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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion to Determine Whether Pacific Gas and Electric Company and PG&E Corporation's Organizational Culture and Governance Prioritize Safety.	Investigation 15-08-019

OPENING COMMENTS OF NEXTERA ENERGY RESOURCES, LLC IN RESPONSE TO ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

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I. INTRODUCTION

Pursuant to the Assigned Commissioner's Scoping Memo and Ruling issued December 21, 2018 ("Scoping Ruling"), NextEra Energy Resources, LLC ("NextEra") submits these opening comments addressing certain alternatives identified in the Scoping Ruling for the potential organization and operation of Pacific Gas and Electric Company ("PG&E"). NextEra is a leading clean energy company and, through its subsidiaries and affiliates, owns and operates renewable electric generating facilities that deliver renewable power to PG&E under power purchase agreements ("PPAs") previously approved by the California Public Utilities Commission ("Commission"). The NextEra affiliate PPAs collectively represent approximately 945 MW of renewable generating capacity, all located in California (of which NextEra owns 795 MW; the rest is owned by partners).[1]

These comments focus on the potential for changes to the structure of PG&E and its electric business. A significant concern regarding any of the potential structural changes

[1] The entities selling and delivering renewable power under the PPAs are: Desert Sunlight 300, LLC; FPL Energy Montezuma Wind, LLC; Genesis Solar, LLC; NextEra Energy Montezuma II, LLC; NextEra Energy Partners, L.P.; North Sky River Energy, LLC; Shafter Solar, LLC; Vasco Winds, LLC; and Westside Solar, LLC.

identified in the Scoping Ruling is how their implementation could affect the procurement of electricity to serve customers in PG&E's service area, both to provide safe and reliable electric service and to continue meeting California's laws and policies requiring increased reliance on renewable and zero carbon electricity. Importantly, consideration of any transformational changes to PG&E should preserve commercial commitments that the Commission has already approved in the form of PG&E's existing long-term PPAs with owners of renewable power generating facilities that were built and financed in reliance on those PPAs. The Commission's leadership on the treatment of PG&E's existing PPAs is critical to provide stability for suppliers and to ensure continued lender and investor confidence in the sector. As a starting point, the Commission should confirm in this proceeding that preserving PG&E's existing PPAs is a foundational objective in any potential reorganization of PG&E or its business, including reorganization through bankruptcy.

Additionally, consideration of potential structural changes to PG&E should ensure that the resulting framework encourages and facilitates continued development of new renewable and zero carbon generating resources in California. These objectives are discussed in NextEra's comments in Section III below.

II. BACKGROUND

The Scoping Ruling specifies that "the next phase of this proceeding will consider a broad range of alternatives to current management and operational structures for providing electric and natural gas in Northern California."[2] The Scoping Ruling poses numerous questions under the following headings:

- Corporate Governance—Board of Directors;

[2] Scoping Ruling at 8.

- Corporate Management—Officers and Senior Leadership;
- Corporate Structure;
- Publicly Owned Utility, Cooperative, Community Choice Aggregation or other Models;
- Return On Equity; and
- Other Proposals.[3]

The Scoping Ruling asks parties to "make preliminary comments on the desirability of these alternatives with discussion of how each proposal impacts the following considerations:"

- the safety and reliability of utility service;
- the operational integrity and technical unity of components within PG&E's gas and electric transmission and distribution systems;
- the stability and adequacy of the utility workforce;
- the utility's relationships with and role in local communities;
- the ability of the state to implement its energy policies, including the need to reduce [greenhouse gas] GHG emissions and local criteria pollutants in both the utility sector and the economy as a whole;
- the ability of the utility to meet financial challenges posed by large catastrophic events such as earthquakes and wildfires;
- the utility's ability to raise capital and purchase gas, electricity, equipment and services; and
- the cost of utility service.[4]

The Scoping Ruling also states that "parties shall make initial observations on the legal, technical, and financial feasibility of these proposals and include observations on the feasibility of transitioning from the current utility structure to proposed alternatives," and allows parties to "offer additional proposals" and "comment on scope and process considerations."[5] The Scoping Ruling asks parties to comment on proposals in the following sequence: Corporate Governance;

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[3] *Id.* at 9-12.

[4] *Id.* at 12-13.

[5] *Id.* at 13.

Corporate Management; Corporate Structure; Public Utility or Cooperative; Return on Equity; and Other Proposals.[6]

III. COMMENTS ON CORPORATE STRUCTURE AND PUBLIC UTILITY OR COOPERATIVE ALTERNATIVES

The Scoping Ruling introduces for consideration a broad range of potential changes to PG&E and its operations. The identified alternatives range from adopting new requirements for PG&E's Board of Directors, to structural changes that could transform PG&E into one or more different entities that may no longer be subject to the Commission's jurisdiction and oversight. NextEra focuses its comments on the latter end of that spectrum and specifically the potential for structural changes to PG&E and its electric business. NextEra's comments thus address the categories of "Corporate Structure" and "Public Utility or Cooperative" and specifically the following questions in the Scoping Ruling:

Corporate Structure

- Should PG&E's corporate structure be reorganized with regional subsidiaries based on regional distinctions? For example, PG&E could be divided into multiple smaller utilities operating under a single parent company.

Public Utility or Cooperative

- Should some or all of PG&E be reconstituted as a publicly owned utility or utilities?
- Should PG&E be a "wires-only company" that only provides electric distribution and transmission services with other entities providing generation services? If so, what entities should provide generation services?[7]

Each of these alternatives initiates consideration of whether PG&E should be transformed into one more different entities—which may be private or publicly owned—with each potentially owning a different combination of assets and performing different functions than PG&E owns

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[6] *Id.*

[7] *Id.* at 12.

and performs today. A significant concern regarding any of these transformational alternatives is how their implementation could affect the procurement of electricity to serve customers in PG&E's service area, both to provide safe and reliable electric service and to continue meeting California's laws and policies requiring increased reliance on renewable and zero carbon electricity. Concerns about impacts to electricity procurement fall within the Scoping Ruling's request for parties to discuss how each alternative would impact: "the safety and reliability of utility service;" "the ability of the state to implement its energy policies, including the need to reduce GHG emissions and local criteria pollutants in both the utility sector and the economy as a whole;" and "the utility's ability to raise capital and purchase gas, electricity, equipment and services."

As discussed below, consideration of any structural change to PG&E should: (1) preserve contractual commitments that the Commission has already approved in the form of PG&E's existing long-term PPAs with owners of renewable generating facilities that were built in reliance on those PPAs; and (2) ensure that the resulting framework encourages and facilitates continued development of new renewable and zero carbon generating resources in California.

A. One Objective Should Be the Preservation of PG&E's Existing PPAs to Protect the Viability of the Associated Generating Facilities.

Developers of wind, solar, and other renewable electricity generation resources have made significant investments to build new generating facilities in California that produce electricity to meet increasing milestones under the California Renewables Portfolio Standard ("RPS"), and to help achieve California's GHG reduction and zero carbon goals. State-regulated utilities' execution of long-term PPAs for new renewable projects—and the Commission's approval of and assurance of rate recovery for those PPAs—provided a critical foundation that facilitated financing and construction of significant new renewable generating resources in

California. The magnitude of investment in reliance on PPAs is reflected in Figure 7 of the Commission's 2018 California Renewables Portfolio Standard Annual Report to the Legislature ("2018 Annual Report"), which shows that since 2003, the state's three large investor-owned utilities ("IOUs") have contracted for 15,739 MW of renewable capacity under the RPS program, with most of that renewable capacity located in California.[8]

The tremendous growth of contracted RPS capacity shown in Figure 7 of the 2018 Annual Report—from zero MW in 2003 to 15,739 MW in 2017—illustrates the connection between PPAs executed by PG&E and the other IOUs and the expansion of renewable capacity in California. A long-term PPA with a creditworthy buyer provides a stable and predictable revenue stream that enables financing and re-investment of capital in California through the construction of new generating projects. This stability and predictability is further supported by the statutory and regulatory framework for RPS procurement, which includes prior Commission approval of the PPAs and authorization of recovery of all payments made under the PPAs in rates for the life of the PPAs, subject to Commission review of each utility's administration of its PPAs.[9] The long-term PPAs signed by PG&E and the other IOUs under the Commission's oversight have provided the essential underpinning of the project financing and tax equity financing transactions that fund construction of new renewable energy projects.

As the Commission considers whether to make transformational changes to PG&E and its business organization, one fundamental principle should be to preserve and protect the fleet of

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[8] 2018 Annual Report at 15 (Figure 7) (cited source is CPUC RPS Database, October 2018).

[9] Pub. Util. Code Sections 399.13(d) ("Unless previously preapproved by the commission, an electrical corporation shall submit a contract for the generation of an eligible renewable energy resource to the commission for review and approval consistent with an approved renewable energy resource procurement plan.") and 399.13(g) ("Procurement and administrative costs associated with contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article and approved by the commission are reasonable and prudent and shall be recoverable in rates.").

renewable generation resources that were built and financed in reliance on long-term PPAs with PG&E. This necessarily requires that the Commission also preserve the PPAs that enabled construction of those projects. Renewable generation projects that have been financed and constructed in reliance on a long-term PPA are vulnerable to the risk of non-performance by PG&E. PG&E's filing for Chapter 11 bankruptcy protection already presents a significant risk to PG&E's existing PPAs and the viability of the associated projects. This is due in part to the fact that it is standard practice in a PPA, including in PG&E's form PPAs, to define the bankruptcy of a party as an event of default under the PPA, which then is often a triggering event for lender remedies under financing agreements executed in reliance on that PPA. PG&E's bankruptcy filing thus already has had a disruptive impact to its PPAs and related financings. Additionally, the potential that PG&E may attempt to reject its PPAs through the bankruptcy process—which would constitute a breach by PG&E with the attendant consequences under the PPA—creates significant uncertainty and concern for project owners and their lenders and investors.

The Commission's leadership on the treatment of PG&E's existing PPAs is critical to provide stability for suppliers and to ensure continued lender and investor confidence. As a starting point, the Commission should confirm in this proceeding that preserving PG&E's existing renewable energy PPAs is a foundational objective in any potential reorganization of PG&E or its business, including reorganization through bankruptcy.

As described above, preserving the existing PPAs is important for the continued viability of the renewable energy projects that were financed and constructed in reliance on the PPAs, including to avoid defaults and potential consequences such as foreclosure under their financing arrangements. Foreclosure could remove the projects from ownership by the companies that

have made significant investments to increase renewable generating capacity in California. It also would undermine the investment climate required to attract capital for the clean energy infrastructure required to meet California's climate goals, impacting the ability of developers to obtain financing at reasonable (or any) cost. This could also result in future increases in energy prices for PG&E's customers, as power suppliers would include a "PG&E default" risk premium in future PPA pricing. It is also important to recognize that some of the Scoping Ruling's alternatives could themselves trigger consequences under PG&E's existing PPAs. Alternatives such as dividing PG&E into multiple new regional entities, reconstituting PG&E as a "wires only" company, or reconstituting PG&E as a publicly owned utility, would need to be implemented with consideration of how any such reorganization might trigger certain standard provisions typically included in PPAs and their associated financing instruments, such as assignment, change of control, event of default, creditworthiness, and consent provisions. To the extent that there is any potential reorganization of PG&E, it should be conducted in a way that avoids triggering restrictions and prohibitions in PG&E's existing PPAs.

B. Any New Procurement Framework Should Be Designed to Facilitate Development of Renewable and Zero Carbon Generating Resources.

Another objective in any structural change to PG&E or its business should be to ensure that the resulting framework is designed to facilitate achievement of California's ambitious climate goals and GHG emission reduction targets. California is now working toward achieving a 60% RPS by 2030 and 100% zero carbon energy by 2045. Meeting these goals will require additional investment in renewable resources and the infrastructure required to integrate variable resources and achieve a zero carbon energy grid. Any structural changes considered for PG&E therefore should be designed to facilitate and encourage the necessary investment.

Establishing broadly applicable policy for new procurement presents a challenge in light of the growing trend of IOU electricity customers transitioning to community choice aggregators ("CCAs") and the decline in IOU bundled electric service customers. To promote a cohesive policy for all IOUs' service areas, ideally consideration of procurement alternatives for PG&E would be addressed in the context of a procurement framework that might be adopted more broadly for all load-serving entities in California. To the extent that the Commission proceeds to consider alternatives for PG&E in this proceeding, the following are considerations for encouraging continued private investment in the State.

As stated above, for the investment that has occurred to date, a necessary element has been the availability of a long-term PPA with a creditworthy counterparty. PG&E's role as the off-taker under PPAs for new projects has shifted to CCAs in recent years, as CCAs have formed to serve an increasing portion of PG&E's retail customers. To the extent that the Commission considers a transfer of future procurement responsibilities to a different entity, it will be critical to ensure that the purchaser meets creditworthiness standards and has the overall financial and operational wherewithal to act as the purchaser under a long-term contractual commitment. In this regard, ensuring that existing PPAs are preserved and survive PG&E's bankruptcy would help build confidence in the stability of a Commission-supervised electricity procurement framework.

Another important consideration is the Commission's ability to continue to oversee a new procurement framework to achieve the requirements and goals now embodied in state law. The Commission has already recognized that growth in CCAs will tend to reduce the Commission's ability to monitor energy procurement activities.[10] The Commission should evaluate and

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[10] 2018 Annual Report at 45 ("As additional CCAs are formed, the CPUC will oversee a smaller percentage of renewable procurement in the state, as the CPUC has limited jurisdiction over the

consider the extent to which a change to PG&E's procurement function—including the potential municipalization of PG&E or creation of a new procurement entity—might affect the Commission's ability to ensure that state goals are being met in a consistent and cohesive way.

IV. CONCLUSION

NextEra appreciates the opportunity to provide these comments and looks forward to participating in this proceeding.

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Respectfully submitted,

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procurement activities of CCAs and ESPs. The CPUC will have limited monitoring of renewable energy procurement activities, including solicitations or Requests for Offers, which may cause challenges in the IRP process due to the CPUC's lack of market visibility.").