

188 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Mark C. Christie and David Rosner.

Arlington Energy Center III, LLC; Blythe
Solar 110, LLC; Blythe Solar III, LLC;
Blythe Solar IV, LLC; Desert Sunlight 250,
LLC; Sunlight Storage, LLC; and McCoy
Solar, LLC

Docket No. IN24-10-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued August 8, 2024)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Arlington Energy Center III, LLC (Arlington), Blythe Solar 110, LLC (Blythe 110), Blythe Solar III, LLC (Blythe III), Blythe Solar IV, LLC (Blythe IV), Desert Sunlight 250, LLC (Desert Sunlight), Sunlight Storage, LLC (Sunlight Storage), and McCoy Solar, LLC (McCoy) (collectively, the Companies). This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation (Investigation) under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2024), into whether the Companies violated the California Independent System Operator Corporation's (CAISO's) Open Access Transmission Tariff (CAISO Tariff) or Commission regulations when providing ancillary services to CAISO during the period January 1, 2022 through September 1, 2023 (Relevant Period).

2. The Companies stipulate to the facts in Section II of the Agreement and admit the violations described in Section III of the Agreement. The Companies agree to: (a) disgorge \$381,724 in revenues that the Companies received from certain transactions during the Relevant Period; (b) pay a civil penalty of \$105,000 to the United States Treasury; and (c) provide compliance monitoring reports to Enforcement as described in the Agreement.

I. Facts

3. The Companies are indirect subsidiaries of NextEra Energy Resources, LLC (NextEra Energy Resources) and/or NextEra Energy Partners, LP (NEP, and collectively, NextEra).¹ Each of the Companies operate a co-located battery energy storage system and solar generation facility (which taken together are considered a Plant).² Each battery energy storage system and solar generation facility function as separate resources but share the same point of interconnection. Under the CAISO large generator interconnection agreement for each Plant, the resources cannot exceed the point of interconnection (POI) limit.

4. The POI limit for each Plant is significantly below the combined maximum potential output of each Plant's battery and solar facilities. For example, the McCoy battery facility has a capacity of 230 MW and the McCoy solar facility has a capacity of 250 MW. However, the McCoy Plant (which includes both the battery and solar facilities) has a combined POI limit of 250 MW.

5. In December 2021, CAISO modified the CAISO Tariff to prohibit co-located battery facilities from deviating from dispatch instructions when providing ancillary services. With this modification, during the Relevant Period, CAISO Tariff § 34.13.3 stated, in relevant part: "A Co-located Resource that is a Non-Generator Resource may not deviate from a Dispatch Instruction pursuant to this section if it is providing Ancillary Services in the same Dispatch Interval." Under Appendix A of the CAISO Tariff, a battery facility is considered a Non-Generator Resource.³

6. NextEra was unaware of CAISO's December 2021 tariff change during the Relevant Period and thus did not update its software to comply with that tariff change.

7. During the Relevant Period, when the combined output of a Plant's battery and solar facilities approached the POI limit, the programmable logic controllers (PLCs) at the Plant that controlled the output of the solar and battery facilities automatically

¹ Specifically, Arlington, Blythe 110, Blythe III, and Blythe IV are indirect subsidiaries of NextEra Energy Resources; Desert Sunlight, McCoy, and Sunlight Storage are indirect subsidiaries of NEP and affiliates of NextEra Energy Resources.

² Arlington, Blythe 110, Blythe III, Blythe IV, and McCoy each are corporate entities that own the co-located Plants in the CAISO region. Sunlight Storage and Desert Sunlight are co-located battery and solar facilities, respectively, but separate corporate entities. Each of these seven corporate entities has market-based rate authority from the Commission.

³ CAISO Tariff, Appendix A, Master Definition Supplement ("Non-Generator Resource").

curtailed the battery facility, allowing the solar facility to continue to deliver its output to the CAISO grid, as was permitted prior to CAISO's December 2021 tariff change. NextEra's software did so even during intervals in which the Plants' batteries received ancillary services awards.

8. Enforcement opened this Investigation following an April 2023 referral from CAISO's Department of Market Monitoring.

9. During the Relevant Period, there were 3,835 five-minute intervals during which the Plants' battery facilities deviated from dispatch instructions while holding ancillary services awards. On these occasions, the combined output of the Plants approached or met the shared POI limit, and NextEra's software automatically curtailed the battery facilities instead of curtailing the solar facilities.

10. During the Relevant Period, the Companies received approximately \$381,724 in incremental revenues resulting from the solar facilities producing energy when those resources should have been curtailed.

11. NextEra has since corrected its software to ensure the Plants operate in a manner consistent with CAISO Tariff § 34.13.3.

12. NextEra fully cooperated with Enforcement during the Investigation.

II. Violations

13. During the Relevant Period, CAISO Tariff § 34.13.3 stated:

A Co-located Resource that is a Non-Generator Resource may deviate from a Dispatch Instruction where a co-located Eligible Intermittent Resource at the same Generating Facility is producing above its Dispatch Operating Target due to meteorological conditions such that the Co-located Resources' combined output would exceed the Interconnection Service Capacity of the Co-located Resources, or otherwise threaten reliability or safety. Such deviations may only occur through proper control technologies that ensure the combined output of all Co-located Resources does not exceed the Generating Facility's Interconnection Service Capacity. All deviations from Dispatch Instruction will be subject to Uninstructed Imbalance Energy. *A Co-located Resource that is a Non-Generator Resource may not deviate from a Dispatch Instruction pursuant to this section if it is providing Ancillary Services in the same Dispatch Interval* (emphasis added).

14. Enforcement determined that during the Relevant Period, the Companies' Plants deviated from CAISO's dispatch instructions while providing ancillary services during all or portions of 3,835 five-minute intervals, in violation of CAISO Tariff § 34.13.3. The

Companies did so by curtailing their battery facilities (which constituted Non-Generator Resources under Appendix A of the CAISO Tariff) and allowing their co-located solar facilities to continue to deliver their output to the CAISO grid.

III. Stipulation and Consent Agreement

15. Enforcement and the Companies have resolved the Investigation by means of the attached Agreement.

16. The Companies stipulate to the facts set forth in Section II of the Agreement and admit to the violations described in Section III of the Agreement.

17. The Companies agree to pay a civil penalty of \$105,000 to the United States Treasury.

18. The Companies agree to pay \$381,724 in disgorgement to CAISO.

19. The Companies agree to submit an annual compliance monitoring report to Enforcement for one year with a second year at Enforcement's sole discretion.

IV. Determination of Appropriate Sanctions and Remedies

20. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,⁴ including the fact that the Companies cooperated with Enforcement during the Investigation.

21. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct.

22. The Commission also concludes that the Companies' civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.

23. The Commission directs the Companies to satisfy disgorgement and pay the civil penalty as required under the Agreement within 10 business days of the Effective Date of the Agreement.

24. The Commission directs the Companies to comply with the provisions in the Agreement including requiring the Companies to submit an annual compliance monitoring report to Enforcement for one year with a second year at Enforcement's sole discretion.

⁴ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

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25. The Commission directs CAISO to allocate the disgorged funds in its discretion for the benefit of CAISO customers and upon approval by Enforcement of CAISO's plan for doing so.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission. Commissioner See is not participating.
Commissioner Chang is not participating.

(SEAL)

Debbie-Anne A. Reese,
Acting Secretary.

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

Arlington Energy Center III, LLC; Blythe Solar 110, LLC; Blythe Solar III, LLC; Blythe Solar IV, LLC; Desert Sunlight 250, LLC; Sunlight Storage, LLC; and McCoy Solar, LLC

Docket No. IN24-10-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission), and Arlington Energy Center III, LLC (Arlington), Blythe Solar 110, LLC (Blythe 110), Blythe Solar III, LLC (Blythe III), Blythe Solar IV, LLC (Blythe IV), Desert Sunlight 250, LLC (Desert Sunlight), Sunlight Storage, LLC (Sunlight Storage), and McCoy Solar, LLC (McCoy) (collectively, the Companies) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic, preliminary investigation (the Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2024). The Investigation examined whether the Companies violated the California Independent System Operator Corporation's (CAISO's) Open Access Transmission Tariff (CAISO Tariff) or Commission regulations when providing ancillary services to CAISO during the period January 1, 2022 through September 1, 2023 (Relevant Period).

2. The Companies stipulate to the facts in Section II and admit the violations described in Section III. The Companies agree to: (a) disgorge \$381,724 in revenues that the Companies received from certain transactions during the Relevant Period; (b) pay a civil penalty of \$105,000 to the United States Treasury; and (c) provide compliance monitoring reports to Enforcement as provided more fully below.

II. STIPULATIONS

Enforcement and the Companies hereby stipulate and agree to the following facts:

3. The Companies are indirect subsidiaries of NextEra Energy Resources, LLC (NextEra Energy Resources) and/or NextEra Energy Partners, LP (NEP, and collectively, NextEra).¹ Each of the Companies operate a co-located battery energy storage system and solar generation facility (which taken together are considered a Plant).² Each battery

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energy storage system and solar generation facility function as separate resources but share the same point of interconnection. Under the CAISO large generator interconnection agreement for each Plant, the resources cannot exceed the point of interconnection (POI) limit.

4. The POI limit for each Plant is significantly below the combined maximum potential output of each Plant's battery and solar facilities. For example, the McCoy battery facility has a capacity of 230 MW and the McCoy solar facility has a capacity of 250 MW. However, the McCoy Plant (which includes both the battery and solar facilities) has a combined POI limit of 250 MW.

5. In December 2021, CAISO modified the CAISO Tariff to prohibit co-located battery facilities from deviating from dispatch instructions when providing ancillary services. With this modification, during the Relevant Period, CAISO Tariff § 34.13.3 stated, in relevant part: "A Co-located Resource that is a Non-Generator Resource may not deviate from a Dispatch Instruction pursuant to this section if it is providing Ancillary Services in the same Dispatch Interval." Under Appendix A of the CAISO Tariff, a battery facility is considered a Non-Generator Resource.³

6. NextEra was unaware of CAISO's December 2021 tariff change during the Relevant Period and thus did not update its software to comply with that tariff change.

7. During the Relevant Period, when the combined output of a Plant's battery and solar facilities approached the POI limit, the programmable logic controllers (PLCs) at the Plant that controlled the output of the solar and battery facilities automatically curtailed the battery facility, allowing the solar facility to continue to deliver its output to the CAISO grid, as was permitted prior to CAISO's December 2021 tariff change. NextEra's software did so even during intervals in which the Plants' batteries received ancillary services awards.

8. Enforcement opened this investigation following an April 2023 referral from CAISO's Department of Market Monitoring.

9. During the Relevant Period, there were 3,835 five-minute intervals during which the Plants' battery facilities deviated from dispatch instructions while holding ancillary services awards. On these occasions, the combined output of the Plants approached or met the shared POI limit, and NextEra's software automatically curtailed the battery facilities instead of curtailing the solar facilities.

10. During the Relevant Period, the Companies received approximately \$381,724 in incremental revenues resulting from the solar facilities producing energy when those resources should have been curtailed.

co-located battery and solar facilities, respectively, but separate corporate entities. Each of these seven corporate entities has market-based rate authority from the Commission.

³ CAISO Tariff, Appendix A, Master Definition Supplement ("Non-Generator Resource").

11. NextEra has since corrected its software to ensure the Plants operate in a manner consistent with CAISO Tariff § 34.13.3.
12. NextEra fully cooperated with Enforcement during the Investigation.

III. VIOLATIONS

13. During the Relevant Period, CAISO Tariff § 34.13.3 stated:

A Co-located Resource that is a Non-Generator Resource may deviate from a Dispatch Instruction where a co-located Eligible Intermittent Resource at the same Generating Facility is producing above its Dispatch Operating Target due to meteorological conditions such that the Co-located Resources' combined output would exceed the Interconnection Service Capacity of the Co-located Resources, or otherwise threaten reliability or safety. Such deviations may only occur through proper control technologies that ensure the combined output of all Co-located Resources does not exceed the Generating Facility's Interconnection Service Capacity. All deviations from Dispatch Instruction will be subject to Uninstructed Imbalance Energy. *A Co-located Resource that is a Non-Generator Resource may not deviate from a Dispatch Instruction pursuant to this section if it is providing Ancillary Services in the same Dispatch Interval* (emphasis added).

14. Enforcement determined that during the Relevant Period, the Companies' Plants deviated from CAISO's dispatch instructions while providing ancillary services during all or portions of 3,835 five-minute intervals, in violation of CAISO Tariff § 34.13.3. The Companies did so by curtailing their battery facilities (which constituted Non-Generator Resources under Appendix A of the CAISO Tariff) and allowing their co-located solar facilities to continue to deliver their output to the CAISO grid.

IV. REMEDIES AND SANCTIONS

15. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to the Companies' conduct evaluated in Enforcement's Investigation, the Companies agree with the facts as stipulated in Section II of this Agreement, and admit the violations described in Section III of this Agreement. The Companies further agree to undertake the obligations set forth in the following paragraphs.

A. Civil Penalty

16. The Companies agree to pay a civil penalty of \$105,000 to the United States Treasury, by wire transfer, within 10 business days of the Effective Date of this Agreement, as defined herein.

B. Disgorgement

17. The Companies agree to pay \$381,724 in disgorgement to CAISO within 10 business days of the Effective Date of this Agreement, to be allocated by CAISO in its

discretion for the benefit of CAISO customers and upon approval by Enforcement of CAISO's plan for doing so.

C. Compliance

18. The Companies shall submit an annual compliance monitoring report to Enforcement for one year with a second year at Enforcement's sole discretion. The first report shall be submitted no later than one year and 30 days after the Effective Date of the Agreement. If a second report is required, it shall be submitted no later than two years and 30 days after the Effective Date of the Agreement.

19. Each compliance monitoring report shall: (1) identify any known incidents of non-compliance with the CAISO Tariff or Commission regulations by any of the Companies that occurred during the period from the date of the Commission's order through the duration of the compliance reporting period, including a description of the nature of the non-compliance and the corrective actions taken; (2) all compliance measures and procedures NextEra or the Companies instituted or modified during the reporting period related to the Companies' compliance with the CAISO Tariff and Commission regulations; and (3) all CAISO and Commission-related compliance training during the reporting period that were administered to the employees within NextEra Energy Resources' business units with responsibility for overseeing the Companies' compliance with the currently effective CAISO Tariff Section 34.13.3 requirements, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

20. Each compliance monitoring report shall also include an affidavit executed by an officer or authorized representative of the Companies stating that it is true and accurate to the best of his/her knowledge.

21. Upon request by Enforcement, NextEra shall provide to Enforcement documentation supporting the contents of its reports.

V. TERMS

22. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to the Companies and any parent or subsidiary company or affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

23. Commission approval of this Agreement without material modification shall release the Companies and forever bar the Commission from holding the Companies and any affiliated entity, parent or subsidiary company, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

24. Failure by the Companies to make the disgorgement or civil penalty payments, or to comply with the compliance obligations agreed to herein or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. § 792, et seq., and may subject the Companies to additional action under the enforcement provisions of the FPA.

25. If the Companies do not make the required disgorgement payment described above within the time agreed by the parties, or if the Companies do not pay the required civil penalty described above within the time agreed by the parties, interest will be calculated pursuant to 18 C.F.R. § 35.19a(a)(2)(iii)(A), (B) from the date that payments are due, in addition to any other enforcement action and penalty that the Commission may take or impose.

26. This Agreement binds each of the Companies and their parents, agents, successors, and assignees. This Agreement does not create any additional or independent obligations on the Companies, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

27. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or by the Companies has been made to induce the signatories or any other party to enter into the Agreement.

28. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor the Companies shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and the Companies.

29. In connection with the disgorgement payment and civil penalty provided for herein, the Companies agree that the Commission's order approving the Agreement without material modification shall be a final and unappealable order under 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). The Companies waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

30. This Agreement can be modified only if in writing and signed by Enforcement and the Companies, and any modifications will not be effective unless approved by the Commission.

31. The undersigned warrants that he is an authorized representative of the Companies, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

32. The undersigned representative of the Companies affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best

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of his or her knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance on those representations.

33. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Agreed to and Accepted:

JANEL
BURDICK

Digitally signed by
JANEL BURDICK
Date: 2024.08.06
13:19:53 -04'00'

Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission



Justin Moeller
Counsel for the Companies

Date: ~~July 2, 2024~~

August 6, 2024

Date: July 2, 2024

Document Content(s)

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