DOCKET NO. 38303

AGREED NOTICE OF VIOLATION AND
SETTLEMENT AGREEMENT RELATING
TO NEXTERA ENERGY RESOURCES,
LLC'S VIOLATION OF PURA § 39.151(j)
AND P.U.C. SUBST. R. 25.503, RELATING
TO FAILURE TO ADHERE TO ERCOT
PROTOCOL § 6.3.2(2) CONCERNING
ANCILLARY SERVICE PROVIDER
OBLIGATIONS

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order addresses the Settlement Agreement and Report to Commission (Agreement) between the Public Utility Commission of Texas (Commission) Staff and NextEra Energy Resources, LLC (NextEra) (collectively, Parties) regarding Commission Staff's investigation of NextEra for violations of PURA\(^1\) § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas, Inc. (ERCOT) Protocol § 6.3.2(2), concerning ancillary service provider obligations. This docket was processed in accordance with applicable statutes and Commission rules. The Agreement resolves all of the issues in this docket. Commission Staff recommended an administrative penalty of $60,000. NextEra agreed to pay the recommended administrative penalty. The Agreement is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. NextEra is a registered power marketer under PURA § 35.032.

2. NextEra participates in the ERCOT market as a qualified scheduling entity (QSE).

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3. PURA § 39.151(j) requires market participants to comply with the ERCOT operating and reliability policies, rules, guidelines, and procedures or be subject to revocation, suspension, or amendment of their certification or to the imposition of administrative penalties.


5. NextEra had QSE ancillary service reserve obligations during each of the six intervals within the time of the event on November 29, 2007.

6. During the November 29, 2007 EECP, NextEra experienced a forced outage in its QSE portfolio which partially contributed to it being short of its required ancillary service reserve obligations during three separate clock hours within the event, which violated ERCOT Protocol § 6.3.2(2) requiring that providers of ancillary services shall provide and deploy, as directed by ERCOT, the Ancillary Service(s) they agreed to provide.

7. On March 2, 2010, NextEra was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.

8. NextEra fully cooperated with Commission Staff's investigation.

9. NextEra participated in one or more settlement discussions with Commission Staff to resolve this matter.

10. NextEra acknowledged the facts giving rise to the violations detailed in this Order.

11. NextEra developed and instituted a mitigation plan designed to ensure that it meets its future ancillary service obligations of providing and deploying the ancillary services that it agrees to provide.
12. NextEra doubled the staff on its real-time desk for purposes of ensuring proper attention to communications between plants and ERCOT.

13. NextEra created a new software application to identify input mistakes on the proposed ERCOT resource plans in time for correction prior to submission.

14. NextEra agrees to continue and maintain its efforts outlined in Findings of Fact Nos. 11-13 to prevent future similar violations.

15. On May 25, 2010, Commission Staff and NextEra filed an Agreement in this docket in which Commission Staff recommended and NextEra agreed to pay an administrative penalty of $60,000 for the violations described herein.

II. Conclusions of Law

1. NextEra is a registered power marketer pursuant to PURA § 35.032.

2. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.002, 14.051, 15.023, 15.024, and 39.151(j).

3. NextEra was provided proper notice of Commission Staff’s investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.

4. Pursuant to PURA § 39.151(j), NextEra is required to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT or be subject to revocation, suspension, or amendment of a certificate, or the imposition of an administrative penalty.

5. P.U.C. SUBST. R. 25.503(f)(2) requires NextEra to comply with ERCOT procedures and any official interpretation of the protocols issued by ERCOT or the Commission.
6. ERCOT Protocol § 6.3.2(2) requires that ancillary service providers shall provide and deploy, as directed by ERCOT, the Ancillary Service(s) that they have agreed to provide.

7. NextEra violated PURA § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2) when it failed to adhere to ERCOT Protocol § 6.3.2(2) on November 29, 2007, by not providing and deploying, as directed by ERCOT, the ancillary services it agreed to provide.

8. The violations of PURA § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2), described herein, are Class A violations pursuant to P.U.C. SUBST. R. 25.8(b)(3)(B).

9. P.U.C. PROC. R. 22.246(g)(1)(B) and (C) require issuance of a report of a settlement to the Commission and a written order that approves the settlement.

10. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement attached to this Order as Attachment 1 is approved, and the Parties shall be bound by its terms.

2. NextEra shall pay an administrative penalty to the Commission in the amount of $60,000 no later than 30 calendar days after the date this Order is signed.

3. Payment of the administrative penalty shall be made by check payable to the Public Utility Commission of Texas and shall reference Docket No. 38303. The check shall be sent to the following address:
4. NextEra shall file an affidavit of payment in this docket attesting to payment of the administrative penalty to the Commission imposed by the Agreement and this Order no later than five calendar days after the date on which payment was made.

5. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.

6. Entry of this Order does not indicate the Commission’s endorsement or approval of any principal or methodology that may underlie the Agreement. Entry of this Order consistent with the Agreement shall not be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.

7. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS on the __th day of July 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER
SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Staff) and NextEra Energy Resources, L.L.C. (NextEra or Company) (individually, a Party and together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of the Company for violation of § 39.151(j) of the Public Utility Regulatory Act (PURAct) and P.U.C. Subst. R. § 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Protocol § 6.3.2(2), concerning ancillary service provider obligations.

The Parties agree as follows:

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.

2. Staff recommends and NextEra agrees to pay an administrative penalty of Sixty Thousand Dollars ($60,000.00) for NextEra's violation described in the attached Proposed Order.

3. NextEra developed and instituted a mitigation plan designed to ensure that it meets its future ancillary service obligations of providing and deploying the ancillary services that it agrees to provide, consistent with the ERCOT market rules.

4. NextEra doubled the staff on its real-time desk for purposes of ensuring proper attention to communications between plants and ERCOT.

5. NextEra created a new software application to identify input mistakes on proposed ERCOT resource plans in time for correction prior to submissions.

6. NextEra agrees to continue and maintain its efforts outlined in paragraphs 3-5 above to prevent future similar violations.

7. Unless specifically provided for in this Agreement, NextEra waives any notice and procedures that might otherwise be authorized or required in this proceeding.

8. Nothing in this Agreement shall limit the Staff's ability to perform its enforcement functions as set forth in PURA and the Commission’s rules.

9. A Party’s support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. Because this is a settlement agreement, a Party is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement, whether those dockets present the same or a different set of circumstances. The Parties’ agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.

10. The Parties contemplate that this Agreement will be approved pursuant to P.U.C. PROC. R. 22.246(g)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration...
has the right to withdraw from this Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other Party written notice within 20 calendar days of the date the Commission files the final order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.

11. This Agreement is the final and entire agreement between the Parties regarding its terms and supersedes all other communications among the Parties or their representatives regarding its terms.

12. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same Agreement.

13. The Company warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

EXECUTED by the Parties by their authorized representatives designated below.

Matt Schafer
Vice President, Business Management
NextEra Energy Resources, LLC

Date: 5/17/10

Marshall Adair
Director – Oversight and Enforcement Division
Public Utility Commission of Texas