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January 26, 2009

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Via Hand Delivery

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Public Utilities Commission of Ohio, 13th Floor
180 East Broad Street
Columbus, OH 43215-3793

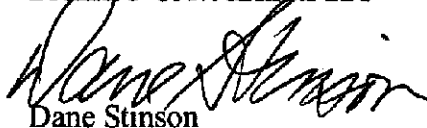
Re: *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Rider FUEL and Related Accounting Authority; Case Nos. 09-21-EL-ATA, 09-22-EL-AEM, 09-23-EL-AAM*

Dear Ms. Jenkins:

Please find enclosed for filing in the above captioned matters the original and twenty (20) copies of (1) NextEra's Motion to Intervene and (2) NextEra's Application for Rehearing. Please date stamp and return the additional copies enclosed herewith.

Very truly yours,

BAILEY CAVALIERI LLC


Dane Stinson

Enclosures

cc: Alan R. Schriber, Chair (via hand delivery)
Ronda Hartman Fergus, Commissioner (via hand delivery)
Valerie A. Lemmie, Commissioner (via hand delivery)
Paul A. Centolella, Commissioner (via hand delivery)
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Parties of Record (via electronic mail)

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of the Ohio Edison)	
Company, The Cleveland Electric Illuminating)	Case Nos. 09-21-EL-ATA
Company, and The Toledo Edison Company for)	09-22-EL-AEM
Approval of Rider FUEL and Related Accounting)	09-23-EL-AAM
Authority.)	

**MOTION TO INTERVENE
OF
NEXTERA ENERGY RESOURCES, LLC, ET AL.
[formerly known as FPL Energy, LLC]**

NextEra Energy Resources, LLC; FPL Energy Power Marketing, LLC; Gexa Energy Holdings, LLC; and Gexa Energy – Ohio, LLC, (collectively “NextEra”),¹ respectfully move the Public Utilities Commission of Ohio for leave to intervene in the above-captioned cases pursuant to section 4903.221, Ohio Rev. Code, and rule 4901-1-11, Ohio Admin. Code. NextEra’s interests in this proceeding and the reasons supporting this Motion to Intervene are set forth in the attached Memorandum in Support.

Respectfully submitted,



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¹ FPL Energy Power Marketing, LLC, Gexa Energy Holdings, LLC, and Gexa Energy – Ohio each is an affiliate of NextEra Energy Resources, LLC, formerly known as FPL Energy, LLC. FPL Energy Power Marketing, LLC, was formerly known as FPL Energy Power Marketing, Inc.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

FPL Energy Power Marketing, LLC ("PML"); Gexa Energy Holdings, LLC ("Gexa"); and Gexa Energy – Ohio, LLC ("Gexa – Ohio") each is an affiliate of NextEra Energy Resources, LLC. ("NextEra Energy"). NextEra Energy is one of the nation's leading providers of clean energy with natural gas, wind, solar, hydroelectric and nuclear power plants in operation in 25 states across the country. It is the leading supplier of wind energy in the U.S. today with approximately 5,000 MW in wind generation in operation at year end 2007. Its stated goal, as part of its growth strategy, is to add approximately 10,000 MW of new wind generation over the period 2007-2012.

PML, Gexa, and NextEra Energy (collectively, "NextEra"), are a part of the FPL Group, Inc., a Fortune 500 company that is rated "A" both by Standard & Poors and Fitch Ratings, and operates approximately 40,000 MWs of generation assets in the United States. Its affiliates also include Florida Power & Light Company, the largest electric utility in the State of Florida;

PML is the marketing and trading arm of NextEra Energy. It helps to manage a diverse merchant portfolio totaling approximately 15,000 MWs of electricity nationwide. PML is also a top 10 wholesale energy trader and a significant provider of full requirements energy supply in PJM, NEPOOL, and ERCOT. PML also provides bidding and scheduling services for non-FPL owned assets, as well as hedging and scheduling load obligations of third parties under energy management service agreements. It also has significant renewal energy marketing and trading capabilities.

Gexa is a retail electric provider licensed to serve commercial and industrial customers in most of the major U.S. deregulated electricity markets. In Texas, Gexa serves residential customers in addition to commercial and industrial customers. Currently, Gexa serves 120,000

customers with a peak load of approximately 1,200 MW. PML procures substantially all of the wholesale electricity supply needed by Gexa's retail operations, and performs the settlement and scheduling functions with each of the ISO's on behalf of Gexa. Gexa's subsidiary, Gexa – Ohio, is a competitive retail electric service ("CRES") provider recently certified to provide CRES in this state.²

PML has executed a letter of intent to provide electric supply to the Northeast Ohio Public Energy Council ("NOPEC"), a large-scale governmental aggregation in Northeastern Ohio with approximately 600,000 eligible customers in Ohio Edison's and Cleveland Electric Illuminating Company's service territories.³ NextEra and NOPEC are in the process of finalizing a full requirements power supply agreement to serve NOPEC's load, commencing in April 2009.

NextEra intervened and fully participated in FirstEnergy's recent ESP proceeding to protect its interests in establishing a level and competitive playing field for the provision of competitive electric services in Ohio, under recently enacted Am. Sub. Senate Bill 221. Specifically, NextEra opposed, among other things, FirstEnergy's proposal to defer SSO customers' generation costs. By its application filed January 9, 2009, in this proceeding, FirstEnergy⁴ attempts to implement a similar deferral. NextEra's legal positions include that the deferrals, as proposed, violate statutory provisions promoting electric competition (section 4928.02, Ohio Rev. Code), prohibiting discriminatory conduct (section 4905.35, Ohio Rev.

² See, *In the Matter of the Application of Gexa Energy Ohio, LLC for Authority to Operation as a Competitive Retail Electric Service Provider*, PUCO Case No. 09-1081-EL-CRS (Certificate Issued October 20, 2008).

³ See *In the Matter of the Application of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the form of an Electric Security Plan*, Case No. 08-935-EL-SSO (hereafter, "ESP Proceeding"), FPL Energy Ex. 1, Attachment A.

⁴ The applicant electric distribution utilities in these proceedings (Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company) collectively will be referred to as "FirstEnergy."

Code), and encouraging large-scale governmental aggregation (section 4928.20(K), Ohio Rev. Code).

Rule 4901-1-11, Ohio Admin. Code, implements the provisions of Section 4903.221, Ohio Rev. Code,⁵ governing intervention in proceedings before the Public Utilities Commission of Ohio ("Commission"). Pursuant to Rule 4901-1-11(A)(2), Ohio Admin. Code, the Commission may grant intervention if a person has "a real and substantial interest in the proceeding and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties." Under the rules, and consistent with the provisions of Section 4903.221, Ohio Rev. Code, the Commission may consider the following criteria in making its determination:

- (1) The nature of the person's interest;
- (2) The extent to which the person's interest is represented by existing parties;
- (3) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and
- (4) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice any existing party.

Rule 4901-1-11(B), Ohio Admin. Code.

If the deferrals are authorized only for SSO generation rates as FirstEnergy proposes in its application, it will succeed in doing in this proceeding what it was prevented from doing in the ESP Proceeding – implementing an anti-competitive deferred generation charge for SSO

⁵ Section 4903.221, Ohio Rev. Code, permits a "person who may be adversely affected" to intervene in a Commission proceeding and provides the following criteria for the Commission to consider in ruling upon applications for intervention:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

customers only. The harm to NextEra is immediate and substantial⁶ in that the anti-competitive proposal will:

- 1) provide an artificially low SSO price against which NextEra will be unable to compete, preventing it from entering Ohio's market and serving NOPEC's customers; and
- 2) place it at a competitive disadvantage vis-à-vis FirstEnergy's SSO suppliers, considering that FirstEnergy will assume such suppliers' obligations to finance and collect the future revenues created by the deferrals, whereas NextEra, and all CRES suppliers, if they were to implement a similar deferral to compete, would be required to finance and collect their own future revenues.

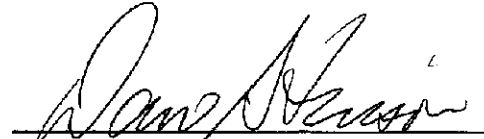
NextEra has a real and substantial interest in these proceedings and seeks to intervene to protect its ability to compete in FirstEnergy's markets, by opposing the proposed deferrals and actively participating in the future proceedings considering the reasonableness of the deferred amounts and their recovery.

NextEra will not unduly prolong or delay these proceedings and, indeed, has filed this motion to intervene prior to deadline for intervention established Section 4903.221, Ohio Rev. Code. With its vast experience in the electric service industry, and active participation in the ESP Proceeding from which this case evolved, NextEra will contribute significantly to the full development and resolution of the factual and legal issues in these proceedings. Moreover, NextEra's financial interests in this proceeding cannot be adequately represented by any other party.

⁶ The Commission has indicated that the reasonableness of the deferral and recovery thereof will be examined and addressed in a future proceeding. January 14, 2009 Finding and Order, at Paragraph 12. The immediate and substantial harm that NextEra, and all CRES providers, will suffer if an SSO-only deferral is allowed must be addressed swiftly in the context of clarification or entry on rehearing. See *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St. 3d 384, 2006 Ohio 5853, 856 N.E.2d 940 (a party may argue that harm resulted from an accounting order that the party claims was unlawful and unreasonable).

Wherefore, NextEra respectfully requests that the Commission grant its motion to intervene in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dane Stinson", is written over a horizontal line.

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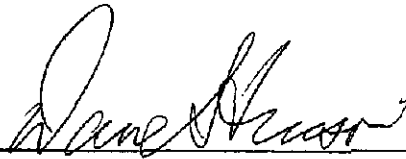
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Motion to Intervene of NextEra Energy Resources, LLC* was served by electronic mail this 26th day of January, 2009 on the persons listed below.


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