



THROUGHOUT THE DECADES: FMEA'S GREATEST WINS ON BEHALF OF FLORIDA PUBLIC POWER

by John Egan

On FMEA's 80th anniversary, three individuals who have served in longtime legislative and legal counsel roles look back at the organization's greatest victories.

Effectively lobbying the Florida Legislature demands a rare set of skills and traits: a good reputation, mastery of the details and being on the right side of the issues. Sound easy? It's not, especially when you're working on complicated, confusing and sometimes controversial issues. But if you're well prepared and focused on serving the public, then money plays second fiddle to other factors, according to three individuals who have served in longtime FMEA general and legislative counsel roles.

"When it comes to lobbying, the investor-owned utilities have deeper pockets, but we've still been very successful because public policy — not profits — is what we're all about," said Bill Peebles, who served as legislative counsel to FMEA from 1985 through 2020, and who recently received FMEA's prestigious Lifetime Achievement Award.

"Public power truly is about the public, and many legislators go into their line of work to implement good public policy." FMEA seeks to lobby in a way that is informed, strategic and takes advantage of the sound public policy arguments that support the value of public power.

"Since public power doesn't have a bottomless wallet, we had to be thoughtful and creative with the assets we did have, which included public power leaders who lived in a legislator's district." FMEA's members are the organization's most valuable assets.

Over the years, Peebles, his colleague Fred Bryant, and FMEA's current General and Regulatory Counsel Jody Finklea, have battled — and beaten — investor-owned utilities like Florida Power & Light and Gulf Power, the electric cooperatives, and the telephone and cable industries in committee rooms and hallways in the state Legislature and the courts.

Those wins sometimes come in the form of defeating bad ideas, and sometimes they come in the form of hard-fought compromises. And those compromises cannot be achieved without adversaries knowing that FMEA will stand up for the interests that it represents.

Playing David to these industry Goliaths, Bryant said, "When you meet a bully on the playground, you don't have to beat him. Just pop him in the nose and most times he'll go away."

Bryant served as general counsel to FMEA from 1973 to 2019.

In addition to the need to be on the right side of public policy issues, success comes from a keen sense of your opponent's weaknesses.

Peebles said, "Nobody likes to be called out in public in a bad light, particularly when the TV cameras were rolling or in a committee hearing room. But in one legislative battle with the phone and

cable companies, we highlighted their monopolistic ways when they tried to pass legislation prohibiting cities from offering broadband. It was us versus two entire industries. The first time we stopped them in their tracks. The second time we fought to a draw in the state Senate."

After FMEA negotiated a compromise with the phone and cable companies on their third go-around, Peebles recalled speaking with a lawyer from one of the phone companies who said, "I never thought the phone industry would be defeated by a bunch of cities in Florida."

Going into that fight, Peebles didn't think it was a winner either, but he simply out-worked the other side.

"I always aspired to be the most informed lobbyist in the room," he said. "Often, it wasn't that difficult."

Issues That Refuse to Die

You can think of them as perennial flowers or zombies that refuse to die. Some issues come back again and again, and may come back yet again in the future. Electric utility industry restructuring is one of those issues.

Peebles said industry restructuring, aka "deregulation," was probably the most significant issue he worked on in his 35 years of lobbying. "Every time someone comes up with what might be a good

idea, it all goes to hell," he said, citing the Enron scandal, which turned off the lights in California in 2000-01, as well as Winter Storm Uri in February 2021, which caused the Texas energy and water systems to seize up, killing an estimated 200 Texans and leading to about \$200 billion in property damage in the Lone Star State.

"I don't know that any state that restructured its electric market did it exactly right, but someone will somewhere. Restructuring will not go away. It's all a function of technology and economics."

Florida didn't want to be seen as behind the times when it came to potentially transformative change, so the state took several looks at restructuring, most recently in 2019.

Finklea picked up the story: "There was a citizen's petition to amend the state constitution to allow each customer to choose their provider of electric generation. The amendment also would have prohibited cities from owning electric generation."

The measure was sponsored by a company that has significant interests in the natural gas industry and interstate pipelines that serve the state. About three-quarters of Florida's electricity is generated from natural gas. Passage of that initiative would have patterned the Florida electric market after Texas', Finklea said, but without keeping the obligation to serve all customers or setting up a "provider of last resort" in case rural or exurban customers found themselves without electricity. Electric generation, and by extension the use of natural gas in the state, would have been far more open to manipulation that could hurt consumers.

"Fortunately, we defeated this flawed policy at the state Supreme Court," Finklea said.

Below is a combined list of FMEA's other biggest successes, according to Peebles, Bryant and Finklea:

2010s

- FMEA provided information to leaders in the community and City Council of Jacksonville that helped scuttle the effort to privatize JEA.

- FMEA twice defeated attempts to deregulate Florida's electricity markets through the Florida Legislature's Constitution Revision Commission and via citizen petition at the Florida Supreme Court.

2000s

- FMEA challenged the state's interpretation of a sales tax law that would have eliminated the ability of cities to purchase transmission and distribution equipment without paying sales tax. The matter went to the state Supreme Court and FMEA won.

1990s

- Efforts by the phone and cable industries to limit the ability of Florida cities to offer broadband services were defeated. This issue was discussed and defeated again in the 2000s and 2010s.

1980s

- FMEA helped exempt all but the largest locally owned utilities from the jurisdiction of the Florida Public Service Commission (FPSC) when it came to energy conservation.

1970s

- FMEA helped defeat proposed legislation that would have made municipal utilities jurisdictional at the FPSC. This victory allowed locally owned utilities to set their own rates, but "rate structures" had to be approved by the FPSC.
- A bill that would have frozen municipal service territories was defeated in the state Legislature. This issue would come back three times in the 1980s and 1990s, and FMEA won all three times.
- The Florida Legislature passed the law that allowed FMEA's members to create the Florida Municipal Power Agency (FMPA), an organizational offshoot of Florida Municipal Utilities Agency (now FMEA), as a statewide joint-action agency that enabled smaller members to own electric generation.

1960s

- This was the decade when the state Legislature tackled the "home rule" issue. Many powerful lawmakers in Tallahassee

didn't believe cities should be in the electricity business. Although FMEA was successful at defeating this measure, it came back several times in the ensuing decades, and the Legislature has limited home rule on several occasions.

Looking back over his 46 years as a lawyer and lobbyist, Bryant said, "Many ideas get pitched to legislators. Some ideas are good, some are bad. We're engaged in a constant battle to keep legislators and their staffs informed so that bad ideas cannot take root, and, if necessary, defeating those bad ideas that make it through FMEA's defenses. Sometimes we were able to defeat bad ideas at the legislature, and sometimes we had to go to court to defeat them."

But with a twinkle in his eye, Bryant said lobbying in Tallahassee "used to be more entertaining — and riskier — before there were computers and livestreams." He recalled instances where a sentence or two was added to a bill in the final hours before passage and it was weeks before anyone knew what happened. That worked for and against FMEA over the years.

Looking forward, Finklea predicted the next iteration of "deregulation" will center on rooftop solar power, which will raise numerous issues at the distribution level.

"Customer expectations around energy are increasing and becoming more sophisticated," he said. "As rooftop solar becomes more popular and distributed generation more prolific, we're going to run into situations where there is no precedent and new public policy will be needed. FMEA will need to be even more engaged with Florida's public power utilities to make sure that wise choices are made."

That's why FMEA needs to remain proactive and engaged, Finklea urged: "We can't wait until a problem materializes. People who are served by locally owned electric utilities feel a tie to them. We continually work to preserve and protect that." ■