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October 22, 2012

California Public Utilities Commission
Attention: Energy Division, ED Tariff Unit
505 Van Ness Avenue
San Francisco, California 94102

Re: Comments of NextEra Energy Resources, LLC on Draft Resolution E-4546

NextEra Energy Resources, LLC ("NextEra") provides the following comments on Draft Resolution E-4546 ("Draft Resolution") of the California Public Utilities Commission ("Commission"), issued in response to Southern California Edison Company ("SCE") Advice Letter 2759-E, Pacific Gas and Electric Company ("PG&E") Advice Letter 4100-E, and San Diego Gas & Electric Company ("SDG&E") Advice Letter 2392-E (collectively the "Advice Letters"). The Advice Letters propose changes to the Renewable Auction Mechanism ("RAM") program established by the Commission in Decision 10-12-048, including to the RAM pro forma power purchase agreements ("RAM PPAs").

NextEra urges the Commission to require additional modifications to the RAM PPAs to facilitate financing for new projects. The Commission established the RAM program "with the purpose of lowering transaction costs" associated with the negotiation and execution of power purchase agreements.¹ Each RAM PPA, however, contains certain provisions that project lenders in the current market typically refuse to accept. As such, a successful bidder in the RAM solicitations will be compelled to negotiate with its investor-owned utility ("IOU") counterparty and its project lenders to modify those unacceptable terms in order to facilitate financing. This additional process can increase transaction costs and delay the development and construction of the very projects that the RAM program is intended to encourage or, at worst, lead to the potential termination of those projects for failure to secure necessary financing.

To address this problem, NextEra requests that the Commission require each IOU to make certain modifications to its RAM PPA to reflect the changes identified for such IOU below. These changes reflect specific feedback from lending institutions that NextEra works with in the course of developing and constructing new renewable energy projects in California. The changes described below will make each IOU's RAM PPA more consistent with lender expectations and documentation typically used in financing new projects and will not materially prejudice the interests of the IOUs or materially disrupt the balance of risk achieved by the existing RAM PPAs. This will help reduce transaction costs and facilitate the financing and

¹ Draft Resolution at 2.

development of RAM program projects. Specific language is provided in blackline format in Attachment 1 hereto.

Non-Negotiable Form for Consent to Collateral Assignment – PG&E

In the typical project finance transaction, the project developer must assign its rights under the power purchase agreement to project lenders as collateral to secure the lenders' investment in the project. Lenders generally require the developer to obtain the IOU's consent to this collateral assignment. The consent to assignment agreement normally will provide the project lender with additional protections, such as the right to receive notices under the power purchase agreement and extended periods to cure developer defaults under the RAM PPA, in order to protect the significant financial investment it will make in the project. However, the exact terms and conditions that a project lender requires will vary from lender to lender and with changing market conditions. As such, both the developer and the project lender need a certain amount of flexibility to negotiate and enter into a consent to assignment agreement. It is possible that without this flexibility, the developer will be unable to secure the necessary financing to proceed with the project.

PG&E's RAM PPA imposes a constraint on the process of negotiating the consent by requiring lenders to use the PG&E form without change. Under Section 10.6(b) of PG&E's RAM PPA, the seller cannot collaterally assign the RAM PPA to a project lender without PG&E's consent unless the project lender first executes the form consent to assignment agreement attached as Appendix VIII to the PG&E RAM PPA.

The Commission should order PG&E to modify Section 10.6(b) of the PG&E RAM PPA so that PG&E must work in good faith with the developer and the project lender to agree upon a mutually-agreeable consent to assignment agreement. This change would make PG&E's RAM PPA consistent with the RAM PPA used by SCE and SDG&E. Specific language to reflect this change is provided in Attachment I.

Project Lender Cure Periods – All IOUs

As noted above, project lenders typically require extended cure periods in consent to assignment agreements in order to protect their investments. Given that the project lenders are not involved with the day-to-day operations of the project, they typically require more time to cure a developer's default, especially if additional time is needed to complete their internal procedures for obtaining approval to effect such a cure. Although the RAM PPAs contemplate some additional cure rights for a project lender, they either afford shorter cure periods than the cure periods typically requested by project lenders, or they leave it to the IOU to decide whether to allow the extra time. The three RAM PPAs also are not consistent with each other.

The lender cure periods under all three RAM PPAs should be made consistent with current market expectations. Based on lender feedback, the current market standard is to afford project lenders an additional thirty days to cure monetary defaults under the RAM PPA, and an additional sixty days to cure non-monetary defaults, with the ability to extend the sixty days to ninety days if the cure is being diligently pursued. These cure periods are in addition to the cure rights in the RAM PPA. Given that project lenders will require the IOUs to agree to these types

of extended cure periods before they provide funding, the Commission can reduce the transaction costs associated with negotiating a lender consent by ordering the IOUs to modify their lender cure period provisions to reflect current market standards. Specific language to reflect this change is provided in Attachment 1.

Force Majeure Cure Periods – SDG&E

Under Section 5.8 of SDG&E's RAM PPA, a party may terminate the agreement if a force majeure event prevents the other party from performing a material portion of its obligations under the agreement for a period of eight consecutive months. This is a very short trigger for termination that is not consistent with current market expectations. It also is a shorter cure period than provided for in the PG&E RAM PPA and the SCE RAM PPA.

Project lenders are typically wary of provisions that give the IOU a unilateral right to terminate the agreement. Given that its investment will be at risk if the power purchase agreement is terminated, a project lender typically requires a certain minimum amount of time to fix a problem with the project before the IOU can terminate the agreement. Under the SCE RAM PPA and the PG&E RAM PPA a force majeure event must have materially and adversely affected the developer's ability to perform under the agreement for at least twelve consecutive months before the IOU counterparty can terminate the agreement. A twelve month force majeure cure period is the typical length required by project lenders in the current market. To eliminate negotiations between SDG&E and project lenders over Section 5.8, the Commission should order SDG&E to modify its RAM PPA to increase the eight month period in Section 5.8 of its RAM PPA to at least twelve consecutive months. Specific language to reflect this change is provided in Attachment 1.

Change in Control Provisions – SCE and SDG&E

Under Section 10.04(b) of the SCE RAM PPA, any direct or indirect change in control of the ownership of the seller is considered an assignment under the RAM PPA requiring SCE's prior written consent. Under Section 13.2 of SDG&E's RAM PPA, certain direct or indirect changes in control of the ownership of developer will be deemed an assignment under the RAM PPA requiring SDG&E's prior written consent. Although not directly linked to the debt financing of a RAM project, power purchase agreement provisions that restrict the ability of the developer to sell its ownership interest to another entity unnecessarily restrict the ability of developers to finance, construct and complete RAM projects in a timely manner. These provisions also prevent developers from efficiently developing new ownership structures that provide maximum benefit for all parties involved. It also should not be necessary for the IOU to have a consent right with respect to a change in the upstream ownership structure of the seller, as the seller remains the counterparty with the obligations under the RAM PPA.

The PG&E RAM PPA addresses this differently. The PG&E RAM PPA specifies that except in connection with public market transactions of the equity interests or capital stock of seller or seller's affiliates, seller must provide PG&E with notice of any direct change of control of seller (whether voluntary or by operation of law). This is a more reasonable change in control provision that appropriately focuses on ensuring that the IOU will receive notice of a change in upstream control of the seller. The notice will be provided either via publicly available

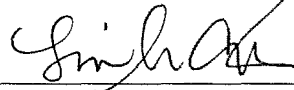
information in a public market transaction, or via a notice from the seller. This appropriately addresses the IOU's interest in knowing who its counterparty is, while not unduly restricting developers' ability to finance projects most efficiently.

For these reasons, the Commission should require SCE and SDG&E to modify their RAM PPAs so that they are consistent with the PG&E RAM PPA. Specific language to reflect this change is provided in Attachment 1.

* * * *

NextEra respectfully requests that the Commission modify the Draft Resolution to order each IOU to modify its RAM PPA to reflect the changes identified for such IOU in the comments above, and in Attachment 1 hereto.

Respectfully submitted,



Lisa Cottle

Counsel for NextEra Energy Resources, LLC

cc: Michael R. Peevey, President, CPUC
Timothy Alan Simon, Commissioner, CPUC
Michel Peter Florio, Commissioner, CPUC
Catherine J.K. Sandoval, Commissioner, CPUC
Mark J. Ferron, Commissioner, CPUC
Edward Randolph, Director - Energy Division, CPUC
Karen V. Clopton, Chief Administrative Law Judge, CPUC
Frank Lindh, General Counsel, CPUC
Adam Schultz, Energy Division, CPUC
Paul Douglas, Energy Division, CPUC
R.11-05-005 Service List

ATTACHMENT 1

PROPOSED CHANGES

PG&E RAM PPA, Section 10.6(b)

Assignment to Financing Providers. Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Project (including any tax equity or lease financing) without the prior written consent of the Buyer; ~~provided that~~ **In connection with such financing or refinancing, Seller, Buyer and** the financing provider(s) **shall in good faith negotiate and,** enter(s) into a **mutually-agreeable** Consent to Assignment, ~~in which may be reflective of~~ the form attached hereto as Appendix VIII ~~under which such financing provider(s) shall agree that upon exercising its rights to assume the Agreement, it shall be bound by the terms and conditions hereof;~~ provided ~~further~~ that Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, execution and delivery of documents in connection with such assignment, including attorneys' fees.

PG&E RAM PPA, Section 4(b) of Appendix VIII

Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a) above, PG&E shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement "Additional Cure Period" means (i) with respect to a monetary default, ~~ten (10)~~ **thirty (30)** days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, ~~thirty (30)~~ **sixty (60)** days in addition to the cure period (if any) provided to Seller in the Assigned Agreement **(with an additional thirty (30) days (for a total of ninety (90) days) if the project lender is diligently pursuing a cure of such default, but cannot complete the cure within such 60-day period).**

SCE RAM PPA, Section 10.05(c)

Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE before the end of any cure period indicating Lender's intention to cure. Lender must remedy or cure the Event of Default **as follows: (i) with respect to a monetary Event of Default, within thirty (30) days after the end of any cure period provided to Seller under this Agreement; and (ii) with respect to a non-monetary Event of Default, within sixty (60) days after the end of any cure period provided to Seller under this Agreement; provided, Lender will have an additional thirty (30) days (for a total of ninety (90) days) to cure a non-monetary Event of Default if Lender is diligently pursuing a cure, but cannot complete the cure within such 60-day period) within the cure period under this Agreement; provided, such cure period may, in SCE's sole discretion, be extended by no more than an additional one hundred eighty (180) days;**

SDG&E RAM PPA, Second Sentence of Section 4(b)(i) of Exhibit F

Notwithstanding anything to the contrary contained in the Assigned Agreement, such notice shall be coupled with an opportunity to cure any such default as follows: (A) with respect to a monetary default, within thirty (30) days after the end of any cure period provided to Seller under the Assigned Agreement; within the longer of the cure period available to Assignor in the Assigned Agreement or and (B) with respect to a non-monetary default, within sixty (60) days after the end of any cure period provided to Seller under the Assigned Agreement; provided, Assignee will have an additional thirty (30) days (for a total of ninety (90) days) to cure a non-monetary Event of Default if Assignee is diligently pursuing a cure, but cannot complete the cure within such 60-day period) or thirty (30) days after notice thereof (except with respect to payment defaults, which cure must be made within five (5) Business Days after the last day of the cure period available to the Assignor in the Assigned Agreement with respect to payment defaults), s. Such cure periods shall commence upon receipt of notice by the Assignee.

SDG&E RAM PPA, Final Sentence of Section 5.8

This Agreement may be terminated by the non-claiming Party with no further obligation to the Party impacted by Force Majeure if a Force Majeure event prevents the performance of a material portion of the obligations hereunder and such Force Majeure event is not resolved within ~~eight (8)~~ twelve (12) months after the commencement of such Force Majeure event.

SCE RAM PPA, Section 10.04(b)

Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller's Affiliates, Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of law). ~~—Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of SCE, which consent shall not be unreasonably withheld.~~

SDG&E RAM PPA, Section 13.2

Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. ~~For purposes hereof, the transfer of more than fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the fair market value of the assets of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer's prior written consent.~~ Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers. In connection with any financing or refinancing of the Project by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in substantially the same form as

Exhibit F. Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller's Affiliates, Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of Law).

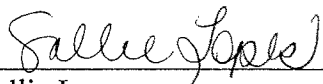
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the

COMMENTS OF NEXTERA ENERGY RESOURCES, LLC ON DRAFT RESOLUTION E-4546

on all known parties to R.11-05-005, along with the additional parties pursuant to instructions on the cover letter to Draft Resolution E-4546, by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on October 22, 2012, at San Francisco, California.



Sallie Lopes