

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tentative Implementation Order)	
)	Docket No. M-2017-2631527
71 P.S. §§ 1 et. seq. Act 40)	

Comments of NextEra Energy Resources, LLC

NextEra Energy Resources, LLC (“NextEra Energy Resources”), on behalf of itself and its affiliates doing business in the Commonwealth of Pennsylvania, thanks the Commission for the opportunity to submit the following comments on the Tentative Implementation Order M-2017-2641527 (“Tentative Order”) and the Joint Statement of Chairman Brown and Vice Chairman Place (“Joint Statement”), dated December 21, 2017.

I. NextEra Energy Resources, LLC’s Interest

NextEra Energy Resources, LLC (together with its affiliated entities, “NextEra Energy Resources”), is a clean energy leader and is one of the largest wholesale generators of electric power in the U.S., with approximately 19,990 megawatts of generating capacity, which includes megawatts associated with noncontrolling interests related to NextEra Energy Partners, LP (NYSE: NEP), primarily in 29 states and Canada as of year-end 2016. NextEra Energy Resources, together with its affiliated entities, is the world’s largest generator of renewable energy from the wind and sun. The business operates clean, emissions-free nuclear power generation facilities in New Hampshire, Iowa and Wisconsin as part of the NextEra Energy

nuclear fleet, which is one of the largest in the United States. NextEra Energy Resources, LLC is a subsidiary of Juno Beach, Florida-based NextEra Energy, Inc. (NYSE: NEE).

Within the Commonwealth of Pennsylvania, NextEra Energy Resources and its affiliates are wholesale and retail energy providers, as well as developers, owners and operators of renewable energy resources and battery storage in Pennsylvania and throughout the PJM region.

II. Comments

A. Tentative Implementation Order

NextEra Energy Resources has reviewed the Tentative Order and believes it takes a reasonable approach that is consistent with the plain language of Act 40 of 2017 (the “Act”). In particular, the Tentative Implementation Order appropriately implements the language of Section 2804(2)(i) of the Act, by clarifying that existing solar photovoltaic (“PV”) resources that were certified by the Pennsylvania AEPS Administrator to generate solar renewable energy credits (“SRECs”) prior to October 30, 2017 will be grandfathered into future certification compliance.¹ This approach is consistent with the language of the Act and appropriately reflects the balance stricken in the Act between encouraging the development of the solar industry within Pennsylvania and the rights of existing solar PV resources that have previously been certified to generate SRECs.

The Joint Statement, on the other hand, would unreasonably narrow Section 2804(2)(i), by effectively requiring that solar PV facilities must be physically located within the Commonwealth to qualify to generate SRECs.² This would effectively revoke the certifications

¹ Tentative Order at 5-6 (citing 52 Pa. Code §§ 75.62, 75.63, and 75.64).

² Joint Statement of Chairman Gladys M. Brown & Vice Chairman Andrew G. Place at 2-3.

of existing solar PV resources that were previously certificated. Interpreting the Act in this way is inappropriately restrictive given that the language of the statute is clear and unambiguous.³ It would also impermissibly give the Act a retroactive effect.⁴ Further, the Commission should not derive meaning or direction from prior iterations of statutes that ultimately were not passed.

While the Act may have been intended to encourage development of renewable resources within the Commonwealth – and NextEra Energy Resources supports doing so -- this goal can be readily achieved by applying the statute on a going forward basis, as proposed in the Tentative Implementation Order. Interpreting the Act to look backward, and essentially revoking existing certifications, is at best creative based on the plain language of the statute, and is certainly punitive. Specifically, such an interpretation would affect a serious inequity on, and taking of value from, those out-of-state resources that were previously qualified to provide SRECs within the Commonwealth, and that relied on the opportunity for certification by the Commonwealth in investing in those facilities. It is neither necessary nor appropriate for the Commission to reach such a result. The interpretation proposed in the Tentative Implementation Order is the correct one, to the extent that any interpretation is required beyond a reading of the plain language of the law itself.

In sum, NextEra encourages the Commission to adopt the Tentative Order as published on December 21, 2017 in this proceeding. NextEra appreciates the opportunity to provide comments on this matter.

³ See Statutory Construction Act of 1972, 1 Pa.C.S. § 1921(b) (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”); *Commonwealth v. Segida*, 604 Pa. 103, 108, 985 A.2d 871, 874 (2009) (“In order to ascertain the intent of the General Assembly, the ruling body should first look at the plain language of the statute.”).

⁴ Statutory Construction Act, 1 Pa.C.S. § 1926 (“no statute may be construed to be retroactive unless clearly and manifestly so intended by the General Assembly.”).

Respectfully submitted,

A handwritten signature in black ink, reading "Michele T. Wheeler". The signature is written in a cursive style and is positioned above a horizontal line.

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