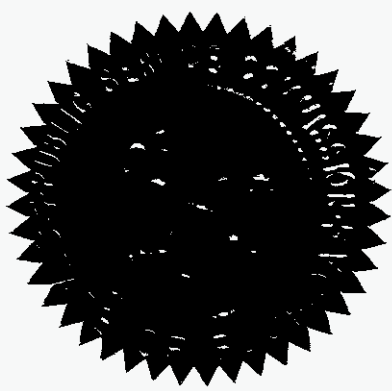


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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. 13  
  
COMMISSIONERS  
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER NATHAN A. SKOP  
COMMISSIONER DAVID E. KLEMENT  
COMMISSIONER BEN A. "STEVE" STEVENS III  
  
DATE: Tuesday, February 9, 2010  
  
PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida  
  
REPORTED BY: LINDA BOLES, RPR, CRR  
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Official FPSC Reporter  
(850) 413-6734

DOCUMENT NUMBER: 01148  
DATE: FEB 22 2010  
FPSC-COMMISSIONER

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

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3           **CHAIRMAN ARGENZIANO:** Okay. Let's move on to  
4 item, our last item, 13. And, members, while staff is  
5 coming up, we have IA. We'll give 15 minutes in between  
6 the, our agenda to get to IA.

7           And thank you to the mayor for being here  
8 today.

9           Will you introduce our item?

10          **MS. BRUBAKER:** Certainly. Commissioners,  
11 Jennifer Brubaker for legal staff.

12           In Commissioner Skop's dissent, the PAA order  
13 on this docket, he encouraged the majority to consider  
14 revisiting its decision vacating the order and setting  
15 the matter directly for hearing. And at the  
16 January 26th agenda this matter was raised, and  
17 ultimately the Commission decided to schedule this item  
18 for discussion at today's Agenda Conference.

19           Before discussion staff recommends that it  
20 would be appropriate to have a motion and a second in  
21 order to discuss the item. And I do note that parties  
22 to this docket are present today and it's at your  
23 discretion whether you'd like to hear from them. And  
24 staff is available to answer your questions.

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

1 Commissioner Stevens.

2 **COMMISSIONER STEVENS:** Madam Chair, since I  
3 was not involved, I believe I have to abstain until,  
4 until it comes forward again. I don't think I can vote.

5 **CHAIRMAN ARGENZIANO:** I think that's --

6 **MR. KISER:** That's our position, that it has  
7 to be the people that were here on the prevailing side.

8 **CHAIRMAN ARGENZIANO:** On the prevailing side.  
9 Uh-huh.

10 **MR. KISER:** And so Commissioner Stevens --

11 **COMMISSIONER STEVENS:** Okay. I just wanted  
12 that, so I wasn't ignoring anyone.

13 **COMMISSIONER ARGENZIANO:** No. No. Glad you  
14 mentioned that. We knew you weren't.

15 **COMMISSIONER STEVENS:** Okay.

16 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

17 **COMMISSIONER SKOP:** I'll just yield and  
18 reserve for a second.

19 **CHAIRMAN ARGENZIANO:** Reserve for a second.  
20 Commissioner Edgar.

21 **COMMISSIONER EDGAR:** And I'm sorry, but once  
22 again I have a question just procedurally. Read nothing  
23 into it more than procedurally.

24 Ms. Brubaker, did you say we needed a motion  
25 to discuss a potential motion for reconsideration or

1 that we needed a motion to reconsider?

2 **MS. BRUBAKER:** I suppose the question is what  
3 are you going to discuss without taking up the matter  
4 for reconsideration?

5 **MR. KISER:** Madam Chairman, I think just  
6 generally in parliamentary procedures it's, it's just  
7 good form to always have a motion, to make sure it's a  
8 significant enough item that it's not just one person  
9 speaking on it, that you have a motion and a second to  
10 bring it up.

11 **CHAIRMAN ARGENZIANO:** Our motion is to bring  
12 up discussion of the matter, is that what you're saying?

13 **MR. KISER:** Well, yes.

14 **CHAIRMAN ARGENZIANO:** Okay.

15 **MR. KISER:** But, again, it just -- whether you  
16 make it a motion to discuss or whether you make it a  
17 motion to, you know, reconsider or to vacate or any of  
18 those options that are available, it's just better  
19 format to have a motion and a second and have it pass.

20 **CHAIRMAN ARGENZIANO:** Right. Okay.

21 **MR. KISER:** Because you're, you're talking  
22 about changing what was already voted on, and we need to  
23 be as formal as we can about that for purposes of  
24 protecting what we've done.

25 **CHAIRMAN ARGENZIANO:** Okay. Well, then I



1 agree. Then we're going to need a motion. And I would  
2 think the motion --

3 **COMMISSIONER KLEMENT:** Madam Chair.

4 **CHAIRMAN ARGENZIANO:** Commissioner Klement,  
5 did you --

6 **COMMISSIONER KLEMENT:** I'm sorry. I didn't  
7 mean to interrupt you.

8 **CHAIRMAN ARGENZIANO:** No. No. Go right  
9 ahead.

10 **COMMISSIONER KLEMENT:** I would move to take  
11 this up for the purposes of discussion. I believe this  
12 is the point where we left off the last time it came up,  
13 so I'd just like to hear my colleagues' ideas about  
14 whether this should be reconsidered. And this is for  
15 purposes of discussion.

16 **CHAIRMAN ARGENZIANO:** Do we have a second?

17 **COMMISSIONER EDGAR:** Second.

18 **CHAIRMAN ARGENZIANO:** Okay. All those in  
19 favor, say aye. Aye.

20 **COMMISSIONER EDGAR:** Aye.

21 **COMMISSIONER SKOP:** Aye.

22 **COMMISSIONER KLEMENT:** Aye.

23 **CHAIRMAN ARGENZIANO:** Opposed, same sign.

24 **COMMISSIONER STEVENS:** And I abstain.

25 **CHAIRMAN ARGENZIANO:** Yes. Okay. Well --

1                   **COMMISSIONER EDGAR:** Madam Chair.

2                   **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

3                   **COMMISSIONER EDGAR:** Thank you. Just, and  
4 I -- if this is not the appropriate time, please jump in  
5 and correct me, Madam Chair, or our staff. But I would  
6 like to put forth that at some point I would like to  
7 hear from the parties that are directly involved at  
8 whatever point that would be the most appropriate.

9                   **CHAIRMAN ARGENZIANO:** I think that's a good  
10 idea, and of course we will do that. Commissioners,  
11 whenever, whenever you want to hear from the parties,  
12 just jump in. How about -- well, Commissioner Skop and  
13 then we'll --

14                   **COMMISSIONER SKOP:** I have a concern with that  
15 on a substantive and procedural due process issue. This  
16 was noticed for a procedural discussion by the  
17 Commission, not from the parties. So, again, this was a  
18 procedural issue, the parties have no due process right  
19 with respect to the Commission's own motion for  
20 reconsideration or motion to vacate, nor a motion to set  
21 it for evidentiary hearing. So it's inappropriate to  
22 hear from the parties, notwithstanding the fact that  
23 last time I brought up the issue I was told it was a  
24 sunshine violation. But if you consult the Government  
25 in Sunshine book, it clearly wasn't, so.

1                   **CHAIRMAN ARGENZIANO:** Okay. Let's -- that's a  
2 good point.

3                   **MR. KISER:** Madam Chairman, I think whether or  
4 not you're required to hear from the parties or not,  
5 that's a matter of, of, of the Commission's will. I  
6 mean, just because it's a parliamentary move doesn't  
7 mean you still can't hear from the parties. You can use  
8 it as a grounds not to hear from them if you choose to.  
9 But if you think it's important to hear from the  
10 parties, I don't see anything that would preclude you  
11 from having the parties weigh in.

12                   **CHAIRMAN ARGENZIANO:** Well, then it's --  
13 Commissioner Edgar.

14                   **COMMISSIONER EDGAR:** Again, I want to do  
15 whatever I can to further a positive and productive  
16 discussion. I thought I heard Ms. Brubaker -- and if  
17 I'm misstating again -- I thought I heard you say that  
18 to hear from the parties was at our discretion.

19                   **MS. BRUBAKER:** That is how this note was --  
20 this item was noted. And if you look at the agenda for  
21 this, for today's agenda, it is noted that party, sorry,  
22 party participation is at the Commission's discretion.

23                   **COMMISSIONER EDGAR:** All right. That was my  
24 understanding and that was my understanding when I made  
25 my comment. Again, I want to do whatever I can to, to

1 further this in a positive way. My preference is still  
2 to hear from the parties, if indeed that is appropriate.

3 **CHAIRMAN ARGENZIANO:** Commissioner Klement.

4 **COMMISSIONER KLEMENT:** Is it appropriate to  
5 try to get more information from staff now in reference  
6 to Commissioner Skop's points that he has raised --

7 **CHAIRMAN ARGENZIANO:** I think it is.

8 **COMMISSIONER KLEMENT:** -- in his dissent?

9 **COMMISSIONER STEVENS:** That's where I agree  
10 with Commissioner Klement, what are we talking about?  
11 What is this discussion?

12 **CHAIRMAN ARGENZIANO:** Well, unfortunately  
13 you're not.

14 (Laughter.)

15 I meant that with all due respect.

16 I see no problem. I don't think -- I don't  
17 know what procedure we should take. If a Commissioner  
18 wants to ask staff questions now pertaining to  
19 Commissioner Skop's questions, I don't see why there's,  
20 that would be unacceptable. We still have to figure  
21 out -- we have a Commissioner who would like to hear  
22 from the parties. I don't have a problem with that  
23 getting more information, unless there's a procedural  
24 problem with that.

25 **MR. KISER:** Well, Madam Chairman, the, the

1 reason that I couched my comments on, in terms of, you  
2 know, having a majority vote and a motion is because  
3 then the motion, whatever action that you want to take,  
4 the motion clearly states that, everybody knows that's  
5 what's in the motion and that's what they vote for or  
6 against. And it would appear that there's at least two  
7 potential areas that the Commission could decide to go  
8 on. One would be a motion to reconsider and the second  
9 one would be a motion to vacate. And that's, that will  
10 depend on whoever makes the motion and what they choose  
11 to do.

12 **CHAIRMAN ARGENZIANO:** So at this, at this  
13 point if we are at, we have a motion and it passed to  
14 discuss --

15 **MR. KISER:** Right.

16 **CHAIRMAN ARGENZIANO:** Well, then it would be  
17 proper now for Commissioner Klement to ask staff some  
18 questions, would it not?

19 **MR. KISER:** Yes. Again, it's also helpful  
20 though that at some point, for example, on the motion to  
21 just discuss, you know, that I think at that level --

22 **CHAIRMAN ARGENZIANO:** What are we discussing?

23 **MR. KISER:** Yeah. Commissioner Stevens is in  
24 an awkward spot. However, if the motion is made and  
25 passed to either vacate or, and that action is taken or

1 a motion to reconsider and that action is taken, then  
2 Commissioner Stevens can participate as a full  
3 participant.

4 **CHAIRMAN ARGENZIANO:** All right. Okay. Then  
5 let me ask you this, if there's a motion to vacate, then  
6 there really is no -- well, there would be questions.  
7 Same thing, or it would come out to the same result. If  
8 there was, if there was, if there was a motion to  
9 reconsider, then all questions would still be viable  
10 and, and whatever the Commission comes to after the  
11 discussion and, and debate, they would make a  
12 determination on whether to vacate or to reconsider.

13 **MR. KISER:** That's right. Right. In either  
14 case if that, whatever that motion is, if it passes,  
15 then the full Commission, everyone included then has an  
16 opportunity -- it's just like you never passed the --

17 **CHAIRMAN ARGENZIANO:** Okay. Got you. Got  
18 you.

19 **MR. KISER:** -- the thing before.

20 **CHAIRMAN ARGENZIANO:** Okay.

21 **MR. KISER:** It's on level ground and it's  
22 fully open to you in every, every type of maneuver you  
23 want to make.

24 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you.

1           As a point of information to our General  
2 Counsel, we've discussed two alternatives: Entertaining  
3 a motion for reconsideration or a motion to vacate. I  
4 know that on the motion for reconsideration, that  
5 requires somebody on the prevailing side, the majority  
6 to make the motion and second it.

7           With respect to the motion to vacate, it's a  
8 little less certain because, again, I was on that order.  
9 I feel that as a member of the order, notwithstanding  
10 the fact that I wrote a dissent, that it would still be  
11 within my inherent right, unless barred by statute or  
12 controlling case law, to bring a motion to vacate and  
13 set for evidentiary hearing on the Commission's own  
14 motion.

15           **MR. KISER:** Commissioner, the only pause that  
16 I have is that due to the nature of what you're talking  
17 about trying to do, if you make a motion, if you make  
18 it, for example, then an issue in terms of someone  
19 reviewing that or trying to appeal that, I'm less  
20 certain of what that outcome will be than if it's a  
21 regular motion to reconsider and you don't, you don't  
22 make the motion and that sort of thing. Then we're just  
23 not -- so there is no -- it's not real clear-cut on the  
24 motion to vacate whether or not that's something that  
25 you can make that motion on or not. That's what --

1 you're right. I don't know of any rules on that and  
2 that's the only pause I have.

3 **COMMISSIONER SKOP:** So it's not expressly  
4 prohibited and it's not prohibited by controlling case  
5 law or statute.

6 **MR. KISER:** Not, not that I'm aware of at this  
7 time.

8 **CHAIRMAN ARGENZIANO:** Commissioner Klement.

9 **COMMISSIONER KLEMENT:** On the motion to  
10 reconsider if it were made, my understanding is -- I'm  
11 not a lawyer, but, and far from it -- but I understood  
12 that to do that you had to, the statute requires that  
13 you have a fact of law or some significant legal point  
14 that was overlooked to justify that. Is that correct?

15 **MR. KISER:** Well, Commissioner Klement,  
16 here's, here's the situation we're in. Under case law  
17 from this Commission, that's how a motion to reconsider  
18 has been used in the past. It's been a, it's been more  
19 limited than, for example, a motion to reconsider under  
20 normal parliamentary, Robert's Rules or the legislative  
21 rules that they have over there. You're not limited by  
22 that.

23 In those other forums, a motion to reconsider,  
24 you can do it for whatever reason you want. You know,  
25 it's just -- you don't really have to state your reason.



1 You just say I move to reconsider and that's it. You  
2 don't get questioned.

3 However, in the, in the couple of cases that  
4 have, that the Commission has been involved in, when a  
5 motion to reconsider was used, that was the standard  
6 that you, that would be under one of those two criteria,  
7 mistake of law, mistake of fact. Whether or not -- you  
8 know, it could be, in the next case it could be expanded  
9 to just because you might want to consider the policy  
10 implications again. That's where we're on a little thin  
11 ice.

12 **CHAIRMAN ARGENZIANO:** But let me ask a  
13 question to that. Is that statutory or you're just  
14 saying that's precedent for the PSC?

15 **MR. KISER:** That was, that was simply the  
16 precedent from case law in I think two cases, yeah, in  
17 two cases that, where a motion to reconsider was used.  
18 And that was the, kind of the grounds for that were  
19 having one of those two issues, either it's a mistake in  
20 fact or a mistake in -- I've lost my mind now here --  
21 law, mistake in law or mistake in fact.

22 **CHAIRMAN ARGENZIANO:** Law. Okay.

23 **MR. KISER:** And, and so those are the two  
24 criteria. So that, that ruling was a little more  
25 narrow.

1           **CHAIRMAN ARGENZIANO:** Commissioner Skop, then  
2 go back to Commissioner Klement.

3           **COMMISSIONER SKOP:** Thank you, Madam Chair.

4           Just to Senator Kiser's point, if the motion  
5 were styled as a motion to revisit the docketed matter  
6 in conjunction with the motion to vacate and set for  
7 evidentiary hearing, then you wouldn't be bound to that  
8 past Commission objective. So, again, semantics might  
9 be important. That's why I used the word "revisit"  
10 instead of "reconsideration" when I wrote my dissenting  
11 opinion.

12           But, again, any -- there's many ways to get  
13 there. I mean, you know, obviously OPC could just  
14 protest it and it would be a moot point. But I'm just  
15 looking at procedural mechanisms to, to accomplish what  
16 I feel is needed to remedy a situation before us.

17           **COMMISSIONER EDGAR:** Madam Chair.

18           **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

19           **COMMISSIONER EDGAR:** We've gone way beyond my  
20 original request --

21           **CHAIRMAN ARGENZIANO:** I'm sorry.

22           **COMMISSIONER EDGAR:** -- which was will -- as,  
23 as we are having whatever discussion on whatever,  
24 whichever procedural mechanism the majority would like  
25 to utilize, will I have the opportunity to hear from the

1 parties? And that is my, my request, and it, it --  
2 again, trying to be positive, but a number of statements  
3 were made by the parties at the two Agenda Conferences  
4 that we had substantial discussion. My vote at the time  
5 was strongly due to some of those things that I heard  
6 from the parties. And if I am going to reconsider my  
7 vote, which, you know, I am certainly considering, but  
8 if I am going to do that, then I would like to hear from  
9 the parties because that's what I voted -- I mean, that  
10 was partially what I made my initial vote upon.

11 **CHAIRMAN ARGENZIANO:** Right now I'm not sure  
12 what we're discussing because I'm not sure if we're  
13 supposed to have a motion to reconsider, a motion to  
14 vacate or what we have to do to even get to the point to  
15 hear from the parties. So -- and I cut Commissioner  
16 Klement off. Let's let him finish and then we'll  
17 determine, I think, or have a motion or a vote on those  
18 issues specifically. Commissioner Klement.

19 **COMMISSIONER KLEMENT:** Well, the motion that  
20 we had previously considered was to discuss, so let's  
21 discuss. We have to -- as I understand it --

22 **CHAIRMAN ARGENZIANO:** I'm not sure, I'm not  
23 sure according to our counsel that that would be wise.  
24 I think what I'm hearing is we need a motion to be more  
25 specific; is that correct?

1           **MR. KISER:** I think that's the safer course  
2 just so it's in a, it's in a format. And remember, too,  
3 you know, on the, on the motion to vacate or motion to  
4 reconsider, once it's made and, and, and then you  
5 discuss it, at that point you can have all the  
6 discussion you want and you may very well come back and  
7 withdraw the motion to vacate or you may defeat it. I  
8 mean, it's not a foregone conclusion just because  
9 someone makes the motion and seconds it that it's going  
10 to pass.

11           **CHAIRMAN ARGENZIANO:** Right.

12           **MR. KISER:** So all that discussion takes  
13 place. And then you, and then after you have that  
14 discussion, if you're satisfied that the first vote was  
15 where you wanted to be, you just simply either withdraw  
16 the motion or you vote it down and reinstate the  
17 previous order.

18           So sometimes people get too concerned about,  
19 you know, making the motion. And quite typically too  
20 you'll hear people say, well, I'll second it for  
21 discussion purposes.

22           **CHAIRMAN ARGENZIANO:** Right.

23           **MR. KISER:** That doesn't apply. You can't --  
24 you don't limit it that way. When you second it, you  
25 second it, period.

1                   **CHAIRMAN ARGENZIANO:** So --

2                   **COMMISSIONER KLEMENT:** Well --

3                   **CHAIRMAN ARGENZIANO:** Go ahead, Commissioner.

4                   **COMMISSIONER KLEMENT:** -- my, my reading, my  
5 understanding is that there has to be a material fact or  
6 a legal, a law that we overlooked to base a  
7 reconsideration motion on.

8                   **CHAIRMAN ARGENZIANO:** Commissioner Skop, do  
9 you have a material fact or --

10                   **COMMISSIONER SKOP:** Again, I did not style my  
11 comments in the motion to reconsider as -- I styled my  
12 comments in a motion to revisit, vacate, set for  
13 evidentiary hearing. There's, there's, there's a  
14 substantive difference there. Again, the two issues  
15 that Commissioner Klement is, is focusing on, the  
16 mistake of law or mistake of fact, are not relevant to  
17 the manner in which I'm trying to style the motion.

18                   **COMMISSIONER ARGENZIANO:** Okay. Well, say it  
19 to me again because I'm not sure how you're trying to  
20 style the motion.

21                   **COMMISSIONER SKOP:** I'm trying to style the  
22 motion that there would be a motion by a member of the  
23 prevailing majority member to revisit the issue, to  
24 vacate the order, and to set it for evidentiary hearing.  
25 That doesn't require reconsideration, which would get

1 into mistakes of law or mistakes of fact.

2 **COMMISSIONER ARGENZIANO:** Okay. And to that  
3 point, if there were a motion to do just what he said,  
4 to revisit and vacate --

5 **COMMISSIONER SKOP:** Revisit, vacate.

6 **CHAIRMAN ARGENZIANO:** -- that would allow the  
7 discussion and also allow to withdraw.

8 **MR. KISER:** Yes. Yes.

9 **CHAIRMAN ARGENZIANO:** Okay. Well, then,  
10 Commissioner Edgar, does that --

11 **COMMISSIONER EDGAR:** To our General Counsel,  
12 some might say that revisit and reconsideration are  
13 synonymous, some might not. So my question is what is  
14 the legal and what is the practical difference between a  
15 motion for reconsideration and a motion to revisit?

16 **MR. KISER:** I don't know if there is any  
17 myself. It's just that usually they use the term  
18 "reconsider" instead of "reconsider" (sic.) And, and so  
19 I'm not sure that there is a more formal.

20 **CHAIRMAN ARGENZIANO:** Let me ask -- I'm sorry.

21 **MR. KISER:** The Black's -- well, let me give  
22 you the Black's Law Dictionary.

23 **CHAIRMAN ARGENZIANO:** Go ahead, Commissioner  
24 Edgar.

25 **COMMISSIONER EDGAR:** Okay.

1           **MR. KISER:** Which reconsideration in the  
2 context of administrative adjudication is used to imply  
3 reexamination and possibly a different decision by the  
4 entity which initially decided it. That's what,  
5 typically what it stands for.

6           **COMMISSIONER EDGAR:** Reconsideration.

7           **MR. KISER:** Reconsideration. Vacate is  
8 defined as: To annul; to set aside; to cancel or  
9 rescind. To render an act void; as, to vacate an entry  
10 of record, or a judgment.

11           **COMMISSIONER EDGAR:** And what about revisit,  
12 because that was my question?

13           **MR. KISER:** What's that now?

14           **COMMISSIONER EDGAR:** My question is --

15           **MR. KISER:** What's the difference?

16           **COMMISSIONER EDGAR:** -- what is the legal  
17 difference and also if -- what is the practical  
18 difference between a motion to reconsider and a motion  
19 to revisit?

20           **MR. KISER:** Well, I would just, almost in  
21 layman's terms I would, I would suggest to you that a  
22 motion to vacate is basically you're saying we're going  
23 to cancel the decision we made. And, and even though at  
24 the end you can, you know, because it says to annul.  
25 The motion is to do it. Whereas on the reconsideration,

1 it's like, well, we're not sure we want to terminate  
2 that and go a different direction, but we want to have a  
3 chance to look at that.

4 And so when you're done, you can either vote  
5 down the motion to -- well, once you vote to reconsider,  
6 it's back before you. So then if you decide after that  
7 discussion that you don't, don't want to change what you  
8 did, then you just make another motion to approve it  
9 again and you vote it out.

10 A motion to vacate, the problem you have there  
11 is if you vote to vacate, that, that's, and that passes,  
12 then that decision is gone and you then start all over.

13 **COMMISSIONER KLEMENT:** Madam Chair.

14 **CHAIRMAN ARGENZIANO:** Commissioner Klement.

15 **COMMISSIONER KLEMENT:** So if I understand it,  
16 Mr. Kiser, to get into the nuts and bolts of  
17 Commissioner Skop's dissent we need to have a motion and  
18 second for, to reconsider. Is that what I'm hearing?

19 **MR. KISER:** Actually, again, I think both of  
20 them get you back to changing what you did before or at  
21 least, or at least putting it in intermediate status of  
22 nonaction until it's voted on a second time.

23 Commissioner Skop, I think, would prefer that  
24 it be a motion to vacate the judgment or the decision  
25 that was made by this, by the body. That's, that's what



1 he had in his dissent and that's what he's continually  
2 argued for all the time.

3 **CHAIRMAN ARGENZIANO:** But, but if we moved to  
4 reconsider, we could discuss and then either withdraw --  
5 and if we agreed with Commissioner Skop, we could then  
6 move to vacate, if that was the will of the Commission,  
7 or, or just whatever the committee does at that point,  
8 what the Commission does at that point.

9 **MR. KISER:** Well, that's where it gets a  
10 little fuzzy. Because the two cases, they, they have  
11 applied the two criteria, it's a mistake of law or  
12 mistake of fact in order for it to sustain a motion to  
13 reconsider. Then if you do, if you take that route,  
14 there's a chance that the court may say that that  
15 discussion and ultimate decision had to fall in one of  
16 those two categories or both.

17 **CHAIRMAN ARGENZIANO:** Okay. So --

18 **MR. KISER:** It couldn't be just because you  
19 want to change perhaps just the policy.

20 **COMMISSIONER ARGENZIANO:** One minute. So if  
21 Commissioner Skop did not have those two criteria in his  
22 discussion to his colleagues --

23 **MR. KISER:** No, he did not.

24 **CHAIRMAN ARGENZIANO:** I mean, if, if he does  
25 not in the discussion, if he doesn't have those two in

1 there, well, then that's what the vote would be based  
2 on, whether those two criteria are met should be based  
3 on a move to reconsider.

4 **MR. KISER:** I'm, I'm not sure I follow you.

5 **CHAIRMAN ARGENZIANO:** In other words, if we  
6 were to move to reconsider and discuss, you're saying  
7 the criteria to move to re, for the move for  
8 reconsideration has to have one of those two components.

9 **MR. KISER:** What I'm saying is that those two  
10 court decisions have limited the use of the reconsider,  
11 to having one of those two, one of those two issues or  
12 both.

13 **CHAIRMAN ARGENZIANO:** Okay. All right. So  
14 for purposes of Commissioner Skop's concerns, he prefers  
15 the motion to vacate so that those aren't the two  
16 criteria, and he brings out additional information that  
17 I guess he wants to share with the Commission. And that  
18 would be -- well, let me ask him.

19 **MR. KISER:** Yeah. I was going to say I  
20 wouldn't want to put words in his mouth ever.

21 **CHAIRMAN ARGENZIANO:** Okay.

22 **COMMISSIONER SKOP:** Thank you, Madam Chair.

23 And I appreciate the comment from our General  
24 Counsel. If I'm going to be hamstrung on this, I'll  
25 just adopt the argument that there was a mistake of law

1 that's embodied in my dissent. Essentially *Florida*  
2 *Statute* -- let me get to it real quick.

3 There's express legislative mandate found in  
4 Section 366.924, *Florida Statutes*, that provides for  
5 110 megawatts of solar statewide, emphasis added,  
6 statewide. And, again, there's more general statutes  
7 that expressly promote renewables.

8 But one could logically make a colorful  
9 argument that there was a mistake of law to the extent  
10 that the express statute should control over the more  
11 general statute. And I'm looking at the transcript from  
12 the past proceeding in response to a question from  
13 Commissioner Edgar which specifically raised that point,  
14 and the response from Ms. Brubaker was that the more  
15 specific statute would control and -- although the  
16 Commission did not adopt that argument ultimately.

17 So, again, I would make that, that point as  
18 the basis of if we move for reconsideration, it would be  
19 a colorful argument made that there was a mistake of law  
20 in the application of the statute.

21 **COMMISSIONER EDGAR:** Commissioner Skop -- and  
22 I apologize to you and my colleagues -- I could not find  
23 your dissent, and I knew I had it here in front of me,  
24 and I wanted it. Could you just restate that one more  
25 time for me, please?

1                   **COMMISSIONER SKOP:** In my dissent, basically  
2 there's a section entitled abrogating avoided cost  
3 precedent creates a slippery slope. And in that,  
4 basically, the Florida Statutes expressly mandate that  
5 in order to demonstrate the feasibility and viability of  
6 clean energy systems, the Commission shall provide for  
7 full cost-recovery under the environmental cost-recovery  
8 clause of all reasonable and prudent costs incurred by a  
9 provider of renewable energy projects that are zero  
10 greenhouse gas emitting at the point of generation up to  
11 a total of 110 megawatts statewide, and then it goes on  
12 with some additional criteria.

13                   That statewide requirement was fully  
14 subscribed before this docket was filed. And, again,  
15 there are statutory provisions outside of 366.924 that  
16 are more general than the Commission used as its basis  
17 for abrogating the avoided cost standard. But, again, a  
18 mistake of law.

19                   One could make a legal argument that under the  
20 rules of statutory construction, as we discussed  
21 extensively this morning in one of the water cases, that  
22 the specific statute typically trumps the more generic  
23 statute. And I would support that argument by -- there  
24 is a specific question in the transcript, and I'm  
25 looking for my reference, but Commissioner Edgar asked

1 about that specific question to Ms. Brubaker. Ms.  
2 Brubaker responded affirmatively that her interpretation  
3 was that the 110-megawatt statewide mandate by the  
4 legislature should control in this instance, and that it  
5 would not be advisable to approve the petition and  
6 instead adopt the staff recommendation.

7 **COMMISSIONER KLEMENT:** Madam Chair.

8 **CHAIRMAN ARGENZIANO:** Commissioner Klement.

9 **COMMISSIONER KLEMENT:** My recollection of the  
10 discussion, and I think I specifically asked this  
11 question, or the point was made whether the statute  
12 specifically prohibited us from going above avoided cost  
13 or not. And the answer I recall is that it did not, but  
14 that it was a Commission rule, and we had discretion to  
15 ignore that rule if we chose to, and we did. That is my  
16 recollection.

17 **CHAIRMAN ARGENZIANO:** Well, what I'm going to  
18 do is I'm going to give the chair over to Commissioner  
19 Stevens, and I'm going to make a motion to reconsider  
20 for the purpose as stated.

21 **COMMISSIONER STEVENS:** (Inaudible. Microphone  
22 off.)

23 **CHAIRMAN ARGENZIANO:** Well, just in case you  
24 need to gavel me quiet.

25 **MR. KISER:** We're in trouble now.

1                   **COMMISSIONER KLEMENT:** We're in trouble now.

2                   (Laughter.)

3                   **CHAIRMAN ARGENZIANO:** If I'm recognized.

4                   **COMMISSIONER STEVENS:** Yes, ma'am.

5                   **CHAIRMAN ARGENZIANO:** I'd like to make a  
6 motion to reconsider for the purposes that Commissioner  
7 Skop has stated and for discussion so that we can have  
8 open discussion on the issues. If a Commissioner has a  
9 concern and wants to bring something forward, I think  
10 it's incumbent to listen.

11                   **COMMISSIONER STEVENS:** There's a motion. Is  
12 there a second?

13                   **COMMISSIONER KLEMENT:** Second.

14                   **COMMISSIONER STEVENS:** A motion and a second  
15 on the floor. Any discussion on that motion?

16                   Commissioner Edgar.

17                   **COMMISSIONER EDGAR:** Thank you.

18                   The motion, I think it says in light of the  
19 points raised by Commissioner Skop, and I have to admit  
20 I'm still not clear on what those points are. However,  
21 as always, I look forward to more discussion to help  
22 give me that clarity, so I will support the motion.

23                   **COMMISSIONER STEVENS:** Any further discussion?  
24 All in favor? Oh, I'm sorry. Commissioner Klement.

25                   **COMMISSIONER KLEMENT:** I didn't -- can

1 Commissioner Edgar repeat what she said. I was looking  
2 on my notes and wasn't paying attention. I apologize.

3 **COMMISSIONER STEVENS:** Yes, sir.

4 **COMMISSIONER EDGAR:** What I said is that I  
5 don't completely understand the basis, since I think it  
6 was dependent upon the points raised by Commissioner  
7 Skop, which I do not yet understand, but I look forward  
8 to more discussion and am glad to support the motion in  
9 that respect.

10 **COMMISSIONER KLEMENT:** All right.

11 **COMMISSIONER STEVENS:** There's a motion and a  
12 second. Any further discussion?

13 There being none, all in favor?

14 (Vote taken.)

15 **COMMISSIONER STEVENS:** Any opposed? It  
16 passes.

17 I pass the gavel back.

18 **CHAIRMAN ARGENZIANO:** Thank you. Good job.

19 **COMMISSIONER KLEMENT:** Madam Chair.

20 **CHAIRMAN ARGENZIANO:** Yes.

21 **COMMISSIONER KLEMENT:** A lot of Commissioner  
22 Skop's case is built around what he has referred to as  
23 \$44 million in excess profit that is built into the  
24 contract, that he thinks is built into the contract  
25 between TECO and Energy 5.0. I would like to ask him to

1 explain, is that the amount that the staff has said  
2 is -- has referred to, and now I've lost my place there,  
3 but in its -- in its recommendation, or is this above  
4 that \$40 million?

5 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you, Madam Chair.

7 Before I answer that, I would like to get a  
8 point of clarification from our General Counsel in terms  
9 of where we are at with our procedural posture. Are we  
10 free to discuss the substantive merits of the matter,  
11 since it has been discussed for reconsideration?

12 **MR. KISER:** Yes. Everyone who had a problem  
13 with voting on the previous stuff are now newly  
14 enfranchised. For Commissioner Stevens who didn't have  
15 a piece of this action, he's now in the middle of it.

16 **COMMISSIONER SKOP:** Great.

17 **MR. KISER:** And, likewise, Commissioner Skop,  
18 the vulnerability you had of being a dissenting voter,  
19 that is now removed and everybody is fully enfranchised  
20 to talk as long as they want to talk and propose as many  
21 motions as they can pass.

22 **COMMISSIONER SKOP:** All right. I'll take that  
23 under advisement, and thank you for the clarification.

24 Commissioner Stevens, welcome aboard.

25 **CHAIRMAN ARGENZIANO:** Commissioner Skop,



1 you're recognized to answer.

2 **COMMISSIONER SKOP:** Thank you, Madam Chair.

3 To Commissioner Klement's point, there was  
4 staff analysis done. Again, this issue had been  
5 lingering. It had been deferred by the company several  
6 times. It came to agenda; I had problems with it; it  
7 was deferred to get additional information, and that  
8 information wasn't really forthcoming. And I didn't  
9 expect we would get into a real substantive discussion,  
10 but I could get the interrogatories and have a field  
11 day.

12 But to answer your question specifically, the  
13 difference -- the \$44 million of excess profit that  
14 inadvertently results from the Commission's PAA decision  
15 is on top of what staff calculated the cost of the  
16 project should be. And that's the levelized cost of  
17 electricity. And staff, if my memory serves me  
18 correctly, calculated that at 22.4 cents per kilowatt  
19 hour over the life of the project.

20 Tom, am I right on that? I don't have it in  
21 front of me.

22 **MR. BALLINGER:** Yes, sir.

23 **COMMISSIONER SKOP:** Actually, I do have it in  
24 front of me. It's in the order. The contract price,  
25 Commissioner, well exceeds that number. So not only are

1 we paying more than we should for that renewable  
2 resource, by virtue of the order we are also abrogating  
3 the historical Commission precedent of avoided cost  
4 where historically the costs have been limited to the  
5 avoided costs of the utility. Okay. So that's a little  
6 bit of a slippery slope in itself.

7 But my primary concern here, and one of great  
8 importance to the Commission is that the petitioners  
9 stated that, oh, we went through an RFP and we got the  
10 low bid. Well, that RFP was conducted in 2007. That  
11 was a long time ago. If you look today, you might find  
12 that things have changed.

13 But the basis for the argument, and one that  
14 was not rebutted at the agenda conferences was that you  
15 have a PAA -- I mean, a request for proposal in an  
16 imperfect market and it was the low bid. You should  
17 just stop there and accept whatever falls out of the  
18 sky, because it's a low bid. That does not ensure value  
19 for consumers. You need to take the additional step --  
20 and let me explain that. That would be analogous to  
21 opening the newspaper and looking at three different car  
22 dealerships and saying this one has a Toyota 4Runner for  
23 \$22,000, I should go to this dealer.

24 **CHAIRMAN ARGENZIANO:** (Inaudible. Microphone  
25 off.)

1                   **COMMISSIONER SKOP:** Well, I like my 4Runner.  
2 My 4Runner I'll give high marks to. All right.

3                   So what I'm saying is they would just have you  
4 stop there, pick the low price from the newspaper, walk  
5 in the door and pay the dealership whatever he says the  
6 price is.

7                   The more prudent thing to do to ensure that  
8 you were getting value if you were buying a car would be  
9 to take the extra step of calling your credit union and  
10 saying what is the dealer invoice price of this car that  
11 I want to go buy. You have identified the dealer, he  
12 has got what you want at a price, but that is just  
13 merely a starting point. That doesn't ensure you are  
14 getting true value.

15                  And so by calling the credit union and getting  
16 the dealer invoice, you now have a better basis for  
17 negotiation. And so putting that into context, the  
18 dealer invoice is the levelized cost of electricity, and  
19 the contract price is what you see in the newspaper.  
20 And you are paying more, so you are just giving TECO's  
21 ratepayer money away. And TECO should be, frankly, a  
22 little bit more cognizant of that, but they weren't in  
23 this case.

24                  Based on the difference between the  
25 confidential contract price and the staff calculated

1 levelized cost of electricity, recognizing that staff  
2 had to work with some imperfect information because the  
3 company was not forthcoming, the issue with that is  
4 their best guess is it is 22.4 cents a kilowatt hour.  
5 You take the difference between the confidential  
6 contract price and you work through the numbers, and you  
7 get a \$44 million difference, which is a windfall to  
8 Energy 5.0.

9           That fact has remained undisputed throughout  
10 the entire PAA and throughout the agenda conferences.  
11 And in that paper they filed with the Commission  
12 yesterday, it doesn't even address that point. No one  
13 will debate me face-to-face on that issue, okay. It  
14 might be a little bit off, but that's the reality. But  
15 what that means is that staff's recommendation applied  
16 the TECO rate case weighted average cost of capital and  
17 the cost of equity, which was 11.25 percent, and used it  
18 as the basis. So it's not like the company is not  
19 already getting a profit. But by being not sensitive to  
20 the true costs of what we should be paying for the  
21 renewable resource, we are, in fact, overpaying by \$44  
22 million.

23           Basically, it makes TECO ratepayers forced to  
24 pay \$44 million more, and what that does to the  
25 estimated return on equity of this project is over

1 18 percent of a return on equity over the life of the  
2 project. That is -- you know, this Commission struggled  
3 in recent cases with what the appropriate ROE is in this  
4 economic environment.

5 And, again, we should encourage renewables. I  
6 want to encourage renewables. But I was here, I raised  
7 that issue, it was ignored. The Chairman moved it  
8 forward. I respect the majority's decision, but it  
9 doesn't address the -- I'm struggling for words here --  
10 it doesn't address the valid concern as to whether we  
11 are overpaying and TECO ratepayers are overpaying for  
12 this renewable resource.

13 And the other point that I want to make is  
14 that you had had some questions, and picking up on some  
15 of the issues I had raised, you tried to ask those  
16 questions to the parties. The Chairman did not afford  
17 you that opportunity to get answers to the questions.  
18 My questions were not answered. Every time I asked a  
19 question on point it was evaded. There was a complete  
20 lack of transparency regarding the economics of this  
21 underlying project. I can go to the interrogatory  
22 responses and pick that out.

23 And so my concern here is that, you know, it  
24 was relayed to me by one of the company representatives,  
25 I asked specifically how did you arrive at this contract

1 price? And they said, well, we just mutually agreed  
2 upon it. I said, okay. I've got experience as a  
3 renewable developer for one of the largest renewable  
4 providers in the United States. I said, okay, where is  
5 the backup information, where is the pro formas? Staff  
6 requested that based on an interrogatory response.

7 **COMMISSIONER EDGAR:** Commissioner Skop, can  
8 you point me to the transcript that you are paraphrasing  
9 for us?

10 **COMMISSIONER SKOP:** I can -- it's going to  
11 take some time. I can dig it out. I mean, I don't have  
12 that specific reference in front of me. I know it was  
13 said because I asked repeatedly, but I'm happy to take a  
14 break and find it. But --

15 **CHAIRMAN ARGENZIANO:** Maybe your Staff can --

16 **COMMISSIONER SKOP:** But what I would proffer  
17 is that I asked for the pro formas and they said they  
18 didn't exist, yet they are going to go finance this  
19 project with a bank? How are you going to walk into a  
20 bank and get financing for a project? The first thing  
21 the bank is going to ask you for is your pro forma. Oh,  
22 we don't have them. Well, do you think that project is  
23 going to get financed? That basically insults my  
24 intelligence, notwithstanding the fact that we are  
25 overpaying.

1           So merely all I'm asking, Commissioners, is  
2 that there is a lack of transparency regarding the  
3 economics of this project. As Chairman Argenziano  
4 always says, it's good to have additional information.  
5 Having this set for evidentiary hearing will give me the  
6 opportunity to get evidence supporting my questions on  
7 the record and sworn statement, and then it comes back  
8 to us so we can make a decision.

9           But the two concerns, the two valid points  
10 that have not been answered with respect to this project  
11 is the two critical questions as to whether TECO  
12 ratepayers are being forced to overpay for the renewable  
13 resource over the life of the project, and whether the  
14 Energy 5.0 proposal is the most cost-effective  
15 alternative for TECO ratepayers. Those two questions  
16 have not been answered in the affirmative.

17           **COMMISSIONER KLEMENT:** Madam Chair.

18           **CHAIRMAN ARGENZIANO:** Commissioner Klement.

19           **COMMISSIONER KLEMENT:** Regarding transparency  
20 of the bidding process, are we able to learn what other  
21 companies bid or -- you know, bid on this contract?

22           **CHAIRMAN ARGENZIANO:** Staff.

23           **MR. BALLINGER:** Yes, sir. When the petition  
24 came in, staff looked at the bid responses, and there  
25 were several different renewable responses. Energy 5.0

1 was the lowest of the solar responses. There were some  
2 other renewables, some biomass projects that were lower  
3 than that. Those were set aside for additional  
4 negotiations.

5 **COMMISSIONER KLEMENT:** Was the company JUWI a  
6 subsidiary of this German company one of those? They  
7 are the company that bid on -- is doing the JEA contract  
8 that Commissioner Skop has cited as being more in  
9 line in cost, and I was wondering if they were a bidder  
10 on this one?

11 **MR. BALLINGER:** I looked back at my staff, and  
12 I don't believe they were.

13 **COMMISSIONER KLEMENT:** Okay. Another question  
14 of staff.

15 One of the issues that Commissioner Skop has  
16 cited has to do with the time frame. This started in  
17 late '07, I believe, and now we are in 2010. However,  
18 the letter that we received from the president of TECO  
19 yesterday cited all the delays; delay after delay in  
20 getting this case moving forward. What were the reasons  
21 for those delays that caused it to go to the end of  
22 2009?

23 **MR. BALLINGER:** It was a little bit of  
24 difficulty. We had asked for some information and it  
25 would raise a few other questions when we would get the



1 information back. And, if you recall, staff was  
2 struggling because we were still recommending you adhere  
3 to the avoided cost statute, so we were trying to think  
4 of a way to balance promoting renewables but still stay  
5 with the statute. And that's why you had the  
6 recommendation that said allow TECO to recover up to  
7 avoided cost, anything above that TECO shareholders  
8 would bear the risk, pending if there was a REC market  
9 that would materialize, or some other RPS, or something  
10 like that that would come along.

11 So it was more trying to gather as much  
12 information as we could. We were pretty confident on  
13 the cost of what was going forward and how to evaluate  
14 it. We were more struggling with do we capture all the  
15 costs, do we capture all the risks, and how do we  
16 balance those risks.

17 **COMMISSIONER KLEMENT:** Was TECO less than  
18 forthcoming in providing the information so that you had  
19 to keep going back to them?

20 **MR. BALLINGER:** I wouldn't say that on the  
21 company. No. The last round on asking specifically for  
22 the levelized costs, neither company gave us a specific  
23 one, and staff had to calculate it. But the other  
24 requests, I think both companies were fairly  
25 forthcoming.

1                   **COMMISSIONER KLEMENT:** Do we typically get the  
2 details of vendor contracts for power generation such as  
3 this in the detail that Commissioner Skop says that we  
4 should here?

5                   **MR. BALLINGER:** No. And the reason is is from  
6 my perspective, I kind of stop the analysis at the  
7 contract, because that is what the ratepayer will see.  
8 To put it simplistic, if a generator is out there and he  
9 is willing to sell power for ten cents a kilowatt hour,  
10 let's say, and that's what the utility and the generator  
11 have negotiated, quite frankly, I don't care if the  
12 generator does that from grass, if they do it from gas,  
13 or whatever. Ten cents a kilowatt hour is what is going  
14 to be passed on to the consumer, because I'm gauging it  
15 to the utility's costs when I'm doing my evaluation. We  
16 have not typically gone behind further to the actual  
17 cost of construction of that generator.

18                   **COMMISSIONER KLEMENT:** Okay. I'll yield for  
19 now. Thank you.

20                   **CHAIRMAN ARGENZIANO:** Commissioner Skop, and  
21 then Commissioner Edgar.

22                   **COMMISSIONER SKOP:** Thank you, Madam Chair.

23                   And I just want to go to a couple of astute  
24 points that Commissioner Klement made with respect to  
25 the RFP process. The RFP process was conducted in 2007.

1 There were significant delays, whether it be from the  
2 company or staff getting comfortable with the idea of  
3 abrogating the avoided cost principle in relation to the  
4 company's request. There were more delays subsequent to  
5 that when the data started coming in. But, again, the  
6 RFP process was in 2007. It was a low bid to an RFP, a  
7 request for proposal.

8 That in itself is insufficient to ensure value  
9 for consumers. You have to rationalize that to an  
10 objective benchmark to gain an appreciation as to what  
11 you are being asked to pay versus what the true cost is.  
12 And so when Mr. Ballinger says we're not privy to any of  
13 the contracts, I take great exception to that. Every  
14 renewable contract or renewable issue that has come  
15 before this Commission, I have seen the contract. It  
16 may be confidential, but I read the terms and  
17 conditions.

18 You know, we look at avoided cost as a  
19 historical precedent, and that's fine. But now, under  
20 this, under the Commission's decision we have abrogated,  
21 which that means toss aside all that Commission  
22 precedent and moved well beyond avoided cost. And the  
23 problem for that is then you need to have even more  
24 appreciation and understanding of what you should be  
25 paying so TECO ratepayers are not being forced to

1 overpay for a renewable resource.

2 Now, Commissioner Klement also mentioned, and  
3 I'm almost done, whether a bidder that had done a JEA  
4 project had actually moved to the -- had participated in  
5 the RFP. And I think staff did not think so and was  
6 subject to check. Again, if we had an evidentiary  
7 hearing some of that would come into play. Again, it  
8 would be premature to discuss it now, but certainly  
9 those facts would be relevant to assessing as to the  
10 critical questions of whether TECO ratepayers are  
11 overpaying for this renewable resource over the life of  
12 the project and whether the Energy 5.0 proposal is the  
13 most cost-effective alternative for TECO ratepayers.

14 You know, I'm talking about \$44 million here,  
15 but if it were to go to evidentiary hearing, I think the  
16 record would gain a little bit more clarity on what the  
17 true costs are and what the alternatives are. And,  
18 again, as Chairman Argenziano says, more information is  
19 always preferable. So I see no harm in moving to an  
20 evidentiary hearing to help the Commission make the best  
21 decision based on some of the lack of transparency here  
22 and the unanswered questions. The harm of not doing  
23 that is TECO ratepayers are being forced to overpay more  
24 than they should for this renewable resource.

25 **CHAIRMAN ARGENZIANO:** Commissioner Klement,

1 and then Commissioner Edgar.

2 **COMMISSIONER KLEMENT:** Continuing to explore  
3 reasons and consequences for vacating. The letter from  
4 the President, Chairman, and CEO of TECO alluded to  
5 consequences of a delay jeopardizing the contract  
6 itself.

7 **CHAIRMAN ARGENZIANO:** Commissioner Klement, I  
8 don't think that's of TECO, that's of Energy 5.0.

9 **COMMISSIONER KLEMENT:** It's not?

10 **COMMISSIONER SKOP:** (Inaudible. Microphone  
11 off.)

12 **COMMISSIONER KLEMENT:** I'm sorry, you're  
13 right. All right, I misstated. This letter, though,  
14 talks about the amount of money spent already, more than  
15 \$2 million to get it to this point, and says that it  
16 could be jeopardized if it's delayed much more. We  
17 should consider the effect of losing this opportunity to  
18 have a renewable asset in Florida as part of this  
19 consideration.

20 **CHAIRMAN ARGENZIANO:** Let me just -- there has  
21 been a lot said. And my concern is it comes down to, of  
22 course, you want to find out what is the most  
23 cost-efficient project that could be out there. But  
24 when it comes down to did the company do everything the  
25 Commission asked for. What I'm afraid of is -- and

1 maybe, Commissioner Skop, you can reply to that in a  
2 minute. I'm asking staff if you asked the company this  
3 is the way the process is and this is what we expect of  
4 you. I want to know if -- maybe we didn't ask the right  
5 questions, but if the company complied with what the PSC  
6 had asked them to comply with, then I have concerns of  
7 asking them after the fact to comply with more.

8 Not that I want to ignore what Commissioner  
9 Skop is saying, and I need to have an understanding as  
10 to whether we as the PSC didn't ask the questions or  
11 asked more of the company than should have been, but I  
12 don't want to fault the company for following the rules  
13 and then later saying, hey -- so I need to know where we  
14 are at.

15 **MR. BALLINGER:** As discussed in the  
16 recommendation that you voted on back at the start of  
17 all of this, the additional information that staff  
18 requested was levelized costs from both Energy 5.0 and  
19 from TECO if they assumed building a similar facility at  
20 their Polk site.

21 What we got back was a response from Energy  
22 5.0 that it is not meaningful to discuss a levelized  
23 cost, because Energy 5.0 will incur whatever costs are  
24 required for the project's capital investment, financing  
25 costs, et cetera. They did provide staff with a capital

1 cost estimate, so did TECO, because they haven't looked  
2 at a project. This was a hypothetical for them. Staff  
3 took those numbers and generated levelized costs and  
4 presented it to the Commission at that last agenda.

5 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

6 Commissioner Skop, can you hang on a second,  
7 because I was supposed to go to Commissioner Edgar, and  
8 I did not.

9 **COMMISSIONER EDGAR:** Madam Chair, thank you  
10 very much, but my questions go back a little ways, so if  
11 this is helpful, but I would like to after.

12 **CHAIRMAN ARGENZIANO:** Okay. As soon as he is  
13 done. Thank you.

14 Commissioner Skop.

15 **COMMISSIONER SKOP:** Thank you.

16 Does staff have a copy of all the  
17 interrogatories and discovery that I could take a look  
18 at briefly? Again, when we request something, whether  
19 it be pro formas supporting the project economics or  
20 other information, and we get told it's not relevant to  
21 discuss what we are asking about, I consider that to be  
22 evasive. I asked for something basic that any reputable  
23 developer would have been able to provide under cloak of  
24 confidentiality. It was never provided to this  
25 Commission. That's why staff had to struggle to do it's

1 own levelized cost of analysis. Tell me that's not  
2 true.

3 **MR. BALLINGER:** I'm not sure of the question.  
4 I read you the response that we got from Energy 5.0. So  
5 we asked for it --

6 **COMMISSIONER SKOP:** Did they give you the  
7 levelized costs pursuant to a properly propounded staff  
8 interrogatory request?

9 **MR. BALLINGER:** Not directly, no.

10 **COMMISSIONER SKOP:** Okay. Were they evasive  
11 to the issue as to why levelized cost is important, even  
12 though it was discussed extensively at agenda?

13 **MR. BALLINGER:** And it was, and it was  
14 discussed with the company representative. I hate to  
15 use the term evasive.

16 **COMMISSIONER SKOP:** Well, because -- I'm not  
17 going to get started. I'm going to maintain my  
18 composure on that, but I just --

19 **MR. BALLINGER:** I think it's their position as  
20 a company to state that.

21 **COMMISSIONER SKOP:** Okay. Well, isn't it  
22 incumbent upon our position as technical staff and our  
23 position as Commissioners to ensure that TECO ratepayers  
24 are not overpaying \$44 million? I hope the answer would  
25 be yes.



1                   **MR. BALLINGER:** The answer is yes. And I  
2 would say, also, that is above and beyond avoided cost  
3 already. So even at a lower -- at the cost at the  
4 levelized cost of this contract that we calculated at  
5 22.4 cents, that would still be, in my mind, TECO's  
6 ratepayers paying more for this energy than --

7                   **COMMISSIONER SKOP:** I understand that, and I  
8 supported the staff recommendation that was not to limit  
9 it to avoided cost. I was comfortable with that. The  
10 Commission chose to go beyond that, and I was  
11 comfortable with that, too. What I'm not comfortable  
12 with, if I'm getting out there on a limb, in light of  
13 going beyond the expressed mandate of the Florida  
14 Legislature for 110-megawatts statewide, because that  
15 was supposed to be used to evaluate whether this was  
16 feasible, it was a feasibility analysis, it wasn't a  
17 broad open the floodgate, do whatever you want, Florida  
18 Public Service Commission.

19                   You know, 110 megawatts, rightfully or  
20 wrongfully was fully subscribed by FPL. They gobbled it  
21 all up, okay. So it didn't leave anything for TECO and  
22 Progress, and I'm sympathetic to that. But what I'm  
23 saying is there is a difference between a purchased  
24 power agreement or a power purchase agreement that this  
25 contract is and building it yourself, and that is what

1 the legislative mandate said you get full cost-recovery,  
2 basically, build it yourself, this is the power purchase  
3 agreement.

4           Nevertheless, my concern here, Commissioners,  
5 I asked for pro formas so I could look at  
6 confidentiality -- under confidentiality, to say what is  
7 really going on here, what are the numbers. FPL has no  
8 problem providing that to me, Progress has no problem  
9 providing that to me, any other company has no company  
10 providing that to me. TECO did not provide that.  
11 Energy 5.0 did not provide. TECO gives us some  
12 analysis, and their number is so off the dartboard it  
13 gives me great concern that they even comprehend the  
14 underlying economics of a solar project. Because you  
15 look at their number in relation to a JEA contract and  
16 you would laugh. It's that simple.

17           **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

18           **COMMISSIONER EDGAR:** Thank you.

19           Commissioner Skop, you said a few moments ago  
20 that you asked a question and you were told your  
21 question was irrelevant. I've read, and tabbed, and  
22 reread the transcripts from the last three times that  
23 this issue came before the Commission, and I don't  
24 remember you being told that a question was irrelevant.  
25 So did that occur during our Commission discussion?

1                   **CHAIRMAN ARGENZIANO:** Commissioner Skop.

2                   **COMMISSIONER SKOP:** What was told that was  
3 irrelevant was that Energy 5.0 in response to a properly  
4 propounded staff interrogatory or data request said that  
5 they felt from the company's position it was not  
6 relevant to discuss a specific concern to a specific  
7 question that I asked them at agenda conference. That  
8 was why staff issued the interrogatory to them and they  
9 were evasive in their response.

10                   I don't have a pro forma analysis, yet Mr.  
11 Cherry can sit before this Commission and tell me that  
12 he and TECO just reached into the space here and just  
13 agreed upon a number that they would form their contract  
14 around. And I asked, okay, well, what supports that  
15 number? Where is the pro forma analysis that any  
16 developer would do? I have done them myself. Oh, well,  
17 we don't have one.

18                   What I should have done is asked him, well,  
19 are you going to finance this project? Yes. Well, how  
20 are you going to do that without a pro forma that you're  
21 telling me you don't have.

22                   So, again, none of this makes sense. There is  
23 no transparency when it comes down to the economics  
24 because they don't want there to be transparency. They  
25 don't want to debate me on this issue. They want to be

1 evasive.

2 It happened at agenda. You take this to  
3 evidentiary hearing and the case will make itself why  
4 this is not a good deal for TECO ratepayers and that  
5 TECO should not be doing this, this project.

6 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

7 **COMMISSIONER EDGAR:** A couple of things, if I  
8 could have just a few minutes.

9 I reiterate my request, Madam Chair and  
10 Commissioners, to have the opportunity to hear from the  
11 representatives of TECO and Energy 5.0 today because, as  
12 I said earlier, my vote was partially based upon  
13 representations and responses that were made at those  
14 two agendas that we discussed this item previously.

15 Now I'm hearing representations, and I say  
16 that with all respect and deference, but that were not  
17 my understanding and my reading of the transcripts. And  
18 so I, again, reiterate my request to hear from TECO and  
19 from Energy 5.0 today before I'm asked to vote again.

20 Now, with that, next, Commissioner Skop, you  
21 said a little bit ago that there were two points that  
22 you thought an evidentiary hearing would help us to, I  
23 think, accomplish. One was are TECO ratepayers being  
24 forced to overpay. And sometimes you speak faster than  
25 I listen, and I did not get the second one. Could you

1 retell me what the second point is that you said an  
2 evidentiary hearing would be helpful?

3 **COMMISSIONER SKOP:** Thank you, Madam Chair.

4 Yes, Commissioner. The two critical questions  
5 that are left unanswered that I feel that an evidentiary  
6 hearing would go great lengths in resolving is whether  
7 TECO ratepayers are overpaying for the renewable  
8 resource over the life of the project, and whether the  
9 Energy 5.0 proposal is the most cost-effective  
10 alternative for TECO ratepayers.

11 And I think that the Commission certainly is  
12 within its right to approve a project of this nature.  
13 We can go beyond the statute if the Commission chooses  
14 to do so. But what is important to me is that we make  
15 sure that there is good value for TECO ratepayers, and I  
16 think that's where my problem is. It's not with the  
17 majority's decision to approve a project. It's just  
18 that the price approved is -- I feel that there is a lot  
19 to be considered with respect to are we doing the right  
20 thing. Because I have no doubt, and I would stand by  
21 this, that TECO ratepayers as an inadvertent result of  
22 our decision are being asked to overpay more than they  
23 should for this renewable resource.

24 **COMMISSIONER KLEMENT:** Madam Chair -- sorry.

25 **COMMISSIONER EDGAR:** So with that in mind,

1 then, and, again, just as our General Counsel, I don't  
2 want to put words in your mouth, I'm trying to make sure  
3 I understand. So is, from your perspective, one of the  
4 goals, potentially, of an evidentiary hearing on this to  
5 renegotiate the contract between TECO and Energy 5.0?

6 **COMMISSIONER SKOP:** I think that there would  
7 be evidence -- I would proffer there would be probably  
8 evidence introduced at an evidentiary hearing that would  
9 make it clear to the decision-makers to form their own  
10 opinion whether we should stick with the existing  
11 decision or whether the decision for this project should  
12 be properly denied and TECO should pursue other  
13 alternatives for other solar projects on behalf of its  
14 ratepayers that would be at a more attractive price  
15 point. Some of which may even be \$100 million cheaper  
16 over the life of the project than this project before us  
17 today.

18 **COMMISSIONER EDGAR:** Is that a yes?

19 **COMMISSIONER SKOP:** Yes, ma'am.

20 **COMMISSIONER EDGAR:** Okay. You have given me,  
21 and I thank you for that, the two questions, again, are  
22 TECO ratepayers -- your two questions to us, are TECO  
23 ratepayers being forced to overpay and is the Energy 5.0  
24 proposal the most cost-effective. Then I also think  
25 when we were discussing the standard for reconsideration

1 a few moments ago that you -- I think you said that you  
2 had a concern that we had gone beyond our statutory  
3 authority by approving a project above avoided cost  
4 beyond the 110 megawatts referenced in Statute 366.92,  
5 and that that was one of the grounds for your request  
6 for reconsideration, or vacating, or revisiting because  
7 we had possibly misinterpreted the law or missed a point  
8 of law.

9 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

10 **COMMISSIONER SKOP:** Thank you, Madam Chair.

11 Yes, Commissioner Edgar, that would be my  
12 legal foothold for making that argument, you know, a  
13 good faith argument as a basis for getting a motion  
14 reconsidered. One could make the argument that the  
15 legislative mandate was express and, you know, the  
16 legislative intent was in order to demonstrate the  
17 feasibility and viability of clean energy systems. So  
18 it was a limited thing for a limited purpose for  
19 110 megawatts to say, hey, we are going to allow full  
20 cost-recovery to see if this works, but certainly there  
21 are other more general provisions in the statute that  
22 would give the majority latitude to do what they did,  
23 and I respect that.

24 But, again, in terms of making my argument for  
25 the necessary showing for reconsideration, I would use

1 that. That there was potentially a mistake of law, and  
2 we should look a little bit closer at that ultimately  
3 irrespective of what the decision may be, because the  
4 Commission does have discretion to interpret statutes.

5 **COMMISSIONER EDGAR:** So is it your  
6 interpretation that this Commission does not have the  
7 statutory authority to approve a project that goes above  
8 avoided cost separate from the projects that we approved  
9 under that 110-megawatt statute?

10 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

11 **COMMISSIONER SKOP:** Thank you, Madam Chair.

12 I think that it's how the Commission and each  
13 of the respective Commissioners choose to interpret the  
14 statute. Certainly the principles of statutory  
15 construction typically provide that the more specific  
16 statute controls over a less specific statute. In this  
17 case --

18 **COMMISSIONER EDGAR:** Are you telling me that  
19 that is your interpretation or --

20 **COMMISSIONER SKOP:** I'm saying that the  
21 Commission has the discretion. The 110-megawatt mandate  
22 seems to be pretty clear to me that the legislature said  
23 you can do this and that beyond that the Commission is  
24 using its discretion, but may be running afoul of the  
25 legislative intent to some part, although there is



1 general broad base intent. So I think there is a  
2 foothold to do either thing.

3 So, again, that why I'm not critical of the  
4 majority in supporting approval of a solar project that  
5 goes beyond the avoided cost standard, because certainly  
6 you can find, if you look deep enough, some legislative  
7 intent to kind of support that. But I can't ignore the  
8 mandate, the express mandate of 110 megawatts with the  
9 express statutory language that says statewide.

10 So you can look at it either way. What I am  
11 concerned is that if we depart from that and the  
12 majority adopts a broader interpretation of the  
13 legislative intent that we do so in a manner that  
14 provides value for consumers. And here I'm concerned  
15 that we are overpaying.

16 **COMMISSIONER EDGAR:** At the first agenda -- I  
17 forgot the date -- October 27th, I made the statement  
18 very clearly that I felt it was important for this  
19 Commission to recognize that if we approved this project  
20 without separate -- or differently from the way the  
21 staff recommendation was constructed, that it was a  
22 change in policy. And, quite frankly, that got me  
23 nothing. But I did say very clearly if we approve this,  
24 this is a change in policy. And I still believe that by  
25 approving it, it was a change in our policy and

1 practice.

2 I also believed at the time -- well, quite  
3 frankly, it was my fallback position, and I think that  
4 that was evident going back through the transcripts,  
5 which was I was in favor of the staff recommendation,  
6 but I can count, and there were not three votes, and  
7 sometimes I've learned that you have to compromise,  
8 candidly. And that there was some discussion, since it  
9 is not in my mind 100 percent crystal clear in the  
10 statute, not an unusual situation for statutes, by the  
11 way, but what our direction from the Legislature is in  
12 balancing the direction to promote renewables with the  
13 avoided cost language in the statutes, and, of course,  
14 the direction and desire for ratepayers to not pay any  
15 more than is ultimately necessary.

16 So with that in mind, I'm still coming back to  
17 what is the best way to proceed at this point in time.  
18 And I almost feel like I'm hearing two separate things,  
19 and I would ask -- and then we can move on, Madam  
20 Chair -- I would ask if you can help clarify for my  
21 benefit in your request to go to evidentiary hearing, is  
22 it to have discussion about what our statutory authority  
23 is on avoided cost and renewable projects beyond the  
24 110 megawatts; is it to renegotiate, or however is a  
25 better way to phrase that, this specific contract; or

1 some third possibility that I have not articulated?

2 Because if, indeed, I am going to be asked to  
3 consider going to hearing on this that I weighed very  
4 carefully at the time, I want to be clear as to what it  
5 is we are trying to accomplish. And if, indeed, that is  
6 the best mechanism to accomplish it.

7 **COMMISSIONER SKOP:** Thank you, Madam Chair.

8 Commissioner Edgar, I think the answer to your  
9 questions, which were very thoughtful, is all of the  
10 above. I think that the evidentiary hearing would  
11 address the Commission's statutory authority as argued  
12 by the developer, Energy 5.0, and TECO to depart, and  
13 why the Commission should do that. It has been argued  
14 previously, but, again, that would come back up in an  
15 evidentiary posture in creating the evidentiary record.

16 The second part would be whether this contract  
17 is favorable for TECO ratepayers. That certainly would  
18 be open for discussion, as well as are there more  
19 cost-effective alternatives that TECO should or may wish  
20 to consider pursuing in lieu of being entered into this  
21 agreement.

22 So, again, I think it's wide open. And,  
23 again, I think that you brought up, you know, in the  
24 previous transcript on Page 45, Lines 10 through 25,  
25 there was that discussion. And I appreciate it because

1 I respected it, but ultimately I equally respect that  
2 the majority view is entitled and can use its discretion  
3 to discern a broad legislative intent, which it did. So  
4 I have no problem with that, but my problem here is  
5 limited to what is the best value, and we shouldn't  
6 overpay, particularly if we are going to get out on a  
7 limb over and beyond that statutory provision.

8 So you mentioned compromise in what was trying  
9 to be accomplished at that agenda, and that's the same  
10 thing I'm trying to accomplish here is to just get in a  
11 procedural posture where we can get evidence, create an  
12 evidentiary record and make the best decision. And each  
13 of us in our own regards can decide on the record  
14 evidence, but we are lacking evidence right now. I  
15 don't have answers to my questions.

16 **COMMISSIONER EDGAR:** Commissioner Skop, as we  
17 discussed in a former lifetime, I think you are more of  
18 a fan of evidentiary proceedings than I am. So, again,  
19 if indeed the majority decides to go down that route on  
20 this project, what I am trying to ascertain is, in my  
21 mind, if that is the best way to accomplish that.

22 At the previous two agendas, or the first two  
23 agendas where we discussed this, I asked some very  
24 specific questions, and I think others did as -- I don't  
25 think you did (Laughter.) -- I think others did as well

1 as to if the staff recommendation were to be approved,  
2 would that kill the project? And I was told by  
3 representatives of both TECO and -- we were all told  
4 that it would.

5 So I guess I'm wondering if, indeed, part of  
6 what we want to accomplish is to flesh out the issues  
7 surrounding avoided cost and above avoided cost and how  
8 the statutes and our previous decisions interrelate with  
9 changed circumstances and changed, perhaps, priorities,  
10 is an evidentiary hearing on this specific project the  
11 best way to accomplish that. That's just one thought.

12 The other is since we were told that to  
13 approve my initial -- well, not just initial, what I  
14 thought was the better approach, which was the staff  
15 recommendation, and that that gave additional  
16 protections to the consumers because it would be the  
17 shareholders that would take on that delta between  
18 avoided cost and above avoided cost, two points on that,  
19 again, if that is what we are trying to do, does it make  
20 more sense -- and this is just for discussion -- does it  
21 make more sense to go back to the staff recommendation,  
22 which is something that should we want to I think we  
23 could today, and that would be faster than going to an  
24 evidentiary hearing, and maybe give the same protection  
25 to ratepayers, that I think is what you are telling me

1 you want to make sure we provide, is one.

2 And then my final is since we were told that  
3 if we adopt something other than what was before us, the  
4 request before us, that it would kill the project, if we  
5 don't want the project to proceed, then why go to  
6 evidentiary hearing? Or, if, indeed, that's going to be  
7 the ultimate result, maybe we got through the hearing  
8 and we get additional information, but if the project is  
9 therefore done, what is the value of that? And I mean  
10 all of those questions in a friendly just trying to  
11 think it through.

12 **CHAIRMAN ARGENZIANO:** Okay. Commissioner  
13 Skop, and then if Commissioner Klement hasn't forgotten  
14 his question, we will go to Commissioner Klement.

15 **COMMISSIONER SKOP:** Thank you, Madam Chair.

16 And, Commissioner Edgar, I think you raised  
17 three good points, and I'll address them in the order in  
18 which you made them. First, with respect to is it  
19 worthwhile to go to evidentiary hearing and is this the  
20 best use of the Commission time. And I would answer  
21 that question, yes.

22 As I also indicated in my dissent, is that in  
23 deciding this case, we didn't really provide an  
24 objective basis for our decision in terms of how we  
25 would address future projects. So, again, that

1 addresses some of the concerns you raised in prior  
2 agenda conferences, you know, but certainly the majority  
3 is entitled to go in the direction. It creates a  
4 slippery slope problem on a forward-going basis, so I  
5 think the value of proceeding to evidentiary hearing  
6 here is that through the record evidence you will be  
7 able to establish an objective benchmark and a basis for  
8 the Commission's decisions such that future projects  
9 know the threshold that they will be required to achieve  
10 to stand a chance of getting approved.

11 And if the goal of promoting solar is to  
12 constantly push the prices down, then if you set a  
13 levelized cost price which I think the record evidence  
14 will show is substantially lower when we go to  
15 evidentiary hearing than what has been agreed to  
16 regarding this project, then if you decide something in  
17 that regard, you have set a benchmark -- an objective  
18 benchmark that others can follow.

19 And if we are out there with a policy choice  
20 decision, as you have referenced, and we are getting  
21 beyond the express mandate, then at least we have the  
22 basis for telling the world here is what we are doing,  
23 here is why we are doing it, and we are getting good  
24 value for the consumer.

25 So I think there is a lot of value to going to

1 an evidentiary hearing as opposed to falling back to the  
2 staff recommendation to constrain the cost-recovery to  
3 that of avoided cost. That is certainly what staff  
4 advocated for and certainly something that could happen.  
5 It would, I guess, go backwards from the majority's view  
6 of moving forward and advancing renewables, but anything  
7 is open for discussion in an evidentiary hearing.

8 The third point goes back to the first point  
9 as to Energy 5.0 and TECO have adamantly stated that if  
10 they have to put any of their shareholder money into  
11 this the project is dead and they want the ratepayers to  
12 pay whatever they have agreed to. If the project goes  
13 by the wayside, so be it. There is other vendors out  
14 there that maybe can do it better, faster, cheaper and  
15 TECO could go work with them.

16 But certainly, you know, establishing an  
17 evidentiary basis for looking at here is the facts  
18 before us, here's the evidence to support their case,  
19 let them make the case on the merits. If the case  
20 doesn't prevail, we should properly deny it. If they  
21 make their case and it is the most cost-effective  
22 alternative, we should approve it. It's as simple as  
23 that. So, hopefully, that answered your questions.

24 **CHAIRMAN ARGENZIANO:** Commissioner Klement.

25 **COMMISSIONER KLEMENT:** Thank you, Madam Chair.



1           This is a question I meant to ask before when  
2 I was talking about the potential impact on the  
3 contract. Legal staff, what is the likelihood or even  
4 the prospect of this going to litigation if we vacate?  
5 Does the company have any grounds to take this to court  
6 and say you have cost us whatever damages for what we  
7 have already spent versus what we would be making  
8 because you have changed your mind? You led us astray.

9           **MS. BRUBAKER:** I'll take a stab at it. Just  
10 to remind everyone where we are, this is still a  
11 proposed agency action, and the ability of a party to  
12 argue that they have somehow been prejudiced by this  
13 being set for hearing I think is very limited.

14           The important thing in a PAA is access to an  
15 administrative hearing, and whether that's through the  
16 normal PAA order is issued and there is a protest and  
17 you go to hearing, or whether the Commission decides to  
18 set a matter directly for hearing, that same process is  
19 afforded. So even if the PAA were issued and the  
20 Commission decided not to set it aside or do something  
21 different with it, if the company wanted to go forward  
22 with the project at this time, it does so at its risk in  
23 case there is a protest of the order.

24           **COMMISSIONER KLEMENT:** That's all I have.  
25 Thank you.

1                   **CHAIRMAN ARGENZIANO:** Okay. Commissioners,  
2 any other discussion?

3                   **COMMISSIONER EDGAR:** I have asked a couple of  
4 times if I could hear from the parties.

5                   **CHAIRMAN ARGENZIANO:** Okay. Well, now what we  
6 need to do is -- I'm going to leave it to the  
7 Commissioners.

8                   **COMMISSIONER STEVENS:** No questions.

9                   **CHAIRMAN ARGENZIANO:** You can wave me down.  
10 We need to decide -- I think I'm going to leave it up to  
11 the Commissioners if you want to hear the parties or  
12 not; and as we have said, it is never a bad thing to  
13 hear more information.

14                   **COMMISSIONER STEVENS:** I agree with that.  
15 But, procedurally, do we have to wait until we vote to  
16 go to an evidentiary proceeding before we hear from  
17 them?

18                   **CHAIRMAN ARGENZIANO:** I don't think so, but  
19 we'll ask our counsel.

20                   **MR. KISER:** I don't think so, but you could --  
21 in terms of which way the Commission wants to go, which  
22 form of the next action, that might help the company  
23 form its specific response to what direction you appear  
24 to be taking.

25                   If you are going to defer, if you are going to

1 move to an evidentiary hearing, or you're going to take  
2 some other process, it might be more helpful for them to  
3 -- then, again, it may not, but it might be helpful to  
4 them to know what direction you appear to be leaning so  
5 they can address those specifically, or they can just  
6 address all of them.

7 **COMMISSIONER EDGAR:** I can take a stab at that  
8 since it is my request.

9 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

10 **COMMISSIONER EDGAR:** My understanding is that  
11 Commissioner Skop has asked us to consider ultimately  
12 sending this requested or this proposed project to  
13 evidentiary hearing for additional information and  
14 record, and I would like the companies to speak to that  
15 potentiality of us going to an evidentiary hearing, and  
16 what, if any, impact in their expert opinion that may  
17 have on this proposed project, and -- well, I'll leave  
18 it at that for now.

19 **MR. KISER:** Madam Chairman.

20 **CHAIRMAN ARGENZIANO:** Yes.

21 **MR. KISER:** We have done some preliminary  
22 inquiry, and it looks like the earliest time that we  
23 could get time for would probably be the end of June,  
24 early July. And then again probably around some part of  
25 August for the next round. But that's -- so you will

1 have a timeframe of what you would be looking at if you  
2 decided to go back and go to an evidentiary hearing.  
3 That is the timeframe that times are available.

4 **CHAIRMAN ARGENZIANO:** Is that because there is  
5 no room on the calendar? Because I see an awful lot of  
6 spaces. Maybe I just don't have the calendar in front  
7 of me, but I would like to make sure of that.

8 **MR. KISER:** Jennifer is the one that inquired,  
9 so why don't you respond, Jennifer.

10 **MS. BRUBAKER:** That's right. I was  
11 coordinating with our calendar coordinator, and the  
12 initial dates that they are currently scheduled hearings  
13 actually are in September/October. I asked is there any  
14 way to get it sooner, and the earliest dates that she  
15 was able to locate for the full Commission was at the  
16 very end of June, possibly the last week of July,  
17 although I understand there are some Commissioner holds  
18 on those dates, and I certainly would not want to speak  
19 for the availability of a Commissioner.

20 **CHAIRMAN ARGENZIANO:** Okay. Commissioner  
21 Skop.

22 **COMMISSIONER SKOP:** I had the same concern  
23 when I heard that. It seemed to me that the last time I  
24 checked on our calendar, I'm kind of wondering what we  
25 are going to be doing here in March and April. But

1 maybe I haven't seen the most current version, but I saw  
2 a lot of blanks there.

3 **MS. BRUBAKER:** If I may, one of the concerns,  
4 of course, is that if you do go to a hearing, you would  
5 need time on the front end to permit filing of testimony  
6 and discovery. And, of course, that would be an usually  
7 accelerated hearing if we were to try to go to hearing  
8 in March.

9 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

10 **COMMISSIONER SKOP:** As a follow-up to that,  
11 though, a lot of the previous interrogatory discoveries,  
12 it seems to me that a lot of that could be incorporated  
13 by reference, and we could just get the additional  
14 lacking information that we need. So to me the  
15 discovery would be probably limited in scope to support  
16 the evidentiary hearing.

17 **MS. BRUBAKER:** Well, if I may, one of the  
18 concerns about if the order is essentially to be vacated  
19 is I believe we would be starting at a de novo  
20 proceeding, and that would be opening the door to the  
21 full panoply of issues before the Commission.

22 **COMMISSIONER SKOP:** Fair enough.

23 **CHAIRMAN ARGENZIANO:** Commissioners, what we  
24 have now is a Commissioner asking to hear from the  
25 parties, and I think what I'm going to just do is ask

1 for a motion.

2 Commissioner Edgar.

3 **COMMISSIONER EDGAR:** Madam Chairman, thank  
4 you. Commissioners, I would ask for your support of my  
5 request to hear from the parties, and I put that in the  
6 form of a motion.

7 **COMMISSIONER KLEMENT:** Second.

8 **CHAIRMAN ARGENZIANO:** It has been seconded.

9 All those in favor say aye.

10 (Vote taken.)

11 **CHAIRMAN ARGENZIANO:** All those opposed, same  
12 sign. We're approved, and we will hear from the  
13 parties.

14 **MR. BEASLEY:** Thank you, Madam Chairman,  
15 Commissioners.

16 **CHAIRMAN ARGENZIANO:** Well, let's give at  
17 least -- I know lunch is --

18 **COMMISSIONER EDGAR:** Long gone.

19 **CHAIRMAN ARGENZIANO:** We have IA, and our  
20 court reporter's fingers are probably ready to fall off.  
21 So would five minutes be enough for each side? Okay,  
22 let's go.

23 **MR. BEASLEY:** Madam Chairman, Commissioners,  
24 thank you. Jim Beasley for Tampa Electric Company. At  
25 the previous two agendas conferences, I think we

1 expressed pretty much all we had to say in support of  
2 what you voted to do. I think in response to  
3 Commissioner Edgar's question, the more time-critical  
4 impact would be on Energy 5.0, and I would defer to them  
5 to respond to your question about the impact.

6 **COMMISSIONER EDGAR:** Thank you.

7 **MR. WRIGHT:** Madam Chairman, Schef Wright,  
8 counsel for Energy 5.0. With me, again, is Mr. Bernard  
9 H. "Bud" Cherry, Chairman and CEO of Energy 5.0, and  
10 he'll address the Commission. And to the extent you  
11 want to ask me any questions, I will be happy to answer  
12 them. Thank you.

13 **CHAIRMAN ARGENZIANO:** Okay.

14 **MR. CHERRY:** Thank you, Schef.

15 Thank you, Madam Commissioner, Commissioners.  
16 Mr. Skop, Happy Birthday.

17 Let me first comment on the question of  
18 schedule which came up. Right now the critical item for  
19 this project is financing. There are a few other trails  
20 that lead up to financing like getting permitting  
21 finished and stuff like that, but we can't start a  
22 serious financing process without having a firm and  
23 final and unappealable order. So if there was a four,  
24 or five, or six-month delay in this process which pushed  
25 us from February to July or August, we really would not

1 have the time to get a financing done.

2 The quickest financing I have ever done in my  
3 career, and I'm sure Mr. Skop has had experience in  
4 this, is about six months. And right now we are getting  
5 into the red zone of having the time to get the  
6 financing done, and to get the contracts let, and to get  
7 into construction in time to receive the Treasury grant  
8 in lieu of tax credit which requires the project to be  
9 under construction before the end of this year.

10 If we miss that deadline, then that grant in  
11 lieu of tax credit would be unavailable to us under the  
12 current -- under the current rec. And I think if there  
13 were an evidentiary hearing that would put us in a  
14 situation where we simply would not qualify for that,  
15 and I think that would be extremely detrimental if not  
16 fatal to the project.

17 We have done so far everything we could do to  
18 keep things on track in the absence of a final order,  
19 and I recognize and agree with the view of the  
20 Commission that we have done this at our risk, but we  
21 have done it at our risk because we wanted to be good  
22 corporate citizens and bring to you a fully fleshed out  
23 project, or as much as we could do without having a  
24 financing in place.

25 **CHAIRMAN ARGENZIANO:** Thank you.



1 Commissioner Stevens.

2 Could you hang on one second? Commissioner  
3 Stevens.

4 **COMMISSIONER STEVENS:** Are we allowed to ask  
5 the parties questions --

6 **CHAIRMAN ARGENZIANO:** Yes.

7 **COMMISSIONER STEVENS:** -- or does that kick us  
8 out?

9 **CHAIRMAN ARGENZIANO:** I think that is the  
10 purpose.

11 Hold on. Commissioner Skop.

12 **COMMISSIONER SKOP:** Would it be possible to  
13 have like a two or three minute break, because I have  
14 questions on that same regard as Commissioner Stevens  
15 about questions. I need to get --

16 **CHAIRMAN ARGENZIANO:** We will come back to  
17 Commissioner Stevens' question in five minutes.

18 (Recess taken.)

19 **CHAIRMAN ARGENZIANO:** All right. We're back  
20 on. Everybody ready?

21 **COMMISSIONER STEVENS:** Yes, ma'am.

22 **CHAIRMAN ARGENZIANO:** Wait a minute.  
23 Commissioner Skop.

24 **COMMISSIONER STEVENS:** Come on, Skop.

25 **COMMISSIONER SKOP:** We have to, we have to

1       lighten, lighten the atmosphere here, so I thought I'd  
2       provide a birthday factoid.

3               I actually used to work for Boeing, and one of  
4       the birthday factoids is two of Boeing's most famous  
5       airplanes actually had their maiden flight on my  
6       birthday, the Boeing 747 and the Boeing 727. So I  
7       thought I would just mention that.

8               **COMMISSIONER STEVENS:** So to borrow a quote  
9       from past Chairman Carter, are we bringing it in for a  
10      landing?

11              **COMMISSIONER SKOP:** I think so.

12              (Laughter.)

13              **CHAIRMAN ARGENZIANO:** You learned well.

14              **COMMISSIONER STEVENS:** I did read the  
15      transcripts. That's pretty, that's pretty bad. That's  
16      pretty bad.

17              **CHAIRMAN ARGENZIANO:** Yeah. Okay.  
18      Commissioner Stevens.

19              **COMMISSIONER STEVENS:** I have three brief  
20      questions -- actually two.

21              The first one is comprised of two answers. Do  
22      the parties, Energy 5.0 and TECO, have an answer to  
23      Commissioner Skop's two concerns? And it's yes or no.  
24      And the silence.

25              **CHAIRMAN ARGENZIANO:** Schef, are you going to

1 be answering that?

2 **COMMISSIONER STEVENS:** Well, you don't have to  
3 give them right now. You can just say, yes, we have  
4 them or, no, we don't.

5 **MR. WRIGHT:** The answer is yes.

6 **COMMISSIONER STEVENS:** The answer is yes.  
7 Okay. If those questions are answered to our, as a  
8 Commission, thought processes or if we relook at staff's  
9 approach or staff's recommendation on this project and  
10 the parties accepted it, then what I'm looking for is a  
11 way to get this project going instead of having to have  
12 an evidentiary proceeding and a hearing and putting the  
13 project on hold and possibly losing it. What I'm  
14 looking at is is there a way today that we can get the  
15 concerns -- and I don't want to use Commissioner Skop --  
16 I want to use -- the Commission's concerns answered?  
17 And I'll give it back to them. Thank you.

18 **CHAIRMAN ARGENZIANO:** Uh-huh. Sure.

19 Mr. Wright, or who's going to answer? And  
20 then probably, and then probably to staff, is there a  
21 way to get there without having to go through an  
22 evidentiary hearing?

23 **MR. CHERRY:** Well, I, I think -- I believe  
24 there is, and I also believe that we had previously made  
25 the arguments in the case as to, as to why this project

1 was, was a good project and fell within the boundaries  
2 of the, of the Commission's authority.

3 **MR. WRIGHT:** If I may, Madam Chairman. Thank  
4 you. And in what I, what I hope and intend to be a more  
5 direct response to Commissioner Stevens' questions, what  
6 I wrote down as, as Commissioner Skop's two questions in  
7 response to a question from Commissioner Edgar are  
8 these. Are Tampa Electric Company's ratepayers  
9 overpaying, and is the Energy 5.0/Tampa Electric power  
10 purchase agreement the most cost-effective alternative  
11 for Tampa Electric's ratepayers to obtain solar power?

12 Our answer to those questions are: To the  
13 first question, no, they are not overpaying, and our  
14 justification for that statement is very simple. Tampa  
15 Electric, if the Commission allows its PAA order to  
16 stand and if no one requests a hearing by the deadline,  
17 which is next Monday, and if it becomes final, we will  
18 perform the contract, we will perform the project at a  
19 fixed price for 25 years to Tampa Electric's customers.  
20 That price is the result of negotiations that followed  
21 on a competitive request for proposals conducted by  
22 Tampa Electric in 2007. Yes, that's true, it was two  
23 and a half years ago, but nonetheless it was a  
24 competitive procurement process, not real different from  
25 those that utilities conduct for other large and small

1 supply needs. That price -- it is undisputed, as  
2 Mr. Ballinger told you earlier, that that price was the  
3 lowest of the solar projects available.

4 In response to the concern that the staff's  
5 estimated levelized cost of energy is less than the  
6 confidential price, and this kind of loops back into a  
7 discovery response, we don't believe it's meaningful to  
8 talk about what our LCOE is because we don't know what  
9 it is, because we don't know, Energy 5.0 does not know  
10 what its costs will be. Energy 5.0 takes all the risks  
11 of delivering power to Tampa Electric Company for its  
12 customers at the agreed upon contract price.

13 My contracts professor at Florida State law --  
14 I am a Gator undergrad -- Bill McHugh, used to say, "A  
15 contract is an allocation of risk," and that's what this  
16 is like every other contract. You know, we're taking a  
17 risk that the market value of our project could be  
18 greater than the confidential price. Tampa Electric is  
19 taking a risk and its customers, per your approval of  
20 the contract for cost recovery purposes, would be taking  
21 a risk that, that they might, they might overpay. The  
22 comparison to the LCOE we really believe is not  
23 meaningful because we don't know what the costs are  
24 going to be and we take all the risk.

25 The -- I think I've answered the second

1 question, but in the context where we are today -- we  
2 started, Tampa Electric started in June of '07, they  
3 selected us in the fall of '07, it took us a while to  
4 negotiate, it took us not very long after we signed the  
5 PPA to get it to you, 11 months ago today for your  
6 consideration. But in the context of those processes it  
7 is undisputed that it was the most cost-effective  
8 alternative offered to Tampa Electric. Thank you.

9 **CHAIRMAN ARGENZIANO:** Commissioner Skop, other  
10 questions or --

11 **COMMISSIONER SKOP:** Yes. I have --

12 **CHAIRMAN ARGENZIANO:** I meant Commissioner  
13 Stevens. Commissioner Skop, now to you.

14 **COMMISSIONER SKOP:** Thank you, Madam Chair.

15 And I have questions to Mr. Beasley and  
16 Mr. Wright and Mr. Cherry, and I think this will further  
17 definitize my point, notwithstanding in my dissent I  
18 raised the issue that under the confidential contract  
19 price that TECO ratepayers would be forced to pay over  
20 \$44 million more than necessary for this renewable  
21 resource. Hopefully the information I'm going to  
22 discuss next will make that point even more crystal  
23 clear.

24 Now Mr. Wright has just mentioned, as  
25 Mr. Cherry has, they don't believe the levelized cost is

1 important. I would beg to disagree. We've had a recent  
2 need determination that we discussed this morning where  
3 you had witness testimony clearly stating how important  
4 levelized cost was. And actually staff, if we turn back  
5 to Item 5 on the staff recommendation, notes that the  
6 levelized cost of electricity is an important criteria  
7 because that's what they used to come to their decision.  
8 So, again, I take great exception to -- to me that's  
9 just plain and simple. Commissioner Stevens cuts to the  
10 chase, I wish I had his brevity, but that's just  
11 evasive. It is what it is.

12 The fact that this is a low bid process,  
13 great, I understand that, but you can't just stop there.  
14 Again, my whole paragraph that I wrote in my dissent,  
15 RFP process in itself does not ensure value for  
16 consumers. If you're arbitrarily paying a price in an  
17 imperfect market and you have no rationalization,  
18 objective benchmark of what you should be paying, then  
19 you're jumping off the cliff blind. And so that's where  
20 levelized cost, as I've argued repeatedly, even going  
21 back to RPS, and even Mr. Twomey has argued that, how  
22 important that is to the determinations we're making.  
23 Because without that you can't do an apples to apples  
24 comparison of what you're approving here. It's just  
25 jumping blind.

1           Here's my point. Mr. Beasley, you indicated  
2           that TECO had made its case. I noticed that TECO did  
3           not respond in support of Mr. Cherry's letter that he  
4           sent to the Commission yesterday urging us to stay on  
5           our course. My question to you, and I have before me  
6           the first amendment to the renewable energy purchased  
7           power agreement executed between Jacksonville, JEA and  
8           Jacksonville Solar, LLC, which is a Delaware company.  
9           Apparently it had been assigned (phonetic) under the  
10          company in New Jersey.

11           Subject to check, and I realize you don't have  
12          the information before you, but would you agree that  
13          the, without disclosing the confidential contract price,  
14          but would you agree the first year price of that  
15          contract for JEA is over \$100 cheaper than the contract  
16          you're asking TECO ratepayers to approve here?

17           **MR. BEASLEY:** You're right, Commissioner Skop,  
18          I don't have that information. I understand it's been  
19          looked at, that there are a lot of costs that aren't  
20          included in that agreement that, that need to be  
21          factored in. I'm telling you probably the limit of my  
22          knowledge about that contract at this point in time.

23           **COMMISSIONER SKOP:** Okay. Subject to check,  
24          would you agree that if TECO, instead of entering this  
25          contract, were to contract with a similar provider at



1 the same contractual terms and conditions and construct  
2 it on the Polk Power Plant site, that TECO would  
3 approximately save ratepayers over a hundred million  
4 dollars in relation to this contract that we're being  
5 asked to approve?

6 **MR. BEASLEY:** I have no reason to dispute your  
7 number, but I don't know that. I haven't looked at  
8 that. I'm sorry.

9 **COMMISSIONER SKOP:** Okay. So there may be a  
10 better way to go about getting your solar project in a  
11 more cost-effective manner for your ratepayers.

12 **MR. BEASLEY:** All I know, Commissioner, is  
13 that this is the best deal that we were able to fashion  
14 from the RFP process and presented it to you.

15 **COMMISSIONER SKOP:** And that was two years  
16 ago. And what I'm saying is there's a much better deal  
17 that would save your ratepayers a hundred million  
18 dollars if TECO would be open to looking at that.  
19 Because, again, it's important to me. I can't just let  
20 things go through without the proper scrutiny.

21 **MR. BEASLEY:** I understand.

22 **COMMISSIONER SKOP:** Mr. Wright, subject to  
23 check, although you believe and your client believes  
24 that levelized cost is not important, the staff  
25 recommendation indicated for the project, Energy 5.0,

1 the levelized cost should be 22.4 cents per kilowatt  
2 hour over the life of the project, and the contract  
3 price is confidential and certainly well above that.  
4 Would you agree with that, subject to check?

5 **MR. WRIGHT:** I will agree with those three  
6 statements. Staff estimated the value at 22.4 cents.  
7 The confidential contract price is greater than that. I  
8 forget the third one, but I think it was accurate.

9 Now I want to add to that, and Mr. Cherry can  
10 expand upon this, we believe the staff's analysis in  
11 computing the 22.4 cents was incorrect, as Mr. Cherry  
12 specifically discussed on December 15th.

13 **COMMISSIONER SKOP:** Okay. And in response to  
14 that I would take exception to the extent that the  
15 company had ample opportunity to respond to my numerous  
16 questions at bench, as well as provide staff with the  
17 data that we had asked for and it failed to do so. All  
18 it did was make excuses as to why it's irrelevant. It's  
19 actually very relevant because, subject to check, would  
20 you agree that the JEA solar project has a levelized  
21 cost of electricity of under 21 cents? It's actually  
22 20.59.

23 **MR. WRIGHT:** The answer to that question is if  
24 you use Tampa Electric's discount rate and the pricing,  
25 yes, that's true. However, that is in our view a

1 severely unfair comparison because UV is getting free  
2 land and that analysis and their contract price do not  
3 include other costs that they would have had to stand  
4 for had they even bothered to bid in the Tampa Electric  
5 RFP process. That's not a fair comparison.

6 **COMMISSIONER SKOP:** Okay. There's some --  
7 well, I would -- it may not be a fair comparison in  
8 relation to the project proposal as Energy 5.0 has  
9 presented, but it may be actually a very relevant  
10 consideration if TECO would look at doing this on  
11 property they own in a manner similar as JEA.

12 **MR. WRIGHT:** And if Tampa Electric had offered  
13 that as an option in their RFP processes in 2007, we  
14 might well have submitted a different bid. We might  
15 have submitted two bids: One on private land, as we  
16 have acquired, or one on Tampa Electric's site.

17 **COMMISSIONER SKOP:** Okay.

18 **MR. WRIGHT:** You know, that, that was not an  
19 option. And really what you're getting into there is,  
20 is questioning Tampa Electric's RFP process. And  
21 this -- you can always question, you can always question  
22 things in hindsight and, and what, that's what really  
23 we're engaging in here.

24 **COMMISSIONER SKOP:** And I don't even need to  
25 get into hindsight analysis because based on the record

1 before me I can clearly articulate, based on staff's  
2 analysis that was provided with data from the company  
3 that the company failed to provide complete information  
4 that would have allowed staff to do its job a little bit  
5 better, that the customer is overpaying by \$44 million.

6 What I'm merely suggesting to emphasize that  
7 point further is if I were to pull a recent contract  
8 from JEA that is going, a plant that's going to be in  
9 service, it's 15 megawatts, that basically for all  
10 intents and purposes you would expect on an economy of  
11 scale to be more expensive, it's actually a lot cheaper  
12 than the alternative before us. And, again, with due  
13 respect, I think this illustrates my point. And,  
14 Mr. Beasley, I hope you would take this back to your  
15 client.

16 My central point here is that right now TECO  
17 ratepayers are being asked to pay \$44 million more than  
18 they should. That goes unrefuted. Again, we can  
19 quibble, but it's incumbent upon the company to make  
20 their case and they failed to provide the data.

21 What I'm saying is if I were to take the JEA  
22 contract, I could logically conclude that if TECO were  
23 sophisticated enough to do this in the manner in which  
24 JEA did it, it might arguably save its ratepayers  
25 anywhere from \$80 to \$100 million over and above this

1 contract. And case in point. I'm done.

2 **MR. WRIGHT:** Madam Chairman.

3 **CHAIRMAN ARGENZIANO:** Yes.

4 **MR. WRIGHT:** I would make one other point, and  
5 that is I think the Commission does have a fair amount  
6 of objective evidence upon which to base, upon which it  
7 has based its decision so far.

8 One, one such point is the known cost of a  
9 recently constructed Florida Power & Light Company  
10 project at DeSoto that is very, very comparable to ours  
11 at 25 megawatts. As FPL's analysis would show, that,  
12 their, their stated avoided, levelized cost is greater  
13 than the confidential contract price, even though that  
14 was all done much after our RFP. And we don't know --  
15 I'll tell you, I don't necessarily agree that that's the  
16 appropriate levelized cost for that project based on  
17 what I know customers are paying today, but that's not  
18 the issue here.

19 The point is even FPL's statements show that  
20 that levelized cost is greater than the contract price,  
21 even though that's a project that was done a year and a  
22 half later.

23 **COMMISSIONER SKOP:** Madam Chair.

24 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

25 **COMMISSIONER SKOP:** I'm going to respond to

1 that because, again, I think that's an unfair  
2 comparison. If we want to get down to the nuts and  
3 bolts of it, if you look at the legislative mandate  
4 under 366.924 that authorizes 110 megawatts statewide,  
5 it's like you get full cost recovery for building  
6 something. Okay. This is different. This is a power  
7 purchase agreement. You can distinguish between those  
8 two.

9           Moreover, FPL is a corporate entity that  
10 cannot efficiently use the tax benefits, the investment  
11 tax credits or convertible investment tax credits as  
12 efficiently as a private entity could. So, again, there  
13 may be a difference there in the pricing. And  
14 notwithstanding that, that levelized cost that FPL came  
15 up with was based on a rate of return that was pretty  
16 high at the time.

17           So, again, you can compare anything. All I'm  
18 just saying is that in this instant case, Commissioners,  
19 based upon the fact that staff did the best job it could  
20 calculating something with imperfect information because  
21 the company was not forthcoming in providing what staff  
22 asked for, they had to do it brute force themselves, so  
23 I commend staff for doing the right thing.

24           But staff's own calculation illustrated my  
25 point, is the contract price that was being asked to be

1 paid by TECO ratepayers substantially exceeded what the  
2 project should cost with a reasonable rate of return.  
3 And if you compare and contrast that, I mean that's \$44  
4 million pure profit resulting in an estimated return on  
5 equity of 18 percent by allowing that to happen  
6 inadvertently. But then if we were to look outside of  
7 that and look at what JEA just recently did, the costs  
8 are a hundred and -- over \$100 per megawatt hour cheaper  
9 than the rate. And, moreover, you don't even get to the  
10 confidential contract price until 19 years out in the  
11 future under the JEA agreement. So I'm at a loss of why  
12 the Commission would approve this agreement because  
13 there's a better, there's a much better price existing  
14 in the state for a project that's almost ready to go  
15 into service.

16 **CHAIRMAN ARGENZIANO:** I need to ask a question  
17 because when we compare, then I need more information on  
18 the comparisons. What -- and staff and the company, and  
19 then Commissioner Skop, if you want to, I need to know  
20 are they identical projects or are they -- does  
21 Commissioner Skop have a point in pointing out the JEA  
22 project? What are the differences, if there are any?

23 **MR. BALLINGER:** Two different that I can think  
24 of off the top of my head.

25 Energy 5.0 is 25 megawatts. The JEA contract

1 is 15 megawatts. The Energy 5.0 is to be built on  
2 private land. The JEA project is going to be built on  
3 utility land adjacent to its Brandy Branch combined  
4 cycle unit. JEA is leasing that land for \$100 a  
5 month -- I mean a dollar a month. I'm sorry. Those are  
6 the two primary differences.

7 The other one is the Energy 5.0 is a levelized  
8 cost for the life of the contract. The JEA contract has  
9 escalators through the life of the contract until the  
10 last five years and then it levelizes there.

11 **CHAIRMAN ARGENZIANO:** So would those  
12 differences, I'm asking the question, with those  
13 differences that would obviously affect the cost per  
14 kilowatt; is that correct?

15 **MR. BALLINGER:** Sure. And they were done at  
16 different times. Like anything, we're seeing products  
17 changing. You're seeing even ads in the paper where  
18 somebody will say we have a sale on TVs, but if you tell  
19 us, you know, in two weeks you find a better deal, we'll  
20 refund the difference. So technology is changing.  
21 Perhaps the developer or the vendor of the JEA project  
22 had a better deal on solar panels. I don't know the  
23 cost structure. All I'm looking at is comparing  
24 contract to contract.

25 **CHAIRMAN ARGENZIANO:** And may I ask another



1 question? When it comes to RFPs, that's what I -- and  
2 maybe I don't have a full understanding of this, but I  
3 understand that businesses do use the, or government  
4 uses the RFP process in order to get the best price or  
5 the best quality and price, however, whatever they're  
6 really looking for.

7 Is there something other that -- Commissioner  
8 Skop is referring to the pro forma data -- that should  
9 have been used or that staff would look into besides the  
10 RFP process?

11 **MR. BALLINGER:** I don't know. I've, I've  
12 always been brought up with the market is your best test  
13 of price. Somebody will say a value of an item is such  
14 and such, but to me it doesn't have value until you  
15 actually sell it and you go to the market and sell it  
16 and see what people are willing to pay for it.

17 I view the same as an RFP, that you go out,  
18 request, and you see who's willing to do it and they  
19 offer their best shot and you take it from there.

20 You have two different entities negotiating,  
21 you have a municipality in JEA, which also has a  
22 renewable goal that it's self-imposed on itself much  
23 like an RPS. So they're out trying to get renewables in  
24 a different manner, unlike TECO, who did this  
25 voluntarily without an RPS. So there's a lot of moving

1 parts there.

2 I guess to directly answer your question, I  
3 like the RFP process. Yes, you have to look, do you  
4 have enough participants in it to make it a meaningful  
5 process? You have to look at the timing of it, is it  
6 relevant or is the data stale? That is something to  
7 consider. But I do think it is a relatively good  
8 process to get through to a negotiated contract.

9 **CHAIRMAN ARGENZIANO:** And another question,  
10 and forgive me if it's, you know, if it's ignorant of  
11 the facts, but I need to know the facts.

12 In regards to a company coming before the PSC  
13 and going through a process 11 months and so on, at the  
14 end of 11 months things could get stale. But what do  
15 you do, do you tell the company the process you started  
16 with, you have to go back again? I'm just not sure how  
17 you rectify the stale issue.

18 **MR. BALLINGER:** That's a, that's been a  
19 dilemma we've had before in other purchased power  
20 agreements where utilities have been accused of dragging  
21 their heels and not negotiating, and then say, oh, the  
22 data is stale, we've got to start over again. And  
23 basically saying we really don't want to deal with you,  
24 we're just kind of going through the motions of  
25 negotiating with you and dragging it out. So they, they

1 do feel that pressure too. I don't believe it's up to  
2 us to tell them to go back and renegotiate. I think we  
3 have to deal with what we have, recognize what's going  
4 on.

5 And, again, staff's recommendation took that  
6 contract price and compared it to TECO's avoided cost  
7 today at the time. So whether it took them a year, six  
8 months or three months to negotiate the contract, it  
9 really didn't play because I'm looking at the end result  
10 of the contract, which is what's being flowed through to  
11 the customers.

12 **CHAIRMAN ARGENZIANO:** Okay. And, Commissioner  
13 Skop, a question to you, because I'm looking at if I'm,  
14 if I'm in business and I have an RFP out there -- I  
15 think what I'm hearing you say is that I should have an  
16 idea of what the costs are going to be ahead of time.  
17 But if I'm not in that business, I'm not sure I know the  
18 cost. And if it's an ever changing type thing with new,  
19 new technology coming in, what else could I rely on, if  
20 not the RFP?

21 **COMMISSIONER SKOP:** I'll answer that, Madam  
22 Chair. And then I have some concerns that Mr. Ballinger  
23 raised with the differences that I'd like to readdress.

24 **CHAIRMAN ARGENZIANO:** Okay.

25 **COMMISSIONER SKOP:** With respect to the cost,

1 you know, certainly the Commission is in the business of  
2 being able to scrutinize a proposed project. In this  
3 case, you know, staff has dealt with avoided cost and  
4 really hasn't looked beyond looking at the levelized  
5 costs until in this proceeding I kind of forced them to.  
6 And they did and the numbers show what they show, that  
7 the contract price exceeds that that should be  
8 reasonably paid for this renewable resource. That just  
9 illustrates my point.

10 So, again, we can be complicit and hide behind  
11 an RFP and just speed through the motion of approving  
12 everything that comes before us, or we can do our jobs  
13 as commissioners and scrutinize --

14 **CHAIRMAN ARGENZIANO:** And I've heard that --  
15 because I'm trying to get to -- instead of hearing  
16 things over again, to that point, if I am the one  
17 putting the proposal out there and this is all I get,  
18 you know, if that's all that's coming to the table, I  
19 don't know how I look for something less than that.

20 **COMMISSIONER SKOP:** Okay. And, and I'll get  
21 to the staleness issue. Again, the company solicited  
22 its, its RFP in 2007. It received a response -- let me  
23 check my documentation. In August 2007 Energy 5.0  
24 responded. The power purchase agreement, being this  
25 document before us that we're being asked to approve,

1 was not executed until February 2009. So who was  
2 sitting on it and made it stale? There's over a year  
3 and a half there of, of time that the company was  
4 negotiating. So, again, they should have been looking  
5 at what, what is the market price, whatever. They took  
6 a number.

7 And, you know, I understand the RFP, but I  
8 also understand that if the data is stale, you know,  
9 TECO has a duty to ensure the best cost for its  
10 ratepayers. And to be complicit and just say we're  
11 going to pay it just because it's the best we can get on  
12 the RFP just really doesn't get it. I mean, you can  
13 turn blinders to that, but --

14 **CHAIRMAN ARGENZIANO:** Okay. But to that  
15 point, that's what I'm trying to extract from you, where  
16 do you go if you don't have a better -- if you've got an  
17 RFP proposal out there and this is the lowest one and  
18 you take that one and you say, well, okay, I'm not  
19 happy, if nobody's there to provide it, where do you go?  
20 That's what I'm trying to get from you. What was the  
21 company to do at that point? If you could tell me, that  
22 helps me understand how you're finding another way that  
23 the company could ensure that they could have gotten a  
24 lower price.

25 **COMMISSIONER SKOP:** Okay. Well, I think based

1 on the data that TECO provided, the incomplete data to  
2 the staff interrogatory where it stated, you know, we  
3 think our capital cost is this and it referenced Black &  
4 Veatch, a report that they did, and that the levelized  
5 cost for TECO doing it was 36 cents per kilowatt hour,  
6 obviously they must not have a good handle of what a  
7 solar project costs. Because you have JEA, little old  
8 JEA, who everyone would think lacks sophistication,  
9 basically, you know, took names on this one by getting a  
10 levelized cost that's, you know, 30 -- 18 cents lower  
11 than what TECO projects.

12 TECO has no concept, and I'm saying this with  
13 respect, has no concept to what the cost of this project  
14 would be. I mean, that's just what the data from TECO  
15 shows me.

16 But to your point about what should we do, you  
17 know, I tried in good faith to raise this concern at an  
18 Agenda Conference. I said, "Here's the contract price,  
19 the confidential one that I can't talk about. Hey,  
20 nothing in JEA's contract is confidential. Here's the  
21 contract price, here's what staff thinks the levelized  
22 price is. It's a little bit too rich for my blood. Why  
23 don't we negotiate?" Chairman Carter just railroaded it  
24 through and basically we, we got, we approved and the  
25 company had no incentive to negotiate at that point

1 because they had three votes.

2 So, again, I tried to address this matter at  
3 Agenda Conference, and it would have behooved the  
4 company to, to be reasonable, but they chose not to be.  
5 So here we, here we are now.

6 **CHAIRMAN ARGENZIANO:** I've got to do this  
7 again because I'm not -- I'm trying desperately to get  
8 this.

9 **COMMISSIONER SKOP:** Okay.

10 **CHAIRMAN ARGENZIANO:** Because you obviously  
11 feel very passionate about it. If there's a way of  
12 saving money, I want to know.

13 **COMMISSIONER SKOP:** Okay.

14 **CHAIRMAN ARGENZIANO:** But now what you just  
15 said is the company didn't -- are you saying they didn't  
16 renegotiate -- are you indicating that they should have  
17 gone out and asked for more proposals, put another bid  
18 out? I'm not sure where they were to go after they got  
19 proposals.

20 **COMMISSIONER SKOP:** Again, I'm trying to do my  
21 --

22 **CHAIRMAN ARGENZIANO:** And let me, let me, let  
23 me go back a step. Because let's say I'm a company and  
24 I put RFPs out there and I have an idea of what the cost  
25 is to, for a solar project that I'm going to do and I

1 get RFPs that come in that are just so different than  
2 even the proposal I have, I don't know what that means  
3 at the end of the day. Now I'm trying to get -- where  
4 did the company fail? Did they fail, did they fail by  
5 not expanding the RFP process? Are you indicating that  
6 they should have gotten more, went into a renegotiation?  
7 Do you follow what I'm saying? I'm trying to figure out  
8 where they didn't --

9 **COMMISSIONER SKOP:** This is my understanding.  
10 I've never seen the RFP responses. What I do know to be  
11 the facts is that Energy 5.0 responded to the TECO RFP  
12 in August 2007. It's reasonable that that RFP was  
13 probably solicited, you know, 90 or 180 days before  
14 that. I don't know when TECO put it out. But sometime,  
15 let's say, May 2007 or earlier TECO put out an RFP. It  
16 got responded to. They said, okay, here's the low bid,  
17 and I don't know how many takers they had, but here's  
18 the low bid on the RFP. Then it took them approximately  
19 a year and a half to enter into an agreement which they  
20 filed with the Commission for approval. Okay?

21 Now the contract was executed in  
22 February 2009. All right? And so I don't know what you  
23 do, but when we come through this and we try and get  
24 information from the company and they're not forthcoming  
25 because they don't want to discuss the levelized cost



1 because it shows that their, their project is not the  
2 most cost-effective alternative and the TECO ratepayers  
3 are faced to pay more than they should and it's a  
4 financial windfall to Mr. Cherry and his company, then  
5 you have to do something. And I don't know what you do,  
6 but it would be incumbent upon TECO to say, look, we  
7 don't feel like we're getting value here. We can't just  
8 jump off the cliff and let our ratepayers pay for it.

9 But the central premise is the facts are  
10 before us. I stand by my assertion that the customers,  
11 TECO ratepayers are being forced to pay over 44 million  
12 than they need for this project. It abrogates the  
13 avoided cost principle that this Commission has used.  
14 It's questionable whether we get far afield of what the  
15 Legislature wants us to do.

16 But the ultimate end of the day is no matter  
17 how this Commission rules on this, the sad fact is that  
18 little old JEA did it better, faster, cheaper by a  
19 savings that, if TECO would do something similar, would  
20 be a hundred million dollars to its ratepayer.

21 **CHAIRMAN ARGENZIANO:** Mr. Wright, did you want  
22 to respond?

23 **MR. WRIGHT:** Thank you, Madam Chairman.

24 I have very brief comments, and Mr. Cherry has  
25 been waiting to make some responsive comments to earlier

1 questions.

2 **CHAIRMAN ARGENZIANO:** Okay. Okay.

3 **MR. WRIGHT:** I can tell you that I personally  
4 was involved in negotiations toward this PPA from  
5 sometime in the spring of 2008 through their conclusion.  
6 It wasn't like Tampa Electric was sitting on their hands  
7 and not bargaining hard. We negotiated price, we  
8 negotiated other terms and conditions extensively.

9 You would have -- naturally I wasn't in the  
10 private rooms with their folks when they were talking  
11 about what they were doing, but I believe, certainly if  
12 I were they, I believe that they were looking at what  
13 else was in the market during the totality of the  
14 negotiation process. But I think Mr. Aldazabal is here.  
15 He probably was in those rooms and you can ask him.

16 **CHAIRMAN ARGENZIANO:** Okay.

17 **MR. CHERRY:** Madam Chairman, I think  
18 Mr. Wright said what I was going to say about the  
19 negotiation because I, I was involved, and it was a  
20 long, tough negotiation for a variety of reasons. TECO  
21 had not done one of these projects before and we were,  
22 we were cutting, we were cutting new ground. In fact, I  
23 believe this, this PPA was probably the first renewable  
24 energy PPA done in, in Florida. There have been other,  
25 have been others done since then.

1           The comment that, that, that we have said  
2           levelized costs are, are not important or not relevant,  
3           let's make sure that, that we're all on the same page  
4           when, when, when we talk about levelized costs.

5           Certainly the levelized costs to the TECO  
6           customers are important. There is, there is, there is  
7           no question about that.

8           What we, what we have said is really  
9           consistent with what Mr. Ballinger said earlier, and  
10          that is typically the staff does not look at pro formas  
11          of independent generators who are selling electricity to  
12          companies under power purchase agreements. So within  
13          that, within that envelope, we did, we tried to be  
14          responsive and we provided the cost of the facility.

15          The staff then went ahead and ran an analysis  
16          using TECO's weighted average cost of capital, which is  
17          8 point something percent. And I'd respectfully correct  
18          you, Commissioner Skop. You said 11 earlier. It's not.  
19          It's --

20                   **COMMISSIONER SKOP:** I said the return --  
21          excuse me. I said the return on equity was  
22          11.25 percent.

23                   **MR. CHERRY:** Oh, okay. Okay.

24                   **COMMISSIONER SKOP:** Because I know I approved  
25          it, and I was criticized by Public Counsel for doing so.

1                   **MR. CHERRY:** Okay. No. No. No. I'm sorry.  
2 I, I was confused then. I thought you were referring to  
3 the weighted average cost of capital.

4                   **CHAIRMAN ARGENZIANO:** Okay. Now that we've  
5 cleared that up, let's just move on.

6                   **MR. CHERRY:** Okay. And I did, I did say at  
7 the last agenda hearing that I wished I could borrow  
8 25-year money at 8.3 percent. We, we can't. We're not  
9 an investment grade utility. Our customer is. We're  
10 pleased about that. But the market demands a risk  
11 premium over their, over their cost of capital, and, and  
12 there's, there's an equity market out there that demands  
13 a return for the equity risks and so on that are, that  
14 are inherent in these, in these projects.

15                   And I, I hope to make a profit on this project  
16 obviously. That's, that's why we're in the business.  
17 But I could lose everything that I put in it also. So I  
18 am completely at risk. I am not a regulated  
19 jurisdictional utility who has some kind of a guaranteed  
20 return. This is, this is a project where if we don't  
21 perform, we don't get paid, pure and simple. If we miss  
22 the deadline for the grant in lieu of construction -- in  
23 lieu of, in lieu of investment tax credit, that's our  
24 problem. That's, that's not the company's problem. So  
25 all of that is on our side of the equation. And that

1 goes to Mr. Wright's comments about risks and rewards  
2 and contracts. We're fully aware of, of how that, of  
3 how that works.

4 And I just wanted to sort of close with this  
5 in saying what we had said in our, in our letter to you,  
6 Madam Chairman, which was not intended to rebut  
7 Mr. Skop's petition but merely to provide the full  
8 Commission, two of the Commissioners who were not around  
9 for the early proceedings, of what, what the schedule  
10 had been on this particular petition, how long it had  
11 taken. And I was not complaining about that, I just  
12 wanted everybody to understand what, what that schedule  
13 was.

14 And here we are now 11, 11 months later. We  
15 and TECO have answered 69 interrogatories, 12 document  
16 requests and 19 informal data requests. That's, that's  
17 a lot, that's a lot of information. And the responses  
18 may not have been perfect, but we tried to be as  
19 responsive as we could given the circumstances of the  
20 hearing.

21 Our very strong preference is that the  
22 Commission let the process run its course from, from,  
23 from here on out. And if we are successful in getting  
24 past February 15th, then we will be prepared to, to move  
25 forward as rapidly as possible because we want this

1 project to happen, TECO wants it, and we think it's, we  
2 think it's a very good project.

3 **CHAIRMAN ARGENZIANO:** Can I just ask one  
4 question, and I'll move to Commissioner Klement and then  
5 Commissioner Skop. And I don't know if it's  
6 appropriate, but after lunch -- not having lunch, and I  
7 do usually have lunch, but my blood sugar is running a  
8 little wild, let me ask it the way I can. Do you think  
9 you can do this cheaper? Can it be done cheaper like a  
10 JEA type -- given the fact, the differences in the land  
11 and -- I mean, that's the question here of cost  
12 efficiency.

13 **MR. CHERRY:** I really don't think so. I  
14 really do not think so. And I, I know that Commissioner  
15 Skop asked me to engage in a discussion about pricing at  
16 the last, at the last meeting. But the combinations of  
17 uncertainties in the financial markets which were not  
18 there when we put our bid together and the situation on  
19 the tax run and all of those things, when, when we look  
20 at our numbers, we keep coming back to, to believing  
21 that the number that we have on the table is, is the  
22 right number.

23 I'm somewhat comforted by the fact that it's  
24 in the, in the ballpark of the other projects that have  
25 been looked at by the staff. We're aware of the JEA

1 contract. I think there's a multiple, that there's a  
2 multiplicity of ways of looking at what their actual  
3 levelized cost is because there are, there are  
4 differences that Mr. Ballinger pointed out.

5 There's also, in addition to the differences  
6 he pointed out, there's, we estimate, possibly a million  
7 dollar difference in the cost of the interconnect  
8 because they're interconnecting at a lower voltage than,  
9 than we are. And we had an extensive development period  
10 that's been going on for a while, which I don't believe  
11 that UV had in that, in that JEA project. So that's,  
12 that's kind of, that's kind of where we are.

13 **CHAIRMAN ARGENZIANO:** Okay. Commissioner  
14 Klement.

15 Thank you.

16 **COMMISSIONER KLEMENT:** Thank you, Madam Chair.

17 My question is not -- is somewhat related to  
18 the Chairman's previous question. Can you provide or  
19 would you be willing to provide some figures that would  
20 help us understand where Commissioner Skop's \$44 million  
21 in alleged excess profits, what might explain that, such  
22 as a number on the difference in the site cost for yours  
23 versus JEA's or any of the other costs that, that would  
24 explain why yours is so much higher, you know, in -- you  
25 know, this many million dollars explains the site

1 difference and so forth?

2 **MR. CHERRY:** We, we estimated a total of about  
3 \$7 million in, in cost between the two projects, with  
4 most of that being costs that were incurred in the front  
5 end, which are the riskiest costs that you can, that you  
6 can incur.

7 I, I don't, I don't know anything more about  
8 the supply arrangements that UV has. We're obviously  
9 going to do the best we can on our, on, on our supply.  
10 And there's been a lot of turbulence in that, in that  
11 market as well.

12 But to go back to the Chairman's question, we  
13 think that's the right price. And, you know, I'll be  
14 very candid with you. If, if I thought there was play  
15 in the price, if there was some flexibility in the  
16 price, when Commissioner Skop asked at the last hearing  
17 to have kind of a negotiation, I would have gone for  
18 that because it would have made life a lot easier and we  
19 wouldn't be sitting here today. But I didn't think that  
20 that was, that that was going to be a way to get to the  
21 finish line for this project. We, we think that prices  
22 that are even marginally lower than the price that we  
23 have will put the financeability of this project in  
24 jeopardy.

25 **COMMISSIONER KLEMENT:** So you think that the



1 conditions are so much different now that you would not  
2 be willing to go back?

3 **MR. CHERRY:** To -- I'm sorry. I --

4 **COMMISSIONER KLEMENT:** Well, you said you  
5 would have been willing to renegotiate back last fall.  
6 But have the financial conditions changed?

7 **MR. CHERRY:** No. No. Actually I didn't --

8 **COMMISSIONER KLEMENT:** You didn't say that?

9 **MR. CHERRY:** I'm sorry. You mis --

10 **COMMISSIONER KLEMENT:** That's what I  
11 understood you to say.

12 **MR. CHERRY:** Oh, I didn't -- I actually didn't  
13 mean to say that. I said if I thought there was play in  
14 the price, which there, which I do not believe, when we  
15 look at our, at our project, I, I do not believe that  
16 the project would be financeable if the price were lower  
17 than the price that we have. That, that's what I'm  
18 saying to you.

19 **COMMISSIONER KLEMENT:** Okay.

20 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

21 **COMMISSIONER SKOP:** Thank you, Madam Chair.

22 I'm missing pages of my copy, otherwise I'd be  
23 more than happy to rebut the interconnection cost  
24 statement that was just made.

25 But I want to go to two pages to Mr. Cherry,

1 very pointed questions. Actually three questions. You  
2 indicated in our prior discussions as well as your  
3 representations before this Commission this morning that  
4 you intend to finance this project; is that correct?

5 **MR. CHERRY:** Yes.

6 **COMMISSIONER SKOP:** Okay. How are you going  
7 to finance a project without providing a lender with a  
8 pro forma analysis?

9 **MR. CHERRY:** Without what?

10 **COMMISSIONER SKOP:** Without -- how are you  
11 going to finance a project without providing a lender  
12 with a pro forma analysis?

13 **MR. CHERRY:** We're, we're not going to. We  
14 have to provide a pro forma analysis to the lenders.

15 **COMMISSIONER SKOP:** You don't have to?

16 **CHAIRMAN ARGENZIANO:** He said, "We have to."

17 **MR. CHERRY:** I said we do have to.

18 **COMMISSIONER SKOP:** Okay. So my question  
19 would be then why didn't you provide it to this  
20 Commission when I specifically asked for it under cloak  
21 of confidentiality?

22 **MR. CHERRY:** We didn't, we didn't provide it  
23 for the reason --

24 **COMMISSIONER SKOP:** Because, see -- okay.  
25 You didn't -- no.

1                   **CHAIRMAN ARGENZIANO:** Let him answer. Let him  
2 answer. Let him answer.

3                   **MR. CHERRY:** Okay. We didn't provide it for  
4 the reasons that Mr. Ballinger earlier stated, that that  
5 has not been the practice of the Commission in looking  
6 at other independent generators.

7                   **COMMISSIONER SKOP:** Okay. So you appease your  
8 staff over a Commission that's going to vote on your, on  
9 your fate at the Commission. And, frankly, I think  
10 you're talking all over the place, Mr. Cherry, with all  
11 due respect. Because when I asked you specifically, you  
12 told me that that didn't exist. You just agreed upon a  
13 price. I asked for specific pro formas. You said they  
14 didn't exist. And that's what I was looking for. And I  
15 can't understand for the life of me why any developer  
16 would not honor a Commissioner's request under cloak of  
17 confidentiality that this Commission affords people to  
18 give me the data I was looking for. And, accordingly,  
19 I'm not approving this project.

20                   **MR. CHERRY:** Okay.

21                   **CHAIRMAN ARGENZIANO:** So let me, let me ask  
22 staff a question just one moment.

23                   **MR. CHERRY:** Sure.

24                   **CHAIRMAN ARGENZIANO:** Do we ask all entities  
25 that come in for the pro forma analysis? And I'm not

1 disregarding a Commissioner's request. I just want to  
2 know if it's --

3 **MR. BALLINGER:** No. We have looked at the,  
4 the cost structure and the financial viability, if you  
5 will, of certain projects, renewable projects that come  
6 through the door more so from a standpoint of their  
7 reliability. In other words, if a renewable project has  
8 signed a capacity and energy contract where it's  
9 providing reliability and the utility is relying on that  
10 renewable generator to provide a reserve margin, we  
11 really want to make sure that that renewable generator  
12 is going to be there. So we will look to the  
13 financeability, looking at their, their credit history,  
14 things of that nature to see does the project look  
15 viable.

16 That's not the case in this project. This is  
17 an energy only solar facility. It has no capacity  
18 payments, no reliability impacts, if you will, at all,  
19 so the need to look at that financial viability is not  
20 as critical.

21 **CHAIRMAN ARGENZIANO:** But to Commissioner  
22 Skop's concerns, would it make a difference in looking  
23 at that pro forma analysis?

24 **MR. BALLINGER:** To me it doesn't. I stopped  
25 at the contract because that's what's being flowed

1 through to the customers. If -- and it's not the  
2 reliability concern that a firm purchased power  
3 agreement has that I have to be concerned about the  
4 viability.

5 If this project went away, TECO's ratepayers  
6 from a reliability perspective would not be harmed. So  
7 I'm not as concerned about the project meeting those  
8 things. You also look at milestones in the contracts  
9 that if a developer doesn't have certain things done by  
10 a certain date, can the contract be terminated? So you  
11 look for protections that way.

12 **CHAIRMAN ARGENZIANO:** Okay. Hang on. I think  
13 you wanted to, you wanted to make a comment, and then  
14 Commissioner Skop.

15 **MR. ZAMBO:** If, if the timing is appropriate,  
16 Madam.

17 **CHAIRMAN ARGENZIANO:** Yes, I think it is.

18 **MR. ZAMBO:** Okay. Madam Chairman,  
19 Commissioners, thank you. Rich Zambo on behalf of  
20 Mosaic Fertilizer.

21 We requested in November of last year status  
22 as an Intervenor, which the Commission granted. So we  
23 are an affected party to the proceeding. And we find  
24 ourselves in sort of an uncomfortable situation because  
25 we, while we don't want to interfere with your strong

1 commitment to encouraging renewable energy, we are also  
2 concerned that we are a large consumer of electricity.  
3 We buy about a million kilowatt hours a year of power  
4 and spend about a \$100 million a year for that power.  
5 And so although this contract may affect the residential  
6 customer negligibly, it's a much, much larger impact.

7 I want to say upfront we don't oppose  
8 renewable energy. We support it. We don't oppose the  
9 contract here. We have some more fundamental issues  
10 that we're concerned with. And I, I raised these issues  
11 at the prior Agenda Conference in December, but for  
12 Commissioner Stevens' benefit I'd like to just briefly  
13 repeat a few things.

14 **CHAIRMAN ARGENZIANO:** Certainly.

15 **MR. ZAMBO:** Mosaic is in the business of  
16 producing phosphate fertilizer, and that process,  
17 fortunately for them and for the state, produces a lot  
18 of heat. There's no fuel burned, there's no fossil  
19 fuel, there's no coal, oil, gas or anything burned, but  
20 it produces a lot of heat that normally just goes up  
21 into the atmosphere, and currently Mosaic generates  
22 about 200 megawatts of electricity from that waste heat.

23 From an environmental perspective it's, it is  
24 as good as solar. Some people will say better because  
25 there's no, absolutely no emissions, there's no water

1 consumption, there's no fuel use. It takes up much less  
2 ground space. You basically recapture some heat, make  
3 some steam and put it in a steam turbine generator.  
4 It's very reliable. It's been, it's been around in this  
5 industry for 30 or 40 years.

6 So we're concerned that this contract and the  
7 policy that the Commission applied in reaching its  
8 decision on this contract, we're concerned about how  
9 that's going to impact us both as a customer and a  
10 renewable energy producer.

11 For example, Mosaic was a participant in the  
12 2007 RFP. At the time we weren't told that it was solar  
13 only. It was a renewable RFP. We, we, like Energy 5.0,  
14 spent a considerable amount of time negotiating a  
15 contract at prices that I might say are just a fraction  
16 of what we're looking at here. But we were, we were  
17 rejected primarily, we were told, because our price  
18 exceeded avoided cost.

19 So one of the questions we have is, is this,  
20 does this order reflect a new nonrule policy of the  
21 Commission that renewable energy facilities can now  
22 expect to be paid more than full avoided cost? And, if  
23 so, how will we go about identifying those, the ways  
24 that'll be applied to us?

25 During the December 15th agenda my comments

1 were fairly limited to describing our situation, and the  
2 one request we did make to the Commission or suggestion  
3 was that, anticipating some questions as to what your  
4 final decision might do to this industry, the renewable  
5 energy industry, we suggested that you provide specific  
6 guidance in the order so we know what logic was used,  
7 what policies are being applied, what calculations were  
8 made so that we could, we and other renewable energy  
9 producers could go back and say, okay, the environment  
10 has changed. We may now be able to look at a project  
11 because we've got this new set of rules. Well,  
12 unfortunately the order is, is pretty lacking in those  
13 areas.

14 **CHAIRMAN ARGENZIANO:** Now I have more  
15 questions.

16 **MR. ZAMBO:** Basically --

17 **COMMISSIONER EDGAR:** Me too.

18 **MR. ZAMBO:** Yeah. Basically they leave  
19 Mosaic, they leave Mosaic and other renewable energy  
20 producers with a number of unanswered questions that may  
21 only be resolvable in a, in a proceeding, a formal  
22 evidentiary proceeding.

23 For example, has the Commission adopted a new  
24 nonrule policy under which renewable energy producers  
25 with environmental attributes similar to solar would be



1 entitled to the same treatment? And if not, would that  
2 be a violation of some equal protection argument, you  
3 know?

4 Has the Commission, and we don't know, we  
5 don't know what the details are, has the Commission  
6 identified a set of circumstances where a renewable  
7 energy producer is now relieved of the obligation to pay  
8 for its interconnection costs? The statute, the  
9 statutes are pretty clear that a renewable generator  
10 pays for its interconnection costs. But in this case,  
11 as I understand the contract, Tampa Electric is paying  
12 the cost of interconnection. And I'm not saying that's  
13 good or bad, but we need to know if that's, if that  
14 applies to us as well as -- because interconnections can  
15 become very expensive.

16 **CHAIRMAN ARGENZIANO:** Let me ask staff, is  
17 that the case? Is TECO paying the interconnections?

18 **MR. BALLINGER:** I believe so. Yes.

19 **COMMISSIONER EDGAR:** Okay. No. Wait. The  
20 company is saying no. Boy, we really are in good shape.  
21 Okay.

22 **MR. ALDAZABAL:** No. Tampa Electric is not  
23 paying for the interconnect. They are paying for the  
24 reconductor of a transmission line, but not for the  
25 interconnection facilities.

1                   **COMMISSIONER SKOP:** Madam Chair.

2                   **MR. ZAMBO:** But I believe it has -- it's the  
3 impact of this facility on the system.

4                   **CHAIRMAN ARGENZIANO:** Commissioner Skop.

5                   **COMMISSIONER SKOP:** Thank you.

6                   Briefly to TECO's point, again, that's an  
7 added cost to the TECO ratepayers on this over and above  
8 what we're paying to Energy 5.0. That's three-quarters  
9 of a million dollars, and I don't see that in JEA's  
10 contract, so.

11                   **CHAIRMAN ARGENZIANO:** Well, let me take this  
12 even back further another step, which everybody is going  
13 to love.

14                   If, if TECO, and it's our responsibility and  
15 TECO's responsibility to get the best efficiency, cost  
16 efficiencies, and especially when it comes to renewable,  
17 and they have had other people in the process, maybe not  
18 solar, but could have provided the same amount of energy  
19 for less, is that something we should have looked at or  
20 should be looking at?

21                   **MR. BALLINGER:** I'm sorry. I was trying to  
22 find a response. I apologize.

23                   **CHAIRMAN ARGENZIANO:** Okay. Is it  
24 something -- in regards to the suggestion that they were  
25 part of the RFP process, didn't understand that it was

1 only solar, and is it an obligation of the company as  
2 well as the PSC then to try to get the most  
3 cost-efficient, and should have, that not have been  
4 considered in the TECO --

5 **MR. BALLINGER:** I got, I got the question now.

6 **CHAIRMAN ARGENZIANO:** Okay.

7 **MR. BALLINGER:** TECO is under no obligation to  
8 solicit proposals for renewable generators. They would  
9 be if an RPS were passed, and we've had this discussion  
10 before.

11 **CHAIRMAN ARGENZIANO:** Uh-huh.

12 **MR. BALLINGER:** The RFP that went out, that  
13 TECO voluntarily went out, asked for all renewables.  
14 Did not discriminate and say we only want solar. They  
15 did that on the tail end.

16 As I said earlier --

17 **CHAIRMAN ARGENZIANO:** But are they under an  
18 obligation then to take the most cost-efficient  
19 renewable?

20 **MR. BALLINGER:** I think that's -- yeah.

21 **CHAIRMAN ARGENZIANO:** I mean, I know there's  
22 other things that have to be plugged in there.

23 **MR. BALLINGER:** I think that's a call that you  
24 have, and that's a discussion we had during the RPS rule  
25 development proposals and there was ways --

1                   **CHAIRMAN ARGENZIANO:** But the problem with  
2 that is the way we do things around here, we talked  
3 about that, what, a year ago? It's kind of hard to  
4 remember everything.

5                   **MR. BALLINGER:** I'll try to summarize it real  
6 quick.

7                   **CHAIRMAN ARGENZIANO:** Okay.

8                   **MR. BALLINGER:** That, that same argument was  
9 made to get the cheapest renewables first, okay, before  
10 you get up to the more expensive maybe solar, things  
11 like that. And what -- the draft RPS rules carved out a  
12 portion for biomass and things of that nature and  
13 another portion for wind and solar. It also apportioned  
14 out the 2 percent revenue cap; that we would go above  
15 avoided cost of 2 percent of revenues. That's what the  
16 Commission in its draft rule said would be the amount  
17 we're willing to go above avoided cost. The Commission  
18 further parceled that out between solar and wind and  
19 biomass or renewables like Mosaic.

20                   This contract, the Energy 5.0 contract, takes  
21 a disproportionate share of the revenue cap if you were  
22 to apply the RPS rule than it does for the energy  
23 provided. So what that tells me is that if I had  
24 several of these contracts identical, I'd run out of  
25 mega -- I'd run out of money before I'd run out of

1 megawatts, before I'd reach my RPS goal. So even with  
2 setting a goal and all that, the revenue cap that the  
3 Commission was willing to do, a lot of it gets eaten up  
4 by this contract. Did that help?

5 **CHAIRMAN ARGENZIANO:** Let me go to  
6 Commissioner Stevens and then back to Commissioner Skop.

7 **COMMISSIONER STEVENS:** And this is a question  
8 for, for TECO and Energy 5.0. If the Commission decides  
9 to go to a full evidentiary proceeding, is this contract  
10 still going to be on the table or is the length of time  
11 going to make it void? Is there a termination on that  
12 contract?

13 **MR. BEASLEY:** The contract is, of course,  
14 subject to the approval of the Commission and that would  
15 be required in order for it to go forward.

16 **CHAIRMAN ARGENZIANO:** But I think there was an  
17 issue --

18 **COMMISSIONER STEVENS:** Is there a termination  
19 on the offer?

20 **MR. BEASLEY:** I think the limitations are as  
21 described by Mr. Cherry concerning his time constraints.

22 **CHAIRMAN ARGENZIANO:** It was a tax credit  
23 issue?

24 **MR. CHERRY:** Well, there, there, there is that  
25 issue. The, the various milestones in the contract

1 float with the length of time it takes for us to get the  
2 regulatory approval.

3 So to directly answer your question,  
4 Commissioner Stevens, the contract would not expire, but  
5 its economics begin to be put in serious jeopardy if  
6 there's a multi-month delay in the process.

7 **COMMISSIONER STEVENS:** Okay. Thank you.

8 Madam Chair, I don't think the Commission's  
9 concerns were addressed. I think, as a matter of fact,  
10 now I'm even more concerned, so --

11 **CHAIRMAN ARGENZIANO:** On, on the issue that  
12 Commissioner Skop talked about?

13 **COMMISSIONER STEVENS:** Yes, ma'am, on  
14 Commissioner Skop's issues and now other issues, I  
15 believe, that have come forward, including Mosaic's. So  
16 with that in mind, I don't think we're going to get  
17 anywhere today that can allow us not to have an  
18 evidentiary proceeding, although I'm one vote. So I  
19 would start looking towards that.

20 **CHAIRMAN ARGENZIANO:** Okay. And when you talk  
21 about Mosaic, because the concerns that he raised about  
22 specifics in the --

23 **COMMISSIONER STEVENS:** The RFP process, the  
24 renewable, and actually specifically the lower cost of  
25 providing energy.

1                   **CHAIRMAN ARGENZIANO:** Commissioner Skop.

2                   **COMMISSIONER SKOP:** Thank you, Madam Chair.

3                   I just want to raise two points. I don't want  
4 to belabor the issue. But what strikes nerves with me  
5 is when I hear different things being said that, that  
6 are just completely all over the place.

7                   Mr. Cherry has repeatedly stated that the  
8 premise needed to move forward with this project is the  
9 investment tax credit and capturing that by project  
10 inception date. And, you know, that was a discussion we  
11 had in the first thing way back in, in I think November  
12 or October and I asked a question on that. And you told  
13 me, Mr. Cherry, the ITC is included in our economics,  
14 and whether you get it as a grant in lieu of tax credit  
15 or you get it as a tax credit is irrelevant to the  
16 overall economics of the project. That's completely  
17 different from what you just represented to this  
18 Commission at least twice today.

19                   Just one point in passing --

20                   **CHAIRMAN ARGENZIANO:** I will give him an  
21 opportunity to respond.

22                   **COMMISSIONER SKOP:** Okay. I think it's  
23 relevant.

24                   **MR. CHERRY:** Commissioner, you, you accurately  
25 repeated what I said, and we were talking about the

1 economic impact of tax credit, tax credits versus,  
2 versus grants. And the fact is that if one can find a  
3 tax equity investor who has an appetite for the full  
4 investment tax credit at, at the time that tax credit  
5 becomes ripe, the fact is that there is no difference.

6 The reason the grant was developed by the  
7 Treasury in the first place was that tax equity market  
8 completely dried up and it's, it's virtually nonexistent  
9 at this point also. So there is a difference in this  
10 market between being able to take advantage of the grant  
11 and having to use the investment tax credit within the  
12 project, which is the other, the other alternative. And  
13 I think that was your, your view and I think we just  
14 disconnected on that, on that point at the time we, we  
15 discussed it.

16 **CHAIRMAN ARGENZIANO:** Commissioner Skop to  
17 follow up.

18 **COMMISSIONER SKOP:** Just in brief rebuttal and  
19 then I'll move on. That was the point of our  
20 discussion, and I represented or disagreed with your  
21 assertion on the basis that taking the convertible  
22 investment tax credit on a time value of money basis  
23 alone would be superior than taking over the life of the  
24 project.

25 Moving on to a point that Chairman Argenziano



1 made about, you know, the way we do things around here,  
2 frankly, I think sometimes the problem is the way we do  
3 things around here. If you were to subscribe --  
4 Mr. Ballinger, you might want to listen to this. I  
5 think the problem is the way we do things around here.  
6 If you were to subscribe to Mr. Ballinger's point of  
7 view, this Commission would indiscriminately approve the  
8 prudence of a, of the cost recovery for a project  
9 without considering all available information,  
10 irrespective of profit and return on equity. That's  
11 what Mr. Ballinger said: We just, we don't look at the  
12 contract, we don't look at pro formas.

13 If we're rendering a prudence determination on  
14 a 30-year power purchase agreement or a 25-year power  
15 purchase agreement, we put the Commission and the  
16 ratepayers on the hook on that. We don't get a second  
17 bite at the apple because those costs flow through a  
18 clause. So if we're not looking at everything, my  
19 question to staff is why? Why does staff think that I'm  
20 not bringing value to the analysis here?

21 **MR. BALLINGER:** No, I didn't say we don't look  
22 at it. We look at the utility's avoided cost and the  
23 contract compared to it.

24 Staff's recommendation was this contract is  
25 significantly above the utility's avoided cost. We do

1 look at the cost of a renewable facility from a  
2 standpoint of viability: Can they get the project  
3 built? Especially if it's a reliability contract with  
4 capacity payments. We also look at the milestones of  
5 the contract between the renewable generator and the  
6 utility.

7 So it's not that it doesn't bring value. In  
8 my mind it's not the, the primary driver, I guess, I  
9 look at. We don't -- I don't, I don't know anywhere in  
10 statutes where it says we have authority to regulate the  
11 rate of return for independent third party generators.  
12 We regulate the utilities and what they pass through.  
13 So I, I kind of stop at the contract. If a, if a third  
14 party can trim its costs after the contract and the  
15 facility is running and they earn a 20 percent return,  
16 that's fine. That's not our, our deal. We're looking  
17 at the contract at the time it comes here.

18 So I do look at it from a standpoint of  
19 viability and is the project feasible. But as far as  
20 that, that's where we go. And we differ, I agree.  
21 We've had this before.

22 **COMMISSIONER SKOP:** Well, again, if I'm being  
23 asked on this Commission under the statutory guidance  
24 that I have to ensure that all costs are fair, just and  
25 reasonable and that only reasonable, necessary and

1 prudently incurred costs will be passed through to the  
2 ratepayers and I don't look at all available  
3 information -- I think there's Commission precedent  
4 directly on point, we will not approve the prudence of  
5 any given project or any issue that comes before this  
6 Commission until we have all available information.  
7 You're telling me I shouldn't look at information that's  
8 not relevant to my analysis.

9 **MR. BALLINGER:** No, sir, I'm not saying that  
10 at all. I'm saying --

11 **COMMISSIONER SKOP:** That's what I'm hearing.

12 **MR. BALLINGER:** The prudent costs are the  
13 avoided costs of the utility at this time. There is  
14 not -- staff's recommendation has not been to go above.

15 **COMMISSIONER SKOP:** One follow up.

16 **CHAIRMAN ARGENZIANO:** Go ahead and follow up.

17 **COMMISSIONER SKOP:** I agree. I agree with the  
18 staff recommendation. Staff did the analysis to say  
19 we're going to maintain the avoided cost standard. The  
20 Commission went beyond that. That's the prerogative of  
21 the Commission to overrule staff recommendation. Okay?  
22 Staff just merely makes recommendations. We're the  
23 decision-makers.

24 But it becomes even more important to consider  
25 these very issues that I'm trying to just beat into

1 staff when we depart from the norm, and that's why it's  
2 important. We can't be agnostic and say, oh, well,  
3 we're not doing it the typical way, so we can ignore  
4 everything. You have to consider this. If this was not  
5 important, then why today in the Gainesville need  
6 determination was there substantial discussion about the  
7 levelized cost of electricity in comparison to the  
8 alternatives?

9 **MR. TRAPP:** Madam Chairman, may I address the  
10 Commissioner's concerns?

11 **CHAIRMAN ARGENZIANO:** Please.

12 **MR. TRAPP:** We agree with the Commissioner.  
13 We agree that all information, all relevant information  
14 is important to look at. But I think you have to  
15 understand where staff stands in this. We have had for  
16 some time now, a very long time now an avoided cost  
17 standard by which we evaluate cogeneration and renewable  
18 contracts. That appears to be in transition. It  
19 appears to be in transition with this project. Staff is  
20 adjusting. Staff is trying to get the information that  
21 Commissioner Skop has rightfully pointed to as being  
22 very important if you're going to go to an above  
23 standard off, standard -- excuse me -- avoided cost  
24 standard.

25 This is what we brought to you at agenda. We

1 said if you go, if you differ from the staff's  
2 recommendation, what is the new standard? And I think  
3 that's what we're struggling with here. So, you know,  
4 I'd like to put this to bed by saying staff is  
5 energetically seeking to get this information to learn  
6 how to operate in the new world. We would desperately  
7 like legislative guidance on how to operate in the new  
8 world, and we certainly want Commission guidance in that  
9 respect. So thank you.

10 **COMMISSIONER SKOP:** And, Mr. Trapp, thank you  
11 for your comments. I think that clarified my concern.  
12 And I'm proud to, to, to know that staff feels that way.  
13 Again, I think that a lot of the concern--

14 **CHAIRMAN ARGENZIANO:** Okay. Well, where does  
15 that "Oh, Kumbaya" leave us?

16 (Laughter.)

17 **COMMISSIONER SKOP:** Well, I -- just, just  
18 briefly. I think, I think Mr. Trapp's concerns are  
19 articulated in also some of the things in my dissent.  
20 And if we get out there in a gray area, we need to be  
21 sure what we're doing and articulate a basis for our  
22 decision that's based on objective benchmarks so that  
23 people that come after this know, know what the ground  
24 rules are.

25 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

1                   **COMMISSIONER EDGAR:** Thank you, Madam Chair.

2                   A few comments for the record, and then I do  
3 actually have something that I just want to throw out  
4 there.

5                   The first is I want to go on record as saying  
6 that I do not believe that JEA lacks sophistication.

7                   **COMMISSIONER SKOP:** (Inaudible. Microphone  
8 not on.)

9                   **COMMISSIONER EDGAR:** Second, I have heard  
10 today that our previous decision on this matter was  
11 indiscriminate, I have heard that it was railroaded, and  
12 I have heard that we won't get a second bite at the  
13 apple, and I have to take, I have to make some  
14 objections to that.

15                   We have over 100 pages of transcript from the  
16 first time that this item came before us, at which point  
17 I stated, and it's in the transcript, that I was ready  
18 to support the staff recommendation because I believed  
19 that gave additional protection to the ratepayers.  
20 However, Commissioner Skop at the time said that he  
21 would like more information, and that is something that  
22 I supported.

23                   Six weeks later the item came before us again.  
24 We -- which again I supported. We have again over  
25 100 pages of transcript that we discussed this. So to

1 say that it was railroaded I don't think is reflected in  
2 the record.

3 At the second meeting I said that I thought  
4 that the staff recommendation gave superior protection  
5 to the ratepayers; however, there were three  
6 Commissioners, who at the end of those 100 pages, three  
7 other Commissioners, who said that they were ready to go  
8 forward with the project. So, again, indiscriminate and  
9 railroading are, are terms that were not my experience  
10 from the discussion that we had.

11 Now back to the issue before us today. If it  
12 is, and I said this earlier but I need to say it again  
13 because we've, we've been rather far ranging, if we were  
14 to go to an evidentiary hearing on this, I would like to  
15 be clear in my mind and hopefully publicly what it is we  
16 are hoping to accomplish at that hearing.

17 In response to my, one of my earlier questions  
18 Commissioner Skop I believe said that one of the goals  
19 would be to renegotiate the contract that was brought to  
20 us. I am not sure that an evidentiary hearing is  
21 necessarily the best way to accomplish that, but that,  
22 again, is part of the discussion that we're having, if  
23 indeed that is our goal.

24 Commissioner Skop and Mr. Zambo, I believe you  
25 have both said that one of the things that we should do

1 is to try to give clearer direction to all interested  
2 parties as to what the standard of this Commission may  
3 be above avoided cost, a certain threshold or whatever.  
4 And, again, I am, I am not convinced that an evidentiary  
5 hearing would be the best way to accomplish that if  
6 indeed as a Commission that's a step we want to take.

7 So what I'm throwing out there is perhaps just  
8 for discussion maybe what we want to do is go have a  
9 workshop, discuss the issue of avoided cost, discuss  
10 what the statutes are. We've referred -- and this may  
11 be a bad idea, I don't know, but it's what keeps coming  
12 back to me through this discussion. We've referred  
13 frequently to the workshops that we had when we put  
14 forward our RPS rule proposal. I think that was an  
15 excellent process. I said so at the time. I still  
16 think so. But the fact remains, as Commissioner Skop  
17 and others have said, the world has moved forward since  
18 then. And to restate the obvious, the Legislature did  
19 not adopt our proposal.

20 So perhaps if indeed -- I don't believe that  
21 in an order based on a specific proposal is necessarily  
22 the best or most appropriate way for us to give  
23 direction to other projects. And, you know, with all  
24 respect, Mr. Zambo, that's just not what I think would  
25 be the best way to do it. But if that is something that



1 this Commission wants to consider, then let's, you know,  
2 put forward that idea and ask for interested parties to  
3 participate. Maybe it is appropriate to go to  
4 rulemaking, as I think was suggested on that. I don't  
5 know. But that is a discussion -- I almost feel like  
6 the old phrase, apples and oranges. At one point we're  
7 talking about a specific contract, should we renegotiate  
8 it from the bench, should we not, or what is the role of  
9 a potential standard above avoided cost, realizing the  
10 competing policy objectives that we have?

11 So I'd just put that out, out for possible  
12 consideration because I do think we're talking about a  
13 couple of different tracks. And if we're going to spend  
14 more time, and it may be the right thing to do, more  
15 time on this specific proposal, then I think we should  
16 be clear that that's what we're doing. If we're trying  
17 to add clarity and have other policy discussions, I  
18 would prefer if we were clear about that as well.

19 **COMMISSIONER STEVENS:** Commissioner Klement  
20 and then Commissioner Skop.

21 **COMMISSIONER KLEMENT:** Thank you, Mr.  
22 Chairman.

23 **COMMISSIONER STEVENS:** Yeah. Thanks.

24 **COMMISSIONER KLEMENT:** Thank you, Chairman.

25 I recall the discussion the first time this

1 came up in October and again later, and I recall  
2 Mr. Trapp's plea to us to give him a standard, his staff  
3 a standard, if we were going to adopt this over above  
4 avoided cost, what that would be. I agree with  
5 Commissioner Edgar that we can't settle that on the, on  
6 the back of this case. I think we need to dispose of  
7 this case in whatever way seems appropriate within the  
8 statutory limits that we have and discuss a new avoided  
9 cost standard separately.

10 **CHAIRMAN ARGENZIANO:** Are you done,  
11 Commissioner Klement?

12 Okay. Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you. And I  
14 appreciate Commissioner Klement's point. I think that  
15 it was well taken.

16 And to Commissioner Edgar's point, you know,  
17 certainly if we're going to depart from past precedent,  
18 we need an objective benchmark standard to follow so  
19 that everyone is on constructive notice that, what the  
20 expectations are and it gives regulatory certainty to  
21 any petition coming before the Commission on a  
22 forward-going basis.

23 With respect to this contract, you know, going  
24 to evidentiary hearing, there's pros and cons, there's a  
25 competing position. You could fall back and approve the

1 staff recommendation and let the parties determine  
2 whether, as you've raised the issue previously, whether  
3 TECO ratepayers should absorb some of this -- or  
4 shareholders, not the ratepayers. So I stand corrected  
5 on that.

6 But, you know, doing an evidentiary hearing  
7 does have some merit because you look at the, some of  
8 the facts that we've discussed here today and get them  
9 in the evidentiary record. And then whatever the  
10 Commission chooses to do in the ultimate disposition of  
11 the case is up to the Commission.

12 You know, my interest in bringing this forth  
13 is merely to try and bring visibility to the issues. I  
14 respect the majority's decision. I just have concerns  
15 related to the cost-effectiveness of this project, and  
16 at the end of the day what I'm really trying to  
17 accomplish is save TECO from making a hundred million  
18 dollar mistake for its ratepayer.

19 **CHAIRMAN ARGENZIANO:** Thank you. I'm not sure  
20 where we're at, but I have -- Mr. Zambo has, has some  
21 real concerns that we need to address too for any  
22 renewable generator out there or user or -- we need to  
23 make those things clear. And I think it's incumbent  
24 upon all of us to make sure that we get that out so they  
25 know the rules to play by, so everybody does.

1           **MR. ZAMBO:** Madam Chair, can I make a comment?

2           **CHAIRMAN ARGENZIANO:** Yes, please. Please.

3           Go right ahead.

4           **MR. ZAMBO:** I didn't quite get to the bottom  
5           of my list.

6           **CHAIRMAN ARGENZIANO:** Okay. No. Continue.  
7           That happens around here.

8           **MR. ZAMBO:** The last, the last item is I just  
9           wanted to make a comment that Mosaic is seriously  
10          looking at filing a protest anyway. So this may all  
11          become moot. That's all due, due on the 15th, the 15th  
12          of February. So for whatever that's worth.

13                 But our -- I think when we file that protest,  
14                 I don't think you can limit it. We will allege in our  
15                 petition the, the reasons we are protesting the order,  
16                 and then that will to some extent control the, control  
17                 the agenda.

18                 But most of our, most of our issues are  
19                 really, are really legal issues, and so I've been trying  
20                 to figure out is there a way we can shortcut this by,  
21                 you know, putting the order on hold and address the  
22                 legal issues? Can they be relieved of the obligation to  
23                 build the interconnection? Does the Commission have the  
24                 authority to pay above avoided cost or to approve  
25                 contracts above avoided cost? Those are the kind of

1 things.

2 So I'm not sure -- I haven't thought it fully  
3 through, and I don't know if it would work, if it would  
4 end up delaying things further. But at least from  
5 Mosaic's perspective it seems like most of the issues we  
6 have concerns with are legal issues. So I throw that  
7 out to you, and that's pretty much the end of my  
8 comments.

9 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

10 **COMMISSIONER SKOP:** Thank you. And to two  
11 points made by Mr. Zambo. The first point, you  
12 previously stated Mosaic's concerns in relation to, you  
13 know, the fact that how does this decision translate  
14 into waste energy or heat energy provided by, by Mosaic,  
15 and where does Mosaic's interests fit into this not only  
16 as a ratepayer but as a provider of renewable energy,  
17 and how Mosaic may not be prejudiced by what's going on  
18 here. So I respect that, and you raised an important  
19 aspect.

20 And I know Mr. Twomey in the RF -- not --  
21 Mr. Twomey in the RPS proceedings beat this issue home  
22 about, you know, the cost-effectiveness of a renewable  
23 alternative, you should start with the most  
24 cost-effective first and work your way up. The  
25 Commission moved away from that and tried to adopt a

1 broad balance. I think that, you know, that's a valid  
2 point that you made and --

3 **CHAIRMAN ARGENZIANO:** But, Commissioner Skop,  
4 can I interject? There's also in the statute, I  
5 believe, something that says that there should be added  
6 weight to certain renewables and that there's an  
7 environmental component in that also. So while being  
8 cost-effective is in there, I think we also have to  
9 weigh in those other things also.

10 **COMMISSIONER SKOP:** Right.

11 **MR. BALLINGER:** The statute gave the  
12 Commission permission to add, to add additional weight  
13 to solar and wind.

14 **CHAIRMAN ARGENZIANO:** Yes, which is --

15 **MR. BALLINGER:** Which we did in our draft  
16 rules of the RPS.

17 **COMMISSIONER EDGAR:** Right. And that is a  
18 policy decision made by the Legislature.

19 **MR. BALLINGER:** Right.

20 **CHAIRMAN ARGENZIANO:** So that has to be taken  
21 into consideration, but not to the detriment of other  
22 renewables. That is, that is a consideration that is  
23 added weight to, according to the Legislature.

24 Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you. And just my

1 second point, Mr. Zambo indicated that, you know,  
2 irrespective of what the Commission may do, that, you  
3 know, if it comes down to it, this, this docket would  
4 likely be protested. And, and if that were the case,  
5 you know, to get full vetting of the issues, should the  
6 Commission not agree with my position, I would hope that  
7 Public Counsel in the interest of TECO ratepayers would  
8 join in that.

9 **CHAIRMAN ARGENZIANO:** Was that an invitation?

10 **COMMISSIONER SKOP:** It is.

11 **CHAIRMAN ARGENZIANO:** Okay.

12 (Laughter.)

13 All right. Well -- all right. Commissioners,  
14 I think we've -- Curt.

15 **MR. KISER:** Yeah. Madam Chairman, the point  
16 that I wanted to make is that, you know, the RPS rule is  
17 one issue, and there's specific authority, you know, for  
18 that.

19 However, when you start getting into the issue  
20 of perhaps going to rulemaking to figure out exactly  
21 how, how far above avoided costs are going to be  
22 permitted, that may very well be an unadopted rule.

23 **CHAIRMAN ARGENZIANO:** Well, the RPS rule is  
24 not, the Legislature has not taken that up.

25 **MR. KISER:** Well, I realize that. But I'm

1 just saying that the authority -- you've got to go back  
2 to it. You know, the Legislature has been very clear  
3 over the last number of years: You have to have very  
4 specific authority today to do any rule.

5 **CHAIRMAN ARGENZIANO:** Authority. Absolutely.

6 **MR. KISER:** And that was intended from day  
7 one, but the courts and some others didn't understand  
8 that. So it wasn't until 1996 that they finally really  
9 tied it down and made it real clear.

10 **CHAIRMAN ARGENZIANO:** I remember.

11 **MR. KISER:** You have to have very specific  
12 authority or you can't do it. The authority for the RPS  
13 rule is there. But when you get to the other issue of,  
14 for example, how high a percentage amount or whatever  
15 above avoided cost that you might want to do as a rule  
16 so that you don't, you don't get into these unadopted  
17 policies, at this first blush of going through it, just  
18 trying to sit here, I haven't seen any specific  
19 authority to do that yet.

20 **CHAIRMAN ARGENZIANO:** Well, that was going to  
21 be my next question to staff is where is our authority  
22 to go above avoided costs? And I remember that very  
23 well with MAPTAC (phonetic) and EPA (phonetic) and all  
24 that great stuff. And it's, it is, it is definitely a  
25 legislative concern when an agency of any kind, even if



1 it's an arm of the Legislature, goes above their  
2 delegated legislative authority. So I -- duly noted.  
3 And, staff, what is, if any, our statutory authority to  
4 go above avoided costs?

5 **MR. KISER:** And I have dealt in that area  
6 extensively, and I handled one of the major landmark  
7 cases after the legislative changes and prevailed on it  
8 in front of the district court and eventually the  
9 Supreme Court on a situation where the governor and  
10 cabinet exceeded their authority. And they specifically  
11 cited the changes to the statute saying that under the  
12 new requirement they don't have authority to do that.  
13 They have extended -- they have gone too far. And that  
14 is why I was going through here while we were talking.

15 **CHAIRMAN ARGENZIANO:** So, then, can I ask this  
16 question, does this beg the question, then, of should we  
17 move forward with an evidentiary hearing for these  
18 purposes, for a lot of these purposes?

19 **MR. KISER:** I think that is an issue that  
20 seriously needs to be examined, and if we find that we  
21 don't currently have that authority, then that may be  
22 something that we want to try to get through this year,  
23 if we can, regardless of what happens to the RPS rule.  
24 That is kind of separate issue.

25 **CHAIRMAN ARGENZIANO:** Can I ask a second part

1 to that? If we don't have specific legislative  
2 authority to go above avoided costs, why are we even  
3 talking about it?

4 **MR. KISER:** Well, you have pretty broad  
5 authority and discretion to do certain things, but when  
6 you start trying to put it down to a rule that you can't  
7 go -- let's say --

8 **CHAIRMAN ARGENZIANO:** That you have no  
9 statutory --

10 **MR. KISER:** Yes. Once you say you're going to  
11 limit it to no more than two percent, at that point then  
12 you probably need a rule to do that. Whereas, I think  
13 you can get by in a gray area, that as long as you have  
14 discretion to do certain things and it doesn't prohibit  
15 you from doing that, specifically prohibit that, then  
16 your actual decisions can probably be at a variance with  
17 that.

18 **CHAIRMAN ARGENZIANO:** Well, then may I ask is  
19 this a JAPC issue?

20 **MR. KISER:** Yes.

21 **CHAIRMAN ARGENZIANO:** I thought so. Okay. So  
22 then we need to probably make sure that we send a letter  
23 to JAPC.

24 Commissioner Edgar.

25 **COMMISSIONER EDGAR:** Thank you, Madam Chair.

1 I'm beginning to feel like I'm repeating  
2 myself, but I'm going to say it again anyway. If we  
3 have substantial concerns as to whether we have the  
4 authority to approval a proposal above avoided cost  
5 separate from the 110 megawatts, then I think that  
6 brings us back to the initial staff recommendation on  
7 this proposal. And if, indeed, we have those strong  
8 concerns, then I'm not sure what the benefit of an  
9 evidentiary hearing on this specific proposal would be.

10 Secondly, I think, although I would want to  
11 before I gave my own independent legal analysis, I would  
12 want to look at it more specifically, but just as a  
13 general, I have concerns that we have the authority to  
14 actually do -- promulgate a rule setting a threshold.  
15 But yet I feel like we have been getting some requests  
16 and having some discussion that that may be something to  
17 look at or consider.

18 So with that, I will reiterate my suggestion  
19 that we consider, and we don't have to make this  
20 decision today, but that we consider potentially maybe  
21 having some workshops on this issue in whatever way  
22 Commissioners feel would be to the most benefit to our  
23 continued education and thought process.

24 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you, Madam Chair.

1           And to Commissioner Edgar's point, I think  
2           that we are running into obviously issues that have come  
3           up, Curt -- Senator Kiser has raised some issues about,  
4           you know, the statutory authority to engage in  
5           rulemaking to going above avoided costs that is  
6           currently in the statute. Commissioner Edgar, I think,  
7           has suggested that there may be some merit in having  
8           additional workshops as well as perhaps regressing back  
9           to the original staff recommendation as a disposition on  
10          this matter, and then let the parties make the decision  
11          whether they want to build it or not, thereby kind of  
12          bringing us in for a landing in an expeditious manner.  
13          And then Commissioner Stevens has, I think, supported my  
14          view of maybe doing an evidentiary hearing, but I'm  
15          open-minded, so I'm looking for consensus.

16                 If the Commission as a whole would want to  
17          regress back to the original staff recommendation, I'm  
18          comfortable with that to dispose of this matter. If  
19          not, we can set it for evidentiary hearing, and I'm  
20          comfortable with that. But I think I have made the  
21          points I need to make today.

22                   **CHAIRMAN ARGENZIANO:** Let me ask a question,  
23          then, Curt. We are dealing with an issue above avoided  
24          cost today. We have it here, so if there's a question  
25          as to whether we have authority to do that, how do we

1 move forward today?

2 (Inaudible. Microphone off.)

3 **CHAIRMAN ARGENZIANO:** Well, if we don't have  
4 authority now, now there's all of these other issues  
5 that have come about, and I'm going to give everybody a  
6 chance to say something, but I want to hear from our  
7 counsel. If we don't really have specific authority to  
8 do that and that is a question raised, why should we  
9 move forward?

10 **MR. KISER:** I think -- whether or not that  
11 issue was looked into by the staff before I got here, I  
12 don't know, and I don't know if they had determined that  
13 they could go above avoided cost or whether it was  
14 somewhat unclear and it was just a vague area, and if  
15 that happened it happened. I mean, obviously their  
16 recommendation -- their recommendation, of course, was  
17 to go that route, so there really wasn't a question.  
18 And at the time that the Commission then went ahead and  
19 voted to go above that, I don't know if any research was  
20 done by the legal staff at that time on whether we could  
21 go above it. I don't know.

22 **MS. BRUBAKER:** I can say during the first  
23 agenda we had this item there was much more extensive  
24 discussion about avoided cost and what the Commission's  
25 statutory authority was to go above avoided cost or

1 whether we were statutorily restricted, and there was a  
2 lot of discussion that there was not a specific  
3 prohibition in the statutes about going above avoided  
4 cost. And there was also discussion about whether there  
5 was sufficient discretion under our broad grant of  
6 discretion to do so. And I think the order does reflect  
7 the substance of what the Commission ultimately decided,  
8 which was in an effort to promote renewable energy  
9 pursuant to the statute that we were going to -- the  
10 Commission was going to approve this project.

11 To be honest, I had concerns in that first  
12 agenda, and I have continuing concerns about whether  
13 going above avoided cost under our current legislative  
14 mandate is appropriate. And I think the amount of  
15 discussion we had on that indicates it is a very live  
16 issue.

17 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

18 **COMMISSIONER SKOP:** And briefly, again. I  
19 tried to articulate those same concerns in the course of  
20 the dissent about, you know, what would result from  
21 abrogating that avoided cost precedent and how that  
22 creates a slippery slope without a basis for a decision.  
23 So, again, I'm comfortable with whatever way the  
24 Commission wants to dispose of this matter.

25 **CHAIRMAN ARGENZIANO:** Mr. Cherry, did you have

1 a comment? And then Mr. Zambo.

2 **MR. CHERRY:** Yes. Quickly, Madam Chairman.  
3 In the previous agenda meetings, we discussed staff's  
4 initial recommendation, and there is a specific  
5 provision in the contract that requires Tampa Electric  
6 to be able to recover the full cost of the solar  
7 electric generation, and I can let Mr. Beasley speak for  
8 himself, as he has in the past, as to their willingness  
9 to go forward with this contract in the absence of that  
10 approval.

11 **CHAIRMAN ARGENZIANO:** Mr. Beasley.

12 **MR. BEASLEY:** Tampa Electric is not in a  
13 position to go forward with the agreement if we are not  
14 approved for all costs paid to Energy 5.0 under the  
15 agreement.

16 **CHAIRMAN ARGENZIANO:** So you are not in favor  
17 of going back to staff's original recommendation?

18 **MR. BEASLEY:** No, ma'am.

19 **CHAIRMAN ARGENZIANO:** Oh, we are getting  
20 better all the time.

21 Mr. Zambo.

22 Hang on, Commissioner Skop.

23 **MR. ZAMBO:** Two minor comments, Madam  
24 Chairman.

25 In light of what Mr. Kiser said earlier about

1 not having the statutory authority to do a rulemaking on  
2 above avoided cost, it just occurs to me you currently  
3 have a rule that limits negotiated contracts to avoided  
4 cost, so I would think logically if you have a rule that  
5 limits it to avoided cost, you probably don't have the  
6 statutory authority to override that rule.

7 And the second point I want to make is there  
8 has been comment at this agenda and the last agenda  
9 about the Commission having the ability to discriminate  
10 among different technologies, solar and wind. In my  
11 view, in my legal opinion that was only in the context  
12 of a renewable portfolio standard where there is not  
13 actually a price set, but the utilities, in an effort to  
14 meet that standard, will go out into the market and  
15 offer higher prices. Since that rule was not adopted, I  
16 don't think the -- I don't think that carries over into  
17 avoided cost. So my view would be all renewable  
18 facilities who bid on an RFP for renewable power should  
19 all be put in the same basket and you take the lowest  
20 price. Thank you.

21 **COMMISSIONER EDGAR:** On that point I agree  
22 with Mr. Zambo's analysis.

23 **MR. ZAMBO:** Thank you. I must be doing  
24 something right.

25 **CHAIRMAN ARGENZIANO:** Commissioner Skop and



1 then Mr. Wright.

2 **COMMISSIONER STEVENS:** And I think to  
3 Commissioner Edgar's point, that was a point, again,  
4 raised extensively by Mr. Twomey during the RPS  
5 discussion.

6 **CHAIRMAN ARGENZIANO:** It was.

7 **COMMISSIONER SKOP:** You work your way up to  
8 the higher cost alternatives recognizing that there is  
9 some statutory discretion the Commission can use to  
10 incentivize certain renewables. But to Mr. Beasley's  
11 representation as to if we do not approve the project as  
12 the majority currently has there will be no project  
13 because neither party is comfortable with the staff  
14 recommendation or regressing back to that. Would there  
15 not be some merit, given the cost considerations raised  
16 today, for TECO just to seek a voluntary withdrawal of  
17 this entire negotiation in light of some of the cost  
18 concerns I have raised and how it might affect TECO's  
19 ratepayers?

20 **MR. BEASLEY:** I think we are obligated to  
21 pursue approval of that agreement, which we have done,  
22 sir.

23 **COMMISSIONER SKOP:** And so I guess that brings  
24 us in the conundrum, Commissioners, as to whether we  
25 want to move to evidentiary hearing or regress back to

1 Commissioner Edgar's suggestion of disapproving the  
2 original staff recommendation and let the project, you  
3 know, meet its demise.

4 **CHAIRMAN ARGENZIANO:** Well, here is what I  
5 see, and somebody correct me. If we go back to staff's  
6 original recommendation that kills the project. If you  
7 go to -- and obviously I'm sure the companies are  
8 hearing the concerns, and there are some legitimate  
9 concerns to warrant or possibly warrant a vote to go  
10 back to -- or to go to an evidentiary hearing. And if  
11 it means not killing the project, I would rather go to  
12 the evidentiary hearing than to kill the project and  
13 gather more information.

14 **COMMISSIONER EDGAR:** Thank you. And just,  
15 again, so that I'm clear, would that mean, if this is a  
16 question that can be answered, that if we go through an  
17 evidentiary hearing and the result is exactly the vote  
18 that we made that the project may go forward, but if  
19 after that evidentiary hearing, this Commission were  
20 potentially or hypothetically to reach a decision  
21 slightly different, would that be a different result?

22 In other words, if we go through an  
23 evidentiary hearing and we come back with a vote that is  
24 exactly where we are today, but if we go through an  
25 evidentiary hearing and we were, as a Commission, to

1 make a decision that is different, would that kill the  
2 project? And that may be an important point or not,  
3 but, yet --

4 **CHAIRMAN ARGENZIANO:** True. But without  
5 knowing the particulars of how it would change, I don't  
6 know how you can answer that today. Because it could  
7 change minor, it may not change at all, and in the event  
8 it does change, who knows what the change would be.

9 **MR. KISER:** I was just going to say there are  
10 so many possibilities. I mean, the Legislature is going  
11 to be meeting in a month; they might address some of  
12 these issues. Congress may get its act together and do  
13 something that makes a project that we didn't think was  
14 good before or marginal, maybe it makes it better or  
15 makes it worse. There is just so many things that could  
16 happen and there is so much happening in this area now  
17 that it is really hard to speculate too far down that  
18 road.

19 **CHAIRMAN ARGENZIANO:** Mr. Beasley, did you  
20 want to comment?

21 **MR. BEASLEY:** It would depend entirely upon  
22 what the outcome of the ruling was, what changed, what  
23 didn't change, as you said.

24 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you, Madam Chair.

1           And, again, my suggestion of maybe regressing  
2 back to the staff recommendation was predicated on  
3 Commissioner Edgar's suggestion. I was just trying to  
4 build some consensus there respecting the views of my  
5 colleagues. But I agree that moving forward with an  
6 evidentiary hearing at least puts things in a holding  
7 pattern so we can get more information, which would go a  
8 long way in answering my questions.

9           I think Commissioner Klement had questions  
10 that didn't get answered at the last agenda, and I don't  
11 want to speak for him, but it also kind of preserves  
12 everyone's options until we see what happens. But I'm  
13 comfortable going either way, and I just want to build  
14 consensus with my colleagues.

15           **CHAIRMAN ARGENZIANO:** Mr. Wright, I'm sorry,  
16 go ahead.

17           **MR. WRIGHT:** Very briefly, Madam Chair and  
18 Commissioners. Thank you.

19           Kind of to bring this in for a landing from  
20 Energy 5.0's perspective, I will say I believe, and  
21 somebody who has been doing this for a really long time,  
22 and Energy 5.0 believes that the best way to proceed  
23 today, answering Commissioner Edgar's somewhat  
24 rhetorical question, the best way to proceed earlier  
25 today, the best way to proceed is to leave the

1 Commission's proposed agency action order undisturbed.

2 The Commission's processes have been running  
3 their course for 11 months now. We would ask you to  
4 leave the order undisturbed. If Mosaic asks for a  
5 hearing or if another party who can establish standing  
6 asks for a hearing by the close of business on Monday,  
7 then we assume the Commission will issue a procedural  
8 order setting the matter for hearing, and we'll have to  
9 regroup and figure out where we are at that time. But  
10 we would ask you to let your processes run their course.  
11 Thank you.

12 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you.

14 And to Mr. Wright's comments, again, I can't  
15 support that in good faith, because if I'm reliant upon  
16 the parties to protest, they control the scope of the  
17 protest, and I don't think Mr. Zambo's interests in this  
18 are exactly aligned with the issues that I'm raising,  
19 and I would have to detrimentally rely upon Mr. Zambo or  
20 Public Counsel to uphold the interest of TECO  
21 ratepayers, and so I'm not comfortable with that  
22 solution.

23 **CHAIRMAN ARGENZIANO:** And I wouldn't expect  
24 you not to try for that solution, but there are --

25 **MR. ZAMBO:** Madam Chairman.

1           **MR. ATKINSON:** -- a lot of concerns that have  
2           been raised. Mr. Zambo.

3           **MR. ZAMBO:** I am representing a TECO customer,  
4           a very large TECO customer, so you can be assured that  
5           those interests will be pursued.

6           **CHAIRMAN ARGENZIANO:** Oh, boy. Did you want  
7           to --

8           **COMMISSIONER SKOP:** I think I can make a  
9           motion now. Is that correct? All right. Madam Chair,  
10          with all due --

11          **CHAIRMAN ARGENZIANO:** Wait a minute. Before  
12          you make a motion, has everyone finished the discussion?  
13          Because understand what is on the table and  
14          understand -- the parties understand there's a lot of  
15          questions and concerns on -- and legitimate questions,  
16          some very legitimate questions. And the issue now  
17          probably -- if everybody is done with their questions.  
18          I want to make sure. Any other discussion?

19          **COMMISSIONER EDGAR:** Unless I have specific  
20          questions regarding what the motion is.

21          **CHAIRMAN ARGENZIANO:** All right. You're  
22          recognized, Commissioner Skop.

23          **COMMISSIONER SKOP:** Thank you, Madam Chair.  
24          Having reconsidered the prior decision before  
25          us and having substantial discussion, I respectfully

1 move to vacate the Commission's PAA order and set the  
2 matter for evidentiary hearing at the earliest possible  
3 date.

4 **COMMISSIONER KLEMENT:** Second.

5 **COMMISSIONER STEVENS:** Second.

6 **CHAIRMAN ARGENZIANO:** We have got two seconds.

7 All in favor, say aye.

8 (Vote taken.)

9 **CHAIRMAN ARGENZIANO:** Opposed? Show that  
10 approved.

11 And any other comments? Thank you.

12 \* \* \* \* \*

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STATE OF FLORIDA     )  
  
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CERTIFICATE OF REPORTERS


WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

WE FURTHER CERTIFY that we are not a relative, employee, attorney or counsel of any of the parties, nor are we a relative or employee of any of the parties' attorneys or counsel connected with the action, nor are we financially interested in the action.

DATED THIS 22nd DAY OF FEBRUARY, 2010.

  
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