



December 14, 2018

**VIA ELECTRONIC FILING**

Mark L. Johnson  
Executive Director and Secretary  
Washington Utilities & Transportation Commission  
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UTIL. AND TRANSP.  
COMMISSION

**Re: Public Utility Regulatory Policies Act, Obligations of the Utility to Qualifying Facilities, WAC 480-107 - Docket U-161024**

**NextEra Energy Resources' Comments**

Dear Mr. Johnson:

Pursuant to the Notice of Opportunity to Submit Written Comments ("Notice") issued by the Washington Utilities and Transportation Commission ("Commission") on November 14, 2018, NextEra Energy Resources, LLC ("NEER")<sup>1</sup> files these comments on the Commission's proposed Public Utilities Regulatory Policies Act ("PURPA") rules. The draft rules address, among other things, when a legally enforceable obligation ("LEO") may be established. NEER's comments on the draft rule are limited to the circumstances under which a LEO may be established between a QF and an electric utility.

**Comment on Proposed Rule WAC 480-106-030(2)(a)**

Proposed Rule WAC 480-106-030(2)(a) sets forth requirements to establish when a LEO exists. A LEO includes both (1) a fully executed contract and (2) a binding commitment between a QF and a utility, whereby a QF has done everything in its power to create an enforceable obligation to deliver power to the utility, and only an act of acceptance by the utility or an act of approval by the state commission remains to establish a contract.<sup>2</sup> Congress enacted PURPA in 1978 to help lessen U.S. dependence on fossil fuels, and concluded that one way to help accomplish that goal would be by encouraging the use of renewable resources and small power projects.<sup>3</sup> Congress recognized, however, that contracting with non-QF alternative projects could be an impediment to deployment of QFs, so PURPA directed the Federal Energy Regulatory Commission ("FERC") to create regulations that would compel electric utilities to purchase energy from projects that met certain criteria, the QFs, and FERC included the concept of a

<sup>1</sup> NEER is a clean energy leader and one of the largest wholesale generators of electric power in the United States, with more than 19,000 megawatts of net generating capacity, primarily in 32 states and Canada as of year-end 2017. NEER, together with its affiliated entities, is the world's largest operator of renewable energy from the wind and sun.

<sup>2</sup> 18 C.F.R. § 292.304(d); *Armco Advanced Materials Corp. v. Pa. Publ. Util. Comm'n*, 135 Pa. Commw. 15, 33, 34 (Pa. Commw. Ct. 1990).

<sup>3</sup> FERC v. Mississippi, 456 U.S. 742, 745-746, 750-751 (1982).

“LEO” in its implementing rules to effectuate those legislative goals. FERC did not define a LEO in its regulations, but has delegated to state commissions authority to establish specific requirements for establishment of a LEO.<sup>4</sup>

NEER believes that several key factors should be considered when determining whether a LEO has been established. From both a reliability and business perspective, whether a resource will be ready to deliver power into the electric system as and when promised is very important. Therefore, NEER recommends the following proposed changes to the draft regulations:

- Section (vii) would require the QF to provide the utility with a “[p]roposed commencement date for the [QF’s] delivery of electric output to the utility.” NEER believes that this should be revised to require QFs to provide a specific operation commencement date. If the QF fails to meet the operation commencement date then there should be an appropriate penalty, financial or otherwise, as determined by the Commission.
- Section (ix) would require the QF to demonstrate its “ability to obtain qualifying facility status.” NEER believes that this proposed requirement should be amended to instead require QFs to be self-certified as a QF with FERC.
- Section (xiv) says that the QF must provide its interconnection agreement (“IA”) status, including queue number. However, the draft regulation does not indicate what IA status is acceptable. The QF should be required to have submitted 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. The QF should also be required to have executed an IA.
- Section (xv) would require the QF to provide to the utility “[p]roposed contract terms and pricing provisions for the sale of electric output to the utility, including but not limited to term in years, fixed price and market indexed price.” NEER believes that the QF should be required to have already received Commission approval of its contract for it to be considered a LEO or in the alternative to have at least provided an executable agreement to the utility.

Finally, other states consider a number of other factors in determining whether LEO has been established, including a showing that the project has: (1) demonstrated site control<sup>5</sup>; (2) developed a site plan and design details; (3) received a certificate of public convenience and necessity or other comparable permits necessary to construct the facility;<sup>6</sup> (4) timely access and manufacturer commitment to necessary generation equipment; (5) access to necessary

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<sup>4</sup> 16 U.S.C. § 824a-3(a); Order No. 688-A, 119 FERC ¶ 61,305 at P 139 (2007).

<sup>5</sup> *South River Partners, LP vs. Pennsylvania Public Utility Commission*, 696 A.2d 926 (1997); See Minn. PUC Docket No. E-015/CD-11-1073, *In the Matter of the Petition of Highwater Wind LLC and Gadwall Wind LLC*, “Opinion” (issued February 25, 2013).

<sup>6</sup> *South River Partners* at 14-15.

financing;<sup>7</sup> and (6) performance guarantees that include, at minimum, a scheduled commercial on-line date, minimum and maximum annual delivery obligations, and adequate security for non-performance.<sup>8</sup> NEER recommends that the Commission add these factors to its existing draft rules when evaluating whether a LEO has been established. These additional factors are consistent with requirements in other jurisdictions and will ensure that the QF project is more than hypothetical and is indeed viable and dependable.

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.

Dated this 14th day of December, 2018.

Sincerely,



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<sup>7</sup> *Id*

<sup>8</sup> 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.*