



April 30, 2020

Ms. Merideth Hadala  
Michigan Public Service Commission  
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Lansing, MI 48917

Delivered to:

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**Re: NextEra Energy Resources' Comments Regarding Draft Legally Enforceable  
Obligation Rules**

Dear Ms. Hadala:

NextEra Energy Resources, LLC ("NEER") files these comments with the Michigan Public Service Commission ("Commission") in response to the February 28, 2020 draft rules filed by the Commission Staff regarding the establishment of a Legally Enforceable Obligation ("LEO") by a qualifying facility ("QF") pursuant to the Public Utility Regulatory Policies Act ("PURPA").

NEER commends the Commission Staff for leading a thorough and collaborative process that allowed stakeholders to weigh in on the policy proposal being drafted by Commission Staff. The proposed rules adopt several policies advocated by NEER. Importantly, consistent with other jurisdictions, the proposed rules include the following three key criteria for defining a LEO: (1) the tendering of a proposed contract, (2) proof of site control, and (3) commitment to pay for interconnection costs. We believe that inclusion of these requirements are critical to establishing a LEO.

In order to ensure proposed QF projects are viable and fulfill their contractual obligations, NEER also reiterates its previous recommendations that the Commission's rules require QFs to provide performance guarantees that include, at minimum, a scheduled commercial on-line date, minimum and maximum annual delivery obligations, and adequate security for non-performance consistent

with other recent state commission decisions.<sup>1</sup> In addition, NEER recommends that QFs demonstrate that they have access to necessary funding for their projects.<sup>2</sup> Absent these provisions, the risk for non-performance will inappropriately be shifted to ratepayers.

As the Commission may be aware, the Federal Energy Regulatory Commission (“FERC”) is in the midst of a Notice of Proposed Rulemaking (“NOPR”) proceeding addressing PURPA reform. Consistent with NEER’s recommendations, FERC’s NOPR proposes to require a QF to demonstrate its commercial viability and a financial commitment to construct its facility as a requirement to establishing a LEO.<sup>3</sup> In response to the FERC NOPR, the National Association of Regulatory Utility Commissioners (“NARUC”) supported such financial assurance requirements stating that “[t]he proposal to establish commercial viability and financial commitment as prerequisites of a LEO will greatly reduce uncertainty and, in the end, benefit utility consumers.”<sup>4</sup>

In light of the FERC NOPR, NEER respectfully reiterates its request that the Commission include the following additional criteria in its rules for the establishment a LEO:

- 1) QFs must provide performance guarantees that include, at minimum, a scheduled commercial on-line date, minimum and maximum annual delivery obligations, and adequate security for non-performance.
- 2) QFs must have timely access to and a manufacturer commitment to necessary generation equipment.
- 3) QFs must have access to necessary financing.

Thank you for the opportunity to comment on this matter and to participate in the stakeholder process. If the Commission or staff has any questions on these comments, please contact me at the number or e-mail below.

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<sup>1</sup> See e.g., North Carolina Utilities Commission Docket No. E-100, Sub 148, *In the Matter of Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities -2016*, “Order Establishing Standard Rates and Contract Terms for Qualifying Facilities” at 107; *In the Matter of the Petition of Highwater Wind LLC and Gadwall Wind LLC* at 20-21; See Oregon PUC - *Investigation into Qualifying Facility Contracting and Pricing*, “Order No. 16 174; UM 1610” (issued May 13, 2016) at 71-72. These two cases are the basis for NEER’s recommendations on performance guarantees.

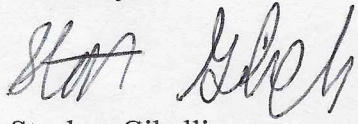
<sup>2</sup> See *South River Partners, LP vs. Pennsylvania Public Utility Commission*, 696 A.2d 926 (1997); See Minn. PUC Docket No. E-015/CD-11-1073, *In the Matter of the Petition of Highwater Wind LLC and Gadwall Wind LLC*, “Opinion” (issued February 25, 2013).

<sup>3</sup> Federal Energy Regulatory Commission Docket RM19-15, *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Notice of Proposed Rulemaking, (Issued September 19, 2019) at Paragraphs 140-142.

<sup>4</sup> Federal Energy Regulatory Commission Docket RM19-15, *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Comments of NARUC, (Dated December 3, 2019) at Page 9.



Sincerely,

A handwritten signature in black ink, appearing to read "SGibelli", written over a horizontal line.

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