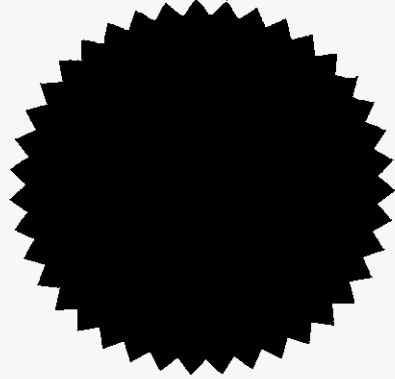


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090109-EI

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



PROCEEDINGS:

AGENDA CONFERENCE  
ITEM NO. 3

COMMISSIONERS  
PARTICIPATING:

CHAIRMAN NANCY ARGENZIANO  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER NATHAN A. SKOP

DATE:

Tuesday, June 1, 2010

TIME:

Commenced at 1:26 p.m.  
Concluded at 1:37 p.m.

PLACE:

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

REPORTED BY:

LORI DEZELL, RPR

DOCUMENT NUMBER DATE

04670 JUN-4 0

FPSC-COMMISSION CLEAR

## P R O C E E D I N G S

1  
2           **CHAIRMAN ARGENZIANO:** Okay. Let's move to  
3 Item No. 3. We'll give everybody a chance to get  
4 in place.

5           Okay. Mr. Sayler? It's getting late for me  
6 too. Did I say Sayer?

7           **MR. SAYLER:** Sayler. Yes. Good afternoon,  
8 Commissioners. I'm Erik Sayler on behalf of the  
9 Office of General Counsel. With me today is  
10 Robert Graves on behalf of technical staff.

11           On May 7, 2010, Tampa Electric Company filed a  
12 notice of voluntary withdrawal for prejudice with  
13 this Commission to dismiss its petition for  
14 approval of a solar energy purchased power  
15 agreement between TECO and Energy 5.0.

16           Staff recommends that this Commission  
17 acknowledge that Tampa Electric Company has  
18 voluntarily dismissed its petition with prejudice  
19 in this docket.

20           I understand representatives of Tampa Electric  
21 Company and Energy 5.0 are also presented. Staff  
22 is available to answer any questions.

23           **CHAIRPERSON ARGENZIANO:** Commissioner Edgar?

24           **COMMISSIONER EDGAR:** Thank you. I'll start  
25 with staff and then if there's a need for any of

1 the other entities to respond, I'm certainly open  
2 to that.

3 Two questions. The first is what is the  
4 meaning or the import or the legal reason for the  
5 phrase "with prejudice" and -- is my first  
6 question. And then my second question, I was not  
7 clear from my reading of the staff analysis at the  
8 very end it says, "Staff recommends that the  
9 Commission acknowledge voluntarily dismissal with  
10 prejudice" but yet in just the recommendation line,  
11 it does not have the phrase "with prejudice." So I  
12 wasn't sure again what the meaning or import of  
13 those words are and why they're in one place and  
14 not the other.

15 **MR. SAYLER:** I'll start with the second  
16 question first. "With prejudice" in the  
17 recommendation statement like was an inadvertent  
18 oversight and can be corrected.

19 **COMMISSIONER EDGAR:** Which was the oversight  
20 and which was --

21 **MR. SAYLER:** Leaving out "with prejudice" in  
22 the recommendation statement. The body of the  
23 staff analysis is correct. It was just  
24 inadvertently left out of the recommendation  
25 statement.

1           **COMMISSIONER EDGAR:** Okay.

2           **MR. SAYLER:** With regard to why TECO Energy --  
3 or TECO dismissed with prejudice, I can't speak to  
4 why they decided to do a voluntary dismissal with  
5 prejudice. According to Black's Law, a dismissal  
6 with prejudice is usually after an adjudication of  
7 the matter on the merits. For example, after a  
8 trial. Here there was no adjudication of the  
9 merits. It is just something that TECO and Energy  
10 5.0 decided to do.

11           Most often times in my experience here at the  
12 Commission, most petitions are just dismissed,  
13 voluntarily dismissed or voluntarily withdrawn. I  
14 can't speak to why they did it with prejudice.

15           **COMMISSIONER EDGAR:** I would welcome  
16 additional comment on that point.

17           **MR. BEASLEY:** Thank you, Mr. Chairman,  
18 Commissioners. James D. Beasley the Ausley law  
19 firm for Tampa Electric Company. We withdrew with  
20 prejudice just to make it clear that we would not  
21 be filing the same proposal again before the  
22 Commission, and that's the sole purpose for using  
23 that phraseology.

24           **COMMISSIONER EDGAR:** That's my only question.

25           **CHAIRMAN ARGENZIANO:** Commissioner Skop?

1           **COMMISSIONER SKOP:** Just to Mr. Beasley. Good  
2 afternoon.

3           **MR. BEASLEY:** Good afternoon. How are you,  
4 sir?

5           **COMMISSIONER SKOP:** Thought it was going to be  
6 good morning but it's a little late.

7           With respect to the procedural matter  
8 currently pending before the Commission, TECO has  
9 the ability to request dismissal of its petition as  
10 a matter of right; is that correct?

11          **MR. BEASLEY:** That's correct, sir.

12          **COMMISSIONER SKOP:** And as counsel for TECO,  
13 have you had the opportunity to review the  
14 discovery responses of this docket?

15          **MR. BEASLEY:** I have. Previous discovery.

16          **COMMISSIONER SKOP:** Okay. And you wouldn't  
17 have those with you at the moment?

18          **MR. BEASLEY:** I do not, sir.

19          **COMMISSIONER SKOP:** Bill, if you could  
20 approach. I want to hand out a brief document just  
21 for one second, please, to try to draw a point.

22          **MR. BEASLEY:** Sure. Okay, sir.

23          **COMMISSIONER SKOP:** And if I could briefly  
24 draw your attention to the document that you have  
25 before you, it's a response to staff interrogatory

1 provided by Energy 5.0, and that's a copy of the  
2 un-redacted confidential document that you have  
3 before you.

4 **MR. BEASLEY:** Yes, sir.

5 **COMMISSIONER SKOP:** Okay. Reviewing the cost  
6 of capital, could you please review the  
7 confidential number listed under the rate column  
8 for equity? And that's signified by the number, by  
9 the red tab.

10 **MR. BEASLEY:** Yes, sir.

11 **COMMISSIONER SKOP:** Okay. Just one final  
12 question. Based upon the discovery response before  
13 you and without disseminating confidential  
14 information, is the return on equity shown in the  
15 discovery response less than the 18 percent return  
16 on equity which I asserted in my descending opinion  
17 to the PAA order?

18 **MR. BEASLEY:** Is it -- the number that's  
19 highlighted here less than the number you said?

20 **COMMISSIONER SKOP:** Yeah. Is the number  
21 highlighted there less than the 18 percent return  
22 on equity which I asserted within my descending  
23 opinion.

24 **MR. BEASLEY:** It is not.

25 **COMMISSIONER SKOP:** That was no for the

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record?

**MR. BEASLEY:** No.

**COMMISSIONER SKOP:** All right. Thank you.

Just briefly, Mr. Beasley, I want to commend you, TECO for doing the right thing here in response to -- you know, it's at your discretion or right to withdraw the pending petition, but I also think that it benefits TECO's ratepayers. You know, JEA has done a great job of promoting solar. Progress recently entered into some contracts for solar avoided cost. They've done a great job, tremendous job. The cost of solar continues to goes down. It's the purview of the Commission pursuant to legislative grant of delegation to encourage renewables in the state and I'm hopeful that TECO will ultimately be successful in pursuing solar projects and I think that, you know, godspeed on that.

**MR. BEASLEY:** Let me say for the record, Commissioner, that this does not deter in any way Tampa Electric's commitment to developing renewable energy resources across the board, including solar. And hopefully the price will continue to come down, as you say, and it will be like big screen TVs. Pretty soon we'll all be able to afford them.

1           **COMMISSIONER SKOP:** Absolutely. I think  
2           TECO's done a tremendous job of pursuing renewables  
3           and is to be commended. And again, I think that  
4           although this one is not moving forward, that  
5           should not deter TECO from moving forward with  
6           other beneficial projects to its ratepayers and the  
7           company as a whole.

8           Just one final question, Madam Chair, to  
9           Mr. Sayler. I guess Commissioner Edgar covered  
10          part of this. But the motion pending before the  
11          Commission is styled as a notice of voluntary  
12          dismissal with prejudice, and I think Mr. Sayler  
13          mentioned the term "with prejudice" is a term of  
14          legal significance.

15          I note that it was mentioned that the term  
16          "with prejudice" is not in the recommendation but  
17          it's also not within the issue statement; is that  
18          correct?

19          **MR. SAYLER:** That is also correct and that can  
20          be -- yes, sir, that is correct. It is not listed  
21          with prejudice, and again that was an oversight.

22          **COMMISSIONER SKOP:** Okay. Should -- is -- in  
23          terms of correcting the deficiency, does staff plan  
24          on making an oral modification to correct that or  
25          should that be embodied within the motion to make



1 sure that that's in the final order?

2 **MR. SAYLER:** Commissioner, we can do it either  
3 way. I can make an oral modification at this time  
4 or it can be embodied within a motion by one of the  
5 Commissioners.

6 **COMMISSIONER SKOP:** Perhaps an oral  
7 modification would address Commissioner Edgar's and  
8 my concern.

9 **MR. SAYLER:** Absolutely. I'm prepared to do  
10 so right now. On page 3 of staff's recommendation,  
11 Issue 1 where it says, "Should the Commission  
12 acknowledge Tampa Electric Company's voluntary  
13 dismissal of its petition," it should read, "Should  
14 the Commission acknowledge Tampa Electric's  
15 voluntary dismissal with prejudice of its  
16 petition."

17 For the recommendation line where it states,  
18 "Yes, the Commission should acknowledge TECO's  
19 voluntary withdrawal of its petition," it should be  
20 amended to read, "Yes, the Commission should  
21 acknowledge TECO's voluntary dismissal with  
22 prejudice of its petition." And I believe that  
23 corrects all the inadvertent oversight errors.

24 **COMMISSIONER SKOP:** Thank you.

25 **MR. KISER:** Madam Chairman?

1           **CHAIRMAN ARGENZIANO:** Mr. Kiser.

2           **MR. KISER:** Yes. Commissioner Edgar said she  
3 would appreciate some additional comments on the  
4 meaning of "with prejudice." It's pretty well  
5 understood in circuit courts, for example, when  
6 lawsuits are filed and motions are filed back and  
7 forth and cases are dismissed and the parties can  
8 refile the case and attempt to revive it or to  
9 continue it going. But usually when the court  
10 rules with prejudice, boom, that shuts the door,  
11 you can't make any more action, case is totally  
12 closed. You can't reopen it. You'd have to file a  
13 whole new case.

14           So Commissioner Skop is right. It does have  
15 legal significance in taking Mr. Beasley's word  
16 that they wanted that language in there because  
17 they wanted to make sure it was certain that this  
18 was -- they were closing the door on this and it --  
19 there would be no efforts in the future to reopen  
20 that door. If they wanted to do something else,  
21 they'd have to file a whole new case.

22           So there is legal significance to it. It's a  
23 little strange that you see this in an  
24 administrative proceeding.

25           **CHAIRMAN ARGENZIANO:** Okay. Thank you.

1 Mr. Scheff, did you want to address --

2 **MR. WRIGHT:** No, Madam Chairman. Thank you.  
3 We support staff recommendation. I just came up in  
4 case there were further questions directed at  
5 Energy 5.0.

6 **CHAIRPERSON ARGENZIANO:** Okay. Any other  
7 questions? Discussion? Do we have a motion?

8 **COMMISSIONER SKOP:** Yes, Madam Chair. With  
9 respect to the disposition of Item 5 -- excuse me,  
10 Item 3 before us, I'd move to adopt the staff  
11 recommendations on Issues 1 and 2.

12 **COMMISSIONER EDGAR:** As modified?

13 **COMMISSIONER SKOP:** As modified.

14 **COMMISSIONER EDGAR:** Second.

15 **CHAIRMAN ARGENZIANO:** All those in favor say  
16 aye.

17 (Unanimous).

18 **CHAIRMAN ARGENZIANO:** Opposed. Okay. Thank  
19 you very much.

20 (Discussion concluded.)

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1 CERTIFICATE OF REPORTER  
2  
3  
4

5 STATE OF FLORIDA )

6 COUNTY OF LEON )  
78 I, LORI DEZELL, RPR, CCR, certify that I was  
9 authorized to and did stenographically report the  
10 proceedings herein, and that the transcript is a true  
11 and complete record of my stenographic notes.12 I further certify that I am not a relative,  
13 employee, attorney or counsel of any of the parties, nor  
14 am I a relative or employee of any of the parties'  
15 attorney or counsel connected with the action, nor am I  
16 financially interested in the action.17 WITNESS my hand and official seal this 3rd day  
18 of June, 2010.  
1920   
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24 Tallahassee, Florida 32308  
25 850-878-2221