-Owned Utilities...” Similarly, the initial sentence of the ballot summary states that the proposed amendment “[g]rants customers of investor-owned utilities the right to choose their electricity provider...” The title and this statement gives the misleading impression that investor-owned utilities would still be able to sell electricity to customers, competing with additional, new providers. But the actual text of the amendment forbids such activity.

This misleading impression is not cured by the second-to-last sentence of the summary. Instead of making clear what the proposed amendment’s chief purpose is, the ballot title and summary uses ambiguous language to disclose what investor-owned utilities are limited to doing. The summary reads that investor-owned utilities are limited “to construction, operation, and repair of electrical transmission and distribution systems.” This unclear language fails to disclose that the proposed amendment would require enactment of laws prohibiting investor-owned utilities from owning, operating, or even leasing any facilities which generate electricity and would prevent investor-owned utilities from competing in a new, electric utility market.

Based on the totality of language, voters simply will not be able to understand the true meaning and ramifications of the proposed amendment, making the ballot language clearly and conclusively defective. Therefore, I oppose the proposed amendment being placed on the ballot in its current form and will present additional argument through brief at the appropriate time.

Respectfully submitted.



Ashley Moody
Attorney General



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

JENNIFER KENNEDY
Interim Secretary of State

January 30, 2019

The Honorable Ashley Moody
Attorney General
Department of Legal Affairs
PL-01 The Capitol
Tallahassee, Florida 32399-1050

Dear Attorney General Moody:

Section 15.21, Florida Statutes, provides that the Secretary of State shall submit an initiative petition to the Attorney General when a sponsoring political committee has met the registration, petition form submission and signature criteria set forth in that section.

The criteria in section 15.21, Florida Statutes, has been met for the initiative petition titled **Right to Competitive Energy Market for Customers of Investor-Owned Utilities; Allowing Energy Choice**, Serial Number **18-10**. Therefore, I am submitting the proposed constitutional amendment petition form, along with a status update for the initiative petition, and a chart that provides a statewide signature count and count by congressional districts.

Sincerely,

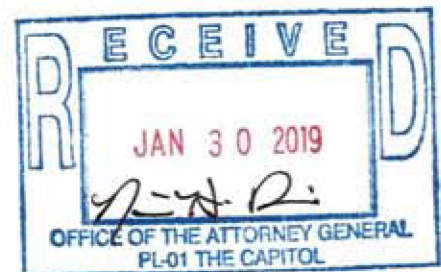
A handwritten signature in black ink that reads "Jennifer Kennedy".

Jennifer Kennedy
Interim Secretary of State

JK/am/ch

pc: James A. Patton Jr., Chairperson, Citizens For Energy Choices

Enclosures



12:14pm

Division of Elections

R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6200 • 850.245.6217 (Fax) • DOS.MyFlorida.com/elections



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: Right to Competitive Energy Market for Customers of Investor-Owned Utilities; Allowing Energy Choice.

BALLOT SUMMARY: Grants customers of investor-owned utilities the right to choose their electricity provider and to generate and sell electricity. Requires the Legislature to adopt laws providing for competitive wholesale and retail markets for electricity generation and supply, and consumer protections, by June 1, 2025, and repeals inconsistent statutes, regulations, and orders. Limits investor-owned utilities to construction, operation, and repair of electrical transmission and distribution systems. Municipal and cooperative utilities may opt into competitive markets.

ARTICLE AND SECTION BEING CREATED OR AMENDED: Article X, new section

FULL TEXT OF THE PROPOSED CONSTITUTIONAL AMENDMENT:

(a) POLICY DECLARATION. It is the policy of the State of Florida that its wholesale and retail electricity markets be fully competitive so that electricity customers are afforded meaningful choices among a wide variety of competing electricity providers.

(b) RIGHTS OF ELECTRICITY CUSTOMERS. Effective upon the dates and subject to the conditions and exceptions set forth in subsections (c), (d), and (e), every person or entity that receives electricity service from an investor-owned electric utility (referred to in this section as "electricity customers") has the right to choose their electricity provider, including, but not limited to, selecting from multiple providers in competitive wholesale and retail electricity markets, or by producing electricity themselves or in association with others, and shall not be forced to purchase electricity from one provider. Except as specifically provided for below, nothing in this section shall be construed to limit the right of electricity customers to buy, sell, trade, or dispose of electricity.

[TEXT CONTINUES ON OTHER SIDE]

[TEXT BEGINS ON OTHER SIDE]

(c) IMPLEMENTATION. By June 1, 2023, the Legislature shall adopt complete and comprehensive legislation to implement this section in a manner fully consistent with its broad purposes and stated terms, which shall take effect no later than June 1, 2025, and which shall:

(1) implement language that entitles electricity customers to purchase competitively priced electricity, including but not limited to provisions that are designed to (i) limit the activity of investor-owned electric utilities to the construction, operation, and repair of electrical transmission and distribution systems, (ii) promote competition in the generation and retail sale of electricity through various means, including the limitation of market power, (iii) protect against unwarranted service disconnections, unauthorized changes in electric service, and deceptive or unfair practices, (iv) prohibit any granting of either monopolies or exclusive franchises for the generation and sale of electricity, and (v) establish an independent market monitor to ensure the competitiveness of the wholesale and retail electric markets.

(2) Upon enactment of any law by the Legislature pursuant to this section, all statutes, regulations, or orders which conflict with this section shall be void.

(d) EXCEPTIONS. Nothing in this section shall be construed to affect the existing rights or duties of electric cooperatives, municipally-owned electric utilities, or their customers and owners in any way, except that electric cooperatives and municipally-owned electric utilities may freely participate in the competitive wholesale electricity market and may choose, at their discretion, to participate in the competitive retail electricity market. Nothing in this section shall be construed to invalidate this State's public policies on renewable energy, energy efficiency, and environmental protection, or to limit the Legislature's ability to impose such policies on participants in competitive electricity markets. Nothing in this section shall be construed to limit or expand the existing authority of this State or any of its political subdivisions to levy and collect taxes, assessments, charges, or fees related to electricity service.

(e) EXECUTION. If the Legislature does not adopt complete and comprehensive legislation to implement this section in a manner fully consistent with its broad purposes and stated terms by June 1, 2023, then any Florida citizen shall have standing to seek judicial relief to compel the Legislature to comply with its constitutional duty to enact such legislation under this section.

DATE OF SIGNATURE

SIGNATURE OF REGISTERED VOTER

Initiative petition sponsored by Citizens for Energy Choices, PO Box 1101, Alachua, FL 32616

If paid petition circulator is used:

Circulator's name _____

Circulator's address _____

For Official Use Only:

Serial Number: 18-10

Date Approved: 10/5/2018

Attachment for Initiative Petition

Right to Competitive Energy Market for Customers of Investor-Owned Utilities; Allowing Energy Choice Serial Number 18-10

- 1. Name and address of the sponsor of the initiative petition:**
James A. Patton Jr., Chairperson
Citizens for Energy Choices
Post Office Box 1101
Alachua, Florida 32616
- 2. Name and address of the sponsor's attorney, if the sponsor is represented:**
Unknown
- 3. A statement as to whether the sponsor has obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot:** As of January 30, 2019, the sponsor has not obtained the requisite number of signatures to have the proposed amendment placed on the ballot. A total of 766,200 valid signatures are required for placement on the 2020 general election ballot.
- 4. If the sponsor has not obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot, the current status of the signature-collection process:** As of January 30, 2019, Supervisors of Elections have certified a total of 79,132 valid petition signatures to the Division of Elections for this initiative petition. This number represents more than 10% of the total number of valid signatures needed from electors statewide and in at least one-fourth of the congressional districts in order to have the initiative placed on the 2020 general election ballot.
- 5. The date of the election during which the sponsor is planning to submit the proposed amendment to the voters:** Unknown. The earliest date of election that this proposed amendment can be placed on the ballot is November 3, 2020, provided the sponsor successfully obtains the requisite number of valid signatures by February 1, 2020.
- 6. The last possible date that the ballot for the target election can be printed in order to be ready for the election:** Unknown
- 7. A statement identifying the date by which the Financial Impact Statement will be filed, if the Financial Impact Statement is not filed concurrently with the request:** The Secretary of State forwarded a letter to the Financial Impact Estimating Conference in the care of the coordinator on January 30, 2019.
- 8. The names and complete mailing addresses of all of the parties who are to be served:** This information is unknown at this time.

FLORIDA DEPARTMENT OF STATE
DIVISION OF ELECTIONS

SUMMARY OF PETITION SIGNATURES

Political Committee: **Citizens for Energy Choices**

Amendment Title: **Right to Competitive Energy Market for Customers of Investor-Owned Utilities;**

Congressional District	Voting Electors in 2016 Presidential Election	For Review 10% of 8% Required By Section 15.21 Florida Statutes	For Ballot 8% Required By Article XI, Section 3 Florida Constitution	Signatures Certified	
FIRST	386,504	3,093	30,921	177	
SECOND	360,098	2,881	28,808	2,812	
THIRD	356,715	2,854	28,538	482	
FOURTH	428,190	3,426	34,256	1,071	
FIFTH	316,115	2,529	25,290	6,045	***
SIXTH	385,918	3,088	30,874	560	
SEVENTH	370,466	2,964	29,638	2,493	
EIGHTH	409,569	3,277	32,766	3,075	
NINTH	362,593	2,901	29,008	3,374	***
TENTH	320,548	2,565	25,644	1,559	
ELEVENTH	417,253	3,339	33,381	1,074	
TWELFTH	386,775	3,095	30,942	7,898	***
THIRTEENTH	367,818	2,943	29,426	16,020	***
FOURTEENTH	336,289	2,691	26,904	10,039	***
FIFTEENTH	340,331	2,723	27,227	8,132	***
SIXTEENTH	403,805	3,231	32,305	3,922	***
SEVENTEENTH	360,061	2,881	28,805	1,366	
EIGHTEENTH	388,772	3,111	31,102	496	
NINETEENTH	389,415	3,116	31,154	982	
TWENTIETH	291,984	2,336	23,359	896	
TWENTY-FIRST	355,842	2,847	28,468	841	
TWENTY-SECOND	361,305	2,891	28,905	962	
TWENTY-THIRD	342,784	2,743	27,423	598	
TWENTY-FOURTH	269,446	2,156	21,556	1,589	
TWENTY-FIFTH	269,983	2,160	21,599	431	
TWENTY-SIXTH	294,742	2,358	23,580	1,325	
TWENTY-SEVENTH	304,012	2,433	24,321	913	
TOTAL:	9,577,333	76,632	766,200	79,132	

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing brief has been furnished
by U.S. Mail on this 1st day of March, 2019, to the following:

Laurel M. Lee
Secretary of State
Florida Department of State
R.A. Gray Building
500 S. Bronough St.
Tallahassee, Florida 32399-0250

James A. Patton Jr., Chairperson
Citizens for Energy Choices
Post Office Box 1101
Alachua, Florida 32616

The Honorable Ron DeSantis
Governor, State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

The Honorable Bill Galvano
President, The Florida Senate
Senate Office Building
404 S. Monroe St.
Tallahassee, FL 32399-1100

The Honorable Jose Oliva
Speaker, Florida House of
Representatives
The Capital, Room 420
402 S. Monroe St.
Tallahassee, FL 32399-1300

/s/ Christopher J. Baum

Christopher J. Baum (FBN 1007882)

DEPUTY SOLICITOR GENERAL

Office of the Attorney General

The Capitol, PL-01

Tallahassee, Florida 32399-1050

christopher.baum@myfloridalegal.com