QUAY COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. 51

AUTHORIZING THE ISSUANCE AND SALE OF QUAY COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (NEW MEXICO WIND ENERGY CENTER REPOWER PROJECT) SERIES 2017 IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF $107,100,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, EQUIPPING AND INSTALLATION OF WIND ENERGY GENERATION EQUIPMENT FOR THE PURPOSE OF GENERATING ELECTRICITY AND REPLACING WORN-OUT AND OTHERWISE OBSOLETE WIND GENERATION EQUIPMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECTS; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Quay County (the "County") is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the "State") created pursuant to Sections 4-20-1 through 4-20-7 NMSA 1978; and

WHEREAS, pursuant to Sections 4-59-1 through 4-59-16, NMSA 1978 (the "Act"), the County is authorized to acquire industrial revenue projects to be located within the County, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting the use of the natural resources of the State and promoting industry and developing trade or other economic activity to secure and maintain a balanced and stable economy in the County to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, NextEra Energy Resources, LLC, a Delaware limited liability company has formed New Mexico Wind Energy Center, LLC, a Delaware limited liability company (the "Company") as its indirect, wholly-owned subsidiary; and

WHEREAS, the Company has presented to the Board of County Commissioners (the "Commission") of Quay County, New Mexico a proposal whereby the County would issue its Taxable Industrial Revenue Bonds (New Mexico Wind Energy Center Repower Project), Series 2017 (the "Bonds" or "2017 Bonds"), and acquire and install certain wind energy generation equipment, transformers and associated electrical generating equipment used to generate electricity from wind energy (the "Project Property") at the portion of the Company's New Mexico Wind Energy Center that is located in the County and outside the corporate limits of any

municipality in the County (the "Project Site"), to be used by the Company to replace worn-out or otherwise obsolete wind energy generation equipment, for the continued generation and transportation of electricity (the "Project" or "Repower Project"); and

WHEREAS, certain of the New Mexico Wind Energy Center generating facilities (the "Original Project"), including the wind energy generation equipment to be replaced pursuant to the Repower Project, were originally financed and acquired with proceeds of the County's Taxable Industrial Revenue Bonds (FPL Energy New Mexico Wind, LLC Project), Series 2002 (the "2002 Bonds"); and

WHEREAS, implementation of the Repower Project will result in the replacement of more than eighty percent (80%) by value of the wind generation equipment originally installed in the project financed with proceeds of the 2002 Bonds; and

WHEREAS, in connection with the Original Project, the Company has made payments in lieu of taxes equal to $2,250 per megawatt of generating capacity (the "Original PILOT") to the County, which Original PILOT is shared by the County and House Municipal Schools; and

WHEREAS, the Company has proposed to make a new PILOT equal to $2,700 per megawatt of generating capacity of the Repower Project, which will supersede and replace the Original PILOT for each year in which the 2017 Bonds are outstanding; and

WHEREAS, the Repower Project is expected to maintain capacity of up to 204 megawatts; and

WHEREAS, the Company has proposed that the County and House Municipal Schools will share the PILOT in the same proportions as applied to the Original PILOT; and

WHEREAS, the 2002 Bonds are expected to remain outstanding until the expiration of their term, which is January 1, 2029, and the Lease Agreement related to the 2002 Bonds is expected to remain effective through that date; and

WHEREAS, under the Company's proposal, the County would enter into an Indenture (the "Indenture") with the purchaser of the 2017 Bonds (the "Purchaser") and BOKF, NA (the "Depositary"), pursuant to which and together with this ordinance (this "Bond Ordinance"), the County would issue the 2017 Bonds; and

WHEREAS, under the Company's proposal, the County and the Company would enter into the Lease Agreement (the "Lease"), pursuant to which the Company will lease the Project Property from the County and the Company will make payments sufficient to pay the principal of and interest on the 2017 Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease and this Bond Ordinance; and

municipality in the County (the "Project Site"), to be used by the Company to replace worn-out or otherwise obsolete wind energy generation equipment, for the continued generation and transportation of electricity (the "Project" or "Repower Project"); and

WHEREAS, certain of the New Mexico Wind Energy Center generating facilities (the "Original Project"), including the wind energy generation equipment to be replaced pursuant to the Repower Project, were originally financed and acquired with proceeds of the County's Taxable Industrial Revenue Bonds (FPL Energy New Mexico Wind, LLC Project), Series 2002 (the "2002 Bonds"); and

WHEREAS, implementation of the Repower Project will result in the replacement of more than eighty percent (80%) by value of the wind generation equipment originally installed in the project financed with proceeds of the 2002 Bonds; and

WHEREAS, in connection with the Original Project, the Company has made payments in lieu of taxes equal to $2,250 per megawatt of generating capacity (the "Original PILOT") to the County, which Original PILOT is shared by the County and House Municipal Schools; and

WHEREAS, the Company has proposed to make a new PILOT equal to $2,700 per megawatt of generating capacity of the Repower Project, which will supersede and replace the Original PILOT for each year in which the 2017 Bonds are outstanding; and

WHEREAS, the Repower Project is expected to maintain capacity of up to 204 megawatts; and

WHEREAS, the Company has proposed that the County and House Municipal Schools will share the PILOT in the same proportions as applied to the Original PILOT; and

WHEREAS, the 2002 Bonds are expected to remain outstanding until the expiration of their term, which is January 1, 2029, and the Lease Agreement related to the 2002 Bonds is expected to remain effective through that date; and

WHEREAS, under the Company's proposal, the County would enter into an Indenture (the "Indenture") with the purchaser of the 2017 Bonds (the "Purchaser") and BOKF, NA (the "Depositary"), pursuant to which and together with this ordinance (this "Bond Ordinance"), the County would issue the 2017 Bonds; and

WHEREAS, under the Company's proposal, the County and the Company would enter into the Lease Agreement (the "Lease"), pursuant to which the Company will lease the Project Property from the County and the Company will make payments sufficient to pay the principal of and interest on the 2017 Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease and this Bond Ordinance; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the Bond Documents (as defined below) and to issue, execute and deliver the 2017 Bonds pursuant to the Act and this Bond Ordinance; and

WHEREAS, the 2017 Bonds in a principal amount not to exceed $107,100,000 will be issued, sold and delivered by the County in a private sale to the Purchaser pursuant to the bond purchase agreement to be dated as of the initial date of delivery of the Bonds among the County, the Purchaser and the Company (the "Bond Purchase Agreement"); and

WHEREAS, the proceeds of the 2017 Bonds shall be applied to pay the costs of acquiring and installing the Project Property and to pay certain costs associated with the issuance and sale of the 2017 Bonds; and

WHEREAS, the Commission is aware that both the 2017 Bonds and the 2002 Bonds are expected to be outstanding until January 1, 2029 and that, thereafter, the 2017 Bonds and the Lease are expected to be outstanding until November, 2047; and

WHEREAS, the Commission has determined that it is in the best interest of the County to issue the 2017 Bonds and to execute and deliver the Bond Documents and other documents related thereto; and

WHEREAS, the County will enter into the following documents in connection with the issuance of the 2017 Bonds:

1. The Lease
2. The Indenture
3. The Bond Purchase Agreement

(collectively referred to in this Bond Ordinance as the "Bond Documents"); and

WHEREAS, the County is authorized to issue the 2017 Bonds under the Act and after having considered the Company's proposal, has concluded that it is desirable at this time to authorize the issuance of the 2017 Bonds to finance the Repower Project and that the County's issuance of the 2017 Bonds will constitute and be a valid public purpose; and

WHEREAS, this Commission has been advised by Bond Counsel that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this transaction inasmuch as the 2017 Bonds are being sold in a private sale to the Purchaser without participation of an underwriter; and

WHEREAS, there has been published in the *Quay County Sun*, a newspaper of general circulation in the County, public notice of the Commission's intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose,

location and size of the Repower Project and the amount of the 2017 Bonds to be issued to finance the Repower Project, which notice was published at least fourteen days prior to final action upon this Bond Ordinance; and

WHEREAS, the County, the Company and the House Municipal Schools either have negotiated and agreed, or will negotiate and agree, upon the PILOT to be provided to the school district pursuant to Section 4-59-4(A)(2), NMSA 1978.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF QUAY COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Commission and the officials of the County directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

A. General. The Commission hereby declares that it has considered all relevant information presented to it relating to the Bonds and the Project and hereby finds and determines that the issuance of the Bonds pursuant to this Bond Ordinance to provide funds for the acquisition and installation of the Project Property is necessary and advisable and in the interest of and will promote the use of the natural resources of the State, industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

(1) The Bonds will be issued for the purpose of financing the acquisition and installation of the Project.

(2) The aggregate face amount of obligations to be issued with respect to financing the Project will not collectively exceed $107,100,000.

(3) The developer of the Project is the Company.

(4) The Project Site is located within the County and outside the corporate limits of any municipality located in the County.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bonds in a principal amount not to exceed $107,100,000 and the use of the proceeds of the Bonds to finance the cost of the Project including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Bonds at par at a purchase price not to exceed $107,100,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the Indenture, (ii) be payable as to principal and interest and subject to redemption in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) be issued in a principal amount not to collectively exceed $107,100,000, bearing interest at the rate and maturing on the date set forth in the Indenture.

C. Execution. The Bonds shall be signed by the presiding officer of the Board of County Commissioners of the County.

D. Interest Rate. The interest rate on the Bonds shall not exceed 5% per annum.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The Bond Documents in the forms presented to the Commission are hereby approved. The Chair of the Board of County Commissioners of the County is authorized to approve the form, terms and provisions of the Bond Documents on behalf of the Commission, provided that such form, terms and provisions are consistent with this Bond Ordinance, and to execute and deliver in the name and on behalf of the County, and the County Clerk or Deputy County Clerk is hereby authorized to attest, as necessary, the Bond Documents. The Chair and the County Clerk is further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents. The Chair, the County Manager and other officers of the County shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and to carry out related transactions as contemplated by this Ordinance and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bonds.

Section 5. DELIVERY OF BONDS. Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Bonds, the Bonds shall be executed, authenticated and delivered to the Purchaser. The Bonds shall not be valid for any purpose until the Bonds have been properly authenticated as set forth in the Indenture.

Section 6. FUNDS AND ACCOUNTS. There is established in the Indenture, and on and after the date on which the Bonds are issued there shall be maintained, the funds and accounts as set forth in the Indenture. Other funds and accounts may be established as are necessary under the Indenture.

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest on the Bonds, assuming issuance of the Bonds as of December 1, 2017, in the maximum aggregate principal amount of $107,100,000 and bearing a maximum interest rate of 5.00%, is as follows:

Year	Total Debt Service	Principal	Interest
2018	$5,355,000	-0-	$5,355,000
2019	5,355,000	-0-	5,355,000
2020	5,355,000	-0-	5,355,000
2021	5,355,000	-0-	5,355,000
2022	5,355,000	-0-	5,355,000
2023	5,355,000	-0-	5,355,000
2024	5,355,000	-0-	5,355,000
2025	5,355,000	-0-	5,355,000
2026	5,355,000	-0-	5,355,000
2027	5,355,000	-0-	5,355,000
2028	5,355,000	-0-	5,355,000
2029	5,355,000	-0-	5,355,000
2030	5,355,000	-0-	5,355,000
2031	5,355,000	-0-	5,355,000
2032	5,355,000	-0-	5,355,000
2033	5,355,000	-0-	5,355,000
2034	5,355,000	-0-	5,355,000
2035	5,355,000	-0-	5,355,000
2036	5,355,000	-0-	5,355,000
2037	5,355,000	-0-	5,355,000
2038	5,355,000	-0-	5,355,000
2039	5,355,000	-0-	5,355,000
2040	5,355,000	-0-	5,355,000
2041	5,355,000	-0-	5,355,000
2042	5,355,000	-0-	5,355,000
2043	5,355,000	-0-	5,355,000
2044	5,355,000	-0-	5,355,000
2045	5,355,000	-0-	5,355,000
2046	5,355,000	-0-	5,355,000
2047	112,455,000	$107,100,000	5,355,000

B. The Bonds will bear interest at the rate of five percent per annum, or such other lower rate as is set forth in the Indenture.

C. The Bonds may be redeemed at any time without premium.

D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

E. The Lease shall require that the Company maintain the Project Property in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the Project Property as provided in the Lease.

F. The Lease shall require the Company to make lease payments in an amount sufficient to pay the principal of and interest on the Bonds as principal and interest become due and to pay all Related Costs (as defined in the Lease).

G. The Lease shall include a provision that the Company pay the County payments in lieu of taxes ("PILOT Payments") for so long as the Bonds are outstanding. The amount of the PILOT Payments shall be acceptable to the Commission and the Board of Education of the House Municipal School District. Notwithstanding Section 4 of this Bond Ordinance, the Commission may, by resolution, determine or adjust the PILOT Payments provisions of the Lease prior to the issuance of the Bonds.

Section 8. LIMITED OBLIGATIONS. The Bonds shall be special limited obligations of the County, payable solely from the Base Rent (as defined in the Lease) paid by the Company to the County as described in the Indenture and any other property or interest of the County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in this Bond Ordinance or in the Bond Documents or any other instruments shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in this Bond Ordinance, the Bond Documents, the Bonds or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor of the Project Property.

Section 9. APPROVAL OF INDEMNIFICATION. The Commission specifically requires that the Lease contain provisions relating to indemnification which provide that the Company shall indemnify and hold harmless the County and its Board of County Commissioners, officials, employees and agents against liability to the Company, or to any third

parties, that may be asserted against the County or its Board of County Commissioners, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bonds and arising from the condition of the Project Property or the acquisition, installation and operation of the Project Property by the Company, except to the extent Section 56-7-1, NMSA 1978 may preclude such indemnity, and except claims for any loss or damage to the extent caused by the gross negligence or willful misconduct of the County or its Board of County Commissioners, or any official, employee or agent of the County.

Section 10. BOND ORDINANCE IRREPEALABLE. After the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds, including interest, are fully paid, canceled and discharged in accordance with the Indenture.

Section 11. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 12. SEVERABILITY. If any section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 13. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the presiding officer of the Board of Commissioners, and by the signature of the County Clerk or any Deputy County Clerk, and shall be recorded in the Ordinance book of the County, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the County.

Done this 9th day of October, 2017.

BOARD OF COUNTY COMMISSIONERS,
QUAY COUNTY, NEW MEXICO

By: _____
Franklin McCasland, Chairman

By: _____
Sue Dowell, Member

By: _____
Mike Cherry, Member

(SEAL)

ATTEST:

By: _____
Ellen White, County Clerk