

**Ruth Nettles**

090109-EI

**From:** Rhonda Dulgar [rdulgar@yvlaw.net]  
**Sent:** Friday, March 12, 2010 12:51 PM  
**To:** Rich Zambo; James D. Beasley; Erik Saylor; Filings@psc.state.fl.us; Jean Hartman; Paula Brown; James Leary; Schef Wright  
**Subject:** Electronic Filing - Docket 090109-EI  
**Attachments:** 090109.Energy5.0.Petition2Intervene.3-12-10.pdf

a. Person responsible for this electronic filing:

Robert Scheffel Wright  
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b. 090109-EI

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

c. Document being filed on behalf of Energy 5.0, LLC.

d. There are a total of 7 pages.

e. The document attached for electronic filing is Energy 5.0 LLC's Petition to Intervene.

(see attached file: 090109.Energy5.0.Petition2Intervene.3-12-10.pdf )

Thank you for your attention and assistance in this matter.

Rhonda Dulgar  
Secretary to Schef Wright  
Phone: 850-222-7206  
FAX: 850-561-6834

DOCUMENT NUMBER DATE

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3/12/2010

FPSC-COMMISSION CLERK

**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. 090109-EI  
Filed: March 12, 2010

**ENERGY 5.0 LLC'S PETITION TO INTERVENE**

ENERGY 5.0, LLC ("Energy 5.0"), pursuant to Rules 28-106.205 and 25-22.039, Florida Administrative Code ("F.A.C."), hereby petitions for leave to intervene in the above-styled [vzr1]docket. In summary, Energy 5.0 is the contract partner from whom Tampa Electric Company ("TECO") has contracted to purchase all of the solar renewable energy generated from Energy 5.0's proposed Florida Solar I Project pursuant to the Solar Energy Contract (the "Contract") that is the focus of this docket. Accordingly, Energy 5.0's substantial interests in developing its solar energy project and in producing and selling electricity generated from solar energy to TECO will be determined by the Commission's actions herein, and Energy 5.0 is entitled to intervene.

**PRODEDURAL BACKGROUND**

1. The name, address, and telephone number of the Petitioner are as follows:

Energy 5.0, LLC  
1601 Forum Place, Suite 1010  
West Palm Beach, Florida 33401.  
Telephone: (561) 697-9800  
Facsimile: (561) 684-3765

2. All pleadings, orders, and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright, Attorney at Law  
John T. LaVia, III, Attorney at Law  
Young van Assenderp, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, Florida 3 2301  
Telephone: (850) 222-7206  
Facsimile: (850) 561-6834

3. The agency affected by this Petition to Intervene is:

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

### **FACTUAL BACKGROUND**

4. Petitioner, Energy 5.0 is a Delaware limited liability corporation, authorized to do business in Florida, whose business includes the development and operation of solar-powered electric generating facilities. Energy 5.0 is developing the Florida Solar I Project (the "Project"), a 25 MW photovoltaic electric generating plant. The Project is a renewable energy generating facility within the meaning of Sections 366.91 and 366.92, Florida Statutes,<sup>1</sup> 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 Project will also be "renewable energy" as defined in Section 377.803(4), Florida Statutes.

5. Energy 5.0 was the successful bidder in TECO's 2007 Renewable Generation Request for Proposals. Accordingly, TECO and Energy 5.0 entered into a negotiated Solar Energy Contract, pursuant to which TECO has agreed to purchase the entire net electrical output and all environmental attributes associated with such generation of Energy 5.0's Project for a period of twenty-five (25) years at a negotiated fixed price per kilowatt-hour. The Contract is the product of a competitive solicitation by TECO and reflects pricing that is competitive against many known solar projects and purchase offerings in Florida and elsewhere.

6. On March 9, 2009, TECO initiated this docket by filing a petition with the Commission requesting approval of the Contract. On January 25, 2010, the Commission issued its order approving the Contract (Order No. PSC-10-0057-PAA-EI) (the "PAA Order"). On March 10, 2010, the Commission issued an order vacating the PAA Order and setting this matter

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<sup>1</sup> All references in this petition to the Florida Statutes are to the 2009 edition thereof.

for evidentiary hearing. The hearing is currently scheduled for June 30-July 1, 2010, thus this petition to intervene is timely.

### **Statement of Affected Interests**

7. In this docket, the Commission will determine whether to approve the Contract for cost recovery purposes pursuant to Commission Rule 25-17.0832, F.A.C., and applicable statutes. As the developer and operator of the renewable energy Project that will provide renewable, green [VP22]power to TECO for the benefit of TECO's customers and for the general benefit of the State as a whole, and as TECO's contract partner in the Contract, Energy 5.0's substantial interests will be determined by the Commission's actions with regard to the Contract. In fact, the Commission's Case Management System records identify Energy 5.0 as a party of record to this docket, but since Energy 5.0 was not formally a party to TECO's petition for contract approval and since Energy 5.0 has not otherwise been formally granted party status in this docket, Energy 5.0 is filing this Petition to Intervene to ensure that there is no procedural obstacle to its participation in any further proceedings herein.

### **Standing to Intervene**

8. Energy 5.0's substantial interests are of sufficient immediacy to entitle it to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervenor must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1977), Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 135 (Fla. 1982). Here, Energy 5.0 is the developer and operator of the Project, as well as TECO's partner in the Contract. The Commission's actions herein will directly determine Energy 5.0's ability to develop the Project and also its ability to perform its obligations under the Contract. Thus, the interests that Energy 5.0 seeks to protect are of sufficient immediacy to warrant intervention, and Energy 5.0's interests in the Commission's actions on TECO's petition for approval of the Contract are clearly within the scope of interests

that this proceeding is designed to protect. Further Energy 5.0 has already invested substantial sums (more than \$2 million) in furtherance of the Project, which are at risk.

**Disputed Issues of Material Fact**

9. Energy 5.0 states that the relevant issues of material fact that the Commission should determine are as follows:

- a. Whether the Florida Solar I Project is consistent with the renewable energy policies articulated by the Florida Legislature, to:
  - i. promote the development of renewable energy in Florida;
  - ii. diversify the types of fuel used to generate electricity in Florida;
  - iii. lessen Florida's dependence on natural gas and fuel oil for the production of electricity;
  - iv. minimize the volatility of fuel costs;
  - v. encourage investment within the state; and
  - vi. improve environmental conditions in Florida.
- b. Whether the Florida Solar I Project, which will furnish renewable energy to TECO for TECO's customers, is in the best interests of TECO's customers.
- c. Whether the Florida Solar I Project, which will furnish renewable energy to TECO for TECO's customers, is in the public interest.
- d. Whether the Commission should approve the Solar Energy Contract for cost recovery, as requested by TECO.

Energy 5.0 believes that the answers to all of these issues are in the affirmative. Energy 5.0 reserves the right to raise additional issues appropriate to this proceeding in accordance with the Order Establishing Procedure.

**Statement of Ultimate Facts Alleged**

10. Energy 5.0 is entitled to intervene by the following facts.
  - a. Energy 5.0's substantial interests in developing the Project and in producing green, renewable electricity consistent with applicable

provisions of Florida Statutes and the Commission's rules will be determined by the Commission's actions herein with regard to the Contract.

- b. The Project is consistent with the renewable energy policies articulated by the Florida Legislature.
- c. The Project is in the best interests of TECO's customers.
- d. The Project is in the public interest.
- e. The Commission should approve the Contract for cost recovery purposes.

**Statutes and Rules that Entitle Energy 5.0 to the Relief Requested**

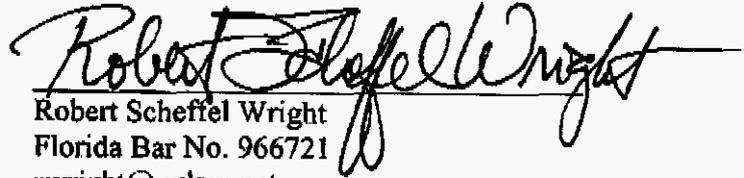
11. The applicable statutes and rules that entitle Energy 5.0 to intervene in this docket include, but are not limited to, Chapter 120, Florida Statutes, and Rules 25-22.039 and 28-106.205, F.A.C.

**CONCLUSION AND RELIEF REQUESTED**

Energy 5.0's substantial interests in developing the Project and in producing green, renewable-source electricity consistent with applicable provisions of Florida Statutes and the Commission's rules will be determined by the Commission's actions herein with regard to the Contract. Accordingly, Energy 5.0 is entitled to intervene in this proceeding as prayed herein.

WHEREFORE, as explained in the foregoing Petition, Energy 5.0, LLC respectfully asks the Commission to issue its order GRANTING this Petition to Intervene and requiring that all parties serve copies of all pleadings and other documents on Energy 5.0's attorneys named above.

Respectfully submitted this 12th day of March, 2010.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery and U.S. Mail this 12th day of March, 2010, to the following:

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