Comments of NextEra Energy Resources
On the California Air Resources Board's
15 – Day Proposed Modification to the
California Cap and Trade Program
August 11, 2011

NextEra Energy Resources[1] (NextEra) is a leading clean energy provider with 18,886 MW of generation capacity operating in 26 states and Canada. More than 90 percent of NextEra's electricity is generated by clean fuels. In addition, NextEra is the nation's leader in wind energy generation and operates the two largest solar thermal fields in the world. Furthermore, we are an affiliate of a regulated utility, Florida Power & Light Company located in southern Florida. In California, NextEra affiliates own and/or operate 700 MWs of wind, 310 MWs of concentrated solar thermal, and 500 MW of combined cycle natural gas generating capacity.

NextEra supports the comments submitted by both the Independent Energy Providers (IEP) and The Western Power Trading Forum (WPTF). In addition to those comments we would like to emphasize some of those suggested changes as well as add our support for the cap and trade programs provision for voluntary renewable energy markets. Providing an accounting mechanism for voluntary renewable energy within the cap and trade program is critical to the future viability of this market. Activity in the state of California provides one example that the voluntary market has been an important driver of clean energy development. In 2007, 2 million megawatt hours of electricity were generated by renewable sources and sold through the Center for Resource Solutions Green-E Energy consumer protection program. This amounts to about 1.2 million metric tons of avoided carbon dioxide emissions, using the US Environmental Protection Agency's emission factor for the western region (based e Grid, the Emissions & Generation Resource Integrated Database).

[1] NextEra Energy Resources, LLC and its affiliates NextEra Energy, Inc., Florida Power & Light Company each have subsidiaries and other affiliates with names that include FPL, NextEra Energy Resources and similar references. For convenience and simplicity, NextEra Energy Resources, NextEra Energy Inc, and FPL as well as terms like Corporation, Company, our, we and its, are sometimes used as abbreviated references to specific subsidiaries, affiliates or groups of subsidiaries or affiliates. The precise meaning depends on the context. NextEra Energy Resources and some of its affiliates were formerly known as FPL Energy.

The delay to the start date of the cap and trade program was an unfortunate development. Any changes to a developing market have real implications. Entities are making arrangements today in order to provide reliable electric service for future years. These entities must plan years in advance and are currently securing the resources to provide that service. A shift in policy that changes potential GHG liability associated with electricity affects the price and value of those services. NextEra would like to urge ARB to give entities as much lead time as possible when it plans to make major changes to the program. This will potentially lessen the adverse impacts on both the electricity and carbon markets.

In an effort to make the overall program more efficient, affective and equitable NextEra urges the California Air Resources Board (ARB) to make some adjustments to the changes proposed in the July 2011 Modified Regulation Order (MRO). These adjustments include the suggestions provided in the comments submitted by IEP and WPTF. To reinforce some of those suggested changes, we urge ARB to make the following changes.

- The elimination of the "buyer liability" placed on purchasers of offset credits in order to meet a compliance obligation.

- A tangible cost recovery option for independent energy producers that are unable to pass through the cost of complying with the regulation.

- Penalties to entities failing to meet their compliance obligation should not remove additional allowances from the market even if the removal is temporary.

<u>Offset Invalidation After Certification</u>

NextEra strongly believes that once an offset credit is verified and certified, it should remain viable and non-revocable. In section 95985 of the MRO for a California Greenhouse Gas Cap and Trade Program[2], ARB provides a mechanism for the invalidation of certified offset credits. The purchaser the offset credit assumes a "buyer liability" and would be required to replace any invalidated offsets used for compliance with either another certified offset or an allowance. We urge ARB to change section 95985 and eliminate the "buyer liability" imposed on purchasers of offset credits. The viability of the offset credit should be the responsibility of the certification process, registered certifying agents, and the offset provider. In many cases the purchaser of the offset credit will be completing transactions through a third party and not be directly involved with the offset project. The purchaser should be able to trust the certification process developed by ARB to assure what they are buying is a real reduction in GHG

[2] Subchapter 10 Climate Change, Article 5, Section 95985, Title 17 California Code of Regulations, pp A-242-246.MRO 95985

emissions and that it qualifies for use as a compliance tool in the GHG cap and trade program. The criteria established by ARB to allow offsets for use under the regulation state that reductions qualifying for offsets must be permanent[3]. The ability of ARB to invalidate a certified offset at a future date contradicts that criterion. The mechanism for the verification and certification of offset credits needs to supply the purchaser with the confidence that the credit they are purchasing will remain viable for use to meet a compliance obligation in future years. The ability of ARB to revoke the viability of an offset implies that anyone who uses offsets to meet a compliance obligation remains in a tentative state of compliance for a period of up to 8 years. This has potential implications that could affect the value of or risk associated with an asset on a rolling 8 year schedule. Once a compliance obligation is met using certified compliance instruments, it is not acceptable from a risk perspective that a facilities compliance status can then be reversed. Failure to provide assurance that a certified offset is reliable could lower demand for offsets and in turn discourage investment in offset projects. An unnecessary element of risk would be added into every offset transaction. In addition, this risk could affect property values, asset transactions, and credit evaluations. These added risks and the liability to buyers of invalidation are unnecessary and should be removed from the regulation.

Another problem associated with ARBs' "buyer liability" approach is determining which offsets get invalidated. If ARB finds a discrepancy, will an entire vintage year or years of offsets from a project be deemed invalid or just the shortfall? Unless all the offsets are purchased by the same entity, ARB will be saddled with determining which entity is holding invalid offsets. For instance if ARB determines the accreditation of offsets is overstated by more than 5%[4], which offsets within the total lot for that year will be invalidated? Will it be the first offsets generated, the last, or some in the middle? This would cause offsets within the same lot to potentially be offered at different prices. ARB will have to determine which offset credits no longer have value. In turn, ARB will have to develop a mechanism that is fair and unbiased in order to make this determination. ARB's effort to protect the integrity of the offset system is commendable however it has created a level of complexity and element of risk that is unnecessary. The adjustment of the accreditation and verification process to lock in a verified offset after 8 or even 5 years[5] is a step in the right direction. This will alleviate some of the risk this approach presents to buyers and developers but does not completely eliminate the problems associated with this approach. ARB needs to attack the issue on the front end rather than just reacting to an error. NextEra proposes ARB establish a buffer pool of allowances to protect the offset program in the event of a project going bankrupt or a large reversal of sequestration. In addition, credits should be considered irrevocable after they are certified by an accredited verifier. In the case of any calculation errors or discrepancies like those listed in the proposed rule modifications[6], the offsets should be deducted from a future year offset vintage that has not been transferred to another entity to account for the shortfall. One option would be to take and replace offset credits from the buffer pool. This way the integrity of the program remains intact since the faulty or overstated offsets have been replaced and the risk to the buyer is eliminated.

[3] MRO 95970(a)(1)
[4] 95985 (b)(2)
[5] 95985 (b)(6)
[6] 95985(b)(1)

The invalidation of an offset credit due to "*The offset project did not meet all local, state, or national regulatory requirements during the time covered by an Offset Project Data Report*;"[7] does not need to be in the regulation. This provision is too broad and exponentially increases the risk to offset generators and buyers. The reasons given for potential invalidation in this section are potentially not even related to the validity of the offsets generated by a project. For instance, according to the current wording to the regulation, if a property fence surrounding the project is not properly placarded the project triggers the criteria for invalidation. We hope that this is merely an oversight on ARB's part and not their intent. In order to avoid this type of scenario, this section should be eliminated. Financial or regulatory status of a project can be added to the verifier's criteria for project verification but we feel that this section is unnecessary. Again NextEra feels that ARB should be proactive when addressing this issue and not reactive.

NextEra agrees with ARB's position on intentional misrepresentation of data associated with an offset project. Any intentional misrepresentation of an offset project's GHG mitigation should be dealt with harshly. Also any attempt to acquire an offset credit after a renewable energy credit has been sold for the same power generation must not be permitted. These actions have real financial and environmental implications. Any such actions undermine the integrity of the program and the offset system. It also provides an unfair economic advantage to those committing the act. We agree with ARB and other stakeholders that strict penalties and legal action is warranted in those situations.

With respect to offset invalidation section of the proposed changes to the regulation, NextEra urges ARB to make the following changes to the regulation:

- Eliminate the "buyer liability" provision in the regulation
- Set up a buffer pool for all offset projects
- Reduce the offset project invalidation to one year

<u>Make a provision for costs that are not recoverable due to existing contracts</u>

The issue of stranded cost recovery has come up repeatedly throughout the development of the regulation. The inability of a facility to recover an added cost due to a pre-existing contract presents some unfair market conditions for certain electricity generating facilities. NextEra supports the comments submitted by IEP and WPTF on this topic. Although the obvious fix to this issue lays in the renegotiation of contracts and power purchase agreements, this may not be an option for some parties involved. In order to address this issue fairly, ARB must incent both parties to renegotiate the contracts. NextEra urges ARB staff provide some assurance that this issue will be addressed in this rule.

[7] 95985(b)(3)

Change the penalty for non-compliance to a monetary requirement

NextEra agrees with the magnitude of the penalty that would be imposed on an entity that fails to meet their compliance obligation in a "timely manner". The 4 to 1 multiplier[8] is an effective deterrent and is appropriate in this type of situation. However, NextEra would urge ARB to change the mechanism for implementing the penalty. We are not implying the shortfall in the compliance obligation should be satisfied with anything but the correct amount of allowances. One allowance should be surrendered for each ton of GHG emitted to cover the shortfall. We feel the penalty portion of the enforcement should be collected in the form of a monetary payment rather than the temporary surrender of additional allowances. The removal of the additional allowances to satisfy the penalty has potentially unintended consequences. The removal of allowances not needed to meet a compliance obligation could place an additional burden on all market participants, not just the entity responsible for the infraction. The resulting increase in the scarcity of allowances could result in an increase to allowance prices. A monetary penalty has the desired effect on the offending entity without causing potential hardship on the rest of the allowance market.

Conclusion

In addition to the comments submitted above, NextEra urges the ARB to consider the comments submitted by IEP and WPTF. Specifically the comments related to imported power, energy efficiency audits, resource shuffling, replacement power with respect to balancing authorities, and holding accounts. NextEra looks forward to working with ARB staff on these issues and looks forward to not only the implementation but also the success of the GHG cap and trade program in California. If you have any questions concerning these comments, please feel free to contact me directly.

Respectfully,

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[8] 95857 (b)