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March 9, 2009

HAND DELIVERED

RECEIVED--FPSC
09 MAR -9 PM 2:16
COMMISSION
CLERK

Ms. Ann Cole, Director
Division of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Petition of Tampa Electric Company for Approval of Solar Energy Power Purchase Agreement with Energy 5.0, LLC

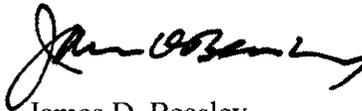
Dear Ms. Cole:

Enclosed for filing in the above-styled matter, on behalf of Tampa Electric Company, are the original and fifteen (15) copies of a Petition for Approval of Solar Energy Power Purchase Agreement with Energy 5.0, LLC.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



James D. Beasley

JDB/pp
Enclosure

COM	_____
ECR	_____
GCL	2
OPC	1
RCP	1
SSC	_____
SGA	_____
ADM	_____
CLK	None

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Tampa Electric Company For)
Approval of Solar Energy Power Purchase)
Agreement with Energy 5.0, LLC)
_____)

Docket No. _____-EI
Filed: March 9, 2009

**PETITION FOR APPROVAL OF SOLAR ENERGY POWER PURCHASE
AGREEMENT**

TAMPA ELECTRIC COMPANY ("Tampa Electric" or the "company"), by and through its undersigned attorneys and pursuant to Chapters 120 and 366, Florida Statutes (2008), and Rules 28-106.201, 25-22.036, 25-17.0832, and 25-17.240, Florida Administrative Code ("F.A.C."), hereby petitions the Florida Public Service Commission ("Commission") for approval of the Contract for the Purchase by Tampa Electric Company of Renewable Energy from Energy 5.0, LLC, which was executed by Tampa Electric and Energy 5.0 on February 25, 2009 (the " Solar Energy Contract" or "Contract").

The Solar Energy Contract awarded to Energy 5.0 as the successful bidder in the company's 2007 Renewable Generation Request for Proposals provides for Tampa Electric to purchase the entire net electrical output of Energy 5.0's Florida Solar I Facility ("Facility") for a period of twenty-five (25) years at a price per kilowatt-hour that is fixed for the entire term of the Contract. The Solar Energy Contract will provide meaningful fuel diversity benefits to the company and its customers and will further the State's goals of promoting renewable energy resources within the state, encouraging investment in native Florida renewable energy resources, improving environmental conditions in Florida, reducing Florida's dependence on natural gas and fuel oil for electricity production, and reducing fuel price volatility to the company's customers. Accordingly, the Commission should approve the Solar Energy Contract for cost recovery purposes.

In further support of its Petition, the company states as follows.

PROCEDURAL BACKGROUND

1. The name and address, of the Petitioner is as follows:

Tampa Electric Company
702 North Franklin Street
Tampa, Florida 33602

2. Copies of all notices and pleadings with respect to this petition should be furnished to:

Lee L. Willis
James D. Beasley
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302

Paula K. Brown
Regulatory Affairs
Tampa Electric Company
Post Office Box 111
Tampa, Florida 33601

3. The agency affected by this Petition is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

FACTUAL BACKGROUND

4. Tampa Electric is an investor-owned public utility operating under the Commission's jurisdiction under Chapter 366, Florida Statutes. The company provides generation, transmission, and distribution service to approximately 667,000 retail customers in Hillsborough County and portions of Polk, Pinellas, and Pasco Counties. The company also provides wholesale full requirements service and other wholesale bulk power services to a number of other electric utilities in Florida. Tampa Electric is committed to obtaining the benefits of Florida renewable energy for its customers. The company is also committed to encouraging and promoting renewable energy pursuant to several sections of Chapter 366, Florida Statutes, including Sections 366.82, 366.91, and 366.92, Florida Statutes. In furtherance of the express purposes of these statutes, the Solar Energy Contract provides substantial benefits

to the company and its customers, and to the State, as a whole, including renewable energy produced by a new Florida renewable energy generating facility, reduced environmental impacts associated with electricity generation, fuel diversity, and reduced electric cost volatility through fixed pricing for the life of the Contract. The Solar Energy Contract will also provide Tampa Electric with a head start toward meeting the Renewable Portfolio Standard promulgated by the Commission pursuant to Section 366.92(4), Florida Statutes.

5. Energy 5.0, LLC is a Florida limited liability company with its headquarters at 1601 Forum Place (Suite 1010), West Palm Beach, Florida 33401. Energy 5.0 and its principals have significant experience and success in the development, financing and operation of renewable energy and conventional power generation projects. Energy 5.0 is developing the Florida Solar I Facility, a 25 MW photovoltaic electric generating station to deliver Solar Renewable Energy to Tampa Electric on the company's transmission system. The Facility will include the solar photovoltaic generating and power conditioning equipment, an interconnection substation with Tampa Electric's transmission system, and other necessary maintenance and support facilities located on a site of approximately 200 acres. The Facility is a renewable energy generating facility within the meaning of Sections 366.91 and 366.92, Florida Statutes, as well as a qualifying small power production facility within the meaning of applicable federal and Florida statutes and rules. The energy produced by the Facility will also be "renewable energy" as defined in Section 377.803(4), Florida Statutes.

6. Tampa Electric awarded Energy 5.0 the opportunity to supply Solar Renewable Energy to its customers through its June 29, 2007 Renewable Generation Request for Proposals. The Solar Energy Contract between Tampa Electric and Energy 5.0 provides for the company to purchase all of the Renewable Energy output of the Facility at a confidential price per kilowatt-hour that is fixed for the 25-year life of the Contract. Most significantly, this

negotiated fixed price is on a delivered-energy, pay-for-performance basis, so that if the Facility fails to deliver Renewable Energy, the company and its customers pay nothing. Energy 5.0 is compensated only for Renewable Energy delivered to and metered by Tampa Electric. The sale and purchase of the Renewable Energy includes all Environmental Attributes and Renewable Energy Credits, including all credits, allowances, and other tradable environmental interests, associated with, belonging to, or granted to the Renewable Energy sold to Tampa Electric.

7. An evaluation for cost-effectiveness was performed by Tampa Electric utilizing a base case and high fuel set of conditions. Additionally, three different scenarios were compared to each reference case to account for carbon dioxide (“CO₂”) emissions penalties, Renewable Energy Credits (RECs) and a combination scenario including both CO₂ costs and RECs. The source of the CO₂ costs and REC values was the Florida Renewable Energy Potential Assessment report prepared for the FPSC and Governor’s Energy Office by Navigant Consulting, Inc. Finally, a scenario that included pricing for RECs based on New Jersey’s Renewable Portfolio Standard was developed. Exhibit I to this Petition shows the avoided cost amounts under the various cases and scenarios that the facility is projected to provide.

8. The Solar Renewable Energy provided under the Contract will avoid CO₂ emissions, sulfur dioxide emissions, nitrogen oxide emissions, particulate emissions, and emissions of other pollutants that would otherwise be produced by conventional electric generating sources. Exhibit II to this Petition shows the direct environmental benefits, in terms of reduced emissions of CO₂ and other pollutants, that the Facility is projected to provide.

9. The Solar Energy Contract includes Milestone Dates and provides for Energy 5.0 to pay the company liquidated damages in the event that the Facility does not meet the

Commercial Operation Milestone Date set forth in the Contract. The Contract is provided as Exhibit III.

10. While the final site for the Facility has not been selected, it is most likely that it will be in Polk County at a location that will provide for convenient interconnection to Tampa Electric's transmission system. Energy 5.0 has identified several suitable sites under separate ownership and is confident that an appropriate site can be secured in a timely fashion to support the stated Contract milestones.

11. Tampa Electric has performed preliminary interconnection and load flow studies and believes that the Facility can be integrated into the company's transmission system without adverse effects on the transmission system or on the company's ability to provide reliable service to its customers. In addition, Energy 5.0 has engaged consultants to assess each site under consideration for suitable access to interconnection with the company's system.

DISCUSSION

12. The Commission should approve the Solar Energy Contract because it promotes and fulfills many of the specific goals of applicable Florida Statutes. Specifically, the Contract will:

- promote the State's goal of encouraging the production of renewable energy produced by renewable energy generating facilities in Florida;
- reduce Florida's dependence on natural gas and fuel oil for electricity production;
- provide the basis for significant new investment, economic development and job creation in the County and in the State;
- reduce environmental impacts associated with electricity generation;
- protect the company and its customers from technical and operational risk by its energy-only, fixed pricing;
- provide the company with a head start toward meeting its obligations under the Commission's Renewable Portfolio Standard Rule promulgated pursuant to Section 366.92(3), Florida Statutes;

- provide fuel diversity benefits; and
- provide the energy independence, sustainability, and national security benefits that inherently come from native Florida renewable energy resources.

13. The pricing under the Solar Energy Contract is markedly cost-effective as compared to other known solar energy projects and offerings in Florida and elsewhere. Under most, but not all, scenarios evaluated by Tampa Electric, the Contract is not expected to be cost-effective as compared to the cost of electrical energy available to the company from conventional fossil fuel generating resources. (These analyses were performed in the traditional manner, against the company's approved fuel forecast and average system values, and without giving the Facility any credit for avoided capacity additions.) However, as shown in Exhibit I the Contract is cost-effective using a scenario that includes estimates of carbon dioxide compliance costs and Renewable Energy Credits. Further, the Facility's forecasted energy generation at least partially coincides with Tampa Electric's daily load profile, and, from a seasonal perspective, its production is higher in the peak summer months. Thus the facility has the unrecognized benefit of offsetting load at peak times as well as fixed price, emission free generation. Significantly, the Commission should note the substantial protection that the fixed pricing feature of the Contract provides against the known volatility of fuel costs, and also against the unknown cost of compliance with future carbon reduction and renewable energy regulations. In conclusion, Tampa Electric believes that the benefits offered by the Contract outweigh any cost disadvantage in comparison to conventional energy sources.

14. The rates, terms, and conditions of the Solar Energy Contract are reasonable and provide substantial benefits to Tampa Electric, its customers, and the State, and also provide adequate protections for the company's customers in the event of non-performance by Energy 5.0.

15. The company is entitled to the Commission's approval of the Solar Energy Contract by Sections 366.91 and 366.92, Florida Statutes, and by Commission Rules 25-17.0832 and 25-17.240, F.A.C.

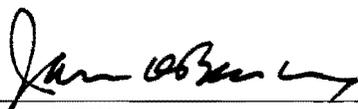
16. Tampa Electric does not believe that there are any disputed issues of material fact relative to the matters addressed in this Petition. The ultimate issues to be decided by the Commission are whether to approve the Solar Energy Contract, and whether Tampa Electric is entitled to this relief by the facts set forth above, namely that the Contract will promote the goals set forth by the Florida Legislature in Sections 366.91 and 366.92, Florida Statutes, and the specific goal of encouraging the use of solar energy set forth in Section 366.81, Florida Statutes.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, the Solar Energy Contract between Tampa Electric Company and Energy 5.0, LLC is in the best interests of the company and its customers, and in the public interest of the State and all Floridians, and accordingly, the Commission should approve the Contract for cost recovery through the Commission's Fuel and Purchased Power Cost Recovery Clause.

WHEREFORE, Tampa Electric Company respectfully petitions the Commission to approve the Contract for the Purchase by Tampa Electric Company of Renewable Energy from Energy 5.0, LLC for cost recovery purposes, as prayed herein.

Respectfully submitted this 9th day of March, 2009.



Lee L. Willis
James D. Beasley
Ausley & McMullen
227 South Calhoun Street (ZIP 32301)
Post Office Box 391
Tallahassee, Florida 32302
Attorneys for Tampa Electric Company

TAMPA ELECTRIC COMPANY
SOLAR ENERGY POWER PURCHASE AGREEMENT
EXHIBIT I

Exhibit I
Economic Evaluation of Florida Solar I Project

An analysis was performed to quantify the economic impact of the Energy 5.0 agreement to Tampa Electric customers utilizing existing and potential fuel costs as well as possible environmental legislation, in order to determine how each possible condition affects the final price of the purchase, and if any combination of scenarios would cause the purchase to achieve savings to Tampa Electric's system.

Energy 5.0

The evaluation of the Energy 5.0 agreement contemplates the 25 MW solar photovoltaic ("PV") array operating from January 1, 2011 through December 31, 2035. The contract specifies a fixed energy cost of \$[REDACTED]/MWh each year.

This energy was calculated from an analysis of photovoltaic capacity factors and availability. Since PV technology is dependent on the sun, there is an associated hourly profile of generation as the sun rises and sets throughout the day. The study used data gathered from Tampa Electric's existing PV array at its Manatee Viewing Center located adjacent to Big Bend Station.

The Florida Solar I facility is a 25 MW PV array that can generate 25 MW at peak at maximum capacity, providing 132.2 MWh generation each day, or approximately 50,000 MWh annually. This equates to a 22 percent capacity factor.

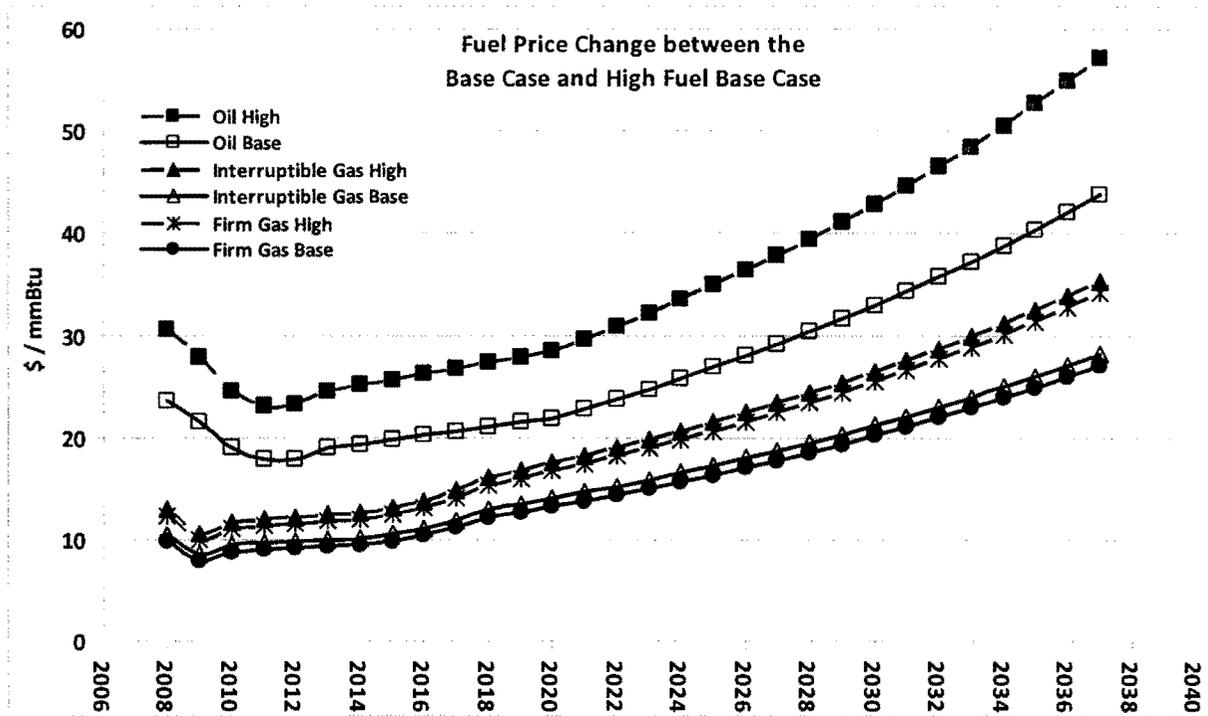
Base Case

The base case used in this analysis was the most current version of Tampa Electric's reference case, which was updated September 15, 2008 and utilized for the company's 2009 fuel cost recovery projection filing. It contains the company's latest maintenance plan and natural gas fuel update. The base case and expansion plan were not changed or altered in any of the scenarios for purposes to determine the economic impact of each scenario on the Energy 5.0 agreement.

High Fuel Base Case

A second base case was created which incorporates a high fuel cost scenario. With higher fuel costs, the value of the Energy 5.0 contract is increased due to higher avoided fuel costs.

Fuel price comparisons between the two cases are shown in the figure below.

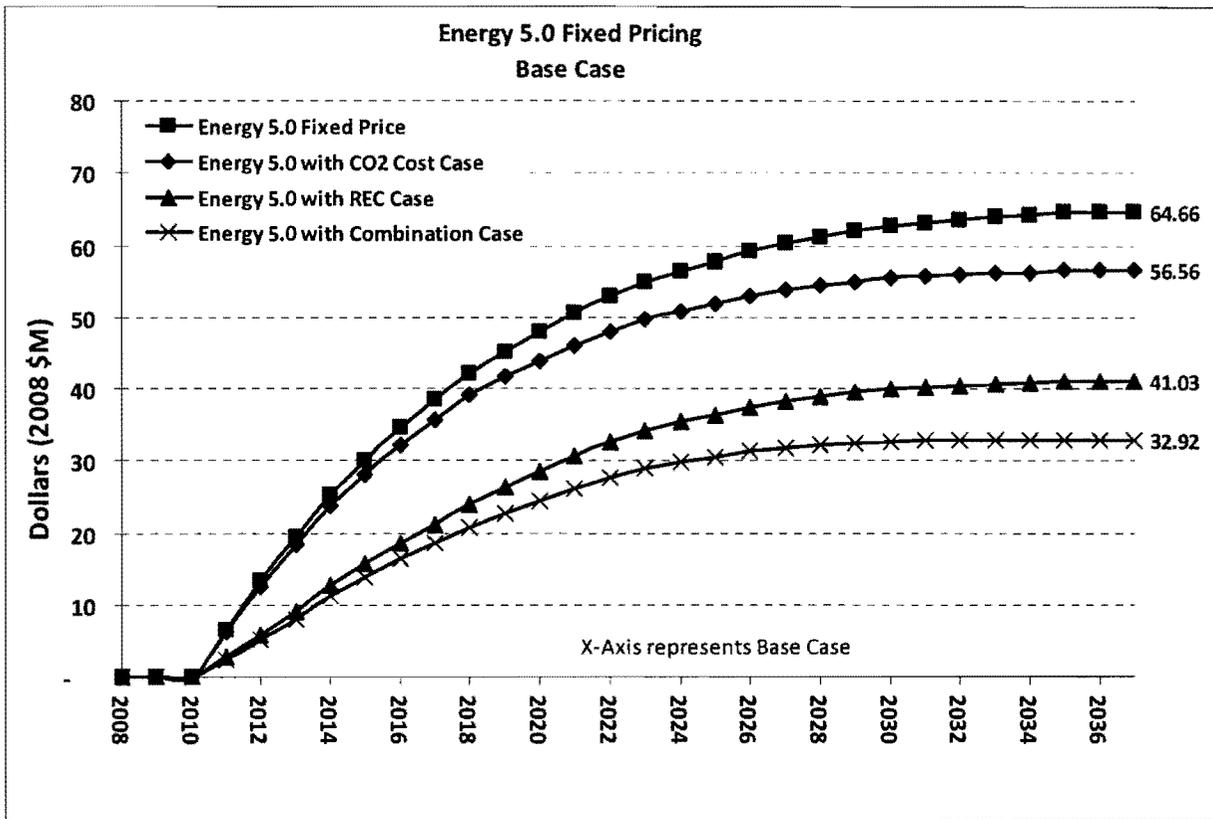


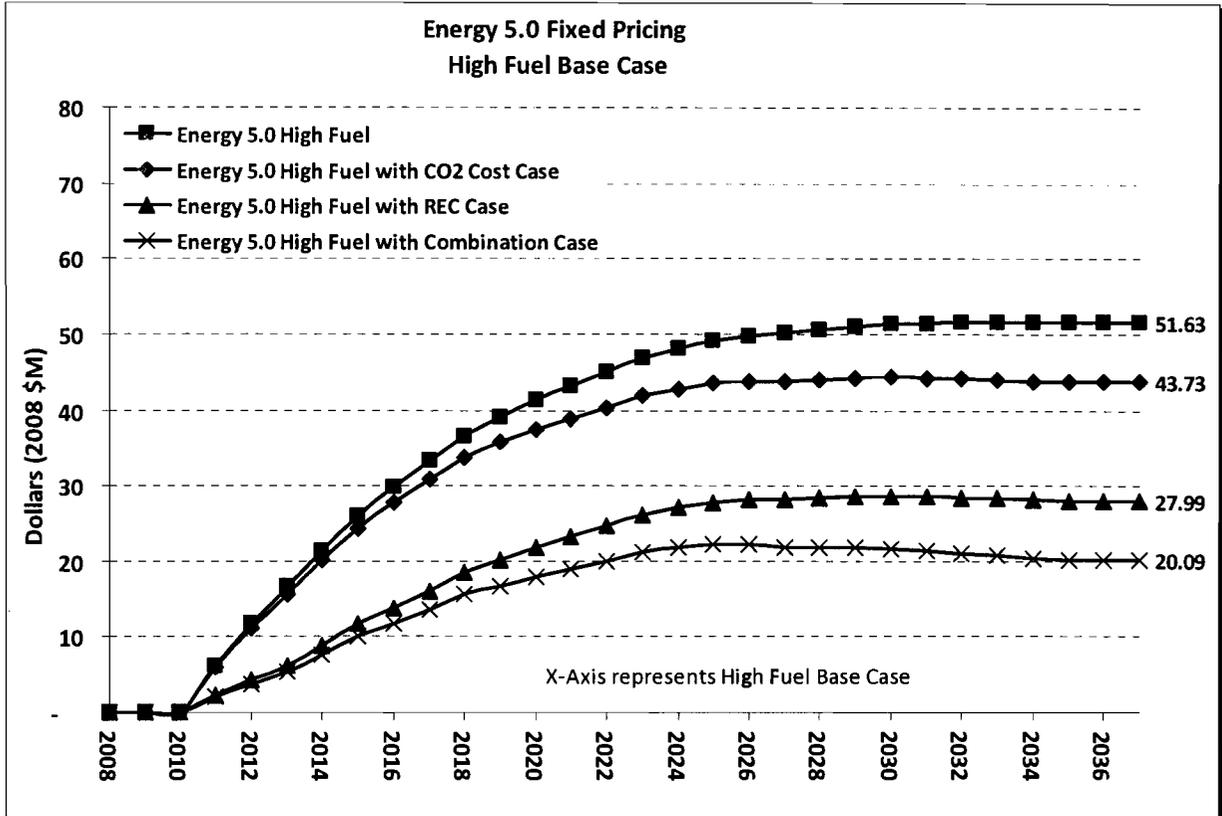
Scenarios

For each set of base case conditions (regular and high fuel), there were three change case scenarios that were tested, in addition to the Energy 5.0 case with the original energy profile and \$ [redacted] /MWh energy pricing. The three change cases are:

- The CO₂ Cost Case is a scenario in which CO₂ emissions penalties are applied based on the Navigant Report CO₂ estimates.
- The Renewable Energy Credit ("REC") Case is a scenario in which a REC is applied based on the Navigant Report REC estimates.
- The Combination Case combines the CO₂ Cost Case and the REC Case.

Graphs depicting the original profile and the three change cases in comparison to the base case and the high fuel base case are shown below.





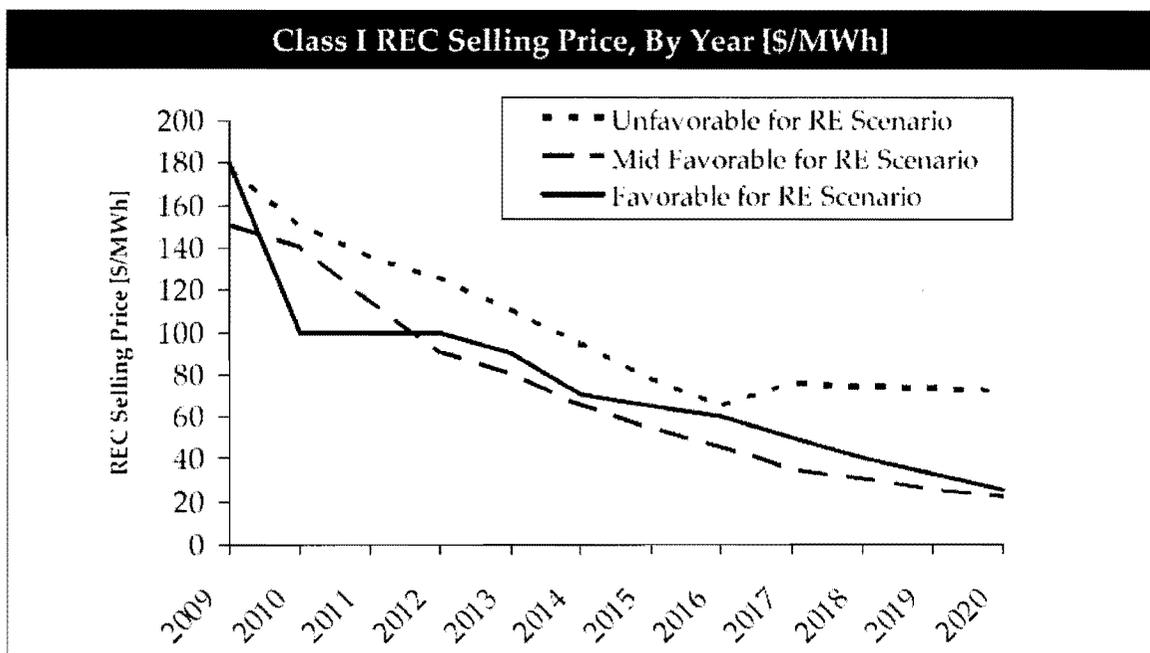
CO₂ Cost Case

For the CO₂ Cost Case, the only change was the addition of a CO₂ emissions penalty. Tampa Electric used the CO₂ pricing forecast from the Navigant Report, which states that a Greenhouse Gas Policy (“GHG”) that is favorable for Renewable Energy has CO₂ pricing initially at \$2/ton, scaling up to \$50/ton by 2020. Those costs were held constant at \$50/ton for all years beyond 2020.

In the analysis, the CO₂ emissions were calculated and penalized for the base case emissions as well as the change case emissions. The Energy 5.0 case offsets some generation, therefore reducing overall emissions and incurring less of a penalty. The savings equates to around \$8 million, which reduces the costs of the project to \$56.56 million and \$43.73 million, for the regular base and high fuel base cases, respectively.

REC Case

For the REC Case, the selling price for RECs was obtained from the Navigant Report, which has a REC value at \$100/MWh in 2009, de-escalating to \$25/MWh in 2020, and was held constant for the remaining years. When this value savings was applied to the Energy 5.0 case, it amounted to a savings of almost \$24 million over the base case. The total net present worth revenue requirements or "NPWRR" cost to customers decreased to \$41 million for the regular base case and \$28 million for the high fuel base case.



CO₂ Cost and REC Combination Case

This is a cumulative total of the two previous scenarios, and it shows the total NPWRR costs dropping to \$33 million and \$20 million for the two cases. This is the lowest cost scenario, assuming the Navigant values for REC and CO₂ Pricing.

New Jersey REC Case

An additional economic analysis was performed utilizing the Renewable Portfolio Standard ("RPS") that exists in east coast markets. New Jersey's RPS requires

electricity suppliers to provide a percentage of their electricity sales from solar generation. The Board of Public Utilities requires use of the Office of Clean Energy's Solar Renewable Electricity Certificate system to satisfy this mandate. Solar Renewable Energy Certificates (SRECs) represent the renewable attributes of solar generation, bundled in minimum denominations of one megawatt hour of electricity production (1 SREC = 1 MWh).

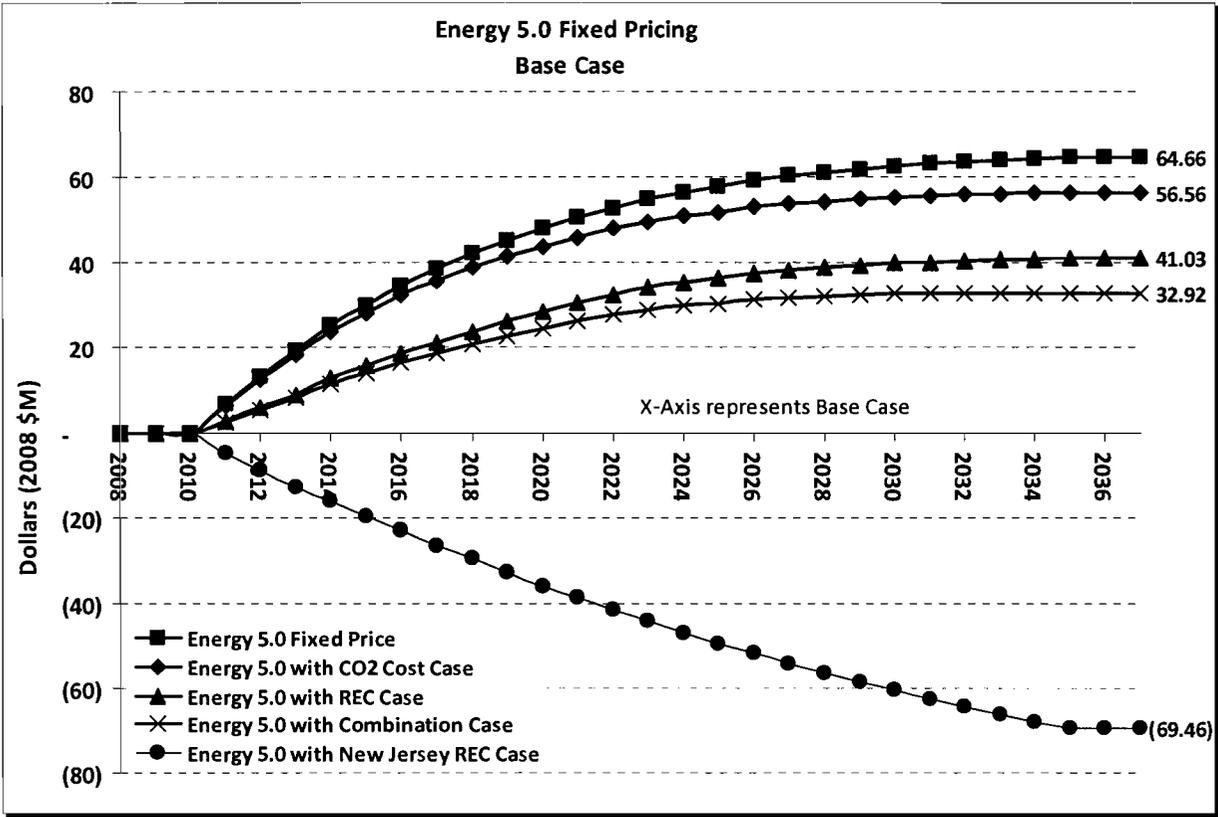
The RPS requires that 20 percent of New Jersey's electricity come from Class One renewable sources by 2020 and includes a 2.12 percent solar set aside, the nation's largest solar commitment relative to population and electricity consumption.

The maximum price for an SREC is forecast to be approximately \$611 for energy reporting year 2009 based upon supply and demand forecasts as well as the establishment of a solar alternative compliance mechanism. Solar Alternative Compliance Payments (SACP) allow suppliers to satisfy their requirements by paying \$711 per MWh for energy reporting year 2009 to the New Jersey Board of Public Utilities fund.

Month	Year	SREC Quantity			Monthly		Cumulative	
		Active kW DC	Issued in Month	Traded in Month	High (\$/MWh)	Low (\$/MWh)	# of SRECs Traded	Weighted Avg Price (\$/MWh)
Dec	2008							
Nov	2008							
Oct	2008	58,557	4,880	4,873	600	170	10,405	391.52
Sept	2008	58,158	4,897	2,410	552	170	5,532	331.62
Aug	2008	56,644	5,866	2,285	560	170	3,122	345.52
Jul	2008	55,657	4,016	837	525	175	837	308.08
	Total		19,659	10,405				

Based on the weighted average prices shown in the table above, Tampa Electric estimated a REC value of \$300/MWh per year. In this analysis, the Energy 5.0 purchase results in a significant NPWRR₂₀₃₇ **savings** of \$69 million, compared to the regular base case.

The graph below depicts the results of the regular base case economic analysis with the various scenarios.



TAMPA ELECTRIC COMPANY
SOLAR ENERGY POWER PURCHASE AGREEMENT
EXHIBIT II

Exhibit II

Environmental Benefits of the Florida Solar I Project

The planned Florida Solar I Project will be erected on 200 to 400 acres of reclaimed phosphate mine land in Polk County, Florida. The project will consist of silicon-based photovoltaic ("PV") modules mounted either at a fixed angle or on single axis horizontal trackers. The PV modules will be wired to inverters and transformers which will collect and convert the direct current produced by the modules to alternating current at the appropriate interconnection voltage for delivery to Tampa Electric.

The site is expected to be fenced and contain one or more buildings to house facilities for operation, maintenance, communication, security, and storage.

The project will be subject to applicable county, regional and state land use and environmental review processes which could take a year to complete. Construction is expected to extend over a two year period with initial operation occurring during the first year.

Once erected the project will require little manual intervention to operate and rely largely on remote monitoring and computer control. Project maintenance will be handled by a small staff and local contractors. It will therefore impose virtually no demand or burden on local infrastructure or roads.

Emissions

As a photovoltaic generator the Florida Solar I Project will be emission free. The nominal 25 MW Phase I project is expected to generate approximately 50,000 MWh of electricity in an average year, 1.27 million MWh over its 25 year proposed contract term, and the project will avoid the emission of up to 1.45 million tons of CO₂ when measured against a natural gas-fired, peaking combustion turbine.

Table 1 quantifies the emissions of the principal regulated pollutants per megawatt-hour from a large central station coal-fueled generator, a natural gas fired peaking combustion turbine and a natural gas fired combined cycle generator subject to the latest environmental standards (New Source Performance) and installed in 2009. These values were identified in the Navigant Study.

	<u>Coal</u> lb/MWh	<u>NG Peaker</u> lb/MWh	<u>NG CC</u> lb/MWh
CO ₂	1,986	2,280	750
SO ₂	28.5	0.0668	0.0035
NO _x	5.6	0.0048	0.05

Source: Navigant Report - Appendix

Table 2 provides an assessment of emissions avoided based on the expected generation of the Florida Solar I Project each year.

	<u>Coal</u>	<u>NG Peaker</u>	<u>NG CC</u>
CO ₂	50,482	57,955	19,064
SO ₂	724	1.70	0.09
NO _x	142	0.12	1.27

Table 3 provides a tally of avoided emissions over the term of the power purchase agreement.

	<u>Coal</u>	<u>NG Peaker</u>	<u>NG CC</u>
CO ₂	1,262,046	1,448,874	476,603
SO ₂	18,111	42.45	2.22
NO _x	3,559	3.05	31.77

In addition to these pollutants, the project will avoid emissions of the following regulated pollutants emitted by fossil-fueled alternatives:

- carbon monoxide,
- particulate matter, and
- mercury.

The Florida Solar I Project will not require the delivery of fuel and will not generate any significant quantity of waste; it will thus avoid the emissions associated with rail or truck traffic for fuel delivery or waste removal. It will have a minimal impact on landfill requirements for waste.

Water Consumption

The Florida Solar I Project will not produce waste heat and thus will neither reject this wasted heat to a cooling water source nor will it represent a consumptive use of water (by evaporating water to the atmosphere).

Other Environmental Considerations

Use of the land for solar power does not necessarily negate other compatible uses. For example the land is not being paved hence there is no increase in its storm water runoff or heat island properties.

If the site was useful for grazing animals prior to installation of the solar generator it may be at least in part useful for grazing after installation.

The site requires only limited road access and generates little traffic and therefore imposes no burden on government agencies for road construction. It requires no road frontage leaving more valuable real estate available for road front development.

The project will generate no noise.

The project will have minimal visual impact as it is likely to be installed well away from traveled roads and installed with a low profile. The only tall structures are expected to be the power poles installed on private property or in existing rights of way to deliver emissions-free, renewable energy from the Florida Solar I Project to the Tampa Electric power grid.

TAMPA ELECTRIC COMPANY
SOLAR ENERGY POWER PURCHASE AGREEMENT
EXHIBIT III

**CONTRACT FOR THE PURCHASE BY TAMPA ELECTRIC COMPANY
OF RENEWABLE ENERGY FROM ENERGY 5.0 LLC**

This contract is made and entered into this 25th day of February, 2009 ("Contract"), by and between Energy 5.0 LLC, the owner and/or operator of the Facility, as defined below (hereinafter referred to as the "Seller") and Tampa Electric Company, a private utility corporation organized under the laws of the State of Florida (hereinafter referred to as the "Purchaser"). Seller and Purchaser are also identified hereinafter individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, the Seller's proposal to provide Renewable Energy was selected from Purchaser's June 29, 2007 Renewable Generation Request for Proposals; and

WHEREAS, the Seller will develop, permit, own, finance, construct, operate and maintain the Facility, as defined below; and

WHEREAS, the Seller desires to sell Renewable Energy, as defined below, in accordance with this Contract; and

WHEREAS, the Purchaser desires to purchase Renewable Energy in accordance with this Contract;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and other good and valuable considerations the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **Definitions:**

- a. **Affiliate:** "Affiliate" shall mean, with respect to any specified Person, any other Person who, directly or indirectly, owns or controls, is under common ownership or control with, or is owned or controlled by, such specified Person.
- b. **Business Day:** "Business Day" shall mean any day on which commercial banks are authorized to open for business in Tampa, Florida.
- c. **Charges:** "Charges" shall have the meaning set forth in Section 10 of this Contract.
- d. **Commercial Operation Date:** "Commercial Operation Date" shall have the meaning set forth in Section 2(c) of this Contract.
- e. **Company Transmission Service:** "Company Transmission Service" shall mean the network transmission service required through the Purchaser's transmission system to deliver Renewable Energy from the Delivery Point to the Purchaser's native load customers.
- f. **Conditions Satisfied Date:** "Conditions Satisfied Date" shall have the meaning set forth in Section 3(g) of this Contract.
- g. **Declined Renewable Energy:** "Declined Renewable Energy" shall have the meaning set forth in Section 14.
- h. **Delivery Point:** "Delivery Point" shall mean, for energy produced at the Facility: (1) the Interconnection Point, as defined below, if the Facility is directly interconnected to the Purchaser's transmission system; or (2) a point on the Purchaser's transmission system,

mutually agreed to in writing by the Parties, at which the Seller shall deliver Renewable Energy via a provider of Third-Party Transmission Services, if the Facility is not directly interconnected to the Purchaser's transmission system.

- i. **Effective Date:** "Effective Date" shall mean the first date this Contract has been executed by both parties.
- j. **Environmental Attributes:** "Environmental Attributes" are attributes associated with Renewable Energy Credits and shall have the meaning of such term or any similar term set forth in any applicable statute or regulation respecting Renewable Energy.
- k. **Facility:** "Facility" shall have the meaning set forth in Section 2(a) of this Contract.
- l. **F.A.C.:** "F.A.C." shall mean Florida Administrative Code.
- m. **FPSC:** "FPSC" shall mean the Florida Public Service Commission or any similar or successor Governmental Body exercising the same or equivalent jurisdiction.
- n. **FERC:** "FERC" shall mean the Federal Energy Regulatory Commission or any similar or successor Governmental Body exercising the same or equivalent jurisdiction.
- o. **F.S.:** "F.S." shall mean Florida Statutes.
- p. **Forced Outage:** "Forced Outage" shall mean an outage that requires immediate removal of the Facility from service or another outage state. A Forced Outage may be delayed but requires removal of the Facility from service within six (6) hours. A Forced Outage may also be postponed beyond six (6) hours but requires that the Facility be removed from in-service state before the end of the next weekend.
- q. **Governmental Body:** "Governmental Body" shall mean any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, court, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- r. **Interconnection Agreement:** "Interconnection Agreement" shall mean the form of interconnection agreement applicable to an interconnection request pertaining to a Qualifying Facility that is included in Purchaser's transmission tariff.
- s. **Interconnection Point:** "Interconnection Point" shall mean, for the Facility, the busbar connection to the high side of the Facility's step-up transformer(s) where Renewable Energy shall be delivered to the Purchaser's transmission system. The Interconnection Point shall be specified in detail in the Interconnection Agreement.
- t. **Internal Use Energy:** "Internal Use Energy" shall mean the amount of energy internally consumed at the Facility (including energy consumed by the Facility's station service equipment such as control and monitoring equipment, etc.) or by Seller's electric loads located at the Facility.
- u. **Lender:** "Lender" shall mean any Person or any agent or trustee of such Person who provides the construction or permanent financing for the Facility.
- v. **Maintenance Outage:** "Maintenance Outage" shall mean an outage that can be deferred beyond the end of the next weekend, but requires that the Facility, in full or in part, be removed from service or another outage state before the next Planned Outage, as defined below. A Maintenance Outage can occur any time of the year, has a flexible start date, may or may not have a predetermined duration, and is usually much shorter

than a Planned Outage.

- w. **Off-Peak Month:** "Off-Peak Month" shall mean any month that is not an On-Peak Month.
- x. **On-Peak Month:** "On-Peak Month" shall mean the calendar months of June, July, August, December, January and February.
- y. **On-Peak Month Hours:** "On-Peak Month Hours" shall mean the clock hours from 7:00 AM to 7:00 PM during the On-Peak Months.
- z. **OATT:** "OATT" shall mean a transmission service provider's Open Access Transmission Tariff on file with the FERC.
- aa. **Person:** "Person" shall mean an individual corporation, limited liability company, partnership, association, trust, unincorporated organization, other entity or group.
- bb. **Planned Outage:** "Planned Outage" shall mean an outage that is scheduled in accordance with Section 13 and may require the removal of the Facility, in full or in part, from service to perform work on specific components, has a pre-determined start date and estimated duration and may last for several weeks, and occurs only once or twice a year.
- cc. **Rate Schedule COG-1:** "Rate Schedule COG-1" shall mean the Purchaser's rate schedule or tariff on file with the FPSC for the Purchaser's standard offer contract rate in effect on the Conditions Satisfied Date, or its successor rate schedule or tariff, and continuing throughout the Term and extended Term, if any for the purchase of as-available energy from qualifying cogeneration and small power production facilities.
- dd. **Renewable Energy:** "Renewable Energy" means the amount of three-phase, 60-cycle alternating current electric energy generated at the Facility, expressed in MWh, that: (i) is produced by a Renewable Generating Facility (or similar term), as described below; and (ii) qualifies as Renewable Energy (or similar term) as determined by the FPSC or the FERC.
- ee. **Renewable Energy Credits:** "Renewable Energy Credits" shall have the meaning of such term or any similar term set forth in any applicable statute or regulation respecting Renewable Energy and may include all credits associated with the electrical generation of the Facility, including but not limited to any and all Renewable Energy certificates, "green tags", or other tradable interests.
- ff. **Renewable Generating Facility:** "Renewable Generating Facility" shall mean a generating facility that satisfies the definition of, and qualifies as, a renewable generating facility in accordance with the provisions of Section 366.91 2(b), F.S. and Rule 25-17.210 (1), F.A.C. as those provisions are in effect as of the Effective Date of this Contract.
- gg. **Termination Date:** "Termination Date" shall mean the last day of the Term of this Contract as set forth in Section 3(a).
- hh. **Third-Party Transmission Services:** "Third-Party Transmission Services" shall mean the firm transmission service(s) and ancillary services required to deliver Renewable Energy from the Facility to the Purchaser's transmission system if the Facility is not directly interconnected to the Purchaser's transmission system.

2. Seller's Facility and Commercial Operation Date:

- a. Subject to the terms and conditions hereof, the Seller shall develop, permit, own, finance, construct, operate and maintain a 25 MW photovoltaic electric generating station to deliver Renewable Energy to the Delivery Point(s) on the Purchaser's transmission system ("Facility").
- b. (i) The Seller shall design, operate and maintain the Facility to satisfy the interconnection requirements of the Purchaser's transmission system; and (ii) the Facility shall qualify as a Renewable Generating Facility as defined in Section 1(ff) as of the Commercial Operation Date.
- c. The "Commercial Operation Date" shall be the first date after the Conditions Satisfied Date upon which the Purchaser receives notice from the Seller declaring Renewable Energy deliveries to commence under this Contract.

3. Term, Conditions Precedent and Conditions Satisfied Date:

- a. The "Term" of this Contract shall commence on the Effective Date and shall continue for a period of twenty five (25) years from the Commercial Operation Date, unless earlier terminated in accordance with this Section 3, Section 4, Section 11, Section 15, or Section 22 of this Contract, or unless the Term is extended by written mutual agreement of the Parties, in which case the Termination Date shall be a new date as designated in such agreement.
- b. The obligations of the Purchaser to purchase Renewable Energy from the Facility pursuant to this Contract are subject to the satisfaction (or waiver by the Purchaser) of all of the following conditions:
 - i. Any approval from any Governmental Authority necessary for the Purchaser to enter into this Contract or to allow full recovery by the Purchaser from its customers of all payments required to be made by this Contract consistent with FPSC Order No. 25668 issued February 3, 1992 shall have been obtained and shall have become non-appealable through lapse of time or otherwise;
 - ii The approval of this Contract by the board of directors of Purchaser; and
 - iii. The representations and warranties made by the Seller in Section 20 continue to be true and correct as of the Effective Date and as of the Conditions Satisfied Date.
- c. If the condition precedent described in Section 3(b)(i) of this Contract continues (as to the Facility) to be unsatisfied or not waived by the Purchaser in writing after October 1, 2009 the Seller may terminate this Contract by tendering written notice to the Purchaser not less than five (5) Business Days prior to the intended effective date of such termination. The Purchaser may avoid said termination by tendering written notice, prior to the intended effective date of termination, of satisfaction or waiver of all outstanding conditions precedent described in Section 3(b) above.
- d. With respect to the condition precedent described in Section 3(b)(ii), Purchaser shall provide written notice to Seller promptly following approval or disapproval of this Contract by its board of directors.
- e. The obligations of the Seller to construct and sell Renewable Energy from the Facility pursuant to this Contract are subject to the satisfaction (or waiver by Seller), prior to the Conditions Satisfied Date, that the representations and warranties made by the Purchaser in Section 21 continue to be true and correct as of the Effective Date and as of the Conditions Satisfied Date.

- f. Purchaser agrees to use commercially reasonable efforts to achieve the satisfaction of each of the conditions precedent in Section 3(b)(i) and 3(d) above. The Seller agrees to use commercially reasonable efforts to achieve the satisfaction of the condition precedent in Section 3(b)(iii) above.
- g. Conditions Satisfied Date shall mean the first date that all of the conditions precedent set forth in Section 3(b) and (d) above have been satisfied or waived with respect to the Facility.

4. **Milestone Dates and Liquidated Damages:**

- a. The Seller shall use reasonable efforts to achieve each of the project milestones set forth in Schedule 1 attached hereto in connection with Seller's ownership, development and construction of the Facility (each a "Milestone"), on or prior to the milestone date set forth on Schedule 1 corresponding to such Milestone (each a "Milestone Date"). Each Milestone Date is subject to extension by the mutual written agreement of the Parties or to an equitable extension of time in the event of Force Majeure, delays in satisfaction of the conditions set forth in Sections 3(b)(i) or 3(d) or delays due to the addition of new facilities and upgrades to Purchaser's transmission system. For purposes of this Contract, an "equitable extension" shall be the amount of time necessary to address the Force Majeure event or other condition causing such delays, and any such "equitable extension" shall be equal to the number of days that the Force Majeure or other delays continue in existence. Seller shall notify the Purchaser in writing promptly upon achieving each Milestone and thirty (30) days prior to the actual Commercial Operation Date. Time is of the essence of this Contract with respect to Seller's obligation to meet each Milestone and to achieve commercial operation of the Facility. In the event that Seller fails to meet the Construction Start Milestone Date,(as such date may be extended under this Section 4(a)) Purchaser shall be entitled, by giving written notice to Seller, to terminate this Contract. Upon such termination, neither Party shall have any further obligation to the other Party hereunder, unless such failure is an Event of Default under Section 15(a)(i) hereof.
- b. Notwithstanding the provisions of Section 4(a) above, in the event that Seller fails to achieve commercial operation of the Facility by, and to declare commercial operation to be a date on or prior to the Commercial Operation Milestone Date (as may be extended under Section 4(a)) Seller shall be entitled, by giving written notice to Purchaser, to further extend the Commercial Operation Milestone Date day-for-day to a date not later than [REDACTED], and in the case of such extension, Seller shall pay Purchaser delay liquidated damages at a rate equal to [REDACTED], which amount shall be due on the first Business Day following the end of each month such liquidated damages accrue. **THE AMOUNTS OF THE LIQUIDATED DAMAGES ARE AGREED UPON AND FIXED BY THE PARTIES BECAUSE OF THE DIFFICULTY OR IMPOSSIBILITY OF ASCERTAINING THE EXACT AMOUNT OF DAMAGES THAT WILL BE ACTUALLY SUSTAINED BY PURCHASER IN ANY SUCH EVENT AND BECAUSE OTHERWISE OBTAINING AN ADEQUATE REMEDY WOULD BE DIFFICULT OR INCONVENIENT. THE PARTIES AGREE THAT THE LIQUIDATED DAMAGES ARE NOT PENALTIES AND SHALL BE APPLICABLE REGARDLESS OF THE AMOUNT OF LOSSES ACTUALLY SUSTAINED BY PURCHASER.**
- c. Notwithstanding the provisions of Section 4(b) above, if for any reason (other than a material breach hereof by the Purchaser) the Seller fails to achieve commercial operation of the Facility by January 1, 2013, the Purchaser shall be entitled, by giving written notice to the Seller, to terminate this Contract. Upon such termination, neither Party shall have any further obligation to the other Party hereunder, unless such failure is an Event of Default under Section 15(a)(i) hereof.

5. **Renewable Energy Purchase and Sale Commitment, and Additional Renewable Energy Purchase Option:** Commencing on the Commercial Operation Date and thereafter during the Term hereof, the Purchaser agrees to purchase and the Seller agrees to sell and deliver at the Delivery Point(s) at a delivery voltage compatible with the operating voltage of the transmission provider(s) at the Delivery Point(s) all Renewable Energy generated by the Facility, excluding Internal Use Energy, and Declined Renewable Energy and transmission system losses incurred by the Seller, if any, to effect delivery of Renewable Energy to the Delivery Point.

The Seller hereby grants the Purchaser an exclusive right (the "Option"), which may be exercised at any time within five (5) years following the Effective Date to purchase all Renewable Energy from a 25 MW photovoltaic electric generating station (the "Additional Facility"). The Purchaser will give Seller written notice of the exercise of the Option as set forth in Section 25. In the event the Option is exercised prior to its expiration, this Contract shall be construed as a binding contract for the purchase and sale of the Renewable Energy from the Additional Facility on the terms and conditions set forth herein, provided that subject to the mutual agreement of the Parties, new energy charge rates, Term and Milestone Dates as set forth in Schedule 1 will be established and incorporated into the Contract for the Additional Facility.
6. **Rights to Environmental Attributes and Renewable Energy Credits from Renewable Energy:** The Seller shall provide all Environmental Attributes and Renewable Energy Credits associated with, belonging to, or granted to, the Renewable Energy that is delivered to the Delivery Point and sold to the Purchaser; provided however, that the Seller shall retain all tax credits arising out of generation of Renewable Energy ("Renewable Energy Tax Credits").
7. **Right of First Refusal Related to Environmental Attributes and Renewable Energy Credits from Internal Use Energy:** The Seller shall retain all Environmental Attributes and Renewable Energy Credits for Internal Use Energy. The Purchaser shall have a right of first refusal with respect to any Environmental Attributes and Renewable Energy Credits associated with, belonging to, or granted to, the Internal Use Energy. In the event that the Seller receives a bona-fide third party offer to purchase such Internal Use Energy Environmental Attributes and Renewable Energy Credits, the Seller shall notify the Purchaser of such offer, providing all of the terms thereof ("Offer Notice"). The Purchaser shall have the right to purchase such Environmental Attributes and Renewable Energy Credits on exactly the same terms offered to the Seller by tendering a notice to the Seller ("Exercise Notice") not later than thirty (30) days from receipt of the Offer Notice. Such Exercise Notice shall create a binding obligation of the Purchaser to purchase, and together with the Offer Notice tendered by the Seller shall create a binding agreement for the purchase and sale of, the Environmental Attributes and Renewable Energy Credits subject to the Offer Notice. If the Purchaser does not timely tender an Exercise Notice, the Seller shall be free to enter into a binding agreement for the purchase of the Environmental Attributes and Renewable Energy Credits on the terms offered to it, but if the Seller does not do so on such terms by the date sixty (60) days from receipt by the Purchaser of the Offer Notice ("Seller Acceptance Deadline Date"), the foregoing right of first refusal shall be reinstated effective as of the Seller Acceptance Deadline Date as if such date were the date of receipt of the Offer Notice.
8. **Metering; Scheduling:** The amount of Renewable Energy delivered during each clock hour of each day at the Facility shall be metered using the meters to be installed at such Facility and recorded by the Seller's and the Purchaser's energy metering equipment in order to accurately apply the rates and pay the Charges described in this Contract. No daily or other scheduling (other than notices of Maintenance Outages, Forced Outages, Force Majeure events or Declined Renewable Energy) shall be required.
9. **Responsibilities for Interconnection Service, Third-Party Transmission Service and Company Transmission Service:** The Seller shall at all times during the Term satisfy and

comply with all applicable OATT eligibility requirements and all required interconnection service agreements, operating agreements and transmission service agreements in a timely manner to satisfy the provisions of this Contract.

The Purchaser shall request and secure in a timely manner the Company Transmission Service to satisfy the provisions of this Contract.

The Seller shall request and secure at its own expense and in a timely manner the required interconnection service at the Interconnection Point for the Facility, and, if such Facility is not directly connected to the Purchaser's transmission system, firm Third-Party Transmission Services.

10. **Charges and Payment:** "Charges" shall mean the monetary amount (in \$) determined by multiplying the amount of Renewable Energy (in MWh) delivered to the Purchaser each clock hour by the energy charge rate of \$ [REDACTED].

On or before the tenth (10th) day after the completion of a Billing Period (defined below), Seller shall deliver monthly to Purchaser an invoice for payment of Renewable Energy delivered to Purchaser during the preceding Billing Period. Delivery of any invoice via electronic mail, in "pdf" format, shall be effective as of the date delivered, provided that such delivery is made before 5:00 p.m. local prevailing time of a Business Day, otherwise the invoice shall be effective on the next Business Day. Said invoice is due and payable within 20 days from receipt of invoice. "Billing Period" shall mean the period beginning on the first calendar day of each calendar month and ending on the last calendar day of such month. If the Purchaser fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at the "Interest Rate" which shall mean, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law. Purchaser may withhold any disputed portion of an invoice until resolution or settlement of the dispute, and any portion of the disputed amount determined to be due and owing shall be paid together with interest on such portion as provided above.

11. **Performance Standards; Early Termination:** The Seller commits to the following Performance Standard:

Beginning the first full calendar year after the Commercial Operation Date, the Seller shall maintain a minimum Availability Factor of 90% during the On-Peak Months (except to the extent prevented by Force Majeure). The Availability Factor will equal on a calendar year basis: (the sum of each On-Peak Month Hour times the Facility's Available Megawatts) divided by (On-Peak Month Hours times 25 Megawatts). The Facility's Available Megawatts will equal those megawatts available irrespective of atmospheric conditions and not subject to a Forced Outage. The Availability Factor for the first full calendar year following the Commercial Operation Date will allow for a 6 month startup period from the Commercial Operation Date that is excluded from the calculation of the Availability Factor.

If the Seller fails to achieve the foregoing Performance Standard (except to the extent prevented by Force Majeure) the Purchaser shall notify the Seller in writing of such failure. Within thirty (30) days of the Seller's receipt of such notice, the Seller shall provide a written report to the Purchaser describing the reason(s) for such failure, the action plan that the Seller is following to resolve such failure and the date by which the Seller commits to resolve the failure and return to compliance with the above performance standard. If the Seller does not satisfy the above performance standard for three consecutive years, the Purchaser, as its sole remedy, shall have the right, but not the obligation, to terminate this Contract prior to the Termination Date, in which case the energy otherwise purchased and sold hereunder may be purchased and sold under the Purchaser's Rate Schedule COG-1, or any other applicable

and available schedule for the purchase of Renewable Energy by the Purchaser, or at other terms and conditions, if any mutually agreed upon by the Purchaser and Seller .

12. **Reporting of Availability and Maintenance Outage, Forced Outage, or Force Majeure Event:** The Seller shall provide as soon as reasonably practical, written notice to the Purchaser upon the occurrence of any Maintenance Outage, Forced Outage, or Force Majeure event materially affecting the Facility, in full or in part, indicating the amount of capability affected and the anticipated period of such outage or Force Majeure event. The Seller shall provide updated information from time to time as reasonably requested or as circumstances warrant. An acceptable reporting form is attached hereto as Exhibit A.
13. **Production and Maintenance Schedules (Reporting of Planned Outages):** At least ninety (90) days prior to the Commercial Operation Date, and no later than September 30th of each calendar year thereafter, during the Term of this Contract, the Seller shall submit to the Purchaser a schedule of Planned Outages for the Facility. An acceptable form for such submittal is attached hereto as Exhibit A. The Seller shall use commercially reasonable efforts to coordinate the scheduling of Planned Outages of the Facility with the Purchaser; however, no Planned Outage of the Facility may take place during any On-Peak Month or the month of March. During each Planned Outage, the Seller shall keep the Purchaser apprised of the status of the Facility and the expected duration of the Planned Outage. If the Seller desires to revise or change the duration of any scheduled Planned Outage, the Seller shall notify the Purchaser in writing of such revision thirty (30) days prior to such revision or change. In addition, during the Term, the Seller agrees to the following:
- a. to operate and maintain the Facility in such a manner as to ensure compliance with its obligations hereunder;
 - b. to promptly update the yearly production schedule and maintenance schedule of the Facility as soon as any change to such schedules are determined to be necessary;
 - c. to comply with reasonable requests or requirements of the Purchaser regarding day-to-day or hour-by-hour communications between the Parties relative to the status of the Facility and the performance of this Contract;
 - d. to provide monthly production estimates for the Facility prior to the Commercial Operation Date and by December 1 for the next calendar year. Seller will assist in providing month-ahead and day-ahead forecasts of Renewable Energy;
 - e. to coordinate scheduled outages of the Facility with the Purchaser in accordance with this Section 13 of this Contract.
14. **Declined Renewable Energy:** From time to time, the Purchaser upon notice to the Seller may decline to accept Renewable Energy during any given hour, due to an emergency condition, or due to the reasons set forth below (such being the "Declined Renewable Energy").

The Purchaser shall not be obligated to purchase and may require curtailed or reduced deliveries of Renewable Energy, to the extent necessary to maintain the reliability and integrity of any part of the Purchaser's system, or if the Purchaser determines that a failure to do so is likely to endanger life or property, or is likely to result in significant disruption of electric service to the Purchaser's customers. The Purchaser shall use commercially reasonable efforts to give the Seller prior notice, if practicable, of its intent to refuse, curtail or reduce the Purchaser's acceptance of Renewable Energy pursuant to this Section 14 and will use commercially reasonable efforts to minimize the frequency and duration of such occurrences.

15. **Default:**
- a. The Seller shall be in default under this Contract ("Event of Default") if:
 - i. The Seller fails to perform any material obligation hereunder, except to the extent prevented by Force Majeure, and such failure continues for thirty (30) days after notice by Purchaser demanding cure of such failure, provided that where cure reasonably requires more than 30 days, so long as Seller has commenced within thirty days of the notice and diligently pursues a cure, the Seller shall have such additional time as is reasonably required to effectuate the necessary cure;
 - ii. Any representation or warranty made by the Seller herein shall have been false when made and such misrepresentation has had or could reasonably be expected to have a material adverse effect on the Purchaser;
 - iii. The Seller voluntarily declares bankruptcy or suffers the filing of an involuntary bankruptcy petition against and fails to obtain the dismissal of such petition within sixty (60) days; or
 - iv. The Seller has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter, and such party fails to assume all the obligations of the Seller under this Contract.
 - b. Upon the occurrence and during the continuation of any Event of Default, the Purchaser shall have the right to deliver a notice of intent to terminate ("Notice of Intent to Terminate") this Contract to the Seller. As long as the Seller is continuing to deliver Renewable Energy from the Facility to the Purchaser, any Event of Default as defined in Section 15(a)(iii) above shall not constitute grounds for any right to terminate this Contract. Any Notice of Intent to Terminate shall specify the Event of Default giving rise to such Notice of Intent to Terminate. Following the giving of a Notice of Intent to Terminate, the Parties shall consult for a period of up to thirty (30) Business Days as to what steps shall be taken. At the expiration of the thirty (30) Business Day period and unless the Parties shall have otherwise mutually agreed on a remedy or the Seller has cured such Event of Default, the Purchaser may terminate this Contract by giving notice thereof to Seller, whereupon this Contract shall immediately terminate. In addition to its right to terminate this Contract Purchaser may (i) withhold any payments due in respect of this Contract unless the Facility is continuing to delivery Renewable Energy for so long as the Event of Default is continuing; and (ii) following the notice and cure period provided for in Section 15(i) pursue any other remedies available in contract, at law or in equity.
16. **Permits:** The Seller hereby agrees to seek to obtain any and all governmental permits, certifications, or other authority the Seller is required to obtain as a prerequisite to engaging in the activities provided for in this Contract. The Purchaser hereby agrees to seek to obtain, at Purchaser's expense, any and all governmental permits, certifications or other authority the Purchaser is required to obtain as a prerequisite to engaging in the activities described in this Contract.
17. **Indemnification:** Each Party shall protect, indemnify and hold harmless the other Party, its parent company, and their respective directors, officers, employees, agents and representatives from and against any cost, expense, damages, fine, penalty, liability or other loss, including without limitation reasonable litigation expenses and attorneys' fees (collectively "Losses") arising out of any claim of any third party (including any Governmental Body) attributable to the fault, negligence or willful misconduct of such Party, its employees,

agents, contractor or subcontractors, in any way connected with the performance of such Party's obligations under this Contract, except in any case to the extent of Losses arising out of the fault, negligence or willful misconduct of the other Party hereto or its employees, agents, contractor or subcontractors. For purposes of the foregoing, neither Party shall be deemed an employee, agent, contractor or subcontractor of the other Party.

18. **Insurance:**

- a. At all times after the Commercial Operation Date, at Seller's sole cost and expense, the Seller shall obtain and maintain in accordance with the provisions of this Section 18 the following insurance coverage with companies rated 'A-' or better by A.M. Best & Co. (or if not rated by A.M. Best & Co., with companies reasonably acceptable to the Purchaser) in such amounts as would be maintained by a prudent owner of facilities similar to the Facility but in no event less than the amounts set forth below.
- i. Automobile liability insurance covering all motor vehicles owned or otherwise used by Seller, covering the accidental injury or death of one or more persons or damage to or destruction of property, with minimum single limits of liability of not less than \$5,000,000 inclusive for each occurrence and in the aggregate. The required minimum limits may be satisfied by a combination of primary policy and an excess or umbrella policy;
 - ii. Worker's Compensation insurance (including coverage for Occupational Disease) as required by all applicable laws and regulations;
 - iii. Employer's liability insurance of no less than \$1,000,000 for each occurrence and in the aggregate;
 - iv. General Liability insurance covering all operations by or on behalf of the Seller providing insurance for bodily injury liability, personal injury liability and property damage liability with minimum limits of liability of \$5,000,000.00 each occurrence and in the aggregate. The General Liability insurance shall include coverage for: (i) premises and operations; (ii) products and completed operations; (iii) contractual liability; (iv) broad form property damage (including completed operations); (v) explosion, collapse and underground hazards; and (vi) sudden and accidental pollution which coverage need only provide a limit of \$1,000,000 per occurrence and in the aggregate. The general liability insurance shall be in the occurrence coverage form. The required minimum limits may be satisfied by a combination of primary policy and an excess or umbrella policy.
- b. **Deductibles:** The Seller shall be responsible for deductible amounts or self-insured retention amounts associated with losses insured by Seller unless the loss is the result of an act or omission of the Purchaser.
- c. **Additional Insured:** The Seller shall ensure that all general liability and automobile liability insurance required under this Section 18(c) lists the Purchaser as an additional insured with respect to liability arising out of or in connection with this Contract. Insurance shall contain 30 day notice of cancellation (which may be 10 days notice of cancellation for non-payment). The Seller shall furnish the Purchaser with a Certificate of Insurance annually, signed by the insurance carrier or its authorized agent evidencing coverage as required under this Section 18(c). Such insurance shall be primary coverage afforded the additional insured. In addition, the commercial general liability and automobile liability insurance shall contain a cross-liability or severability of interest clause with respect to the Seller's operations. The Seller hereby waives and shall cause their insurers to waive all rights of subrogation against the Purchaser, its officers, directors and employees in the event of any covered loss under the policies described above or under any other policy maintained by the Seller. Any waiver of subrogation

should be limited and impose no waiver to the extent the Purchaser is negligent.

- d. **Examination of Policies; Right to Purchase Insurance:** If the Purchaser requests, the Seller shall permit any authorized representative of the Purchaser to examine and copy the Seller's original insurance policies and any modifications or amendments thereof. If the Seller at any time neglects or refuses to provide the insurance required herein, or if such insurance is canceled, without waiving any other rights or remedies which the Purchaser may have under the circumstances, the Purchaser shall have the right to purchase such insurance and the cost thereof shall be reimbursed by the Seller on demand.
 - e. **Commercial Availability:** If at any time during the Term any insurance (including the limits) required by this Section 18 to be maintained (other than insurance required by applicable law) shall not be available on commercially reasonable terms (including but not limited to price) in the commercial insurance market, the Seller shall obtain and maintain at all times during the Term the types of coverage required by Section 18(a)(i) through (iv) of this Contract with only such limits, deductibles and other terms and conditions as are available on commercially reasonable terms (including but not limited to price) in the commercial insurance market and in such amounts as would be maintained by a prudent owner of a facility similar in size and scope to the Facility.
19. **Force Majeure:** If either Party shall be unable, by reason of Force Majeure, to carry out its obligations under this Contract, either wholly or in part, the Party so failing shall give written notice and full particulars of such cause or causes to the other Party as soon as possible after the occurrence of any such cause; and such obligations shall be suspended during the continuance of such hindrance, which, however, shall be remedied with all possible dispatch. The term "Force Majeure" shall be taken to mean all acts of God, strikes, lockouts or other industrial disturbances at the manufacturing site of the major equipment components or the construction site, wars, blockades, insurrections, riots, arrests and restraints of rules and people, explosions, fires, floods, lightning, wind, windstorm, tornado, tropical storm, hurricane, other weather event, perils of the sea, accidents to equipment or machinery or similar occurrences; provided, however that no occurrence may be claimed to be a Force Majeure occurrence if it is caused by the negligence or lack of due diligence on the part of the Party attempting to make such claim.
20. **Representations and Warranties of the Seller:** The Seller represents and warrants that as of the date this Contract is executed:
- a. **Organization, Standing and Qualification:** The Seller is a limited liability company duly organized and validly existing in good standing under the laws of the State of Delaware and has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Contract and all other related documents and agreements to which it is or shall be a Party. The Seller is duly qualified or licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would materially impair its ability to perform its obligations under this Contract or would result in a material liability to or would have a material adverse effect on the Purchaser.
 - b. **Due Authorization, No Approvals, No Defaults, Enforceability, etc.:** Each of the execution, delivery and performance by the Seller of this Contract has been duly authorized by all necessary action on the part of the Seller, does not require any approval, except as has been heretofore obtained, of the members of the Seller or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of the Seller, except for such as have been duly obtained, and does not contravene or constitute a default under any law, the operating agreement of the Seller,

or any agreement, judgment, injunction, order, decree or other instrument binding upon the Seller, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract. This Contract constitutes the legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms, subject to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of creditors' right generally, general equitable principles and the discretion of courts in granting equitable remedies.

- c. **Compliance with Laws:** The Seller has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. The Seller is in compliance with all laws, except to the extent that failure to comply therewith would not, in the aggregate, have a material adverse effect on the Seller or the Purchaser. By entering into this Contract, the Seller represents and warrants that the Facility will be a renewable energy resource pursuant to F.S. 366.91 2(b), as of the Commercial Operation Date, and confirms such representation and warranty with the signature of the Seller's authorized representative on this Contract.
 - d. **Governmental Approvals:** Except as expressly contemplated herein, neither the execution and delivery by the Seller of this Contract, nor the consummation by the Seller of any of the transactions contemplated hereby, requires the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of governmental authority, except in respect of permits (a) which have already been obtained and are in full force and effect or (b) are not yet required (and with respect to which the Seller has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).
 - e. **No Suits, Proceedings:** There are no actions, suits, proceedings or investigations pending or, to the knowledge of the Seller, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction which individually or in the aggregate could result in any materially adverse effect on the Seller's business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Contract. The Seller has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment.
21. **Representations and Warranties of the Purchaser:** The Purchaser represents and warrants that as of the date this Contract is executed:
- a. **Organization, Standing and Qualification:** The Purchaser is a private utility corporation duly organized and validly existing in good standing under the laws of the State of Florida and has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Contract and all other related documents and agreements to which it is or shall be a Party. The Purchaser is duly qualified or licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would materially impair its ability to perform its obligations under this Contract or would result in a material liability to or would have a material adverse effect on the Seller.
 - b. **Due Authorization, No Approvals, No Defaults, Enforceability, etc.:** Each of the execution, delivery and performance by the Purchaser of this Contract has been duly authorized by all necessary action on the part of the Purchaser, does not require any approval, except as has been heretofore obtained and except for the condition precedent set forth in Section 3(b)(ii), of the board of directors or shareholders of the Purchaser or any consent of or approval from any trustee, lessor or holder of any indebtedness or

other obligation of the Purchaser, except for such as have been duly obtained; and does not contravene or constitute a default under any law, the constitutive documents of the Purchaser, or any agreement, judgment, injunction, order, decree or other instrument binding upon the Purchaser. This Contract constitutes the legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms, subject to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of courts in granting equitable remedies.

- c. **Compliance with Laws:** The Purchaser has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. The Purchaser is in compliance with all laws, except to the extent that failure to comply therewith would not, in the aggregate, have a material adverse effect on the Seller or the Purchaser.
- d. **Governmental Approvals:** Except as expressly contemplated herein, neither the execution and delivery by the Purchaser of this Contract, nor the consummation by the Purchaser of any of the transactions contemplated hereby, requires the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of governmental authority, except in respect of permits (a) which have already been obtained and are in full force and effect or (b) are not yet required (and with respect to which the Purchaser has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).
- e. **No Suits, Proceedings:** There are no actions, suits, proceedings or investigations pending or, to the knowledge of the Purchaser, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction which individually or in the aggregate could result in any materially adverse effect on the Purchaser's business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Contract. The Purchaser has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment.

22. **Continuing Qualification and Regulatory Approval:** Notwithstanding any other provisions of this Contract, the Purchaser shall have the right to terminate this Contract, by written notice to the Seller giving the reasons therefore, without cause, liability or obligation, if any of the following conditions subsequent has occurred, in the Purchaser's good faith judgment.

- a. The Facility shall fail to maintain its status as a Renewable Generation Facility as defined in Section 1(ff) above. By the end of the first quarter of each calendar year, the Purchaser may request and, if so, the Seller shall furnish to the Purchaser a notarized certificate by an officer of the Seller certifying that the Facility has continuously maintained its status as defined in Section 1(ff) on a calendar year basis since the Commercial Operation Date under this Contract;
- b. Any approval from any Governmental Body having jurisdiction thereof necessary for the Purchaser to enter into this Contract or to allow full recovery by the Purchaser from its customers of all payments required to be made by this Contract shall no longer be in full force and effect, and some portion or all of such payments shall have become disqualified for such recovery in contravention of FPSC Order No. 25668 issued February 3, 1992. In connection with the foregoing, Purchaser and Seller agree to support and defend this Contract, and their respective rights to cost recovery and payment, against any challenge by any entity.

23. **Assignment:** The Seller shall not have the right to assign this Contract without the Purchaser's prior written consent and such consent shall not be unreasonably withheld;

provided however; the Seller may without the Purchaser's prior written consent (i) assign its benefits under this Contract; (ii) assign, pledge or otherwise encumber this Contract to any Lender as collateral security for financing the Facility; or (iii) assign and transfer this Contract to an Affiliate with creditworthiness equal to, or higher, than that of the Seller, provided that such Affiliate assignment is subject to Purchaser's written consent which will not be unreasonably withheld.

In the event that Seller shall sell or otherwise dispose of the Facility, the Seller shall at the request of the Purchaser assign this Contract to any successor owner of the Facility, which request constitutes the consent of the Purchaser under this Section 23. Seller shall cause any assignee of this Contract to assume the obligations of Seller hereunder.

24. **Disclaimer:** Except as otherwise expressly contemplated in this Contract, the Purchaser does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with the Seller or any assignee of this Contract.
25. **Notification:** Any notice required or permitted to be given hereunder shall be in writing and shall be: (i) personally delivered; (ii) transmitted by postage prepaid certified mail; (iii) transmitted by a recognized overnight courier service; or (iv) transmitted by facsimile to the receiving Party as follows, as elected by the Party giving such notice:

For: the Seller

c/o President
Energy 5.0 LLC
1601 Forum Place (Suite 1010)
West Palm Beach, Florida 33410

For: the Purchaser

c/o Manager-Wholesale Contracts,
Wholesale Marketing and Sales
Tampa Electric Company
702 North Franklin Street 33602
or
P.O. Box 111
Tampa, Florida 33601

All notices and other communications shall be deemed to have been duly given on: (i) the date of receipt if delivered personally; (ii) the date of receipt if transmitted by mail; (iii) the date of receipt if transmitted by courier; or (iv) the date of transmission with confirmation if transmitted by facsimile, whichever shall first occur. Any Party may change its address for purposes hereof by notice to the other Party.

26. **Applicable Law; Venue; Waiver of Jury Trial:** This Contract shall be governed by and construed and enforced in accordance with the laws, rules, and regulations of the State of Florida without regard to the choice of law provisions thereof. THE PARTIES AGREE THAT ANY LEGAL ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS CONTRACT WILL BE INSTITUTED IN A COURT OF COMPETENT JURISDICTION LOCATED IN HILLSBOROUGH COUNTY, FLORIDA. THE PARTIES HEREBY WAIVE THE RIGHT TO A JURY TRIAL FOR ANY LEGAL ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS CONTRACT.
27. **Severability:** If any part of this Contract, for any reason, be declared invalid, or unenforceable by a court or public authority of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of this Contract, which remainder shall remain in force and effect as if this Contract had been executed without the invalid or unenforceable portion.
28. **Complete Contract:** This Contract, together with any exhibits or attachments thereto represents the entire agreement of the Parties with respect to the subject matter contained herein. All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Contract are hereby abrogated with the

exception of the Confidentiality Agreement dated April 8, 2008.

29. **Benefit:** This Contract, as it may be amended from time to time, shall be binding and inure to the benefit of the Parties and their respective successors-in-interest and legal representatives. No party not a signatory hereto shall be deemed an intended third party beneficiary of this Contract.
30. **Record Retention; Audit:** The Seller agrees to retain during the Term hereof and thereafter for a period of five (5) years from the Termination Date hereof all records relating to the performance of its obligations hereunder, and to cause the Seller or its Affiliate to retain for the same period all such records. The Purchaser shall have the right throughout the Term, and thereafter for a period of five (5) years from the Termination Date hereof, upon reasonable prior notice, to audit the Seller's metering records to the limited extent necessary to verify the basis for any claim by either Party regarding payments hereunder. The Seller shall make such metering records available at its office during normal business hours and the Purchaser shall reimburse the Seller for reasonable costs incurred by the Seller for the audit, as supported by appropriate documentation.
31. **No Waiver:** No waiver of any of the terms and conditions of this Contract shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.
32. **Variable Interest Entity:** Accounting rules set forth in Financial Accounting Standards Board Interpretation No. 46 (Revised December 2003) ("FIN 46R"), as well as future amendments and interpretations of those rules, may require the Purchaser to evaluate whether the Seller must be consolidated, as a variable interest entity (as defined in FIN 46R), in the financial statements of the Purchaser. The Seller agrees to cooperate with the Purchaser and make available to the Purchaser's independent auditors (subject to the Confidentiality Agreement dated April 8, 2008) all financial data and other information, as deemed necessary by the Purchaser's independent auditors, to perform that evaluation on a timely basis as of the Commercial Operation Date and periodically thereafter as required by FIN 46R. Seller will furnish the necessary information to the Purchaser's auditor when Seller receives a written request from Purchaser that such information is necessary and material to prepare Purchaser's financial statements. In the event Purchaser does not receive the necessary information within thirty (30) days of the Purchaser's request, Purchaser may claim an Event of Default within the meaning of Section 15(a) of this Contract. If the result of the evaluation under FIN 46R indicates that the Seller must be consolidated in the financial statements of the Purchaser, the Seller agrees to provide, upon reasonable advance written notice, financial statements, together with other required information subject to the Confidentiality Agreement dated April 8, 2008, as determined by the Purchaser's independent auditors, for inclusion in disclosures contained in the footnotes to the financial statements and in the Purchaser's required filings with the Securities and Exchange Commission ("SEC"). Provided the Seller is given reasonable advance written notice, this information must be received by the Purchaser's independent auditors in a timeframe consistent with the Purchaser's earnings release and SEC filing schedules, to be determined at the sole discretion of the Purchaser's independent auditors. Additionally, if the result of the evaluation under FIN 46R indicates that the Seller must be consolidated in the financial statements of the Purchaser, the Seller agrees to cooperate with the Purchaser and its independent auditors in completing an assessment of the Seller's internal controls as required by the Sarbanes-Oxley Act of 2002 and performing any audit procedures necessary for the independent auditors to issue their opinion on the consolidated financial statements of the Purchaser. The Purchaser shall reimburse the Seller for any costs incurred by the Seller to comply with the requirements of this Section 32.

- 33. **Purchaser Support:** The Purchaser understands and acknowledges that the Seller intends to obtain financing for the construction of the Facility. The Purchaser agrees to use commercially reasonable efforts to assist the Seller in obtaining any such financing which may include without limitation providing information, providing access to management and executing consents, agreements or similar documents reasonably requested by the project lender(s) and to the extent reasonably acceptable to Purchaser, provided that Purchaser shall not be obligated to incur any out-of-pocket costs with respect thereto.
- 34. **Counterparts:** This Contract may be executed in two (2) or more counterparts, all of which will be considered one and the same Contract and each of which will be deemed an original.

IN WITNESS WHEREOF, Seller and the Purchaser have executed this Contract the day and year first above written.

WITNESSES:

Martin A. Bernack:

OFFICE Manager

Energy 5.0 LLC
Bernard H.

By: Cherry

Its: CHAIRMAN and CEO

Digitally signed by Bernard H. Cherry
DN: cn=Bernard H. Cherry, o=Energy 5.0,
ou, email=Bud.Cherry@Energy5-0.com,
c=US
Date: 2009.07.20 15:28:45 -05'00'

WITNESSES:

Jana Zwick

Director, Wholesale Marketing
& Fuels.

Tampa Electric Company

By: [Signature]

Its: PRESIDENT

Exhibit A

Notice / Reporting Form for Planned Outages, Maintenance Outages, Forced Outages, and Force Majeure Events				
	Outage Period Start Date	Outage Period End Date	Amount of MW Associated with Renewable Energy Forecasted to be Unavailable During the Outage or Forced Majeure Event, if any (MW)	Type of Outage Period (Planned, Maintenance, or Forced) or Force Majeure Event
Facility				

Schedule 1 - Milestones

<u>Milestone</u>	<u>Milestone Date</u>
1. Construction Start:	1/1/2010
2. Commercial Operation:	1/1/2011

These dates are to be adjusted day for day based on the period of time from December 1, 2008 and the actual Conditions Satisfied Date.