



June 20, 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") files these additional comments with the Michigan Public Service Commission ("Commission") in response to the draft rules regarding the establishment of a Legally Enforceable Obligation ("LEO") by a qualifying facility ("QF") pursuant to the Public Utility Regulatory Policies Act ("PURPA").

On May 28, 2019, the Commission published two proposed rule options for defining when a LEO is created. Option 1 includes most of the elements NEER proposed in its February 14, 2019 comments, with some limited exceptions including our proposed requirement that developers agree to performance guarantees and must demonstrate that they have with a couple of limited exceptions described below.¹ Option 2 is similar to Option 1 but has removed three key criteria for defining a LEO: 1) the tendering of a proposed contract, 2) proof of site control, and 3) execution of an agreement committing to pay for interconnection costs.

¹ In its February 14, 2019 comments, NEER recommended 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.
- 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) 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.
- 8) QFs must have timely access to and a manufacturer commitment to necessary generation equipment.
- 9) QFs must have access to necessary financing.

NEER supports the inclusion of all three of the aforementioned criteria in rules determining when a LEO is established which is why we believe Option 1 is the better proposal. The criteria proposed in Option 1, which is consistent with precedent in other jurisdictions, will help ensure a reasonable and appropriate analysis is used for determining whether a LEO exists for a QF. However, NEER recommends that the criteria in Option 1 be strengthened to include both a performance guarantee and a demonstration of necessary financing. Specifically, the following requirements should be added to Option 1:

- 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
- 2) QFs must have access to necessary financing.³

The addition of these two criteria in Option 1 will help ensure that only viable projects are eligible for LEO status.

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 the next stakeholder meeting in July.

Sincerely,



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² 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.

³ *Id*