NextEra Energy's Comments on the Draft Desert Renewable Energy Conservation Plan (DRECP) and Environmental Impact Report/Environmental Impact Statement (EIR/EIS)

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NextEra Energy, Inc. (NEE) respectfully submits these comments on the proposed Draft Desert Renewable Energy Conservation Plan and Environmental Impact Report/Environmental Impact Statement (DRECP EIR/EIS). NEE is a leading clean-energy company with 2013 consolidated revenues of approximately $15.1 billion, more than 42,000 megawatts of electric generating capacity, and approximately 14,000 employees in 26 states and Canada as of year-end 2013. Headquartered in Juno Beach, Florida, NEE's principal subsidiaries are NEE Resources, LLC (NEE Resources), the largest generator in North America of renewable energy from the wind and the sun, and Florida Power & Light Company (FPL), which serves approximately 4.7 million customer accounts in Florida and is one of the largest rate-regulated electric utilities in the U.S. In California NEER has invested over $6 billion and operates 2,072 MW of wind and solar electric generation assets. Looking forward, an additional 842 MW of renewable generation capacity servicing California is planned to come on-line by then end of 2016.

NEE has participated in the stakeholder process during the development of the Desert Renewable Energy Conservation Plan (DRECP) during the last several years. This was and continues to an extremely complex program which at its core was developed with the intent to "…provide effective protection and conservation of desert ecosystems while allowing for the appropriate development of renewable energy projects."[1] NEE appreciates the amount of work that has been accomplished to this point as well as the effort put forward by all stakeholders involved in the process. This was no small undertaking and the resulting documents and analyses are an extremely valuable milestone in the development of a platform that will accomplish the goals set forth by the Renewable Energy Action Team (REAT).[2] It is our desire that the goals of the DRECP are realized. The intent of our following comments is to assist the REAT agencies in further developing the program. While the resulting product is impressive and valuable, NEE has some concerns about some of the aspects of this program in its current form. The intent of our submission is not to dissuade further development of the program but to prevent the outcome falling short of its stated goals for both conservation and development. Failure to fully flesh out these issues could result in an unnecessary reduction in the potential development of

[1] "What is DRECP?", http://www.drecp.org/

[2] REAT consists of representatives from the following state and federal agencies: California Energy Commission, California Department of Game and Fish, U.S. Bureau of Land Management, and U.S. Fish and Wildlife Service, DRECP Draft EIR/EIS Executive Summary, p6

renewable energy projects in the DRECP Planning Area. To dissuade renewable energy project development that would not have any significant negative effects on the DRECP's stated Biological Goals and Objectives [3] could prevent these goals from being realized. The revenue base needed to establish and maintain the conservation areas comes from and depends on the development of new renewable energy projects. Any reduction in that revenue base could undermine the viability of the overall program. In addition, any reduction in potential renewable energy project development in California could have ancillary impacts on other programs including but not limited to the states climate objects and renewable energy targets. The following are some concerns NEER has with the draft DRECP EIR/EIS that we feel need to be addressed prior to the implementation of the program:

NextEra Energy is concerned that the program will not accomplish streamlined permitting approvals but will potentially create layers of requirements that could actually extend permitting timetables.

This is a general observation and difficult to quantify prior to the implementation of the program. If permitting timelines in the development focus areas (DFAs) are increased, it would contradict one of the primary goals established by the REAT[4]. The flow chart and associated tables that depict the process for pre-siting, siting, agency review, construction and post-construction[5] are thorough but also appear to be extremely complex. Just on face value, it appears this process would inherently take more time than the current *status quo* and therefore be in conflict with the idea of streamlining. For example, upon further evaluation of the Conservation Management Actions (CMAs) it appears the DRECP will create many layers of monitoring, analysis, and review. Each layer of complexity and study increases not only the time aspect related to permitting but also adds to the cost associated with developing a renewable energy project. If there will be any room for flexibility within the implementation of these CMAs, it isn't apparent in the current draft DRECP EIR/EIS. The DRECP should further scrutinize the "streamlining" process in order to determine if this benefit will be realized with the implementation of the program.

Increases in project development costs may cause project leakage.

While the cost of producing renewable energy has been greatly reduced over the last several decades, it is still generally higher than the cost of generating electricity from non-renewable sources. The result is that renewable energy has difficulty competing with certain non-renewable generation technologies strictly on a cost per MWhr basis. There are programs that assist in offsetting this price differential such as the California Energy Commission's Renewable Portfolio Standard (RPS) and the federal Production Tax Credit (PTC). While these programs have helped spur the development of renewable energy projects, they are not guaranteed nor are they likely to continue in perpetuity. Also, increased costs imposed on renewable energy development projects threatens to widen the gap even

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[3] Draft Desert Renewable Energy Conservation Plan and Environmental Impact Report/Environmental Impact Statement (DRECP EIR/EIS), September 2014, Appendix C, pp 11-51.

[4] DRECP EIR/EIS, Volume I.1, p1

[5] DRECP Volume II.3, Exhibit III.9, pp 233-34.

further. The development of a new renewable energy project or the repowering of an existing project depends on evaluating financial risk on a 20, 30, or even 40 year horizon. Any new cost or potential variable cost added onto the development or operation of a renewable energy project increases the risk of investment in that project. Development companies and their associated financial backers must evaluate and quantify these risks. If the perceived risk is too high the project doesn't get built. Financial uncertainty or an increased risk associated with potential projects in the DRECP Planning Area could cause renewable energy project developers to cease or decrease investment resources in this region. If not properly addressed, the DRECP could face a problem similar to the leakage issue the California Air Resources Boards' GHG Cap and Trade Program was forced to address in 2008.[6] The leakage of potential project development dollars, jobs, and tax revenue is a real issue that needs to be evaluated. All things being equal, new development will occur where it makes the most sense. If the DRECP is not careful they could lose development projects and resources to other regions of California or even other states.

Monitoring and conservation area costs are unclear and in some cases appear open ended

The potential open-ended cost associated with the maintenance of conservation areas increases financial risk to projects. Before the DRECP EIR/EIS is finalized, the cost associated with these conservation areas needs to be furthered vetted. It appears these costs have the potential to escalate over time and they depend on new development in the DRECP Planning Area. The DRECP EIR/EIS is unclear with respect to the relationship between the various implementation fees and charges that will be imposed on projects within the Planning Area. These costs need to be properly quantified and potentially capped in order for proposed projects to properly evaluate the risk associated with developing a renewable energy project in the DRECP Planning Area. In addition, it appears the DRECP intends to develop and manage various species mitigation areas for covered species. This is intended to benefit the covered species as well as project developers by providing quality and much needed mitigation opportunities. The mechanism for implementation and administration of this benefit is unclear. In addition, if there will be any projected cost savings to projects, these numbers at least need to be quantified so developers can properly evaluate their financial benefit.

NEE agrees that biological data collection is paramount to the success of the program and the protection of the cover species. [7] However, it is also important to recognize that the length and frequency of the biological monitoring can greatly affect the costs associated with a renewable energy generation project. The monitoring proscribed by the Monitoring and Adaptive Management Plan (MAMP)[8] appears to be very proscriptive without much room for flexibility. The frequency of repeated monitoring efforts should be flexible where possible. It is also important that data collection is not mandated to the point where it is purely academic or unnecessary. The potential for reduced monitoring parameters may

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6 AB 32 Scoping Plan Appendix K, California Air Resources Board, 2008

7 DRECP Volume III.7, Table III.7-33, p III-7.125

8 DRECP Volume II.3

be warranted in some instances where the impact of the facility on covered species can be shown to be non-existent. In many cases, this is a very difficult item to determine prior to the actual monitoring. The DRECP should consider building in potential off-ramps in order to limit the cost to facilities where biological impacts are not significant. Any flexibility that can be built into the program will reduce the financial uncertainty and therefore the risk posed by investment in a project. Also, it appears the regional monitoring cost will be spread across projects which is a good thing; however, the mechanism for executing the monitoring and the administration of these efforts is unclear. This lack of clarity leads to several questions like:

- Will the cost be spread evenly across all projects within the DRECP or just new projects?
- Who will collect and manage the funds for monitoring and management?
- How will the monitoring be used to benefit renewable energy generation in the Planning Area?
- Will the cost be confined to renewable energy projects?
- Are the costs capped? Should they be?
- Is there a contingency plan for distributing shared costs in case the development goals and targets aren't met?

Lastly, it is unclear how the management areas will be maintained over time. The draft DRECP does an extensive analysis related to the acquisition and preparation cost for mitigation areas[9]. Apart from the initial acquisition there will ongoing management cost associated with conservation areas. There may be a need for fees to be implemented over an extended period of time or the DRECP may need to consider extending these fees to other sectors beyond just renewable energy generation projects. Either way the uncertainty related to future financial risk to renewable energy projects associated with the administration and maintenance of the conservation areas needs to be addressed in more detail.

The level of granularity in the analysis isn't consistent throughout the DRECP EIR/EIS

NEE understands why the REAT needed to develop a set of renewable energy capacity assumptions with respect to the Planning Area. This could only be accomplished by setting ranges of potential development by technology type. This requires some very specific assumptions and analysis. It appears however that some of the assumptions used to demarcate the DFAs were then generalized. For instance, it appears the Development Focus Areas (DFAs) are based on total land acreage in a designated area. What isn't clear is if the REAT considered how much of the acreage within a DFA is actually available for development. Things like existing structures and riparian setbacks [10]would reduce the footprint of land that can be developed within a DFA. It is unclear if other land use restrictions were considered in the calculation of area available for potential renewable energy project development. Also the level of detail related to resource availability doesn't appear to have been considered in when establishing DFAs. For instance, areas with a higher resource availability (i.e. wind resource or solar radiance) will potentially produce more renewable energy while utilizing a smaller footprint than other

9 DRECP, Appendix I

10 DRECP Vol II, Table II-3.6, Riparian and Wetland Avoidance and Setbacks, p II-3.48

areas with a lower resource availability. Areas of higher biological sensitivity or a high conservation value should undergo a higher level scrutiny regardless of resources availability. What is unclear is if resource availability was considered at all when establishing the conservation areas. Are some areas more critical with respect to conservation efforts than others and if so is it possible to develop in some of these areas if advance mitigation techniques are employed? It appears that when establishing the conservation areas a high degree of granularity was employed and these areas were lumped together as "off limits" while the same level of granularity was not considered with respect to resource availability. This could be a function of data availability or could be related to the focus and intent of the program. Either way NEE would like the REAT to consider resource availability in greater detail in order to potentially expand the areas made available for potential renewable energy project development.

Not all renewable energy technologies pose equal risk to all covered species and habitat equally but it appears they are treated as such

It appears that the REAT assumed that all renewable energy technologies affect conservation efforts equally. Not all technologies affect all species or habitats equally. Design features of different technologies differ in size and potential impact. Limiting the types of land area available for development without considering potential synergies between technology types and conservation areas could potentially unnecessarily eliminate viable development areas that represent little or no significant impacts to covered species and habitats. For example, terrestrial species and avian species could have very different conservation needs and requirements. It is not evident if renewable energy technology type was evaluated with respect to conservation areas. While it is understandable why the REAT used generalization when determining DFAs, it is unclear if the agencies developing this program considered allowing a business as usual approach when evaluating potential development opportunities in or around potential conservation areas. Also, it has been stated in several stakeholder meetings with the REAT agencies that project review and permitting for projects outside of DFAs will be given a lower priority status. Due to numerous variables project development may be necessary outside the DFAs and NEE is concerned that the permitting review process will be extended beyond the current timetables. Also, the development of technological advances in renewable energy generation as well as mitigation techniques avoidance techniques and equipment may increase this disparity and further justify the need for program flexibility and timely review for projects outside the DFAs.

DRECP should acknowledge that the repowering and expansion of existing projects would not trigger new conservation or mitigation requirements

The DRECP EIR/EIS clearly indicates existing renewable energy projects will not be subjected to monitoring and CMA requirements in the program. What is unclear is the treatment of these same projects who wish to expand their existing footprint or repower their existing equipment with newer more efficient technologies. The modernization of an older facility increases renewable energy output or can even improve species protection efforts. Existing projects have been established in a disturbed area and should be encouraged as areas for expansion of renewable energy capacity. If the DRECP requires repowering efforts or expansion efforts to implement CMAs or additional monitoring it could discourage

project owners from such actions. This would in essence needlessly limit potential renewable energy generating capacity within the Planning Area. Advancements in project efficiency decrease the need for new project development in greenfield areas and should be encouraged rather than discouraged. NEE feels that repowering and expansion should be specifically addressed in the DRECP EIR/EIS.

Clarification on classification of transmission associated with projects is needed

Transmission is a covered activity and has been addressed in the DRECP EIR/EIS[11]. What is not clear however is how the REAT intends to deal with gen-tie lines. Gen-tie lines deliver power generated by a renewable energy facility from that facility to an established transmission line. These gen-ties are typically constructed in conjunction with project development. There are potential scenarios where a renewable energy project is proposed in an acceptable area however the gen-tie needs to cross a conservation area. It is unclear how this situation will be treated by the lead permitting authority. Will this even be an acceptable proposal or will the gen-tie have to be rerouted around the conservation area? If it is allowed to be constructed in a conservation area will the CMAs and mitigation requirement extend for the entire project or just be limited to the gen-tie? NEE would like the REAT to address this issue specifically in the DRECP EIR/EIS.

County government reaction to DRECP

It is unclear where the county authority begins and ends under the DRECP. Has the role of the county governments increased, decreased, or neither? Due to the complexity of the document, the integration of the county level review process is difficult to determine. It is important for county governmental entities' implementation of the program be as consistent as possible. Inconsistent implementation leads to uncertainty and increases risk when evaluating the viability of a project. Also some county governments tend to be more renewable energy friendly than others. It is not apparent if this variable was taken into consideration during the development of the DRECP. It is a difficult variable to evaluate however it could alter the renewable energy capacity calculations and assumptions in the Planning Area. While we will know more about this issue after comments are submitted, it should be addressed in some manner in the final document. Also, the DRECP needs to address which entity has the final determination in the case of any conflict or differing opinions on the implementation of the program.

One of NEE's existing renewable energy facilities was not listed in the document

Several renewable energy facilities located in the DRECP Planning Area, which are partially owned by NEE were not listed as existing facilities in the document.[12] These facilities are referred to as the Solar Energy Generation Stations (SEGS) III-IX. There are seven units that were built between 1986

[11] DRECP Volume II-3.1.4, p II-3.161

[12] DRECP, Appendix O

and 1991 totaling 310 MW generation capacity. The facilities utilize solar thermal technology and are recognized under the CEC's RPS program. Units III,IV, V, VI, and-VII are located in Kramer Junction and each unit has a 30MW capacity. SEGS VIII and IX are each 80MW units and are located in Harper Lake. These units were constructed pursuant to the Federal Power Act provision for renewable facilities. Each unit has a separate ownership structure. NEE would like to make sure these units are added to the existing facility list.

Conclusion

NEE appreciates the opportunity to provide comments on the DRECP Draft EIR/EIS. While we have concerns about the state of the current document, it is a valuable framework that if further developed lays the foundation for a comprehensive conservation and renewable energy development plan. If the concerns raised by NEE and other commenters are not addressed by a revision of this document, we would be inclined to recommend that the REAT implement the No Action Alternative. It is not our desire to see that as the outcome of this process however if some of the concerns stated in this document are not addressed, the program will potential fall short of the stated goals and objectives. We look forward to working with the REAT agencies on the further development of this program. If you have any questions about these comments or would like to discuss the impacts of this program on renewable energy development, please feel free to contact me.

Respectfully,

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