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Re: Comments of NextEra Energy Resources, LLC on Draft Resolution E-4582

NextEra Energy Resources, LLC (“NextEra”) submits its comments on Draft Resolution E-4582 of the California Public Utilities Commission (“Commission”), issued by the Energy Division’s own motion pursuant to Decision 10-12-048 (the “Draft Resolution”). The Draft Resolution would implement changes to the Renewable Auction Mechanism (“RAM”) of Pacific Gas and Electric Company (“PG&E”), San Diego Gas and Electric Company (“SDG&E”) and Southern California Edison Company (“SCE”) to (1) authorize a fifth RAM auction (which would close on June 27, 2014), and (2) modify capacity allocation targets for the fourth RAM auction (scheduled to close on June 28, 2013) to delay some RAM procurement by reserving one-third of each utility’s remaining authorized but unsubscribed RAM capacity, and directing utilities to procure the reserved amounts in the fifth RAM auction.

NextEra supports the changes proposed in the Draft Resolution and urges the Commission to approve them. The Commission also should take this opportunity to allow the utilities to make non-substantive refinements to their individual RAM pro forma power purchase and sale agreements (“PPAs”) to facilitate efficient contracting in the RAM program. NextEra previously identified four problems in the PPAs that create unnecessary challenges for obtaining project financing for RAM projects. In its comments on Draft Resolution E-4546 submitted on October 22, 2012 (“NextEra October 2012 Comments”), NextEra noted that the Commission established the RAM program “with the purpose of lowering transaction costs” associated with the negotiation and execution of PPAs,¹ and explained that the utilities’ PPAs do not fully advance this purpose because they contain certain terms that typically are not acceptable to project lenders. Successful bidders in the RAM program are compelled to negotiate with the utility counterparty and lenders to attempt to modify the unacceptable terms to facilitate financing. NextEra noted that this additional process can increase transaction costs and delay the development and construction of the very projects the RAM program is intended to encourage

¹ See Resolution E-4546, p. 2.

or, at worst, lead to the potential termination of those projects for failure to secure financing. NextEra asked the Commission to improve this situation by requiring the utilities to modify their PPAs to align better with lender expectations in the current market. NextEra described the reasons for its changes, and provided specific language in blackline format.

In Resolution E-4546 issued November 8, 2012, the Commission confirmed that Commission staff has the authority and discretion pursuant to Decision 10-12-048 to propose adopting NextEra's suggested changes.² Although the Commission declined to require utilities to adopt NextEra's suggested changes at that time, Resolution E-4546 indicates that the changes could be reconsidered if there were an opportunity for stakeholder comment.³

NextEra asks the Commission to grant discretion to the utilities to make the changes to the PPAs that were presented in the NextEra October 2012 Comments. NextEra also asks the Commission to allow the utilities to make two additional changes to their PPAs, as described below. All of the requested changes to the PPAs are based on NextEra's experience developing RAM projects, as well as substantial feedback from the lenders NextEra regularly works with in financing new projects in California. The changes described below will make each PPA more consistent with lender expectations and documentation typically used in financing new projects and will not materially prejudice the interests of the utilities or materially disrupt the balance of risk achieved by the existing PPAs. This will help reduce transaction costs and facilitate the financing and development of RAM projects. Proposed findings and ordering paragraphs for the Draft Resolution, and specific language for the changes to the PPAs, are provided in the attached Appendix, along with a table summarizing NextEra's recommended PPA modifications.

1. Allow Flexibility in Negotiating Consent to Collateral Assignment (PG&E)

In the typical project finance transaction, the developer must assign its rights under the PPA to lenders as collateral to secure the lenders' investment in the project. Lenders generally require the developer to obtain the utility's consent to this collateral assignment. The consent to assignment agreement normally provides the lender with additional rights not contained in the PPA, such as the right to receive notices under the PPA and extended periods to cure developer defaults under the PPA, as protection for the lender's financial investment in the project. Developers need flexibility to negotiate the consent to assignment agreement, as the terms and conditions that a lender requires vary from lender to lender and with changing market conditions. Without this flexibility, the developer could be unable to secure the necessary financing to proceed with the project.

PG&E's PPA imposes a constraint on this process by requiring lenders to use the PG &E form consent to assignment agreement without change. Under Section 10.6(b) of PG&E's PPA, the seller cannot collaterally assign the PPA to a project lender without PG&E's consent unless the project lender first executes the consent to assignment agreement attached as Appendix VIII to the PPA. In NextEra's experience, lenders have significant concerns with PG&E's non-negotiable consent to assignment agreement. For instance:

² Resolution E-4546, p. 35.

³ *Id.*

- Section 3 specifies that when an event of default has occurred, the lender will be subject to all of the obligations of the seller under the PPA to the same extent and in the same manner as if the lender were an original party to the PPA, but lenders typically require the ability to cure defaults without necessarily assuming all of the PPA obligations;
- Section 4 does not provide adequate lender cure rights for defaults under the PPA (this issue is discussed further below);
- PG&E's form lacks standard language confirming that if the PPA is rejected in a bankruptcy proceeding, PG&E will enter into a new PPA on the same terms and conditions as the rejected PPA;
- There is concern that Section 5 could allow PG&E to offset amounts due by Seller or its affiliates under other agreements (not just the PPA), which is generally not acceptable;
- Section 7 allows PG&E to modify the PPA without notifying the lender, whereas lenders typically require an offtaker to agree not to amend the PPA absent lender consent; and
- PG&E's form does not contain certain standard representations and warranties, including that the PPA has not been amended except as disclosed to the lender, and that there are no events of default under the PPA.

Rather than attempting to prescribe a non-negotiable consent to assignment agreement, the Commission should direct PG&E to work with other sellers and their lenders to agree upon acceptable terms. Section 10.6(b) of PG&E's PPA therefore should be modified so that PG&E must work in good faith with the developer and its lender to agree upon a mutually agreeable consent to assignment agreement. This would make PG&E's PPA consistent with the SCE and SDG&E PPAs. Suggested language is provided in the Appendix.

2. Provide for More Standard Lender Cure Periods (All Utilities)

To protect their investment in a project, lenders typically require additional rights, beyond those specified in the PPA, to cure a seller default. These rights and extended cure periods generally are specified in the consent to assignment agreement. Because lenders are not involved with the day-to-day operations of the project, they often need extra time to cure a seller default, especially if additional time is needed to complete their internal procedures for obtaining approval to effectuate a cure. Although the PPAs contemplate some additional cure rights for a lender, they either afford shorter cure periods than typically requested by lenders, or they leave it to the utility to decide whether to allow the extra time. The three PPAs also are not consistent with one another on this point.

The lender cure periods under all three 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 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 requires more time and is being diligently pursued. These cure periods are in addition to the seller's cure rights in the PPA. Project lenders will require utilities to agree to these types of extended cure periods before they provide funding. Given the importance of these rights, the Commission can reduce the transaction costs associated with negotiating a lender consent by

directing utilities to modify their PPAs and form consents for consistency with current market standards. Suggested language is provided in the Appendix.

3. No Termination for Extended Force Majeure Event Unless It Continues for Twelve Consecutive Months (SDG&E)

Section 5.8 of SDG&E's PPA allows a party to terminate the PPA if a force majeure event prevents the other party from performing a material portion of its obligations under the PPA for eight consecutive months. Eight months 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 and SCE PPAs.

Project lenders are wary of provisions that give the utility a unilateral right to terminate the PPA. Given that its investment will be at risk if the PPA is terminated, a lender requires a certain minimum amount of time to fix a problem with the project before the utility can terminate the PPA. Under the SCE and PG&E PPAs, 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 (PG&E) (or 365 consecutive days for SCE) before the utility has the right to terminate the PPA. This is consistent with lender expectations in the current market. To eliminate negotiations between SDG&E and project lenders over Section 5.8, the Commission should instruct SDG&E to modify its PPA to increase the eight month period in Section 5.8 of its PPA to at least twelve consecutive months. Suggested language is provided in the Appendix.

4. Eliminate Requirement for Consent to Upstream Changes in Control of a Seller (SCE and SDG&E)

Under Section 10.04(b) of the SCE PPA, any direct or indirect change in control of the ownership of the seller is considered an assignment of the PPA requiring SCE's prior written consent. Under Section 13.2 of SDG&E's PPA, certain direct or indirect changes in control of the ownership of developer will be deemed an assignment of the PPA requiring SDG&E's prior written consent. In reality, these types of ownership changes do not result in an assignment of the PPA because the entity that is the seller under the PPA remains the same. It should not be necessary for the utility 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 PPA. Provisions that restrict or delay the developer's ability to sell its ownership interest to another entity unnecessarily restrict the developer's flexibility to finance, construct and complete RAM projects in a timely manner. These provisions also prevent developers from efficiently creating new ownership structures that provide maximum benefit for all parties involved.

PG&E's PPA addresses this differently by specifying 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 utility will receive notice of a change in upstream ownership 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

utility's interest in knowing who its counterparty is, while not unduly restricting developers' ability to finance projects most efficiently.

The Commission should require SCE and SDG&E to modify their PPAs so that they are consistent with PG&E's PPA. Suggested language is provided in the Appendix.

5. Allow PG&E to Update its Insurance Requirements (PG&E)

Since submitting the NextEra October 2012 Comments, NextEra has identified two additional changes to the PPAs that are necessary to facilitate efficient RAM contracting. One necessary change relates to the insurance requirements in PG&E's PPA. PG&E's Section 10.10 generally contains commercially outdated provisions and language, and is not consistent with currently available insurance products.

Two requirements are particularly problematic. First, PG&E requires an "Additional Insured" endorsement adding PG&E and its personnel on Insurance Services Office Form CG2010 1185 or equivalent form. This form endorsement has been interpreted to insure against the sole negligence of the counterparty, which in this case is PG&E. The endorsement is out of date and is not used today, and thus is very difficult to obtain. The best solution to this issue would be to allow PG&E to maintain the requirement but to strike the reference to the specific form. Second, Section 10.10 provides that with respect to any additional insured, all policies required in the PPA (including liability insurance) must provide that the insurance will not be invalidated by any action or inaction of the additional insured and will insure each additional insured regardless of any breach or violation of any warranty, declaration or condition contained in such insurance by the primary named insured. This requirement is associated with property insurance, but it is not typically used for liability insurance. It is therefore difficult to obtain as an attachment to liability insurance as PG&E's PPA requires. PG&E recently has recognized the challenges of this requirement, and has deleted the language in its 2nd Combined Heat and Power RFO, Utility Tolling PPA form. The Commission should allow PG&E also to modify its PPA for the RAM program. Suggested language is provided in the Appendix.

6. Align Transfer Tax Provisions (PG&E and SDG&E)

A second additional change relates to Section 9.2 of the PG&E and SDG&E PPAs, which specify transfer tax provisions that are not standard in the industry. The SCE PPA, like most PPAs that NextEra has executed, specifies that seller is responsible for taxes imposed prior to the energy delivery point, while buyer is responsible for taxes imposed at and after the delivery point. Yet the PG&E and SDG&E PPAs make seller responsible for taxes imposed at the delivery point, with buyer responsible only for taxes imposed after the delivery point. The PG&E and SDG&E PPAs should be modified for consistency with SCE's PPA. Suggested language is provided in the Appendix.

In conclusion, NextEra respectfully requests that the Commission modify the Draft Resolution to order each utility to modify its PPA to reflect the changes identified for such utility in the comments above, and in the Appendix hereto.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa A. Cottle", is written over a light gray, textured background that resembles a signature strip or a piece of paper with a fine grid pattern.

Lisa A. Cottle

Counsel for NextEra Energy Resources, LLC

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

Signature page

APPENDIX

PROPOSED FINDINGS AND ORDERING PARAGRAPH FOR DRAFT RESOLUTION E4582

Add to Findings and Conclusions:

10. To facilitate efficient contracting and financing for RAM projects, certain changes are needed to the pro forma power purchase agreements (PPAs) used by the utilities. We therefore direct the utilities to modify their pro forma PPAs for consistency with the changes shown below. We also instruct PG&E to modify the insurance provisions in its PPA so that they are consistent with current industry standards.

Add to Ordering Paragraphs:

6. San Diego Gas and Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company shall revise their pro forma power purchase and sale agreements for the RAM auctions to reflect the changes described in paragraph 10 of the Findings and Conclusions above.

Recommended Language Changes to Utility PPAs

1. Allow Flexibility in Negotiating Consent to Collateral Assignment (PG&E)

PG&E PPA, Section 10.6(b)

Assignment to Financing Providers. Seller shall be permitted to assign t his 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 exerci—sing 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.

2. Provide for More Standard Lender Cure Periods (All Utilities)

PG&E 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 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 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 period shall commence upon receipt of notice by the Assignee.

3. No Termination for Extended Force Majeure Event Unless It Continues for Twelve Consecutive Months (SDG&E)

SDG&E 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.

4. **Eliminate Requirement for Consent to Upstream Changes in Control of a Seller (SCE and SDG&E)**

SCE 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 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).**

5. **Allow PG&E to Update its Insurance Requirements (PG&E)**

PG&E PPA, Section 10.10(b)(iii)

Coverage shall: (A) by "Additional Insured" endorsement add as insured PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller ~~(Insurance Services Office Form CG2010 1185, or equivalent form)~~. In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;"

PG&E PPA, Section 10.10(f)

Form And Content. (i) All policies or binders with respect to insurance maintained by Seller shall: ~~(A)~~ waive any right of subrogation of the insurers hereunder against PG&E, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy; ~~and (B) with respect to any additional insured, provide that such insurance will not be invalidated by any action or inaction of each such insured and will insure each such insured regardless of any breach or violation of any warranty, declaration or condition contained in such insurance by the primary named insured.~~

6. **Align Transfer Tax Provisions (PG&E and SDG&E)**

PG&E PPA Section 9.2

Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Product or the Transaction arising ~~at~~ before the Delivery Point, including ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction at and from the Delivery Point.

SDG&E PPA Section 9.2

Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any governmental authority (“Governmental Charges”) on or with respect to the Product or the transaction under this Agreement arising prior to ~~and at~~ the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the transaction under this Agreement at and from the Delivery Point.

NEXTERA ENERGY (NEE) PROPOSED CHANGES TO THE RAM CONTRACT FOR FINANCEABILITY PURPOSES:

Financeability Issue	PG&E (from 11-15-2012 RAM PPA)	SCE (from RAM 3 Pro Forma)	SDG&E (from November 2012 version)
<p>1. Non-negotiable lender consent form</p>	<p>Section 10.6b: Current PG&E RAM contract contains a Consent to Assignment form that is non-negotiable (Appendix VII) NEE PROPOSAL: Similar to SCE and SDG&E PG&E shall in good faith negotiate with the Seller and Lender to agree upon a consent to collateral assignment of the RAM contract. (Importance – Depending upon market conditions, Lenders require certain flexibilities in their cure rights to avoid unnecessary direct performance/financial obligations in the event of a Seller’s default)</p>	<p>Section 10.05: In connection with any financing or refinancing of the Generating Facility by Seller, SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement NEE PROPOSAL: None</p>	<p>Section 13.2: 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 in the same form as Exhibit F. NEE PROPOSAL: None</p>
<p>2. Short lender cure periods in the event of Seller’s default</p>	<p>Appendix VIII – Consent for Agreement, Section 4(c): For purposes of this Agreement “Additional Cure Period” means (i) with respect to a monetary default, ten (10) 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) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement. NEE PROPOSAL: To increase cure period for monetary default from 10 to 30 days and non-monetary from 30 days to 60 days (up to 90 days if cure is being pursued diligently). (Importance – Longer lender cure periods ensures each participating lender has flexibility to meet its own internal procedures/schedules to obtain necessary approvals from its committees.</p>	<p>Section 10.05c: 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 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. NEE PROPOSAL: See NEE’s proposal to PG&E. This also ensures that all lender cure periods are the same for all RAM contracts in California. (Importance – Longer lender cure periods ensures each participating lender has flexibility to meet its own internal procedures/schedules to</p>	<p>Exhibit F – Assignment Consent and Agreement - Section 4(b)(i): Notwithstanding anything to the contrary contained in the Assigned Agreement, such notice shall be coupled with an opportunity to cure any such default within the longer of the cure period available to the Assignor in the Assigned Agreement 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), such cure period shall commence upon receipt of notice by the Assignee). NEE PROPOSAL: See NEE’s proposal to PG&E. This also ensures that all lender cure periods are the same for all RAM contracts in California. (Importance – Longer lender cure periods ensures each participating</p>

Financeability Issue	PG&E (from 11-15-2012 RAM PPA)	SCE (from RAM 3 Pro Forma)	SDG&E (from November 2012 version)
		obtain necessary approvals from its committees.	lender has flexibility to meet its own internal procedures/schedules to obtain necessary approvals from its committees.)
<p>3. Short cure period for Force Majeure (FM) Event</p>	<p>Section 11.1(a)(i): If after the Initial Energy Delivery Date, the Project fails to deliver at least forty percent (40%) of the Contract Quantity (as may be adjusted pursuant to Sections 3.1(e)(ii) or 3.9(d)) to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project (“Force Majeure Project Failure”); provided that.... NEE PROPOSAL: None</p>	<p>Section 5.04: Either Party may terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is provided, if an event of Force Majeure extends for more than three hundred sixty-five (365) consecutive days which materially and adversely affects the operations of the Claiming Party, or the Generating Facility is destroyed or rendered inoperable by a Force Majeure, and an independent, third party engineer determines in writing that the Generating Facility cannot be repaired or replaced within an aggregate period of twenty-four (24) months after the first day of such Force Majeure. NEE PROPOSAL: None</p>	<p>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) months after the commencement of such Force Majeure event. NEE PROPOSAL: Termination cure period of 8 months for a Force Majeure event is very short. SDG&E’s cure period should be consistent with PG&E (i.e. 12 consecutive rolling months following a FM event that materially and adversely impacts the project) or SCE (i.e. 365 consecutive days following a FM event that materially and adversely impacts the project).</p>
<p>4. Change of Control</p>	<p>Section 10.6(c): 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). NEE PROPOSAL: None</p>	<p>Section 10.04(b): 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. NEE PROPOSAL: NEE is proposing to use the PG&E Change of Control language which exempts public market transactions of the equity interests or capital stock of Seller or Seller’s Affiliates and only provides</p>	<p>Section 13.2: 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</p>

Financeability Issue	PG&E (from 11-15-2012 RAM PPA)	SCE (from RAM 3 Pro Forma)	SDG&E (from November 2012 version)
		notice to Buyer.	also constitute an assignment of this Agreement requiring Buyer's prior written consent. NEE PROPOSAL: NEE is proposing to use the PG&E Change of Control language which exempts public market transactions of the equity interests or capital stock of Seller or Seller's Affiliates and only provides notice to Buyer.
5. Outdated Insurance Requirements	<p>Section 10.10(b)(iii): Coverage shall: (A) by "Additional Insured" endorsement add as insured PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller (Insurance Services Office Form CG2010 1185, or equivalent form). NEE PROPOSAL: Delete reference to Insurance Services Office Form CG2010-1185 or equivalent.</p> <p>Section 10.10(f): All policies or binders with respect to insurance maintained by Seller shall: . . . (B) with respect to any additional insured, provide that such insurance will not be invalidated by any action or inaction of each such insured and will insure each such insured regardless of any breach or violation of any warranty, declaration or condition contained in such insurance by the primary named insured. NEE PROPOSAL: Delete the requirement in (B) above.</p> <p>(Importance: The requirements above are commercially outdated and are not consistent with currently available insurance products. Developers therefore are not able to obtain the required coverage.)</p>	NEE PROPOSAL: None	NEE PROPOSAL: None

Financeability Issue	PG&E (from 11-15-2012 RAM PPA)	SCE (from RAM 3 Pro Forma)	SDG&E (from November 2012 version)
<p>Non-Standard Transfer Tax Provisions</p>	<p>Section 9.2: Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Product or the Transaction arising at the Delivery Point, including ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point.</p> <p>NEE PROPOSAL: NEE is proposing to use the SCE transfer tax provision which specifies that Seller pays taxes arising before the Delivery Point, and Buyer pays taxes arising at and from the Delivery Point. This is consistent with the industry standard.</p>	<p>Section 9.02: Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Metered Amounts (and any contract associated with the Metered Amounts) arising before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, land, land rights or interests in land for the Generating Facility. SCE shall pay or cause to be paid all Governmental Charges on or with respect to the Metered Amounts at and from the Delivery Point.</p> <p>NEE PROPOSAL: None</p>	<p>Section 9.2: Seller shall pay or cause to be paid all taxes imposed by any governmental authority (“Governmental Charges”) on or with respect to the Product or the transaction under this Agreement arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the transaction under this Agreement from the Delivery Point.</p> <p>NEE PROPOSAL: NEE is proposing to use the SCE transfer tax provision which specifies that Seller pays taxes arising before the Delivery Point, and Buyer pays taxes arising at and from the Delivery Point. This is consistent with the industry standard.</p>

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-4582**

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-4582, 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 April 29, 2013, at San Francisco, California.

/s/ Sallie Lopes

Sallie Lopes