

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

NextEra Energy, Inc. and)	
NextEra Energy Partners, L.P.,)	
)	
Complainants)	
)	
v.)	Docket No. EL19-35-000
)	
Pacific Gas & Electric Co.,)	
)	
Respondent.)	

**MOTION TO INTERVENE AND COMMENTS IN SUPPORT OF
NEXTERA ENERGY COMPLAINT**

Pursuant to Rule 214 of the Rules of the Federal Energy Regulatory Commission (“Commission”)¹ and the January 18, 2019 Notice issued by the Commission,² the American Council on Renewable Energy (“ACORE”) hereby submits this motion to intervene and comments in support of NextEra Energy, Inc.’s (“NextEra”) Petition for Declaratory Order and Complaint, and Request for Expedited Action in this proceeding.³ Given Pacific Gas and Electric Company’s (“PG&E”) stated intent to file for bankruptcy petition no sooner than January 29, 2019, the Commission should act quickly to protect the sanctity of wholesale electric power contracts entered into under Section 205 of the FPA.

ACORE supports the arguments made in the NextEra Complaint and requests that the Commission provide relief by January 25, 2019, that if PG&E files a petition for bankruptcy, it

¹ 18 C.F.R. § 385.214 (2018).

² *NextEra Energy, Inc. v. Pacific Gas & Electric Co.*, Notice of Complaint and Petition for Declaratory Order, Docket No. EL19-35-000 (Jan. 18, 2019).

³ Petition for Declaratory Order and Complaint of NextEra Energy, Inc. and NextEra Energy Partners, L.P. against Pacific Gas and Electric Co. and Request for Expedited Action, Docket No. EL19-35-000 (filed Jan. 18, 2019) (“NextEra Complaint”).

may not abrogate, amend or reject in bankruptcy any of the rates, terms and conditions of its wholesale power purchase agreements subject to this Commission's jurisdiction without first obtaining approval from the Commission under FPA Sections 205 or 206. ACORE notes that this relief is similar to the outcome advocated by the Department of Justice in the Sixth Circuit in the FirstEnergy bankruptcy proceeding in June 2018.

I. MOTION TO INTERVENE

ACORE is a national non-profit organization representing the nation's leading renewable energy developers, manufacturers, financial institutions, corporate end-users, utilities, grid technology providers and other diverse industries that make up the thriving renewable energy sector.

Many companies that invest in and develop renewable energy generation projects have financed and constructed renewable generating assets in reliance on PG&E power contracts. As such, the renewable energy industry will be directly affected by the outcome of this proceeding and submits these comments in the interest of its member companies and the public interest. Pursuant to Rule 214(b)(2)(iii) and the January 18, 2019 Notice, ACORE respectfully submits these comments in the public interest.

II. CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications concerning the above-captioned proceeding should be addressed to the following persons:

Todd Foley
Senior Vice President of Policy &
Government Affairs
American Council on Renewable
Energy
1600 K Street NW, Suite 650
Washington, DC 20006
(202) 777-7585
foley@acore.org

Timothy Olson
Policy and Research Manager
American Council on Renewable Energy
1600 K Street NW, Suite 650
Washington, DC 2009
(202) 507-4634
olson@acore.org

III. COMMENTS IN SUPPORT OF NEXTERA COMPLAINT

ACORE supports the NextEra Complaint and urges the Commission to expeditiously grant the relief requested therein. Renewable energy investors, developers and other market participants rely on FERC jurisdictional authority under the FPA to help ensure the integrity of the wholesale market for electric power contracts. Such regulatory authority promotes private sector investment in renewable energy infrastructure and contributes to the lowest possible rates for consumers. Allowing for the abrogation, amendment or rejection in bankruptcy of any rates, terms and conditions of wholesale power purchase agreements would have an immediate chilling effect on renewable energy investment and deployment. This would also make it more difficult for states like California to meet their renewable energy mandates and slow private sector infrastructure investment.

The Commission's exclusive jurisdiction under the FPA includes the rates, terms and conditions of wholesale electric power contracts, as well as all rules and regulations affecting or pertaining to such rates. Renewable energy investors and developers rely on FERC's authority over wholesale power contracts in making decisions to finance and construct renewable energy assets. The rejection of the wholesale power sales contracts in bankruptcy will directly affect the rates, terms and conditions of those existing contracts. If this is done without first obtaining Commission approval it will directly and adversely impact the Commission's ability to establish and promote rate certainty, the sanctity of wholesale power contracts, and the continued development of renewable resources in California.

For the reasons stated above, ACORE requests the Commission to grant NextEra's request and order that PG&E may not reject, abrogate, or amend any of its Commission-jurisdictional wholesale power contracts in bankruptcy without prior approval from the

Commission pursuant to FPA Section 205 or 206. In short, ACORE urges the Commission to act consistent with the arguments submitted by the Department of Justice in the Sixth Circuit bankruptcy proceeding of FirstEnergy.⁴ To avoid a chilling effect on renewable energy finance and development as a result of jurisdictional uncertainty, ACORE urges the Commission to issue its decision prior to PG&E's intended bankruptcy filing date of January 29, 2019.

IV. CONCLUSION

For the reasons set forth herein and in the NextEra Complaint, ACORE respectfully requests that the Commission: (1) grant ACORE's motion to intervene; and (2) expeditiously grant the relief requested by NextEra and issue an order stating that if PG&E files a petition for bankruptcy, PG&E may not abrogate, amend or reject in bankruptcy any of the rates, terms and conditions of its wholesale power purchase agreements subject to this Commission's jurisdiction without first obtaining approval from this Commission under FPA Sections 205 or 206.

Respectfully submitted,

/s/ Todd Foley

/s/ Tim Olson

Todd Foley

Senior Vice President of Policy & Government
Affairs

Tim Olson

Policy and Research Manager

American Council on Renewable Energy

1600 K Street N.W., Suite 650

Washington, DC 20006

Dated: January 22, 2019

⁴ See Department of Justice brief at Attachment A.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 22nd day of January, 2019.

/s/ Todd Foley

Todd Foley