BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewable Portfolio Standard Program	Rulemaking. 11-05-005 (Filed May 5, 2011)

OPENING COMMENTS OF NEXTERA ENERGY RESOURCES, LLC ON PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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On behalf of NextEra Energy Resources, LLC

October 27, 2011

SUBJECT INDEX LISTING RECOMMENDED CHANGES TO THE PROPOSED DECISION

TABLE OF AUTHORITIES

Page Number

STATUTES

ORDERS

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I. INTRODUCTION

Pursuant to Article 14 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), NextEra Energy Resources, LLC ("NextEra") submits these opening comments on the Proposed Decision of Administrative Law Judge Simon Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program ("Proposed Decision"). The Proposed Decision implements the three new portfolio content categories in California Public Utilities Code Section 399.16(b) ("Section 399.16(b)") as adopted in recent legislation.[1] Going forward, these new categories will determine the products to be purchased by load serving entities ("LSEs") to meet their obligations under California's renewables portfolio standard ("RPS").

NextEra appreciates the Commission's efforts to implement the changes enacted in SB 2(1X) in an expeditious manner. Establishing clear rules and interpretations for the portfolio content categories will allow buyers and sellers to transact efficiently and with certainty regarding the products that qualify in each new category. With clear rules in place, market participants can engage in transactions that facilitate timely achievement of the RPS goals.

While the Proposed Decision provides helpful clarity on many elements of the new portfolio content categories, it also raises a few concerns. One significant concern is the requirement, reflected throughout the Proposed Decision, for utilities requiring Commission

[1] Senate Bill 2(1X) (Simitian), Stats. 2011, ch. 1, enacted in the 2011-2012 First Extraordinary Session of the Legislature ("SB 2(1X)"). The changes enacted in SB 2(1X) will be effective December 10, 2011.

approval of their RPS procurement contracts to make an "upfront" demonstration in the advice letter process that the products to be procured under the contract at issue will qualify under specific portfolio content categories. This requirement would constrain transactions by imposing a cumbersome and unrealistic contract approval process that is of little benefit given that upfront approval will not (and should not) substitute for the compliance determination that must be made for utilities' RPS compliance filings. The Proposed Decision also presumes that most RPS product transactions will be long-term supply contracts between an LSE and the owner of a generating resource, with little recognition of the broad range of transactions that could involve marketers and other third party intermediaries between LSEs and generating resources. A framework that does not recognize and facilitate these third party transactions is likely to reduce market liquidity by allowing fewer market participants and less flexibility in RPS transactions. This would not serve the goals of California's RPS program. A liquid market with many participants is critical for providing LSEs access to the necessary RPS products at a reasonable cost, and for reducing transaction risk.

As described below, to avoid potential constraints on the market, the Commission should modify the Proposed Decision to remove the requirement for an upfront compliance determination when RPS contracts are filed for approval. Instead, the focus should be on establishing clear rules and guidelines for LSEs to demonstrate in their compliance filings that purchases qualify under the appropriate portfolio content categories. NextEra recommends a few additional changes to clarify elements of the Proposed Decision's interpretation of the portfolio content categories, as also described below.

II. COMMENTS AND RECOMMENDED CHANGES TO THE PROPOSED DECISION

A. Requiring an "upfront" compliance determination at the time of contract approval is an unnecessary burden that should be eased in favor of establishing clear rules and guidelines for demonstrating compliance in LSEs' compliance filings.

The most troubling aspect of the Proposed Decision is its requirement that utilities seeking Commission approval of their RPS procurement contracts must make an "upfront" showing in the advice letter process that the products to be procured under the contract will

qualify under specific portfolio content categories.[2] As described in the introduction, this upfront showing is unnecessarily burdensome and will have detrimental impacts on the market. The upfront process cannot substitute for the demonstration that must be made in the post-purchase compliance filing. Forcing utilities to provide an upfront compliance demonstration would be of limited value because it would not provide reliable assurance that all purchases under the approved contract will actually qualify at the time the compliance demonstration is made. The upfront showing would impose a significant burden with little benefit.

The requirement also may discourage flexibility in contracts. Transactions with RPS resources located outside California could involve a combination of products that qualify under more than one portfolio content category, making it difficult to prove how much product will qualify in each category. For example, there could be sales of products in the first portfolio content category (*e.g.*, energy that is scheduled hourly into a California balancing authority without substituting electricity), and products in the second portfolio content category (*i.e.*, energy that is firmed and shaped). The contract may establish one price for the production that is scheduled hourly under the first category, and a different price for the energy that is not scheduled hourly due to overgeneration or transmission constraints, but that may satisfy the second portfolio content category as firmed and shaped energy. In that transaction, neither the buyer nor the seller will have certainty regarding how much energy will fit into each category over time given the dynamics of the system and expected variation in production. Requiring an upfront compliance showing is likely to constrain creative commercial transactions that maximize the benefit of the renewable generation and the flexibility of buyers to manage their RPS compliance obligations.

Rather than making the advice letter process more burdensome in this manner, the Commission should establish requirements in the final decision for what must be demonstrated and documented when LSEs submit their RPS compliance filings identifying the products purchased in each portfolio content category. At the compliance filing stage it is reasonable to require LSEs to demonstrate and document that their purchases do in fact qualify for treatment under the claimed portfolio content category. Establishing clear compliance rules and counting methodologies in the final decision will facilitate that process and make it more efficient.

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[2] Proposed Decision, pp. 12-14.

To reflect these changes, NextEra recommends deleting the following Conclusions of Law and Ordering Paragraphs in the Proposed Decision:

Delete Conclusion of Law 6: "~~In order to provide value to ratepayers and promote the fair and efficient administration of the RPS program, IOUs should be required to make an upfront showing of the new portfolio content category or categories of procurement in contracts submitted for Commission approval~~."

Delete Conclusion of Law 10: "~~Because new types of information will be necessary to evaluate the value to ratepayers of IOUs' procurement that meets the requirements of the new portfolio content categories, the Director of Energy Division should be authorized to develop methods for evaluating the value to ratepayers of IOUs' procurement meeting the requirements the new portfolio content categories and to require IOUs to provide necessary information, as determined by the Director of Energy Division, for such evaluation at the time an IOU seeks Commission approval of an RPS procurement contract.~~"

Delete Ordering Paragraph 4: "~~In submitting any contract for procurement to meet the California renewables portfolio standard to the Commission for approval on or after December 10, 2011, an investor owned utility must provide sufficient information for the Commission to evaluate, without limitation and in addition to any other requirements for information, the following elements: the claimed portfolio content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio category~~."

Delete Ordering Paragraph 5: "~~The Director of Energy Division is authorized to require any investor owned utility that has submitted a contract for procurement to meet the California renewables portfolio standard that was signed after June 1, 2010 but was not approved by the Commission prior to December 10, 2011 to provide additional information to allow the Commission to evaluate, without limitation and in addition to any other requirements for information, the following elements: the claimed portfolio content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio category.~~"

Delete Ordering Paragraph 6: "~~The Director of Energy Division is authorized to develop any methods and requirements for information to be provided by investor owned utilities seeking approval of contracts for procurement to meet the California renewable portfolio standard to allow the Commission to evaluate,~~

~~without limitation, the following elements: the claimed portfolio content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio content category~~."

B. For products that are "scheduled into a California balancing authority without substituting electricity," the Proposed Decision should be modified to recognize that the real time ancillary services necessary to maintain an hourly or subhourly import schedule can be provided by entities other than the host balancing authority where the renewable facility is located.

The Proposed Decision addresses the three portfolio content categories established in new Section 399.16(b). The first portfolio content category (Section 399.16(b)(1)) generally applies to electricity purchased from an in-state eligible renewable energy resource. But Section 399.16(b)(1)(A) includes a subcategory for products that "are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source." Section 399.16(b)(1)(A) specifies that "the use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category."

The Proposed Decision lists the eligibility criteria for products in this subcategory as:

- without substituting electricity from another source;
- real-time ancillary services;
- hourly or subhourly import schedule; and
- fraction of the schedule generated by the RPS-eligible generator.[3]

The Proposed Decision distinguishes "real-time ancillary services," which are permitted under the statute if needed to "maintain an hourly or subhourly import schedule," as being different from "substitute energy," and finds that:

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[3] *Id.*, p. 19.

> Real-time ancillary services are **provided by the host balancing authority (i.e., the balancing authority where the RPS-eligible generator is interconnected)** to maintain the import schedule if variations occur on an hourly or subhourly basis. Unlike substitute electricity, the ancillary services are not the electricity that is actually scheduled.[4]

This statement requires modification to avoid being interpreted as a requirement that real-time ancillary services can be provided only by the balancing authority where the generator is interconnected. In reality, real-time ancillary services are not always provided by the host balancing authority or control area. An entity scheduling renewable energy to a California delivery point can arrange for ancillary services from a control area that is not associated with the host control area or the control area of the sink (*i.e.*, the receipt point for the renewable energy). The Proposed Decision should be modified to recognize this.

The statute clearly specifies that only the renewable energy simultaneously generated and delivered to a California control area on an hourly or subhourly basis can be counted for the first portfolio content category. Because any ancillary services used to maintain the import schedule will be netted from the calculation of energy that is eligible for "first category" status, it is not necessary to specify or limit the source of the ancillary services. As reflected in the Proposed Decision, as long as there is not a substitution of energy, it should not matter which entity provides the ancillary services needed to maintain the import schedule.

To make this point clear and avoid unnecessary restrictions on the market for products in the first portfolio content category, NextEra recommends modifying Finding of Fact 5 to include the following language from Section 399.16(b)(1)(A) (additions shown in bold, underlined text):

> ***Modify Finding of Fact 5***: "Electricity from a generation facility located outside the boundaries of a California balancing authority may be scheduled into a California balancing authority on an hourly or subhourly basis without the substitution of energy from another source**, and the use of any other source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category.**"

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4 *Id.*, pp. 19-20 (emphasis added).

NextEra agrees with the Proposed Decision's determination that holding firm transmission rights is not required to ensure that an RPS-eligible resource is scheduled hourly without substitution.[5] Having firm transmission rights in place may add value to a transaction that will be reflected in its commercial terms, but requiring this as a condition of eligibility would result in inefficient use of the transmission system, would unnecessarily limit market participation, and is not required to ensure hourly energy schedules.

C. The Proposed Decision should be modified to adopt the methodology for measuring energy "scheduled into a California balancing authority without substituting electricity" as the lesser of: (1) actual hourly generation at the renewable facility as measured by meter data; and (2) energy scheduled for the hour from the renewable facility and documented in an e-Tag.

The Proposed Decision notes that transactions in the Section 399.16(b)(1)(A) group, *i.e.*, those that are "scheduled to a California balancing authority without substituting electricity," require "a transmission path from the renewable generating facility to the California balancing authority in real time."[6] NextEra and a number of other parties recommended that the approach most consistent with Section 399.16(b)(1)(A) is to measure the quantity of renewable energy that is eligible for this group as the "lesser of": (1) the meter data from the renewable facility, which shows actual renewable energy production and determines the quantity of renewable energy credits ("RECs") that are recognized for the resource in WREGIS; and (2) the amount of energy from the resource that is documented using an e-Tag, which shows the amount of energy being scheduled to a California balancing authority. Consistent with the statutory criteria, this "lesser of" figure demonstrates the amount of renewable energy that is scheduled to the California balancing authority without substituting energy from another source.

Based primarily on arguments by PacifiCorp, the Proposed Decision expresses concern with this approach and finds that "the current functionalities of WREGIS and e-Tags were not designed with SB 2(1X) in mind, and cannot provide information by which the Commission can determine with a high level of confidence that RPS procurement could or did meet the statutory

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5 *Id.*, p. 22.

6 *Id.*, p. 23.

requirements of Section 399.16(b)(1)(A)."[7] The Proposed Decision also finds that there is no existing system that in the near term can gather all of the data necessary to operationalize and document the product categorization language for this criterion. The Proposed Decision essentially defers the development of a methodology to a later time, but requires utilities to make an upfront showing that the criteria of Section 399.16(b)(1)(A) will be met when they submit a contract for Commission approval, and requires all retail sellers to provide documentation that the criteria in fact have been met when they submit compliance filings.[8]

NextEra urges the Commission to approve a methodology in this decision for measuring energy that is "scheduled without substituting electricity" rather than deferring the issue to a future time. NextEra agrees with the Proposed Decision's finding that the following should be demonstrated to qualify for the "scheduled without substituting electricity" element of the first portfolio content category:

- how much RPS-eligible energy was generated;
- how much generation was scheduled;
- how much generation was delivered;
- how much of the scheduled delivery was provided by ancillary services; and
- that none of the energy scheduled into the California balancing authority was substitute energy.[9]

NextEra disagrees, however, with the Proposed Decision's finding that existing systems are not capable of being used to make this demonstration. The Proposed Decision's lack of specificity regarding the methodology for demonstrating compliance could undermine the commercial viability of these types of transactions. By creating uncertainty about how transactions can qualify under this category, the Proposed Decision's findings will tend to discourage market participants from transacting within this product category. Deferral of this issue and the resulting uncertainty is also not necessary because, as explained below, a combination of hourly meter data from the renewable facility and the e-Tag schedule for the

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7 *Id.*, p. 25.

8 *Id.*, pp. 26-27.

9 *Id.*, p. 27.

facility can be used to determine how much energy was "delivered without substituting electricity" to a California balancing authority on an hourly basis.

First, it is possible to rely on e-Tag schedules to show how much energy is scheduled from an RPS-eligible facility on an hourly basis. While generators are not currently required to specify the generation source on an e-Tag, they can elect to do so. If a renewable generator chooses to specify the eligible source and the California receipt point for the energy on an e-Tag, then such specifications should be a valid means of demonstrating how much renewable energy was scheduled to the California balancing authority on an hourly basis. In other words, the Commission should recognize that an e-Tag can be used to demonstrate delivery but only if the generation source and the receipt point are specifically identified on the e-Tag. Establishing this requirement would strongly encourage generators to include the facility-specific information in the e-Tag, and the requirement could be further enforced by including it in LSEs' procurement contracts for this product content category. If there are specific types of resources that cannot be identified in an e-Tag, those circumstances could be addressed in a future ruling or on a case-by-case basis in the RPS compliance determinations. As a general rule, however, the Commission should specify that an e-Tag identifying the RPS-eligible generating resource and the associated California receipt point can be used to demonstrate that energy was scheduled to a California balancing authority on an hourly basis without substituting electricity.

Second, there are also existing systems that can be used to satisfy the other concern in the Proposed Decision – how to establish, on an hourly basis, the amount of energy generated at the RPS-eligible facility. The concern stated in the Proposed Decision seems to stem from the fact that WREGIS "posts" actual generation data on a monthly basis.[10] This is why NextEra and others proposed aggregating hourly generation documented by WREGIS and the hourly schedules established using e-Tags and then netting those amounts on a monthly basis. This remains the most efficient and administratively least burdensome approach.

If, however, the final decision establishes a requirement to demonstrate both hourly production and hourly schedules to the California balancing authority, existing systems can be used to obtain this data in an hourly format. The best means of demonstrating hourly production

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10 *Id.*, pp. 23-24.

is by using hourly meter data from the RPS facility and netting that against the hourly e-Tag schedule identifying the facility. The lesser of the two is the RPS delivered quantity. This will accurately show the amount of generation produced in a single hour and how much of the scheduled generation was delivered without substitution. The resulting calculation will automatically exclude ancillary services because ancillary services will not be included in the facility meter data.

NextEra strongly recommends adopting this methodology in the final decision rather than deferring the methodology to be developed by staff at a later time as proposed in the Proposed Decision. To accomplish this, NextEra recommends modifying the Proposed Decision's Findings of Fact as follows:

> ***Modify Finding of Fact 2***: "WREGIS aggregates information about RPS-eligible generation on a monthly basis**, but actual meter data from an RPS-eligible facility can be used to determine the amount of hourly generation at that facility.**"
>
> ***Modify Finding of Fact 3***: "WREGIS does not currently have a functionality that would allow tracking of the new portfolio content categories created by new § 399.16**, but the amount of energy scheduled to a California balancing authority without substitution can be determined for purposes of § 399.16(b)(1)(A) as the lesser of: (1) actual hourly generation at the RPS-eligible facility as measured by meter data; and (2) the amount of energy scheduled from the facility to a California balancing authority for the hour as specified in an e-Tag that properly identifies the facility and the receipt point.**"
>
> ***Modify Finding of Fact 7***: "**Although i**~~I~~nformation about the specific generation facility providing generation recorded on the e-Tag is not **currently** a required element of e-Tags**, if information identifying the facility and the receipt point is provided in the e-Tag, such information can be used to confirm the quantity of energy that is scheduled to a California balancing authority on an hourly basis without substituting electricity**."

D. For dynamic transfer transactions, instead of requiring utilities to provide a dynamic transfer agreement with their advice letter filing, the Proposed Decision should be modified to specify that the procurement contract must include a condition requiring a dynamic transfer agreement to be in place before the utility's purchase obligation becomes effective.

The Proposed Decision states that utilities seeking Commission approval of an RPS contract involving energy that will be dynamically transferred to a California balancing authority to meet the first portfolio content category in Section 399.16(1)(B) must provide appropriate documentation of the applicable dynamic transfer agreement as part of the advice letter filing seeking approval of the procurement contract.[11] This requirement is not necessary and would impair commercial activity. Although the Federal Energy Regulatory Commission recently approved the California Independent System Operator's dynamic transfers protocols for variable resources, the agreement and criteria will not be fully implemented until 2013.[12] Even after those rules are established it can take considerable time to complete the inter-balancing authority arrangement and meet the facility technical standards. There is no reason to delay execution or Commission approval of dynamic transfer transactions until the applicable dynamic transfer agreement is actually executed.

Instead, to qualify for approval as a dynamic transfer transaction, the relevant procurement contract should specify that a dynamic transfer agreement meeting the requirements in Section 399.16(b)(1)(B) must be in place by the time that the utility's purchase obligation under the procurement contract goes into effect. If this condition is not met, then the procurement contract could specify the consequences for the utility's purchase obligation and other associated terms and conditions. This can be implemented by modifying the Proposed Decision as follows:

> ***Modify Conclusion of Law 11***: "Because dynamic transfer transmission arrangements are evolving, ~~**the Director of Energy Division should be authorized to review the development of dynamic transfer methods and incorporate any such developments into the information retail sellers must provide for**~~ **utilities can demonstrate** compliance with the new portfolio content categories **by including a condition in the relevant procurement contract requiring a dynamic transfer agreement meeting the requirements of the**

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11 *Id.*, p. 29.

12 *California Independent System Operator Corporation,* 136 FERC ¶ 61, 239 (September 30, 2011).

statute to be in place at the time that the utility's purchase obligation under the procurement contract becomes effective."

E. For firmed and shaped transactions, the Proposed Decision should be clarified to confirm that energy from the bundled purchase can be sold locally and the REC bundled with the substitute energy, and to allow greater flexibility in security the substitute energy.

The Proposed Decision finds that a transaction qualifying under Section 399.16(b)(2) as a "firmed and shaped eligible renewable energy resource electricity product providing incremental electricity and scheduled into a California balancing authority" will include three commercial elements:

1. the buyer's simultaneous purchase of energy and associated RECs from the RPS-eligible generation facility without selling the energy back to the generation;
2. the availability of the purchased energy to the buyer (*i.e.*, the purchased energy must not in practice be already committed to consumption by another party); and
3. the acquisition of the substitute energy at the same time as acquisition of the RPS-eligible energy, or at least prior to submission of the contract for the firmed and shaped transaction for Commission approval.[13]

The Proposed Decision recognizes that "to count in this category, a firmed and shaped transaction must also provide 'incremental electricity' that is 'scheduled into California balancing authority area.'" The Proposed Decision finds that the substitute, "firming energy" will be considered incremental if it "is newly procured by the retail seller as part of the firming and shaping transaction." With regard to tagging of RECs to substitute energy, the Proposed Decision states that this practice is "incompatible with both the requirement that electricity be acquired to substitute for the RPS-eligible generation and the requirement that 'incremental electricity' be scheduled into a California balancing authority."[14]

NextEra generally agrees with the Proposed Decision's conclusions on firmed and shaped transactions, but two points require clarification. First, the Commission should clarify how the REC associated with this type of transaction can be bundled. The Proposed Decision seems to confirm that the original transaction (as reflected in element (1) above) will be a bundled

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13 *Id.*, p. 40.

transaction. It also seems to recognize that the energy associated with the firmed and shaped transaction and committed to the buyer may be sold locally (*i.e.*, in the region where the energy is generated). The Proposed Decision also implies that RECs associated with the bundled transaction may be linked to the incremental, substitute energy, as long as the energy is scheduled to a California balancing authority within the calendar year. However, these elements of the Proposed Decision seem inconsistent with the finding regarding "tagging" and with statements in the Proposed Decision that an unbundled REC can never be re-bundled with another energy source. It seems that the type of transaction that the Commission intends not to allow in the second portfolio content category is one in which the energy is not actually committed to the buyer because it was sold back to the original generator. In that circumstance the RECs cannot be tagged to or bundled with the substitute energy. In contrast, if the energy in the original bundled transaction is actually committed to the buyer, then the buyer should be able to re-sell the energy locally and bundle the associated REC with the substitute energy to show compliance. It would be helpful to confirm this in the final decision.

The quotes above also indicate that the substitute firming energy: (1) must be acquired at the same time as the bundled energy and REC transaction or at the latest prior to submission for Commission approval; and (2) must be procured "as part of the firming and shaping transaction." These statements indicate that the contract for the substitute energy transaction should be in place and submitted when the bundled procurement contract is submitted for Commission approval. The Commission should eliminate this requirement. An LSE or the RPS seller should be able to execute the firming transaction separately and potentially at a different time than the original bundled transaction. The purchase of the substitute electricity in compliance with the statute should be demonstrated in the compliance filing, not as part of an upfront review of the bundled RPS procurement contract. It should also be clarified that the substitute energy transaction can be with a third party (and not with the supplier of the bundled product) as long as it meets the incremental definition and is newly procured.

To clarify these points, the Proposed Decision's Conclusions of Law and Ordering Paragraphs should be modified as follows:

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[14] *Id.*, pp. 40-41.

Modify Conclusion of Law 16: "Procurement from contracts signed on or after June 1, 2010 may be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011, if the generation facility from which the electricity is procured is certified as eligible for the California RPS and the generation from that facility is firmed and shaped with substitute electricity scheduled into a California balancing authority within the same calendar year as the generation from the facility eligible for the California RPS, and if the substitute electricity provides incremental electricity, if the following conditions are met, so long as the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner **(provided that the renewable energy credits can be bundled with the incremental substitute electricity meeting the requirements specified herein)**, and all other procurement requirements for compliance with the California RPS are also met:

- the buyer simultaneously purchases energy and associated RECs from the RPS-eligible generation facility;
- the energy purchased from the RPS-eligible generation facility is available to the buyer (i.e., the purchased energy must not in practice be already committed to consumption by another party);
- the buyer acquires the substitute energy at the same time as it acquires the RPS-eligible energy **(although the two contracts do not need to be with the same counterparty or executed at the same time, and the substitute transaction does not need to be in place or submitted for Commission approval when the bundled procurement contract is approved)**."

Modify Ordering Paragraph 2: "A retail seller claiming that procurement for compliance with the California renewables portfolio standard from a contract signed on or after June 1, 2010 counts in the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011, must provide information to the Director of Energy Division sufficient to demonstrate that the generation from that facility is firmed and shaped with substitute electricity scheduled into a California balancing authority within the same calendar year as the generation from the facility eligible for the California renewables portfolio standard, and that the substitute electricity provides incremental electricity, if the following conditions are met:

- the buyer simultaneously purchases energy and associated renewable energy certificates (RECs) from the RPS-eligible generation facility;
- the energy purchased from the RPS-eligible generation facility is available to the buyer (i.e., the purchased energy must not in practice be already committed to consumption by another party);
- the buyer acquires the substitute energy at the same time as it acquires the renewables portfolio standard-eligible energy **(although the two**

contracts do not need to be with the same counterparty or executed at the same time, and the substitute transaction does not need to be in place or submitted for Commission approval when the bundled procurement contract is approved).

The retail seller must also demonstrate that the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner **(provided that the renewable energy credits can be bundled with the incremental substitute electricity meeting the requirements specified herein)**, and that all other requirements for procurement compliance with the California renewables portfolio standard are met by the procurement.

F. The Proposed Decision correctly applies its interpretation of unbundled RECs as defined in Section 399.16(b)(3) to RECs associated with electricity generated by a distributed generation system and consumed onsite.

NextEra supports the Proposed Decision's determination that electricity produced by a distributed generation ("DG") system and consumed onsite should be distinguished from the bundled sale by the DG system owner of energy and RECs. The Proposed Decision correctly finds that because the DG system has reduced the total retail sale of electricity, it also has reduced the amount of RPS generation to be procured.[15] There is no justification or need to confer additional benefit on these types of resources by allowing the sale of unbundled RECs associated with onsite consumption to qualify for the first portfolio content category. The Proposed Decision's determination that unbundled RECs are within the third portfolio content category under a strict interpretation of the statute should be applied equally to all such transactions, including to energy produced by a DG system and consumed onsite.

III. CONCLUSION

NextEra appreciates the opportunity to submit these opening comments. NextEra's recommended changes to the Proposed Decision's Findings of Fact, Conclusions of Law, and Ordering Paragraphs are repeated in the attached Appendix.

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15 *See id.* pp. 34-35.

Respectfully submitted,

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On behalf of NextEra Energy Resources, LLC

October 27, 2011

APPENDIX
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact:

Modify Finding of Fact 2: "WREGIS aggregates information about RPS-eligible generation on a monthly basis**, but actual meter data from an RPS-eligible facility can be used to determine the amount of hourly generation at that facility.**"

Modify Finding of Fact 3: "WREGIS does not currently have a functionality that would allow tracking of the new portfolio content categories created by new § 399.16**, but the amount of energy scheduled to a California balancing authority without substitution can be determined for purposes of § 399.16(b)(1)(A) as the lesser of: (1) actual hourly generation at the RPS-eligible facility as measured by meter data; and (2) the amount of energy scheduled from the facility to a California balancing authority for the hour as specified in an e-Tag that properly identifies the facility and the receipt point.**"

***Modify Finding of Fact 5*: "Electricity from a generation facility located outside the boundaries of a California balancing authority may be scheduled into a California balancing authority on an hourly or subhourly basis without the substitution of energy from another source**, and the use of any other source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category.**"

Modify Finding of Fact 7: "**Although i**Information about the specific generation facility providing generation recorded on the e-Tag is not **currently** a required element of e-Tags**, if information identifying the facility and the receipt point is provided in the e-Tag, such information can be used to confirm the quantity of energy that is scheduled to a California balancing authority on an hourly basis without substituting electricity**."

Conclusion of Law:

***Delete Conclusion of Law 6*: ~~"In order to provide value to ratepayers and promote the fair and efficient administration of the RPS program, IOUs should be required to make an upfront showing of the new portfolio content category or categories of procurement in contracts submitted for Commission approval~~."

***Delete Conclusion of Law 10*: ~~"Because new types of information will be necessary to evaluate the value to ratepayers of IOUs' procurement that meets the requirements of the new portfolio content categories, the Director of Energy Division should be authorized to~~

~~develop methods for evaluating the value to ratepayers of IOUs' procurement meeting the requirements the new portfolio content categories and to require IOUs to provide necessary information, as determined by the Director of Energy Division, for such evaluation at the time an IOU seeks Commission approval of an RPS procurement contract.~~"

Modify Conclusion of Law 11: "Because dynamic transfer transmission arrangements are evolving, ~~**the Director of Energy Division should be authorized to review the development of dynamic transfer methods and incorporate any such developments into the information retail sellers must provide for**~~ **utilities can demonstrate** compliance with the new portfolio content categories **by including a condition in the relevant procurement contract requiring a dynamic transfer agreement meeting the requirements of the statute to be in place at the time that the utility's purchase obligation under the procurement contract becomes effective.**"

Modify Conclusion of Law 16: "Procurement from contracts signed on or after June 1, 2010 may be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011, if the generation facility from which the electricity is procured is certified as eligible for the California RPS and the generation from that facility is firmed and shaped with substitute electricity scheduled into a California balancing authority within the same calendar year as the generation from the facility eligible for the California RPS, and if the substitute electricity provides incremental electricity, if the following conditions are met, so long as the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner **(provided that the renewable energy credits can be bundled with the incremental substitute electricity meeting the requirements specified herein)**, and all other procurement requirements for compliance with the California RPS are also met:

- the buyer simultaneously purchases energy and associated RECs from the RPS-eligible generation facility;

- the energy purchased from the RPS-eligible generation facility is available to the buyer (i.e., the purchased energy must not in practice be already committed to consumption by another party);

- the buyer acquires the substitute energy at the same time as it acquires the RPS-eligible energy **(although the two contracts do not need to be with the same counterparty or executed at the same time, and the substitute transaction does not need to be in place or submitted for Commission approval when the bundled procurement contract is approved)**."

Ordering Paragraphs:

Modify Ordering Paragraph 2: "A retail seller claiming that procurement for compliance with the California renewables portfolio standard from a contract signed on or after June 1, 2010 counts in the portfolio content category described in Pub. Util. Code

§ 399.16(b)(2), as effective December 10, 2011, must provide information to the Director of Energy Division sufficient to demonstrate that the generation from that facility is firmed and shaped with substitute electricity scheduled into a California balancing authority within the same calendar year as the generation from the facility eligible for the California renewables portfolio standard, and that the substitute electricity provides incremental electricity, if the following conditions are met:

- the buyer simultaneously purchases energy and associated renewable energy certificates (RECs) from the RPS-eligible generation facility;

- the energy purchased from the RPS-eligible generation facility is available to the buyer (i.e., the purchased energy must not in practice be already committed to consumption by another party);

- the buyer acquires the substitute energy at the same time as it acquires the renewables portfolio standard-eligible energy **(although the two contracts do not need to be with the same counterparty or executed at the same time, and the substitute transaction does not need to be in place or submitted for Commission approval when the bundled procurement contract is approved)**.

The retail seller must also demonstrate that the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner **(provided that the renewable energy credits can be bundled with the incremental substitute electricity meeting the requirements specified herein)**, and that all other requirements for procurement compliance with the California renewables portfolio standard are met by the procurement.

Delete Ordering Paragraph 4: "~~In submitting any contract for procurement to meet the California renewables portfolio standard to the Commission for approval on or after December 10, 2011, an investor owned utility must provide sufficient information for the Commission to evaluate, without limitation and in addition to any other requirements for information, the following elements: the claimed portfolio content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio category~~."

Delete Ordering Paragraph 5: "~~The Director of Energy Division is authorized to require any investor owned utility that has submitted a contract for procurement to meet the California renewables portfolio standard that was signed after June 1, 2010 but was not approved by the Commission prior to December 10, 2011 to provide additional information to allow the Commission to evaluate, without limitation and in addition to any other requirements for information, the following elements: the claimed portfolio content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio category.~~"

Delete Ordering Paragraph 6: "~~The Director of Energy Division is authorized to develop any methods and requirements for information to be provided by investor owned utilities seeking approval of contracts for procurement to meet the California renewable portfolio standard to allow the Commission to evaluate, without limitation, the following elements: the claimed portfolio content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio content category~~."

VERIFICATION

I, Kerry Hattevik, am the Director of West Market Affairs of NextEra Energy Resources, LLC. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the October 27, 2011 *Opening Comments of NextEra Energy Resources, LLC on Proposed Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program* are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated as of October 27, 2011 at El Cerrito, California.

/s/ Kerry Hattevik

Kerry Hattevik

Director of West Market Affairs
NextEra Energy Resources, LLC