Comments Submitted by NextEra Energy Resources on the California Air Resources Board Preliminary Draft Regulation for the California Greenhouse Gas Cap and Trade Program Workshop on December 14, 2009

NextEra Energy Resources[1] (NextEra Energy) is a leading clean energy provider with over 13,000 MW of natural gas, wind, solar, hydroelectric and nuclear power plants in operation in 25 states. 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, 500 MW of combined cycle natural gas, and 44 MWs of coal generating capacity. Our company brings a unique perspective to the climate change discussion. We have looked at this issue from both the regulated and unregulated perspective as well as from the view of merchant and contracted assets. We operate in all major regions of the country. 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, the Western Climate Initiative (WCI), Midwestern Governor GHG Accord, as well as numerous federal GHG reduction efforts.

The following is a submission of comments in response to the California Air Resources Board (CARB) Preliminary Draft Regulation (PDR) for a California Greenhouse Gas Cap and Trade Program. As this draft regulation continues to develop with the consideration of the forthcoming Economic and Allocation Advisory Committee (EAAC) recommendations, NextEra Energy will continue to provide our perspective on these and related issues. The substance of our comments submitted today include:

- Support for investment in a voluntary REC market through allowance set asides;
- The transportation, small commercial sources, and residential sectors should be include in the first compliance period if possible;

[1] NextEra Energy Resources, LLC and its affiliates FPL Group, Inc., Florida Power & Light Company, FPL Group Capital, Inc., each have subsidiaries and other affiliates with names that include FPL and NextEra Energy Resources, NextEra and similar references. For convenience and simplicity, NextEra, FPL Group, FPL and FPL Group Capital, 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.

- Altering the currently proposed compliance periods based on a fear of emitting sources going bankrupt is unnecessary;
- Offset limitations should:
  - be enforced at the emissions sources and not on supply side,
  - utilize a percentage of emissions restriction;
  - allow emissions sources to retain the right to fully maximize offset allotment across compliance periods;
- Auction revenues must be used for investment in long term solutions to climate change;
- Auction design should be based on current structure of the RGGI auctions;
- CARB should employ multiple cost containment mechanisms and flexible compliance mechanisms that introduce a carbon cost to consumers and protect against extreme negative economic impacts;
- CARB should mirror actions taken by RGGI with respect to market oversight, disclosure of trading information, and usage of trading platforms;
- Once an offset is certified it should remain viable and fungible.

Adjustments to the Base Allowance Budgets for Voluntary Investment in Renewable Sources of Electricity Generation

NextEra applauds the CARB for recognizing that voluntary renewable energy can contribute to California achieving their GHG reduction goals. The establishment of a set-aside-pool of allowances to protect the integrity of renewable energy credits purchased in a voluntary market provides incentive for these purchases and results in additional reductions in the emissions responsible for global warming. CARB should follow the example set by the Regional Greenhouse Gas Initiative (RGGI) by including an “off-the-top rule” or the setting aside and retirement of allowances to account for voluntary investment in renewable energy.

It is important to implement strong energy sector initiatives to bolster clean energy development, in particular bold renewable portfolio standards. Even though the voluntary market stands apart from compliance efforts, NextEra Energy feels it plays a key role in the development of a cleaner electric generation portfolio. In order to protect the validity and integrity of the voluntary REC market it is essential to prevent any double counting of the benefits attributed to renewable energy projects. The voluntary market has been an important driver of clean energy development in California. It allows consumers and businesses to participate in directly in the development of renewable energy. 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). Yet this number significantly understates the actual reductions as neither the green power programs of six California utilities nor most on-site generation are included in this figure.

A key driver of voluntary renewable power purchases is customer confidence that their purchase helps reduce the pollution that causes global warming. If CARB does not implement an off-the-top approach, they risk undermining the continued growth in California's voluntary renewable power market and the benefits that this market provides to the State of California. This benefit includes low cost emission reductions by leveraging non ratepayer actions. When a cap on emissions is established in 2012 voluntary purchases of renewable energy will still displace fossil generation. Unless allowances are retired on behalf of this renewable generation, the number of emission allowances will be unaffected and emission reduction claims from these voluntary investments will become problematic.

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. 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:

- 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.
- CARB (and the WCI Partners) should consider the location of the renewable energy purchaser, not the location of the generator, for eligibility. The RGGI program provides useful insight into how an off-the-top system can work.
- The voluntary renewable energy set-aside should be estimated in advance of each compliance period and then removed from the total pool of allowances created under the cap.
- At the end of a compliance period, program administrators should reconcile voluntary demand estimates with actual sales.
- 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.
- 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.

The accounting for the voluntary purchase of renewable energy credits at the location of the purchaser allows for the development of renewable energy projects at the most cost effective sites. CARB's implementation of AB32 should not limit the ability of customers in CA to support the development of renewable generation but should encourage it. The purchase of a voluntary renewable energy credit in CA will result in a real reduction in GHG emissions regardless of location of the project. The purchaser typically does not care where the credits come from, but is more concerned the investment results in a real reduction. Accounting for voluntary renewable energy purchases at the location of the purchaser allows in the investment within CA, WCI, or elsewhere depending on availability and cost. If the project is located outside CA or WCI, GHG emissions are reduced at the location of the project and an allowance is retired within the capped sector. This will force the reduction of emissions within the capped sector in an equivalent amount to the purchase. Allowing consumers to participate in development projects through the voluntary market and the retirement of voluntary renewable energy credits at the purchasers location through an off-the-top set aside of allowances simply has the potential to get more renewable energy projects actually constructed.

Potential Inclusion of Fuel Deliverers in 2012

In the PDR, staff is contemplating the inclusion transportation and fuel delivery sectors. NextEra Energy supports the inclusion of the "broad scope" of sectors into a cap and trade program at the earliest point possible. The inclusion of these sources increases number of sources under the cap. This will provide a greater opportunity for reduction. If the market is allowed to function properly, GHG reductions will be discovered and implemented at the least cost opportunities. As CARB is aware several other stakeholders in addition to NextEra Energy have supported the concept of including the transportation, residential, and commercial sectors under the cap and trade program in the first compliance period. NextEra Energy supports the inclusion of the "broader scope" of emitting sectors as long as it is done without compromising the accuracy of the cap levels and it does not result in the "double taxation" of emissions sources.

First, CARB must prevent any entity with a downstream compliance obligation from also incurring an upstream obligation. The electric generation sector and the manufacturing sectors are susceptible to potentially paying a compliance cost in two locations for the same quantity of emissions. Fuels supplied to a facility that will also incur a compliance obligation when combusting that same fuel must either receive "untaxed" fuels or the downstream source must be compensated in some manner. CARB should also be aware that some fuel pricing contracts are based on indexed pricing. If those price calculations include a carbon cost, the source has essentially paid a carbon cost twice.

Although this is not under direct control of CARB, staff needs to be aware of this and remain open to discuss any potential scenarios that could present a duplication of payment for the same carbon liability.

Second, before CARB includes these sectors into the first compliance period, staff must have an accurate emissions inventory for these sectors. An error in setting the cap level due to incorrect inventory data could outstrip the benefits of including these sectors in the first compliance period. In essence, NextEra Energy supports the inclusion of the "broader scope" of emitting sectors as long as it is done without compromising the accuracy of the cap levels and it doe not result in "double taxation" of emissions.

Discussion of Concept – Addressing Bankruptcy of Covered Entities

The discussion surrounding the mitigation of bankruptcy is an interesting point for CARB to explore, however, NextEra Energy does not feel it should a driving factor for changing the compliance schedule. CARB could potentially formulate many "what if" scenarios that could lead to rethinking the structure of the cap and trade program. NextEra Energy has supported the use of a three year compliance period because of the compliance flexibility it provides to emission sources. Also, since it mirrors the current RGGI program, a three year compliance period provides some consistency to operational procedures between facilities we operating those regions. NextEra Energy could potentially support either of the options proposed in the PDR if CARB found the original proposal of a three year compliance period was insufficient. The key is to maintain the maximum amount of compliance flexibility while protecting the integrity of the program. Based on the discussion presented in the PDR and reasons mentioned above, NextEra Energy does not feel these alternative compliance period options need to be developed any further.

Discussion of Concept – Quantitative Usage Limit on Offsets and other Similar Compliance Instruments

Throughout this process of developing AB32 into a regulation NextEra Energy has supported the unlimited use of offsets to meet compliance obligations. We will continue to support the use of offsets as long as offset projects produce real and verified reductions in GHG emissions. Both CARB and the Western Climate Initiative (WCI) have chosen to limit offset use to 49% of emissions reductions. We feel this limitation is too strict and could result in higher than necessary compliance cost to businesses and consumers. We understand that CARB would like to see reductions in emissions at the sources and they feel the offset limitations will facilitate that response. That would potentially be the case if there were actually a commercially viable technology that could remove GHG emissions, but that is not the case. CARB should at least reconsider this limitation to bring their position into agreement with some of the current climate change legislation in Washnington D.C.

In response to the specific questions posed in the PDR related to quantitative offset limitation, NextEra supports the PDR's normalized quantitative limit placed on the emissions source. In our comments submitted to CARB in response to the March 2009, *Implementing a Quantitative Limit on the Use of Offsets in a Cap and Trade Program Workshop,* NextEra Energy expressed the advantages of implementing this position as opposed limiting offset use on the supply side. Fixing the offset usage limit to a percentage of a sources' compliance obligation provides some surety to offset project developers and some market predictability to entities with a compliance obligation.

In response to the carryover question, NextEra Energy feels if offset use is not fully utilized, emissions sources should retain the right to use the balance of an unused offsets allotment in future compliance periods. This is a simple calculation and could be confirmed relatively easily by CARB staff. Since entities with a compliance obligation will most likely have to establish some type of account with CARB, one option would to track the quantity of under utilized offsets associated with a registered entity and true that account up on a periodic basis.

Discussion of Concept - Informational Placeholder on Allowance Allocation

Obviously this subject will be further developed after the recommendations of the EAAC subcommittee are submitted to CARB. As a general comment, revenues generated from auctioning allowances can be an important tool in moving California to a lower carbon intensive economy. In order to meet the long term goals of AB32, investments will be needed in carbon reduction technologies, renewable energy projects, energy efficiency programs, and new electric generation technologies. A portion of the revenues from auctioned allowances needs to be invested in those programs that will build the framework to achieve long term solutions to climate change. In addition, a portion of the auction revenues can be dedicated to the mitigation of adverse cost impacts a cap and trade program has on consumers and businesses. NextEra Energy prefers CARB utilize a rebate or tax reimbursement to facilitate this cost mitigation to avoid cloaking the price signal of carbon to consumers. In order for California to reach the 2050 reduction goal, both behavior changes by consumers and operational changes by emitting sources will be required. Muting the price signal of carbon in the economy would stifle these needed changes.

Discussion of Concept – Format of Auction

In general, it is the observation of NextEra Energy that the RGGI auction design has been successful and ARB should duplicate their basic auction design. NextEra Energy has participated in the RGGI auctions both as a compliance

entity and a general market participant. The following is an outline of our preferred auction design principles:

1. **Use a familiar, understandable auction format.**
   A familiar auction type that is easy to understand should be used. NextEra Energy recommends a single-round, sealed bid, uniform price auction (like RGGI). Auction types should not change from one auction to the next.

2. **Separate auctions should be held for each vintage**.
   Separate auctions should be held for each vintage year with future allowances made available up to 4 years in advance.

3. **Auction participants should be limited to regulated entities**.
   Only those entities that are subject to the WCI regulations should be allowed to bid in the regional auction. All other participants should be allowed to participate in the secondary market. This is NextEra Energy's preference; however, RGGI did not restrict auction participation. NextEra Energy feels this restriction ensures entities with a compliance obligation will have the first opportunity to purchase the allowance they need to meet that compliance obligation.

4. **Auctions should be held quarterly.**
   Quarterly auctions allow entities to obtain allowances in coordination with the need for associated generation. More frequent auctions could add too much complexity for both participating and facilitating entities. Quarterly auctions are working well in the RGGI process.

5. **Any reserve price should be transparent.**
   If a reserve price is used, it should be transparent and publicly announced prior to the auction. RGGI uses a reserve price but has failed to supply the justification for that price. The price is published well in advance of the auction.

6. **Allowance prices should be made public**.
   Clearing prices and the number of allowances sold should be released within 24 hours after each auction.

7. **Unsold allowances should be rolled into next auction**.
   Any unsold allowances should be made available in the next auction and not retired or held in a contingency bank.

8. **Bids should be binding contracts**.
   Bids should be considered binding contracts. Any breaches of contract should be met with strong sanctions up to, and including, prohibition from bidding in future auctions.

As a participant in the RGGI auctions, NextEra Energy would welcome any inquires from CARB on either the function of the RGGI auctions or potential

minor improvements to the program we feel are warranted. Overall the RGGI auctions are functioning well and CARB should use RGGI as a starting template. The RGGI auctions limited information of specific trades to the public. CARB should maintain a similar level of confidentially to protect the business interests of the entities participating in the auctions.

Discussion of Concept – Cost Containment

NextEra Energy Resources supports California's adoption of flexible compliance and cost control mechanisms in a cap and trade program for the following reasons:

- absence of viable commercial scale carbon reduction technology for the electric generation sector;
- potential negative economic impacts to consumers and business;
- incentive for the development of carbon reduction and low-emitting generation projects and programs; and
- protection against uncontrollable market forces that could jeopardize the integrity of the program.

Stakeholders have expressed concern about the negative economic impacts a GHG cap and trade program could have on consumers and businesses. While the inclusion of a price signal for carbon is important to promote behavioral change, extreme economic impacts could undermine the support for the program. NextEra Energy supports implementation of the following cost containment mechanisms:

- An increasing price ceiling and floor on the price of auctioned allowances (price collar);
- A safety valve mechanism triggered under extreme potentially harmful economic circumstances that would allow the purchase of allowances from future compliance periods;
- Multiple year compliance periods;
- Use of offsets to meet a compliance obligation.

In order to guard against extreme economic impacts to consumers and business owners, CARB should implement a gradually increasing price ceiling on the price of auctioned allowances. It is critical to set the ceiling high enough for the price signal of carbon to promote changes in behavior but low enough to prevent catastrophic economic impacts and political backlash. The upper limit of the carbon price should gradually increase over time in order to give consumers and regulated entities an opportunity to adapt to the price of carbon and avoid any harmful economic consequences. A pre-determined price ceiling will limit the potential "rate shock" to consumers while allowing the price of carbon to filter into the economy. In addition, a price ceiling defines the potential worst case

cost scenario. This allows investors to more accurately identify potential risk involved with developing new electric generation projects.

In addition to a price ceiling, NextEra Energy recommends the establishment of a price floor for auctioned allowances to facilitate investment in carbon reduction projects. A minimum price for carbon allowances will give investors in clean generation technologies and offset projects some level of confidence their product will maintain value in the future carbon market. Establishing a guaranteed value for carbon will limit risk to investors that could otherwise impede the development of carbon reduction projects and tehnologies. This price floor should be increased in parallel with the price ceiling to bracket the cost of carbon. NextEra Energy supports the utilization of a price floor cost control mechanism as a means to bolster investment in carbon reduction projects and offset projects.

Controlling the cost of carbon allowances may not be enough. Inclusion of a safety valve triggered under extreme potentially harmful economic circumstances that would allow purchase allowances from future compliance periods should be an essential element in the cap and trade program. If the cap is too stringent there may not be enough viable emissions reduction options or offsets available to enable emitters to meet their compliance obligations. This shortfall in carbon allowances would drive up the cost of carbon without any assurance that emission sources could meet their compliance obligation.

Since commercial scale emissions control technology is not yet available, some emitters may have no choice but to either stop production or incur non-compliance penalties. A safety valve would allow a temporary expansion of the cap for a given compliance period by allowing for the purchase of carbon credits from future compliance periods. If the safety valve is triggered, the cap in future compliance periods would be adjusted so that reductions would stay on a glide path to reach the 2020 carbon reduction goals and, ultimately, the 2050 long term goal. A safety valve must never be used as a crutch that allows emissions sources to arbitrarily shirk compliance obligations. Therefore, the conditions to allow the triggering of this safety valve must be well defined and rigorously monitored. A cost control mechanism incorporating a safety valve would provide compliance flexibility in the event the emissions cap level is not reasonably attainable. Additionally, a safety valve protects emissions sources against unpredictable and unavoidable shortfalls in the availability of carbon emission allowances and therefore further insulates the California economy from severe economic impacts.

The use of a multiple year compliance period is another tool that would further protect California's economy against harmful economic impacts. Multiple year compliance periods provide entities a window of time to obtain allowances needed for compliance and the opportunity to seek out least cost reduction options. "First Deliverers" would be able to adjust to changing market conditions or unexpected increases in their compliance obligation. The multiple year

compliance periods do not affect the integrity of the cap and allow some needed flexibility for entities with compliance obligations.

Finally, NextEra Energy supports the use of offsets for compliance as another means of cost controls. We are encouraged that CARB and WCI are considering the inclusion of offset use. NextEra Energy would like to see the restrictions placed on offset use total removed; however, we feel that even restricted offset usage will reduce the cost of compliance to the consumers and businesses located in California. Without a commercially viable emissions control technology available to remove carbon from source emissions, the use of offsets provide a cost effective option to mitigate financial impact of compliance obligations. We strongly support the use of offsets in a GHG cap and trade program as long as the production of these offsets result in real reductions in GHG emissions.

Discussion of Concept – Use of Trading Facilities

NextEra Energy urges CARB to mirror the process implemented in the RGGI program. Most of the secondary and derivative market transactions related to the RGGI market occur in the existing exchanges without additional oversight. Expanding CARB's monitoring responsibilities beyond their area of expertise is unnecessary. For instance, CARB should not have to monitor bilateral trading beyond a transfer of ownership. CARB should allow the markets to function under the rules and regulations established by the U.S. Government and the Commodity Futures Trading Commission (CFTC).

Discussion of Concept – Reversals of Offset Credits

NextEra Energy does not support empowering CARB staff with the ability to reverse an offset credit once issued. First, an offset credit should not be realized until a real reduction occurs. That would prevent any misrepresentation of promised or future reduction claims. Reductions should be real and accounted for correctly under the best available accounting and certification procedures. Secondly, if a project has the potential to produce offsets that are not permanent, CARB should account for that possibility prior to issuing any verification of the associated credits. There are options the CARB 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 that could release previously sequestered carbon as the result of an action outside of the projects direct control (i.e. earthquake, fire, etc). CARB could multiply a projects offset production by a factor that would reduce the amount of credits certified. This factor could be the established based on the risk of or likelihood of a release. All offset projects of a particular type would share the risk of release. If a release does occur the "lost reductions" would still be potentially accounted for either partially or in total. Once an offset is certified, it should remain viable and non-revocable. Otherwise the risk to project developers would be increased. This added risk could result in a decreased level of offset project development.

NextEra Energy does not support any penalties levied against an entity that has purchased an offset credit certified according to the criteria established by this rule. If a credit has been issued to an offset project or entity that in some way misrepresented information to CARB or any agent representing CARB, action should be taken against only that entity which produced false or misleading information. Taking action against a purchasing agent has the potential to hurt the offset market.

CONCLUSION

Throughout the continued development of the regulation, NextEra Energy will continue to provide CARB with input on these and other issues surrounding the GHG cap and trade program debate. We hope that our perspective as both a regulated utility and an independent energy provider is helpful to the development of and effective and efficient GHG program. To restate the main points of our comments, NextEra Energy:

- Supports voluntary REC set-aside;
- Supports the expansion of the applicability of the program in the initial compliance period if accuracy of the cap is maintained;
- Opposes altering the compliance period schedule based on a fear of source bankruptcy;
- Supports offset use as presented in PDR with sources retaining the right to keep full offset allotment across compliance periods;
- Supports the use of allowance value to build infrastructure for a long term solution to climate change;
- Supports the auction design, market oversight, and information disclosure terms currently utilized in RGGI;
- Supports the use of multiple cost containment mechanisms to prevent against extreme market excursions while allowing the cost of carbon to influence consumer and operational behaviors;
- Opposes the de-certification of offsets.

If you have any questions concerning these comments or other related issues, please feel free to contact Diane Fellman (415) 703-6000 or Kyle Boudreaux (561)691-7358.

Thank You,

Kyle D. Boudreaux
Project Manager, Environmental Issue Management, Western Region
NextEra Energy Resources