**NextEra Energy Resources Comments on the California Air Resources Board’s Discussion Draft of the Proposed Changes to the GHG Cap and Trade (presented in workshop format on 7/18/2013)**

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NextEra Energy Resources (NextEra) supports the comments submitted to the Air Resources Board by the Western Power Trading Forum (WPTF) and the Independent Energy Producers (IEP). In addition, NextEra is submitting the following comments based on the materials covered in the July 18, 2013 workshop as well as other observed opportunities for improvements to the regulation. We appreciate that the document released by ARB staff is a discussion draft and would welcome questions related to our response and look forward to any opportunity to further expand on these comments with ARB staff.

**The addition of an exemption for solar renewable energy from GHG compliance obligation**

Over the past few years, the Air Resources Board has recognized that several types of generation and processes provide benefits to the State that outweigh the costs of any greenhouse gas emissions that the resources may emit. This has resulted in ARB exempting specific types of resources from GHG compliance obligations including resources that are considered green technologies. Unfortunately, the ARB has not included solar generation in this list of exemptions. As a result facilities with overall GHG benefits are incurring a compliance obligation. This compliance obligation increases the cost of generating renewable generated within the state and could potentially decrease the amount of renewable energy generated at these sites.

Additionally, in-state and out-of-state renewable generation facilities are not being treated equally under ARB’s current version of the regulations. Out-of-state renewable energy is not assessed any carbon liability associated with the delivery of that power to the California grid. These transactions are even given a credit for GHG liability equal to the MRR default emissions rate against the fossil generation used to deliver RECs into the state. In-state renewable generation is not treated equally in this respect. Although the source of the emissions is not always the same for both generating sources, the same standard should be applied equally. The same reasons used to allow out-of-state renewable generation to enjoy an “RPS adjustment” in their GHG liability calculation should apply to in-state generation and should also be credited under their compliance calculation. They are both delivering RECs into the California RPS.

NextEra is asking that ARB recognize the many benefits of solar generation and the fact that a solar generation facility generates green energy which benefits California. Specifically, we would like solar generation to be added to the list of resources that is exempt from complying with a GHG emission obligation. A solar facility with GHG emissions would still be required to report GHG emissions from their facility to the ARB. This exemption from GHG liability for solar generation facilities can be accomplished by amending Section § 95852.2(b) of the ARB regulations to add solar generation. Specifically ARB should add a twelfth process to the list of exemptions.

95852.2 (b)(12) “Emissions from solar electric generating units and facilities.”

**The modification or removal of additional disclosure of information in CITSS registration**

 ARB staff is proposing the addition of more registration requirements within CITSS. While NextEra understands the intent is to prevent manipulation of the market, some of the requirements are in our view extremely burdensome not only to report the required information but also to maintain the information accurately. There are two specific proposed revisions NextEra feels add unnecessary complexity to the registration process.

First, the proposed modifications to **Sections 95830 and 95833** to require all corporate associations to be disclosed in CITSS regardless of that entities participation in the California GHG cap and trade program. It is understandable that ARB would like to obtain a complete picture of all corporate relationships in order to prevent any type of market manipulation. It is also apparent that this requirement could be burdensome to reporting entities to not only collect and enter the information but also to maintain the list. Some larger companies could literally have hundreds if not thousands of corporate associations that include limited liability corporations (LLC) with common ownership. All of those LLC’s would have to be identified and unraveled. Relationships that are not at the disposal of the reporting business unit or operational unit would have to be researched in detail and all pertinent information disclosed. While this requirement is well intentioned, it is in our opinion overly burdensome and potentially problematic. The frequencies at which corporate association change and variety of these relationships in corporate setting make this requirement administratively challenging. We recommend ARB not change the current requirement and only require the disclosure of relationships with entities participating in the program.

Second, ARB has proposed in their discussion draft the modification of **Section 95830I(1)(I)** to require the disclosure of names and contact information for “all persons employed by an entity which would give them knowledge of decisions on compliance instrument transactions or holding.” We believe the intension is to eliminate any sort of collusion between two parties that may both be participating in the GHG market is warranted. The current wording however is very broad and could literally involve several hundred people in one company. We recommend that ARB refine the language to limit the need for disclosure to those people involved in the actual trading or acquisition of commodities. The penalties for manipulation of the market should be substantial in order to dissuade any collusion. The difference between employees or contractors being aware of positions and influencing position is a significant distinction. In addition, since the penalty for failure to report all the information required under this regulation can be very significant keeping the scope of this reporting requirement broad expands the potential for companies to inadvertently and unknowingly omit employees that should be listed in the registration. For these reasons we would refer ARB to WPTF’s comments on this issue as our recommended word change to the regulation.

**The retirement of compliance instruments should not be prescribed by ARB**

 ARB is proposing to change **Section 95856** of the regulation to prescribe the order of compliance instrument retirement. NextEra Energy does not believe this order should be pre-determined in all cases. There are many considerations that go into a company’s decision of which compliance instruments to retire and when to retire them. These compliance instruments are the property of those entities that have purchased, created, or been given them and they should be allowed the discretion to retire the compliance instrument in the order they see fit. This can be accomplished under the current regulation if ARB were to set up a distinct retirement account in CITSS for each entity. It would be the entity’s responsibility to move the appropriate amount of compliance instruments into the retirement account prior to the compliance deadline. ARB can then clear or lock the accounts on the appointed deadline. Based on the presentation of the proposed changes during the July 17 meeting, it was apparent the ARB staff is attempting to make things easier for entities to obtain compliance. While NextEra appreciates ARB’s efforts to make things easier, when it comes to compliance instruments there are other business decisions that outweigh the need for ease. There are other opportunities for ARB to simplify the program whereas this simplification is potentially more harmful than beneficial.

**ARB should create sub-accounts within CITSS to enable parent companies to populate distinctly separately owned or operated entities**

 NextEra is asking ARB add expanded functionality within CITSS that would allow each entity to create sub-accounts within their general account. The architecture of a corporation and its associated businesses can be very complex. Often the ownership of distinct subsidiaries and business operations involves varied sets of requirements both legally and from an accounting perspective. In order to maintain the distinct lines between holdings and business ventures it would be extremely helpful if ARB would allow and entity to create sub-accounts for LLCs or subsidiaries under the umbrella of a parent company. This would be much cleaner from and more transparent from both an accounting and an operational perspective. All parties associated with an entity with a compliance obligation would be able to clearly see the responsibilities and liabilities associated with distinct and separate activities and operations. It would also allow the subsidiaries to manage their accounts semi-independently.

**ARB should impose the 8% offset limit on the annual compliance surrender**

The offset program is very important to NextEra. Throughout the development of the legislation giving authorization to this regulation and the development of the regulation, we have supported the development of a robust offset program. The current absence of any offsets credits converted into compliance instruments is concerning but let’s assume those issues will be resolved. The current version of the discussion draft proposes that any offsets submitted in excess of the 8% limit would be forfeit. Since the 8% limit is calculated against the compliance period obligation and not the annual compliance obligation, it is possible for an entity to exceed the limit. ARB is proposing that any offsets submitted in excess of the 8% limit will be retired, not count toward any compliance obligation, and will not be returned to the owner. NextEra believes ARB’s refusal to return those offsets to the owner presents several issues that are potentially problematic.

 First, the offsets that are retired without the consent of the owner could potentially be seen as an illegal take of property. Offset credits are created through the investment in projects. There is also a cost incurred to register, verify, and certify these credits. The credits are then either used by the project developer or sold to another entity for their use. An entity that submits offset credits to the ARB to satisfy a compliance obligation is surrendering a fungible product for a specific purpose. It is offered in good faith and within the specified requirements of the program. The failure of ARB to return this property to the owner if it is not used for its intended purpose and without due process could present some legal issues.

 Second, to this point offsets have been scarce and have a degree of risk associated with their use. ARB has the right to invalidate offset credits used as compliance instruments even after they have been certified. There is some concern that there will not be enough offset credits created and certified for all the entities in the cap and trade program to fully utilize their 8% allotment. The retirement of offset credits submitted to the ARB intended to satisfying a compliance obligation without allowing them to counting toward any obligation is a waste of resources. It also introduces another element of risk associated with the use of offset credits. This could in turn have a negative effect on the development of more qualified offset projects which are already in short supply.

 NextEra recommends that the ARB eliminate this retirement without benefit position by imposing an 8% limit on the annual surrender requirement. This would not be our most preferred solution however it is a relatively simple and straight forward way to ensure that offset credits will not be forfeit and therefore wasted.

**ARB should not move up the submission and verification dates**

 It has been pointed out by several stakeholders and NextEra would agree that moving up the verification and reporting timetables is problematic. The complexity of the verification process in conjunction with scarcity of certified 3rd party verifiers makes it a challenge for companies to complete the process under the current timeline. Shortening the timeline even further would only multiply the problems. We recommend that the reporting and verification timeline remain the same especially in light on the fact the ARB is considering adjusting the regulation to add even more complexity to the reporting regulation.