

**Comments of the California Wind Energy Association and CalRENEW-1 LLC
On FERC Order 764 Market Changes;
CAISO October 21, 2013 Draft Tariff Language**

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Introduction and Summary

The California Wind Energy Association (“CalWEA”) and CalRENEW-1 LLC (“CalRENEW”) appreciate the California Independent System Operator Corporation’s (“CAISO”) consideration of these comments on the October 21, 2013 draft tariff language to implement the FERC Order 764 market changes. Through these comments CalWEA and CalRENEW seek to ensure that the tariff language properly implements the protective measures adopted by the CAISO Governing Board for certain existing Participating Intermittent Resources that would otherwise suffer dislocation as a result of the FERC Order 764 market changes. CalWEA and CalRENEW are concerned that, without the modifications discussed below, some generators that the Governing Board intended to be covered by protective measures will be ineligible for them, and some of those that are eligible will find the protective measures largely inadequate.

As CalWEA has stated numerous times, its hope is that protective measures will not be needed by generators that have existing long-term contracts with the investor-owned utilities. CalWEA members and CalRENEW have reached out to the utilities and proposed reasonable contract amendments designed to address these issues. To date, neither CalWEA’s members nor CalRENEW have even received a written proposal from the utilities. CalWEA and CalRENEW are convinced, and the CAISO Governing Board apparently agreed, that the best way to ensure that generators are able to work things out with their utility counterparties is for CAISO to adopt reasonable protective measures that will help to level the playing field in the intended negotiations.

In this light, and as discussed in more detail below, the following six changes should be made to the draft tariff language:

1. Generators should not be required to present an affidavit from their utility counterparty to be eligible for protective measures, as this requirement is unduly burdensome.
2. The eligibility criterion designed to address generators that are contractually unable to protect themselves from increased risks in the new market should properly reflect the Governing Board's intention for this class of generators.
3. The tariff should state correctly which of the eligibility criteria must be met for a generator to be eligible for protective measures.
4. The tariff should indicate that the duration of the protective measures will be evaluated in the Spring of 2015 and may be extended, as required by the CAISO Governing Board.
5. The tariff should state clearly that certified Participating Intermittent Resources may choose, after notifying CAISO, to utilize their own forecasts for scheduling purposes for any period of time, and that at all times such resources are scheduling their generation as Participating Intermittent Resources.
6. The protective measures should be revised for generators that are required to utilize Inter-SC Trades under their pre-existing contracts to settle their generation schedules with CAISO based upon the same prices used by CAISO to settle the Inter-SC Trades.

Discussion

1. Generators should not be required to present an affidavit from their utility counterparty to be eligible for protective measures

Section 4.8.1 requires generators seeking protective measures to present an affidavit signed by representatives of the generator and the utility counterparty attesting to the generator's eligibility for protective measures. It is perfectly reasonable for CAISO to expect an affidavit from the generator certifying, under penalty of perjury, that it meets the enumerated eligibility criteria. It is wholly unreasonable, however, to require that the generator obtain the signature of the utility counterparty on the affidavit as well.

As CAISO is undoubtedly aware, the utilities have opposed CAISO's efforts to extend protective measures to generators at every turn. Neither CAISO nor a generator can force a utility to sign an affidavit. Requiring that a generator obtain the utility counterparty's signature to an affidavit completely empowers the utility to deny a generator the right to receive protective measures; the utility can simply refuse to sign the affidavit. The only circumstance under which a generator with a utility counterparty will need protective measures is when the generator and the utility are unable to agree upon a contract amendment to address the underlying commercial issues posed by the market transition. It is completely unrealistic to expect that the utility will cooperate with the generator in its attempt to seek protective measures when the utility is in the midst of negotiations, and possibly dispute resolution, with a generator.

In addition, protective measures are available to Qualifying Facility generators greater than 20 MW upon expiration of their existing standard offer contracts. It makes no sense to require these generators to obtain an affidavit from their current utility counterparty attesting to the fact that the generator is a QF greater than 20 MW that has a contract that will expire at some point. Surely, an affidavit from the QF itself should be sufficient for these purposes.

It is worth noting that none of the prior materials presented to stakeholders or approved by the CAISO Governing Board contemplated that the utility would be required to sign the eligibility affidavit. On the October 22, 2013, stakeholder conference call, CAISO staff explained that they proposed unilaterally to make this change to the protective measures program because the CAISO Governing Board adopted a new program feature at its September 12, 2013 meeting, making generators that are contractually prohibited from protecting themselves from increased risks in the new market eligible for protective measures. This new eligibility criterion is reflected in item (b) under Section 4.8.1.

CalWEA and CalRENEW agree that certain program changes may be warranted as a result of this additional eligibility criterion; in fact, CalWEA and CalRENEW propose one such change below. However, for the reasons discussed above, requiring the utility counterparty to sign the eligibility affidavit is not a reasonable requirement. It will be unduly burdensome for a generator that should be eligible for protective measures and it is not necessary. An affidavit from the generator alone, made under penalty of perjury, should be sufficient for CAISO's purposes.

2. The eligibility criterion designed to address generators that are contractually unable to protect themselves from increased risks in the new market should properly reflect the Governing Board's intention for this class of generators.

As discussed above, eligibility criterion (b) was adopted by the CAISO Governing Board at its September 12, 2013, meeting. It is designed to extend protective measures to those generators that, by contract, are constrained in their ability to utilize the new market mechanisms to mitigate the increased risk of imbalance charges that follows from the end of the monthly netting feature of PIRP. When discussing the contractual issues at the Governing Board meeting, CalWEA counsel repeatedly made reference to two primary contractual concerns: (i) certain contracts contain provisions that prevent the generators from reducing their output in response to economic price signals, exposing generators to imbalance risk when their output will deviate from scheduled amounts, especially during times of negative prices, and (ii) these same contracts also require generators to utilize Inter-SC Trades, which must be submitted 75 minutes before real time and, thus, prevent the generators from taking advantage of the closer to real time scheduling window that was designed to mitigate imbalance risk. These concerns were translated obliquely by CAISO counsel in the motion on protective measures adopted by the Governing Board as extending protective measures "to include resources which are contractually prohibited from responding to ISO dispatch signals."

This translation of the concerns discussed was a bit odd, as responding to CAISO dispatch signals, if these words are given their literal meaning, was never really an issue related to protective measures for those with contractual limitations. In fact, few, if any, power purchase agreements address a generator's ability to respond to CAISO dispatch signals directly.

Nevertheless, it was expected that the translation was an encapsulation of the issue addressed by the Governing Board to be implemented fully in tariff language.

Unfortunately, the draft tariff language requires that the contract specify (which is more restrictive language than that used in the motion) that the generator is prohibited from responding to CAISO dispatch signals. By simply quoting from the motion, the tariff language fails completely to provide the protection intended by the Governing Board at its meeting. Again, the Governing Board was not concerned about contracts that expressly preclude generators from responding to CAISO dispatch signals, in the literal sense of term. Rather, the concern included restrictions on generators' ability to reduce generation in response to market price signals, or otherwise utilize the new market mechanisms, to mitigate their exposure to deviation charges. If criterion (b) is not given its intended meaning, it is likely that no generator will be able to employ it, as probably no contract will specify that a generator may not respond to a CAISO dispatch signal.

In order to address this concern, CalWEA and CalRENEW propose that criterion (b) be modified to apply to generators whose contracts (i) prohibit them from curtailing their output (not including times when they are ordered to do so by CAISO or a PTO) or (ii) require the use of Inter-SC Trades. The first prong is very similar to the requirement in criterion (a), which refers to a physical inability to "curtail output" but acknowledges that all contracts will allow a generator to reduce its output if it is required to do so by CAISO or under its interconnection agreement with a PTO. The second prong reflects the concern expressed above concerning the required use of Inter-SC Trades. Note that in the pre-Order 764 Market environment, as we have today, using Inter-SC Trades is an appropriate and "no-risk" mechanism for the generator; the problem with Inter-SC Trades only comes about as a result of the changes being made in the Order 764 Market. That is why protective measures are appropriate for generators that elected to use Inter-SC Trades at a time when they were reasonable and appropriate, but will be such no longer.

3. The tariff should state correctly which of the eligibility criteria must be met for a generator to be eligible for protective measures.

Under Section 4.8.1, there are four individual eligibility criteria for protective measures, denoted as items (a) through (d). In order to be eligible for protective measures, a generator must either meet one, but not both, of the criteria in items (a) or (b), and the criterion in item (d), or the generator must, as discussed below, meet items (a), (c) and (d). In other words, in no case is a generator required to meet all of the criteria to be eligible.

Unfortunately, the third sentence of Section 4.8.1 states that the generator's eligibility affidavit must certify that the generator meets "all criteria items a. through d. below". This statement is plainly incorrect and should be modified. During the October 22, 2013, stakeholder conference call, CAISO counsel acknowledged this error and indicated that it will be fixed.

In addition, criterion (c) states that Qualifying Facilities greater than 20 MW are eligible for protective measures if they "meet the remaining criteria specified in this Section 4.8.1." This language could be read to require that Qualifying Facility generators must meet each of the

criteria in items (a), (b) and (d) in addition to criterion (c). But, criterion (b), which involves contractual restrictions on a generator's ability to protect itself in the new market, was never intended to apply to Qualifying Facilities that are operating under legacy standard offer contracts. In fact, it has always been the upcoming absence of a contract (i.e., after the legacy contract expires), coupled with old technology, that has qualified these resources for protective measures. As such, criterion (c) should be modified to make clear that Qualifying Facilities generators greater than 20 MW operating under legacy contracts need only meet eligibility criteria (a) and (d) in addition to criterion (c).

Finally, it is also important to clarify that criterion (c) only applies to Qualifying Facilities operating under legacy contracts. It is entirely possible for a relatively new facility to be a Qualifying Facility and to operate under a contractual restriction qualifying it for protective measures under criterion (b) but not using old technology under criterion (a). This clarification could easily be made by referring to "Regulatory Must Take Generator" rather than "Qualifying Facility" in criterion (c).¹

4. The tariff should indicate that the duration of the protective measures will be evaluated in the Spring of 2015 and may be extended, as required by the CAISO Governing Board.

One of CalWEA's and CalRENEW's primary concerns with CAISO's protective measures throughout this process has been the proposed three year term thereof. With this short duration, the utilities will be able to just wait out the three years and then subject the generators to the increased risks that the protective measures were designed to address. This would give the utilities undue leverage in any contract negotiations designed to revise existing contracts to address the underlying issues.

When CalWEA presented this concern to the CAISO Governing Board at its September 12, 2013, meeting, the Governing Board declined to extend the term of the protective measures at that time, but did require that the term of the protective measures be re-evaluated and potentially extended in the Spring of 2015. With an explicit re-evaluation on the calendar, if the utilities do not negotiate in good faith with affected generators, they run the risk that CAISO will extend the protective measures. This evaluation requirement and extension option was duly noted in the resolution on Motion Number 2013-09-G2. Because of its importance, the tariff language should be modified to indicate that CAISO will re-evaluate, and potentially extend, the duration of the Protective Measures in the Spring of 2015 as required by the CAISO Governing Board at its September 12, 2013 meeting.

¹ Not to make things too complicated, but this and the prior clarification could also be addressed by specifying that Qualifying Facilities greater than 20 MW are eligible if they meet either criterion (a) or (b) in addition to criteria (c) and (d).

5. The tariff should state clearly that certified Participating Intermittent Resources may choose, after notifying CAISO, to utilize their own forecasts for scheduling purposes for any period of time, and that at all times such resources are scheduling their generation as Participating Intermittent Resources.

Section 4.8.2 of the draft tariff establishes that Eligible Intermittent Resources may submit schedules based upon either the forecast produced by CAISO's independent forecasting expert or the generator's own forecast. By referring to Eligible Intermittent Resources, however, the tariff language creates a potential ambiguity as to whether a generator using its own forecast remains a Participating Intermittent Resource and is scheduling as such. Because most, if not all, existing contracts require intermittent resources to be Participating Intermittent Resources and to submit schedules as Participating Intermittent Resources, the tariff should be clarified to specify that an Eligible Intermittent Resource that goes through the required certification process to become a Participating Intermittent Resource does not lose its Participating Intermittent Resource status because it uses, from time to time and upon prior notice to CAISO, its own forecast for scheduling purposes. This is entirely consistent with how the market works today and there is no reason not to be explicit about this in the future. Similarly, just because a Participating Intermittent Resource is using its own forecast for scheduling purposes, it does not follow that the resource is no longer scheduling as a Participating Intermittent Resource. This too should be clarified. Failure to make these clarifications could result in the preclusion of Eligible Intermittent Resources from using their own forecasts, as they could be accused of violating contract requirements to remain and schedule as Participating Intermittent Resources.

6. The protective measures should be revised for generators that are required to utilize Inter-SC Trades under their pre-existing contracts.

Last, but certainly not least, CAISO should supplement the protective measures described in Section 11.12.1 of the draft tariff for generators that must use Inter-SC Trades under their existing contracts. In particular, Section 11.12.1 should provide that the price to be used to settle scheduled generation in step (1) of the protective measure settlement process for those generators that must use Inter-SC Trades is the simple average of the Fifteen Minute Market prices, as opposed to the simple average of five minute Real Time Market prices. The reason for this is simple.

The Inter-SC Trade was developed for the CAISO market as a convenient way to allow buyers and sellers to implement bilateral contracts under which each party is represented by its own Scheduling Coordinator. In CAISO's MRTU markets, generators receive payments from CAISO for the amount that they schedule for delivery into the CAISO market and buyers pay CAISO for the amount that they schedule for consumption from the market.² As a result, absent some special arrangement, a generator that agrees by contract to sell power to a buyer will receive a payment from the buyer under the contract and a payment from CAISO for the amount scheduled with CAISO. Conversely, the buyer will pay the generator under the contract and CAISO under the MRTU market rules. This situation in which the seller gets two revenue

² Payments actually flow to the Scheduling Coordinators for these entities, but for simplicity it is enough to refer directly to the principals.

streams and the buyer pays twice would be untenable for obvious reasons. Thus, the Inter-SC Trade was developed.

Under an Inter-SC Trade, the generator must pay CAISO for the volume of the trade at a certain price and the buyer is paid the same amount by CAISO. In its current form, the price used to settle the Inter-SC Trade is the same as the price used to settle the generator's scheduled generation. Thus, the generator's Inter-SC Trade payment obligation offsets the revenues that it will receive from CAISO for its scheduled generation, assuming that the volume specified in the Inter-SC Trade is the same as the volume specified in the generator's generation schedule. The net result is that, after the combined Inter-SC Trade and bilateral contract transaction, the generator will receive only the contract payment. The same happens to the buyer, only reversed. Thus far everyone is happy.

However, if there is a mismatch between either the volumes or the prices used in the Inter-SC Trade and the volumes or prices in the CAISO generation schedule settlement, the payments made by the generator to CAISO under the Inter-SC Trade will not properly offset the payments that it will receive from CAISO for its scheduled amounts, and someone will not be happy. This, unfortunately, is the situation under the proposed protective measures. Under the Order 764 Market rules, Inter-SC Trades will utilize either Day Ahead Market prices or the new Fifteen Minute Market prices. Schedules for intermittent resources with protective measures, however, will continue to be settled at the five minute Real Time Market prices. For generators that must use Inter-SC Trades, this will create a mismatch between the Inter-SC Trade payment to CAISO (using the Fifteen Minute Market prices) and the payment from CAISO for scheduled generation (using the five minute Real Time Market prices).

Thus, because the overall goal of CAISO's protective measures is to keep the generator in the same position that it was in before implementation of the Order 764 Market rules, the solution is simply to settle the CAISO payments for generators that must use Inter-SC Trades at the Fifteen Minute Market prices and not at the five minute Real Time Market prices. This will re-establish the basic premise of the Inter-SC Trade – the Inter-SC Trade charge should offset the forward generation schedule revenue – and preserve the desired result in which the generator receives a net revenue stream of only contract payments for its bilateral contract.

At the October 22, 2013 stakeholder conference call, CalWEA made this proposal and two concerns were presented by CAISO counsel. First, CAISO counsel indicated that the CAISO Governing Board had approved the protective measures using the five minute Real Time Market prices, not the Fifteen Minute Market prices, and CAISO staff did not intend to go back to the CAISO Governing Board for approval to change this before filing the tariffs at the end of November. CalWEA and CalRENEW agree that the CAISO Governing Board approved the use of the Real Time Market prices in the protective measures. However, much as CAISO counsel believes that the Governing Board's adoption of a new eligibility criterion for generators with contractual restrictions entitles CAISO staff to change the eligibility affidavit requirement, as discussed above, CalWEA and CalRENEW believe that adoption of this new eligibility criterion (which was meant to apply, in part, to generators that must use Inter-SC Trades as discussed above) allows CAISO staff to change the protective measure price component for generators that must use Inter-SC Trades. And, if CAISO staff does not want to diverge from using five minute

Real Time Prices in Step (1) of the protective measures resettlement process, this issue could be addressed by leaving that step as intended and simply adding a new third step to the protective measures that would true up the Inter-SC Trade for the affected generators using five minute Real Time Market prices. Finally, if CAISO staff believes that both of these approaches would need to go before the Governing Board, this issue is important enough to merit a requested change at the next Governing Board meeting.

Second, CAISO counsel stated that CalWEA had already proposed to use Fifteen Minute Market prices in the protective measures and this was rejected by the Governing Board. This statement is not entirely correct, as it overlooks a key distinction. CalWEA originally proposed to apply the Fifteen Minute Market prices in the protective measures to all generators obtaining protective measures, whether or not they use Inter-SC Trades. Seeing a potential windfall for generators that would not use Inter-SC Trades and would, thus, keep their CAISO market revenues, CAISO staff opposed this proposal and it was not adopted. Now, with the benefit of seeing how the protective measures fit into the rest of the Order 764 Market changes in a single tariff filing, one can appreciate the need to change the protective measures to use the Fifteen Minute Market prices for those generators that must use Inter-SC Trades as a result of their pre-existing contracts. These generators will not receive any windfalls as a result of this change, since the very purpose of the Inter-SC Trade is to cancel out the generator's CAISO payments and revenues. Thus, CalWEA's and CalRENEW's current proposal, limited to only those generators that must use Inter-SC Trades, is different from its prior proposal and, given the protective measures goal of preserving pre-Order 764 Market outcomes for eligible generators, eminently reasonable.