Comments of NextEra Energy Resources In Response to the California Air Resource Board's Proposed Regulation for the California Greenhouse Gas Cap and Trade Program

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Introduction

NextEra Energy Resources[1] (NextEra Energy) is a leading clean energy provider with over 18,000 MW of natural gas, wind, solar, hydroelectric and nuclear power plants in operation in 26 states and Canada. We are an affiliate of a regulated utility, Florida Power & Light Company located in southern Florida. Within the Western Electricity Coordinating Council (WECC)[2], NextEra Energy affiliates own and/or operate 1550 MWs of wind, 310 MWs of concentrated solar thermal, 500 MW of combined cycle natural gas generating capacity. Because our parent company operates both a regulated utility and independent electric generation, we have looked at the issues surrounding climate change programs from both perspectives. We are able to provide ARB a relatively unique perspective on the issues involving the electric generation sector. Our corporation is committed to advancing climate change policies and has actively participated in the development of Regional Greenhouse Gas Initiative (RGGI) protocols in the Northeast, Midwestern Governor GHG Accord, California's implementation of the Global Warming Solutions Act of 2006, as well as all federal GHG reduction efforts.

NextEra Energy supports the California Air Resource Board's (ARB) initiative to establish a greenhouse gas (GHG) cap and trade program as well as the goals established by the California Legislatures passage of AB32. We feel it is important to develop a program that effectively reduces GHG emissions in California in a cost effective manner, keeping the focus of the program on the long term goals of AB32. In order to protect the interests of the citizens of California and to reach the program goals in the most efficiency manner, the strategy for implementation must set a framework that enables the participants in the program to meet their long term reductions requirements while maintaining their economic viability. In addition, it is important that ARB develop a program that can be easily migrated into a regional, federal, or international program.

NextEra Energy supports the majority of the elements contained within the proposed regulation, including but not limited to;

- The ability to use offsets to meet a compliance obligation
- The establishment of cost containment mechanisms:
    - Banking of allowances
    - 3 year compliance period

[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.

2 The Western Electricity Coordinating Council region encompasses the interconnected power grid of the Western states, provinces, and a small part of Mexico.

    - Price floor
    - Cost Containment Reserve Auction
- Quarterly allowance auction
- Limited protection for economically disadvantaged industries
- An emission threshold for applicability
- A multi-sector program
- The placeholder for inclusion of voluntary renewable energy accounting under the cap and trade program

Based on conversations with staff and a review of the proposed regulation, it is obvious that the proposed regulation intentionally left out some program details to be developed in 2011. In addition, NextEra Energy feels that some of the program elements contained in the draft will need to be modified in order to implement the most efficient and effective program with respect to both costs and emissions reductions. NextEra Energy recommends that ARB make the following changes to the proposed regulation in order to achieve the reductions outlined in AB32 in the most effective, efficient, and fair manner:

- An accounting mechanism for voluntary renewable energy purchases needs to be established to allow renewable energy projects located within California to participate in the voluntary renewable energy market. This can be accomplished most effectively through an off the top set-aside pool of allowances. Similar programs have been established in 9 of 10 RGGI states.

- Permanence of certified offsets is necessary to ensure this provision acts an effective cost containment mechanism. The current proposed regulation leaves offset purchasers and project developers in a position of uncertainty. The potential invalidation of certified offset credits will result in fewer projects moving forward and therefore fewer GHG emissions reductions as well as reducing the amount of potential the co-benefits created by these projects.

- ARB needs to expand the list of eligible offset projects and develop certification protocols for these additional project types. NextEra Energy feels the current list of project types is too limited and fails to maximize the program's potential.

- ARB must avoid creating a competitive disadvantage for independent energy producers that are unable to pass through the cost of complying with the regulation due to pre-AB32 power purchase contracts.

- Participation in the Cost Containment Reserve Auction should not require the retirement of all held allowances. It is an unnecessary restriction. There are other mechanisms that could be employed in order to ensure entities are buying these allowances only for compliance reasons.

- ARB must be more definitive with the restrictions on auction revenue usage. The current suggestions are very good but should be made mandatory.

Establishment of a voluntary renewable energy set-aside

The voluntary market has been an important driver of clean energy development in California. 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 on e-Grid, the Emissions & Generation Resource Integrated Database). Yet this number significantly understates the actual reductions as the green power programs of six California utilities are not included in this figure.

The contribution from the voluntary purchase renewable energy credits to the development of new clean energy projects should not be ignored. The clean energy development that the off-the-top approach provides will put California in a better position to meet its long term goals (i.e. post-2020). The additional early (i.e. pre-2020) clean energy development will mean less reductions will have to be found in the long term, which will potentially reduce future allowance prices. Again, there are many other environmental and economic benefits beyond these reduced allowance prices. We offer the following specific suggestions for how the process of setting-aside and retiring allowances associated with voluntary purchases of renewable energy should work:

- The voluntary renewable energy set-aside should be estimated in advance of each compliance period and then the appropriate volume of allowances removed from total pool of allowances created under the cap.

- At the end of a compliance period, program administrators should reconcile voluntary demand estimates with actual generation.

- The difference between estimated and actual demand can be accounted for by adding to or subtracting from the set aside for the next compliance period.

- ARB should consider the location of the renewable energy generator for eligibility. The RGGI program provides useful insight into how an off-the-top system can work.

- If a California cap-and-trade program is linked with others through the Western Climate Initiative (WCI), California should negotiate reciprocity with other WCI participants.

- Information from the National Renewable Energy Laboratory, the Western Region Electricity Generation Information System, and other public data sources should serve as the basis for determining the quantity of allowances to be set-aside under the cap in advance of each compliance period.

NextEra Energy was pleased to see ARB recognize the importance of the voluntary renewable energy market. We look forward to working with ARB in developing sections §95870(e) and §95831 (c)(6) in 2011.

Certified offsets should not be reversible

NextEra Energy feels that once an offset credit is certified, it should remain viable and not be revocable. In section §95985[3] of proposed rule, ARB is providing for the invalidation of already certified offset credits. The purchaser the offset credit assumes "buyer liability" and would be required to replace any invalidated offsets with either another certified offset or another compliance instrument. 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 of the ARB to assure what they are buying is a real reduction in GHG emissions and that it qualifies for use as a compliance tool in the GHG cap and trade program. One of the basic criteria for offsets along with being a real reduction and additional is the idea of permanence. The ability of ARB to invalidate certified offsets at some future date contradicts that criterion. The mechanism for the verification and certification of offset credits needs to supply the purchaser with the confidence that what they are buying will remain viable.

The proposed buyer liability approach:

- Reduces the demand for offset projects due to an additional risk to both the investors in the projects themselves and the purchasers of the offsets. The risk and uncertainty injected into the market could result in less investment in potential projects and/or the development of new project technologies.

- Increases the cost of offsets to the purchasers because an independent evaluation of the projects by the purchaser of the credits would be necessary. In addition, buyers of offset credits have to purchase additional assurances or hedge financial positions to protect against this added risk. This is ironic because offsets are listed as a cost containment mechanism.

- Moves some level of accountability for offset credit verification from the experts in this arena (certifying agents) and shifts it to non-experts (buyers).

- Places California offset projects at a disadvantage to out-of-state projects that do not institute this reversibility provision in their rules. (RGGI projects, WCI projects, non-cap and trade states/regions);

There are options the ARB could exercise prior to the issuance of a credit that could mitigate the potential voiding of an offset credit. For instance, there may be projects at

[3] ARB Proposed Regulation Order, Appendix A, pp A-160

risk for the release previously sequestered carbon as the result of an action outside of the projects direct control (i.e. earthquake, fire, etc). ARB would need to identify those types of projects and assign a discount factor to the total offset production of every project certified under that protocol. This factor should be established based on the risk of sequestration or offset reversal. All the discounted offsets are then placed into a general holding account. If it is determined that a reversal has occurred, an equivalent amount of offsets are retired from this holding account. All offset projects of a particular type would share the risk of the offset reversal and there is no need to invalidate any of the offsets. The GHG cap integrity is maintained. This also gives assurances to investors up front so their risk in developing new projects is limited. If the holding account is exhausted or reversals from a specific project type are reoccurring, ARB can then either adjust the discount factor or revisit the verification protocol.

Once an offset is certified, it should remain viable and non-revocable. One example of establishing a policy of non-reversal has been proposed in British Columbia. WCI also recognizes the need for assurances of offset credits to retain their value.[4] NextEra urges ARB to establish robust offset protocols and establish the policy that offsets once certified are not reversible.

Cost pass through for stranded contract pricing

Appendix J of the ARB staff report recognizes the potential issue surrounding stranded costs created by the currently proposed GHG cap and trade program and born by some independent energy producers under existing power agreements. Some pre-existing power purchase contracts do not allow the generator to pass-through the cost of purchasing allowances or offsets. NextEra Energy believes that the proposed regulation needs to be amended in order to mitigate the impact that could result from these situations. The addition of a provision to mitigate these stranded costs would require ARB to at least:

- Define the eligibility requirements for this provision
- Establish the conditions under which these facilities continue to receive assistance or relief
- Determine the form the relief will take (example-allowance allocation, auction revenue, surcharge to off-taker, etc)
- Documentation requirements

It is encouraging that that this issue has been identified prior to the finalization of the regulation and NextEra Energy encourages ARB to continue to work with stakeholders to discover a fair and equitable solution.

4 Proposed Offset Regulation Consultants paper, page 17 at: http://www.env.gov.bc.ca/cas/mitigation/ggrcta/offsets-regulation/index.html#Intentions

Utilization of Cost Containment Reserve should not require retirement of held allowances

NextEra Energy supports ARB's use of the Allowance Price Containment Reserve defined in section §95913[5] of the regulation. It provides another source of procuring allowances for entities that incur a compliance obligation. One of the requirements to utilize this pool of allowances however states participants "hold no compliance instruments in their holding accounts or limited use holding accounts."[6] One reason for the inclusion of this provision is to ensure that entities using this mechanism for obtaining allowances do not profit from the sale of the allowances purchased from the reserve. This restriction is not necessary. There are other ways to ensure that any allowances purchased in this manner are used for compliance only. The emptying of accounts is not necessary and should be removed from the regulation. One way to accomplish the same goal is to move the allowances purchased from the reserve directly to the retirement account of the purchaser or to tag the allowance as ineligible for transfer to another entity. Entities that have a compliance obligation need the flexibility to bank allowances obtained from various sources in order to fully realize any cost containment provided by the reserve. This flexibility benefits consumers by allowing entities with a compliance obligation to spread the risk associated compliance over time. NextEra Energy feels the emptying of all holding accounts in order to purchase allowances from the reserve causes more problems than it solves. For instance, will allowances with future vintages need to be retired? Also, the partial surrender of annual compliance obligation could trigger the need to go to reserve to makeup any shortfall. Emptying entities holding accounts could effect the hedging positions taken for future compliance obligations. The Allowance Price Containment Reserve should be available to meet short term compliance obligations as needed by entities with a compliance obligation or to be used for long term speculation in anticipation of escalating allowance prices. In short, this requirement of emptying holding accounts does not maximize cost containment and could actually result in a cost escalation in future compliance periods.

Use of auction revenue

The use of auction revenue is important not only for political and legal reasons, but NextEra believes it is also an important part of ARB reaching their long term GHG reduction goals. Currently §95892[7] of the proposed regulation suggests IOUs use auction revenues to the benefit of ratepayers in a manner consistent with the goals of AB32. NextEra Energy feels ARB should be more proscriptive. There is an opportunity to use these auction revenues to invest in programs that will provide the framework for a low carbon future. Examples of these potential investments include but are not limited to;

[5] ARB Proposed Regulation Order, Appendix A, pp A-94 thru A-98

[6] ARB Proposed Regulation Order, Appendix A, section §95913 (c)(1)(B)

[7] ARB Proposed Regulation Order, Appendix A, p A-83

- Building transmission to renewable energy zones
- Developing new or improved electric generation technologies
- Alternative fuel distribution facilities
- Appliance efficiency upgrade/replacement programs
- Supplementing costs of renewable energy to electricity customers

ARB should give the CPUC and CEC more direct guidance on the potential uses for auction revenue. Any unfair competitive advantages for entities administering the revenues to customers must be avoided. Any revenue from the auctioning of allowances needs to be used to maximize reductions in GHG emissions while positioning the state to reach its long term goals efficiently and effectively.

Expand the list of eligible offset projects

NextEra Energy supports the use of offsets as a compliance tool in ARB's cap and trade program. As observed in by ARB staff in the development of this regulation, the use of offsets will reduce the cost of compliance to consumers and participants. While the inclusion of offsets is encouraging, the limited number of qualifying project types is something we feel needs to be addressed. Section §95973[8] lists 4 types of offset projects that are eligible for certification and they include:

- Ozone Depleting Substances Projects (ODS)
- Livestock Projects
- Urban Forest Projects
- US Forest Projects

Although this is a good foundation, this list should be expanded to other project types. There are several other types of projects that could be incorporated into the cap and trade program relatively easily. Some of these project types include but are not limited to:

- Expanding ODS to imported substances from Mexico or Canada
- N_2O abatement
- Wastewater management
- Coal mine methane

The expansion of this list can increase the amount of projects developed. More offset projects will decrease the cost of the offsets to purchasers of offset credits and therefore the cost of the program on consumers. It will also provide investors an opportunity to develop diverse portfolio of project types. In addition, the total amount of co-benefits associated with these offset projects will increase with more projects being developed.

[8] ARB Proposed Regulation Order, Appendix A, section §95913 (a)(2)(C), p A-113

Overall NextEra Energy feels this list is too restrictive and should be expanded as soon as ARB can establish the necessary verification protocols.

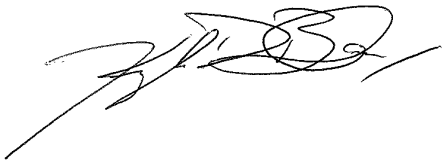
Conclusion

NextEra Energy has supported AB32 from its inception and has participated with agency staff at all stages of the program development process. We look forward to working with ARB staff to help finalize the last few pieces of this program. As stated above, while we support the majority of the elements contained within the proposed regulation we also feel some adjustments are warranted to ensure the program operates effectively and efficiently. These adjustments include:

- An accounting mechanism for voluntary renewable energy purchases
- Permanence of certified offsets
- Expand the list of eligible offset projects
- Relief for entities without cost pass through contracts
- Cost Containment Reserve Auction should not require the retirement of all held allowances.
- Developing more definitive auction revenue usage requirements

If you have any questions related to these comments, please feel free to contact me directly at 561-691-7358, kyle.boudreaux@fpl.com .

Thank you,



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