

THE BOND BUYER

Proposal to deregulate Florida's electricity market gains steam and opposition

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A constitutional amendment that would deregulate Florida's electricity market is gaining steam among voters and opposition from numerous organizations, including municipal power agencies across the state.

The ballot initiative, proposed by Citizens for Energy Choices based in Alachua, Florida, is called the "Right to Competitive Energy Market for Customers of Investor-Owned Utilities; Allowing Energy Choice."

Why Florida municipal utilities oppose deregulation

Electric utility contracts will be impaired

Outstanding bonds will be affected

Home rule authority will be eliminated

Local governments face reduced revenues

Proposal improperly covers more than one subject

The ballot summary is misleading

Source: Florida Supreme Court filings

To date, 386,312 registered voters have signed petitions supporting the placement of the amendment on the November 2020 ballot. A total of 766,200 verified signatures will be needed for the proposal to go before voters.

Whether it advances that far also depends on the Florida Supreme Court, which must determine if the ballot language complies with state law. Justices will hear oral arguments in the case Aug. 28.

If the court allows the proposal to be placed on the ballot, it must be approved by at least 60% of the voters to take effect.

Deregulation isn't supported by Florida's largest public power agencies and municipal utilities, including JEA in Jacksonville, the Orlando Utilities Commission, Florida Municipal Electric Association, and Florida Municipal Power Agency.

The initiative would "fundamentally alter the contractual relationships" that the public power utilities have relied on for decades and destabilize business arrangements serving millions of Floridians, according a Supreme Court brief filed by OUC, FMEA and FMFA.

"The contractual framework for power supply, transmission service, and generating plant joint ownership is substantially impacted, because all of those existing contractual relationships with [investor-owned utilities] would necessarily be altered" by the amendment, the public power agencies contend. "When the initiative would remove the existing IOUs as counterparties to public power parties on those agreements, there is no doubt that those existing contractual arrangements are impaired."

Bonds issued by utilities to fund joint projects with IOUs would also be affected because of altered contracts, the brief said, adding that impairing contracts with bondholders would violate Florida's constitution.

According to a summary of the ballot proposal, customers of investor-owned utilities would have the right to choose their electricity provider and to generate and sell electricity. The Legislature would be required to "adopt laws providing for competitive wholesale and retail markets for electricity generation and supply" by June 1, 2025. The system would have to be fully implemented by June 1, 2025.

Municipal and cooperative utilities can voluntarily opt into the competitive market.

Currently, Florida and 32 other states have regulated energy markets, while 17 states and the District of Columbia have deregulated their retail electricity markets since the early 1990s.

Citizens for Energy Choices contends that deregulation will lower electricity bills, create new permanent jobs and increase renewable energy options.

“With choice, Florida can save more than \$5 billion every year,” the group says [on its website](#). “This economic advantage would help keep Florida a leader among the country’s most populous states.”

The organization doesn’t say how it calculated the savings or provide any estimates of the jobs that would be created.

Deregulation could make it difficult for some municipal utilities to pay bills, according to Dan Aschenbach of the energy consulting firm AGVP Advisory.

“The Florida ballot question would cover municipal electric utilities, some who are not positioned now for competitive choice, meaning customers could shop elsewhere for their electricity which could equal less local revenues, including for paying debt,” he said.

Another concern, he added, would be the “stranded costs particularly if customers leave and there are fixed costs to be paid.”

Aschenbach said Texas is an example of one state where customer choice was approved and “it seems to be working partly due to the significant strengthening of the transmission network and a robust wholesale energy market” overseen by the Electric Reliability Council of Texas.

ERCOT manages the flow of electric power to more than 25 million customers in the Lone Star State, representing about 90% of the electric load on the grid.

“In most states, even in Texas, municipal electric utilities could opt out and most do,” Aschenbach said.

In 1999, Texas Gov. George W. Bush signed Senate Bill 7, the state’s retail electric deregulation law. After a transition period, the deregulated market opened in January 2002.

In the 20 years since, the market has been bifurcated because the grid operated by ERCOT doesn’t match the boundaries of the state, and utilities outside ERCOT’s footprint remain regulated, according to R.A. “Jake” Dyer, a policy analyst for the Texas Coalition for Affordable Power.

The coalition is a voluntary organization of about 160 cities and other political subdivisions that purchase electricity in the deregulated market for their own use.

Dyer said he’s aware of Florida’s deregulation proposal but that he hasn’t been consulted about it. According to court filings, the Florida energy choice amendment is based on the competitive electricity market in Texas.

About 85% of Texas' municipal utilities and electric cooperatives are located within ERCOT's territory, although Dyer said only about two public utilities participate.

The record on deregulation is somewhat mixed in terms of residential consumer prices since the state isn't completely deregulated.

"We have been deregulated since 1999," Dyer said. "In Texas, what that means is residential customers paid more for electricity in the deregulated market."

Over the last decade, he added, the price gap between customers in and outside the deregulated market has "narrowed substantially."

In the first six years of deregulation from 2002 through 2007, prices in areas that remained exempt from deregulation increased by 29.1%, while prices in deregulated areas increased by 69.7%, according to the Coalition's 2019 [Snapshot Report](#) on electricity prices based on data from the U.S. Energy Information Administration.

From 2008 to 2017, average residential prices in regulated areas increased by 0.4%, while prices in deregulated areas decreased by 23.7%.

By 2017, the last year data exists to conduct the benchmark analyses, the difference in deregulated and non-deregulated residential prices narrowed to 1.1%, its smallest point on record, the report said.

Even though Texas' energy deregulation was accomplished through legislation as opposed to a constitutional amendment, Dyer said it would be an "extremely difficult undertaking" to unwind it.

"There is no hue and cry to re-regulate," he said. "No one is pushing for this."

Under Florida's current market, the retail price of electricity for residential, commercial, and industrial customers is below the national average, according to [a Florida TaxWatch analysis](#) of the proposed amendment.

The watchdog group found that deregulation would have "significant and measurable impacts" on state and local tax revenues.

"Changes in the price of electricity would impact revenues, since so much of the billions in taxes and fees paid by IOUs are based on the amount consumers pay or on the gross revenues of utilities, but the inconsistent outcomes across other states that have initiated deregulation and the probable allowance for recovering stranded costs further cloud the future," said the group's analysis.

Providing electricity to customers and businesses raises \$4.4 billion annually in taxes and fees for Florida governments, not including \$2.8 billion from the sales of electricity by municipal-owned utilities, the group's analysis found. Investor-owned utilities pay about \$3.6 billion annually in franchise fees and public services, property, income, gross receipts, and sales and use taxes.

"This analysis uses the best available evidence to estimate that this amendment has the potential to cause a loss of state and local revenue ranging from \$426 million to \$1.368 billion in 2026, the expected first full year of implementation," TaxWatch said.



No one in Texas is pushing for re-regulation of the energy market, said R.A. "Jake" Dyer, a policy analyst for the Texas Coalition for Affordable Power.

Florida's energy choice amendment is based on the competitive electricity market in Texas, according to Supreme Court briefs filed by Infinite Energy Inc., NRG Energy Inc., and Vistra Energy Corp., which identify themselves as the "Energy Suppliers."

The Energy Suppliers said they have served customers in the competitive electricity market in Texas for nearly 20 years, and in other locations across the U.S.

“Like the investor-owned utilities, the Energy Suppliers have a financial stake in the outcome of this proceeding and in the election that may follow it, but the nature of that stake is very different,” their brief said. “The Energy Suppliers want to compete to supply electricity to Floridians.”

All of the state’s IOUs oppose the measure: Florida Power & Light Co. and its affiliate Gulf Power Co., Duke Energy Florida and the Tampa Electric Co.

According to Florida Attorney General Ashley Moody, the proposed amendment should not move forward because the ballot title and summary are legally deficient and “fail to sufficiently inform the public of the proposed amendment’s true purpose and would affirmatively mislead the public as to the proposed amendment’s true effect.”

Others opposed to placing the amendment on the ballot include the Florida Senate and House of Representatives, Florida League of Cities, Florida Association of Counties, Florida Sheriffs Association, Florida Police Benevolent Association and the Florida Chamber of Commerce.

The measure is also opposed by the Florida Economic Development Council, Associated Industries of Florida, Florida Health Care Association, Florida Hospital Association, Floridians for Affordable Reliable Energy, Urban League of Palm Beach County, Jacksonville Urban League, and the Central Florida Urban League.

The National Audubon Society and the Nature Conservancy’s Florida chapters also oppose the initiative.

“Without explanation to voters,” they said in a joint brief, “the proposed amendment ... could derail and delay planned and potential energy conservation efforts as well as the increased use and deployment of renewable energy.”

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