



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 4, 2022

W. Scott Seeley
NextEra Energy, Inc.

Re: NextEra Energy, Inc. (the "Company")
Incoming letter dated December 30, 2021

Dear Mr. Seeley:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Myra K Young Roth IRA (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity.

We are unable to concur in your view that the Company may exclude the Proposal under Rules 14a-8(b) and 14a-8(f). We note that the Proponent appears to have supplied documentary support sufficiently evidencing the Proponent's eligibility to submit the Proposal.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's public disclosures do not substantially implement the Proposal.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Andrew Behar
As You Sow

W. Scott Seeley
Vice President, Compliance & Corporate Secretary



Rule 14a-8(f)
Rule 14a-8(i)(10)

VIA ELECTRONIC EMAIL (shareholderproposals@sec.gov)

December 30, 2021

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: NextEra Energy, Inc.
Shareholder Proposal of As You Sow

Ladies and Gentlemen:

We are submitting this letter on behalf of NextEra Energy, Inc. (the "Company"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude from its proxy materials for its 2022 annual meeting of shareholders a shareholder proposal (the "Proposal") submitted by As You Sow (the "Representative") on behalf of Myra K Young Roth IRA (the "Proponent").

We also request confirmation that the Staff of the Division of Corporation Finance (the "Staff") will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its 2022 proxy materials for the reasons discussed below.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), this letter and its exhibits are being e-mailed to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this letter and its exhibits also are being sent to the Proponent. Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, the undersigned hereby informs the Proponent that, if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned.

The Company currently intends to file its 2022 proxy materials with the Commission on or about March 30, 2022.

NextEra Energy, Inc.

700 Universe Boulevard, Juno Beach, FL 33408

THE PROPOSAL

On November 29, 2021,¹ the Company received a letter submitting the Proposal for inclusion in the Company's 2022 proxy materials.

The resolution included in the Proposal provides as follows:

RESOLVED: Shareholders request that NextEra Energy, Inc. (NextEra Energy) report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity. The reporting should be done at reasonable expense and exclude proprietary information.

A copy of the Proposal and relevant correspondence is attached as Exhibit A.

BASIS FOR EXCLUSION

The Company believes that the Proposal may be excluded from the Company's 2022 proxy materials pursuant to (i) Rule 14a-8(b) and Rule 14a-8(f)(1) because the Representative and the Proponent failed to establish the requisite authority to submit the Proposal on the Proponent's behalf after receiving notice of such deficiency; and (ii) Rule 14a-8(i)(10) because the Proposal has been substantially implemented by the Company, which has addressed the requests in the Proposal through its existing actions and activities, as reported in its public disclosures.

I. Rule 14a-8(b) and Rule 14a-8(f)(1) – The Representative and The Proponent Failed to Establish The Requisite Eligibility To Submit The Proposal

A. The Exclusion

Under Rule 14a-8(f), a company may exclude from its proxy materials a proposal submitted by a proponent who fails to satisfy the procedural requirements set forth in Rule 14a-8(b). Rule 14a-8(b)(iv) sets forth seven requirements that a proponent who submits

¹ The Company first received notice of the Proposal via an email from the Representative dated November 29, 2021 (timestamped 4:09 p.m. ET). See Exhibit A. The Company confirmed receipt of such email on November 29, 2021 (timestamped 4:24 p.m. ET) and stated that the Company had not previously received the Proposal even though the Representative stated it was "delivered via USPS on Monday, November 22, 2021." *Id.* The Representative has not provided evidence confirming such delivery on November 22, 2021. Thus, while the date of delivery is not being contested in this no-action request, nothing in this letter shall be deemed an admission or confirmation of receipt on any date prior to November 29, 2021.

a shareholder proposal through a representative must satisfy. Namely, the proponent must provide the company with documentation that:

- (a) identifies the company to which the proposal is directed;
- (b) identifies the annual or special meeting for which the proposal is submitted;
- (c) identifies the proponent and the person acting on the proponent's behalf as representative;
- (d) includes the proponent's statement authorizing the designated representative to submit the proposal and otherwise act on the proponent's behalf;
- (e) identifies the specific topic of the proposal to be submitted;
- (f) includes the proponent's statement supporting the proposal; and
- (g) is signed and dated by the proponent.

In explaining the rationale for codifying these requirements, the Commission acknowledged that “[m]uch of this information is already provided in accordance with staff guidance” as the requirements were in large part based on Staff Legal Bulletin No. 14I (Nov. 1, 2017)(since rescinded).² Nevertheless, the Commission explained that current practices had not “obviate[ed] the need for” specifying the requirements in Rule 14a-8. Specifically, the Commission reasoned that the requirements would “help safeguard the integrity of the shareholder proposal process and the eligibility restrictions by making clear that representatives are authorized to so act, and by providing a *meaningful degree of assurance as to the shareholder proponent’s identity*, role, and interest in a proposal that is submitted for inclusion in a company’s proxy statement.” (emphasis added).³ The Commission also noted that adding the requirements to Rule 14a-8 would “provide greater clarity to those seeking to rely on the rule” and with “minimal burden” on the shareholder proponent.⁴

B. *The Representative and the Proponent failed to establish the requisite eligibility to submit the Proposal because the delegation of authority was defective*

On November 29, 2021, the Company received an email from the Representative attaching the “filing documents” to submit the Proposal for inclusion in the Company’s 2022 proxy materials.⁵ The attachment contained a cover letter from the Representative addressed to the Company, a copy of the Proposal and a letter captioned “Authorization to File Shareholder Resolution” (“Authorization Letter”).⁶ The Authorization Letter

² See SEC Release No. 34-89964 (September 23, 2020).

³ *Id.*

⁴ *Id.*

⁵ See Exhibit A.

⁶ *Id.*

identified the shareholder as “Myra K Young Roth IRA” but failed to comply with Rule 14a-8(b)(iv)(G) in that it was not signed by such shareholder (the “Signature Deficiency”). Instead, the Authorization Letter was signed by “Myra Young.” While the name of the shareholder identified in the Authorization Letter is similar to the name of the individual who signed the Authorization Letter, there was no documentation demonstrating that the individual signing the Authorization Letter had the power or authority to act on behalf of the identified shareholder (the “Authority Deficiency”). The Representative also failed to submit proof of ownership.

Accordingly, on December 1, 2021, within 14 days of the Company’s receipt of the Proposal, the Company sent a letter notifying the Representative of the Proposal’s procedural deficiencies as required by Rule 14a-8(f) (the “Deficiency Notice”). In the Deficiency Notice, attached hereto as Exhibit B, the Company informed the Representative of the requirements of Rule 14a-8 and how it could cure the procedural deficiencies. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- a request to provide substantiation of ownership to qualify the Representative to submit the Proposal;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b);
- the authorization requirements of Rule 14a-8(b)(iv);
- a request to provide documentation to cure the Signature Deficiency and the Authority Deficiency; and
- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Representative received the Deficiency Notice.

Also on December 1, 2021, the Company received an email from the Representative confirming receipt of the Deficiency Notice.⁷ On December 2, 2021, the Company received proof of ownership from the Representative via email, but the Representative did not provide the proper authorization requested in the Deficiency Notice.⁸ Because the Representative and the Proponent failed to respond to the Deficiency Notice (which put them on notice regarding the need to provide proper authorization), the Company may exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f).

⁷ See Exhibit C.

⁸ See Exhibit C.

II. Rule 14a-8(i)(10) – The Proposal Has Been Substantially Implemented

A. The Exclusion

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. In addressing the predecessor to Rule 14a-8(i)(10), the SEC stated that the exclusion was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” SEC Release No. 34-12598 (Jul. 7, 1976). For a proposal to be excludable, it is not necessary that the company have implemented the proposal in full or exactly as presented by the proponent. Instead, the standard for exclusion is substantial implementation. Exchange Act Release No. 40018 (May 21, 1998).

The Staff has stated that, in determining whether a shareholder proposal has been substantially implemented, it will consider whether a company’s particular policies, practices, and procedures “compare favorably with the guidelines of the proposal.” See *Applied Materials, Inc.* (Dec. 21, 2018) (permitting exclusion of a proposal requesting the company establish a public policy committee because the company’s existing policies and procedures dealt with public policy issues); *Exxon Mobil Corp.* (Mar. 23, 2018) (permitting exclusion of a proposal requesting a report describing how the company could adapt its business model to align with a decarbonizing economy by altering its energy mix because the company already disclosed plans to address the impact of a decarbonizing economy on its business); and *PNM Resources, Inc.* (Mar. 20, 2018) (permitting exclusion of a proposal requesting the company establish more effective board oversight of its policies and programs addressing climate change and report on such oversight to shareholders because the company’s existing disclosures on climate change efforts provided sufficient evidence of board oversight). See also, e.g., *Wal-Mart Stores* (Mar. 16, 2017); *Oshkosh Corp.* (Nov. 4, 2016); *NetApp, Inc.* (Jun. 10, 2015); *JPMorgan Chase & Co.* (Mar. 6, 2015); *Peabody Energy Corp.* (Feb. 25, 2014); *Medtronic, Inc.* (Jun. 13, 2013); *Starbucks Corp.* (Nov. 27, 2012), *Whole Foods Market, Inc.* (Nov. 14, 2012); and *Texaco, Inc.* (Mar. 28, 1991).

Substantial implementation under Rule 14a-8(i)(10) requires a company’s actions to have satisfactorily addressed the proposal’s underlying concerns and its essential objective. See *The Wendy’s Co.* (Apr. 10, 2019) (concurring with the exclusion of a proposal requesting a report assessing human rights risks of the company’s operations, including the principles and methodology used to make the assessment, the frequency of assessment, and how the company would use the assessment’s results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its

website the frequency and methodology of its human rights risk assessments); *see also PG&E Corporation* (Mar. 10, 2010) (concurring with the exclusion of a proposal seeking a semiannual report disclosing specific information concerning the company's charitable contributions where the company's existing disclosures on its website and corporate charitable contributions program substantially implemented the proposal, and the Staff noted that the company's "policies, practices and procedures compare[d] favorably with the guidelines of the proposal").

The Staff has permitted companies to exclude proposals from their proxy materials pursuant to Rule 14a-8(i)(10) where the company has satisfied the essential objective of the proposal, even if the company did not take the exact action requested by the proponent or implement the proposal in every detail. *See, e.g., Oracle Corp.* (Aug. 11, 2016) (permitting exclusion of a proxy access proposal notwithstanding that the company's proxy access bylaw did not implement provisions that the proposal identified as "essential elements" of the proposal); *Walgreen Co.* (Sept. 26, 2013) (permitting exclusion of a proposal requesting an amendment to the company's articles of incorporation that would eliminate all super-majority vote requirements, where the company eliminated all but one such requirement); and *Exelon Corp.* (Feb. 26, 2010) (allowing exclusion of a proposal requesting a recurring report on different aspects of the company's political contributions when the company had already adopted guidelines for political contributions made with corporate funds, and issued a report on the company's political contributions). *See also, e.g., Hewlett-Packard Co.* (Dec. 11, 2007), *Anheuser-Busch Cos., Inc.* (Jan. 17, 2007) and *Bristol-Myers Squibb Co.* (Mar. 9, 2006). The Staff has permitted the exclusion of shareholder proposals under Rule 14a-8(i)(10) when a company's actions have satisfactorily addressed the proposal's underlying concerns and its "essential objective," even when the manner by which a company implements the proposal does not correspond precisely to the actions sought by the proponent. *See MGM Resorts International* (Feb. 28, 2012); *ConAgra Foods, Inc.* (July 3, 2006); and *Johnson & Johnson* (Feb. 17, 2006).

In addition, the Staff has permitted exclusion of proposals under Rule 14a-8(i)(10) where a proponent requests the release of information that is already made publicly available by the company. For example, in *McDonald's Corporation* (Mar. 26, 2014), the Staff concurred in the exclusion of a proposal requesting that the company publicly articulate directors' duties with respect to corporate social responsibility issues where the company's public disclosures compared favorably with the guidelines of the proposal. The Staff noted that "the [c]ompany's public disclosures compare favorably with the guidelines of the [p]roposal and . . . the [c]ompany has, therefore, substantially implemented the [p]roposal. *See also Hess Corp.* (Apr. 11, 2019) (concurring with the exclusion of a

proposal requesting a report on aligning the company's carbon footprint with the necessary greenhouse gas reductions to achieve the Paris Agreement's goal where the company had met the essential objective through its most recent sustainability report, its responses to the Carbon Disclosure Project Climate Change Questionnaire, and its 2018 Investor Day Presentation); *Mondelēz International, Inc.* (Mar. 7, 2014) (concurring with the exclusion of a proposal requesting a report on the human rights risks of the company's operations and supply chain where the company had achieved the essential objective of the proposal by publicly disclosing its risk management processes); *The Boeing Co.* (Feb. 17, 2011) (concurring with the exclusion of a proposal requesting that the company assess and report on human rights standards where the company had achieved the essential objective of the proposal through publicly available reports, risk management processes, and a code of conduct); and *Caterpillar, Inc.* (avail. Mar. 11, 2008) (concurring with the company's exclusion of a shareholder proposal requesting that the company prepare a global warming report where the company had already published a report that contained information relating to its environmental initiatives).

B. The Company has substantially implemented the Proposal because it currently discloses quantitative data on substantially all of the categories requested by the Proposal

The Proposal requests that the Company "report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity." As discussed below, the Company's 2021 Environmental, Social and Governance report ("2021 ESG Report")⁹ and Diversity and Inclusion website¹⁰ already provide shareholders with information on the outcomes of the Company's diversity, equity, and inclusion ("DEI") efforts. Such disclosures include extensive detail on the Company's DEI efforts, including quantitative data as requested by the Proposal. Thus, the Company has already substantially implemented the essential objective of the Proposal, which is, according to the Proposal's supporting statement, that investors be able to "assess, understand and compare the effectiveness" of the Company's "diversity, equity, and inclusion programs."

Exclusion of the Proposal is consistent with and supported by the Staff's recent no-action response in *Comcast Corporation* (April 9, 2021), which agreed that the

⁹ See the Company's 2021 ESG Report, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

¹⁰ See the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

company could exclude a proposal asking the company to publish an annual report “assessing the [c]ompany’s diversity and inclusion efforts.” The *Comcast* proposal specified that such report should include (i) the board of directors’ process for assessing effectiveness of DEI programs and (ii) the board’s assessment of program effectiveness, “as reflected in any goals, metrics, and trends related to its promotion, recruitment and retention of protected classes of employee.”¹¹ Similar to the supporting statement in the Proposal, in *Comcast*, the proponent’s supporting statement explained that the rationale of the proposal was to provide investors with “*quantitative, comparable data to understand the effectiveness of the [c]ompany’s diversity, equity, and inclusion programs*” (emphasis added). In *Comcast*, the company provided specific examples of quantitative data related to its DEI efforts that were reported on annually and publicly available on its corporate website and also detailed its public disclosures related to the board’s process for and assessment of the effectiveness of the company’s DEI efforts. Thus, the company had already substantially implemented the proposal’s essential objective.

1. The Company publishes quantitative data on workforce composition, which may also serve as a key indicator of progress on recruitment, retention and promotion over time

In 2021, the Company issued its second annual ESG Report, which includes quantitative data on workforce composition.¹² The 2021 ESG Report discloses that, as of year-end 2020, women represented 24% of the Company’s workforce and minorities represented 37% of the Company’s workforce.¹³ The 2021 ESG Report also provides a breakdown of such data by ethnic minority groups, including Hispanics/Latino (21%), Black or African American (10%), Asian (4%), and all other minorities, which includes Native Hawaiian or Other Pacific Islander, two or more races, and Native American or Alaskan Native (2%).¹⁴ Additionally, the 2021 ESG Report discloses that more than 78% of the nearly 200 interns in the Company’s 2020 summer intern program were women and minorities.¹⁵ While the Proposal does not specifically request public disclosure of the Company’s EEO-1 data, it is noted that the categories of diversity disclosed in the 2021 ESG Report generally align with Employer Information Report EEO-1 Form (“EEO-1

¹¹ See *Comcast Corporation* (April 9, 2021).

¹² See the Company’s 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See the Company’s 2021 ESG Report at page 40, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

Report”) categories. Instead, the resolution in the Proposal calls for “quantitative data,” which, as detailed above, the Company already clearly provides.

In addition to quantitative data on the Company’s workforce at large, the Company also discloses a breakdown of gender, race and ethnicity among the Company’s management. As of year-end 2020, women represented 25% of the Company’s management and minorities represented 27%.¹⁶ Similar to the workforce composition data, the Company provides a management-level breakdown among various ethnic minorities: Hispanics/Latino (14%), Black or African American (4%), Asian (6%), and all other minorities, which includes Native Hawaiian or Other Pacific Islander, two or more races, and Native American or Alaskan Native (2%).¹⁷

Moreover, the quantitative data published on the Company’s workforce and management may, over time, allow stakeholders to assess the Company’s progress on recruitment, retention and promotion, thus addressing the Proposal’s request to report on “outcomes” with respect to DEI efforts on recruitment, retention and promotion. For example, year-over-year comparisons of quantitative data on diversity within the Company’s management may prove to be a key indicator of the Company’s efforts to promote diverse team members. This conclusion is supported by *Comcast*, where the company’s year-over-year data on gender, race and ethnicity in its workforce illustrated the company’s progress on DEI efforts. Similarly, comparing the data from the Company’s 2020 ESG Report to the Company’s 2021 ESG Report shows the Company’s progress on DEI efforts. At year-end 2019, women represented 23% of the Company’s workforce (which increased to 24% in 2020) and minorities represented 36% of the Company’s workforce (which increased to 37% in 2020).¹⁸ With respect to data at the management-level, at year-end 2019, women represented 25% of management (which was maintained in 2020) and minorities represented 26% of management (which increased to 27% in 2020).¹⁹ Additionally, women and minorities represented 70% of the Company’s 2019 summer intern program, which grew to 78% in 2020.²⁰

The Proposal also asserts that “providing clear, quantitative data on workforce composition, promotion and retention rates . . . can help assure that investors are able to

¹⁶ See the Company’s 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

¹⁷ *Id.*

¹⁸ See the Company’s 2020 ESG Report at page 37, available at <https://www.investor.nexteraenergy.com/~media/Files/N/NEE-IR/Sustainability/2020%20NEE%20ESG%20Report%20with%20TCFD%20Index.pdf>.

¹⁹ *Id.*

²⁰ *Id.*

compare [the Company's] diversity programs to that of its peers." In that respect, it is noteworthy that the S&P Global Ratings' annual ESG Evaluation published in April 2021 describes the Company's diversity metrics as "in line" with its peers.²¹

2. The Company also discloses quantitative data on recruitment, retention, and promotion efforts related to its racial equity working team

The Company's 2021 ESG Report and Diversity and Inclusion website highlight the Company's focus on recruiting, retaining and promoting a diverse and highly skilled workforce.²² These public materials note the demonstrated focus of the Company's talent acquisition team in 2020 on attracting a diverse talent pool through virtually attending career fairs and college recruiting events across the country. Key organizations include Women in Technology International, the National Black MBA Association, the American Indian Science and Engineering Society as well as several veterans organizations. The Company also discusses its concerted focus on improving recruitment, retention and promotion of Black team members.²³ The Company explains how its racial equity working team was established in light of the continued focus throughout the country on social justice, racial equity and related issues, and in order to develop specific actions the Company can take to make a positive contribution toward racial equity.²⁴

The Company proudly discloses several quantitative data points²⁵ related to the racial equity working team, including the following:

- The racial equity working team has partnered with more than 50 professional organizations to increase the pipeline of Black talent, including Management Leadership for Tomorrow, National Black MBA Association, National Association of Black Accountants and HBCU Connect.
- The racial equity working team has supported key programs that make a difference in Black communities, including 19 community and youth outreach organizations such as the National Urban League, Black Girls CODE, Data for Black Lives and Center for Policing Equity.

²¹ See the S&P Global Ratings Environmental, Social and Governance Evaluation at page 4, available at <https://www.investor.nexteraenergy.com/sustainability/esg-resources>.

²² See the Company's 2021 ESG Report at page 40, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

²³ See the Company's 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

²⁴ *Id.*

²⁵ *Id.*

- The work of the racial equity working team has led to an increase in total funding from the Company for Black communities by \$6 million annually, a commitment to enhance the Company's supplier diversity program by tripling spending with Black-owned businesses by 2022 and a commitment to investing more than \$100 million in venture capital and private equity funds that are focused on racial equity.
- About 100 team members have volunteered to be part of the racial equity working team.

Similarly, in *Comcast*, the company described how, among other things, it was investing in its diverse recruitment initiatives, supporting minority-led and minority-serving organizations with monetary contributions, and tracking participation in employee resource groups, which provide a supportive environment for employees who either identify with certain defined diverse communities or seek to be active allies.

3. The Company measures effectiveness of its DEI efforts using data-driven metrics which are discussed in the Company's qualitative disclosures

We would be remiss if we did not emphasize that it is the Company's *qualitative* efforts that translate into quantitative improvements in DEI efforts over time and also that quantitative data plays a key role in helping the Company's leadership assess DEI efforts. First and foremost, the Company is committed to maintaining an inclusive work environment that is free from discrimination and harassment on the basis of race, color, age, sex, national origin, religion, marital status, sexual orientation, gender identity, gender expression, genetics, disability or protected veteran status.

With respect to recruitment, as discussed in Section II.B.2. above, the Company's talent acquisition team is keenly focused on attracting a diverse talent pool. This commitment is supported by the highest levels of company leadership, as evidenced by the active role that the Company's management and board of directors play in monitoring, evaluating and overseeing DEI efforts. The Company's 2021 ESG Report and Diversity and Inclusion website highlight how its Executive Diversity & Inclusion ("D&I") Council is dedicated to advising and driving corporate DEI strategy and to partnering with business units in order to promote diverse talent development and recruitment.²⁶ The Executive D&I Council reviews D&I metrics on a quarterly basis,²⁷ which showcases the Company's

²⁶ See the Company's 2021 ESG Report at page 41, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf; and the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

²⁷ *Id.*

commitment to data-driven results. Such metrics are used to develop annual D&I plans, track progress and implement the Company's strategies, and are reviewed at least annually by the Company's board of directors.²⁸ Such metrics also enable the Company's board of directors to focus on diversity in the Company's talent pipeline and its internship program, which is a key recruitment tool.²⁹

With respect to retention and promotion, the Company has a robust talent management process for all employees that includes an annual performance review with two check-ins throughout the year and an employee development and goal-setting plan that focuses equally on employee and leader feedback to develop skills, opportunities and further advancement within the organization.³⁰ Senior managers hold talent meetings across business units to identify, assess and position employees to further develop skills needed to become future leaders.³¹ With regard to improving retention and promotion of Black team members, the Company's racial equity working team supported implementation of a mentorship program for Black employees and a rotational development program for Black employees.³²

In addition, members of the Company's Corporate D&I Council act as business unit champions by driving business unit D&I strategies, sharing best practices, sponsoring the Company's annual D&I Summit and advising and mentoring employee resource groups ("ERGs").³³ The Company's twelve ERGs are at the heart of the Company's engagement efforts on DEI. It is within these all-volunteer groups that team members and allies partner together to develop personal and professional skills, drive cultural competency and demonstrate advocacy.³⁴ Examples of the Company's ERGs include the African-American Professional Employee Group, the Hispanic Organization for Latino Americans, Asian Professionals in the Energy Exchange and Women in Energy, among others. The Company also regularly conducts employee engagement surveys, which the Company uses to establish action plans facilitated by the Company's corporate engagement team in order to address top areas of focus. In 2020, 90% of employees,

²⁸ See the Company's 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See the Company's 2021 ESG Report at page 41, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

³⁴ *Id.*

excluding FPL bargaining employees, completed the survey and ranked diversity and inclusion among their most positive work experiences.³⁵

Finally, the Company has also received external recognition for its DEI efforts. In 2020, the Company was named to Forbes magazine's list of "America's Best Employers for Diversity" for the third consecutive year.³⁶ In addition, the Company was selected by Winds of Change magazine as one of the "Top 50 Workplaces for Indigenous STEM Professionals" for the Company's strong support for diversity and an inclusive work climate.³⁷

CONCLUSION

For the reasons set forth above, the Company believes that the Proposal may be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) as well as Rule 14a-8(i)(10). The Company respectfully requests the Staff's concurrence in the Company's view or, alternatively, confirmation that the Staff will not recommend any enforcement action to the Commission if the Company so excludes the Proposal from its proxy materials for its 2022 annual meeting of shareholders.

³⁵ See the Company's 2021 ESG Report at page 41, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf; and the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

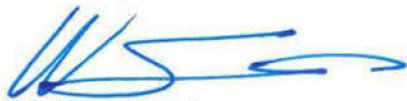
³⁶ See the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

³⁷ See the Company's 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporate Finance
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I would be happy to provide the Staff with any additional requested information and answer any questions related to this subject. In accordance with Staff Legal Bulletin 14F, Part F (Oct. 18, 2011), please send your response to this letter to me by e-mail at scott.seeley@nexteraenergy.com. If I can be of any further assistance in this matter, please do not hesitate to call me at (561) 691-7038 or Alan Dye, of Hogan Lovells, at (202) 637-5737.

Sincerely,



W. Scott Seeley
Vice President, Compliance & Corporate Secretary

cc: Alan Dye, Hogan Lovells
Myra K Young Roth IRA
Andrew Behar, As You Sow

Enclosures

Exhibit A

Copy of the Proposal and Relevant Correspondence

Carey, Kristen

From: Seeley, Scott
Sent: Monday, November 29, 2021 4:24 PM
To: Shareholder Engagement; NextEraEnergy-Investor-Relations
Cc: Meredith Benton; James McRitchie; Gail Follansbee; Rachel Lowy
Subject: RE: NextEra Energy - Shareholder Proposal Documents

I acknowledge receipt of this email. For your information, I have not received the documents you reference as having been delivered via USPS on Monday November 22, 2021.

Best Regards,

Scott

From: Shareholder Engagement <[REDACTED]@asyousow.org>
Sent: Monday, November 29, 2021 4:09 PM
To: Seeley, Scott <[REDACTED]@nexteraenergy.com>; NextEraEnergy-Investor-Relations <[REDACTED]@NextEraEnergy.com>
Cc: Meredith Benton <[REDACTED]@whistlestop.capital>; James McRitchie <[REDACTED]@corp.gov.net>; Gail Follansbee <[REDACTED]@asyousow.org>; Rachel Lowy <[REDACTED]@asyousow.org>
Subject: NextEra Energy - Shareholder Proposal Documents

Caution - External Email ([REDACTED]@asyousow.org)

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[Quick response](#)

[Emergency response](#)

[Tips](#)

Dear Mr. Seeley,

Attached please find filing documents submitting a shareholder proposal for inclusion in the company's 2022 proxy statement. A printed copy of these documents has been sent to your offices via USPS and our records show that it has been delivered Monday, November 22, 2021.

It would be much appreciated if you could please confirm receipt of this email.

Thank you and best regards,

Rachel Lowy

Rachel Lowy (she/her/hers)

Shareholder Relations Associate

As You Sow

Main Post Office, P.O. Box 751 | Berkeley, CA 94701

████████████████████

██████@asyousow.org | www.asyousow.org



VIA FEDEX & EMAIL

November 23, 2021

W. Scott Seeley
Vice President, Compliance & Corporate Secretary
NextEra Energy, Inc
P.O. Box 14000
700 Universe Blvd.
Juno Beach, FL 33408-0420
[REDACTED]@nexteraenergy.com

Dear Mr. Seeley,

As You Sow is filing a shareholder proposal on behalf of Myra K Young Roth IRA (“Proponent”), a shareholder of NextEra Energy, for inclusion in NextEra Energy’s 2022 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent’s concerns.

To schedule a dialogue, please contact Meredith Benton, Work Place Equity Program Manager at [REDACTED]@whistlestop.capital. Please send all correspondence **with a copy to** [REDACTED]@asyousow.org.

Sincerely,

Andrew Behar
CEO

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: [REDACTED]@nexteraenergy.com

Resolved: Shareholders request that NextEra Energy, Inc. (NextEra Energy) report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity. The reporting should be done at reasonable expense and exclude proprietary information.

Supporting Statement: Quantitative data is sought so that investors can assess, understand, and compare the effectiveness of companies' diversity, equity, and inclusion programs and apply this analysis to investors' portfolio management and securities' selection process.

Whereas: Numerous studies by respected organizations such as *The Wall Street Journal*, Credit Suisse, Morgan Stanley, McKinsey, PwC and BCG have pointed to the material benefits of a diverse workforce.

Companies should look to hire the best talent. However, Black and Latino applicants face recruitment challenges. Results of a meta-analysis study of 24 field experiments, dating back to 1990, found that, with identical resumes, White applicants receive an average of 36 percent more callbacks than Black applicants and 24 percent more callbacks than Latino applicants."¹

Promotion rates show how well diverse talent is nurtured at a company. Unfortunately, women and non-White employees experience "a broken rung" in their careers. For every 100 men who are promoted, only 86 women are promoted. Non-White women are particularly impacted, comprising 17 percent of entry-level workforce and only 4 percent of executives.²

Morgan Stanley has found that "Employee retention that is above industry peer averages can indicate the presence of competitive advantage. This advantage may lead to higher levels of future profitability than past financial performance would indicate."³ Companies with high employee satisfaction have also been linked to annualized outperformance of over two percent.⁴

NextEra Energy has not yet committed to release standardized workforce composition data through its consolidated EEO-1 form, which is best practice in diversity data reporting. Nor has it shared sufficient recruitment, retention, and promotion data to allow investors to determine the effectiveness of its human capital management programs.

Eighty-one percent of the S&P100 have released, or have committed to release, their EEO-1 forms. The number of S&P100 companies releasing this form increased 239 percent between September 2020 and September 2021. The number of S&P100 companies releasing recruitment rate data by gender, race, and ethnicity increased by 234 percent. Companies releasing retention rate data increased by 79 percent, and those companies releasing promotion rate data increased by 379 percent. NextEra Energy is increasingly a laggard in its decision to continue to withhold these data sets.

¹ <https://hbr.org/2017/10/hiring-discrimination-against-black-americans-hasnt-declined-in-25-years>

² https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2021.pdf

³ https://www.morganstanley.com/im/publication/insights/articles/article_culturequantframework_us.pdf

⁴ https://www.institutionalinvestor.com/article/b1tx0zzdhnf5x/Want-to-Pick-the-Best-Stocks-Pick-the-Happiest-Companies?utm_medium=email&utm_campaign=The%20Essential%20I%20100721&utm_content=The%20Essential%20I%20100721%20CID_eb103a9e15359075f72a85f7ff534c79&utm_source=CampaignMonitorEmail&utm_term=Want%20to%20Pick%20the%20Best%20Stocks%20Pick%20the%20Happiest%20Companies

By providing clear, quantitative data on workforce composition, promotion, and retention rates NextEra Energy can help assure that investors are able to compare NextEra Energy's diversity programs to those of its peers.

November 9, 2021

Andrew Behar
CEO
As You Sow
2020 Milvia Street, Suite 500
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, the undersigned (“Stockholder”) authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2022 proxy statement, The resolution at issue relates to the below described subject.

Stockholder: Myra K Young Roth IRA

Company: NextEra Energy Inc

Subject: Greater Disclosure of Material Corporate Diversity, Equity and Inclusion Data

The Stockholder has continuously owned over \$2,000 worth of Company stock, with voting rights, since before January 4, 2020 and will hold the required amount of stock through the date of the Company’s annual meeting in 2022.

The Stockholder gives *As You Sow* the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder’s name may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available for a meeting with NextEra Energy Inc regarding this shareholder proposal, at the following days/times: [Stockholder to provide 2 dates and 30-minute meeting options within the following time frame:

12/6/2021 - 12/23/2021 Monday through Friday between 9:00am-5:30pm Eastern Time]

Date 12/7/2021 Time 10:30am

Date 12/7/2021 Time 11:00am

The Stockholder can be contacted at the following email address to schedule a dialogue during one of the above dates: [REDACTED]@corp.gov.net

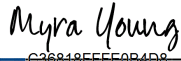
Any correspondence regarding meeting dates must **also be sent to my representative:**

Meredith Benton, Workplace Equity Program Manager at [REDACTED]@whistlestop.capital

and to [REDACTED][@asyousow.org](mailto:[REDACTED]@asyousow.org).

The Stockholder also authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:

C36818FFFE0B4D0...

Myra Young

Shareholder

Exhibit B

Copy of the Deficiency Notice



W. Scott Seeley
Vice President, Compliance & Corporate Secretary

Via Email and UPS Overnight Delivery

December 1, 2021

Mr. Andrew Behar
CEO
As You Sow
2150 Kittredge Street, Suite 450
Berkeley, California 94704

Re: Shareholder Proposal for NextEra Energy, Inc. ("NextEra Energy") 2022 Annual Meeting

Dear Mr. Behar:

We are in receipt of your e-mail dated November 29, 2021, which transmitted a shareholder proposal requesting a report on the Company's diversity, equity and inclusion efforts (the "Proposal"), on behalf of Myra K Young Roth IRA (the "Proponent"). We received the e-mail on November 29, 2021.

The purpose of this letter is to inform you that, for the following reasons, we believe that your submission does not comply with Rule 14a-8 under the Securities Exchange Act of 1934 and therefore is not eligible for inclusion in NextEra Energy's 2022 proxy statement.

Verification of Ownership

As you know, Rule 14a-8(b) provides that, to be eligible to submit a shareholder proposal, a proponent must have continuously held a minimum of company securities entitled to be voted on the proposal of: (1) at least \$2,000 in market value for at least three years; (2) at least \$15,000 in market value for at least two years; or (3) at least \$25,000 in market value for at least one year, prior to the date the proposal is submitted. Ownership may be substantiated in either of two ways:

1. you may provide a written statement from the record holder(s) of the shares of NextEra Energy common stock beneficially owned by the Proponent, verifying that, on November 22, 2021, when you submitted the Proposal, such Proponent had continuously held the requisite number or value of shares of NextEra Energy's common stock for the applicable time frame; or
2. you may provide a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or any amendment to any of those documents or updated forms, reflecting the ownership by the Proponent of the requisite number or value of

NextEra Energy, Inc.

shares of NextEra Energy's common stock as of or before the date on which the eligibility period began, together with your written statement that the Proponent continuously held the shares for the applicable time frame as of the date of the statement.

The staff of the SEC's Division of Corporation Finance has provided guidance to assist companies and shareholders with complying with Rule 14a-8(b)'s eligibility criteria. This guidance, contained in Staff Legal Bulletin No. 14F (October 18, 2011) and Staff Legal Bulletin No. 14G (October 16, 2012), clarifies that proof of ownership for Rule 14a-8(b) purposes must be provided by the "record holder" of the securities, which is either the person or entity listed on the Company's stock records as the owner of the securities or a DTC participant (or an affiliate of a DTC participant). A proponent who is not a record owner must therefore obtain the required written statement from the DTC participant through which the proponent's securities are held. If a proponent is not certain whether its broker or bank is a DTC participant, the proponent may check the DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf>. If the broker or bank that holds the proponent's securities is not on DTC's participant list, the proponent must obtain proof of ownership from the DTC participant through which its securities are held. If the DTC participant knows the holdings of the proponent's broker or bank, but does not know the proponent's holdings, the proponent may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required number or value of securities had been continuously held by the proponent for the applicable time frame preceding and including the date of submission of the proposal (November 29, 2021) with one statement from the proponent's broker or bank confirming the required ownership, and the other statement from the DTC participant confirming the broker or bank's ownership.

Your letter did not provide substantiation of ownership of NextEra Energy Common Shares to qualify you to submit the Proposal. Accordingly, please submit proper documentation of such ownership as outlined above.

Proper Authorization

In addition, Rule 14a-8(b)(iv) sets forth seven requirements that the proponent of a shareholder proposal who submits the shareholder proposal by a representative, must satisfy. Namely, documentation provided by the proponent must:

- identify the shareholder-proponent and the person acting on the proponent's behalf as representative;
- includes proponent's statement authorizing the designated representative to submit the proposal and otherwise act on the proponent's behalf;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;

- identify the specific topic of the proposal to be submitted;
- include the proponent's statement supporting the proposal; and
- be signed and dated by the shareholder.

The letter captioned "Authorization to File Shareholder Resolution" ("Authorization Letter") accompanying the Proposal does not satisfy the last condition above, in that it is not signed by the entity identified as the shareholder. Also, there is no documentation demonstrating that the individual signing the Authorization Letter has the power or authority to act on behalf of the identified shareholder. Accordingly, please submit documentation which cures the deficiencies identified for the Authorization Letter.

* * *

For the Proposal to be eligible for inclusion in NextEra Energy's 2022 proxy materials, the information requested above must be furnished to us electronically or be postmarked no later than 14 calendar days from the date you receive this letter. If the information is not provided, NextEra Energy may exclude the Proposal from its proxy materials pursuant to Rule 14a-8(f).

The requested information may be provided to the undersigned at W. Scott Seeley, Vice President, Compliance & Corporate Secretary, NextEra Energy, Inc., PO Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0420, or by facsimile at: [REDACTED]. You may also provide the requested information to me by email at scott.seeley@nexteraenergy.com.

In accordance with SEC Staff Legal Bulletin Nos. 14 and 14B, a copy of Rule 14a-8, including Rule 14a-8(b), is enclosed for your reference. Also enclosed for your reference is a copy of Staff Legal Bulletin Nos. 14F and 14G.

If you respond in a timely manner to this letter and cure the aforementioned deficiencies, NextEra Energy will review the Proposal. Please note that, in accordance with Exchange Act Rule 14a-8, a proposal may be excluded on various grounds.

Very truly yours,



W. Scott Seeley

Enclosures

§ 240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

- (a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).
- (b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?*
 - (1) To be eligible to submit a proposal, you must satisfy the following requirements:
 - (i) You must have continuously held:
 - (A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or
 - (B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
 - (C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or
 - (D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and
 - (ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and
 - (iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:
 - (A) Agree to the same dates and times of availability, or
 - (B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and
 - (iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:
 - (A) Identifies the company to which the proposal is directed;
 - (B) Identifies the annual or special meeting for which the proposal is submitted;

- (C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;
 - (D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;
 - (E) Identifies the specific topic of the proposal to be submitted;
 - (F) Includes your statement supporting the proposal; and
 - (G) Is signed and dated by you.
- (v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.
 - (vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.
- (2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:
- (i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.
 - (ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
 - (A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or
 - (B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:
 - (1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;
 - (2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and
 - (3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.
- (3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be

eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

- (i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and
 - (ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.
 - (iii) This paragraph (b)(3) will expire on January 1, 2023.
- (c) *Question 3: How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.*
- (d) *Question 4: How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.*
- (e) *Question 5: What is the deadline for submitting a proposal?*
- (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.
 - (2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.
 - (3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.
- (f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?*
- (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).
 - (2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.
- (g) *Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.*
- (h) *Question 8: Must I appear personally at the shareholders' meeting to present the proposal?*

- (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.
- (2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.
- (3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.
 - (i) *Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?*
 - (1) *Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;*

Note to paragraph (i)(1):

Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

- (2) *Violation of law: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;*

Note to paragraph (i)(2):

We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

- (3) *Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;*
- (4) *Personal grievance; special interest: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;*
- (5) *Relevance: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;*
- (6) *Absence of power/authority: If the company would lack the power or authority to implement the proposal;*
- (7) *Management functions: If the proposal deals with a matter relating to the company's ordinary business operations;*
- (8) *Director elections: If the proposal:*
 - (i) Would disqualify a nominee who is standing for election;
 - (ii) Would remove a director from office before his or her term expired;
 - (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
 - (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
 - (v) Otherwise could affect the outcome of the upcoming election of directors.

- (9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9):

A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

- (10) *Substantially implemented*: If the company has already substantially implemented the proposal;

Note to paragraph (i)(10):

A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

- (11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;
- (12) *Resubmissions*. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:
- (i) Less than 5 percent of the votes cast if previously voted on once;
 - (ii) Less than 15 percent of the votes cast if previously voted on twice; or
 - (iii) Less than 25 percent of the votes cast if previously voted on three or more times.
- (13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.
- (j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal?
- (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.
 - (2) The company must file six paper copies of the following:
 - (i) The proposal;
 - (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
 - (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.
- (k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

- (l) *Question 12*: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

- (1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.
 - (2) The company is not responsible for the contents of your proposal or supporting statement.
- (m) *Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?*
- (1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.
 - (2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.
 - (3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
 - (i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
 - (ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE

Nov. 4, 2020, § 240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.



U.S. Securities and Exchange Commission

Division of Corporation Finance Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: [SLB No. 14](#), [SLB No. 14A](#), [SLB No. 14B](#), [SLB No. 14C](#), [SLB No. 14D](#) and [SLB No. 14E](#).

B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.¹

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.² Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.³

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.⁴ The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.⁵

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.⁶ Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to

accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8⁷ and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,⁸ under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.⁹

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC

participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).¹⁰ We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."¹¹

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).¹² If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.¹³

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,¹⁴ it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "falls in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.¹⁵

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act

on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.¹⁶

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

¹ See Rule 14a-8(b).

² For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. See Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

² If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

⁴ DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. See Proxy Mechanics Concept Release, at Section II.B.2.a.

⁵ See Exchange Act Rule 17Ad-8.

⁶ See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

⁷ See *KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

⁸ *Techne Corp.* (Sept. 20, 1988).

⁹ In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. See Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

¹⁰ For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

¹¹ This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

¹² As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

¹³ This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by

the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

¹⁴ See, e.g., Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

¹⁵ Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

¹⁶ Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

<http://www.sec.gov/interp/legal/cfslb14f.htm>

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Modified: 10/18/2011



U.S. Securities and Exchange Commission

Division of Corporation Finance Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: [SLB No. 14](#), [SLB No. 14A](#), [SLB No. 14B](#), [SLB No. 14C](#), [SLB No. 14D](#), [SLB No. 14E](#) and [SLB No. 14F](#).

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)...."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.¹ By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.² If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to

correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.³

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.⁴

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the

exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

¹ An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

² Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

³ Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

⁴ A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

<http://www.sec.gov/Interps/legal/cfs1b14g.htm>

Exhibit C

Email from Representative Acknowledging Receipt of the Deficiency Notice

Carey, Kristen

From: Gail Follansbee <[REDACTED]@asyousow.org>
Sent: Thursday, December 2, 2021 11:09 PM
To: Seeley, Scott
Cc: Meredith Benton; James McRitchie; Rachel Lowy; [REDACTED]@corp.gov.net; Shareholder Engagement
Subject: Re: NextEra Energy - Shareholder Proposal Documents
Attachments: 22.NEE.1 Proof of Ownership - Myra Young.pdf

Caution - External Email ([REDACTED]@asyousow.org)

Report this Email

Quick response

Emergency response

Tips

Hello Scott,

Attached is the proof of ownership for your reference:

Proponent Myra Young Roth IRA 150 shares

Please confirm receipt of this proof of ownership and that all deficiencies have been satisfied.

Thank you,
Gail

Gail Follansbee (she/her)
Coordinator, Shareholder Relations

As You Sow

2020 Milvia Street, Suite 500

Berkeley, CA 94704

[REDACTED] (work) ~ [REDACTED] (cell)

[REDACTED]@asyousow.org | www.asyousow.org

From: Gail Follansbee <[REDACTED]@asyousow.org>

Date: Wednesday, December 1, 2021 at 1:56 PM

To: "Seeley, Scott" <[REDACTED]@nexteraenergy.com>, Shareholder Engagement <[REDACTED]@asyousow.org>
Cc: Meredith Benton <[REDACTED]@whistlestop.capital>, James McRitchie <[REDACTED]@corpgov.net>, Rachel Lowy <[REDACTED]@asyousow.org>, "[REDACTED]@corpgov.net" <[REDACTED]@corpgov.net>
Subject: Re: NextEra Energy - Shareholder Proposal Documents

Hello Mr. Seeley,

Confirming receipt of this deficiency letter as of Wednesday 12/1/21. The proof of ownership has been requested from the shareholder's custodian. We will respond within 14 days of receipt of this notice, so by 12/15/21 latest.

Thank you and best regards,
Gail

Gail Follansbee (she/her)
Coordinator, Shareholder Relations

As You Sow

2020 Milvia Street, Suite 500
Berkeley, CA 94704

[REDACTED] (work) ~ [REDACTED] (cell)
[REDACTED]@asyousow.org | www.asyousow.org

From: "Seeley, Scott" <[REDACTED]@nexteraenergy.com>
Date: Wednesday, December 1, 2021 at 12:42 PM
To: Shareholder Engagement <[REDACTED]@asyousow.org>
Cc: Meredith Benton <[REDACTED]@whistlestop.capital>, James McRitchie <[REDACTED]@corpgov.net>, Gail Follansbee <[REDACTED]@asyousow.org>, Rachel Lowy <[REDACTED]@asyousow.org> "[REDACTED]@corpgov.net" "[REDACTED]@corpgov.net"
Subject: RE: NextEra Energy - Shareholder Proposal Documents

Dear All. Attached is a letter requesting more information with respect to the shareholder proposal that was recently submitted to us. An original is also being sent by UPS. Kindly acknowledge receipt of this email.

Best Regards,

Scott Seeley

From: Shareholder Engagement <[REDACTED]@asyousow.org>

Sent: Monday, November 29, 2021 4:09 PM

To: Seeley, Scott <[REDACTED]@nexteraenergy.com>; NextEraEnergy-Investor-Relations <[REDACTED]@NextEraEnergy.com>

Cc: Meredith Benton <[REDACTED]@whistlestop.capital>; James McRitchie <[REDACTED]@corp.gov.net>; Gail Follansbee <[REDACTED]@asyousow.org>; Rachel Lowy <[REDACTED]@asyousow.org>

Subject: NextEra Energy - Shareholder Proposal Documents

Dear Mr. Seeley,

Attached please find filing documents submitting a shareholder proposal for inclusion in the company's 2022 proxy statement. A printed copy of these documents has been sent to your offices via USPS and our records show that it has been delivered Monday, November 22, 2021.

It would be much appreciated if you could please confirm receipt of this email.

Thank you and best regards,

Rachel Lowy

Rachel Lowy (she/her/hers)

Shareholder Relations Associate

As You Sow

Main Post Office, P.O. Box 751 | Berkeley, CA 94701

[REDACTED]

[REDACTED]@asyousow.org | www.asyousow.org

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

Via electronic mail

January 24, 2022
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: NextEra Energy, Inc. Shareholder Proposal of Myra K Young

Ladies and Gentlemen,

Myra K Young Roth IRA (the "Proponent") is beneficial owner of common stock of NextEra Energy, Inc. (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I am responding, on behalf of Proponent, to the letter dated December 30, 2021 ("Company Letter"), from W. Scott Seeley contending that the Proposal may be excluded from the Company's 2022 proxy statement. A copy of this letter is being emailed concurrently to Mr. Seeley.

SUMMARY

The Proposal urges the Board of Directors to report to shareholders the effectiveness of the Company's diversity, equity, and inclusion efforts using quantitative metrics for recruitment, retention, and promotion of employees, including data by gender, race, and ethnicity.

The Company Letter first objects to the Proponent's authorization letter because it failed to include Proponent's middle name in her signature. This highly technical objection is inconsistent with the Staff's interpretation of the shareholder proposal rule, which seeks reasonable assurance that the proponent owns shares and has authorized the representative to file the proposal. No genuine question of authorization exists in the present instance, and therefore this objection fails.

The Company Letter also asserts that the Proposal is substantially implemented. The Company Letter cites disclosures which do not include "quantitative data on workforce ... recruitment, retention, and promotion rates of employees by gender, race, and ethnicity" as requested in the Proposal. The Company has not published the requested report and has not in any sense fulfilled the guidelines or the essential purpose of the Proposal. Therefore, the Proposal is not excludable under Rule 14a-8(i)(10).

THE PROPOSAL

Resolved: Shareholders request that NextEra Energy, Inc. (NextEra Energy) report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity. The reporting should be done at reasonable expense and exclude proprietary information.

Supporting Statement: Quantitative data is sought so that investors can assess, understand, and compare the effectiveness of companies' diversity, equity, and inclusion programs and apply this analysis to investors' portfolio management and securities' selection process.

Whereas: Numerous studies by respected organizations such as *The Wall Street Journal*, Credit Suisse, Morgan Stanley, McKinsey, PwC and BCG have pointed to the material benefits of a diverse workforce.

Companies should look to hire the best talent. However, Black and Latino applicants face recruitment challenges. Results of a meta-analysis study of 24 field experiments, dating back to 1990, found that, with identical resumes, White applicants receive an average of 36 percent more callbacks than Black applicants and 24 percent more callbacks than Latino applicants.”¹

Promotion rates show how well diverse talent is nurtured at a company. Unfortunately, women and non-White employees experience “a broken rung” in their careers. For every 100 men who are promoted, only 86 women are promoted. Non-White women are particularly impacted, comprising 17 percent of entry-level workforce and only 4 percent of executives.²

Morgan Stanley has found that “Employee retention that is above industry peer averages can indicate the presence of competitive advantage. This advantage may lead to higher levels of future profitability than past financial performance would indicate.”³ Companies with high employee satisfaction have also been linked to annualized outperformance of over two percent.⁴

NextEra Energy has not yet committed to release standardized workforce composition data through its consolidated EEO-1 form, which is best practice in diversity data reporting. Nor has it shared sufficient recruitment, retention, and promotion data to allow investors to determine the effectiveness of its human capital management programs.

Eighty-one percent of the S&P100 have released, or have committed to release, their EEO-1 forms. The number of S&P100 companies releasing this form increased 239 percent between September 2020 and September 2021. The number of S&P100 companies releasing recruitment

¹ <https://hbr.org/2017/10/hiring-discrimination-against-black-americans-hasnt-declined-in-25-years>

² https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2021.pdf

³ https://www.morganstanley.com/im/publication/insights/articles/article_culturequantframework_us.pdf

⁴ https://www.institutionalinvestor.com/article/b1tx0zzdhnf5x/Want-to-Pick-the-Best-Stocks-Pick-the-Happiest-Companies?utm_medium=email&utm_campaign=The%20Essential%20II%20100721&utm_content=The%20Essential%20II%20100721%20CID_eb103a9e15359075f72a85f7ff534c79&utm_source=CampaignMonitorEmail&utm_term=Want%20to%20Pick%20the%20Best%20Stocks%20Pick%20the%20Happiest%20Companies

rate data by gender, race, and ethnicity increased by 234 percent. Companies releasing retention rate data increased by 79 percent, and those companies releasing promotion rate data increased by 379 percent. NextEra Energy is increasingly a laggard in its decision to continue to withhold these data sets.

By providing clear, quantitative data on workforce composition, promotion, and retention rates NextEra Energy can help assure that investors are able to compare NextEra Energy's diversity programs to those of its peers.

ANALYSIS

Rule 14a-8(b) and Rule 14a-8(f)(1)

The Company Letter begins with an attempt to argue a highly technical basis for exclusion by claiming that the signature of Myra Young on the delegation of authority was inadequate because the official name of the Proponent is "Myra K Young Roth IRA." This is an absurd and abusive effort to find an extremely technical basis on which to strike down a proof of ownership. Fortunately, the Staff have made it clear that such hyper-technical efforts to invalidate proponent submissions has no place in the shareholder proposal process, and that a common sense approach to the filings is appropriate.⁵ Clearly the company had adequate evidence that the Proponent authorized the filing of the Proposal, and this argument is out of line with the spirit and letter of Rule 14a-8 and its authorization letter requirements..

Rule 14a-8(i)(10)

The Proposal requests that the Company report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity. The reporting should be done at reasonable expense and exclude proprietary information.

The Company argues that the Proposal may be excluded from the 2022 Proxy Materials as substantially implemented pursuant to Rule 14a-8(i)(10). In order for the Company to meet its burden of proving substantial implementation pursuant to Rule 14a-8(i)(10), it must show that its activities meet the guidelines and essential purpose of the Proposal. The Staff has noted that a determination that a company has substantially implemented a proposal depends upon whether a company's particular policies, practices, and procedures compare favorably with the guidelines of the proposal. Texaco, Inc. (Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed both the proposal's guidelines and its essential objective. See, e.g., Exelon Corp. (Feb. 26, 2010).

⁵ Staff Legal Bulletin 14 L notes "Some companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive." We believe the same common sense approach is applicable to the new authorization letter requirements, and that the Company's attempt here to find a very technical basis for excluding the proposal is inappropriate and out of line with the Staff's application of the filing requirements.

Where a company can demonstrate that it has taken action that meets most of the guidelines of a proposal and the proposal's essential purpose, the Staff has concurred that the proposal has been "substantially implemented." In the current instance, the Company has substantially fulfilled neither the guidelines nor the essential purpose of the Proposal.

Guidelines and essential purpose of the proposal

Here the Proposal's guidelines request that Nextera Energy report to shareholders the effectiveness of the Company's diversity, equity, and inclusion efforts using "quantitative data on workforce composition, and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity."

The essential purpose of the Proposal is to obtain a breakdown of workforce composition, and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity, such that investors can assess whether company practices and culture support effective recruitment, retention, and promotion. This focus is apparent both in the language of the Resolved clause, which is very specific in its request for quantitative data to help answer these questions, and in the Whereas clauses of the Proposal which are clear and articulate on the focus of this data.

Due to the importance of the type of data requested in the proposal, between September 2020 and September 2021, the number of S&P100 companies releasing recruitment rate data by gender, race and ethnicity increased by 234 percent; companies releasing retention rate data increased by 79 percent; and companies releasing promotion rate data increased by 379 percent.

Contrasting the Company Letter and Actions with the Proposal

The Company focuses its argument on its provision of data demonstrating that it has DEI programs in place. The Proponents are not asking for affirmation that DEI programs exist at NextEra Energy, nor for additional reporting on what those programs are. It is expected that diversity programs of varying quality exist at most public companies. The Proponents are also not looking to judge or suggest changes to NextEra Energy, Inc.'s existing programs or initiatives, they seek to understand the *effectiveness* of these programs.

DEI programs are associated with share outperformance across several measures. Thus, investors are seeking decision-useful information to assess whether the Company's programs work in a way that supports shareholder value. That data has not yet been shared by the Company. The fact that a limited set of data stating the racial and gender composition of NextEra Energy, Inc. staff at a specific time has been provided does not answer the crucial question of whether NextEra Energy, Inc.'s diversity and inclusion program as a whole is effective and achieves the goals of contributing to stock outperformance.

What Proponents seek is information that shows the effectiveness of those programs, in total, including metrics and trends related to the company's promotion, recruitment, and retention of protected classes of employees.

To illustrate the difference between what the Company has provided and what the Proposal is requesting, a metaphor is useful: a private high school might publish a beautiful brochure describing its buildings, its commitment to the whole child, the school's warm and encouraging atmosphere, and the school's strong scholastic programs. These things, while important and necessary, do not tell a parent whether the sought-after result of a well-educated child is likely. Before agreeing to tuition costs, parents will also want to know how these programs contribute to students' success, including for example, student reading and mathematics scores, graduation rates, and college entrance and graduation rates.

To cite Comcast as an example of a successful instance of substantial implementation is misleading. The Comcast Resolved clause and its focus is distinct from the Proposal's. The Comcast resolution asked the company to assess its DEI programs, focusing primarily on Board oversight and process in assessing DEI program effectiveness. Specifically, Comcast's Resolved clause requested that the company:

Publish annually a report, at reasonable expense and excluding proprietary information, assessing the Company's diversity and inclusion efforts. At a minimum the report should include: the process that the Board follows for assessing the effectiveness of its diversity, equity and inclusion programs; the Board's assessment of program effectiveness, as reflected in any goals; and metrics, and trends related to its recruitment, promotion, and retention of protected classes of employees.

While the Comcast proposal asked for metrics and trends related to its promotion, recruitment and retention data, this was not the central focus of the proposal. Here, the Proposal asks principally for data related to the Company's "outcomes, using quantitative metrics for recruitment, retention, and promotion of employees, including data by gender, race, and ethnicity." NextEra, Inc. does not currently disclose "quantitative metrics" across the range of metrics identified in the Proposal. Although the Company provides a small slice of the requested information, including a limited set of workforce composition data and hiring data from its internship program, this information does not meet the guidelines or the central purpose of the Proposal.

Insufficiency of current reporting

The Company argues that it publishes quantitative data on workforce composition, which may also serve as a key indicator of progress on recruitment, retention, and promotion over time. However, the Company shares a very limited amount of data on its recruitment efforts.

The Company states "78% of the nearly 200 interns in the company's 2020 summer intern program were women and minorities". [Emphasis added] This seems to be about as far as the company goes to disclose "recruitment" data and certainly does not fulfill the requested companywide recruitment rate data requested in the Proposal.⁶

⁶ Even in the limited data provided on summer intern recruitment, one would not know how many of those individuals were recruited to work for the Company after their internship nor how many were retained or promoted.

Although the Company provides certain workforce composition data requested by the EEO-1 data form,⁷ which is a public reporting standard met by 83% of S&P 100 companies, that limited information is insufficient to assess the effectiveness of the Company's recruitment, retention and promotion efforts. Similarly, while disclosure of the other efforts of the board and company to diversify are useful information, they do not fulfill the Proposal because none of the disclosures provide transparency into recruitment, retention, and promotion -- key measures of effectiveness of DEI efforts. One cannot discern from the limited information provided what quantity of diverse employees are recruited and whether diverse employees, once hired, are promoted and retained.

This information is increasingly being disclosed by companies. Between September 2020 and September 2021 the number of S&P100 companies releasing recruitment rate data by gender, race, and ethnicity increased by 234 percent. Companies releasing retention rate data increased by 79 percent, and those companies releasing promotion rate data increased by 379 percent. NextEra Energy is increasingly a laggard in its decision to continue to withhold these data sets.

By providing clear, quantitative data on workforce composition, promotion, and retention rates NextEra Energy can help assure that investors are able to compare NextEra Energy's diversity programs to those of its peers.

Diverse representation does not represent program success

Workforce diversity composition is not an indication of program success. The presence of a diverse employee at a given point in time does not mean that investors will benefit from their skills and knowledge unless the company is also equitable and inclusive. As stated by a Harvard Business Review article, *Diversity Doesn't Stick Without Inclusion*, "In the context of the workplace, diversity equals representation. Without inclusion, however, the crucial connections that attract diverse talent, encourage their participation, foster innovation, and lead to business growth won't happen."

Companies that recruit without attention to equity and inclusion risk organizational tensions, frustrated employees, potential negative reputational concerns, and increased human capital expense as employees cycle in and out of the company. Such companies will not be able to realize the benefits of diverse hires. In the absence of disclosure by the Company, the workforce

The Company's discussion of its recruitment programs includes mention of the racial equity working team has partnered with more than 50 professional organizations to increase the pipeline of Black talent, including Management Leadership for Tomorrow, National Black MBA Association, National Association of Black Accountants and HBCU Connect. While a start, these efforts do not equate to transparency on total recruitment relative to the entry level positions being filled by the described programs, leaving the reader unable to ascertain how meaningful these programs are relative to the company's overall hiring and diversity needs.

⁷ The Company's own data disclosures are not fully aligned with the EEO-1 form. It clumps together the 'Native Hawaiian or Other Pacific Islander', 'American Indian or Alaska Native', and 'Two or more races' ethnic groups together; making it indistinguishable to investors what the representation for each individual ethnicity is.

composition data provides an inadequate view of the effectiveness of DEI programs. The workforce composition data would not reveal, for instance, if the composition numbers are a result of strong retention or if significant resources were needed to recruit new employees in the face of high employee turnover. For investors seeking to understand the effectiveness of a company's DEI program, this is essential information.

Researchers have found that “thirty-seven percent of African-Americans and Hispanics and forty-five percent of Asians say they “need to compromise their authenticity” to conform to their company's standards of demeanor or style.”⁸ Given this known problem, the resolution is explicit in its request for reporting on the effectiveness of equity and inclusion programs.

Studies show extensive bias in promotion. McKinsey found that, in 2019, for every 100 men promoted, only 85 women, 71 Latinas and 58 Black women were promoted.⁹ Men are also more likely to promote other men and women more likely to be the promoters of other women.¹⁰ This promotion bias reinforces career immobility, as more men are in positions where they choose whom to promote. Women are also required to be more qualified: Globally, 44.3 percent of female managers have university degrees, as compared to only 38.3 percent of male managers.¹¹ In addition, studies from Stanford¹² show that merit reviews can conflict with impartial rankings of employees. That is, when a system allows for subjective employee reviews, bias is more likely to occur in the assessment of a diverse employee's contribution.

The best form of investor transparency for assessing such cultural factors is disclosure of retention data. As Arthur Woods of the diversity recruiting platform Mathison, has said “We see organizations that have instituted plans for diversity hiring actually failing to retain and advance those very job seekers.”¹³ Companies with diverse employees in their headcount may still struggle with unwelcoming and discriminatory cultures.

This is not a theoretical concern. As an example, Whistle Stop Capital and *As You Sow* staff have had a company explicitly tell them that recruitment was not a challenge and that it had strong diverse representation. **That company also stated that it was unwilling to share its retention data because its turnover of diverse employees would be concerning to investors.**

The lack of disclosure of the metrics that are a core focus of the Proposal guidelines, background and its essential purpose means that the proposal cannot be deemed substantially implemented for purposes of Rule 14a-8(i)(10).

⁸ <https://hbr.org/2017/02/diversity-doesnt-stick-without-inclusion>

⁹ <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace>

¹⁰ <https://www.payscale.com/career-news/2018/05/new-research-promotion-gap>

¹¹ ILO, “A Quantum Leap for Gender Equality” < https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_674831.pdf>

¹² As presented by Lori Nishiura Mackenzie, co-founder, Stanford VMware Women's Leadership Innovation Lab, at the CalPERS & CalSTRS Diversity Forum on June 6, 2019

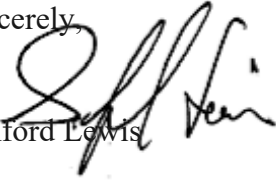
¹³ <https://www.marketplace.org/2020/07/17/diversity-recruitment-retention-workplace-discrimination/>

CONCLUSION

The Company Letter has provided no basis for exclusion of the proposal. Therefore, we respectfully request that the Staff inform the Company that it is denying the no action letter request.

Sincerely,

Sanford Lewis

A handwritten signature in black ink, appearing to read "Sanford Lewis", is written over the typed name. The signature is fluid and cursive, with a large initial "S" and a distinct "L".

W. Scott Seeley
Vice President, Compliance & Corporate Secretary



Rule 14a-8(f)
Rule 14a-8(i)(10)

VIA ELECTRONIC EMAIL (shareholderproposals@sec.gov)

February 2, 2022

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: NextEra Energy, Inc.
Shareholder Proposal of As You Sow

Ladies and Gentlemen:

On December 30, 2021, NextEra Energy, Inc., submitted a letter (attached as Exhibit A, the "No-Action Request"), requesting that the Staff concur in the Company's view that the shareholder proposal submitted by As You Sow on behalf of the Myra K Young Roth IRA may be excluded from the Company's proxy materials for its 2022 annual meeting of shareholders for the reasons set forth below, in addition to the reasons set forth in the No-Action Request. Capitalized terms not otherwise defined in this letter have the meanings ascribed to them in the No-Action Request.

On January 24, 2022, Sanford J. Lewis, on behalf of the Proponent, submitted a response to the No-Action Request (attached as Exhibit B, the "Proponent Letter"). The Company is submitting this letter in response to the Proponent Letter and reaffirms its request for confirmation that the Staff will not recommend that enforcement action be taken by the Commission if the Company excludes the Proposal from its proxy materials for the Annual Meeting.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter and its exhibits are being e-mailed to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponent.

The Representative and The Proponent Failed to Establish Eligibility To Submit The Proposal

As discussed in the No-Action Request, the Representative and the Proponent failed to establish that the Representative had the requisite authority to submit the

NextEra Energy, Inc.

700 Universe Boulevard, Juno Beach, FL 33408

Proposal on the Proponent's behalf, as required by Rule 14a-8(b). After receiving notice from the Company that the Authorization Letter was defective, the Proponent failed to correct the deficiency.

The Proponent's Letter confuses the nature of the deficiency by stating that the deficiency was merely a failure to include the Proponent's middle initial in her signature to the Authorization Letter. On the contrary, the deficiency is that the signatory to the Authorization Letter is Myra Young, ostensibly in her individual capacity, without indicating whether or, if so, how she is acting on behalf of the Proponent, or has the authority to act on behalf of, the Myra K Young Roth IRA account.

An IRA is a separate account or trust which is a separate entity from the individual beneficiary of the IRA and can be controlled by a person other than the beneficiary. Indeed, Myra Young may or may not be the beneficiary of the Roth IRA account or be entitled to direct its affairs. Additional evidence is necessary to provide a meaningful degree of assurance that Myra Young has authority to act on behalf of the Myra K Young Roth IRA account. Such evidence has not been provided, and therefore the purported delegation of authority from Myra Young, and not Myra K Young Roth IRA, to As You Sow, is insufficient to allow the Representative to submit the Proposal on behalf of the Proponent.

The Proposal Has Been Substantially Implemented

The Proposal may be excluded for the additional reason that it has been substantially implemented by the Company through its existing actions and activities, as reported in its public disclosures. As discussed in greater detail in the No-Action Request, a proposal may be considered substantially implemented under Rule 14a-8(i)(10) where the company has satisfied the proposal's underlying concerns and essential objectives, even if the company did not taken the exact action requested by the proponent or implement the proposal in every detail.

The Proponent Letter acknowledges that where a company can demonstrate that it has taken action that meets *most* – not necessarily all – of the guidelines of the proposal and the proposal's essential purpose, the proposal has been "substantially implemented." However, the Proponent Letter fails to set forth any useful information to support its argument that the Company has not substantially implemented the guidelines and the essential purpose of the Proposal.

According to the Proponent Letter, the "guidelines of the proposal" are described in the resolved clause, which requests that the Company "report to shareholders on the

outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity." The following key points from the No-Action Request, although dismissed by the Proponent, demonstrate that these guidelines have been substantially implemented:

- The Company has published quantitative data on workforce composition for 2019 and 2020, which are broken down by gender, race and ethnicity, as requested by the Proposal. For example, at year-end 2020, women represented 24% of the Company's workforce (which increased from 23% in 2019) and minorities represented 37% of the Company's workforce (which increased from 36% in 2019). Contrary to the Proponent's assertions, the Company continues to believe that these data points may also speak to its recruiting and retention DEI efforts.
- The Company also publishes quantitative data of its workforce at the *management* level broken down the gender, racial and ethnicity. This key point is completely ignored by the Proponent. However, as discussed in greater detail in the No-Action Request, the Company believes that year-over-year comparisons of quantitative data on diversity within the Company's management may prove to be a key indicator of the Company's efforts to promote diverse team members, which is another key aspect of the stated guidelines in the Proposal. For example, at year-end 2020, women represented 25% of management (which was maintained from 2019) and minorities represented 27% of management (which increased from 26% in 2019).
- The Proponent also dismisses the Company's disclosure of diversity statistics for its summer internship program, which the Company continues to believe speaks to its recruitment efforts. Notably, women and minorities represented 70% of the Company's 2019 summer intern program, which grew to 78% in 2020.

The points above address each of the key aspects of the Proposal's stated guidelines – workforce composition, recruitment, retention and promotion. Moreover, the quantitative data described in these points, regarding the Company's workforce and management over time, together with the many other key actions and strategies discussed in the No-Action Request, sufficiently address the Proposal's essential purpose, which is to give investors the ability to "assess whether company practices and culture support effective recruitment, retention and promotion."

Separately, the Proponent Letter's attempt to distinguish the No-Action Request from *Comcast Corporation* (April 9, 2021) is misguided. Contrary to what the Proponent Letter suggests, the No-Action Request acknowledges that the proposal in *Comcast* is not identical, and notes that such proposal included a second objective (i.e., assessing board oversight) that is not present in the Proposal. Ironically, the Proponent Letter clearly concedes the key similarities between the No Action-Request and *Comcast*:

- The Proponent Letter states that the Proponent seeks information “on the outcomes of the Company’s diversity, equity and inclusion efforts . . .”
- The Proponent Letter also acknowledges that the *Comcast* proposal sought information “assessing the Company’s diversity and inclusion efforts.”

The Proponent suggests that the essential objectives of the proposal in *Comcast* was different from the essential objectives of the Proposal in that the proposal in *Comcast* asked for an assessment of the “effectiveness” of the company’s diversity program, while the Proposal seeks an assessment of “outcomes.” This suggestion draws a distinction without a difference. An assessment of the effectiveness of a program necessarily entails an assessment of the program’s outcomes.

The Proponent Letter also attempts to distinguish *Comcast* by asserting that metrics were not the central focus of the *Comcast* proposal. However, quoting directly from *Comcast*, the Proponent Letter effectively affirms that metrics were a critical component to responding to the proposal’s request that the Comcast disclose its board’s assessment of DEI program effectiveness.

- The Proponent Letter states that the Proponent seeks “information that shows the effectiveness of those programs, in total, including *metrics and trends related to the company’s promotion, recruitment, and retention of protected classes of employees*” (emphasis added).
- The Proponent Letter also acknowledges that the *Comcast* proposal sought, in part, public disclosure to assess “the [b]oard’s assessment of program effectiveness, *as reflected in any goals, metrics and trends related to its recruitment, promotion and retention of protected classes of employees.*” (emphasis added).

While the proposal in *Comcast* is worded slightly differently from the Proposal, and is framed through the lens of the board’s assessment of DEI program effectiveness, the essential objectives are, at their core, the same.

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporate Finance
February 2, 2022
Page 5

Finally, the Company wishes to dispel the implication in the Proponent Letter that the Company is unwilling to share retention data with its investors. The Proponent Letter contains a boldface statement about a company's unwillingness to share retention data which appears to be referring to the Company, when in fact the Proponent means to refer to some other, unnamed company. To be clear, the Company has not stated that it is unwilling to share retention data because the data would be concerning to investors.

Conclusion

Based upon the foregoing analysis, in addition to the arguments set forth in the No-Action Request, we respectfully reiterate our request that the Staff confirm that it will not recommend to the Commission that enforcement action be taken against the Company if it excludes the Proposal from its proxy materials for its 2022 annual meeting.

I would be happy to provide the Staff with any additional requested information and answer any questions related to this subject. In accordance with Staff Legal Bulletin 14F, Part F (Oct. 18, 2011), please send your response to this letter to me by e-mail at scott.seeley@nexteraenergy.com. If I can be of any further assistance in this matter, please do not hesitate to call me at (561) 691-7038 or Alan Dye, of Hogan Lovells, at (202) 637-5737.

Sincerely,



W. Scott Seeley
Vice President, Compliance & Corporate Secretary

cc: Alan Dye, Hogan Lovells
Myra K Young Roth IRA
Andrew Behar, As You Sow

Enclosures

Exhibit A

No-Action Request

W. Scott Seeley
Vice President, Compliance & Corporate Secretary



Rule 14a-8(f)
Rule 14a-8(i)(10)

VIA ELECTRONIC EMAIL (shareholderproposals@sec.gov)

December 30, 2021

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: NextEra Energy, Inc.
Shareholder Proposal of As You Sow

Ladies and Gentlemen:

We are submitting this letter on behalf of NextEra Energy, Inc. (the "Company"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude from its proxy materials for its 2022 annual meeting of shareholders a shareholder proposal (the "Proposal") submitted by As You Sow (the "Representative") on behalf of Myra K Young Roth IRA (the "Proponent").

We also request confirmation that the Staff of the Division of Corporation Finance (the "Staff") will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its 2022 proxy materials for the reasons discussed below.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), this letter and its exhibits are being e-mailed to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this letter and its exhibits also are being sent to the Proponent. Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, the undersigned hereby informs the Proponent that, if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned.

The Company currently intends to file its 2022 proxy materials with the Commission on or about March 30, 2022.

NextEra Energy, Inc.

700 Universe Boulevard, Juno Beach, FL 33408

THE PROPOSAL

On November 29, 2021,¹ the Company received a letter submitting the Proposal for inclusion in the Company's 2022 proxy materials.

The resolution included in the Proposal provides as follows:

RESOLVED: Shareholders request that NextEra Energy, Inc. (NextEra Energy) report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity. The reporting should be done at reasonable expense and exclude proprietary information.

A copy of the Proposal and relevant correspondence is attached as Exhibit A.

BASIS FOR EXCLUSION

The Company believes that the Proposal may be excluded from the Company's 2022 proxy materials pursuant to (i) Rule 14a-8(b) and Rule 14a-8(f)(1) because the Representative and the Proponent failed to establish the requisite authority to submit the Proposal on the Proponent's behalf after receiving notice of such deficiency; and (ii) Rule 14a-8(i)(10) because the Proposal has been substantially implemented by the Company, which has addressed the requests in the Proposal through its existing actions and activities, as reported in its public disclosures.

I. Rule 14a-8(b) and Rule 14a-8(f)(1) – The Representative and The Proponent Failed to Establish The Requisite Eligibility To Submit The Proposal

A. The Exclusion

Under Rule 14a-8(f), a company may exclude from its proxy materials a proposal submitted by a proponent who fails to satisfy the procedural requirements set forth in Rule 14a-8(b). Rule 14a-8(b)(iv) sets forth seven requirements that a proponent who submits

¹ The Company first received notice of the Proposal via an email from the Representative dated November 29, 2021 (timestamped 4:09 p.m. ET). See Exhibit A. The Company confirmed receipt of such email on November 29, 2021 (timestamped 4:24 p.m. ET) and stated that the Company had not previously received the Proposal even though the Representative stated it was "delivered via USPS on Monday, November 22, 2021." *Id.* The Representative has not provided evidence confirming such delivery on November 22, 2021. Thus, while the date of delivery is not being contested in this no-action request, nothing in this letter shall be deemed an admission or confirmation of receipt on any date prior to November 29, 2021.

a shareholder proposal through a representative must satisfy. Namely, the proponent must provide the company with documentation that:

- (a) identifies the company to which the proposal is directed;
- (b) identifies the annual or special meeting for which the proposal is submitted;
- (c) identifies the proponent and the person acting on the proponent's behalf as representative;
- (d) includes the proponent's statement authorizing the designated representative to submit the proposal and otherwise act on the proponent's behalf;
- (e) identifies the specific topic of the proposal to be submitted;
- (f) includes the proponent's statement supporting the proposal; and
- (g) is signed and dated by the proponent.

In explaining the rationale for codifying these requirements, the Commission acknowledged that “[m]uch of this information is already provided in accordance with staff guidance” as the requirements were in large part based on Staff Legal Bulletin No. 14I (Nov. 1, 2017)(since rescinded).² Nevertheless, the Commission explained that current practices had not “obviate[ed] the need for” specifying the requirements in Rule 14a-8. Specifically, the Commission reasoned that the requirements would “help safeguard the integrity of the shareholder proposal process and the eligibility restrictions by making clear that representatives are authorized to so act, and by providing a *meaningful degree of assurance as to the shareholder proponent’s identity*, role, and interest in a proposal that is submitted for inclusion in a company’s proxy statement.” (emphasis added).³ The Commission also noted that adding the requirements to Rule 14a-8 would “provide greater clarity to those seeking to rely on the rule” and with “minimal burden” on the shareholder proponent.⁴

B. *The Representative and the Proponent failed to establish the requisite eligibility to submit the Proposal because the delegation of authority was defective*

On November 29, 2021, the Company received an email from the Representative attaching the “filing documents” to submit the Proposal for inclusion in the Company’s 2022 proxy materials.⁵ The attachment contained a cover letter from the Representative addressed to the Company, a copy of the Proposal and a letter captioned “Authorization to File Shareholder Resolution” (“Authorization Letter”).⁶ The Authorization Letter

² See SEC Release No. 34-89964 (September 23, 2020).

³ *Id.*

⁴ *Id.*

⁵ See Exhibit A.

⁶ *Id.*

identified the shareholder as “Myra K Young Roth IRA” but failed to comply with Rule 14a-8(b)(iv)(G) in that it was not signed by such shareholder (the “Signature Deficiency”). Instead, the Authorization Letter was signed by “Myra Young.” While the name of the shareholder identified in the Authorization Letter is similar to the name of the individual who signed the Authorization Letter, there was no documentation demonstrating that the individual signing the Authorization Letter had the power or authority to act on behalf of the identified shareholder (the “Authority Deficiency”). The Representative also failed to submit proof of ownership.

Accordingly, on December 1, 2021, within 14 days of the Company’s receipt of the Proposal, the Company sent a letter notifying the Representative of the Proposal’s procedural deficiencies as required by Rule 14a-8(f) (the “Deficiency Notice”). In the Deficiency Notice, attached hereto as Exhibit B, the Company informed the Representative of the requirements of Rule 14a-8 and how it could cure the procedural deficiencies. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- a request to provide substantiation of ownership to qualify the Representative to submit the Proposal;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b);
- the authorization requirements of Rule 14a-8(b)(iv);
- a request to provide documentation to cure the Signature Deficiency and the Authority Deficiency; and
- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Representative received the Deficiency Notice.

Also on December 1, 2021, the Company received an email from the Representative confirming receipt of the Deficiency Notice.⁷ On December 2, 2021, the Company received proof of ownership from the Representative via email, but the Representative did not provide the proper authorization requested in the Deficiency Notice.⁸ Because the Representative and the Proponent failed to respond to the Deficiency Notice (which put them on notice regarding the need to provide proper authorization), the Company may exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f).

⁷ See Exhibit C.

⁸ See Exhibit C.

II. Rule 14a-8(i)(10) – The Proposal Has Been Substantially Implemented

A. The Exclusion

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. In addressing the predecessor to Rule 14a-8(i)(10), the SEC stated that the exclusion was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” SEC Release No. 34-12598 (Jul. 7, 1976). For a proposal to be excludable, it is not necessary that the company have implemented the proposal in full or exactly as presented by the proponent. Instead, the standard for exclusion is substantial implementation. Exchange Act Release No. 40018 (May 21, 1998).

The Staff has stated that, in determining whether a shareholder proposal has been substantially implemented, it will consider whether a company’s particular policies, practices, and procedures “compare favorably with the guidelines of the proposal.” See *Applied Materials, Inc.* (Dec. 21, 2018) (permitting exclusion of a proposal requesting the company establish a public policy committee because the company’s existing policies and procedures dealt with public policy issues); *Exxon Mobil Corp.* (Mar. 23, 2018) (permitting exclusion of a proposal requesting a report describing how the company could adapt its business model to align with a decarbonizing economy by altering its energy mix because the company already disclosed plans to address the impact of a decarbonizing economy on its business); and *PNM Resources, Inc.* (Mar. 20, 2018) (permitting exclusion of a proposal requesting the company establish more effective board oversight of its policies and programs addressing climate change and report on such oversight to shareholders because the company’s existing disclosures on climate change efforts provided sufficient evidence of board oversight). See also, e.g., *Wal-Mart Stores* (Mar. 16, 2017); *Oshkosh Corp.* (Nov. 4, 2016); *NetApp, Inc.* (Jun. 10, 2015); *JPMorgan Chase & Co.* (Mar. 6, 2015); *Peabody Energy Corp.* (Feb. 25, 2014); *Medtronic, Inc.* (Jun. 13, 2013); *Starbucks Corp.* (Nov. 27, 2012), *Whole Foods Market, Inc.* (Nov. 14, 2012); and *Texaco, Inc.* (Mar. 28, 1991).

Substantial implementation under Rule 14a-8(i)(10) requires a company’s actions to have satisfactorily addressed the proposal’s underlying concerns and its essential objective. See *The Wendy’s Co.* (Apr. 10, 2019) (concurring with the exclusion of a proposal requesting a report assessing human rights risks of the company’s operations, including the principles and methodology used to make the assessment, the frequency of assessment, and how the company would use the assessment’s results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its

website the frequency and methodology of its human rights risk assessments); *see also PG&E Corporation* (Mar. 10, 2010) (concurring with the exclusion of a proposal seeking a semiannual report disclosing specific information concerning the company's charitable contributions where the company's existing disclosures on its website and corporate charitable contributions program substantially implemented the proposal, and the Staff noted that the company's "policies, practices and procedures compare[d] favorably with the guidelines of the proposal").

The Staff has permitted companies to exclude proposals from their proxy materials pursuant to Rule 14a-8(i)(10) where the company has satisfied the essential objective of the proposal, even if the company did not take the exact action requested by the proponent or implement the proposal in every detail. *See, e.g., Oracle Corp.* (Aug. 11, 2016) (permitting exclusion of a proxy access proposal notwithstanding that the company's proxy access bylaw did not implement provisions that the proposal identified as "essential elements" of the proposal); *Walgreen Co.* (Sept. 26, 2013) (permitting exclusion of a proposal requesting an amendment to the company's articles of incorporation that would eliminate all super-majority vote requirements, where the company eliminated all but one such requirement); and *Exelon Corp.* (Feb. 26, 2010) (allowing exclusion of a proposal requesting a recurring report on different aspects of the company's political contributions when the company had already adopted guidelines for political contributions made with corporate funds, and issued a report on the company's political contributions). *See also, e.g., Hewlett-Packard Co.* (Dec. 11, 2007), *Anheuser-Busch Cos., Inc.* (Jan. 17, 2007) and *Bristol-Myers Squibb Co.* (Mar. 9, 2006). The Staff has permitted the exclusion of shareholder proposals under Rule 14a-8(i)(10) when a company's actions have satisfactorily addressed the proposal's underlying concerns and its "essential objective," even when the manner by which a company implements the proposal does not correspond precisely to the actions sought by the proponent. *See MGM Resorts International* (Feb. 28, 2012); *ConAgra Foods, Inc.* (July 3, 2006); and *Johnson & Johnson* (Feb. 17, 2006).

In addition, the Staff has permitted exclusion of proposals under Rule 14a-8(i)(10) where a proponent requests the release of information that is already made publicly available by the company. For example, in *McDonald's Corporation* (Mar. 26, 2014), the Staff concurred in the exclusion of a proposal requesting that the company publicly articulate directors' duties with respect to corporate social responsibility issues where the company's public disclosures compared favorably with the guidelines of the proposal. The Staff noted that "the [c]ompany's public disclosures compare favorably with the guidelines of the [p]roposal and . . . the [c]ompany has, therefore, substantially implemented the [p]roposal. *See also Hess Corp.* (Apr. 11, 2019) (concurring with the exclusion of a

proposal requesting a report on aligning the company's carbon footprint with the necessary greenhouse gas reductions to achieve the Paris Agreement's goal where the company had met the essential objective through its most recent sustainability report, its responses to the Carbon Disclosure Project Climate Change Questionnaire, and its 2018 Investor Day Presentation); *Mondelēz International, Inc.* (Mar. 7, 2014) (concurring with the exclusion of a proposal requesting a report on the human rights risks of the company's operations and supply chain where the company had achieved the essential objective of the proposal by publicly disclosing its risk management processes); *The Boeing Co.* (Feb. 17, 2011) (concurring with the exclusion of a proposal requesting that the company assess and report on human rights standards where the company had achieved the essential objective of the proposal through publicly available reports, risk management processes, and a code of conduct); and *Caterpillar, Inc.* (avail. Mar. 11, 2008) (concurring with the company's exclusion of a shareholder proposal requesting that the company prepare a global warming report where the company had already published a report that contained information relating to its environmental initiatives).

B. *The Company has substantially implemented the Proposal because it currently discloses quantitative data on substantially all of the categories requested by the Proposal*

The Proposal requests that the Company "report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity." As discussed below, the Company's 2021 Environmental, Social and Governance report ("2021 ESG Report")⁹ and Diversity and Inclusion website¹⁰ already provide shareholders with information on the outcomes of the Company's diversity, equity, and inclusion ("DEI") efforts. Such disclosures include extensive detail on the Company's DEI efforts, including quantitative data as requested by the Proposal. Thus, the Company has already substantially implemented the essential objective of the Proposal, which is, according to the Proposal's supporting statement, that investors be able to "assess, understand and compare the effectiveness" of the Company's "diversity, equity, and inclusion programs."

Exclusion of the Proposal is consistent with and supported by the Staff's recent no-action response in *Comcast Corporation* (April 9, 2021), which agreed that the

⁹ See the Company's 2021 ESG Report, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

¹⁰ See the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

company could exclude a proposal asking the company to publish an annual report “assessing the [c]ompany’s diversity and inclusion efforts.” The *Comcast* proposal specified that such report should include (i) the board of directors’ process for assessing effectiveness of DEI programs and (ii) the board’s assessment of program effectiveness, “as reflected in any goals, metrics, and trends related to its promotion, recruitment and retention of protected classes of employee.”¹¹ Similar to the supporting statement in the Proposal, in *Comcast*, the proponent’s supporting statement explained that the rationale of the proposal was to provide investors with “*quantitative, comparable data to understand the effectiveness of the [c]ompany’s diversity, equity, and inclusion programs*” (emphasis added). In *Comcast*, the company provided specific examples of quantitative data related to its DEI efforts that were reported on annually and publicly available on its corporate website and also detailed its public disclosures related to the board’s process for and assessment of the effectiveness of the company’s DEI efforts. Thus, the company had already substantially implemented the proposal’s essential objective.

1. The Company publishes quantitative data on workforce composition, which may also serve as a key indicator of progress on recruitment, retention and promotion over time

In 2021, the Company issued its second annual ESG Report, which includes quantitative data on workforce composition.¹² The 2021 ESG Report discloses that, as of year-end 2020, women represented 24% of the Company’s workforce and minorities represented 37% of the Company’s workforce.¹³ The 2021 ESG Report also provides a breakdown of such data by ethnic minority groups, including Hispanics/Latino (21%), Black or African American (10%), Asian (4%), and all other minorities, which includes Native Hawaiian or Other Pacific Islander, two or more races, and Native American or Alaskan Native (2%).¹⁴ Additionally, the 2021 ESG Report discloses that more than 78% of the nearly 200 interns in the Company’s 2020 summer intern program were women and minorities.¹⁵ While the Proposal does not specifically request public disclosure of the Company’s EEO-1 data, it is noted that the categories of diversity disclosed in the 2021 ESG Report generally align with Employer Information Report EEO-1 Form (“EEO-1

¹¹ See *Comcast Corporation* (April 9, 2021).

¹² See the Company’s 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See the Company’s 2021 ESG Report at page 40, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

Report”) categories. Instead, the resolution in the Proposal calls for “quantitative data,” which, as detailed above, the Company already clearly provides.

In addition to quantitative data on the Company’s workforce at large, the Company also discloses a breakdown of gender, race and ethnicity among the Company’s management. As of year-end 2020, women represented 25% of the Company’s management and minorities represented 27%.¹⁶ Similar to the workforce composition data, the Company provides a management-level breakdown among various ethnic minorities: Hispanics/Latino (14%), Black or African American (4%), Asian (6%), and all other minorities, which includes Native Hawaiian or Other Pacific Islander, two or more races, and Native American or Alaskan Native (2%).¹⁷

Moreover, the quantitative data published on the Company’s workforce and management may, over time, allow stakeholders to assess the Company’s progress on recruitment, retention and promotion, thus addressing the Proposal’s request to report on “outcomes” with respect to DEI efforts on recruitment, retention and promotion. For example, year-over-year comparisons of quantitative data on diversity within the Company’s management may prove to be a key indicator of the Company’s efforts to promote diverse team members. This conclusion is supported by *Comcast*, where the company’s year-over-year data on gender, race and ethnicity in its workforce illustrated the company’s progress on DEI efforts. Similarly, comparing the data from the Company’s 2020 ESG Report to the Company’s 2021 ESG Report shows the Company’s progress on DEI efforts. At year-end 2019, women represented 23% of the Company’s workforce (which increased to 24% in 2020) and minorities represented 36% of the Company’s workforce (which increased to 37% in 2020).¹⁸ With respect to data at the management-level, at year-end 2019, women represented 25% of management (which was maintained in 2020) and minorities represented 26% of management (which increased to 27% in 2020).¹⁹ Additionally, women and minorities represented 70% of the Company’s 2019 summer intern program, which grew to 78% in 2020.²⁰

The Proposal also asserts that “providing clear, quantitative data on workforce composition, promotion and retention rates . . . can help assure that investors are able to

¹⁶ See the Company’s 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

¹⁷ *Id.*

¹⁸ See the Company’s 2020 ESG Report at page 37, available at <https://www.investor.nexteraenergy.com/~media/Files/N/NEE-IR/Sustainability/2020%20NEE%20ESG%20Report%20with%20TCFD%20Index.pdf>.

¹⁹ *Id.*

²⁰ *Id.*

compare [the Company's] diversity programs to that of its peers." In that respect, it is noteworthy that the S&P Global Ratings' annual ESG Evaluation published in April 2021 describes the Company's diversity metrics as "in line" with its peers.²¹

2. The Company also discloses quantitative data on recruitment, retention, and promotion efforts related to its racial equity working team

The Company's 2021 ESG Report and Diversity and Inclusion website highlight the Company's focus on recruiting, retaining and promoting a diverse and highly skilled workforce.²² These public materials note the demonstrated focus of the Company's talent acquisition team in 2020 on attracting a diverse talent pool through virtually attending career fairs and college recruiting events across the country. Key organizations include Women in Technology International, the National Black MBA Association, the American Indian Science and Engineering Society as well as several veterans organizations. The Company also discusses its concerted focus on improving recruitment, retention and promotion of Black team members.²³ The Company explains how its racial equity working team was established in light of the continued focus throughout the country on social justice, racial equity and related issues, and in order to develop specific actions the Company can take to make a positive contribution toward racial equity.²⁴

The Company proudly discloses several quantitative data points²⁵ related to the racial equity working team, including the following:

- The racial equity working team has partnered with more than 50 professional organizations to increase the pipeline of Black talent, including Management Leadership for Tomorrow, National Black MBA Association, National Association of Black Accountants and HBCU Connect.
- The racial equity working team has supported key programs that make a difference in Black communities, including 19 community and youth outreach organizations such as the National Urban League, Black Girls CODE, Data for Black Lives and Center for Policing Equity.

²¹ See the S&P Global Ratings Environmental, Social and Governance Evaluation at page 4, available at <https://www.investor.nexteraenergy.com/sustainability/esg-resources>.

²² See the Company's 2021 ESG Report at page 40, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

²³ See the Company's 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

²⁴ *Id.*

²⁵ *Id.*

- The work of the racial equity working team has led to an increase in total funding from the Company for Black communities by \$6 million annually, a commitment to enhance the Company's supplier diversity program by tripling spending with Black-owned businesses by 2022 and a commitment to investing more than \$100 million in venture capital and private equity funds that are focused on racial equity.
- About 100 team members have volunteered to be part of the racial equity working team.

Similarly, in *Comcast*, the company described how, among other things, it was investing in its diverse recruitment initiatives, supporting minority-led and minority-serving organizations with monetary contributions, and tracking participation in employee resource groups, which provide a supportive environment for employees who either identify with certain defined diverse communities or seek to be active allies.

3. The Company measures effectiveness of its DEI efforts using data-driven metrics which are discussed in the Company's qualitative disclosures

We would be remiss if we did not emphasize that it is the Company's *qualitative* efforts that translate into quantitative improvements in DEI efforts over time and also that quantitative data plays a key role in helping the Company's leadership assess DEI efforts. First and foremost, the Company is committed to maintaining an inclusive work environment that is free from discrimination and harassment on the basis of race, color, age, sex, national origin, religion, marital status, sexual orientation, gender identity, gender expression, genetics, disability or protected veteran status.

With respect to recruitment, as discussed in Section II.B.2. above, the Company's talent acquisition team is keenly focused on attracting a diverse talent pool. This commitment is supported by the highest levels of company leadership, as evidenced by the active role that the Company's management and board of directors play in monitoring, evaluating and overseeing DEI efforts. The Company's 2021 ESG Report and Diversity and Inclusion website highlight how its Executive Diversity & Inclusion ("D&I") Council is dedicated to advising and driving corporate DEI strategy and to partnering with business units in order to promote diverse talent development and recruitment.²⁶ The Executive D&I Council reviews D&I metrics on a quarterly basis,²⁷ which showcases the Company's

²⁶ See the Company's 2021 ESG Report at page 41, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf; and the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

²⁷ *Id.*

commitment to data-driven results. Such metrics are used to develop annual D&I plans, track progress and implement the Company's strategies, and are reviewed at least annually by the Company's board of directors.²⁸ Such metrics also enable the Company's board of directors to focus on diversity in the Company's talent pipeline and its internship program, which is a key recruitment tool.²⁹

With respect to retention and promotion, the Company has a robust talent management process for all employees that includes an annual performance review with two check-ins throughout the year and an employee development and goal-setting plan that focuses equally on employee and leader feedback to develop skills, opportunities and further advancement within the organization.³⁰ Senior managers hold talent meetings across business units to identify, assess and position employees to further develop skills needed to become future leaders.³¹ With regard to improving retention and promotion of Black team members, the Company's racial equity working team supported implementation of a mentorship program for Black employees and a rotational development program for Black employees.³²

In addition, members of the Company's Corporate D&I Council act as business unit champions by driving business unit D&I strategies, sharing best practices, sponsoring the Company's annual D&I Summit and advising and mentoring employee resource groups ("ERGs").³³ The Company's twelve ERGs are at the heart of the Company's engagement efforts on DEI. It is within these all-volunteer groups that team members and allies partner together to develop personal and professional skills, drive cultural competency and demonstrate advocacy.³⁴ Examples of the Company's ERGs include the African-American Professional Employee Group, the Hispanic Organization for Latino Americans, Asian Professionals in the Energy Exchange and Women in Energy, among others. The Company also regularly conducts employee engagement surveys, which the Company uses to establish action plans facilitated by the Company's corporate engagement team in order to address top areas of focus. In 2020, 90% of employees,

²⁸ See the Company's 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See the Company's 2021 ESG Report at page 41, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

³⁴ *Id.*

excluding FPL bargaining employees, completed the survey and ranked diversity and inclusion among their most positive work experiences.³⁵

Finally, the Company has also received external recognition for its DEI efforts. In 2020, the Company was named to Forbes magazine's list of "America's Best Employers for Diversity" for the third consecutive year.³⁶ In addition, the Company was selected by Winds of Change magazine as one of the "Top 50 Workplaces for Indigenous STEM Professionals" for the Company's strong support for diversity and an inclusive work climate.³⁷

CONCLUSION

For the reasons set forth above, the Company believes that the Proposal may be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) as well as Rule 14a-8(i)(10). The Company respectfully requests the Staff's concurrence in the Company's view or, alternatively, confirmation that the Staff will not recommend any enforcement action to the Commission if the Company so excludes the Proposal from its proxy materials for its 2022 annual meeting of shareholders.

³⁵ See the Company's 2021 ESG Report at page 41, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf; and the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

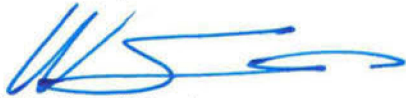
³⁶ See the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

³⁷ See the Company's 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporate Finance
December 30, 2021
Page 14

I would be happy to provide the Staff with any additional requested information and answer any questions related to this subject. In accordance with Staff Legal Bulletin 14F, Part F (Oct. 18, 2011), please send your response to this letter to me by e-mail at scott.seeley@nexteraenergy.com. If I can be of any further assistance in this matter, please do not hesitate to call me at (561) 691-7038 or Alan Dye, of Hogan Lovells, at (202) 637-5737.

Sincerely,



W. Scott Seeley
Vice President, Compliance & Corporate Secretary

cc: Alan Dye, Hogan Lovells
Myra K Young Roth IRA
Andrew Behar, As You Sow

Enclosures

Exhibit B
Proponent Letter

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

Via electronic mail

January 24, 2022
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: NextEra Energy, Inc. Shareholder Proposal of Myra K Young

Ladies and Gentlemen,

Myra K Young Roth IRA (the “Proponent”) is beneficial owner of common stock of NextEra Energy, Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I am responding, on behalf of Proponent, to the letter dated December 30, 2021 (“Company Letter”), from W. Scott Seeley contending that the Proposal may be excluded from the Company’s 2022 proxy statement. A copy of this letter is being emailed concurrently to Mr. Seeley.

SUMMARY

The Proposal urges the Board of Directors to report to shareholders the effectiveness of the Company's diversity, equity, and inclusion efforts using quantitative metrics for recruitment, retention, and promotion of employees, including data by gender, race, and ethnicity.

The Company Letter first objects to the Proponent’s authorization letter because it failed to include Proponent’s middle name in her signature. This highly technical objection is inconsistent with the Staff’s interpretation of the shareholder proposal rule, which seeks reasonable assurance that the proponent owns shares and has authorized the representative to file the proposal. No genuine question of authorization exists in the present instance, and therefore this objection fails.

The Company Letter also asserts that the Proposal is substantially implemented. The Company Letter cites disclosures which do not include “quantitative data on workforce ... recruitment, retention, and promotion rates of employees by gender, race, and ethnicity” as requested in the Proposal. The Company has not published the requested report and has not in any sense fulfilled the guidelines or the essential purpose of the Proposal. Therefore, the Proposal is not excludable under Rule 14a-8(i)(10).

THE PROPOSAL

Resolved: Shareholders request that NextEra Energy, Inc. (NextEra Energy) report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity. The reporting should be done at reasonable expense and exclude proprietary information.

Supporting Statement: Quantitative data is sought so that investors can assess, understand, and compare the effectiveness of companies' diversity, equity, and inclusion programs and apply this analysis to investors' portfolio management and securities' selection process.

Whereas: Numerous studies by respected organizations such as *The Wall Street Journal*, Credit Suisse, Morgan Stanley, McKinsey, PwC and BCG have pointed to the material benefits of a diverse workforce.

Companies should look to hire the best talent. However, Black and Latino applicants face recruitment challenges. Results of a meta-analysis study of 24 field experiments, dating back to 1990, found that, with identical resumes, White applicants receive an average of 36 percent more callbacks than Black applicants and 24 percent more callbacks than Latino applicants.”¹

Promotion rates show how well diverse talent is nurtured at a company. Unfortunately, women and non-White employees experience “a broken rung” in their careers. For every 100 men who are promoted, only 86 women are promoted. Non-White women are particularly impacted, comprising 17 percent of entry-level workforce and only 4 percent of executives.²

Morgan Stanley has found that “Employee retention that is above industry peer averages can indicate the presence of competitive advantage. This advantage may lead to higher levels of future profitability than past financial performance would indicate.”³ Companies with high employee satisfaction have also been linked to annualized outperformance of over two percent.⁴

NextEra Energy has not yet committed to release standardized workforce composition data through its consolidated EEO-1 form, which is best practice in diversity data reporting. Nor has it shared sufficient recruitment, retention, and promotion data to allow investors to determine the effectiveness of its human capital management programs.

Eighty-one percent of the S&P100 have released, or have committed to release, their EEO-1 forms. The number of S&P100 companies releasing this form increased 239 percent between September 2020 and September 2021. The number of S&P100 companies releasing recruitment

¹ <https://hbr.org/2017/10/hiring-discrimination-against-black-americans-hasnt-declined-in-25-years>

² https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2021.pdf

³ https://www.morganstanley.com/im/publication/insights/articles/article_culturequantframework_us.pdf

⁴ https://www.institutionalinvestor.com/article/b1tx0zzdhhnf5x/Want-to-Pick-the-Best-Stocks-Pick-the-Happiest-Companies?utm_medium=email&utm_campaign=The%20Essential%20II%20100721&utm_content=The%20Essential%20II%20100721%20CID_eb103a9e15359075f72a85f7ff534c79&utm_source=CampaignMonitorEmail&utm_term=Want%20to%20Pick%20the%20Best%20Stocks%20Pick%20the%20Happiest%20Companies

rate data by gender, race, and ethnicity increased by 234 percent. Companies releasing retention rate data increased by 79 percent, and those companies releasing promotion rate data increased by 379 percent. NextEra Energy is increasingly a laggard in its decision to continue to withhold these data sets.

By providing clear, quantitative data on workforce composition, promotion, and retention rates NextEra Energy can help assure that investors are able to compare NextEra Energy's diversity programs to those of its peers.

ANALYSIS

Rule 14a-8(b) and Rule 14a-8(f)(1)

The Company Letter begins with an attempt to argue a highly technical basis for exclusion by claiming that the signature of Myra Young on the delegation of authority was inadequate because the official name of the Proponent is "Myra K Young Roth IRA." This is an absurd and abusive effort to find an extremely technical basis on which to strike down a proof of ownership. Fortunately, the Staff have made it clear that such hyper-technical efforts to invalidate proponent submissions has no place in the shareholder proposal process, and that a common sense approach to the filings is appropriate.⁵ Clearly the company had adequate evidence that the Proponent authorized the filing of the Proposal, and this argument is out of line with the spirit and letter of Rule 14a-8 and its authorization letter requirements..

Rule 14a-8(i)(10)

The Proposal requests that the Company report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity. The reporting should be done at reasonable expense and exclude proprietary information.

The Company argues that the Proposal may be excluded from the 2022 Proxy Materials as substantially implemented pursuant to Rule 14a-8(i)(10). In order for the Company to meet its burden of proving substantial implementation pursuant to Rule 14a-8(i)(10), it must show that its activities meet the guidelines and essential purpose of the Proposal. The Staff has noted that a determination that a company has substantially implemented a proposal depends upon whether a company's particular policies, practices, and procedures compare favorably with the guidelines of the proposal. Texaco, Inc. (Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed both the proposal's guidelines and its essential objective. See, e.g., Exelon Corp. (Feb. 26, 2010).

⁵ Staff Legal Bulletin 14 L notes "Some companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive." We believe the same common sense approach is applicable to the new authorization letter requirements, and that the Company's attempt here to find a very technical basis for excluding the proposal is inappropriate and out of line with the Staff's application of the filing requirements.

Where a company can demonstrate that it has taken action that meets most of the guidelines of a proposal and the proposal's essential purpose, the Staff has concurred that the proposal has been "substantially implemented." In the current instance, the Company has substantially fulfilled neither the guidelines nor the essential purpose of the Proposal.

Guidelines and essential purpose of the proposal

Here the Proposal's guidelines request that Nextera Energy report to shareholders the effectiveness of the Company's diversity, equity, and inclusion efforts using "quantitative data on workforce composition, and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity."

The essential purpose of the Proposal is to obtain a breakdown of workforce composition, and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity, such that investors can assess whether company practices and culture support effective recruitment, retention, and promotion. This focus is apparent both in the language of the Resolved clause, which is very specific in its request for quantitative data to help answer these questions, and in the Whereas clauses of the Proposal which are clear and articulate on the focus of this data.

Due to the importance of the type of data requested in the proposal, between September 2020 and September 2021, the number of S&P100 companies releasing recruitment rate data by gender, race and ethnicity increased by 234 percent; companies releasing retention rate data increased by 79 percent; and companies releasing promotion rate data increased by 379 percent.

Contrasting the Company Letter and Actions with the Proposal

The Company focuses its argument on its provision of data demonstrating that it has DEI programs in place. The Proponents are not asking for affirmation that DEI programs exist at NextEra Energy, nor for additional reporting on what those programs are. It is expected that diversity programs of varying quality exist at most public companies. The Proponents are also not looking to judge or suggest changes to NextEra Energy, Inc.'s existing programs or initiatives, they seek to understand the *effectiveness* of these programs.

DEI programs are associated with share outperformance across several measures. Thus, investors are seeking decision-useful information to assess whether the Company's programs work in a way that supports shareholder value. That data has not yet been shared by the Company. The fact that a limited set of data stating the racial and gender composition of NextEra Energy, Inc. staff at a specific time has been provided does not answer the crucial question of whether NextEra Energy, Inc.'s diversity and inclusion program as a whole is effective and achieves the goals of contributing to stock outperformance.

What Proponents seek is information that shows the effectiveness of those programs, in total, including metrics and trends related to the company's promotion, recruitment, and retention of protected classes of employees.

To illustrate the difference between what the Company has provided and what the Proposal is requesting, a metaphor is useful: a private high school might publish a beautiful brochure describing its buildings, its commitment to the whole child, the school's warm and encouraging atmosphere, and the school's strong scholastic programs. These things, while important and necessary, do not tell a parent whether the sought-after result of a well-educated child is likely. Before agreeing to tuition costs, parents will also want to know how these programs contribute to students' success, including for example, student reading and mathematics scores, graduation rates, and college entrance and graduation rates.

To cite Comcast as an example of a successful instance of substantial implementation is misleading. The Comcast Resolved clause and its focus is distinct from the Proposal's. The Comcast resolution asked the company to assess its DEI programs, focusing primarily on Board oversight and process in assessing DEI program effectiveness. Specifically, Comcast's Resolved clause requested that the company:

Publish annually a report, at reasonable expense and excluding proprietary information, assessing the Company's diversity and inclusion efforts. At a minimum the report should include: the process that the Board follows for assessing the effectiveness of its diversity, equity and inclusion programs; the Board's assessment of program effectiveness, as reflected in any goals; and metrics, and trends related to its recruitment, promotion, and retention of protected classes of employees.

While the Comcast proposal asked for metrics and trends related to its promotion, recruitment and retention data, this was not the central focus of the proposal. Here, the Proposal asks principally for data related to the Company's "outcomes, using quantitative metrics for recruitment, retention, and promotion of employees, including data by gender, race, and ethnicity." NextEra, Inc. does not currently disclose "quantitative metrics" across the range of metrics identified in the Proposal. Although the Company provides a small slice of the requested information, including a limited set of workforce composition data and hiring data from its internship program, this information does not meet the guidelines or the central purpose of the Proposal.

Insufficiency of current reporting

The Company argues that it publishes quantitative data on workforce composition, which may also serve as a key indicator of progress on recruitment, retention, and promotion over time. However, the Company shares a very limited amount of data on its recruitment efforts.

The Company states "78% of the nearly 200 interns in the company's 2020 summer intern program were women and minorities". [Emphasis added] This seems to be about as far as the company goes to disclose "recruitment" data and certainly does not fulfill the requested companywide recruitment rate data requested in the Proposal.⁶

⁶ Even in the limited data provided on summer intern recruitment, one would not know how many of those individuals were recruited to work for the Company after their internship nor how many were retained or promoted.

Although the Company provides certain workforce composition data requested by the EEO-1 data form,⁷ which is a public reporting standard met by 83% of S&P 100 companies, that limited information is insufficient to assess the effectiveness of the Company's recruitment, retention and promotion efforts. Similarly, while disclosure of the other efforts of the board and company to diversify are useful information, they do not fulfill the Proposal because none of the disclosures provide transparency into recruitment, retention, and promotion -- key measures of effectiveness of DEI efforts. One cannot discern from the limited information provided what quantity of diverse employees are recruited and whether diverse employees, once hired, are promoted and retained.

This information is increasingly being disclosed by companies. Between September 2020 and September 2021 the number of S&P100 companies releasing recruitment rate data by gender, race, and ethnicity increased by 234 percent. Companies releasing retention rate data increased by 79 percent, and those companies releasing promotion rate data increased by 379 percent. NextEra Energy is increasingly a laggard in its decision to continue to withhold these data sets.

By providing clear, quantitative data on workforce composition, promotion, and retention rates NextEra Energy can help assure that investors are able to compare NextEra Energy's diversity programs to those of its peers.

Diverse representation does not represent program success

Workforce diversity composition is not an indication of program success. The presence of a diverse employee at a given point in time does not mean that investors will benefit from their skills and knowledge unless the company is also equitable and inclusive. As stated by a Harvard Business Review article, *Diversity Doesn't Stick Without Inclusion*, "In the context of the workplace, diversity equals representation. Without inclusion, however, the crucial connections that attract diverse talent, encourage their participation, foster innovation, and lead to business growth won't happen."

Companies that recruit without attention to equity and inclusion risk organizational tensions, frustrated employees, potential negative reputational concerns, and increased human capital expense as employees cycle in and out of the company. Such companies will not be able to realize the benefits of diverse hires. In the absence of disclosure by the Company, the workforce

The Company's discussion of its recruitment programs includes mention of the racial equity working team has partnered with more than 50 professional organizations to increase the pipeline of Black talent, including Management Leadership for Tomorrow, National Black MBA Association, National Association of Black Accountants and HBCU Connect. While a start, these efforts do not equate to transparency on total recruitment relative to the entry level positions being filled by the described programs, leaving the reader unable to ascertain how meaningful these programs are relative to the company's overall hiring and diversity needs.

⁷ The Company's own data disclosures are not fully aligned with the EEO-1 form. It clumps together the 'Native Hawaiian or Other Pacific Islander', 'American Indian or Alaska Native', and 'Two or more races' ethnic groups together; making it indistinguishable to investors what the representation for each individual ethnicity is.

composition data provides an inadequate view of the effectiveness of DEI programs. The workforce composition data would not reveal, for instance, if the composition numbers are a result of strong retention or if significant resources were needed to recruit new employees in the face of high employee turnover. For investors seeking to understand the effectiveness of a company's DEI program, this is essential information.

Researchers have found that “thirty-seven percent of African-Americans and Hispanics and forty-five percent of Asians say they “need to compromise their authenticity” to conform to their company's standards of demeanor or style.”⁸ Given this known problem, the resolution is explicit in its request for reporting on the effectiveness of equity and inclusion programs.

Studies show extensive bias in promotion. McKinsey found that, in 2019, for every 100 men promoted, only 85 women, 71 Latinas and 58 Black women were promoted.⁹ Men are also more likely to promote other men and women more likely to be the promoters of other women.¹⁰ This promotion bias reinforces career immobility, as more men are in positions where they choose whom to promote. Women are also required to be more qualified: Globally, 44.3 percent of female managers have university degrees, as compared to only 38.3 percent of male managers.¹¹ In addition, studies from Stanford¹² show that merit reviews can conflict with impartial rankings of employees. That is, when a system allows for subjective employee reviews, bias is more likely to occur in the assessment of a diverse employee's contribution.

The best form of investor transparency for assessing such cultural factors is disclosure of retention data. As Arthur Woods of the diversity recruiting platform Mathison, has said “We see organizations that have instituted plans for diversity hiring actually failing to retain and advance those very job seekers.”¹³ Companies with diverse employees in their headcount may still struggle with unwelcoming and discriminatory cultures.

This is not a theoretical concern. As an example, Whistle Stop Capital and *As You Sow* staff have had a company explicitly tell them that recruitment was not a challenge and that it had strong diverse representation. **That company also stated that it was unwilling to share its retention data because its turnover of diverse employees would be concerning to investors.**

The lack of disclosure of the metrics that are a core focus of the Proposal guidelines, background and its essential purpose means that the proposal cannot be deemed substantially implemented for purposes of Rule 14a-8(i)(10).

⁸ <https://hbr.org/2017/02/diversity-doesnt-stick-without-inclusion>

⁹ <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace>

¹⁰ <https://www.payscale.com/career-news/2018/05/new-research-promotion-gap>

¹¹ ILO, “A Quantum Leap for Gender Equality” < https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_674831.pdf>

¹² As presented by Lori Nishiura Mackenzie, co-founder, Stanford VMware Women's Leadership Innovation Lab, at the CalPERS & CalSTRS Diversity Forum on June 6, 2019

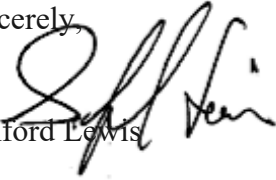
¹³ <https://www.marketplace.org/2020/07/17/diversity-recruitment-retention-workplace-discrimination/>

CONCLUSION

The Company Letter has provided no basis for exclusion of the proposal. Therefore, we respectfully request that the Staff inform the Company that it is denying the no action letter request.

Sincerely,

Sanford Lewis

A handwritten signature in black ink, appearing to read "Sanford Lewis", is written over the printed name. The signature is fluid and cursive, with a large initial "S" and a distinct "L".

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

February 9, 2022
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Nextera Energy Regarding employee recruitment, retention, and promotion data on Behalf of Myra K Young Roth IRA

Ladies and Gentlemen:

Myra K Young Roth IRA (the "Proponent") is beneficial owner of common stock of Nextera Energy (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the supplemental letter dated February 2, 2022 ("Supplemental Letter") sent to the Securities and Exchange Commission by W. Scott Seeley. A copy of this response letter is being emailed concurrently to W. Scott Seeley.

Proof of ownership and authorization

The Supplemental Letter perpetuates an implausible, hypertechnical objection to the proof of ownership and authorization, focusing on whether Myra Young was authorized to file a proposal on behalf of her own Roth IRA account.¹ The Letter states:

An IRA is a separate account or trust which is a separate entity from the individual beneficiary of the IRA and can be controlled by a person other than the beneficiary. Indeed, Myra Young may or may not be the beneficiary of the Roth IRA account or be entitled to direct its affairs. Additional evidence is necessary to provide a meaningful degree of assurance that Myra Young has authority to act on behalf of the Myra K Young Roth IRA account. Such evidence has not been provided, and therefore the purported delegation of authority from Myra Young,

¹ In our prior response we do not focus on that issue, because it seemed entirely implausible that the company would assert that Myra Young does not have authority to file on behalf of her personal Roth IRA account.

and not Myra K Young Roth IRA, to As You Sow, is insufficient to allow the Representative to submit the Proposal on behalf of the Proponent.

In fact, the proof of ownership provided by Ameritrade was clear that Myra K Young Roth IRA is a personal account for Myra Young. Note that it states Myra K Young Roth IRA in the addressing line and that, internally, the letter was addressed to the individual, Myra Young. The proof of ownership also states that “Myra Young held and has continually held” since 4/9/12. Here the Company has no reasonable basis to think that in such circumstances Myra Young was not an authorized representative of the Myra K Young Roth IRA.



12/02/2021

Myra K Young Roth Ira Td Ameritrade Clearing Custodian
9295 Yorkship Ct
Elk Grove, CA 95758

Re: Your TD Ameritrade account ending in PII

Dear Myra Young,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra Young held and has held continuously, since 4/9/12, 150 common shares or more of NextEra Energy Inc (NEE) in an account ending in PII at TD Ameritrade. The value of those shares has continuously exceeded \$2,000 since before January 4, 2020 and continues to do so. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to Client Services > Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads 'William Pieper'.

William Pieper
Resource Specialist
TD Ameritrade

Substantial implementation

The Supplemental Letter also asserts that the proposal is substantially implemented by the Company's existing reports. The Supplemental Letter attempts to override the focus of the proposal on the need for recruitment, retention, and promotion data and instead claims that the Company's minimal disclosures satisfy the guidelines or essential purpose of the Proposal by providing data that investors might use to derive an assessment of the effectiveness of the Company's practices in implementing diversity programs.

While the Company publishes workforce representation data broken down by gender, race and ethnicity, it does not publish data on recruitment, retention, and promotion but instead suggests that the increases in women and minorities over time in the representation data should suffice to fulfill the Proposal. Notably, the Company's management level disclosures include a category of "minorities" which does not provide comparability against the general workforce data. By lumping "minorities" together in the management figures, while disaggregating race and ethnicity in the general workforce, it is not possible to assess the extent of black, Latinx or other minority promotion within the company. Instead the category of minorities appears to include Asian and other minorities which would dilute the clarity of the disclosures requested by the proposal. Aggregating minorities ignores the very real differences in treatment between different races and ethnicities in the workplace. Combining these data sets makes the content reported meaningless for the Proposal's essential purpose.

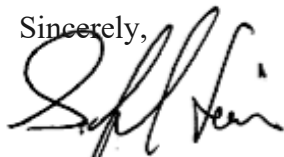
Similarly, the data regarding women in management does not provide transparency into recruitment, promotion, and retention of women from the workforce. This data might be a result of strong retention, a positive indicator, or conducting additional recruitment for management level positions after high attrition, a negative indicator.

In short, data disclosed by the Company might lead to speculative assessment by investors as to the extent of recruitment, retention, and promotion of women and racial and ethnic minorities, but it does not give investors the equivalent ability as the requested data to "assess whether company practices and culture support effective recruitment, retention, and promotion."

The Proponent stands by the distinction between this Proposal and that of *Comcast Corporation* (April 9, 2021). That proposal had a broader focus than the current proposal which made it more amenable to the company's substantial implementation argument.

The Company has not met its burden of proof under the rule to provide a basis for exclusion and therefore we stand by our prior correspondence and urge the staff to notify the company that it must include the Proposal on the Company's 2022 proxy statement.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis", written in a cursive style.

Sanford Lewis

W. Scott Seeley
Vice President, Compliance & Corporate Secretary



Rule 14a-8(f)
Rule 14a-8(i)(10)

VIA ELECTRONIC EMAIL (shareholderproposals@sec.gov)

February 11, 2022

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: NextEra Energy, Inc.
Shareholder Proposal of As You Sow

Ladies and Gentlemen:

On December 30, 2021, NextEra Energy, Inc., submitted a letter (attached as Exhibit A, the "No-Action Request"), requesting that the Staff concur in the Company's view that the shareholder proposal submitted by As You Sow on behalf of the Myra K Young Roth IRA may be excluded from the Company's proxy materials for its 2022 annual meeting of shareholders for the reasons set forth in the No-Action Request, in addition to the reasons set forth below. Capitalized terms not otherwise defined in this letter have the meanings ascribed to them in the No-Action Request.

On January 24, 2022, Sanford J. Lewis, on behalf of the Proponent, submitted a letter (attached as Exhibit B, the "First Proponent Letter") in response to the No-Action Request, and on February 2, 2022, the Company submitted a letter (attached as Exhibit C, the "Company Response Letter") in response to the First Proponent Letter.

The Company is submitting this letter in response to a second letter (attached as Exhibit D, the "Second Proponent Letter") submitted by Sanford J. Lewis, on behalf of the Proponent, on February 9, 2022, and reaffirms its request for confirmation that the Staff will not recommend that enforcement action be taken by the Commission if the Company excludes the Proposal from its proxy materials for the Annual Meeting.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter and its exhibits are being e-mailed to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponent.

NextEra Energy, Inc.

700 Universe Boulevard, Juno Beach, FL 33408

The Representative and The Proponent Failed to Establish Eligibility To Submit The Proposal

As discussed in the No-Action Request and the Company Response Letter, the Representative and the Proponent failed to establish that the Representative had the requisite authority to submit the Proposal on the Proponent's behalf, as required by Rule 14a-8(b).

The Second Proponent Letter inexplicably relies on the salutation in the proof of ownership letter as evidence of Myra Young's ability to act on behalf of the Myra K Young Roth IRA. The salutation in a letter does not confer authority to act on behalf of an entity that is not a natural person. Absent evidence to show that Myra Young has the authority to act on behalf of the Proponent, Myra K Young Roth IRA, the purported delegation of authority from Myra Young, and not Myra K Young Roth IRA, to As You Sow, is insufficient to allow the Representative to submit the Proposal on behalf of the Proponent. Therefore, the Proposal should be excluded pursuant to Rule 14a-8(f).

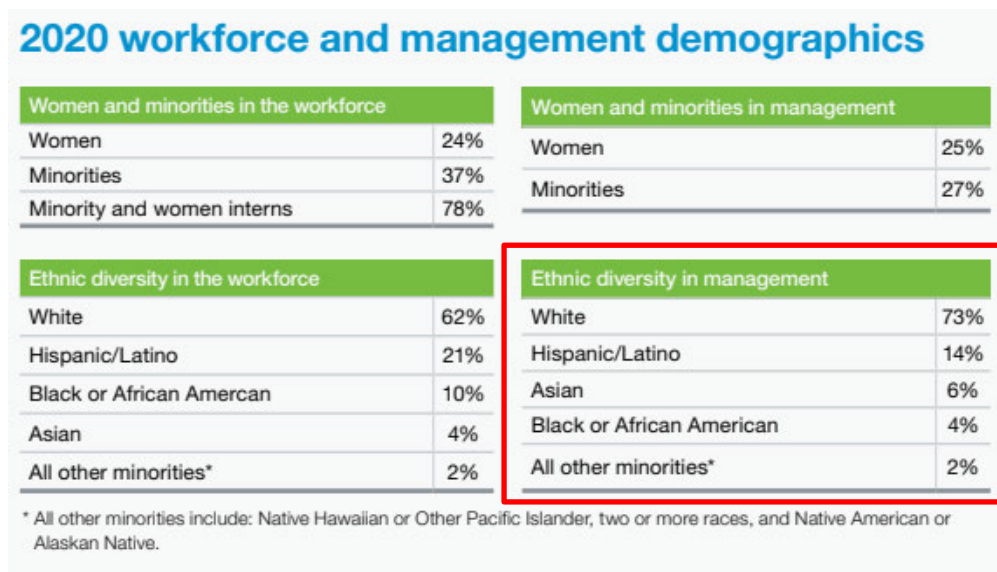
The Proposal Has Been Substantially Implemented

As discussed in greater detail in the No-Action Request and the Company Response Letter, the Proposal may be excluded for the additional reason that it has been substantially implemented by the Company through its existing actions and activities, as reported in its public disclosures.

The Second Proponent Letter's characterization of the Company's existing public disclosures completely ignores certain key data. The Second Proponent Letter states:

"Notably, the Company's management level disclosures include a category of "minorities" which does not provide comparability against the general workforce data. By lumping "minorities" together in the management figures, while disaggregating race and ethnicity in the general workforce, it is not possible to assess the extent of black, Latinx or other minority promotion within the company. Instead the category of minorities appears to include Asian and other minorities which would dilute the clarity of the disclosures requested by the proposal."

However, as discussed in the No-Action Request, the Company's ESG Report¹ very clearly discloses a breakdown of racial and ethnic diversity in the Company's workforce and management composition in the following graphic:



Additionally, it is not at all clear what the Proponent is intending to assert by its statement that "Asian and other minorities" would "dilute the clarity of the disclosures requested by the proposal." The Proposal does not address whether certain underrepresented ethnic groups should be grouped together or included or excluded from the data it requests.

Conclusion

Based upon the foregoing, we respectfully reiterate our request that the Staff confirm that it will not recommend to the Commission that enforcement action be taken against the Company if it excludes the Proposal from its proxy materials for its 2022 annual meeting.

I would be happy to provide the Staff with any additional requested information and answer any questions related to this subject. In accordance with Staff Legal Bulletin 14F, Part F (Oct. 18, 2011), please send your response to this letter to me by e-mail at scott.seeley@nexteraenergy.com. If I can be of any further assistance in this matter,

¹ See the Company's 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporate Finance
February 11, 2022
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please do not hesitate to call me at (561) 691-7038 or Alan Dye, of Hogan Lovells, at (202) 637-5737.

Sincerely,



W. Scott Seeley
Vice President, Compliance & Corporate Secretary

cc: Alan Dye, Hogan Lovells
Myra K Young Roth IRA
Andrew Behar, As You Sow

Enclosures

Exhibit A

No-Action Request

W. Scott Seeley
Vice President, Compliance & Corporate Secretary



Rule 14a-8(f)
Rule 14a-8(i)(10)

VIA ELECTRONIC EMAIL (shareholderproposals@sec.gov)

December 30, 2021

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: NextEra Energy, Inc.
Shareholder Proposal of As You Sow

Ladies and Gentlemen:

We are submitting this letter on behalf of NextEra Energy, Inc. (the "Company"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude from its proxy materials for its 2022 annual meeting of shareholders a shareholder proposal (the "Proposal") submitted by As You Sow (the "Representative") on behalf of Myra K Young Roth IRA (the "Proponent").

We also request confirmation that the Staff of the Division of Corporation Finance (the "Staff") will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its 2022 proxy materials for the reasons discussed below.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), this letter and its exhibits are being e-mailed to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this letter and its exhibits also are being sent to the Proponent. Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, the undersigned hereby informs the Proponent that, if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned.

The Company currently intends to file its 2022 proxy materials with the Commission on or about March 30, 2022.

NextEra Energy, Inc.

700 Universe Boulevard, Juno Beach, FL 33408

THE PROPOSAL

On November 29, 2021,¹ the Company received a letter submitting the Proposal for inclusion in the Company's 2022 proxy materials.

The resolution included in the Proposal provides as follows:

RESOLVED: Shareholders request that NextEra Energy, Inc. (NextEra Energy) report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity. The reporting should be done at reasonable expense and exclude proprietary information.

A copy of the Proposal and relevant correspondence is attached as Exhibit A.

BASIS FOR EXCLUSION

The Company believes that the Proposal may be excluded from the Company's 2022 proxy materials pursuant to (i) Rule 14a-8(b) and Rule 14a-8(f)(1) because the Representative and the Proponent failed to establish the requisite authority to submit the Proposal on the Proponent's behalf after receiving notice of such deficiency; and (ii) Rule 14a-8(i)(10) because the Proposal has been substantially implemented by the Company, which has addressed the requests in the Proposal through its existing actions and activities, as reported in its public disclosures.

I. Rule 14a-8(b) and Rule 14a-8(f)(1) – The Representative and The Proponent Failed to Establish The Requisite Eligibility To Submit The Proposal

A. The Exclusion

Under Rule 14a-8(f), a company may exclude from its proxy materials a proposal submitted by a proponent who fails to satisfy the procedural requirements set forth in Rule 14a-8(b). Rule 14a-8(b)(iv) sets forth seven requirements that a proponent who submits

¹ The Company first received notice of the Proposal via an email from the Representative dated November 29, 2021 (timestamped 4:09 p.m. ET). See Exhibit A. The Company confirmed receipt of such email on November 29, 2021 (timestamped 4:24 p.m. ET) and stated that the Company had not previously received the Proposal even though the Representative stated it was "delivered via USPS on Monday, November 22, 2021." *Id.* The Representative has not provided evidence confirming such delivery on November 22, 2021. Thus, while the date of delivery is not being contested in this no-action request, nothing in this letter shall be deemed an admission or confirmation of receipt on any date prior to November 29, 2021.

a shareholder proposal through a representative must satisfy. Namely, the proponent must provide the company with documentation that:

- (a) identifies the company to which the proposal is directed;
- (b) identifies the annual or special meeting for which the proposal is submitted;
- (c) identifies the proponent and the person acting on the proponent's behalf as representative;
- (d) includes the proponent's statement authorizing the designated representative to submit the proposal and otherwise act on the proponent's behalf;
- (e) identifies the specific topic of the proposal to be submitted;
- (f) includes the proponent's statement supporting the proposal; and
- (g) is signed and dated by the proponent.

In explaining the rationale for codifying these requirements, the Commission acknowledged that “[m]uch of this information is already provided in accordance with staff guidance” as the requirements were in large part based on Staff Legal Bulletin No. 14I (Nov. 1, 2017)(since rescinded).² Nevertheless, the Commission explained that current practices had not “obviate[ed] the need for” specifying the requirements in Rule 14a-8. Specifically, the Commission reasoned that the requirements would “help safeguard the integrity of the shareholder proposal process and the eligibility restrictions by making clear that representatives are authorized to so act, and by providing a *meaningful degree of assurance as to the shareholder proponent’s identity*, role, and interest in a proposal that is submitted for inclusion in a company’s proxy statement.” (emphasis added).³ The Commission also noted that adding the requirements to Rule 14a-8 would “provide greater clarity to those seeking to rely on the rule” and with “minimal burden” on the shareholder proponent.⁴

B. *The Representative and the Proponent failed to establish the requisite eligibility to submit the Proposal because the delegation of authority was defective*

On November 29, 2021, the Company received an email from the Representative attaching the “filing documents” to submit the Proposal for inclusion in the Company’s 2022 proxy materials.⁵ The attachment contained a cover letter from the Representative addressed to the Company, a copy of the Proposal and a letter captioned “Authorization to File Shareholder Resolution” (“Authorization Letter”).⁶ The Authorization Letter

² See SEC Release No. 34-89964 (September 23, 2020).

³ *Id.*

⁴ *Id.*

⁵ See Exhibit A.

⁶ *Id.*

identified the shareholder as “Myra K Young Roth IRA” but failed to comply with Rule 14a-8(b)(iv)(G) in that it was not signed by such shareholder (the “Signature Deficiency”). Instead, the Authorization Letter was signed by “Myra Young.” While the name of the shareholder identified in the Authorization Letter is similar to the name of the individual who signed the Authorization Letter, there was no documentation demonstrating that the individual signing the Authorization Letter had the power or authority to act on behalf of the identified shareholder (the “Authority Deficiency”). The Representative also failed to submit proof of ownership.

Accordingly, on December 1, 2021, within 14 days of the Company’s receipt of the Proposal, the Company sent a letter notifying the Representative of the Proposal’s procedural deficiencies as required by Rule 14a-8(f) (the “Deficiency Notice”). In the Deficiency Notice, attached hereto as Exhibit B, the Company informed the Representative of the requirements of Rule 14a-8 and how it could cure the procedural deficiencies. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- a request to provide substantiation of ownership to qualify the Representative to submit the Proposal;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b);
- the authorization requirements of Rule 14a-8(b)(iv);
- a request to provide documentation to cure the Signature Deficiency and the Authority Deficiency; and
- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Representative received the Deficiency Notice.

Also on December 1, 2021, the Company received an email from the Representative confirming receipt of the Deficiency Notice.⁷ On December 2, 2021, the Company received proof of ownership from the Representative via email, but the Representative did not provide the proper authorization requested in the Deficiency Notice.⁸ Because the Representative and the Proponent failed to respond to the Deficiency Notice (which put them on notice regarding the need to provide proper authorization), the Company may exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f).

⁷ See Exhibit C.

⁸ See Exhibit C.

II. Rule 14a-8(i)(10) – The Proposal Has Been Substantially Implemented

A. The Exclusion

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. In addressing the predecessor to Rule 14a-8(i)(10), the SEC stated that the exclusion was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” SEC Release No. 34-12598 (Jul. 7, 1976). For a proposal to be excludable, it is not necessary that the company have implemented the proposal in full or exactly as presented by the proponent. Instead, the standard for exclusion is substantial implementation. Exchange Act Release No. 40018 (May 21, 1998).

The Staff has stated that, in determining whether a shareholder proposal has been substantially implemented, it will consider whether a company’s particular policies, practices, and procedures “compare favorably with the guidelines of the proposal.” See *Applied Materials, Inc.* (Dec. 21, 2018) (permitting exclusion of a proposal requesting the company establish a public policy committee because the company’s existing policies and procedures dealt with public policy issues); *Exxon Mobil Corp.* (Mar. 23, 2018) (permitting exclusion of a proposal requesting a report describing how the company could adapt its business model to align with a decarbonizing economy by altering its energy mix because the company already disclosed plans to address the impact of a decarbonizing economy on its business); and *PNM Resources, Inc.* (Mar. 20, 2018) (permitting exclusion of a proposal requesting the company establish more effective board oversight of its policies and programs addressing climate change and report on such oversight to shareholders because the company’s existing disclosures on climate change efforts provided sufficient evidence of board oversight). See also, e.g., *Wal-Mart Stores* (Mar. 16, 2017); *Oshkosh Corp.* (Nov. 4, 2016); *NetApp, Inc.* (Jun. 10, 2015); *JPMorgan Chase & Co.* (Mar. 6, 2015); *Peabody Energy Corp.* (Feb. 25, 2014); *Medtronic, Inc.* (Jun. 13, 2013); *Starbucks Corp.* (Nov. 27, 2012), *Whole Foods Market, Inc.* (Nov. 14, 2012); and *Texaco, Inc.* (Mar. 28, 1991).

Substantial implementation under Rule 14a-8(i)(10) requires a company’s actions to have satisfactorily addressed the proposal’s underlying concerns and its essential objective. See *The Wendy’s Co.* (Apr. 10, 2019) (concurring with the exclusion of a proposal requesting a report assessing human rights risks of the company’s operations, including the principles and methodology used to make the assessment, the frequency of assessment, and how the company would use the assessment’s results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its

website the frequency and methodology of its human rights risk assessments); *see also PG&E Corporation* (Mar. 10, 2010) (concurring with the exclusion of a proposal seeking a semiannual report disclosing specific information concerning the company's charitable contributions where the company's existing disclosures on its website and corporate charitable contributions program substantially implemented the proposal, and the Staff noted that the company's "policies, practices and procedures compare[d] favorably with the guidelines of the proposal").

The Staff has permitted companies to exclude proposals from their proxy materials pursuant to Rule 14a-8(i)(10) where the company has satisfied the essential objective of the proposal, even if the company did not take the exact action requested by the proponent or implement the proposal in every detail. *See, e.g., Oracle Corp.* (Aug. 11, 2016) (permitting exclusion of a proxy access proposal notwithstanding that the company's proxy access bylaw did not implement provisions that the proposal identified as "essential elements" of the proposal); *Walgreen Co.* (Sept. 26, 2013) (permitting exclusion of a proposal requesting an amendment to the company's articles of incorporation that would eliminate all super-majority vote requirements, where the company eliminated all but one such requirement); and *Exelon Corp.* (Feb. 26, 2010) (allowing exclusion of a proposal requesting a recurring report on different aspects of the company's political contributions when the company had already adopted guidelines for political contributions made with corporate funds, and issued a report on the company's political contributions). *See also, e.g., Hewlett-Packard Co.* (Dec. 11, 2007), *Anheuser-Busch Cos., Inc.* (Jan. 17, 2007) and *Bristol-Myers Squibb Co.* (Mar. 9, 2006). The Staff has permitted the exclusion of shareholder proposals under Rule 14a-8(i)(10) when a company's actions have satisfactorily addressed the proposal's underlying concerns and its "essential objective," even when the manner by which a company implements the proposal does not correspond precisely to the actions sought by the proponent. *See MGM Resorts International* (Feb. 28, 2012); *ConAgra Foods, Inc.* (July 3, 2006); and *Johnson & Johnson* (Feb. 17, 2006).

In addition, the Staff has permitted exclusion of proposals under Rule 14a-8(i)(10) where a proponent requests the release of information that is already made publicly available by the company. For example, in *McDonald's Corporation* (Mar. 26, 2014), the Staff concurred in the exclusion of a proposal requesting that the company publicly articulate directors' duties with respect to corporate social responsibility issues where the company's public disclosures compared favorably with the guidelines of the proposal. The Staff noted that "the [c]ompany's public disclosures compare favorably with the guidelines of the [p]roposal and . . . the [c]ompany has, therefore, substantially implemented the [p]roposal. *See also Hess Corp.* (Apr. 11, 2019) (concurring with the exclusion of a

proposal requesting a report on aligning the company's carbon footprint with the necessary greenhouse gas reductions to achieve the Paris Agreement's goal where the company had met the essential objective through its most recent sustainability report, its responses to the Carbon Disclosure Project Climate Change Questionnaire, and its 2018 Investor Day Presentation); *Mondelēz International, Inc.* (Mar. 7, 2014) (concurring with the exclusion of a proposal requesting a report on the human rights risks of the company's operations and supply chain where the company had achieved the essential objective of the proposal by publicly disclosing its risk management processes); *The Boeing Co.* (Feb. 17, 2011) (concurring with the exclusion of a proposal requesting that the company assess and report on human rights standards where the company had achieved the essential objective of the proposal through publicly available reports, risk management processes, and a code of conduct); and *Caterpillar, Inc.* (avail. Mar. 11, 2008) (concurring with the company's exclusion of a shareholder proposal requesting that the company prepare a global warming report where the company had already published a report that contained information relating to its environmental initiatives).

B. *The Company has substantially implemented the Proposal because it currently discloses quantitative data on substantially all of the categories requested by the Proposal*

The Proposal requests that the Company "report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity." As discussed below, the Company's 2021 Environmental, Social and Governance report ("2021 ESG Report")⁹ and Diversity and Inclusion website¹⁰ already provide shareholders with information on the outcomes of the Company's diversity, equity, and inclusion ("DEI") efforts. Such disclosures include extensive detail on the Company's DEI efforts, including quantitative data as requested by the Proposal. Thus, the Company has already substantially implemented the essential objective of the Proposal, which is, according to the Proposal's supporting statement, that investors be able to "assess, understand and compare the effectiveness" of the Company's "diversity, equity, and inclusion programs."

Exclusion of the Proposal is consistent with and supported by the Staff's recent no-action response in *Comcast Corporation* (April 9, 2021), which agreed that the

⁹ See the Company's 2021 ESG Report, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

¹⁰ See the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

company could exclude a proposal asking the company to publish an annual report “assessing the [c]ompany’s diversity and inclusion efforts.” The *Comcast* proposal specified that such report should include (i) the board of directors’ process for assessing effectiveness of DEI programs and (ii) the board’s assessment of program effectiveness, “as reflected in any goals, metrics, and trends related to its promotion, recruitment and retention of protected classes of employee.”¹¹ Similar to the supporting statement in the Proposal, in *Comcast*, the proponent’s supporting statement explained that the rationale of the proposal was to provide investors with “*quantitative, comparable data to understand the effectiveness of the [c]ompany’s diversity, equity, and inclusion programs*” (emphasis added). In *Comcast*, the company provided specific examples of quantitative data related to its DEI efforts that were reported on annually and publicly available on its corporate website and also detailed its public disclosures related to the board’s process for and assessment of the effectiveness of the company’s DEI efforts. Thus, the company had already substantially implemented the proposal’s essential objective.

1. The Company publishes quantitative data on workforce composition, which may also serve as a key indicator of progress on recruitment, retention and promotion over time

In 2021, the Company issued its second annual ESG Report, which includes quantitative data on workforce composition.¹² The 2021 ESG Report discloses that, as of year-end 2020, women represented 24% of the Company’s workforce and minorities represented 37% of the Company’s workforce.¹³ The 2021 ESG Report also provides a breakdown of such data by ethnic minority groups, including Hispanics/Latino (21%), Black or African American (10%), Asian (4%), and all other minorities, which includes Native Hawaiian or Other Pacific Islander, two or more races, and Native American or Alaskan Native (2%).¹⁴ Additionally, the 2021 ESG Report discloses that more than 78% of the nearly 200 interns in the Company’s 2020 summer intern program were women and minorities.¹⁵ While the Proposal does not specifically request public disclosure of the Company’s EEO-1 data, it is noted that the categories of diversity disclosed in the 2021 ESG Report generally align with Employer Information Report EEO-1 Form (“EEO-1

¹¹ See *Comcast Corporation* (April 9, 2021).

¹² See the Company’s 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See the Company’s 2021 ESG Report at page 40, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

Report”) categories. Instead, the resolution in the Proposal calls for “quantitative data,” which, as detailed above, the Company already clearly provides.

In addition to quantitative data on the Company’s workforce at large, the Company also discloses a breakdown of gender, race and ethnicity among the Company’s management. As of year-end 2020, women represented 25% of the Company’s management and minorities represented 27%.¹⁶ Similar to the workforce composition data, the Company provides a management-level breakdown among various ethnic minorities: Hispanics/Latino (14%), Black or African American (4%), Asian (6%), and all other minorities, which includes Native Hawaiian or Other Pacific Islander, two or more races, and Native American or Alaskan Native (2%).¹⁷

Moreover, the quantitative data published on the Company’s workforce and management may, over time, allow stakeholders to assess the Company’s progress on recruitment, retention and promotion, thus addressing the Proposal’s request to report on “outcomes” with respect to DEI efforts on recruitment, retention and promotion. For example, year-over-year comparisons of quantitative data on diversity within the Company’s management may prove to be a key indicator of the Company’s efforts to promote diverse team members. This conclusion is supported by *Comcast*, where the company’s year-over-year data on gender, race and ethnicity in its workforce illustrated the company’s progress on DEI efforts. Similarly, comparing the data from the Company’s 2020 ESG Report to the Company’s 2021 ESG Report shows the Company’s progress on DEI efforts. At year-end 2019, women represented 23% of the Company’s workforce (which increased to 24% in 2020) and minorities represented 36% of the Company’s workforce (which increased to 37% in 2020).¹⁸ With respect to data at the management-level, at year-end 2019, women represented 25% of management (which was maintained in 2020) and minorities represented 26% of management (which increased to 27% in 2020).¹⁹ Additionally, women and minorities represented 70% of the Company’s 2019 summer intern program, which grew to 78% in 2020.²⁰

The Proposal also asserts that “providing clear, quantitative data on workforce composition, promotion and retention rates . . . can help assure that investors are able to

¹⁶ See the Company’s 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

¹⁷ *Id.*

¹⁸ See the Company’s 2020 ESG Report at page 37, available at <https://www.investor.nexteraenergy.com/~media/Files/N/NEE-IR/Sustainability/2020%20NEE%20ESG%20Report%20with%20TCFD%20Index.pdf>.

¹⁹ *Id.*

²⁰ *Id.*

compare [the Company's] diversity programs to that of its peers." In that respect, it is noteworthy that the S&P Global Ratings' annual ESG Evaluation published in April 2021 describes the Company's diversity metrics as "in line" with its peers.²¹

2. The Company also discloses quantitative data on recruitment, retention, and promotion efforts related to its racial equity working team

The Company's 2021 ESG Report and Diversity and Inclusion website highlight the Company's focus on recruiting, retaining and promoting a diverse and highly skilled workforce.²² These public materials note the demonstrated focus of the Company's talent acquisition team in 2020 on attracting a diverse talent pool through virtually attending career fairs and college recruiting events across the country. Key organizations include Women in Technology International, the National Black MBA Association, the American Indian Science and Engineering Society as well as several veterans organizations. The Company also discusses its concerted focus on improving recruitment, retention and promotion of Black team members.²³ The Company explains how its racial equity working team was established in light of the continued focus throughout the country on social justice, racial equity and related issues, and in order to develop specific actions the Company can take to make a positive contribution toward racial equity.²⁴

The Company proudly discloses several quantitative data points²⁵ related to the racial equity working team, including the following:

- The racial equity working team has partnered with more than 50 professional organizations to increase the pipeline of Black talent, including Management Leadership for Tomorrow, National Black MBA Association, National Association of Black Accountants and HBCU Connect.
- The racial equity working team has supported key programs that make a difference in Black communities, including 19 community and youth outreach organizations such as the National Urban League, Black Girls CODE, Data for Black Lives and Center for Policing Equity.

²¹ See the S&P Global Ratings Environmental, Social and Governance Evaluation at page 4, available at <https://www.investor.nexteraenergy.com/sustainability/esg-resources>.

²² See the Company's 2021 ESG Report at page 40, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

²³ See the Company's 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

²⁴ *Id.*

²⁵ *Id.*

- The work of the racial equity working team has led to an increase in total funding from the Company for Black communities by \$6 million annually, a commitment to enhance the Company's supplier diversity program by tripling spending with Black-owned businesses by 2022 and a commitment to investing more than \$100 million in venture capital and private equity funds that are focused on racial equity.
- About 100 team members have volunteered to be part of the racial equity working team.

Similarly, in *Comcast*, the company described how, among other things, it was investing in its diverse recruitment initiatives, supporting minority-led and minority-serving organizations with monetary contributions, and tracking participation in employee resource groups, which provide a supportive environment for employees who either identify with certain defined diverse communities or seek to be active allies.

3. The Company measures effectiveness of its DEI efforts using data-driven metrics which are discussed in the Company's qualitative disclosures

We would be remiss if we did not emphasize that it is the Company's *qualitative* efforts that translate into quantitative improvements in DEI efforts over time and also that quantitative data plays a key role in helping the Company's leadership assess DEI efforts. First and foremost, the Company is committed to maintaining an inclusive work environment that is free from discrimination and harassment on the basis of race, color, age, sex, national origin, religion, marital status, sexual orientation, gender identity, gender expression, genetics, disability or protected veteran status.

With respect to recruitment, as discussed in Section II.B.2. above, the Company's talent acquisition team is keenly focused on attracting a diverse talent pool. This commitment is supported by the highest levels of company leadership, as evidenced by the active role that the Company's management and board of directors play in monitoring, evaluating and overseeing DEI efforts. The Company's 2021 ESG Report and Diversity and Inclusion website highlight how its Executive Diversity & Inclusion ("D&I") Council is dedicated to advising and driving corporate DEI strategy and to partnering with business units in order to promote diverse talent development and recruitment.²⁶ The Executive D&I Council reviews D&I metrics on a quarterly basis,²⁷ which showcases the Company's

²⁶ See the Company's 2021 ESG Report at page 41, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf; and the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

²⁷ *Id.*

commitment to data-driven results. Such metrics are used to develop annual D&I plans, track progress and implement the Company's strategies, and are reviewed at least annually by the Company's board of directors.²⁸ Such metrics also enable the Company's board of directors to focus on diversity in the Company's talent pipeline and its internship program, which is a key recruitment tool.²⁹

With respect to retention and promotion, the Company has a robust talent management process for all employees that includes an annual performance review with two check-ins throughout the year and an employee development and goal-setting plan that focuses equally on employee and leader feedback to develop skills, opportunities and further advancement within the organization.³⁰ Senior managers hold talent meetings across business units to identify, assess and position employees to further develop skills needed to become future leaders.³¹ With regard to improving retention and promotion of Black team members, the Company's racial equity working team supported implementation of a mentorship program for Black employees and a rotational development program for Black employees.³²

In addition, members of the Company's Corporate D&I Council act as business unit champions by driving business unit D&I strategies, sharing best practices, sponsoring the Company's annual D&I Summit and advising and mentoring employee resource groups ("ERGs").³³ The Company's twelve ERGs are at the heart of the Company's engagement efforts on DEI. It is within these all-volunteer groups that team members and allies partner together to develop personal and professional skills, drive cultural competency and demonstrate advocacy.³⁴ Examples of the Company's ERGs include the African-American Professional Employee Group, the Hispanic Organization for Latino Americans, Asian Professionals in the Energy Exchange and Women in Energy, among others. The Company also regularly conducts employee engagement surveys, which the Company uses to establish action plans facilitated by the Company's corporate engagement team in order to address top areas of focus. In 2020, 90% of employees,

²⁸ See the Company's 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See the Company's 2021 ESG Report at page 41, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

³⁴ *Id.*

excluding FPL bargaining employees, completed the survey and ranked diversity and inclusion among their most positive work experiences.³⁵

Finally, the Company has also received external recognition for its DEI efforts. In 2020, the Company was named to Forbes magazine's list of "America's Best Employers for Diversity" for the third consecutive year.³⁶ In addition, the Company was selected by Winds of Change magazine as one of the "Top 50 Workplaces for Indigenous STEM Professionals" for the Company's strong support for diversity and an inclusive work climate.³⁷

CONCLUSION

For the reasons set forth above, the Company believes that the Proposal may be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) as well as Rule 14a-8(i)(10). The Company respectfully requests the Staff's concurrence in the Company's view or, alternatively, confirmation that the Staff will not recommend any enforcement action to the Commission if the Company so excludes the Proposal from its proxy materials for its 2022 annual meeting of shareholders.

³⁵ See the Company's 2021 ESG Report at page 41, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf; and the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

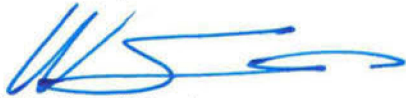
³⁶ See the Company's Diversity and Inclusion website, available at <https://www.nexteraenergy.com/sustainability/employees/diversity.html>.

³⁷ See the Company's 2021 ESG Report at page 43, available at https://www.nexteraenergy.com/content/dam/nee/us/en/pdf/2021_NEE_ESG_Report_Final.pdf.

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December 30, 2021
Page 14

I would be happy to provide the Staff with any additional requested information and answer any questions related to this subject. In accordance with Staff Legal Bulletin 14F, Part F (Oct. 18, 2011), please send your response to this letter to me by e-mail at scott.seeley@nexteraenergy.com. If I can be of any further assistance in this matter, please do not hesitate to call me at (561) 691-7038 or Alan Dye, of Hogan Lovells, at (202) 637-5737.

Sincerely,



W. Scott Seeley
Vice President, Compliance & Corporate Secretary

cc: Alan Dye, Hogan Lovells
Myra K Young Roth IRA
Andrew Behar, As You Sow

Enclosures

Exhibit B

First Proponent Letter

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

Via electronic mail

January 24, 2022
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: NextEra Energy, Inc. Shareholder Proposal of Myra K Young

Ladies and Gentlemen,

Myra K Young Roth IRA (the “Proponent”) is beneficial owner of common stock of NextEra Energy, Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I am responding, on behalf of Proponent, to the letter dated December 30, 2021 (“Company Letter”), from W. Scott Seeley contending that the Proposal may be excluded from the Company’s 2022 proxy statement. A copy of this letter is being emailed concurrently to Mr. Seeley.

SUMMARY

The Proposal urges the Board of Directors to report to shareholders the effectiveness of the Company's diversity, equity, and inclusion efforts using quantitative metrics for recruitment, retention, and promotion of employees, including data by gender, race, and ethnicity.

The Company Letter first objects to the Proponent’s authorization letter because it failed to include Proponent’s middle name in her signature. This highly technical objection is inconsistent with the Staff’s interpretation of the shareholder proposal rule, which seeks reasonable assurance that the proponent owns shares and has authorized the representative to file the proposal. No genuine question of authorization exists in the present instance, and therefore this objection fails.

The Company Letter also asserts that the Proposal is substantially implemented. The Company Letter cites disclosures which do not include “quantitative data on workforce ... recruitment, retention, and promotion rates of employees by gender, race, and ethnicity” as requested in the Proposal. The Company has not published the requested report and has not in any sense fulfilled the guidelines or the essential purpose of the Proposal. Therefore, the Proposal is not excludable under Rule 14a-8(i)(10).

THE PROPOSAL

Resolved: Shareholders request that NextEra Energy, Inc. (NextEra Energy) report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity. The reporting should be done at reasonable expense and exclude proprietary information.

Supporting Statement: Quantitative data is sought so that investors can assess, understand, and compare the effectiveness of companies' diversity, equity, and inclusion programs and apply this analysis to investors' portfolio management and securities' selection process.

Whereas: Numerous studies by respected organizations such as *The Wall Street Journal*, Credit Suisse, Morgan Stanley, McKinsey, PwC and BCG have pointed to the material benefits of a diverse workforce.

Companies should look to hire the best talent. However, Black and Latino applicants face recruitment challenges. Results of a meta-analysis study of 24 field experiments, dating back to 1990, found that, with identical resumes, White applicants receive an average of 36 percent more callbacks than Black applicants and 24 percent more callbacks than Latino applicants.”¹

Promotion rates show how well diverse talent is nurtured at a company. Unfortunately, women and non-White employees experience “a broken rung” in their careers. For every 100 men who are promoted, only 86 women are promoted. Non-White women are particularly impacted, comprising 17 percent of entry-level workforce and only 4 percent of executives.²

Morgan Stanley has found that “Employee retention that is above industry peer averages can indicate the presence of competitive advantage. This advantage may lead to higher levels of future profitability than past financial performance would indicate.”³ Companies with high employee satisfaction have also been linked to annualized outperformance of over two percent.⁴

NextEra Energy has not yet committed to release standardized workforce composition data through its consolidated EEO-1 form, which is best practice in diversity data reporting. Nor has it shared sufficient recruitment, retention, and promotion data to allow investors to determine the effectiveness of its human capital management programs.

Eighty-one percent of the S&P100 have released, or have committed to release, their EEO-1 forms. The number of S&P100 companies releasing this form increased 239 percent between September 2020 and September 2021. The number of S&P100 companies releasing recruitment

¹ <https://hbr.org/2017/10/hiring-discrimination-against-black-americans-hasnt-declined-in-25-years>

² https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2021.pdf

³ https://www.morganstanley.com/im/publication/insights/articles/article_culturequantframework_us.pdf

⁴ https://www.institutionalinvestor.com/article/b1tx0zzdhhnf5x/Want-to-Pick-the-Best-Stocks-Pick-the-Happiest-Companies?utm_medium=email&utm_campaign=The%20Essential%20II%20100721&utm_content=The%20Essential%20II%20100721%20CID_eb103a9e15359075f72a85f7ff534c79&utm_source=CampaignMonitorEmail&utm_term=Want%20to%20Pick%20the%20Best%20Stocks%20Pick%20the%20Happiest%20Companies

rate data by gender, race, and ethnicity increased by 234 percent. Companies releasing retention rate data increased by 79 percent, and those companies releasing promotion rate data increased by 379 percent. NextEra Energy is increasingly a laggard in its decision to continue to withhold these data sets.

By providing clear, quantitative data on workforce composition, promotion, and retention rates NextEra Energy can help assure that investors are able to compare NextEra Energy's diversity programs to those of its peers.

ANALYSIS

Rule 14a-8(b) and Rule 14a-8(f)(1)

The Company Letter begins with an attempt to argue a highly technical basis for exclusion by claiming that the signature of Myra Young on the delegation of authority was inadequate because the official name of the Proponent is "Myra K Young Roth IRA." This is an absurd and abusive effort to find an extremely technical basis on which to strike down a proof of ownership. Fortunately, the Staff have made it clear that such hyper-technical efforts to invalidate proponent submissions has no place in the shareholder proposal process, and that a common sense approach to the filings is appropriate.⁵ Clearly the company had adequate evidence that the Proponent authorized the filing of the Proposal, and this argument is out of line with the spirit and letter of Rule 14a-8 and its authorization letter requirements..

Rule 14a-8(i)(10)

The Proposal requests that the Company report to shareholders on the outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity. The reporting should be done at reasonable expense and exclude proprietary information.

The Company argues that the Proposal may be excluded from the 2022 Proxy Materials as substantially implemented pursuant to Rule 14a-8(i)(10). In order for the Company to meet its burden of proving substantial implementation pursuant to Rule 14a-8(i)(10), it must show that its activities meet the guidelines and essential purpose of the Proposal. The Staff has noted that a determination that a company has substantially implemented a proposal depends upon whether a company's particular policies, practices, and procedures compare favorably with the guidelines of the proposal. Texaco, Inc. (Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed both the proposal's guidelines and its essential objective. See, e.g., Exelon Corp. (Feb. 26, 2010).

⁵ Staff Legal Bulletin 14 L notes "Some companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive." We believe the same common sense approach is applicable to the new authorization letter requirements, and that the Company's attempt here to find a very technical basis for excluding the proposal is inappropriate and out of line with the Staff's application of the filing requirements.

Where a company can demonstrate that it has taken action that meets most of the guidelines of a proposal and the proposal's essential purpose, the Staff has concurred that the proposal has been "substantially implemented." In the current instance, the Company has substantially fulfilled neither the guidelines nor the essential purpose of the Proposal.

Guidelines and essential purpose of the proposal

Here the Proposal's guidelines request that Nextera Energy report to shareholders the effectiveness of the Company's diversity, equity, and inclusion efforts using "quantitative data on workforce composition, and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity."

The essential purpose of the Proposal is to obtain a breakdown of workforce composition, and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity, such that investors can assess whether company practices and culture support effective recruitment, retention, and promotion. This focus is apparent both in the language of the Resolved clause, which is very specific in its request for quantitative data to help answer these questions, and in the Whereas clauses of the Proposal which are clear and articulate on the focus of this data.

Due to the importance of the type of data requested in the proposal, between September 2020 and September 2021, the number of S&P100 companies releasing recruitment rate data by gender, race and ethnicity increased by 234 percent; companies releasing retention rate data increased by 79 percent; and companies releasing promotion rate data increased by 379 percent.

Contrasting the Company Letter and Actions with the Proposal

The Company focuses its argument on its provision of data demonstrating that it has DEI programs in place. The Proponents are not asking for affirmation that DEI programs exist at NextEra Energy, nor for additional reporting on what those programs are. It is expected that diversity programs of varying quality exist at most public companies. The Proponents are also not looking to judge or suggest changes to NextEra Energy, Inc.'s existing programs or initiatives, they seek to understand the *effectiveness* of these programs.

DEI programs are associated with share outperformance across several measures. Thus, investors are seeking decision-useful information to assess whether the Company's programs work in a way that supports shareholder value. That data has not yet been shared by the Company. The fact that a limited set of data stating the racial and gender composition of NextEra Energy, Inc. staff at a specific time has been provided does not answer the crucial question of whether NextEra Energy, Inc.'s diversity and inclusion program as a whole is effective and achieves the goals of contributing to stock outperformance.

What Proponents seek is information that shows the effectiveness of those programs, in total, including metrics and trends related to the company's promotion, recruitment, and retention of protected classes of employees.

To illustrate the difference between what the Company has provided and what the Proposal is requesting, a metaphor is useful: a private high school might publish a beautiful brochure describing its buildings, its commitment to the whole child, the school's warm and encouraging atmosphere, and the school's strong scholastic programs. These things, while important and necessary, do not tell a parent whether the sought-after result of a well-educated child is likely. Before agreeing to tuition costs, parents will also want to know how these programs contribute to students' success, including for example, student reading and mathematics scores, graduation rates, and college entrance and graduation rates.

To cite Comcast as an example of a successful instance of substantial implementation is misleading. The Comcast Resolved clause and its focus is distinct from the Proposal's. The Comcast resolution asked the company to assess its DEI programs, focusing primarily on Board oversight and process in assessing DEI program effectiveness. Specifically, Comcast's Resolved clause requested that the company:

Publish annually a report, at reasonable expense and excluding proprietary information, assessing the Company's diversity and inclusion efforts. At a minimum the report should include: the process that the Board follows for assessing the effectiveness of its diversity, equity and inclusion programs; the Board's assessment of program effectiveness, as reflected in any goals; and metrics, and trends related to its recruitment, promotion, and retention of protected classes of employees.

While the Comcast proposal asked for metrics and trends related to its promotion, recruitment and retention data, this was not the central focus of the proposal. Here, the Proposal asks principally for data related to the Company's "outcomes, using quantitative metrics for recruitment, retention, and promotion of employees, including data by gender, race, and ethnicity." NextEra, Inc. does not currently disclose "quantitative metrics" across the range of metrics identified in the Proposal. Although the Company provides a small slice of the requested information, including a limited set of workforce composition data and hiring data from its internship program, this information does not meet the guidelines or the central purpose of the Proposal.

Insufficiency of current reporting

The Company argues that it publishes quantitative data on workforce composition, which may also serve as a key indicator of progress on recruitment, retention, and promotion over time. However, the Company shares a very limited amount of data on its recruitment efforts.

The Company states "78% of the nearly 200 interns in the company's 2020 summer intern program were women and minorities". [Emphasis added] This seems to be about as far as the company goes to disclose "recruitment" data and certainly does not fulfill the requested companywide recruitment rate data requested in the Proposal.⁶

⁶ Even in the limited data provided on summer intern recruitment, one would not know how many of those individuals were recruited to work for the Company after their internship nor how many were retained or promoted.

Although the Company provides certain workforce composition data requested by the EEO-1 data form,⁷ which is a public reporting standard met by 83% of S&P 100 companies, that limited information is insufficient to assess the effectiveness of the Company's recruitment, retention and promotion efforts. Similarly, while disclosure of the other efforts of the board and company to diversify are useful information, they do not fulfill the Proposal because none of the disclosures provide transparency into recruitment, retention, and promotion -- key measures of effectiveness of DEI efforts. One cannot discern from the limited information provided what quantity of diverse employees are recruited and whether diverse employees, once hired, are promoted and retained.

This information is increasingly being disclosed by companies. Between September 2020 and September 2021 the number of S&P100 companies releasing recruitment rate data by gender, race, and ethnicity increased by 234 percent. Companies releasing retention rate data increased by 79 percent, and those companies releasing promotion rate data increased by 379 percent. NextEra Energy is increasingly a laggard in its decision to continue to withhold these data sets.

By providing clear, quantitative data on workforce composition, promotion, and retention rates NextEra Energy can help assure that investors are able to compare NextEra Energy's diversity programs to those of its peers.

Diverse representation does not represent program success

Workforce diversity composition is not an indication of program success. The presence of a diverse employee at a given point in time does not mean that investors will benefit from their skills and knowledge unless the company is also equitable and inclusive. As stated by a Harvard Business Review article, *Diversity Doesn't Stick Without Inclusion*, "In the context of the workplace, diversity equals representation. Without inclusion, however, the crucial connections that attract diverse talent, encourage their participation, foster innovation, and lead to business growth won't happen."

Companies that recruit without attention to equity and inclusion risk organizational tensions, frustrated employees, potential negative reputational concerns, and increased human capital expense as employees cycle in and out of the company. Such companies will not be able to realize the benefits of diverse hires. In the absence of disclosure by the Company, the workforce

The Company's discussion of its recruitment programs includes mention of the racial equity working team has partnered with more than 50 professional organizations to increase the pipeline of Black talent, including Management Leadership for Tomorrow, National Black MBA Association, National Association of Black Accountants and HBCU Connect. While a start, these efforts do not equate to transparency on total recruitment relative to the entry level positions being filled by the described programs, leaving the reader unable to ascertain how meaningful these programs are relative to the company's overall hiring and diversity needs.

⁷ The Company's own data disclosures are not fully aligned with the EEO-1 form. It clumps together the 'Native Hawaiian or Other Pacific Islander', 'American Indian or Alaska Native', and 'Two or more races' ethnic groups together; making it indistinguishable to investors what the representation for each individual ethnicity is.

composition data provides an inadequate view of the effectiveness of DEI programs. The workforce composition data would not reveal, for instance, if the composition numbers are a result of strong retention or if significant resources were needed to recruit new employees in the face of high employee turnover. For investors seeking to understand the effectiveness of a company's DEI program, this is essential information.

Researchers have found that “thirty-seven percent of African-Americans and Hispanics and forty-five percent of Asians say they “need to compromise their authenticity” to conform to their company's standards of demeanor or style.”⁸ Given this known problem, the resolution is explicit in its request for reporting on the effectiveness of equity and inclusion programs.

Studies show extensive bias in promotion. McKinsey found that, in 2019, for every 100 men promoted, only 85 women, 71 Latinas and 58 Black women were promoted.⁹ Men are also more likely to promote other men and women more likely to be the promoters of other women.¹⁰ This promotion bias reinforces career immobility, as more men are in positions where they choose whom to promote. Women are also required to be more qualified: Globally, 44.3 percent of female managers have university degrees, as compared to only 38.3 percent of male managers.¹¹ In addition, studies from Stanford¹² show that merit reviews can conflict with impartial rankings of employees. That is, when a system allows for subjective employee reviews, bias is more likely to occur in the assessment of a diverse employee's contribution.

The best form of investor transparency for assessing such cultural factors is disclosure of retention data. As Arthur Woods of the diversity recruiting platform Mathison, has said “We see organizations that have instituted plans for diversity hiring actually failing to retain and advance those very job seekers.”¹³ Companies with diverse employees in their headcount may still struggle with unwelcoming and discriminatory cultures.

This is not a theoretical concern. As an example, Whistle Stop Capital and *As You Sow* staff have had a company explicitly tell them that recruitment was not a challenge and that it had strong diverse representation. **That company also stated that it was unwilling to share its retention data because its turnover of diverse employees would be concerning to investors.**

The lack of disclosure of the metrics that are a core focus of the Proposal guidelines, background and its essential purpose means that the proposal cannot be deemed substantially implemented for purposes of Rule 14a-8(i)(10).

⁸ <https://hbr.org/2017/02/diversity-doesnt-stick-without-inclusion>

⁹ <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace>

¹⁰ <https://www.payscale.com/career-news/2018/05/new-research-promotion-gap>

¹¹ ILO, “A Quantum Leap for Gender Equality” < https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_674831.pdf>

¹² As presented by Lori Nishiura Mackenzie, co-founder, Stanford VMware Women's Leadership Innovation Lab, at the CalPERS & CalSTRS Diversity Forum on June 6, 2019

¹³ <https://www.marketplace.org/2020/07/17/diversity-recruitment-retention-workplace-discrimination/>

CONCLUSION

The Company Letter has provided no basis for exclusion of the proposal. Therefore, we respectfully request that the Staff inform the Company that it is denying the no action letter request.

Sincerely,

Sanford Lewis

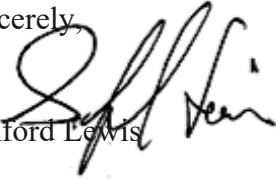
A handwritten signature in black ink, appearing to read "Sanford Lewis", is written over the printed name.

Exhibit C

Company Response Letter

W. Scott Seeley
Vice President, Compliance & Corporate Secretary



Rule 14a-8(f)
Rule 14a-8(i)(10)

VIA ELECTRONIC EMAIL (shareholderproposals@sec.gov)

February 2, 2022

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: NextEra Energy, Inc.
Shareholder Proposal of As You Sow

Ladies and Gentlemen:

On December 30, 2021, NextEra Energy, Inc., submitted a letter (attached as Exhibit A, the "No-Action Request"), requesting that the Staff concur in the Company's view that the shareholder proposal submitted by As You Sow on behalf of the Myra K Young Roth IRA may be excluded from the Company's proxy materials for its 2022 annual meeting of shareholders for the reasons set forth below, in addition to the reasons set forth in the No-Action Request. Capitalized terms not otherwise defined in this letter have the meanings ascribed to them in the No-Action Request.

On January 24, 2022, Sanford J. Lewis, on behalf of the Proponent, submitted a response to the No-Action Request (attached as Exhibit B, the "Proponent Letter"). The Company is submitting this letter in response to the Proponent Letter and reaffirms its request for confirmation that the Staff will not recommend that enforcement action be taken by the Commission if the Company excludes the Proposal from its proxy materials for the Annual Meeting.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter and its exhibits are being e-mailed to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponent.

The Representative and The Proponent Failed to Establish Eligibility To Submit The Proposal

As discussed in the No-Action Request, the Representative and the Proponent failed to establish that the Representative had the requisite authority to submit the

NextEra Energy, Inc.

700 Universe Boulevard, Juno Beach, FL 33408

Proposal on the Proponent's behalf, as required by Rule 14a-8(b). After receiving notice from the Company that the Authorization Letter was defective, the Proponent failed to correct the deficiency.

The Proponent's Letter confuses the nature of the deficiency by stating that the deficiency was merely a failure to include the Proponent's middle initial in her signature to the Authorization Letter. On the contrary, the deficiency is that the signatory to the Authorization Letter is Myra Young, ostensibly in her individual capacity, without indicating whether or, if so, how she is acting on behalf of the Proponent, or has the authority to act on behalf of, the Myra K Young Roth IRA account.

An IRA is a separate account or trust which is a separate entity from the individual beneficiary of the IRA and can be controlled by a person other than the beneficiary. Indeed, Myra Young may or may not be the beneficiary of the Roth IRA account or be entitled to direct its affairs. Additional evidence is necessary to provide a meaningful degree of assurance that Myra Young has authority to act on behalf of the Myra K Young Roth IRA account. Such evidence has not been provided, and therefore the purported delegation of authority from Myra Young, and not Myra K Young Roth IRA, to As You Sow, is insufficient to allow the Representative to submit the Proposal on behalf of the Proponent.

The Proposal Has Been Substantially Implemented

The Proposal may be excluded for the additional reason that it has been substantially implemented by the Company through its existing actions and activities, as reported in its public disclosures. As discussed in greater detail in the No-Action Request, a proposal may be considered substantially implemented under Rule 14a-8(i)(10) where the company has satisfied the proposal's underlying concerns and essential objectives, even if the company did not taken the exact action requested by the proponent or implement the proposal in every detail.

The Proponent Letter acknowledges that where a company can demonstrate that it has taken action that meets *most* – not necessarily all – of the guidelines of the proposal and the proposal's essential purpose, the proposal has been "substantially implemented." However, the Proponent Letter fails to set forth any useful information to support its argument that the Company has not substantially implemented the guidelines and the essential purpose of the Proposal.

According to the Proponent Letter, the "guidelines of the proposal" are described in the resolved clause, which requests that the Company "report to shareholders on the

outcomes of the Company's diversity, equity, and inclusion efforts by publishing quantitative data on workforce composition and recruitment, retention, and promotion rates of employees by gender, race, and ethnicity." The following key points from the No-Action Request, although dismissed by the Proponent, demonstrate that these guidelines have been substantially implemented:

- The Company has published quantitative data on workforce composition for 2019 and 2020, which are broken down by gender, race and ethnicity, as requested by the Proposal. For example, at year-end 2020, women represented 24% of the Company's workforce (which increased from 23% in 2019) and minorities represented 37% of the Company's workforce (which increased from 36% in 2019). Contrary to the Proponent's assertions, the Company continues to believe that these data points may also speak to its recruiting and retention DEI efforts.
- The Company also publishes quantitative data of its workforce at the *management* level broken down the gender, racial and ethnicity. This key point is completely ignored by the Proponent. However, as discussed in greater detail in the No-Action Request, the Company believes that year-over-year comparisons of quantitative data on diversity within the Company's management may prove to be a key indicator of the Company's efforts to promote diverse team members, which is another key aspect of the stated guidelines in the Proposal. For example, at year-end 2020, women represented 25% of management (which was maintained from 2019) and minorities represented 27% of management (which increased from 26% in 2019).
- The Proponent also dismisses the Company's disclosure of diversity statistics for its summer internship program, which the Company continues to believe speaks to its recruitment efforts. Notably, women and minorities represented 70% of the Company's 2019 summer intern program, which grew to 78% in 2020.

The points above address each of the key aspects of the Proposal's stated guidelines – workforce composition, recruitment, retention and promotion. Moreover, the quantitative data described in these points, regarding the Company's workforce and management over time, together with the many other key actions and strategies discussed in the No-Action Request, sufficiently address the Proposal's essential purpose, which is to give investors the ability to "assess whether company practices and culture support effective recruitment, retention and promotion."

Separately, the Proponent Letter's attempt to distinguish the No-Action Request from *Comcast Corporation* (April 9, 2021) is misguided. Contrary to what the Proponent Letter suggests, the No-Action Request acknowledges that the proposal in *Comcast* is not identical, and notes that such proposal included a second objective (i.e., assessing board oversight) that is not present in the Proposal. Ironically, the Proponent Letter clearly concedes the key similarities between the No Action-Request and *Comcast*:

- The Proponent Letter states that the Proponent seeks information “on the outcomes of the Company’s diversity, equity and inclusion efforts . . .”
- The Proponent Letter also acknowledges that the *Comcast* proposal sought information “assessing the Company’s diversity and inclusion efforts.”

The Proponent suggests that the essential objectives of the proposal in *Comcast* was different from the essential objectives of the Proposal in that the proposal in *Comcast* asked for an assessment of the “effectiveness” of the company’s diversity program, while the Proposal seeks an assessment of “outcomes.” This suggestion draws a distinction without a difference. An assessment of the effectiveness of a program necessarily entails an assessment of the program’s outcomes.

The Proponent Letter also attempts to distinguish *Comcast* by asserting that metrics were not the central focus of the *Comcast* proposal. However, quoting directly from *Comcast*, the Proponent Letter effectively affirms that metrics were a critical component to responding to the proposal’s request that the Comcast disclose its board’s assessment of DEI program effectiveness.

- The Proponent Letter states that the Proponent seeks “information that shows the effectiveness of those programs, in total, including *metrics and trends related to the company’s promotion, recruitment, and retention of protected classes of employees*” (emphasis added).
- The Proponent Letter also acknowledges that the *Comcast* proposal sought, in part, public disclosure to assess “the [b]oard’s assessment of program effectiveness, *as reflected in any goals, metrics and trends related to its recruitment, promotion and retention of protected classes of employees.*” (emphasis added).

While the proposal in *Comcast* is worded slightly differently from the Proposal, and is framed through the lens of the board’s assessment of DEI program effectiveness, the essential objectives are, at their core, the same.

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February 2, 2022
Page 5

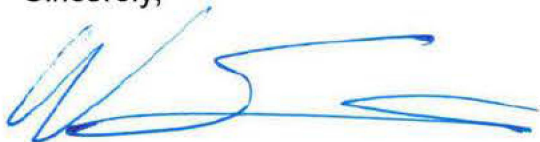
Finally, the Company wishes to dispel the implication in the Proponent Letter that the Company is unwilling to share retention data with its investors. The Proponent Letter contains a boldface statement about a company's unwillingness to share retention data which appears to be referring to the Company, when in fact the Proponent means to refer to some other, unnamed company. To be clear, the Company has not stated that it is unwilling to share retention data because the data would be concerning to investors.

Conclusion

Based upon the foregoing analysis, in addition to the arguments set forth in the No-Action Request, we respectfully reiterate our request that the Staff confirm that it will not recommend to the Commission that enforcement action be taken against the Company if it excludes the Proposal from its proxy materials for its 2022 annual meeting.

I would be happy to provide the Staff with any additional requested information and answer any questions related to this subject. In accordance with Staff Legal Bulletin 14F, Part F (Oct. 18, 2011), please send your response to this letter to me by e-mail at scott.seeley@nexteraenergy.com. If I can be of any further assistance in this matter, please do not hesitate to call me at (561) 691-7038 or Alan Dye, of Hogan Lovells, at (202) 637-5737.

Sincerely,



W. Scott Seeley
Vice President, Compliance & Corporate Secretary

cc: Alan Dye, Hogan Lovells
Myra K Young Roth IRA
Andrew Behar, As You Sow

Enclosures

Exhibit D

Second Proponent Letter

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

February 9, 2022
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Nextera Energy Regarding employee recruitment, retention, and promotion data on Behalf of Myra K Young Roth IRA

Ladies and Gentlemen:

Myra K Young Roth IRA (the "Proponent") is beneficial owner of common stock of Nextera Energy (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the supplemental letter dated February 2, 2022 ("Supplemental Letter") sent to the Securities and Exchange Commission by W. Scott Seeley. A copy of this response letter is being emailed concurrently to W. Scott Seeley.

Proof of ownership and authorization

The Supplemental Letter perpetuates an implausible, hypertechnical objection to the proof of ownership and authorization, focusing on whether Myra Young was authorized to file a proposal on behalf of her own Roth IRA account.¹ The Letter states:

An IRA is a separate account or trust which is a separate entity from the individual beneficiary of the IRA and can be controlled by a person other than the beneficiary. Indeed, Myra Young may or may not be the beneficiary of the Roth IRA account or be entitled to direct its affairs. Additional evidence is necessary to provide a meaningful degree of assurance that Myra Young has authority to act on behalf of the Myra K Young Roth IRA account. Such evidence has not been provided, and therefore the purported delegation of authority from Myra Young,

¹ In our prior response we do not focus on that issue, because it seemed entirely implausible that the company would assert that Myra Young does not have authority to file on behalf of her personal Roth IRA account.

and not Myra K Young Roth IRA, to As You Sow, is insufficient to allow the Representative to submit the Proposal on behalf of the Proponent.

In fact, the proof of ownership provided by Ameritrade was clear that Myra K Young Roth IRA is a personal account for Myra Young. Note that it states Myra K Young Roth IRA in the addressing line and that, internally, the letter was addressed to the individual, Myra Young. The proof of ownership also states that “Myra Young held and has continually held” since 4/9/12. Here the Company has no reasonable basis to think that in such circumstances Myra Young was not an authorized representative of the Myra K Young Roth IRA.



12/02/2021

Myra K Young Roth Ira Td Ameritrade Clearing Custodian
9295 Yorkship Ct
Elk Grove, CA 95758

Re: Your TD Ameritrade account ending in **PII**

Dear Myra Young,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra Young held and has held continuously since 4/9/12, 150 common shares or more of NextEra Energy Inc (NEE) in an account ending in **PII** at TD Ameritrade. The value of those shares has continuously exceeded \$2,000 since before January 4, 2020 and continues to do so. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to Client Services > Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads 'William Pieper'.

William Pieper
Resource Specialist
TD Ameritrade

Substantial implementation

The Supplemental Letter also asserts that the proposal is substantially implemented by the Company's existing reports. The Supplemental Letter attempts to override the focus of the proposal on the need for recruitment, retention, and promotion data and instead claims that the Company's minimal disclosures satisfy the guidelines or essential purpose of the Proposal by providing data that investors might use to derive an assessment of the effectiveness of the Company's practices in implementing diversity programs.

While the Company publishes workforce representation data broken down by gender, race and ethnicity, it does not publish data on recruitment, retention, and promotion but instead suggests that the increases in women and minorities over time in the representation data should suffice to fulfill the Proposal. Notably, the Company's management level disclosures include a category of "minorities" which does not provide comparability against the general workforce data. By lumping "minorities" together in the management figures, while disaggregating race and ethnicity in the general workforce, it is not possible to assess the extent of black, Latinx or other minority promotion within the company. Instead the category of minorities appears to include Asian and other minorities which would dilute the clarity of the disclosures requested by the proposal. Aggregating minorities ignores the very real differences in treatment between different races and ethnicities in the workplace. Combining these data sets makes the content reported meaningless for the Proposal's essential purpose.

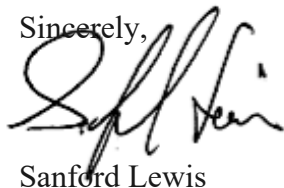
Similarly, the data regarding women in management does not provide transparency into recruitment, promotion, and retention of women from the workforce. This data might be a result of strong retention, a positive indicator, or conducting additional recruitment for management level positions after high attrition, a negative indicator.

In short, data disclosed by the Company might lead to speculative assessment by investors as to the extent of recruitment, retention, and promotion of women and racial and ethnic minorities, but it does not give investors the equivalent ability as the requested data to "assess whether company practices and culture support effective recruitment, retention, and promotion."

The Proponent stands by the distinction between this Proposal and that of *Comcast Corporation* (April 9, 2021). That proposal had a broader focus than the current proposal which made it more amenable to the company's substantial implementation argument.

The Company has not met its burden of proof under the rule to provide a basis for exclusion and therefore we stand by our prior correspondence and urge the staff to notify the company that it must include the Proposal on the Company's 2022 proxy statement.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis", written in a cursive style.

Sanford Lewis

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

February 18, 2022
Via electronic mail
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Nextera Energy Regarding employee recruitment, retention, and promotion data on Behalf of Myra K Young Roth IRA

Ladies and Gentlemen:

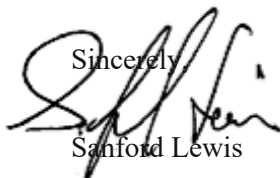
I am writing on behalf of Myra K Young Roth IRA (the "Proponent") to respond to the second supplemental no action request of Nextera Energy (the "Company") submitted to the SEC on February 11, 2022 ("Second Supplemental Letter") sent to the Securities and Exchange Commission by W. Scott Seeley. A copy of this response letter is being emailed concurrently to W. Scott Seeley.

The Second Supplemental Letter continues to assert unfounded objections to the proof of ownership and authorization. As stated clearly in the proof of ownership letter from Custodian Ameritrade, the Proponent "Myra Young held and has held continuously, since 4/19/12, 150 common shares or more of NextEra Energy Inc. in an account ending in [REDACTED] . . ." We have no additional comments on that issue.

The Second Supplemental Letter also continues to assert that the Company has provided adequate information on employee representation to substantially implement the Proposal's request for information on recruitment, retention and promotion rates. The letter notes that the Company has provided a breakdown of the category of "minority" positions in management in 2020. This single year of data does not allow assessment of the company's success in retaining and promoting diverse employees on a year-over-year basis. As we made clear in our prior correspondence, this single year of data is not a substitute for providing the requested disclosures of recruitment, retention and promotion rates.

The fact that shareholders might speculate on the effectiveness of recruitment, retention and promotion based on representation in management in a single year is not equivalent to clear disclosures that track the extent to which turnover is an impediment to retaining and promoting recruited employees.

In these and all other aspects we stand by our prior correspondence and urge the Staff to deny the no action request.

Sincerely,

Sanford Lewis