

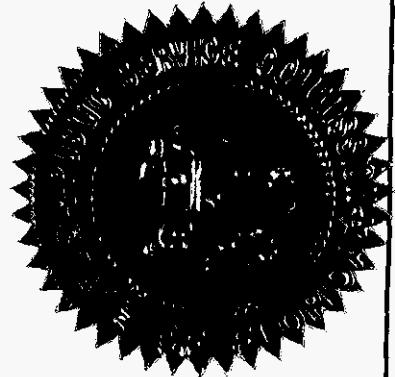
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

PETITION FOR APPROVAL OF
SOLAR ENERGY POWER PURCHASE
AGREEMENT BETWEEN TAMPA
ELECTRIC COMPANY AND
ENERGY 5.0, LLC.

DOCKET NO. 090109-EI



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT

DATE: Tuesday, October 27, 2009

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

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P R O C E E D I N G S

1
2 **CHAIRMAN CARTER:** We are back on the record.
3 And when we last left we were getting ready for Item 3.
4 Staff, you're recognized.

5 **MR. GRAVES:** Good afternoon, Commissioners.
6 Robert Graves from Commission staff.

7 Item 3 is Tampa Electric Company's petition for
8 approval of a negotiated renewable energy contract with
9 Energy 5.0. The contract is based on TECO purchasing the
10 entire net electrical output of Energy 5.0's Florida
11 Solar I facility for a period of 25 years beginning on
12 January 1, 2011.

13 Energy 5.0 will sell as-available energy
14 produced by the facility to TECO at a price per megawatt
15 hour that is fixed for the term of the contract. In
16 addition to the purchase of energy, the contract
17 specifies that TECO will receive all environmental
18 attributes and renewable energy credits associated with
19 the renewable energy that is sold to TECO.

20 Staff's recommendation is that TECO be
21 authorized to recover from its ratepayers an amount equal
22 to its avoided energy costs. Any costs in excess of this
23 amount should be borne by TECO's stockholders. Staff's
24 recommendation would have no impact on customers' bills.
25 If TECO is granted full cost-recovery of the contract,

1 customers would see a monthly bill impact of roughly 50
2 cents in 2011, and that would be an increase.

3 Chairman, representatives of the party and a
4 member of the public are present to speak.

5 **CHAIRMAN CARTER:** Okay. Let's do this. Let's
6 do this. Let's start with the company first, and then we
7 will hear from the public, and then we will hear from
8 intervenors. You're an intervenor, Mr. Wright, is that
9 right?

10 **MR. WRIGHT:** We are the co-party. I represent
11 Energy 5.0. We are the supplier to Tampa Electric.

12 **CHAIRMAN CARTER:** Let's do this. Mr. Klutho is
13 here. Let's hear from him first.

14 Mr. Klutho, good morning.

15 **MR. WRIGHT:** Thank you, Chairman.

16 **CHAIRMAN CARTER:** Or good afternoon.

17 **MR. KLUTHO:** Shouldn't I be after?

18 **CHAIRMAN CARTER:** After what? Do you want to
19 be heard on the issue?

20 **MR. KLUTHO:** I would rather be heard last, if
21 that's okay.

22 **CHAIRMAN CARTER:** Okay. Let's hear from the
23 company and then from the co-petitioner.

24 **MR. BEASLEY:** Thank you.

25 Mr. Chairman and Commissioners, I'm James D.

1 Beasley appearing with Lee L. Willis of the law firm of
2 Ausley and McMullen on behalf of Tampa Electric Company.
3 With me today from Tampa Electric are Joann Wehle, who is
4 the Director of Wholesale Marketing and Fuels, and Mr.
5 Carlos Aldazabal, who is the Director of Regulatory
6 Affairs.

7 Commissioners, for many years we have all heard
8 the call globally, nationally, state, and locally that
9 developing and rigorously pursuing renewable energy
10 resources is for the good of all of us, and to that end,
11 Tampa Electric Company set about in 2007 to issue,
12 publish, and widely disseminate a request for proposals
13 seeking all of the renewable energy proposals that we
14 could get from the marketplace.

15 We got responses to those and fully evaluated
16 them, and in particular the solar proposals. And the
17 company evaluated those proposals and determined that
18 from the solar proposals, the Energy 5.0 proposal is the
19 best proposal presented to us from a cost standpoint from
20 the qualifications of the provider for our customers. So
21 for approximately a year thereafter we negotiated with
22 Energy 5.0 and came up with the contract that is before
23 you for 25 megawatts of solar PV energy from this
24 provider.

25 Now, we believe that this agreement represents

1 the lowest cost alternative developed by Tampa Electric
2 from a competitive market solicitation for solar PV in
3 our service territory. Consequently, it's the best solar
4 alternative that we can present to you on behalf of Tampa
5 Electric Company having looked at the various
6 alternatives that were presented.

7 While our petition acknowledges that the cost
8 of this energy would be greater than that generated from
9 conventional energy generation sources, it is solar power
10 and we believe that everyone in government favors the
11 development of solar power to the extent that we can do
12 that. So consequently, we have this contract before you.
13 We urge you to approve it for cost-recovery purposes for
14 us so that we can implement it, and we have Mr. Wright on
15 behalf of Energy 5.0 here with his representatives to
16 answer questions you may have regarding the service that
17 they will provide to our customers.

18 **CHAIRMAN CARTER:** Thank you.

19 Mr. Wright, you're recognized.

20 **MR. WRIGHT:** Thank you, Mr. Chairman, and good
21 morning. As before, I'm Schef Wright, and on this matter
22 I have the privilege of representing Energy 5.0, LLC, a
23 Florida LLC who will be the supplier of solar power to
24 Tampa Electric pursuant to the power purchase agreement
25 that's before you today.

1 Also here with me today on behalf of the
2 company are Mr. Bud Cherry, Mr. Vince Zodiaco, and
3 Mr. Zach Cherry, who are respectively the Chairman and
4 CEO, the Chief Operating Officer, and the Vice-President
5 for Finance and Development of Energy 5.0.

6 In summary, we appreciate that part of the
7 staff's recommendation that recommends approval of the
8 power purchase agreement for partial cost-recovery.
9 However, we disagree with the staff's attempt to parse
10 the energy payments into two components, and a part for
11 as-available energy and into a part for RECs, or the rest
12 of the environmental attributes.

13 Approval of the power purchase agreement and
14 the -- I do have a few minutes of comments. I will be as
15 brief as I can. In summary, approval of the power
16 purchase agreement and of the project itself are in the
17 public interest and we would urge you to exercise your
18 authority and your jurisdiction to approve the power
19 purchase agreement and the petition as requested by Tampa
20 Electric.

21 To be very clear, it is our unequivocal
22 understanding that if you do not approve the petition and
23 the power purchase agreement for full cost-recovery as
24 prayed by Tampa Electric, this project will not go
25 forward. The contract will not go forward.

1 Now, as Mr. Beasley said, Tampa Electric
2 followed sound competitive procurement procedures to get
3 us to where we are this morning. They conducted a
4 competitive RFQ/RFP process and got a number of
5 proposals. They selected Energy 5.0's proposal as the
6 best solar proposal of the lot. We negotiated with them
7 for well over a year and these actions have now yielded
8 what I would call the proof in the pudding. Tampa
9 Electric has negotiated very competitive pricing under
10 this power purchase agreement versus the known pricing
11 for other solar photovoltaic projects pricing and costs
12 for other known solar photovoltaic projects and contracts
13 in Florida and elsewhere throughout the United States.

14 Now, the staff referred to this as as-available
15 energy. I would characterize it as Tampa Electric
16 getting all of the energy and all of the output. It is
17 on a nonfirm basis. We elected to have a single price,
18 which is confidential, but it is a single price. But it
19 includes all of the energy, it includes the capacity to
20 the extent that exists, which is not trivial at the time
21 of summer peak on a hot, sunny summer afternoon, and it
22 includes all of the environmental attributes, whatever
23 they are, carbon credits, carbon tax credits, carbon
24 allowances, renewable energy credits, RPS or RES credits.
25 Tampa Electric gets all the output and all the

1 environmental attributes.

2 You have basically two key issues and one that
3 I think is somewhat less important that I will touch on
4 briefly. First, can the Commission approve the solar
5 power purchase agreement between Tampa Electric and
6 Energy 5.0 for full cost-recovery? We believe the answer
7 to that question is unequivocally yes. The Commission
8 has the authority and jurisdiction to approve this power
9 purchase agreement just as it has for other cogeneration
10 and renewable energy contracts. To really cut to it, you
11 have the authority. You are, in fact, directed to
12 regulate the public interest. You are directed by
13 366.91, 366.92, and 366.81 to promote the use of solar
14 energy, to promote the use of renewable energy. Under
15 your general authority in several sections, you are
16 required to have rates that are fair, just, and
17 reasonable, and in the public interest.

18 We would submit to you that to the extent that
19 there is a small amount, you know, a few cents a month,
20 anywhere from two to 40 cents a month over the life of
21 the contract, to the extent that there is a small amount
22 above the utility's conventionally calculated avoided
23 cost, which by the way doesn't pay any attention to
24 carbon costs or RPS mandate compliance costs, you have
25 the authority to approve these in the public interest.

1 Additionally, two separate sections of your
2 Statute 366.01 direct the Commission to regulate public
3 utilities in the public interest and to broadly construe
4 your statute in the public interest, and 366.81, which is
5 the first real business part of the Florida Energy
6 Efficiency and Conservation Act likewise states that it
7 is to be liberally construed for the purposes of
8 encouraging solar energy, renewable energy, solving the
9 state's energy problems, and so on.

10 Next, should the Commission approve the solar
11 power purchase agreement between Tampa Electric and
12 Energy 5.0? Again, the answer is yes. Approving this
13 solar PPA is in the public interest and will promote and
14 serve the specific public interest goals and criteria set
15 forth in Chapter Section 366.91 and 92. It will promote
16 fuel diversity; it will reduce Florida's dependency on
17 natural gas as a generating fuel; it will reduce
18 Florida's exposure to fuel price volatility; it will
19 improve environmental conditions by reducing emissions
20 from conventional electric generation; and it will
21 encourage investment in Florida.

22 There has been an issue discussed and it is
23 being litigated in connection with other matters
24 elsewhere in the United States, but the question is does
25 the Public Utility Regulatory Policies Act of 1978, or

1 PURPA, or the PURPA rules in any way bar Tampa Electric
2 Company from entering into a contract that has pricing
3 greater than conventionally calculated avoided cost, and
4 does it bar the Commission from approving it. The answer
5 to that is also no. Section 292.301(b) of the Federal
6 Energy Regulatory Commission's PURPA rules clearing
7 states that nothing in the rules prohibits a utility and
8 a supplier -- even assuming that the supplier was a
9 qualifying facility, and I will come back to that briefly
10 in a moment -- from negotiating payments pricing greater
11 than the utility's conventionally calculated avoided
12 cost.

13 The important distinction with respect to the
14 PURPA rules, if you assume arguendo that this is a
15 qualifying facility, is that this is a voluntary
16 negotiated power purchase agreement and, therefore, it is
17 completely okay under the PURPA rules. The distinction
18 is that it is not a state-mandated standard offer type
19 contract mandating payments above avoided cost. The
20 first rulings on that are mixed, but they are really not
21 relevant here.

22 Additionally, this power purchase agreement
23 does not require Energy 5.0 to be a qualifying facility.
24 So if there was any concern about that technicality, we
25 could register as an exempt wholesale generator, in which

1 case the hypothetical PURPA bar would not apply in any
2 event.

3 I have a few concluding comments. I think I
4 have explained -- and I will answer all the questions you
5 want to ask me -- I explained that you have the authority
6 to approve this power purchase agreement, and that it's
7 in the public interest, and that it specifically
8 addresses and serves the public interest criteria
9 articulated by the Legislature in its prorenewable
10 statutes.

11 I want to say a few more things. Tampa
12 Electric Company deserves tremendous credit for its
13 vision in initiating the competitive procurement process
14 that led to their selection of this power purchase
15 agreement. We're fortunate. We made a really good
16 offer. This is the American economy, they chose our
17 project. Tampa Electric got out in front. They
18 recognized the public interest benefits of renewable
19 energy, of Florida-based solar power in particular, and
20 they anticipate what pretty much all of us anticipate,
21 and that is that we are looking at future carbon
22 regulation and future renewable energy mandates, probably
23 near term future in the opinion of most observers.

24 Tampa Electric also deserves tremendous credit
25 for sticking with the negotiation process with us for

1 well over a year. I think it was over a year and a half.
2 Sixteen months, I'm advised by Mr. Cherry.

3 I would submit to you, Commissioners, that your
4 decision today on this solar power purchase agreement
5 requires great vision, as well. The vision that the
6 Florida Legislature has articulated for Florida's energy
7 future is a future where Floridians obtain increasing
8 amounts of our energy resources -- of our energy needs
9 from renewable Florida-based energy resources. This will
10 provide the public interest benefits: Fuel diversity,
11 reduced dependency on natural gas and other fossil fuels
12 for generation, reduced exposure to fuel price
13 volatility, and enhanced environmental quality.

14 The business as usual vision is not so bright.
15 As we sit here today, we import 97 percent of all of our
16 electric generating fuel that's used to make electricity
17 in the state of Florida from outside of Florida. Some is
18 from across the Atlantic, some is from across the
19 Pacific, some is from across the Gulf, some is from other
20 sources in the United States, but we import 97 percent,
21 and solar represents only a tiny fraction of the pretty
22 small 3 percent share that renewable energy enjoys today.

23 You have the opportunity this morning to adopt
24 a new vision and chart a better course for Florida's
25 energy future by approving this PPA, to recognize and

1 reward Tampa Electric's vision in pursuing solar today
2 for the long-term benefits that it will provide to Tampa
3 Electric, Tampa Electric's customers, and Florida as a
4 whole.

5 You have the opportunity to send a clear
6 message supporting the Legislature's vision for reduced
7 vulnerability to volatile energy prices, for enhanced
8 Florida energy security and energy independence, and for
9 increased investment in Florida renewable energy
10 resources. Every investor-owned utility in Florida is
11 watching this docket closely, and they have told me,
12 straight up, because they, too, are interested in
13 pursuing realistically priced workable renewable energy
14 projects like the Energy 5.0 Florida Solar I Project, and
15 bringing them to you as Tampa Electric has done here.

16 We urge you to grant Tampa Electric's petition
17 and to approve the solar power purchase agreement for
18 full cost-recovery.

19 I want to thank you very much for your
20 attention. And, Mr. Cherry, would like to provide some
21 additional detailed and some practical real world --

22 **CHAIRMAN CARTER:** Hang on a second, Mr. Cherry.
23 I will come back to you later.

24 Mr. Klutho, you're recognized.

25 **MR. KLUTHO:** Yeah. I have here from the New

1 *York Times*, October 10th, this new book, *Capturing a*
2 *Nation's Thirst for Energy*. And this author, who's a
3 photographer, is putting out public service type messages
4 around the country pairing some of the book's images with
5 literary quotations, like the one from Mark Twain that
6 hovers above a shot of a slab of new Nevada highway.
7 This is from Mark Twain: "Civilization is a limitless
8 multiplication of unnecessary necessities." And that's
9 what we have here with this plan that TECO wants. And
10 remember when I testified last time here I showed you the
11 lighting fixture, the imaging specular reflector? You
12 still haven't fixed the lighting system here in your
13 building.

14 **CHAIRMAN CARTER:** We're here to talk about the
15 issue, Mr. Klutho. Keep it, keep it, keep it focused.
16 Keep it focused.

17 **MR. KLUTHO:** This is the issue. This is the
18 issue.

19 And the problem with this system, which is, in
20 a word, asinine, remember what I said when I spoke
21 before, what Amory Lovins says about getting your hot
22 water from electricity, it's like cutting butter with a
23 chainsaw? Well, these fools want people to pay for this
24 solar generated electricity that will be wasted going
25 into the grid that people will have to pay to get. And

1 it'll go into tanks so that they can heat their water,
2 the worst way that you can use solar electricity.

3 Now at our house we have solar thermal, flat
4 plate collectors where the water trickles through these
5 collectors and gets heated and goes into a tank. This is
6 the most cost-effective type of solar that there is. And
7 we made an investment. These collectors, we will pay for
8 them and own them.

9 Now the big array like this one here that
10 Florida Power & Light has that accompanied this column
11 that was in the paper, Look to the Sun to Make the State
12 Green, it says here that investing in solar, as this
13 developer has done in Sarasota, can create jobs. Well,
14 Florida Power & Light is not a developer. But, again, to
15 emphasize how stupid it is, over on Sligh Avenue in Tampa
16 there are Washingtonia Palms growing up next to the power
17 lines, and the fronds of these palms have burned and
18 turned brown because of the heat released by the power
19 lines. These are line losses. And the line losses that
20 you will have as a result of the PV generated electricity
21 is an obscene waste of renewable energy that we cannot
22 afford. When you do solar on the roof, it is being
23 provided right where it is needed, not being sent through
24 power lines. I mean it is dumb, dumb, dumb.

25 And here we have this big article that was in

1 the *St. Pete Times* recently, why the military is paying
2 attention to energy efficiency and global warming. And
3 when you talk about efficiency, making a big, giant array
4 of solar PV is not being efficient. You are wasting PV.
5 But, again, the thought of PV always comes after you do
6 the thermal.

7 As I said before when I testified, in Israel
8 and Spain it is a law, any new single family dwelling
9 must come with solar thermal for hot water. And as of,
10 as of the first of the year, it is a law in Hawaii that a
11 new house must have solar thermal for hot water. They
12 aren't requiring photovoltaics. Solar thermal for the
13 hot water. The payback for the solar thermal is much,
14 much quicker than PV, and you are an imbecile if you're
15 going to do your hot water with PV.

16 And here in this *National Geographic*,
17 *Repowering the Planet, Energy for Tomorrow*, in an
18 interview with Amory Lovins this woman says, "You
19 popularized the term megawatt." Well, this is an idiot
20 because he didn't popularize the term, he coined the term
21 "megawatt." He says -- she says, "What are megawatts and
22 why should we care about them?" "Megawatts are watts
23 saved by more efficient use. It's enormously cheaper,
24 probably eight times cheaper on average to save
25 electricity than to make it."

1 Now when you're talking about doing
2 photovoltaics and then you're going to put it into the
3 grid and waste this, that's an absurdity.

4 Here in the newsletter from the Rocky Mountain
5 Institute, on the cover you can see "RMI Retrofits
6 America's Favorite Skyscraper." That's the Empire State
7 Building. If you remember, I told you about one of my
8 favorite quips from Amory Lovins: "Efficiency measures
9 are like -- are better than a free lunch. They're like
10 getting paid to eat your lunch." Well, this, this idea
11 here is, people, you need to just keep on squandering
12 your money, burn your money. We'll make plenty of PV
13 renewable electricity, and you burn the dollars, you be
14 stupid. Like what's happening here, you talk about being
15 fair. Wall Street is stupid. The money is going up in
16 smoke. I mean, this is about being smart with the money,
17 being prudent. A megawatt, on average eight times less
18 than producing a watt. And they wouldn't have hired
19 Amory Lovins and the Rocky Mountain Institute to retrofit
20 the Empire State Building if this guy didn't know what he
21 was talking about. He also helped lead the retrofit of
22 the White House and the Pentagon to make them more energy
23 efficient.

24 Now this is, this is sheer absurdity. When I
25 spoke here before, I had that paper by Amory Lovins

1 putting central power plants out of business. Now you
2 want to talk about fairness, you want to talk about
3 creating jobs, you don't make a big central PV plant and
4 say, you dupes, buy this PV electricity the sun is
5 putting on those collectors, you have the sun that's
6 shining on the roof, everybody's roofs, you have them
7 enjoy that benefit.

8 **CHAIRMAN CARTER:** I'm going to give you another
9 minute to wind it up, Mr. Klutho. Okay?

10 **MR. KLUTHO:** You know, from *Solar Today, Better*
11 *Buildings by Design*. "We shape our buildings, thereafter
12 they shape us," Winston Churchill, *Time Magazine*,
13 September 1960. And when you say better buildings by
14 design, those are the buildings that are sustainable,
15 that have those solar collectors on the roof.

16 And like I say, before you think about the PV,
17 the solar thermal comes first. That is the one that has
18 the fastest payback. I mean, this what's happening here,
19 this is, this is a circus. There's no other way to
20 describe it, you know. He, he's, he's talking just sheer
21 nonsense. This is, this is a snake oil salesman. No, no
22 other way to put it.

23 **COMMISSIONER ARGENZIANO:** May I ask a question?

24 **CHAIRMAN CARTER:** Commissioner Argenziano,
25 you're recognized, then Commissioner Skop.

1 **COMMISSIONER ARGENZIANO:** Thank you.

2 Mr. Klutho, are you -- I understand what you're saying
3 about the solar thermal. Are you suggesting that TECO
4 should be placing solar thermal panels on individual
5 homeowner's homes to get the efficiency, the greater
6 efficiency or -- I'm not sure which -- are you asking
7 that TECO use solar thermal -- and, of course, they
8 couldn't use it centrally. It would have to be on
9 individual homes; right?

10 **MR. KLUTHO:** Absolutely.

11 **COMMISSIONER ARGENZIANO:** Okay. So instead of,
12 instead of -- what you're -- I don't want to put words in
13 your mouth. You have to tell me if this is what you're
14 suggesting because I'm trying to extract that.

15 **MR. KLUTHO:** Yeah.

16 **COMMISSIONER ARGENZIANO:** Are you suggesting
17 that instead of TECO going forward with this project,
18 they take the money from this project and place solar
19 thermal panels on their customers' homes for hot water
20 production?

21 **MR. KLUTHO:** We have talked about this before,
22 that there needs to be an arrangement made so that
23 utilities can be allowed -- there needs to be a
24 decoupling. That absolutely has to happen so that
25 utilities can make money helping people save money on

1 their utilities. But to design solar so that it is
2 wasted -- this system is solar 101, how you waste it.
3 And more than 90 percent of the renewable energy being
4 installed today is renewable energy being wasted.

5 **COMMISSIONER ARGENZIANO:** Well, then can I just
6 follow up?

7 **CHAIRMAN CARTER:** Commissioner.

8 **COMMISSIONER ARGENZIANO:** Basically I think
9 what I hear you saying is that there should be a
10 different approach and it probably should be by
11 government to allow incentives for individual homeowners
12 to use more efficient types of renewable energies.
13 Excuse me. And I'm not sure that they're not headed in
14 that direction, but I understand they're not moving quick
15 enough. But would that be what you're trying to say is
16 basically a different approach, a different way, but
17 isn't that more geared towards the individual homeowner?

18 **MR. KLUTHO:** Like I said, in Israel and Spain
19 --

20 **COMMISSIONER ARGENZIANO:** A government decision
21 is made.

22 **MR. KLUTHO:** In Hawaii the first of the year it
23 is a law that any new single family dwelling must have
24 solar thermal for their hot water, and they are working
25 on expanding the law to do other things with multifamily

1 and helping people and doing conversions with -- they
2 were initially with electrical hot water, and they're
3 working on helping people convert where they have gas hot
4 water. And it's true, Hawaii has the highest cost for
5 their energy, but still the costs are going to continue
6 to rise. And, you know, when this -- if you, if you read
7 this article by the, by the vice admiral, what he had to
8 say where we're headed, I mean it's going, we're going to
9 end up in wars because of, of energy, and it's not a
10 pretty picture.

11 **CHAIRMAN CARTER:** Thank you. Commissioner
12 Skop, you're recognized.

13 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.
14 Good afternoon, Mr. Klutho. Just a quick
15 follow-up question, if I'm understanding your concerns
16 correctly, that you are against the proposed project.

17 **MR. KLUTHO:** Absolutely.

18 **COMMISSIONER SKOP:** Okay. And you are in
19 support of distributed generation over centralized
20 projects; is that correct?

21 **MR. KLUTHO:** Because that way it is not wasted.

22 **COMMISSIONER SKOP:** Okay. And you prefer solar
23 thermal over solar PV; is that correct?

24 **MR. KLUTHO:** Well, no. No. We have installed
25 solar thermal at the house. And when I finish the, do

1 the retrofit of the house, I will have PV installed also.
2 But before the PV is installed, you have to do all your
3 efficiency measures so you don't waste the PV.

4 **COMMISSIONER SKOP:** Okay. I understand. And
5 just as a point of reference, the item was deferred from
6 today's agenda on Item 5. But if you'd get with our
7 staff, Item 5, Issue 11 may more appropriately address
8 some of the concerns that you've brought forth today. So
9 thank you for your comments.

10 **CHAIRMAN CARTER:** Thank you.

11 Commissioner Klement.

12 **COMMISSIONER KLEMENT:** Yes. Thank you, Mr.
13 Chairman.

14 **CHAIRMAN CARTER:** You're recognized.

15 **COMMISSIONER KLEMENT:** I can agree with the
16 witness on some of the things he said. I wish in the
17 future he would refrain from the pejoratives that he's
18 used in addressing issues and people whom he disagrees
19 with. Words like stupid, idiot, dupes, absurd, nonsense
20 and snake oil do not belong in a civil debate, and I
21 would just ask if you would not use those again when
22 disagreeing with any of the presenters here.

23 I realize what you're saying about rooftop
24 solar hot water, and it would be wonderful if we had
25 that,

1 but we are far -- I've done some studying of that. We're
2 far from being ready or able to do that. I have no idea
3 what the cost per homeowner of putting that in -- well, I
4 guess I have. It's in the thousands of dollars. I don't
5 know how long it takes to, to recoup that, but it takes
6 some time.

7 **MR. KLUTHO:** Eight years.

8 **COMMISSIONER KLEMENT:** If it were so
9 financially advantageous, I believe many of our American
10 entrepreneurs would be doing it. So at some point we
11 need to be doing it, I hope we will be doing it, but that
12 isn't what we're discussing here today.

13 **MR. KLUTHO:** Can I, can I respond? I did a
14 landscape in Tampa in 1989 by Downtown Tampa, and there
15 was an old German gentleman right near where I was doing
16 the landscape. And he was in a house that had a solar
17 hot water system that was still functioning in 1989 that
18 was installed in the 1920s. Solar hot water is, has been
19 and is functioning all over the world going back over a
20 hundred years. I don't know where you've been.

21 **COMMISSIONER KLEMENT:** I'm not disagreeing with
22 you.

23 **MR. KLUTHO:** And the payback is roughly seven
24 or eight years. You don't get that kind of a payback
25 with photovoltaics or any kind of a power plant, not even

1 close. Not even close.

2 **CHAIRMAN CARTER:** Thank you.

3 Commissioner Argenziano.

4 **COMMISSIONER ARGENZIANO:** I think, I think, as
5 Commissioner Klement had said, we, we agree that there
6 are better efficiencies. I, if I were building a house
7 today, the first thing I would do is make sure that my
8 hot water heater did have solar thermal. That would be
9 the first thing I would do and move in that direction.
10 And I do believe that sometime the policymakers are going
11 to have to move and move quicker than slower, because
12 it's been a long time coming, to maybe mandate that new
13 home construction and also to provide incentives. And
14 there are incentives now, but better incentives for each
15 homeowner to retrofit. Even if they're in -- I mean, if
16 they're in an existing home, to retrofit to be able to at
17 least get their hot water heaters off the grid. And as a
18 matter of fact, I think if you took most homeowners in
19 the State of Florida and just their, their water heaters,
20 if you did a solar thermal or PV, you would remove so
21 much from peak power, you know, off the current grid that
22 I think it would save a lot of money and probably slow
23 down the need for construction of new plants. We're
24 trying to get there, and that's a political process that
25 is a heck of a nightmare.

1 But today -- and I understand what you're
2 saying because you were saying there are losses in
3 efficiencies with this type of system. But I still have
4 to look, and I know what you're saying and hopefully it
5 can get there, and if we each talk to our legislators,
6 federal and state, maybe it'll, it'll move quicker,
7 although very political, and I understand that. But
8 today I'm also looking at a company that may be doing
9 other things that may negate some of the losses that you
10 see. And I know you're shaking your head. You're not --
11 we can't take your approach today because it's not going
12 to work here today because there's so many political
13 ramifications to it that those guys in those hot
14 seats, the policymakers, are going to have to make up
15 their minds soon, and that's going to take people to make
16 that happen.

17 But as of today what we're looking at is a
18 system that probably is going to reduce CO2, is moving in
19 the direction that the state says it needs to move in.
20 And that's what we're doing here today is evaluating that
21 company's process today, while understanding what you're
22 saying. I think a lot of people may, may take what you
23 say the wrong way and sometimes you can say it the wrong
24 way. Believe me, I'm accused of that many times myself
25 and I understand that. And I think you really have done

1 your homework, and I've been reading up a lot about this.
2 You're way ahead of me on some of those issues, but I --
3 and I think you're right. It's just that today what this
4 Commission is faced with is not going to change the
5 political that is the most desperate -- and I believe
6 that sometimes, Commissioner, that's frustration you hear
7 when you hear the words come out of someone who's
8 probably been trying to do this for a long, long time and
9 sees things clearer than maybe we have or our political
10 leaders have, and I understand that very well. I just, I
11 just want Mr. Klutho to understand that his research and
12 his understanding of this doesn't go unnoticed, it really
13 doesn't, not to me anyway, and I don't think to my
14 colleagues. It's just that where you are today, we can't
15 solve the problem that you really see is out there.

16 And I think that TECO is trying very hard to
17 follow what it's, the policy of the lawmakers in the
18 State of Florida have given, and I've got to look at the
19 positives of what they're trying to do too, although I
20 understand what you're saying. And I know you're going
21 to shake your head, but I think that's what's before this
22 Commission today. And I hope -- I think you are, I think
23 you are dealing with the legislators and I hope you are
24 because they're the policymakers. And there's a lot of
25 things that are tied up in politics that stay there

1 forever. And I think we're at the point that we need to
2 move that forward, and maybe you're the right person to
3 do that.

4 And I would suggest, if you haven't, and I know
5 you probably have, is really trying to get to the
6 policymakers, state and federal. And I know it's a tough
7 job for one man to do, but I think there's a lot of
8 people who believe in what you say, and maybe help some
9 of the companies and the individual homeowners to get to
10 where we need to be.

11 So I don't take what you say for granted. I do
12 appreciate the work that you put into it, and I don't
13 think you're a stupid man by any means. And I do
14 appreciate
15 what you bring forward, and I can see the frustration
16 too.

17 But I just want you to know where we're at here today.

18 **CHAIRMAN CARTER:** Thank you.

19 Commissioner Skop, you're recognized.

20 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

21 And just to Commissioner Argenziano's point as well as to
22 the point made by Mr. Klutho, I couldn't agree more. I
23 mean, trying to drive changes in policy within the
24 political process is difficult at best. And, you know,
25 I -- Commissioner Argenziano touched upon the point about

1 state building codes, as, as Mr. Klutho did. I'm of the
2 firm belief that the state building code should be
3 amended to provide for both solar thermal and solar PV
4 requirements on new construction in Florida exceeding a
5 certain square footage or exceeding a certain threshold
6 value. If you have a million dollar house, I mean,
7 certainly you can afford to implement some of these
8 initiatives to do your part to support distributed
9 generation and energy conservation. And I think that
10 that's something that should be taken a critical look at
11 to not only help promote energy conservation, but to
12 support the development of additional renewables within
13 our state. So I just wanted to comment on the excellent
14 point that I thought Commissioner Argenziano brought up.

15 **CHAIRMAN CARTER:** Thank you. Commissioners, I
16 kind of wanted -- Commissioner Klement, do you have --

17 **COMMISSIONER KLEMENT:** No.

18 **CHAIRMAN CARTER:** Commissioners, what I propose
19 we do is we kind of get staff to kind of walk us through
20 this perspective in case we have any questions or
21 anything like that. And I do want us to get a chance to
22 get into our debate and our discussion and our dialogue.
23 Staff, would you kind of tee this up for us?

24 **MR. WRIGHT:** Mr. Chairman.

25 **CHAIRMAN CARTER:** Mr. Wright.

1 **MR. WRIGHT:** I'm sorry. I thought you had said
2 that you were going to come back to Mr. Cherry.

3 **CHAIRMAN CARTER:** I did. Mr. Cherry, you've
4 got two, two and a half minutes. Mr. Wright burned up
5 all your time. Just kidding. Just kidding. (Laughter.)

6 I did. Thank you, Mr. Wright.

7 **MR. CHERRY:** Yes, sir. I am Bud Cherry. I'm
8 the Chairman and CEO of Energy 5.0. I've been in the
9 energy business for 40 years, and I've been involved in
10 all of the policy arguments that, that were previously
11 discussed.

12 Mr. Wright's laid out the legal basis for the
13 Commission's authority and reasons for the Commission to
14 approve the Florida Solar I contract. I'll touch on a
15 couple of the public interest aspects that have not been
16 discussed and then talk a little bit about where we are
17 with, with the project, if, if you will bear with me on
18 that. Because I think, I think that is important.

19 Having a solar electric generator as part of a
20 portfolio of sources in Florida and in the TECO service
21 area is very positive in terms of the environment and
22 having a balanced generation mix. This is not to suggest
23 that we are rejecting or in support of rejecting any
24 other technologies including solar thermal, including
25 rooftop thermal, including anything that adds to the

1 energy efficiency of the state, including conservation
2 incentives and so on, and in my career in the business
3 I've been involved in all of those kinds of programs.
4 And some of them work and some of them don't work, and
5 some of them are very expensive and some of them are very
6 cost-effective.

7 I've spent time talking with Amory Lovins. The
8 exact quote was, "Cutting butter with a chainsaw." He
9 was referring to nuclear power plants, not heating hot
10 water. This project meets all the criteria that the
11 state has set out for, for renewables. Most particularly
12 there is no CO2 emissions. In fact, there are no
13 emissions at all except electrons, and the losses,
14 despite the earlier comments, are modest.

15 Over the 25-year proposed contract term the
16 project is expected to avoid the emission of up to one
17 and a half million tons of, of carbon dioxide as compared
18 to a conventional gas-fired project.

19 I'll spare you the list of other advantages
20 because I think Mr., Mr. Wright has, has covered those.
21 I do want to say that within the contract the company and
22 its customers are protected from technical and
23 operational risks through the structure of the contract,
24 which is an energy only, pay for performance fixed price.
25 And that is if we don't deliver a kilowatt hour to Tampa

1 Electric, we don't get paid for it. Tampa Electric and
2 its customers take no risk whatsoever under this
3 contract. We take all the risks.

4 I will say finally that this project will be a
5 showcase project for Central Florida, showcase solar
6 project for Central Florida.

7 Mr. Beasley talked about the background of the
8 contract and that TECO, as a thoughtful and creative
9 company, believed it made good sense to get ahead of the
10 curve and be responsible to the policy guidelines in the
11 state.

12 Mr. Beasley also talked about how we were
13 selected in the negotiations. At the, at the time of the
14 contract signing, TECO president Chuck Black praised the
15 project. The Governor praised the project. He said, "I
16 applaud TECO and Energy 5.0 on this exciting partnership
17 that moves Florida closer to its goal of increasing
18 energy diversity and reducing greenhouse gas emissions."

19 We began to diligently and professionally
20 progress this project as soon as the contract was signed
21 in February of 2009. To date I have spent approximately
22 \$2 million on this project, and what we have accomplished
23 is we have acquired a site in central Polk County, a
24 352-acre site, reclaimed phosphate lands. There is an
25 existing 69 kV TECO distribution line which runs along

1 the periphery of the, of the property so that the
2 interconnection to TECO, the TECO system is going to be
3 very straightforward and very simple.

4 We've done a great deal of engineering,
5 preliminary engineering on both the plant and
6 transmission. We've done environmental assessments.
7 We've done a Phase 1 environmental assessment on the
8 property. We've done geotechnical analyses. And there
9 have been transmission studies done performed by TECO at
10 our, at our cost. Virtually all of this work was done by
11 Florida-based firms. Virtually all of this work was done
12 by Florida-based firms.

13 This project is essentially shovel ready.
14 There are only two major permits that we need to get.
15 One is a conditional use permit issued by Polk County.
16 We think we'll get that because of the economic
17 development and because of the strength of the project.
18 The other is an environmental permit which deals mostly
19 with storm water runoff, which we believe we will also
20 get. There have been no major issues raised by any of
21 the agencies regarding those permits.

22 We could have treated this contract as kind of
23 an option where we sat back and did the minimum amount
24 possible and waited for this tribunal to make its ruling
25 on the efficacy of the contract, but we believe that the

1 right thing to do, the good corporate citizen approach to
2 bringing this project forward was to bring forward the
3 best, most real project that we could to this Commission
4 so that you understood that we were committed to getting
5 it done. And we have, and we have done all that.

6 Staff has indicated that the cost of the
7 electricity is, is incrementally higher than, than TECO's
8 current avoided cost. It's 46 cents a month on an
9 approximately \$138 a month bill. That declines to two
10 cents by the end of the contract. And the average
11 increase over the term of the contract based on TECO's
12 analysis is 18 cents a kilowatt hour.

13 It is notable that as we speak the President is
14 attending the dedication of another solar PV plant in
15 Arcadia. That project is more expensive than the
16 electricity that we're delivering by the public
17 statements made by the owner of that, of that project.
18 But what's important is the presidential focus and the
19 policy focus on solar energy in Florida underscores the
20 importance of moving ahead on a broader front and for the
21 benefit of the state and of the United States. And I'm
22 sorry, I misspoke. It's -- the 18 cents is not per
23 kilowatt hour. It's per month, 18 cents per month
24 average over the term of the contract is the incremental
25 cost of the solar photovoltaic generation coming from

1 this, from this facility.

2 So I'm not, I'm not turning up my nose at 18
3 cents, 18 cents a month, but I think by, by any measure
4 it's a modest price for the step that Tampa Electric
5 wants to take to move ahead into the, into, into
6 renewables. Let me close, and I know I've run over my --

7 **CHAIRMAN CARTER:** Are you close? I was about
8 to say, are you close to winding it down?

9 **MR. CHERRY:** I know I've run over my two
10 minutes. I just wanted to say that in my 40-year
11 career -- I haven't played football for a very long time,
12 I appreciate your comment earlier, Mr. Chairman -- I have
13 appeared before regulatory commissions from Pennsylvania
14 to the Philippines. And these regulatory tribunals have
15 always done the right thing for their constituents, their
16 customers, the companies, their developers and so on, and
17 I'm pleased to have the confidence that this tribunal is
18 going to do the same thing. So I appreciate your
19 forbearance with my presentation.

20 And, finally, I want to thank the people at
21 TECO who have worked so hard on this, on this contract
22 over the time that we have been engaged in the
23 negotiations and the follow-on activities. I think they
24 deserve a great deal of credit.

25 **CHAIRMAN CARTER:** Thank you very kindly.

1 Commissioner Argenziano, you're recognized.

2 **COMMISSIONER ARGENZIANO:** Just one question.

3 And I appreciate any, any movement in the direction of
4 alternatives. I think it's a smart thing to do.

5 Just one question. As, as I've been trying to
6 keep up with solar advancements, there seems to be a
7 great deal of promise coming out, hopefully sooner than
8 later, of more efficient solar technology. If that were
9 to come about, is there any integration that's possible
10 in a system that -- I mean, it's a contract for 25 years
11 and I understand that. But is there any type of
12 integration if it becomes a more efficient panel or a
13 more efficient technology to integrate into the system?

14 **MR. CHERRY:** Yes. The answer is yes, because
15 as, as the panels are developed now, you in fact can
16 change out panels. It's one of the things that is
17 potentially something you'd need to do to make sure that
18 the system stays up at a 98, 99 percent availability.
19 And so if the improvement is in photovoltaic, then we'll,
20 we will be in fact able to roll those kinds of
21 improvements into the project over its, over its
22 lifetime.

23 **COMMISSIONER ARGENZIANO:** Okay. Great. Thank
24 you.

25 **CHAIRMAN CARTER:** Thank you. Let me just kind

1 of ask this before, and then, Commissioner Skop, you'll
2 be next. Is the project scalable? I know you say you've
3 got like 300 plus acres there, and right now we're
4 talking about 25 megawatts. Is it scalable to where if
5 there are new technologies, as Commissioner Argenziano
6 had asked, and new developments, there's a lot of
7 whiz-bang stuff happening more now than ever before, is
8 the project scalable in terms of increasing the
9 capacities?

10 **MR. CHERRY:** Yes, sir. The project is
11 scalable. And in fact in the contract with TECO there is
12 a very soft option where the parties would sit down and
13 negotiate the terms and conditions of a second
14 25 megawatts. And we specifically acquired the rights to
15 this 352-acre parcel in Polk County so that if TECO
16 desired to go forward with the second phase of the
17 project, that we wouldn't have to go through the hassle
18 of getting more real estate, worrying about
19 interconnections and all of those kinds of things. So
20 the answer is, yes, the project is scalable.

21 **CHAIRMAN CARTER:** And in the context of the
22 scalability of the project, I know -- well, I guess if
23 you had another 25 megawatts and you scaled up to that,
24 what's the impact of the overall rate on a monthly basis?
25 Do you know that? I know that may not be a fair

1 question.

2 **MR. CHERRY:** I, I don't know it offhand. I
3 think the cost of the overall generation would, would go
4 down somewhat because there are fixed costs that you
5 incur whether it's 25, 50 or 100 megawatts.

6 **CHAIRMAN CARTER:** Okay. Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

8 I guess it may be best to hear from staff to
9 introduce the issues. Before they do so, I just wanted
10 to touch upon a point raised by Commissioner Argenziano
11 and chime in on that.

12 I also appreciate the positive aspects of what
13 TECO and Energy 5.0 are trying to do to give effect to
14 the legislative, to give effect to the intent of the
15 Legislature with respect to the energy policy embodied
16 within House Bill 7135 that was approved by the
17 Legislature. I'm also a very strong advocate for
18 renewable energy, but I also am required to balance that
19 and be equally aware of the need to keep customer
20 electric bills fair, just and reasonable.

21 I do have some significant reservations with
22 respect to their proposal, and I'll just save those
23 questions for staff after staff introduces the issue.
24 And, again, my concerns are more financially and
25 technically related based on my renewable energy industry

1 experience. Thank you.

2 **CHAIRMAN CARTER:** Thank you. Commissioners,
3 before I go to staff, any further general comments before
4 we do that?

5 Staff, you're recognized to introduce the
6 issues. In fact, just take us 1 and 2. We know that 3
7 is "Should the docket be closed?" But just kind of bring
8 us, bring us in for, kind of tee it up for Issues 1 and
9 2, please.

10 **MR. GRAVES:** Yes, sir. Issue 1 addresses the
11 recovery of costs up to the company's as-available energy
12 rate. Issue 2 addresses the recovery of costs, of any
13 costs that exceed that as-available energy rate.

14 And staff, staff agrees that there are a lot of
15 benefits to solar energy. And I guess where we kind of
16 depart from the company is with the economics. We feel
17 like our recommendation of not allowing the recovery of
18 costs above the as-available energy rate fits within the
19 boundaries of the rules, of the PSC rules that we made
20 our decision on.

21 **CHAIRMAN CARTER:** Now does that mean the, the,
22 does that mean that in addition to what you said the
23 current rate structure is and the RECs, that that should
24 be a part of that, or are you just talking about one
25 issue? Because I would like for you to kind of tee the

1 whole thing up so we can have a free flowing discussion.

2 **MR. GRAVES:** I got you. Okay. Right. Issue
3 2, because the rule says that anything above avoided
4 costs cannot be recovered, no, they can't pay for energy
5 that's above the as-available energy rate, we decided to
6 allocate those costs towards what they would pay for the
7 RECs. I know Mr. Wright didn't agree with that, but
8 anything above the company's as-available energy rate is
9 not allowed by rule. So we considered those as what they
10 would be paying for the RECs.

11 And in Issue 2 we're saying that the recovery
12 of costs for RECs is not, it's not mandated right now, so
13 we don't agree with the recovery of those costs.

14 **CHAIRMAN CARTER:** Commissioner Argenziano.

15 **COMMISSIONER ARGENZIANO:** To that point, you
16 say the additional costs, meaning from the traditional
17 costs that are available; right?

18 **MR. GRAVES:** Correct. If they, so basically if
19 they produce their energy on their own, it would be less
20 than what it would cost them to pay Energy 5.0 for that
21 energy.

22 **COMMISSIONER ARGENZIANO:** So if they built the
23 plant themselves, is that what you're saying?

24 **MR. GRAVES:** No, ma'am. What I'm saying is
25 from their existing fleet, if they produced energy using,

1 say, a combustion turbine or combined cycle unit.

2 **COMMISSIONER ARGENZIANO:** But that would be,
3 that would be exactly opposite of the policy of the state
4 and moving towards renewables and alternatives.

5 **MS. BRUBAKER:** Commissioners, with your
6 indulgence perhaps I could make an attempt to kind of lay
7 out the statutory framework under which staff was -- I'm
8 sorry.

9 **COMMISSIONER ARGENZIANO:** Just one other
10 question with that in mind.

11 **MS. BRUBAKER:** Certainly.

12 **COMMISSIONER ARGENZIANO:** Because if we have
13 to, we're trying to give incentives for people to move in
14 a different direction, we can't punish them at the same
15 time. And if I'm looking at the cost to the consumer
16 being miniscule at the end of the month, I have to take
17 that into consideration of course, those costs. And you
18 also mentioned what's allowed by rule. Doesn't the
19 statute now kind of possibly change that rule to allow
20 for encouragement, even the word solar in the statute,
21 wouldn't that -- I don't know how the rule -- because
22 these statutes supersede the rules. That's what you go
23 by. And if the policy is shifting, maybe it's time to
24 take a look at that rule.

25 **CHAIRMAN CARTER:** Ms. Brubaker.

1 **MS. BRUBAKER:** Thank you. I would just like to
2 point out, the petitioner is absolutely right, the state
3 has a very clear mandate moving towards renewable energy.
4 It's in the first line of 366.91 that the Legislature
5 finds it is in the public interest to promote the
6 development of renewable energy resources in the state.
7 So that's, that is absolutely a primary concern.

8 But also of concern is we have other statutes.
9 The rules that have been talked about do cite to
10 366.051 which talks about cogeneration. And in that
11 statute it also says in fixing rates for power purchased
12 by public utilities from cogenerators or small power
13 producers, the Commission shall authorize a rate equal to
14 the purchasing utility's full avoided cost. And let's go
15 to the two rules that have been discussed in staff's
16 recommendation and also by Mr. Wright on behalf of Energy
17 5.0 in a filing on October 22nd. Those are 25-17.0825,
18 *Florida Administrative Code*, and 25-17.240, both of which
19 also cite to 366.051, the statute I just mentioned.

20 They both discuss utility payments for
21 as-available energy shall be recoverable if payments, and
22 I'm paraphrasing a little, if the payments are not
23 reasonably projected to result in higher cost electric
24 service to the utility's general body of ratepayers. And
25 then 25-17.240, negotiated contracts will be considered

1 prudent for cost recovery purposes, again paraphrasing,
2 provided they're at a cost to the utility's ratepayers
3 which does not exceed full avoided cost.

4 So what we have are different statutes. One
5 definitely wants to promote renewable energy, but they
6 also, another one also requires the Commission to
7 evaluate the avoided cost for that.

8 **COMMISSIONER ARGENZIANO:** And I understand
9 that, and that's where, when the Legislature asks, asks
10 for the Public Service, because I know they asked me when
11 I was at the nominating commission and, and just my
12 fellow colleagues in the senate said, you know, make sure
13 you let us know what the needs are. And when we're
14 looking at this, and this is just getting off the point
15 here, but perhaps they need to know that while you're
16 promoting moving towards renewables, you have to change
17 things a little bit. You can't have it both ways. And I
18 think that's a message that I'm gonna to take back and I
19 hope that the Commission would agree, the Commissioners,
20 that if the policy of the state is to move in one
21 direction, then you have to, you have to start looking at
22 the entire statute. You can't say it and then prohibit
23 it in another part of the statute. You have to
24 accommodate for that, especially if the costs are so
25 minimal but getting you to that area where you really

1 want to go as far as policy.

2 **CHAIRMAN CARTER:** Okay. Let me, let me do
3 this, Commissioners. I'm going to go to Commissioner
4 Klement, then Commissioner Edgar, then Commissioner Skop.
5 Commissioner Klement.

6 **COMMISSIONER KLEMENT:** Thank you, Mr. Chairman.
7 I wanted to focus on the Rule 25 a little
8 closer to, to learn more about it. Is that -- what is
9 the process for changing that? Is that a rule that we
10 control or is that something that's imposed on us by the
11 Legislature and we must abide by?

12 **MS. BRUBAKER:** Absolutely, Commissioner
13 Argenziano is absolutely right. The statute is always
14 our primary source of authorization. That's why I
15 directed you to 366.051. The rules are proposed by the
16 Commission. They have to be approved, of course, by the
17 state and be ratified. But the rules implement 366.051.
18 We also look to the statutes for our authority.

19 **COMMISSIONER KLEMENT:** So are our hands tied
20 legally by statute?

21 **MS. BRUBAKER:** Well, again, I'm not focusing on
22 the rules so much as the statutes. And when I'm reading
23 366.051 and, of course, the rules that implement it, I'm
24 also looking at 366.91 and .92 as urged by the
25 Petitioners. And I would point you to 366.92. There are

1 actually two potential exclusions from the avoided cost.
2 One is in (4) of 366.92 where the Legislature
3 specifically created full cost recovery for up to a total
4 of 110 megawatts of power. That was approved, I believe,
5 in '08 for Florida Power & Light Company.

6 There's also discussion in 366.92(3) that once
7 the RPS rule has been ratified by the Legislature,
8 avoided cost can essentially be trumped for, I believe
9 it's Standard Offer Contract specifically. Of course
10 what we're dealing with here was a negotiated contract.

11 So the statutes do, are looking forward to a
12 time where renewables may take some precedence over the
13 avoided cost mandate, but I don't think we're there at
14 this time and I don't think we're there with this
15 project. We're for the project, in fact we're
16 recommending the project be approved, but not at a cost
17 above the avoided cost, not to be ascribed to the
18 ratepayers for that amount.

19 **COMMISSIONER KLEMENT:** I appreciate your, your
20 motives for this. I'll say more perhaps when more
21 information comes out, Mr. Chairman.

22 **CHAIRMAN CARTER:** Okay. Commissioner Edgar,
23 then Commissioner Skop.

24 Commissioner Edgar.

25 **COMMISSIONER EDGAR:** Okay. Thank you. And of

1 course the Legislature has not approved an RPS.

2 **MS. BRUBAKER:** That's correct.

3 **COMMISSIONER EDGAR:** Am I correct that one
4 basic difference between the staff recommendation and the
5 request of the coparties is that minimal amount of an
6 average of 18 cents a month would be paid by the
7 shareholders under the staff recommendation and would be
8 borne by the ratepayers under the request?

9 **MR. GRAVES:** That's correct.

10 **COMMISSIONER EDGAR:** And the statute -- and,
11 I'm sorry, Ms. Brubaker, I don't remember the cite, nor
12 do I have it in front of me, but the statute that put in
13 place that up to 110 megawatts of solar under a specific
14 cost recovery clause, specific, specific method of cost
15 recovery, which statute is that?

16 **MS. BRUBAKER:** That's 366.92(4).

17 **COMMISSIONER EDGAR:** That's .92. Okay. Would
18 it be reasonable to put forth that if the Legislature
19 wanted us to go beyond avoided cost to ratepayers for
20 solar projects, that they would have not put on a
21 110-megawatt cap?

22 **MS. BRUBAKER:** That is certainly my
23 interpretation. I would be uncomfortable recommending
24 the Commission go forward without that clear intent by
25 the Legislature.

1 **COMMISSIONER EDGAR:** And so I guess,
2 Commissioners, once again we're in that conundrum of
3 competing priorities, which of course is not unusual for
4 this body, nor probably is it unusual for any other
5 subject area of public policy with complex statutes
6 created over time.

7 I am, as I know we all are, I am a huge
8 believer and supporter of promoting and supporting
9 renewables. In fact, a discussion that I think we may
10 have at Internal Affairs here in a little while this
11 afternoon with the Ten-Year Site Plan that will be before
12 us then and looking at what our fuel portfolio is or,
13 another way to put it, the lack, my words, lack of
14 diversity in that fuel portfolio has been a concern of
15 mine in the past and certainly going forward.

16 So with that, I'm strongly going to do what I
17 can as one Commissioner, what we can as a body to promote
18 renewables and to create jobs and to foster a regulatory
19 environment that is, is, helps us as a state to promote
20 renewables and bring those jobs into this state. But
21 that piece of the statute that says up to 110 megawatts
22 and then to go above and beyond that, once again, kind of
23 like in our last issue when we've got some competing
24 directives, so that gives me some concern.

25 **CHAIRMAN CARTER:** Commissioner Skop.

1 **COMMISSIONER SKOP:** Thank you, Mr. Chair. I
2 just wanted to touch upon the discussion that was in some
3 points that I had hoped to have made in terms of how I
4 view the docketed matter before me.

5 I guess if we look back to House Bill 7135,
6 which basically was responsible or provided for what is
7 now enacted in *Florida Statute* 366.92(4), looking at that
8 specific statutory provision the Legislature saw fit to
9 expressly allow or provide for full cost recovery for a
10 total of 110 megawatts statewide subject to certain
11 prerequisite conditions being fulfilled. Again, that was
12 an express mandate to incentivize solar. Unfortunately,
13 and that may be part of why we have the issue before us,
14 the 110 megawatts was quickly subscribed to, leaving none
15 for our other Florida investor IOUs.

16 Secondly, avoided cost has always been a
17 practice followed by the Commission to keep rates low for
18 consumers and serve as a threshold measure. Specifically
19 in other cases before the Commission, recent cases, I
20 believe one was for Progress on a biomass project and one
21 was for FPL, the Commission did not allow for the
22 recovery of energy credits or environmental attributes
23 because it was not expressly provided for by the
24 Legislature and would be an additional cost borne by
25 consumers.

1 To that point, I'd also note that the staff
2 recommendation as to Issue 2 is consistent with the
3 precedent previously established by this Commission.

4 As to the proposed project, I'm also in favor
5 of the project, but I agree with the staff recommendation
6 for issues that I will further articulate. However, with
7 respect to the attributes and the other things that are
8 necessary to make the project I guess cost-effective from
9 the developer's standpoint, I would note that the
10 Legislature, when considering the RPS recommendation in
11 the last legislative session, they were looking at things
12 that would, provided for avoided cost-plus type of
13 pricing mechanisms to support renewables, but they did
14 not ratify that RPS portfolio standard for the state.

15 So, again, I think that we're seeing, you know,
16 express legislative intent vis-a-vis *Florida Statute*
17 366.92(4), which says you can go build this and get full
18 cost recovery. Then we're struggling at the Commission
19 in terms of the avoided cost threshold and the precedent,
20 prior precedent of the Commission.

21 But I also would point out that in viewing
22 this, this is a power, essentially a power purchased -- a
23 purchased power agreement or -- I'm getting tongue -- a
24 power purchase agreement, a long-term power purchase
25 agreement for 25 years. And although it entails

1 renewable, it's not substantially different than the
2 other biomass contracts or waste energy contracts the
3 Commission has also been called upon to assess not only
4 the value to consumers, but also to approve consistent
5 with the energy policies of the state.

6 But to me I see a fundamental difference
7 between a power purchase agreement and the self-build
8 option or the allowance of full cost recovery for a
9 project under 366.92(4). I think it's a subtle but
10 distinct difference, and I'll get more into that when
11 staff finishes its discussion. Again from the -- just a
12 fundamental review of the project itself, I think that
13 it's a great project. I'd like to see more of them in
14 Florida. But making the economics work are also a
15 critically important aspect to the extent that consumers'
16 rates are impacted sometimes substantially by these
17 projects. And, you know, we need to make sure that
18 consumers frankly are not overpaying for renewable
19 resources, and that'll lend itself into my other
20 comments. But I am generally in favor of the project but
21 also in favor of the staff recommendation which limits
22 the costs that could be recovered to the as-available
23 energy rate.

24 **CHAIRMAN CARTER:** Okay. Thank you.

25 Commissioner Argenziano.

1 **COMMISSIONER ARGENZIANO:** I, I just find it
2 kind of absurd coming from the Legislature that we would
3 have a policy in the state -- and of course this is going
4 out to the Legislature, it's my prerogative I guess to do
5 so -- to say that we're going to have a policy of getting
6 off traditional or moving towards alternative sources and
7 renewables and yet limiting to 110 megawatts. That's the
8 most hypocritical thing I think we've done, the
9 Legislature has done -- well, one of the most. I won't
10 get into that. I'll get myself in trouble again.

11 But, and it may be a stretch, and I guess it
12 is. Looking at the 110 megawatts as a sole provider,
13 could, could that be looking at it as a sole provider
14 even though the word "statewide" is in there? Meaning
15 per, per --

16 **MR. GRAVES:** I don't think the 110 was intended
17 for a sole provider. I think it ended up that way that
18 FPL got the full 110 megawatts.

19 **COMMISSIONER ARGENZIANO:** I know. What I'm
20 trying to say is can -- I understand that. I guess it's
21 too much of a stretch to look at it the other way. What
22 I was trying to say is could it have been written in the
23 statute and looking at that as per provider?

24 **MS. BRUBAKER:** I certainly think it could have
25 been written so. I do not believe it was written so in

1 this instance. I understand from Mr. Trapp it was argued
2 that way at the time that the statute, the amended
3 statutory language was being considered.

4 **CHAIRMAN CARTER:** Commissioner Skop.

5 **COMMISSIONER SKOP:** Thank you. And I think to
6 Commissioner Argenziano's point, I wholeheartedly agree.
7 You know, obviously our other respective investor-owned
8 utilities were disadvantaged by the fact that there's
9 none of the 110-megawatt statewide capacity left for them
10 to avail themselves of. You know, in viewing the
11 project, I think it's a good one. I'm just torn by how
12 you approve something where it doesn't comport with
13 Commission precedent in the absence of a ratified RPS and
14 in the absence of a statutory provision that's been fully
15 subscribed to by one investor-owned utility. It seems to
16 me that part of the logical approach and, you know,
17 advice I would give would be the legislative session is,
18 you know, quickly approaching, and it would seem to me
19 that if there are additional shovel-ready projects, then
20 certainly the Legislature could see fit to expressly
21 provide for cost recovery of those projects should it
22 deem appropriate and in the interest of state policy to
23 do so.

24 I would also, you know, when we get into
25 further discussion, I have some concerns as to the

1 company in lieu of entering into a power purchase
2 agreement, why they did not maybe look at a self-build
3 option that could have provided some additional cost
4 benefit to its ratepayers. But I'll save my questions to
5 that.

6 **CHAIRMAN CARTER:** Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** Mr. Chair, and I'm
8 just I guess at a loss because I understand where we are.
9 But when you look at a company who's trying to promote
10 something, that policy, really we're saying that's where
11 we need to move and as an individual I believe we need to
12 be moving in that direction, at such a low cost, because
13 whatever you've heard for the past three decades, oh,
14 it'll cost thousands and thousands, people wouldn't be
15 able to afford their bills. You know, you're talking
16 about a minimal amount per month to move towards
17 something that many believe is essential. And, and it
18 just boggles my mind I think that here we are looking at
19 this and having to look at, you know, what the
20 Legislature has said. And basically we'd be telling this
21 company, sorry, we can't, you know, you can't pass this
22 on, this small amount to move in the direction that we
23 all need, most of us know we need to be moving in.

24 And I still when I read the statute I just see
25 conflicting, that you could almost make the argument to

1 say, well, you can go ahead with it until you get to that
2 one point. And I'm not sure whether it takes better
3 lobbying on TECO's part. Maybe Mr. Wright can, can add
4 on to that.

5 **CHAIRMAN CARTER:** Mr. Wright, ever so briefly.

6 **MR. WRIGHT:** Thank you, Mr. Chair, and I'll be
7 as brief as I can. I really did try to keep my earlier
8 remarks fairly short because we laid it out in our memo
9 of law. But I really need to address the issues related
10 to the statutory construction and the rule issues.

11 **CHAIRMAN CARTER:** Okay.

12 **MR. WRIGHT:** I will be as brief as I can.

13 I believe that to hit the concluding point
14 first and I'll come back to it, I believe that the
15 correct interpretation is that you can indeed do what
16 Tampa Electric asks you to do under the statutes as they
17 are written today, and I'll go through why that is.

18 Neither the statutes nor the rules prohibit you
19 from paying more than avoided cost. 366.051's statement
20 to the effect that the Commission shall authorize full
21 payment equal to full avoided cost is really in the
22 context of Standard Offer Contracts.

23 The --

24 **CHAIRMAN CARTER:** And this is not -- this is a
25 negotiated agreement.

1 **MR. WRIGHT:** This is a negotiated contract.

2 Yes, sir.

3 **CHAIRMAN CARTER:** Okay.

4 **MR. WRIGHT:** 366.92(4) provided for really
5 essentially a separate pilot project to allow for the
6 development of certain renewable energy projects and for
7 their recovery through the Environmental Cost Recovery
8 Clause. That's exactly what that did. It was not
9 exclusive as to what we're asking for. We're not asking
10 to be rolled under that statute. We're asking you to
11 approve this through your general authority to approve
12 power purchase agreements and through your general both
13 authority and mandates to regulate in the public
14 interest.

15 The rules do not prohibit. The rules say will
16 be considered prudent for cost recovery purposes if less
17 than avoided cost. They do not say if and only if, they
18 do not say will be considered imprudent for cost recovery
19 purposes if they're above avoided cost. Your statutes
20 very clearly, and I think y'all agree with this, even
21 those who have reservations about, about the pricing
22 under this contract, y'all agree that this contract, that
23 it's the Legislature's intent to promote renewable energy
24 for the achievement of the specific public policy goals
25 and purposes articulated in 366.91 and 366.92. And from

1 the sound of the discussion, I think you all agree that
2 this project will in fact promote those public interest
3 purposes as we suggest.

4 I come back to Chapter 366.01, which states
5 that Chapter 366 shall be broadly construed to serve the
6 public interest. Chapter 366.81, which is part of, a
7 more specific part of the Florida Energy Efficiency and
8 Conservation Act, I'm leaving out a lot of words because
9 there's a lot here, but it very clearly says the
10 Legislature intends that the use of solar energy,
11 renewable energy sources, et cetera, shall be encouraged.
12 And it says that FEECA at any rate shall be liberally
13 construed in order to meet Florida's energy problems.

14 I don't, I honestly don't believe that it's a
15 reach at all for you to rely on your public, public
16 interest mandates under FEECA and under 366.01 and the
17 specific -- and the fact that this project will serve the
18 specific purposes identified as the public interest under
19 366.91 and 366.92: Fuel diversity, reduced dependence on
20 natural gas, reduced exposure to fuel price volatility
21 and investment in the state, improved environmental
22 conditions as articulated by the Legislature.

23 Regarding the rules, if there, if there even
24 were -- and I don't think it's a valid argument that the
25 rules prohibit paying more than cost recovery, than full

1 avoided costs conventionally calculated, a rule cannot
2 trump a statute. Your statutes clearly direct you to
3 encourage solar energy, to encourage renewable energy,
4 and that your statutes also clearly, clearly direct you
5 to construe your statutes liberally for the
6 accomplishments of these, these purposes. Thank you.

7 **CHAIRMAN CARTER:** Commissioner Edgar, then
8 Commissioner Argenziano.

9 **MR. WRIGHT:** And briefly, I believe that -- let
10 me throw in one more personal note.

11 **CHAIRMAN CARTER:** Okay.

12 **MR. WRIGHT:** I've been doing this a long time.
13 I had the privilege of working on the staff for seven
14 years and working with a whole lot of folks, technical
15 and legal staff. When I first left the Commission and
16 went to law school, I actually had the opportunity as a
17 Class B practitioner back then to serve alongside Harold
18 McLean, who was working for the Public Counsel at the
19 time, formerly of the staff, later your General Counsel.

20 And Harold said to me, "Schef, you're going to
21 find that there's about 90 percent of all lawyers when
22 you ask them if you want to do something will tell you
23 why you can't do it, and there's another 10 percent that
24 will tell you you can find a way to do it." And I
25 believe that your statutes clearly afford you the way to

1 get to where you want to get. You want to send a message
2 that this is a good project. You want to credit Tampa
3 Electric's vision. You want to tell the other utilities
4 that they're open for business, that they can bring you
5 solar projects like this one where they determine that
6 they're in the best interest of those utilities and their
7 customers. Thank you.

8 **CHAIRMAN CARTER:** For the record, Mr. Wright is
9 a 10 percenter. So we'll go to --

10 **MR. WRIGHT:** Thank you, Mr. Chairman.

11 **CHAIRMAN CARTER:** Yeah. We'll go to
12 Commissioner Edgar, Commissioner Argenziano, then
13 Commissioner Klement and then Commissioner Skop.

14 Commissioner Edgar, you're recognized.

15 **COMMISSIONER EDGAR:** Mr. Wright, here's my
16 struggle. I think we've all pointed out that there are
17 some potentially inherent conflicts in the statutes. And
18 it certainly would make this job much easier if there
19 were a statutory provision that said promote renewables
20 no matter what the cost as long as you try to minimize
21 them or something like that. I don't see that.

22 So here's my first question to you. What is
23 the position of consumer groups regarding whether
24 shareholders or ratepayers should pay the difference
25 above avoided cost for renewables?

1 **MR. WRIGHT:** Commissioner Edgar, first I would
2 like to say it would make my job a lot easier too.

3 **COMMISSIONER EDGAR:** I understand.

4 **MR. WRIGHT:** I can only speak -- I don't know
5 if my brethren from the Office of Public Counsel are
6 still here. I can only speak generally on behalf of --

7 **COMMISSIONER EDGAR:** I note that they are not.

8 **MR. WRIGHT:** They were either wise or hungry or
9 both.

10 So as I sit here before you, here's what I can
11 tell you from, from everything I know. AARP has opposed
12 things like this. They have not offered an opinion to
13 me, no representative of the AARP has offered an opinion
14 to me one way or the other on this. But we know they did
15 oppose a 2 percent cap versus a 1 percent cap. That's
16 what we know about AARP. I don't know that the
17 industrial power users have taken a position on this.
18 Public Counsel rarely takes positions on things like
19 this. And I can tell you on behalf of my other client,
20 the Florida Retail Federation, they're strongly
21 supportive of renewable energy. We haven't, I don't
22 think we've discussed this specific project, but I
23 believe -- I know that they support renewable energy
24 generally speaking and they very actively support solar
25 power, including projects like this. They want to see

1 the last or next to the last of the legislative
2 Band-Aids. Well, actually they want to see several of
3 them.

4 **COMMISSIONER EDGAR:** But there again, Mr.
5 Wright --

6 **MR. WRIGHT:** They want to see, they want to see
7 energy independence and they want to see encouraged
8 investment.

9 **COMMISSIONER EDGAR:** Let, let me, please. We
10 all -- your organizations or the ones you've cited that
11 support renewables, we have all I think individually if
12 not today otherwise have said, I think each of us,
13 certainly I have, that we support renewables. It, as
14 always in life, comes down to who's going to pay. And
15 we've had comments here that this, this, the difference
16 for this particular project appears to be, and I've heard
17 the word used and I will use it, minimal.

18 With all of the advantages to renewable
19 projects that we hear about, promoting fuel diversity,
20 hoping to attract new industry into this state, hoping to
21 create jobs and on and on and on, why should that minimal
22 cost not be borne by the shareholders for the hopefully
23 goodwill and other benefits that would accrue from, for
24 instance, what we've been reading about with the project
25 in Arcadia today?

1 **MR. WRIGHT:** Well, I would point out that with
2 regard to the project in Arcadia, the shareholders are
3 not bearing the cost at all. The price -- the cost of
4 that contract is substantially higher than this.

5 **COMMISSIONER EDGAR:** And I did not say that
6 they were. And if I did, that's -- exactly. We've been
7 making the distinction between the cost recovery that is
8 provided for under statute for that project and others, I
9 guess.

10 My -- the point I was trying to make is that
11 there does seem to be goodwill and other things that come
12 along to a company that is promoting a renewable project,
13 certainly a solar project in this state, not without
14 criticism from some, but that why should that minimal
15 cost be borne by the ratepayers and not by the
16 shareholders?

17 **MR. WRIGHT:** My answer to that question, you
18 know, as one who does represent consumers before you --

19 **COMMISSIONER EDGAR:** That's why I thought you'd
20 be the perfect person to answer the question.

21 **MR. WRIGHT:** -- very, very often, my answer to
22 that is because it is minimal and it is in the public
23 interest here. I think with regard to why it should be
24 borne by the shareholders, I answered the question why
25 should it be borne by customers?

1 **COMMISSIONER EDGAR:** Because it's minimal.

2 **MR. WRIGHT:** Because it's minimal and because
3 it's in the public interest and because it's going to get
4 you where, a lot closer to where you want to be.

5 **COMMISSIONER EDGAR:** Could you not argue it the
6 other way? If it's minimal and it's in the public
7 interest, that the shareholders, in light of unclear
8 statutory direction?

9 **MR. WRIGHT:** I think that Mr. Beasley might be
10 better positioned to answer that than I, but I would
11 offer you this. It's minimal, it's cents on a typical
12 customer's monthly bill. It's a substantial amount of
13 money to Tampa Electric Company, to Tampa Electric
14 Company's shareholders. That I think is the real
15 difference there. But that's, that's my former economist
16 answer to you. I think Mr. Beasley might be in a better
17 position to answer.

18 **COMMISSIONER EDGAR:** Thank you. Thank you.

19 **CHAIRMAN CARTER:** Commissioner Argenziano and
20 then Commissioner Klement and then Commissioner Skop.

21 **COMMISSIONER ARGENZIANO:** Well, under, under
22 the Environmental Cost Recovery Clause, can staff maybe
23 tell me how it wouldn't fit in there or, and -- excuse
24 me. I lost where I was now. Hang on one second.

25 I guess can you tell me also your reading of

1 366.051 under cogeneration and how that could be
2 interpreted in that statute?

3 **MS. BRUBAKER:** Certainly. If I could, I'll
4 start with the statute. I have actually conferred with
5 our General Counsel, and I don't see where 366.051 is
6 limited to Standard Offer Contracts. Certainly that is a
7 component of the types of contracts that might come
8 before this Commission. But the other component is
9 negotiated contracts, which we have. And in both
10 instances we look at avoided cost. It wouldn't make
11 sense to use a test for one but not the other in staff's
12 opinion.

13 And I'm sorry. Could you restate your question
14 about recovering through the clause? I'm --

15 **COMMISSIONER ARGENZIANO:** The environmental
16 recovery, recovery.

17 **MR. BALLINGER:** Commissioner Argenziano, I
18 think that was specific in the statute for the
19 110 megawatts, to flow it through the Environmental Cost
20 Recovery Clause.

21 **COMMISSIONER ARGENZIANO:** Just for the --

22 **MR. BALLINGER:** Yes. Normally purchased power
23 agreements go through the fuel and purchased power
24 clause.

25 **COMMISSIONER ARGENZIANO:** Right. Right. It

1 was the 110. Okay. Thank you.

2 **CHAIRMAN CARTER:** Commissioner Klement. Oh,
3 wait. Hang on a second.

4 Commissioner.

5 **COMMISSIONER ARGENZIANO:** Well, when the
6 Commissioner is done maybe Mr. Wright can, can tell me
7 how he sees it fitting into 366.051.

8 **CHAIRMAN CARTER:** Why don't we do that now, and
9 then we can go to Commissioner Klement. He can get a
10 full perspective on his questions. Commissioner -- Mr.
11 Wright, would you respond to Commissioner Argenziano's
12 question, please, sir?

13 **MR. WRIGHT:** Well, again, I think I essentially
14 answered that. I think it's not preclusive. I said
15 shall authorize a rate equal to the utility's full
16 avoided cost.

17 You know, as Commissioner Edgar correctly
18 pointed out, it would be a lot easier if the Commission,
19 if the Legislature just said do this. Our -- and just to
20 touch on the Environmental Cost Recovery Clause question
21 raised by Commissioner Argenziano, we're not asking for
22 that. We're just asking for conventional recovery
23 through the fuel cost recovery clause.

24 But the, again, there is tension in the
25 statute. You know, you've got this one reference here

1 and then you've got in 366.92 this very nebulous
2 phraseology, while at the same time minimizing cost to
3 customers. A very simple explanation of that is that
4 they meant promote renewable energy at the lowest
5 reasonable cost for required renewable energy. That's
6 exactly what Tampa Electric Company has done in this case
7 through its competitive procurement process and through,
8 as I put it, the proof in the pudding, bringing you a
9 solar power purchase agreement with pricing that's lower
10 than virtually every other data point we know of. It's
11 less than the Arcadia and related projects. It's less
12 than GRU's feed-in tariff. It's less than the Cal Energy
13 Commission as reported as the cost for comparable
14 generation in California which has a better solar
15 resource than we have.

16 I would say that we have that good old
17 statutory construction principle of in pari materia. If
18 you read all this in pari materia, you're required to
19 promote the public interest, construe your statutes in
20 the public interest, promote, promote renewable energy
21 and develop fair, just and reasonable rates. Our
22 position is, with which Tampa Electric agrees, that the
23 rates resulting from approving this petition as prayed
24 will be fair, just and reasonable rates. There will be a
25 small impact on customers' bills. Whatever benefits

1 there are over the long-term will flow through to
2 customers. And additionally customers not only of Tampa
3 Electric but of the other utilities in the state will see
4 the benefits of encouragement as other vendors, as we
5 along with, Energy 5.0 along with other vendors of
6 renewable energy come knocking on their door next month,
7 next year after hopefully you approve this power purchase
8 agreement and say, look, now we know what we're working
9 with. Let's sit down and see if we can't cut you a
10 better deal. But, you know, every journey begins with
11 the first step, and this really is one of those first
12 steps, you know. The pricing under the other project
13 we've discussed is, as I've put it, substantially higher
14 than ours. Here we are beating the price down. We think
15 you ought to approve the contract. Thank you.

16 **CHAIRMAN CARTER:** Okay. Commissioner Klement
17 and then Commissioner Skop.

18 **COMMISSIONER KLEMENT:** Thank you, Mr. Chairman.
19 Actually Commissioner Edgar's question to
20 Mr. Wright was the question I had most wanted to ask was
21 about why, why not ask the shareholders to pay instead of
22 the rateholders since it is a small amount, but you've
23 answered that.

24 So I'll instead use this opportunity
25 to ask staff counsel if it's true what Mr. Wright said

1 that a rule cannot trump a statute, if that is an
2 accurate interpretation of the legalities.

3 **MS. BRUBAKER:** That's correct. You always --
4 the primary authorization for any agency to act is its
5 authorizing statutes. The rules are created to help
6 implement the statutes. Rules are always subservient to
7 the statutes that authorize them.

8 However, I don't see that the rules are
9 necessarily in conflict here. What we have is a
10 statutory framework that is moving towards promoting
11 renewable energies. We, we have seen great progress in
12 that direction. They specifically reference and
13 hopefully we will soon have an RPS. The fact of the
14 matter is we're not there yet. And what we have
15 currently before us is a framework that is what it is.
16 You know, what staff looks at, I'll cite you to Page 4 of
17 staff's recommendation that says TECO's evaluation of the
18 contract without revenues from the sale of RECs indicates
19 that purchased power pursuant to the contract would have
20 a net cost above TECO's as-available energy cost of
21 approximately \$44 million to \$65 million over the life of
22 the contract.

23 Maybe that's minimal when you look at a
24 month-to-month bill, maybe it's not. But what staff is
25 saying, promote the contract, but do it so that costs

1 above the avoided costs are, are imposed to the
2 shareholders. And let them -- to the extent there are
3 rewards, more power to them and may they come. But to
4 the extent there are risks, we would ask that those not
5 be imposed on the customers.

6 **COMMISSIONER KLEMENT:** If I may follow up. You
7 said we do not have an RPS. Do you mean Florida or do
8 you mean the PSC?

9 **MS. BRUBAKER:** Actually I think it's both at
10 this time. We are, we are -- I don't know exactly where
11 we are in the process of that. Perhaps Mr. Trapp can --

12 **COMMISSIONER EDGAR:** We do not have one.

13 **MR. TRAPP:** I can address that for you.

14 **MS. BRUBAKER:** At this time one has not been
15 approved by the Legislature.

16 **MR. TRAPP:** We during the last session were
17 required to give a draft RPS rule to the Legislature for
18 their ratification, and the Commission did that. As a
19 matter of fact, the Commission gave the Legislature a
20 range of options to look at with respect to the adoption
21 of an RPS, and the Legislature during the last session
22 did not act on ratifying that. So we are in this state
23 of limbo with respect to what the legislative total
24 intent is with respect to payment above avoided cost.

25 I wish at some point in this discussion that

1 you would look at some of the real numbers. We've heard
2 a lot of rhetoric, if you would, with respect to the
3 minimal impacts of this project. But this is a
4 25-megawatt project that's going to have a 40- or 50-cent
5 first year impact on monthly rates, and that to me is
6 significant. And I think staff has got an exhibit from
7 TECO that shows you those impacts that you probably ought
8 to look at.

9 **COMMISSIONER KLEMENT:** What percentage was
10 that?

11 **MR. TRAPP:** Tom, do you have those numbers?

12 **MR. BALLINGER:** No. It was the -- I handed it
13 to all your offices this morning. It was the
14 interrogatory response from Tampa Electric that showed
15 the rate impact. It's a one-page exhibit. It's response
16 to Interrogatory Number 66. And it shows that the first
17 year rate impact is about 48 cents on a typical
18 residential bill. It escalates the next year, but then
19 it starts to decline as customer growth goes on. But
20 keep in mind, this is an increase above and beyond what
21 the bill normally would be, and that is significant. 50
22 cents a month is a significant increase on a customer
23 bill. I would also --

24 **COMMISSIONER ARGENZIANO:** Chairman.

25 **CHAIRMAN CARTER:** Commissioner.

1 **COMMISSIONER ARGENZIANO:** He's not done. He's
2 not done. I'm sorry.

3 **MR. BALLINGER:** That's okay. Go ahead.

4 **COMMISSIONER ARGENZIANO:** No. The Commissioner
5 is not done yet.

6 **COMMISSIONER KLEMENT:** I wanted to ask, that
7 RPS that we recommended to the Legislature, is that 7
8 percent by 2013?

9 **CHAIRMAN CARTER:** It was 20 by 20.

10 **MR. BALLINGER:** It was 20 by 20, I remember
11 that, and I think it was basically a linear progression
12 up to that.

13 **COMMISSIONER KLEMENT:** Okay. Perhaps it went
14 up to 20 by 20.

15 I don't know. I'm still, I'm thinking out loud
16 here, but perhaps the Commission needs to send a message
17 to the Legislature in some more vocal form than --

18 **COMMISSIONER ARGENZIANO:** Send me. Send me.

19 (Laughter.)

20 **COMMISSIONER KLEMENT:** They don't appear to
21 have heard us up to now. I know. I know. I heard that
22 at the Nominating Council interviews, as Mr. Carter did;
23 right?

24 **CHAIRMAN CARTER:** Yep.

25 **COMMISSIONER KLEMENT:** And you answered them

1 pretty emphatically, "You didn't pass what we
2 recommended."

3 I yield the floor.

4 **COMMISSIONER ARGENZIANO:** Mr. Chair.

5 **CHAIRMAN CARTER:** Commissioner, let meet do
6 this. Let me go to Commissioner Skop. He's been,
7 believe it or not, he's been patient. Then I'll come
8 back to you.

9 Commissioner Skop.

10 **COMMISSIONER SKOP:** Okay. And I'll make my one
11 point, then yield to Commissioner Argenziano.

12 **CHAIRMAN CARTER:** And I do want, before you go,
13 Commissioner, I do want, Commissioners, for us to kind of
14 start getting our minds around this thing to kind of
15 bring it in. It's, it's really unfortunate because we've
16 talked about how much we support creating an environment
17 for renewable energy in Florida, but, and then the
18 Legislature has for whatever reason chosen not to give us
19 the appropriate tools to get there. But anyway let's
20 kind of -- I want you to be thinking about that after we
21 finish our discussion.

22 Commissioner Skop.

23 **COMMISSIONER SKOP:** Actually let me, it will
24 probably be best because I have a few points I want to
25 cover in sequence. So let me yield at this point to

1 Commissioner Argenziano. And then if you could come back
2 to me, I'd appreciate it.

3 **CHAIRMAN CARTER:** Commissioner Argenziano.

4 **COMMISSIONER ARGENZIANO:** Sure. And I guess
5 what I'm looking at is the way the policy direction has
6 been moving. And I think Mr. Wright is correct when you
7 talk about what's in the public interest. I mean, we
8 hear the Legislature and we hear, you know, we see the
9 statutes, read the statutes. I think when you look at
10 what the policy has done in other areas, I mean there are
11 recoveries that are totally given for other energy
12 sources that are not placed upon the shareholders. And I
13 think when you look at it in the whole context -- and I
14 think what Mr. Schef (sic.) said, I've been scrambling
15 through the -- Mr. Wright, Mr. Schef, I just renamed
16 you -- Mr. Wright had indicated strikes me that I don't
17 see a prohibition and that makes a big difference. If
18 there's no prohibition in the statute specifically and
19 yet you look at the direction of the statute and you add
20 into that what's in the public interest, then perhaps it
21 is in the public interest. So unless you direct me to
22 the prohibition in the statutes, well, then I don't have
23 a prohibition.

24 **MR. TRAPP:** I would like to address it from a
25 policy standpoint, and I think maybe the legal standpoint

1 are two different things.

2 **COMMISSIONER ARGENZIANO:** Well, now you're
3 talking legislative, legislative policy or your policy?
4 And I don't mean that with disrespect.

5 **MR. TRAPP:** Well, I'm an employee of the Public
6 Service Commission, so what I hope to offer you is
7 proposed Public Service Commission policy. Actually it's
8 steeped upon rulemaking and legislative intent and all of
9 that.

10 **COMMISSIONER ARGENZIANO:** Right. And the
11 reason --

12 **MR. TRAPP:** So it's PSC policy.

13 **COMMISSIONER ARGENZIANO:** Okay. So then the
14 reason I said that is because there's quite a difference
15 between legislative policy, they are the true
16 policymakers. And no matter what we do here, unless they
17 give us the authority to do that, and we don't, we can't
18 do it unless we have legislative authority to do. So I
19 was asking for a differentiation for that purpose.

20 **MR. TRAPP:** Let me simply pose a practical
21 question to you.

22 **COMMISSIONER ARGENZIANO:** Sure.

23 **MR. TRAPP:** If you believe this project is in
24 the public interest and you want to approve it and you
25 want to pay more than avoided cost, my question is very

1 simple, what does staff do to evaluate the next project
2 that comes in? And where, without specific guidance from
3 the Legislature on how much more than the standard
4 avoided cost you can pay, without that guidance, how am I
5 to evaluate any project that comes in here?

6 The Legislature has very clearly in my mind and
7 in the adopted rules of this Commission said avoided cost
8 is the standard. They have not varied from that standard
9 yet. There's been a lot of talk about it, there's been a
10 proposed rule, subject to ratification that would allow
11 us to go past avoided cost. But the rule has not been
12 ratified, so the question has not been answered. And
13 without standards, I don't see how this Commission can
14 make decisions in the future. That's, that's my
15 conundrum.

16 **MR. BALLINGER:** Commissioner, if I could add a
17 little to that. Just as Commissioner Skop pointed out
18 earlier, that staff's recommendation is consistent with
19 Commission policy of looking at renewables, of using
20 avoided cost as kind of our benchmark and all that. And
21 I'd just like to remind you consistent a few weeks ago
22 you had before you an issue with the City of Tampa and
23 Tampa Electric, it was a solid waste facility, which is
24 another renewable facility under 366.92. That contract
25 showed savings over the term of the contract below

1 avoided cost, yet the Commission decided to send the
2 parties back to try to get some more savings. So staff
3 is trying to gauge, like Mr. Trapp said, how do we
4 evaluate these things.

5 **COMMISSIONER ARGENZIANO:** Yeah. I understand
6 that. And there were different circumstances in that
7 because there was a belief that there could be more
8 savings.

9 And what I'm trying to get at, and I understand
10 the dilemma we're in quite, I mean clearly except --
11 well, and I guess if the Legislature -- I guess what it
12 looks like when it comes down to it, if there's no
13 prohibition, strict prohibition against it, then it can
14 be done. It's just then how do you know, like Mr. Trapp
15 has indicated, what do you do the next time and what
16 numbers do you use? And I'm not sure.

17 All I know is that when you look at it in
18 total, that the policy has been to move forward to
19 renewables, actually then my statement today to the
20 Legislature would be you're speaking out of both sides of
21 your mouth because you cannot say that we need to move
22 towards renewables and not put it in the statutes.

23 Now if they turn around and say, well, you're
24 not prohibited from doing that, well, then I'd feel like
25 an idiot too. So that's what I'm trying to get down to,

1 I guess, is looking, if there's no prohibition, as Mr.
2 Wright says, and yet everything else leans towards -- it
3 even specifically talks about solar, giving added weight
4 to solar, then maybe we're not doing what's in the best
5 interest, understanding the problems that arise the very
6 next time that something comes into play.

7 **MS. BRUBAKER:** Mr. Chairman, if I may.

8 **CHAIRMAN CARTER:** Ms. Brubaker.

9 **MS. BRUBAKER:** I have the great pleasure of
10 actually disagreeing with something Mr. Trapp says. He
11 says that the Legislature has never given us guidance
12 about going above avoided cost, and actually they have
13 and he even talked about it. It's at 366.92(4). And
14 they created there a very specific carve-out to allow up
15 to 110 megawatts of -- I think it actually says
16 renewables. I don't think it really specifies -- or is
17 it solar?

18 **CHAIRMAN CARTER:** That's already been, the 110,
19 that's already been --

20 **MS. BRUBAKER:** Anyway, 110 megawatts at, at
21 full cost recovery, full cost recovery, and that's,
22 that's very different. There's a, there's a principle of
23 statutory interpretation that says statutes should be
24 read together to the extent they can. And to the extent
25 there's conflict, there are different ways to assess how

1 to interpret it. I don't think we have a conflict here.
2 I think we have some tension, and I would love to see the
3 Legislature give us a better sense of where we can go in
4 the future. But we have statutes that talk about
5 projects at avoided cost and that's our, our hallmark,
6 our standard, and we also have the promoting renewable
7 energy. And I would like to think that's what we're
8 doing here, we just don't want to do it where the risk is
9 assessed to the customers.

10 And one thing that Commissioner Skop actually
11 mentioned is some prior cases recently where we have
12 actually addressed this very issue, and I'd like to cite
13 you to Order PSC-08-0116-PAA-EQ, and that had to do with
14 a petition for approval of negotiated renewable energy
15 contract with Manatee Green Power LLC with Florida Power
16 & Light Company. And the order actually discusses some
17 of the things we've heard today, PURPA and 366.051.

18 And in that order on Page 7 I would just point
19 out the Commission, which actually is four-fifths of
20 today's sitting Commission, "It would not be appropriate
21 for the general body of ratepayers to be obligated at
22 this time to pay the cost to purchase speculative green
23 attributes that may be associated with the Manatee
24 project." And with all due respect and reverence for
25 what has been said up to this point, I really think

1 that's where we are today, where we are here today.
2 We're in the same position. We have a, a policy of
3 promoting renewables, but we also have a policy of
4 setting fair, just and reasonable rates. And as staff
5 recommends, we think that would be up to, cost recovery
6 up to the point of avoided cost.

7 **COMMISSIONER ARGENZIANO:** Well, then one, one
8 other comment, Mr. Chair.

9 **CHAIRMAN CARTER:** Commissioner Argenziano.

10 **COMMISSIONER ARGENZIANO:** And I'd be happy to,
11 to tell it to the Legislature personally.

12 **CHAIRMAN CARTER:** Then Commissioner Skop.

13 **COMMISSIONER ARGENZIANO:** But then it's a real
14 joke to, for the Legislature or the policymakers of this
15 state to give us these statutes and I guess indicate to
16 the people of the State of Florida that we are moving in
17 a direction towards renewables and yet only selectively
18 allow cost recoveries in certain areas where they may be
19 justifiably right, but it's a joke then. Because sitting
20 here trying to do a job and trying to look at what's in
21 the best public interest, my hands are tied then. And it
22 looks like that's what -- but I have to make the comment
23 that I think it is a joke. You cannot tell the people of
24 the State of Florida that this is your policy. I mean,
25 it has to be done within reason, of course, and costs

1 have to be very much a consideration, as we all know.
2 But when you have something before you -- and it's just
3 because maybe the Legislature didn't look -- I guess
4 they're selectively picking where they want that
5 incentives to go, and it obviously isn't in the solar
6 industry's interest at this point.

7 Where I hear from the people of the State of
8 Florida, many people are interested in moving towards
9 solar. We are the Sunshine State. That doesn't diminish
10 nuclear or anything else. It just says that in my
11 opinion the Legislature is speaking out of both sides of
12 its mouth. You can't take away the incentives of one
13 industry when you're talking about renewables. You have
14 to give that incentive also.

15 And I guess what I'm getting from today, and
16 I'm trying very hard to find it in the statutes, but that
17 they have not given us that incentive for solar. So when
18 the people call us and complain that we're not moving
19 toward solar or pushing or helping companies to get
20 there, they need to call their state representatives and
21 their senators because we don't have the incentive to
22 give TECO to do this at this point.

23 You may, may be able to stretch it that way.
24 But really when you look at it, it looks like they've
25 decided not to give the incentive to that industry at

1 this time.

2 **CHAIRMAN CARTER:** Thank you.

3 Commissioner Skop.

4 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

5 And I just wanted to follow up and hopefully we
6 can bring this into landing after we've had substantial
7 discussion on the issue.

8 But I just want to be clear. I generally am in
9 support, full support of the proposed project, but I
10 equally agree with the staff recommendation at the
11 present time and I'll articulate some rationale why.

12 I guess staff has alluded to, and I had my aid
13 pass out two pages for all the Commissioners, but the
14 first page I'd like the Commission to look at is the one
15 with Page 54 at the bottom that has the differential
16 pricing or the rate impact on customer bills. And if we
17 look at the far right column, which is the differential
18 in 1,200 kilowatt hours for a customer bill, it shows, as
19 staff has articulated, the monthly impact is, starts out
20 in 2011 of 48 cents and then rises to 52 cents and then
21 goes up and down and then ultimately down towards the end
22 of the term of the project.

23 My concern stated concisely is that I believe
24 that the rate impact shown on this page may be higher
25 than they need to be, and that's just based upon my

1 review of the underlying documents of the project and
2 some of the things I'll get into. But the central point
3 is I have no doubt that this project is consistent with
4 the public interest and consistent with the legislative
5 policy of the state. But that being said, we as a
6 Commission cannot be agnostic to procuring renewable
7 resources at the lowest cost possible for ratepayers.

8 And Mr. Trapp, we often disagree, but he said
9 something that resonated the point I was trying to make
10 during our RPS discussions. When the state moves forward
11 with encouraging renewables, we as a Commission that are
12 called upon to evaluate each specific project have to
13 have a benchmark to evaluate the project such that it
14 is -- you know, I've harped upon this, it's very
15 important to establish a levelized cost by renewable type
16 to ensure that consumers are not overpaying on any given
17 project.

18 And the reason for this is that the company can
19 come before the Commission today with a solar PV contract
20 for a 15-year term. Solar projects typically have a
21 useful life anywhere from 25 to 30 years. So if they
22 come with a 15-year term contract, how are we as a
23 Commission to evaluate that contract versus another
24 contract based on solar PV that may be for a 25- or
25 30-year term? You need to look at the levelized cost by

1 renewable type over the life cycle cost of the project in
2 order to have a benchmark to properly evaluate whether
3 the cost being requested to be recovered from consumers
4 is fair, just and reasonable. In this case we don't have
5 that levelized cost data.

6 And I'll ask the Commission to turn to the next
7 handout, which is, it's got a big one at the bottom of
8 it, and it's staff's first data request, request number
9 one, Page 1 of 2. And if we look at the response to 1A,
10 and I'll just quote excerpts, "Fixed price is just that,
11 a fixed price. Tampa Electric has no knowledge of Energy
12 5.0 internal financing analysis that may support the
13 confidential price of the subject power purchase
14 agreement."

15 So I want to loosely translate this using my
16 own renewable experience. I take this as TECO has no
17 knowledge of a levelized cost by renewable type to ensure
18 that TECO customers are not overpaying for this renewable
19 resource. I have no benchmarking data at all to
20 substantiate this. That's why I have a big question
21 mark.

22 Again, even, Mr. Wright, even if I adopted your
23 position that the Commission had the discretion to
24 approve the proposed project, I would not do so at the
25 present time because of the many unanswered questions

1 that I have regarding the proposed project.

2 As further stated on Page 1, Tampa Electric
3 had to go benchmark off the CEC, which is the
4 California Energy Commission, to try and rationalize the
5 proposed confidential price.

6 Well, I've worked in California on renewable
7 projects. I've -- I may have even appeared before the
8 California Energy Commission. I can't remember. But I'm
9 certainly familiar with working with them. Again, what's
10 good for California is not good for Florida. We need to
11 establish our own levelized cost structure so that we can
12 evaluate these projects as they come before the
13 Commission. To do otherwise is complete randomness
14 because we have no benchmark and we're just merely
15 guessing, and that's the concern that I have here.

16 Another point with this document is that they
17 have established a fixed price. And I have a question
18 for staff. What is the current as-available energy rate
19 for TECO in dollars per megawatt hour or dollars or cents
20 per kilowatt hour?

21 **MR. BALLINGER:** We get monthly reports and I'm
22 trying to recall the last one I saw. I want to say it's
23 anywhere between four and five cents a kilowatt hour, but
24 Mr. Beasley might be able to --

25 **CHAIRMAN CARTER:** Mr. Beasley.

1 **MR. BEASLEY:** I understand that's about
2 approximately correct.

3 **MR. BALLINGER:** Okay.

4 **COMMISSIONER SKOP:** Okay. All right. So
5 without getting confidential data, the fixed rate versus
6 the as-available energy price, they're on different
7 spectrums of the universe; is that correct?

8 **MR. BALLINGER:** Yes.

9 **COMMISSIONER SKOP:** Okay. All right. The
10 other concerns that I have here, most importantly is that
11 if you were to look at, and everyone may not have this
12 and I don't want to bore everyone, but on Page 27 of the
13 agreement between the parties, Page 6, Paragraph 6 talks
14 about the rights to environmental attributes and
15 renewable energy credits.

16 As staff has properly stated and as presented
17 by the parties, certainly under the proposed agreement
18 TECO would own the environmental attributes and renewable
19 energy credits. If you read the last sentence of that,
20 however, and you have to read closely because this is
21 very important, "The seller shall retain," the seller
22 being Energy 5.0, "The seller shall retain all tax
23 credits arising out of generation of renewable energy,
24 renewable energy tax credits."

25 Under the current Investment and Recovery Act

1 policy there's something known as invest, convertible
2 investment tax credit which provides for a cash payment
3 of 30 percent of the qualified project costs directly
4 from the Treasury. I'm not certain as to whether that
5 30 percent rebate, for lack of a better word, has been
6 properly priced into the fixed energy costs within the
7 agreement, which again means that TECO customers might be
8 overpaying for the renewable resource. Again, you have
9 to read this closely to, and I don't have the -- part of
10 the problem here is I don't have Energy 5.0's project pro
11 forma. I can't evaluate what their revenue stream would
12 be, I can't evaluate what their expenses would be,
13 whether it be project O&M, debt service for the capital
14 cost of the project, and I certainly can't evaluate what
15 their profit margin would be or their return on equity.
16 But with that lack of transparency and not knowing
17 whether the convertible investment tax credit which this
18 project, given the in-service date, certainly should
19 qualify for, it could be a tremendous windfall to the
20 developer. I mean, I know how these things work. I did
21 it. I got paid well to manage type of projects like
22 this. So, again, these are, these are relevant comments.

23 Other points I would mention is that the
24 capacity factor assumed for the project is, is, and this
25 is in a public record, it's, I believe, 22 percent, which

1 is much higher than what was projected by FPL for its
2 three solar projects that were built under 366.92(4). I
3 believe it is.

4 **MR. BALLINGER:** They're comparable. I think
5 the FPL is 20 to 21. This is pretty comparable.

6 **COMMISSIONER SKOP:** Okay. Well, I thought I
7 saw 18 percent for one of the FPL projects, which was
8 land-based solar PV not the, not the --

9 **MR. BALLINGER:** It's in the range. Yes.

10 **COMMISSIONER SKOP:** Okay. All right. Anyway,
11 that, that had a concern to me. I mean, it's a concern
12 in passing. It affects revenue for the project.

13 But looking at the, how the project was
14 presented, the base case again was developed in
15 September 15th, 2008, based upon 2009 fuel cost recovery
16 prices. Natural gas has gone down substantially since
17 that time. Again, the economic analysis would have to be
18 rerun at best.

19 But some other closing points that I just
20 wanted to mention. You know, these illustrate in my
21 mind -- again, I'm fully in support of the project, but,
22 again, there's a right way to go about it and a wrong
23 way. And in order to evaluate the cost-effectiveness of
24 any given project of a given type as it comes before the
25 Commission, we need to establish levelized costs. I know

1 in that data request they refer to what California did.
2 Well, you know, that's a good benchmark, but it may not
3 be applicable to Florida. There's different capacity
4 factors certainly for a project given the solar resource
5 of California, its geographic differences, a whole host
6 of things that factor into that.

7 So, again, what would be interesting to me
8 would be to see the project pro forma to see and evaluate
9 how it compares to what would be established by the
10 Commission as levelized cost.

11 But just to Mr. Wright briefly, and Mr. Beasley
12 also mentioned this in terms of the developer's
13 experience, but can you identify a solar PV project that
14 Energy 5.0 has developed and is currently in operation in
15 Florida?

16 **MR. CHERRY:** The answer is no, we have not
17 developed a solar PV project in Florida. However, we
18 have developed as individuals projects far more
19 complicated, far more expensive in far more difficult
20 circumstances than in Florida.

21 And, for example, I was responsible for the
22 repowering of the JEA Northside Plant, and we view solar,
23 and we've spent a lot of time looking at it over the last
24 two years, we view the execution of a solar project not
25 as something that's a slam dunk, easy to do, but it is

1 much less complicated than building and developing the
2 kind of power projects that we have had lots of
3 experience in doing.

4 **COMMISSIONER SKOP:** I understand. And I do
5 respect that. And also the liquidated damages provision
6 within the agreement somewhat protects the ratepayer in
7 the event that there's -- but I have no doubt that, you
8 know, it's possible. It's just not been done yet.

9 To Mr. Beasley, with respect to the proposed
10 project, and I know that they did a solicitation, but
11 part of the project relies upon using land that is going
12 to be a reclaimed phosphate mine, I guess as articulated
13 in the background information. But typically when you're
14 developing a project, obviously you have to acquire the
15 land and that's a cost of doing business, which, you
16 know, is an expense to be incurred.

17 I guess the question I had, and similar to
18 what, you know, one investor-owned utility did that took
19 advantage of the statutory provision for 110 megawatts of
20 solar, has TECO given any thought to self-building a
21 comparable array or could it show that it would be more
22 cost-effective than their proposal before us to the
23 extent that, you know, out at least at the Polk facility,
24 you know, it seems to have suitable land or maybe some
25 other facilities it had which would avoid the need to

1 procure land or make the project more cost-effective for
2 ratepayers because ratepayers have already paid for the
3 land and just basically self-build using an EPC or
4 engineering procurement construction contract for a, what
5 is pretty much a snap together, 25kW, I mean 25-megawatt
6 array? It's not real rocket science. There's some, you
7 know, development issues that have to go in that, some
8 permitting approvals. But, you know, certainly it's, you
9 know, feasible on something like that to, to self-build.
10 And I was interested as to whether TECO considered that
11 and why maybe it did not pursue that option if it would
12 have been in fact a more cost-effective option for the
13 ratepayers?

14 **MR. BEASLEY:** I asked that question myself,
15 Commissioner Skop, and it's my understanding that the
16 company does not have the internal expertise to do that
17 and would have to retain someone, much the same as we
18 have through the competitive bidding process, to perform
19 that work for us.

20 **COMMISSIONER SKOP:** Okay. But there's a
21 fundamental difference between a long-term power purchase
22 agreement, a PPA, and a turnkey EPC contract to just have
23 a vendor, I'm going to use FPL's vendor for a second,
24 SunPower or Sharp or some other qualified vendor come in
25 and to build and construct the array on your own site if

1 you have suitable land where you already have existing
2 transmission facilities. You know, there might be some
3 cost benefit there that would make the, the numbers on
4 this page be less than what they are with the proposal.
5 And also it would allow the company to avail itself
6 perhaps of an investment tax credit that I don't know the
7 disposition of as it pertains to the proposed rates here.

8 **MR. BEASLEY:** Mr. Aldazabal will address that.
9 I wish I were competent to answer that, but I'm not.

10 **MR. ALDAZABAL:** Commissioner, that's a good
11 question. I think our resource planning group did work
12 with, did work with Black & Veatch and they did a study
13 on that and, on the preliminary analysis, and it didn't
14 turn out to be cost-effective for us.

15 **COMMISSIONER SKOP:** Okay. I'll accept that. I
16 don't know why, you know, you'd have to get somebody as
17 high-end as Black & Veatch to do that. I mean, you know,
18 certainly you could have contacted a, you know, a large
19 solar manufacturer or vendor, SunPower or equivalent, to
20 take a look at that. But, you know, it's a question that
21 came to mind in terms of the project-specific
22 backgrounds. Because certainly if they're acquiring land
23 to site the project, then what happens to the land at the
24 end of the, you know, 25-year project? Is the life of
25 the solar panels -- I don't know anything about the solar

1 panels. Do they have a 30-year life versus a 25-year and
2 what's the remaining life? A lot of questions here that
3 are unanswered.

4 So, again, it boils down to I'm in support of
5 renewable projects. I'm probably the biggest advocate
6 you'll find. But I'm not going to do so in a manner that
7 causes ratepayers to bear higher costs than otherwise
8 they should absent somebody with my technical expertise
9 digging in the details and making sure there's value
10 there. Because if there's no value and the consumers are
11 being taken advantage of, I'm not approving it. So
12 that's, that's my concern. And that may not be the case.
13 But I don't have transparency -- even TECO by its own
14 admission doesn't have the underlying confidential pro
15 formas. It's just we picked a price, we looked around,
16 it seemed to be a reasonable price, and we're going to go
17 with it. To me -- that answer doesn't work well for me.
18 I'm not going to do that. It's not going to garner my
19 support. I need more information.

20 And from staff's perspective, I would expect as
21 we evaluate projects of different terms and different
22 types, we need to establish, it's critically important to
23 establish a levelized cost over the life cycle, I mean,
24 the life cycle, projected life of the project so that we
25 know on a cents-per-kilowatt-hour basis how much

1 consumers should be paying given a reasonable rate of
2 return on the project and all the expenses and such that
3 go into that.

4 But if we just pick a number out of thin air
5 and say we're going to pay, I don't know, 50 cents a
6 kilowatt hour for electricity just because it sounds
7 good, that doesn't imply inherent value if the levelized
8 cost of the project is determined to be approximately,
9 you know, 16 cents or 20 cents per kilowatt hour.

10 We had the same problem in Sunshine Energy
11 where the payback on that Rothenbach array was, you know,
12 the contract was about eight years and the useful life of
13 the array was 25 years. So after year eight anything
14 they made from that is pretty much gravy, and that's not
15 protecting the ratepayers well in a case where we're
16 asked to enter into a long-term power purchase agreement.
17 We need to make sure that the costs are fair, just and
18 reasonable. And the only way you can do that in my eyes
19 is to conclusively establish what is your best estimate
20 of levelized cost for a particular renewable project type
21 over the life of the project. And I'd be happy to hear
22 from staff. But those are the comments I wanted to make.
23 Okay. Yes.

24 **CHAIRMAN CARTER:** Okay.

25 **MR. BALLINGER:** I think there's a couple of

1 ways to look at that. One is you can establish a market
2 rate for a particular thing. And I think in this
3 instance TECO attempted to do that through an RFP and,
4 according to the people here, took the cheapest solar
5 alternative and that's what ended up in the contract. So
6 from a, from a market basis where you have the same
7 technologies competing, if you will, you get your lowest
8 price. That's one method of going at it.

9 Your method also has merit of looking at the
10 levelized cost of a, of a unit. That takes a bit more
11 expertise on the staff side and assumptions of financing
12 and internal rates of return, things of that nature. So
13 there's, there's a couple of ways to slice that apple.

14 The other way we look at it is once you have
15 that price in the contract, staff looks at the avoided
16 cost as our benchmark for determining that and that's
17 what we're talking about. We need some level to measure
18 these things against. And I think when we look at the
19 utility's avoided cost, we have a good handle on that.

20 **CHAIRMAN CARTER:** Mr. Wright.

21 **MR. WRIGHT:** I think Mr. Cherry would like to
22 say something.

23 **CHAIRMAN CARTER:** Okay. And then, Mr. Beasley,
24 I'll come back to you.

25 **MR. CHERRY:** Okay. I wanted to make a comment

1 relative to the discussion of a self-build program by
2 TECO versus this power purchase agreement. In a, in a
3 self-build program the, the owning entity takes all the
4 risks of delivering that project.

5 In the PPA that we have structured with TECO
6 they take no risk. We take all the risk. Because if we
7 don't get -- if we don't deliver, we don't get paid. And
8 I think that's, that's an important point.

9 And the second point is relative to how does
10 the staff do its job? I'm not a lawyer, but it seems to
11 me that the point of how does the staff do its job should
12 not be a factor in considering what is a \$130 million
13 project and a \$2 million investment on, on my part. I
14 think the staff needs to figure out how to do its job and
15 they need to figure out how to do it properly.

16 What happened on this project was the assurance
17 to the staff and to the Commission that this project was
18 professionally and thoughtfully and carefully evaluated
19 by Tampa Electric was the process that Tampa Electric
20 went through and described in detail to the staff in
21 terms of how they went through their procurement
22 activities. And I note in the, in the staff's
23 recommendation they don't have any negative comments on
24 the TECO procurement activity, and I would therefore
25 conclude that they found that acceptable.

1 **CHAIRMAN CARTER:** Okay. Mr. Beasley.

2 **MR. BEASLEY:** Yes, Mr. Chairman. I just wanted
3 to say that Mr. Ballinger appropriately assessed the
4 alternative that we chose two and a half years ago when
5 we took the bull by the horns and decided we've heard the
6 challenges from the Governor, from the Legislature, from
7 this Commission to go out and develop renewable energy
8 resources and particularly solar. So we used the RFP
9 process, and we scoured the market, we got bids from a
10 number of potential suppliers. This bid was the, the low
11 bid from the standpoint of our ratepayers. I mean, this
12 was by far and away better than the other bids that we
13 received for comparable solar projects. We relied on the
14 market, and we think that that's an appropriate means for
15 ensuring that your ratepayers are not paying more than
16 they need to for this resource. So that, that, that is
17 one alternative, and that's the alternative that we
18 selected and that led us to where we are.

19 **CHAIRMAN CARTER:** Commissioners, I'm going to
20 go to Commissioner Klement and then I'm going to --

21 **MR. WRIGHT:** 30 seconds.

22 **CHAIRMAN CARTER:** I thought you passed it off
23 to your client. Mr. Wright.

24 **MR. WRIGHT:** I did. Thank you. Just to
25 continue part of the dialogue and colloquy involving

1 Mr. Beasley, Mr. Cherry, Commissioner Skop and Mr. Trapp,
2 what the staff do have and what the Commission does have
3 is knowledge that Tampa Electric conducted a competitive
4 process, at least reasonable knowledge, if not better
5 than that, that that process was completely sound. We
6 assert that it was.

7 In terms of, in terms of standards that the
8 staff might apply, you could apply standards as follow.
9 Was it procured through a competitive process, was it a
10 sound process, did it do the job right, and what were the
11 results? In this case there's no quibble, there's no
12 argument that Tampa Electric's process was flawed in any
13 way. And, again, the proof is in the pudding. There,
14 there are few, if any, data points out there in Florida
15 or anywhere else that the pricing arrived at pursuant to
16 Tampa Electric's competitive process is not highly
17 competitive versus all other known data points. Thank
18 you.

19 **COMMISSIONER SKOP:** Mr. Chair.

20 **CHAIRMAN CARTER:** Commissioner Skop.

21 **COMMISSIONER SKOP:** I'll just briefly respond
22 to that in terms of my expectation of staff in terms of
23 evaluating renewable projects. Again, when you have a
24 solar PV project that has a term of eight years, a term
25 of 16 years, a term of 20 years, a term of 25, 30 years,

1 how do you evaluate what's good value? The only way you
2 can do that is what is the, at the end of the day the
3 levelized cost in cents-per-kilowatt-hour or
4 dollars-per-megawatt-hour of the renewable resource such
5 that for contracts that are of different terms you're not
6 overpaying for the same renewable resource?

7 On solar PV it's very simple. There's software
8 out there that allows one to develop the levelized cost
9 for a solar project that even analysts use. You know,
10 certainly the way I used to do such things would be you
11 create a pro forma spreadsheet with your revenues and
12 your expenses and your debt service payments, and you
13 look at your net operating income and your profit,
14 reasonable profit, and you figure out what it's going to
15 take, what the, what the array can produce over its life
16 in terms of, you know, megawatt hours or kilowatt hours.
17 You know what the cost is that generates a revenue and
18 they you look at your expenses. It's a simple pro forma
19 analysis.

20 But absent doing that, we're just guessing.
21 We're guessing on the market. And that does, to me does
22 not imply strict scrutiny of ensuring the best value for
23 the ratepayers. It's complacency. And a market analysis
24 benchmarking off California costs in a market that has a
25 whole host of, of differences from Florida, has a

1 completely different regulatory scheme, has mandates by
2 the state completely different from this state is not an
3 appropriate benchmark. It's one benchmark that can be
4 looked at. But, again, at the end of day what I want to
5 see when I'm evaluating a project is levelized cost
6 versus the cost of the project. And if it's at, near the
7 levelized cost, it's going to get my approval subject to
8 the terms and conditions being acceptable. If it's way
9 above the levelized cost value, there's a problem there.
10 It's probably not as cost-effective as another
11 alternative. It's very simple, it's a very
12 straightforward analysis. It's just it seems that we
13 don't want to do the homework. We just want to allow and
14 buy off on any different variation of different projects.
15 And it's important to have consistency so that we know
16 we're doing the right thing on a consistent basis.

17 Solar PV, it's very simplistic to do something
18 like this. Wind, it would be very simplistic to do
19 something like this. Other technologies may be a little
20 bit more difficult. But solar PV costs are
21 well-documented. You know what your solar PV costs are
22 for the, for the, for the modules. You know what your
23 fixed O&M and variable O&M costs are going to be.
24 They're basically maintenance free. Maybe you have to do
25 some mowing, some cleaning every once in a while. But

1 you sit the thing there, you fence it, you got an
2 inverter, and you keep it clean and the sun does its job
3 and you produce power. So it's not rocket science.

4 But, you know, when we're looking at just the
5 market value or a competitive bid, you know, I have no
6 ability other than to accept the bids as a competitive
7 bid. I don't know whether those bids are overstated in,
8 in virtue of reality or even what the underlying return
9 on equity for such projects would be.

10 I know that, you know, when I managed wind
11 turbines, we had easement payments we had to make for the
12 use of the land. That's an expense of doing business.
13 Similarly, if you, if you procure a parcel of land to use
14 for a solar PV array, there's probably easement costs
15 unless you're purchasing the land directly. But the
16 costs are finite and distinct on a solar PV project.
17 It's not rocket science. And we ought to take a critical
18 look such that when we have a contract of different
19 terms, which I think we've seen a couple of them so far,
20 that we can make a balanced choice based on looking at
21 the evaluated cost of the project versus the proposed
22 project costs and draw some logical evaluation as to
23 whether consumers are truly getting good value for the
24 renewable. We want to encourage renewables. I want to
25 encourage renewables. I support the project. But I only

1 support the project at a cost that is appropriate, and I
2 don't believe we've done that analysis.

3 **MR. BALLINGER:** Okay. I -- we've had these
4 discussions before about levelized costs. I'm not going
5 to get into it much. But I think from our perspective
6 we're looking at it from the ratepayers' perspective, and
7 I think that's why we look at avoided cost as our
8 benchmark.

9 Quite frankly, I don't care how they negotiate
10 a contract, what the price is. I look at that price
11 compared to the utility's avoided cost. That's the
12 entities that we, or the Commission regulates that sets a
13 rate of return. We don't have the authority to set the
14 rate of return for a private entity.

15 So I look at it from an avoided cost standpoint
16 from the ratepayers, what they are being asked to pay,
17 and it's a little different philosophy.

18 **COMMISSIONER SKOP:** But by nature renewables,
19 with the exception of waste energy and biomass, are
20 inherently above avoided cost. So that's why that
21 becomes important. It's not just can you do it cheaper?
22 If you're, if you're approving a solar PV project,
23 obviously it's going to be above avoided cost unless
24 there's some quantum leap in technology that is going to
25 come from the planet of Krypton and I'm not aware of.

1 It's going to happen.

2 **MR. BALLINGER:** Correct.

3 **COMMISSIONER SKOP:** The same thing for wind,
4 it's above avoided cost. The only two I know of are
5 biomass and waste energy that are even remotely
6 cost-competitive on a standalone basis without additional
7 incentives to a generator or IOU's avoided cost as it
8 exists today. Is that correct?

9 **MR. BALLINGER:** Correct. And that's why we got
10 into the RPS discussion and the rules that we sent to the
11 Legislature.

12 I'd like -- you made a good point. There are
13 some renewables that are below avoided cost. You've seen
14 some of them before you in contracts: The waste energy
15 facility a few weeks ago, some biomass plants. In fact,
16 I think in TECO's RFP that went out, they went out for
17 all renewables, they found some biomass projects that
18 were cheaper on a total levelized cost basis than the
19 solar project, yet they chose to pursue solar. And
20 Energy 5.0 was the cheapest of the solar proposals, not
21 the cheapest overall of all the renewables.

22 **COMMISSIONER SKOP:** And just briefly because,
23 you know, we've had a lengthy discussion. I think also
24 if I remember from the RPS discussion, you know, it goes
25 to Mr. Twomey's argument about, you know, you want to

1 look at what you can procure.

2 And, again, I don't, I don't want to -- I want
3 to acknowledge and commend both TECO and 5.0's efforts
4 towards, you know, trying to give effect to the
5 legislative intent and policy of our, you know, energy
6 policy of this state. To me, you know, I feel somewhat
7 constrained by the statute where I've expressed provision
8 for 110 megawatts statewide, not utility, per utility,
9 it's statewide that has already been subscribed. RPS for
10 avoided cost plus was not ratified.

11 But, again, even assuming Mr. Wright's argument
12 is valid, and I accept it on face, that we do have the
13 discretion of the Commission to depart from that and
14 approve something in the public interest, I still have
15 substantial questions when you're dealing with such great
16 unknowns that what we're approving isn't just a shot in
17 the dark, that it is based on well understood, easily,
18 readily quantified numbers that we currently don't have
19 transparency to, particularly in light of the 30 percent
20 convertible investment tax credit. That's a big deal. I
21 don't even know if it's embodied in the analysis. I
22 don't even want to venture to guess. Even if it was
23 included in the pricing, I would still have a host of
24 questions that I've previously articulated in lengthy
25 discussion. Thank you, Mr. Chair.

1 **CHAIRMAN CARTER:** Thank you.

2 Commissioners, my plans are to go to
3 Commissioner Klement, then Commissioner Argenziano, but I
4 recognize that blood sugar has dropped tremendously and
5 we've had staff here for the whole time, and we do have a
6 couple of staff members that do need some nutrition for,
7 for health reasons and all like that. So, and of course
8 I wouldn't mind having a bite to eat myself.

9 Commissioner Klement, then Commissioner
10 Argenziano. You're recognized.

11 **COMMISSIONER KLEMENT:** Well, I don't know if
12 this is -- I want to wait with the comments I have until
13 there's more of a motion or something closer to that.

14 **CHAIRMAN CARTER:** Okay. Until we bring it in
15 for a landing. Okay. That'll be fine.

16 **COMMISSIONER KLEMENT:** Thank you, Mr. Chairman.

17 **CHAIRMAN CARTER:** I hope we're closer to -- I
18 really sincerely appreciate -- I hope that we're close to
19 bringing it in for a landing.

20 Commissioner Argenziano, you're recognized.

21 **COMMISSIONER ARGENZIANO:** Just comments.

22 **CHAIRMAN CARTER:** Just comments.

23 **COMMISSIONER ARGENZIANO:** You know, while I
24 don't think any one of us would want to willy-nilly give
25 out anything without, you know, any, any kind of rates

1 that impact the ratepayer without an understanding of how
2 they're derived and what are the best efficiencies, but
3 you also have to be looking at the fact that in the
4 regulated realm of things solar is not something that's
5 been, has a large history. And there aren't many
6 projects out there other than maybe nonregulated projects
7 out there, and it's on the cusp of trying to get its foot
8 in the door.

9 And if I were in the solar industry, what I
10 would be saying is that everybody is talking a great deal
11 about renewables but we're never going to get there. And
12 if you don't let them in the door, you're not going to
13 have any comparisons or, or you're never going to get to
14 the point where you talk about consistency and
15 confidence. If I were an industry in the solar industry,
16 I hear this but I don't see it. And maybe in certain
17 areas I see it happening. And I would not want to, want
18 to commit dollars into research to, to go forward.

19 And if you don't let them get in the door
20 somehow and you have politics, and don't even get me
21 started with politics, that has virtually kept
22 alternatives out of the picture. And it's starting to,
23 the people are starting to speak louder on that. And
24 while I'm saying you need to, you need to, of course,
25 check into things, but there isn't that slate of

1 paperwork that you can pull out regarding the regulated,
2 regulation of the solar industry and say, well, okay,
3 these prices have been. If you have an RFP, I think
4 that's pretty good until it gets more established and you
5 understand what solar really can do and the advances that
6 are coming or may be coming.

7 But as far as -- and even when we talk about
8 biomass and waste, those are great because we talk about
9 having alternatives to the traditional and they're
10 important. But they still do not take care of the CO2
11 issue, which is a very big issue in today's world. When
12 I talk to people out there, there are people who are
13 against solar, there are people for solar, and I hear
14 from a lot of people who would say to me that, look, I'd
15 pay two, three bucks a month if you could switch to an
16 alternative because that's what they want to see.

17 So, and understanding Commissioner Skop's
18 concerns about, you know, levelized, trying to fix in on
19 what are the appropriate costs, I understand that. But
20 with somewhat of not having a very long history of being
21 regulated, of where we are today, we're sitting here as
22 Commissioners really on the, on a major change that I
23 think is coming to, to this country, and it's going to
24 have to, I guess. And the same reasons why we talk about
25 nuclear; we need to be able to get to where we want to go

1 with clean energy and hopefully more efficient energy.

2 But, but I have a hard time understanding, I
3 guess, where, what schedule I would look at to see what,
4 what rates are good when it comes to solar. I have a,
5 somewhat of an understanding in looking about the
6 countries, all the different countries that have
7 implemented solar and where it should be. So, but if --
8 I guess what I'm saying is if you don't let them in the
9 door, if you can't get solar practicing, if you can't get
10 those companies feeling good about somebody is finally
11 going to let them get motivated into spending more
12 dollars to, to increase the research, to feel that there
13 is a potential for solar to be used more where it can be
14 used more, then it ain't never going to happen.

15 And if, if the question comes down to me as a
16 Commissioner or if, as a past legislator, if the question
17 came to me that said that, that if all the Public Service
18 Commission can do is look at what's the cheaper, can you
19 do it cheaper than the traditional way? Well, heck, that
20 ain't going to happen right now because they're such new
21 industries. I think we know that. And if you wait for
22 it to be cheaper, it's never going to happen if they
23 don't have incentives to move forward.

24 So while I understand Commissioner Skop saying
25 that he'd like to see more of a, I guess a history of

1 where we should be with, with those rates, understanding,
2 to me understanding that it's such a new, a new venture I
3 guess and I don't think that history is there, although I
4 do feel comfortable with what I know what's being
5 produced around the country and other countries and with
6 the RFP process. So, you know, I guess I don't know if
7 you, if you -- I don't know. I guess a lot of it is
8 legislative. But in speaking here today as the Public
9 Service Commission, if we were just to say, well, you
10 know, we don't have enough information, well, how do you
11 ever get there unless you start letting them in the door?

12 And I can't, I can't tell you how many times I
13 have heard from people out there who are for
14 alternatives, not just solar, for alternatives, who are
15 saying, you know, when is this ever going to happen? And
16 I'm not sure -- I know that a lot of it has to do with
17 our policymakers. As we said, we have put forward an
18 RPS. And if you remember, we did a solar carve-out on
19 that, on that RPS.

20 **CHAIRMAN CARTER:** We did a carve-out.

21 **COMMISSIONER ARGENZIANO:** And I think
22 everything that we hear coming from the Legislature says
23 renewable. You look in, you look in the, in the statute
24 and, and I mean there are things of course going towards
25 nuclear, let's get moving because we need to provide

1 energy, but also that say pay particular attention to
2 solar.

3 And while I agree and have said before that the
4 Legislature needs to sharpen up things and figure out
5 really which way they want to go, I guess I just wanted
6 to make my comments that, you know, I think that new
7 technology, the people are speaking loud and clear. They
8 want to see renewables, they want to give new technology
9 a chance. And the new technology that's coming with
10 solar is something that I think in the years to come -- I
11 don't know how much better it will get, but from what I
12 understand it's getting better and better. But I'm just
13 worried that if we're looking for a history -- and I
14 think I got what you said, Commissioner Skop, is that you
15 really need to feel more comfortable with whether it's
16 the right cost. And I, and I understand that, I really
17 do.

18 But we sit here and we, we kind of give
19 costs -- there's a lot more impact of costs, and of
20 course there's a greater energy that we get in, in
21 return. But I'm just not so sure that the history is
22 there. And if it doesn't, if we don't start it
23 somewhere, we don't develop that history. I don't know
24 if that make sense or not.

25 **COMMISSIONER SKOP:** Mr. Chair.

1 **CHAIRMAN CARTER:** Commissioner Skop.

2 **COMMISSIONER SKOP:** Thank you, Mr. Chair. And
3 I'll briefly respond.

4 At least with solar PV and wind there's firm,
5 there should be at the state of where we're at today very
6 firm, definitive costs on, on what a solar PV module
7 would cost. Those costs are coming down. But, you know,
8 it's not a very variable cost. It should be easy to
9 discern what that cost of the modules would be and you
10 just multiply to get the capacity of the array and
11 that's, that's your capital cost for the most part of
12 what comprises the solar PV array. So, so to me the
13 costs are easily able to be quantified.

14 I guess the point I'm trying to discern briefly
15 is that the costs in the far right column of Page 54, I'm
16 just merely questioning whether those costs are higher
17 than they need to be without further transparency into,
18 you know, how much is this going to cost and such like
19 that.

20 It's analogous very simply to if I was going to
21 buy a new car today, just going and paying sticker price
22 versus consulting CARFAX or my credit union to look up
23 the dealer invoice price and try and negotiate to get the
24 best price. I'm not, I'm not saying that these numbers
25 are wrong. I'm just merely saying I don't have

1 confidence in the numbers based on the uncertainty
2 in the tax credit situation and some of the underlying
3 assumptions to articulate that I'm just not signing off
4 on something that is a windfall over and above something
5 that would be taking a more critical approach.

6 But to one other point and then I'm going to
7 just turn it off and not say a lot. You know, I support
8 the project. I think the staff recommendation provides
9 opportunity for the company to the extent that in the
10 near-term it allows for the sale of energy should the
11 project be developed at the as-available energy rate.
12 Also providing opportunity for the petitioners to go to
13 the Legislature during the upcoming legislative session
14 to try and, you know, affect legislative change that
15 would support the project on other terms that staff has
16 not chosen to adopt in terms of the renewable energy
17 credits and such. So I think there's, there's
18 opportunity there and I support the project.

19 And I'd also point out that, although it was
20 deferred today and I don't want to get into it but I'll
21 mention it in passing, under Item 5 of today's agenda,
22 Issue 11, there's a staff recommendation that actually
23 provides for solar in a manner that was very analogous to
24 the solar rebates in the alternate RPS proposal that was
25 sent over that would facilitate the development of up to

1 3 megawatts annually of distributed solar PV generation
2 through the energy conservation and cost recovery clause.
3 So I do think that staff is, is trying to affect the
4 intent of the Legislature in the ways that it has
5 available to do so in the conservation goal setting. In
6 this instance I do agree with the staff recommendation,
7 but I am open to approving the project. But, again, my
8 concern is I'm happy to approve, but I want to make sure
9 that I'm not giving away the farm at the same time, so.

10 **CHAIRMAN CARTER:** Thank you.

11 Commissioner Edgar, then Commissioner Klement.

12 **COMMISSIONER EDGAR:** Thank you.

13 Mr. Chairman, you have referred sometimes when
14 we've all been gathered together to the use and timing of
15 the necessary room.

16 **CHAIRMAN CARTER:** Yes, ma'am.

17 **COMMISSIONER EDGAR:** So I'm hoping that that
18 use and timing is coming soon.

19 And with that in mind, I guess I'd like to, if
20 I may, kind of bring our attention back to the issues
21 that are before us.

22 We've had a number of statements, I have made
23 some and I think I've heard some from each side of me
24 here along the bench today in support of many of the
25 aspects of this project that is before us today and of

1 similar projects and other types of renewable projects.
2 But yet when I come back to the item before us, with that
3 in mind, that, those voices of support that I think I've
4 heard for the project, it does seem to really then kind
5 of come down to where we think individually the statutes
6 guide us or take us for Issue 2. And so with that in
7 mind, I'm just wondering if maybe we can look a little
8 more specifically at Issue 2, and let me pose it this way
9 to our staff.

10 Am I correct in my reading of these two issues
11 and Issue 2 primarily and the analysis and recommendation
12 before us that the primary difference between what the
13 coparties are requesting and what is being recommended to
14 us by our staff is where the risk for the RECs reside?

15 **MR. GRAVES:** Yes, ma'am. And it's actually
16 just the risks of any costs that are above the
17 as-available energy rate from the company.

18 **COMMISSIONER EDGAR:** Okay. And with that in
19 mind, would it be a correct statement that if at some
20 point in the future RECs that could be, as a result of
21 this project could be profit making, but that is unknown
22 at this time?

23 **MR. GRAVES:** That's correct.

24 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

25 **CHAIRMAN CARTER:** Commissioner Klement.

1 **COMMISSIONER KLEMENT:** Thank you, Mr. Chairman.

2 I appreciate the staff's dilemma on this issue,
3 which rule to follow, what standard to follow if we
4 approve this proposal. I would like to suggest a
5 threshold to start with, the price of a soft drink. Not
6 to be flippant about it or sarcastic, but we're talking
7 about, according to the figures provided, 48 cents a
8 month for the average rate holder. I can't go to a
9 machine and get a soft drink for that.

10 I want to ask this question in regard to
11 renewables for, for the Commissioners to consider. It's
12 one of my favorite expressions. If not now, when? If
13 not us, whom? I don't like to blithely approve higher
14 rates of any size for rate holders, I mean, sorry, for
15 ratepayers, but I believe we must start somewhere if
16 we're going to do anything about renewables. If we ever
17 hope to achieve energy independence, if we're ever going
18 to make some, make some real progress in converting from
19 fossil fuels, it seems like we're going to have to make
20 some sacrifices.

21 And one of the problems that our economy, the
22 reason it's in this state and our federal government is
23 in this state, because we've been unwilling to pay the
24 price now for the things we want and the things we need
25 and our leaders have not asked us to.

1 Our culture is enjoy now, let the kids pay
2 later. And at some point I think we have to face up to
3 the real costs if we want to achieve goals, including the
4 renewables that we all say we want.

5 I appreciate what staff has said and all the
6 points that Commissioner, Commissioner Skop has made as
7 well. He has gone far more into depth than I am capable
8 of doing. So I'm relying upon the efforts put in by
9 staff on, on the overall proposal and regarding the
10 statutory and rule issues. We have heard that it is
11 statutorily allowed even if it is in conflict with a
12 rule. So hopefully -- I mean, this may be not borne out,
13 but our approval, if our approval of this project is
14 made, that it would provide some political cover for
15 legislators to come around in 2010 and really pass some,
16 some standards.

17 I agree with Commissioner Argenziano and the
18 point she just made about the attitude of consumers
19 toward paying for clean energy. Maybe not all, maybe not
20 even a majority, but I think many people are now willing
21 to pay something to begin the move to renewable, for
22 clean energy. They see, many of them, and we're
23 increasingly so, see the handwriting on the wall
24 regarding the limits of fossil fuel and the hostility of
25 the countries who provide it to us. And that is becoming

1 clearer every day. Look at the headlines. And I think
2 that's some, these are some of the things that should
3 weigh on our decision today.

4 **CHAIRMAN CARTER:** Thank you.

5 *Commissioners,* just before I ask to bring it in
6 for a landing is that when we sent the RPS rule to the
7 Legislature -- you were there when I talked to them at
8 the Nominating Council. When we sent the rule over
9 there, we had testimony and evidence from people here
10 during the workshop saying, look, if you're going to do
11 solar, one, you're going to need to have a carve-out.
12 It's too expensive, so you're going to have to do
13 something to kind of bridge the gap. And that's why in
14 our RPS rule we put a specific carve-out in there for
15 solar. We didn't need it for biomass. It's a fairly
16 established process there.

17 But the other thing too is that in order to
18 bring about technological advances there has to be some
19 modicum of investment, and that level of investment has
20 to be to, to a standpoint to where I don't think
21 25 megawatts is going to break us or anything like that,
22 but I do think that that's one of the reasons I asked the
23 questions about is it scalable. Is that as prices come
24 down, technologies become available, we can probably
25 scale it up and then the costs will go down. As we were

1 going through those, those hearings, remember, people
2 were saying, look, you guys -- we had people from the
3 Solar Institute, we had people from all over the country,
4 in fact, and some that had international -- one person
5 there was telling us about what they're doing in Europe
6 and things of that nature.

7 But I do think that we started out, I believe
8 it was two years ago, Commissioners, when we talked about
9 the fact that we wanted to make sure that Florida was
10 open for business for renewable energy. I think that was
11 one of the things that I said, and that's what we said
12 too. I think that where we are now, we may very well be
13 on the margins.

14 But we sent a -- one of the things that I'm real
15 proud of when we did that is, I think you all got a copy of
16 a letter that was signed by 1,400 people saying we did
17 the right thing for solar in Florida. Commissioners, you
18 remember that? 1,400 people that took the time to read
19 all of that boring stuff, to follow our deliberations,
20 and then to go through the process and say the RPS rule
21 that you sent to the Legislature is world-class. We
22 think you did the right thing, particularly the way that
23 you did with the solar carve-out. And I'm saying, I mean
24 18 cents may or may not be significant, but I do think
25 that Commissioner Klement is right, is that if not now,

1 when? If not us, who? That's where we are now.

2 Commissioner Skop, and then I'm going to ask
3 him for a motion. Commissioner Skop.

4 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

5 I'm still not clear on this, this 18 cents.
6 Can somebody explain that to me? Because I'm seeing a
7 rate impact of 48 cents per month in 2011 for the average
8 consumer. Mr. Wright.

9 **CHAIRMAN CARTER:** Mr. Wright.

10 **MR. WRIGHT:** Mr. Chairman, Commissioner Skop, I
11 believe that 18 cents is the approximate median over the
12 life of the contract.

13 **COMMISSIONER SKOP:** Okay. But sooner rather
14 than later there's going to be --

15 **MR. WRIGHT:** It's front-loaded. It's, it's
16 higher than avoided cost today. That shrinks over time.
17 And, again, these values don't include anything for
18 carbon or RPS mandates.

19 **COMMISSIONER SKOP:** Do you know, do you know if
20 the investment tax credit were included in the negotiated
21 rate?

22 **MR. WRIGHT:** I don't know the answer to that,
23 Commissioner.

24 **COMMISSIONER SKOP:** Because no one has
25 commented on my assertion so far.

1 **MR. CHERRY:** The ITC is included in our, in our
2 economics. And whether you get it as a grant in lieu of
3 tax credit or you get it as a tax credit is irrelevant to
4 the overall economics of the project.

5 **COMMISSIONER SKOP:** Okay. I would respectfully
6 disagree on the time value of money issue because the
7 project finance would be substantially lower based on
8 the, the debt that would have to be incurred for the
9 project if you got 30 percent of the qualified project
10 costs back from the Treasury in 60 days.

11 **MR. CHERRY:** Well, we've had, we've had a lot
12 of conversations with providers of capital for this
13 project, and I'd respectfully disagree with you.

14 **COMMISSIONER SKOP:** Okay. Well, it's good to
15 respectfully disagree.

16 Question to staff, I don't want to mix issues,
17 but a very I guess logical analogy in terms of rate
18 impact would be to look at, as staff did, in Item 5 today
19 that was deferred generally on Page 73. But looking at
20 the five-year average cost of the cost recovery clause
21 and then trying to look at a percentage basis of what the
22 proposed near-term rates would be expressed as in a
23 percentage, would it be logical to say that that's
24 basically about a 50 percent increase in the capacity
25 clause recovery?

1 **MR. BALLINGER:** You threw a lot of numbers at
2 me there.

3 **COMMISSIONER SKOP:** Okay. Just, just, just for
4 the purposes of discussion, again, I don't want to get
5 into this in depth, but I'm trying to rationalize what
6 I'm being asked to approve here.

7 On Page 73 of Item 5, and this is just for
8 staff's purposes --

9 **MR. BALLINGER:** Right. We're looking at the
10 five-year average I guess for TECO, the ECCR?

11 **COMMISSIONER SKOP:** Yes.

12 **MR. BALLINGER:** It was \$765,000.

13 **COMMISSIONER SKOP:** Okay. But, but on Page 73
14 in the table, Table 1 of 1, the, for Witness, not the
15 staff recommendation but for Witness --

16 **MR. BALLINGER:** Spellman?

17 **COMMISSIONER SKOP:** -- Spellman who adopted a
18 10 percent methodology and then look what that translates
19 to into impact in terms of cents per month.

20 **MR. BALLINGER:** Yes.

21 **COMMISSIONER SKOP:** Okay. So that's for
22 10 percent of the four-year average of the clause
23 recovery; right?

24 **MR. BALLINGER:** Correct.

25 **COMMISSIONER SKOP:** So to take that, if that

1 represents 10 percent for 10 cents, then certainly 50
2 cents would be a 50 percent increase in that clause.

3 **MR. BALLINGER:** Correct.

4 **COMMISSIONER SKOP:** Okay. I agree. I think
5 that we need to start somewhere. Again, I'm in favor of
6 the project. I have some grave reservations. And, I
7 mean, part of me recognizes the need to move forward with
8 this. Part of me would want to defer it to get some
9 better transparency as to the underlying economics. I
10 mean, I feel like I'm just throwing a dart at a dart
11 board and it's a best guess.

12 So I guess from a policy decision, if this is a
13 one-time deal and the Commission wants to approve it, I
14 may follow the majority against my better judgment. But
15 that's not the way -- I'm a very analytical person. I'm
16 a very financially savvy person. I've run spreadsheets,
17 I'm familiar with project economics, I'm familiar with
18 some of the things that I've discussed. But it's not the
19 way I like to do it. I like to see apples to apples
20 comparison to make a sound judgment as to whether
21 consumers are being asked to overpay for a renewable
22 resource. And this isn't it, but I'll respect the
23 underlying Commission's decision.

24 **CHAIRMAN CARTER:** Thank you.

25 **MR. WRIGHT:** Mr. Chairman, just one quick fact.

1 **CHAIRMAN CARTER:** Ever so briefly, Mr. Wright,
2 because I really had no intentions of coming back on this
3 side of the bench. But ever so briefly.

4 **MR. WRIGHT:** Thank you for your indulgence,
5 Mr. Chairman.

6 I just conferred with Mr. Aldazabal. The
7 company, as I represented earlier, intends to recover the
8 cost of this through the fuel clause. 48 cents would be
9 somewhat under, just a shade under 1 percent on the
10 fuel bill, which is a shade north of \$50 a month on 1,000
11 kWh. On -- actually the 48 cents is on 1,200, so it's
12 probably closer to eight-tenths of a percent on the fuel
13 charge.

14 **CHAIRMAN CARTER:** Commissioner Skop.

15 **COMMISSIONER SKOP:** Thank you. And thank you,
16 Mr. Wright, for that clarification. I was going back and
17 forth between pages and thought I was talking about the
18 same clause.

19 **CHAIRMAN CARTER:** Thank you.

20 Commissioner Edgar.

21 **COMMISSIONER EDGAR:** I'm back to getting that,
22 wanting that necessary room real soon, Mr. Chairman, but
23 --

24 **CHAIRMAN CARTER:** Please tell me that you're
25 going to give a stab at making a motion.

1 **COMMISSIONER EDGAR:** Well, actually not, not
2 quite yet. Sorry.

3 **CHAIRMAN CARTER:** Okay. All right.

4 **COMMISSIONER EDGAR:** But what I did want to say
5 is I made some comments earlier on the previous item
6 about -- and, please, nobody throw a shoe at me or
7 anything, but about --

8 **CHAIRMAN CARTER:** That it would be in Baghdad
9 where they do the shoes.

10 **COMMISSIONER EDGAR:** Sometimes it feels like
11 it, Mr. Chairman. About if a Commissioner or a party
12 requests additional time, that we almost always try to
13 accommodate that.

14 And, Commissioner Skop, I think I heard you say
15 you wanted more time. And even though we have had, you
16 know, significant discussion this afternoon, I do note
17 that at the front of the item it does say no, no critical
18 dates.

19 I am, you know, I, I am comfortable with the
20 project. I am less comfortable with the issues that are
21 embodied in Issue 2. And I guess to our newest
22 colleague, I would kind of turn some of those comments on
23 the other side. Again just for discussion purposes, the
24 price of a soft drink once again, it seems like perhaps
25 the shareholders in the interest of pushing forward

1 renewables could, could find some way to work with that
2 as well is just, you know, to look at it from the other
3 perspective.

4 If indeed this project is approved rejecting
5 the staff's recommendation on Issue 2, I think it's
6 important to point out that that is a significant change
7 in policy. I also think it's important, stating the
8 obvious, that issues that come before us are case by case
9 and almost every one has some unique features to it. But
10 I do think that it's important to not gloss over that in
11 addition to whether you think the amount should be by the
12 ratepayers, an amount of the project should be borne by
13 the ratepayers or by the shareholders or split some way
14 or some other mechanism for finding those funds, that to
15 do it different from what the staff recommends separate
16 from the amount is a change in policy and I think it's
17 important to make sure that we all realize. And, again,
18 Commissioner, it's more time to you and that is a
19 possibility --

20 **CHAIRMAN CARTER:** Commissioner, if you need a
21 deferral, Commissioner, we'll grant it.

22 **COMMISSIONER SKOP:** Well, again, I think I --

23 **CHAIRMAN CARTER:** We'll do it. If you need a
24 deferral, we'll grant it. I mean, any Commissioner, as
25 Commissioner Edgar has said, that any time any

1 Commissioner needs additional information, particularly
2 when there's not prohibition by statute or rule or
3 anything like that, we'll do that.

4 Let me go to Commissioner Argenziano while
5 you're thinking. I'll come back to you.

6 Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** And just I think if a
8 Commissioner needs more time, that's just the thing to
9 do, unless there was something that was just so critical
10 that it couldn't be done. But, and I mean this with all
11 due respect to Commissioner Edgar's comment that
12 sometimes policy does change with new, you know, new
13 directions from the policymakers especially sometimes our
14 policy may change. And I don't know where that is as of
15 right now. But when we're looking at something new, it
16 may require a policy change and it may have to be
17 ultimately from the, from the Legislature. But sometimes
18 it does change. But I understand the concern of, you
19 know, uncertainty.

20 **CHAIRMAN CARTER:** Staff, excuse me.

21 **COMMISSIONER EDGAR:** And, Commissioner, I
22 appreciate those comments. And I, I just didn't want to,
23 again, not state the obvious, that it would be, would be
24 a change. Whether that may be a great thing, it may be
25 the time, but I think it's an important thing to just

1 kind of shine that light on.

2 **CHAIRMAN CARTER:** Staff's, there's no -- it
3 doesn't say here. There's no statutory prohibition or
4 rule prohibition that would preclude us from, or prohibit
5 us from deferring this, is there?

6 **MS. BRUBAKER:** None that I'm aware of.

7 **CHAIRMAN CARTER:** Commissioners, let's just do
8 this. We don't -- let's don't vote. Let's just -- by,
9 by a motion, by a movement of the Chair we'll just defer
10 this to allow for more, more time for more discussion,
11 more information. We'll do that. So let's just consider
12 this docket, this item deferred. And staff can get with
13 each one of our respective offices and provide additional
14 information and we'll go from there, Commissioners. So
15 we'll just do it like that. Okay? So Item 3 is
16 deferred. A robust debate nevertheless.

17 **MR. WRIGHT:** Thank you, Commissioners, Mr.
18 Chairman.

19 **CHAIRMAN CARTER:** Okay.

20 **MR. CHERRY:** Thank you very much.

21 **CHAIRMAN CARTER:** Commissioners, I know that I
22 said that people need nutrition, but I really do want us,
23 I want to finish, I really do want to finish. So, staff,
24 come on and let's kind of shake a leg and get on Item 6.

25 And I've talked to Chris. What we'll probably

1 do once we finish -- I know I normally give you 20
2 minutes, but I'm going to give you, give you five minutes
3 for, five minutes for Internal Affairs. Okay?

4 (Agenda item deferred.)
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Parties Staff Handout
Internal Affairs Agenda
on 10/27/09
Item No. 3
090109-EI

TAMPA ELECTRIC COMPANY
DOCKET NO. 090109-EI
STAFF'S FIRST DATA REQUEST
REQUEST NO. 1
PAGE 1 OF 2
FILED: SEPTEMBER 28, 2009

1. How was the fixed energy cost by Energy 5.0 developed? (Capital, O&M, Green Attributes, IRR, etc) Please provide any and all work papers/spreadsheets associated with the development of this cost. (Direct to Energy 5.0).
 - A. The fixed energy cost, the fixed price to be paid by Tampa Electric under the Solar PPA, is a negotiated value. While Energy 5.0 made certain assumptions in preparing its initial 2007 response to Tampa Electric's renewable energy solicitation, and throughout the negotiation process, the fixed price is just that, a fixed price. It is not a "built up" value in the conventional utility accounting sense. Tampa Electric has no knowledge of Energy 5.0's internal financial analysis that may support the confidential price of the subject power purchase agreement. Energy 5.0 responded to Tampa Electric's 2007 Renewable Generation Request for Proposals with a proposal to build, own and operate a 75 MW PV facility and deliver all of the energy and environmental attributes of the energy to Tampa Electric for a period of 30 years for a set base price with a yearly escalation rate. The initial proposals were provided to the Commission on a confidential basis. During the course of that negotiation the size of the project was reduced from 75 MW to 25 MW, the price was adjusted slightly to reflect the impact of the decreased economies of scale and the escalated price was levelized to the confidential value previously provided to the Commission.

As stated in Tampa Electric's petition, filed March 9, 2009, the Energy 5.0 response to the company's request for proposals was the most competitive non-firm solar proposal. Also, Tampa Electric's response to Staff's Second Set of Interrogatories No. 51 provided comparative pricing information for utility scale PV solar projects. The most recently available information relevant to Staff's request can be found in the California Energy Commission report entitled "Comparative Costs Of California Central Station Electricity Generation" which provides a methodology and levelized price for a variety of energy generation technologies for facilities built, owned, and operated by merchant, investor and publicly owned utilities. The executive summary of that report is attached to this response; the full report is available at the following link: <http://www.energy.ca.gov/2009publications/CEC-200-2009-017/CEC-200-2009-017-SD.PDF>. The study considers all capital, operating and maintenance cost components, an assumed capital structure, taxes, insurance, available incentives and as appropriate fuel and waste disposal costs to establish a consistent set of levelized costs per kWh for utility scale facilities employing several energy generation technologies assumed

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commencing operation in California in 2009. Table B-1 of that report lists the average levelized costs for a merchant 25 MW PV solar facility as 26.22 cents per kWh. Despite the presence of better solar resource in most areas of California than any in Florida, the levelized price from the CEC report is greater than the confidential price in the Tampa Electric Energy 5.0 power purchase and sale agreement. The list of data points, while by no means exhaustive, is representative of utility scale PV projects. The conclusion, for the Commission's inquiry into the reasonableness of the pricing under the Tampa Electric-Energy 5.0 Solar PPA, is that by whatever means Energy 5.0 and Tampa Electric arrived at the contract price, the results are more favorable to Tampa Electric's customers than any of the comparably sized facilities listed in the table.