



February 14, 2019

Ms. Merideth Hadala
Michigan Public Service Commission
hadalam@michigan.gov

Re: NextEra Energy Resources' Comments Regarding Criteria for the Creation of a Legally Enforceable Obligation

Dear Ms. Hadala:

NextEra Energy Resources, LLC ("NEER")¹ is pleased to file these comments with the Michigan Public Service Commission ("Commission") for consideration by staff and other interested stakeholders to develop rules regarding when a Legally Enforceable Obligation ("LEO") is established by a qualifying facility ("QF") under the Public Utility Regulatory Policies Act ("PURPA"). NEER's comments are limited to the circumstances under which a LEO may be established between a QF and an electric utility. NEER recommends that a LEO should be established only after a contract executed by the developer is submitted to the utility, and the developer has demonstrated that its QF project provides a viable and enforceable obligation to deliver power to the utility, and only an act of acceptance by the utility or an act of approval by the Commission remains to establish a contract.²

Congress enacted PURPA in 1978 to help lessen the United States' dependence on fossil fuels, and concluded that one way to help accomplish that goal would be by encouraging the use of renewable resources and small power projects.³ As a result, PURPA directed the Federal Energy Regulatory Commission ("FERC") to create regulations that would compel electric utilities to purchase energy from projects that met certain criteria (QFs), and FERC included the concept of a LEO in its implementing rules to effectuate those legislative goals. FERC did not define a LEO in its regulations, but delegated to state commissions authority to establish specific requirements for defining a LEO.⁴

Several key factors should be considered when determining whether a LEO has been established. From both a reliability and business perspective, it is critical that a resource can viably deliver power into the electric system by a date certain. Therefore, in consideration of the best practices

¹ NEER is a clean energy leader and one of the largest wholesale generators of electric power in the United States, with more than 19,000 megawatts of net generating capacity, primarily in 32 states and Canada as of year-end 2017. NEER, together with its affiliated entities, is the world's largest operator of renewable energy from the wind and sun.

² 18 C.F.R. § 292.304(d); *Armco Advanced Materials Corp. v. Pa. Publ. Util. Comm'n*, 135 Pa. Commw. 15, 33, 34 (Pa. Commw. Ct. 1990).

³ *FERC v. Mississippi*, 456 U.S. 742, 745-746, 750-751 (1982).

⁴ 16 U.S.C. § 824a-3(a); Order No. 688-A, 119 FERC ¶ 61,305 at P 139 (2007).

of other jurisdictions, NEER recommends the following for consideration by the stakeholder working group in establishing requirements for 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.⁵
- 2) QFs must be self-certified as a QF with FERC.
- 3) QFs must submit to the utility a completed interconnection request that demonstrates compliance with system reliability standards and a commitment to pay the cost of interconnection including any necessary system upgrades.
- 4) QFs must receive Commission approval of its power purchase contract or in the alternative at least provide an executable agreement to the utility signed by the QF.
- 5) QFs must demonstrate site control.⁶
- 6) QFs must have a fully developed site plan and design details.
- 7) QFs must have a certificate of public convenience and necessity or other comparable permits necessary to construct the facility;⁷
- 8) QFs must have timely access to and a manufacturer commitment to necessary generation equipment.
- 9) QFs must have access to necessary financing.⁸

Adoption of these factors in the LEO definition will help ensure that QF projects are viable and dependable.

Thank you for the opportunity to comment on this matter. If the Commission or staff has any questions on these comments, please contact me at the number or e-mail below. NEER looks forward to participating in future stakeholder meetings.

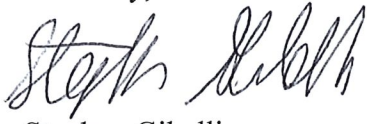
⁵ North Carolina Utilities Commission Docket No. E-100, Sub 148, *In the Matter of Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities -2016*, “Order Establishing Standard Rates and Contract Terms for Qualifying Facilities” at 107; *In the Matter of 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.

⁶ *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).

⁷ *South River Partners* at 14-15.

⁸ *Id*

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Gibelli", written in a cursive style.

Stephen Gibelli
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