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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue  
Implementation and Administration of California  
Renewables Portfolio Standard Program,

Rulemaking 08-08-009  
(Filed August 21, 2008)

**NEXTERA ENERGY RESOURCES APPLICATION FOR REHEARING OF  
DECISION NO. 10-12-048**

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January 18, 2011

Pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure, NextEra Energy Resources ("NextEra"), hereby applies for rehearing of Decision No. 10-12-048 ("Decision" or "RAM Decision"), in one important respect that the Commission can easily remedy consistent with its policy goals and without delay.

I. INTRODUCTION.

NextEra, founded in 1985, is the largest generator of wind and solar power in North America, with facilities in operation in twenty-six states and Canada.<sup>1</sup> NextEra currently has twelve renewable facility operations in California, and in accordance with this State's and the Commission's emphasis on renewable resources, particularly with respect to the Renewable Portfolio Standards (RPS) and AB 32, is attempting to expand here. Consistent with established Commission policy encouraging repowering of existing renewable facilities, NextEra has been in negotiations with Southern California Edison ("Edison") for nearly a year and was near to finalizing five power purchase agreements to repower existing wind Qualifying Facilities ("QFs") in the Palm Springs area when the Commission issued the RAM Decision on December 16, 2010. This repowering is expected to triple the annual output at the facility due to the efficiencies of the new facility.

The RAM Decision creates ambiguity on the ability to negotiate bilaterally an agreement with a Qualifying Facility or the repowering of Qualifying Facilities. The RAM decision precludes bilateral negotiations of projects that are 20 MW or smaller except for Commission approved utility solar PV programs. The decision, however, includes references to the intent of the Commission to exempt QFs from the prohibition on bilateral agreements. Unfortunately, this exemption is not included in the findings or conclusions of the Decision. This ambiguity

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<sup>1</sup> NextEra changed its name from FPL Energy LLC in 2009, and FPL Energy LLC is a party to this proceeding. Pillsbury Winthrop Shaw Pittman appears for NextEra in this Application. Concurrently herewith, we are filing NextEra Energy Resource's Petition for Modification of Decision No. 10-12-048, dated January 18, 2011.

threatens action on the Palm Springs repower in its current form, which is fully permitted and ready to start construction in 2011, potentially depriving the state of the benefits of the increased output of renewable and greenhouse gas-free generation from this resource, which as a repower presents no development risk.

It is clear that the Commission did not intend in the RAM Decision to alter the “decisions and obligations” related to “purchases from QFs pursuant to PURPA” or other programs the Commission has authorized in “prior decisions.” Decision, p. 22, n. 40. However, since the RAM Decision made no findings or conclusions consistent with this text, NextEra’s negotiations for the Palm Springs facilities are at an impasse until the Commission provides clarity with regard to its intent. The Commission is required to make findings of fact and conclusions of law “on all issues material to the order or decision” (Pub. Util. Code, § 1705), and its failure to do so here was legal error. Pub. Util. Code § 1757.1(a)(2). The Decision should be reheard to include findings and legal conclusions consistent with the language and intent of the Decision.

II. NEXTERA IS DEVELOPING A RENEWABLE GREENHOUSE GAS-FREE RESOURCE THAT BUT FOR THE AMBIGUITY CREATED BY THE RAM DECISION WOULD BE OPERATIONAL IN 2011.

NextEra’s Palm Springs wind facility has five Standard Offer No. 4 QF contracts with Edison that expire between 2014-2018. NextEra plans to replace the existing 49.2 MW facility with a new 49.5 MW facility that will produce more energy as a result of advanced technology and increased efficiency from new wind turbines. While the new facility is 49.5 MW, it is split between five contracts of roughly 10 MW each. The energy production associated with the existing facility (56,000 MWH) will be priced at the existing QF contract price through the expiration of the contracts, at which point it will be replaced with a competitive market price. In the interim, before the initial contracts expire, the incremental increase in energy production, 110,000 MWH, will be priced at the competitive market price. Once the final QF contract

expires the output from the entire facility will be under the competitive market price. The term of this transaction is twenty years.

The interconnection studies for the new equipment are scheduled to be complete in March, the Power Purchase Agreements (“PPAs”) are nearly final, and but for the impact on negotiations created by the ambiguity of the RAM Decision, the project is scheduled to be operational in the fourth quarter of 2011. NextEra intends to begin construction as soon as the PPAs are executed.

III. THE COMMISSION SHOULD CONTINUE TO ENCOURAGE REPOWERING IN ACCORDANCE WITH THE UNIQUE BENEFITS OF REPOWERINGS AND LONGSTANDING COMMISSION PRECEDENT.

This commercial construct of NextEra’s Palm Springs wind facility is representative of complexity of repowering old QF facilities. Bringing these facilities and vintage agreements into the modern renewable procurement construct often requires very site specific considerations and nuanced negotiations. These projects do not fit with a standardize procurement approach such as the one developed under the RAM decision, which is why the Commission has long held that repowering of old wind facilities can be conducted through bilateral contract negotiations. Consistent with longstanding Commission policy, NextEra believes that it was the Commission’s intent to exempt QFs and repowers from the RAM decision and that a simple oversight is the reason that the explicit QF reference in the decision was not carried over from footnote 40 to the findings of fact and conclusions of law.

Since 2003 the Commission has had an explicit policy to encourage the repowering of old wind facilities:

“[T]he repowering of existing wind facilities in prime locations is a common-sense approach to increasing procurement of renewable energy, with costs that should be lower than for new greenfield projects. *Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program*, D.03-06-071, Mimeo Op. p. 58 (June 19, 2003).

In 2005 the Commission reinforced the Commission’s policy with regard to repowering, clearly acknowledges the value of allowing bilateral negotiations for repowering projects, stating:

“The high ranking given to biofuels pushes wind repowering down to third on PG&E’s list, although PG&E concedes that repowering would be efficient and effective. The Altamont Pass Wind Resource Area (Altamont Pass) is in PG&E’s service territory. It is currently providing electricity to PG&E’s customers and is well-understood. Here, the ranking is more than merely illustrative. For resources that bid into an RPS solicitation, a utility’s low planning ranking of a particular resource would not be allowed to interfere with the least cost/best fit analysis of the bid. But repowering contracts may be bilaterally negotiated rather than bid into a solicitation, as PG&E notes in its plan. If the utility’s internal planning downgrades repowering, it could have a negative impact on the utility’s pursuit of repowering opportunities.” *Interim Opinion Approving Long-Term Renewables Portfolio Standard Plans*, D.05-10-014, Mimeo Op. p. 16 (October 6, 2005) (footnote omitted).<sup>2</sup>

While the RAM Decision provides that projects smaller than 20 MW may no longer use bilateral negotiations, it also provides exemptions for other Commission approved programs and purchases from QF contracts. Given Commission precedent, its policy regarding repowers and QFs, the Commission should expand on the QF reference already in the Decision to make findings and conclusions of law, enabling the development of the Palm Springs facility in 2011.

IV. THE COMMISSION SHOULD GRANT LIMITED REHEARING TO MAKE FINDINGS AND LEGAL CONCLUSIONS ON MATERIAL ISSUES CONSISTENT WITH THE LANGUAGE OF THE DECISION.

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<sup>2</sup> In the omitted footnote 12, the Commission stated that “bilateral repowering contracts” which do not use PGC funds can be “presented by advice letter.” *Id.*

The RAM Decision, as the Commission states, is to be the “primary procurement vehicle” for projects in its size range “[g]oing forward.” Decision, p. 3. The RAM Decision is, however, equally clear that it is not meant to preempt or supersede other Commission-authorized programs. Thus, for example, the Decision states that “projects may still participate in other Commission authorized programs such as the annual RPS solicitations ...” *Id.* And again, the Decision states that “nothing in this decision alters the decisions and obligations related to ... purchases from QFs pursuant to PURPA, or other programs the Commission has authorized in prior decisions ...” Decision, p. 22, n. 40.<sup>3</sup>

Although the Decision is clear about these matters, the Commission made no findings or legal conclusions consistent with the language of the RAM Decision. The law requires that the Commission grant limited rehearing to adopt additional findings and legal conclusions. Section 1705 of the Public Utilities Code requires that the Commission’s “decision shall contain, separately stated, findings of fact and conclusions of law ... on all issues material to the order or decision.” The California Supreme Court in *California Motor Transport Co. v. Public Utilities Com.*, 59 Cal. 2d 270, 273 (1963), emphasized that,

“Every issue that must be resolved to reach that ultimate finding is ‘material to the order or decision. Statutes like section 1705 have been held to require findings of the basic facts upon which the ultimate finding is based [citations omitted]”.

The Court pointed out that “Such findings afford a rational basis for judicial review;” “indicate the basis for the decision [so that] the parties can prepare accordingly for rehearing or review;” and, of particular importance in the context here, “are also helpful to anyone planning activities that might involve similar questions.” 59 Cal.2d at 274. To the same effect is the decision of the California Supreme Court in *Associated Freight Lines v. Public Utilities Com.* (1963) 59 Cal.2d 583, holding that in failing to make and separately state findings on all material

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<sup>3</sup> The Decision states that “RAM is not a QF program.” Decision, p. 73.

issues, the Commission did not regularly pursue its authority as required by Public Utilities Code section 1757.

V. CONCLUSION.

For the reasons stated above, NextEra respectfully submits that the Commission should grant limited rehearing of D.10-12-048 to adopt additional findings and conclusions consistent with the language and intent of the Decision. NextEra's proposed conclusion of law is set forth in Exhibit A. The RAM Decision should not provide a vehicle to delay expansion of existing renewable facilities that it is Commission policy to promote. This is a narrow issue on which NextEra requests an expedited ruling separate from the other rehearing issues which may be presented by other parties.

Dated: January 18, 2011

Respectfully submitted,

By /S/ Michael S. Hindus

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## EXHIBIT A

NextEra's proposed conclusion of law:

\_\_\_\_. Nothing in this RAM Decision should apply to contracts with facilities that qualify as small power producers pursuant to PURPA and 18 CFR 292.201 et. seq. The IOUs are permitted to continue bilateral negotiations with QFs under 20 MW.

\_\_\_\_. Nothing in this RAM Decision should apply to contracts with QFs that are being repowered. The IOUs are permitted to continue bilateral negotiations with QFs that are being repowered.

**VERIFICATION**

I am the Director of West Market Affairs for NextEra Energy Resources and am authorized to make this verification on the its behalf. I am informed and believe that the matters stated in the foregoing pleading are true.

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

Executed this 18<sup>th</sup> day of January, 2011, at El Cerrito, California

/S/ Kerry Hattevik

By: Kerry Hattevik

NextEra Energy Resources

829 Arlington Boulevard

El Cerrito, CA 94530

CERTIFICATE OF SERVICE

I, Thomas E. Morgan, do hereby certify that I caused a true copy of **NEXTERA ENERGY RESOURCES APPLICATION FOR REHEARING OF DECISION NO. 10-12-048** to be served on all parties of record on the official Service List in proceeding R.08-08-009 by electronic mail or by U. S. Mail.

Executed the 20<sup>th</sup> day of January 2011

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