

Comments of the California Wind Energy Association
on the Extension of PIRP Protective Measures

March 2, 2017

These comments are being submitted on behalf of the California Wind Energy Association (“CalWEA”). CalWEA was actively engaged in the development of the initial Participating Intermittent Resource Program (“PIRP”) and, more recently, the PIRP Protective Measures. CalWEA represents several wind-powered electricity generators that currently receive PIRP Protective Measures. CalWEA appreciates the opportunity to submit these comments on whether PIRP Protective Measures should be extended, and if so for whom and for how long. As discussed below, CalWEA recommends that PIRP Protective Measures be extended to those resources that both desire them and continue to meet the original eligibility requirements until the respective resource’s underlying contract is either amended or expires.

Background

1. PIRP and generators’ as Scheduling Coordinator

PIRP was developed through a cooperative effort of the California Independent System Operator (“CAISO”), CalWEA and other parties to enable intermittent resources to deliver energy over the CAISO-controlled grid without undue exposure to imbalance charges and related costs. Recognizing that intermittent resources cannot be expected to predict with precision their output, particularly several hours ahead of the operating hour, PIRP netted positive and negative deviations over each month and charged intermittent generators a monthly deviation charge based upon the net monthly deviation and a weighted average imbalance price for the month. PIRP also required the generators to schedule with CAISO using a forecast of output developed by CAISO’s third party consultant.

PIRP was a very successful program and facilitated the development of many wind and solar resources under California’s Renewables Portfolio Standard (“RPS”) program. PIRP was especially important in the early years of the RPS program, because the investor-owned utilities’ (“IOUs”) pro forma contracts required the intermittent generators to serve as Scheduling Coordinator and bear the costs of imbalances. In some cases, the contracts would require the generator to bear the cost of negative deviations and forego any possible upside associated with positive deviations. The generators’ willingness and ability to take on this role and bear these risks was premised upon the applicability of PIRP’s monthly imbalance netting feature.

As one would expect, various other aspects of the pro forma RPS contracts were structured around CAISO’s then-existing market design, including the use of Inter-SC Trades and the timelines and requirements for submitting Schedules to CAISO. Importantly, in the early

days of the RPS program, parties did not expressly contemplate the potential need for economic curtailment of intermittent resources to respond to CAISO market price signals; intermittent generators were viewed as must-take resources that would have to run whenever their resource was available and to the full extent of their generation potential.

2. Order 764 enhancements and adoption of PIRP Protective Measures

As part of its implementation of Federal Energy Regulatory Commission Order 764, CAISO reduced the time interval between the Schedule and the operating hour, and established a new Fifteen Minute Market. Both of these market enhancements served to reduce, in theory, intermittent generators' exposure to imbalance costs. As such, CAISO also proposed to eliminate the monthly netting feature of PIRP, largely because it diluted intermittent generators' sensitivity to prevailing market signals. But CAISO's market enhancements only could work if the generators were not somehow precluded from employing them.

CalWEA supported CAISO's Order 764 market structure enhancements, but pointed out that certain existing intermittent resources that relied on the PIRP monthly netting feature would not be able to take advantage of the new market mechanisms to mitigate their exposure to imbalance costs. Some relatively older resources did not have the physical ability to respond to market price signals and others were contractually prohibited from so doing. As a result, CalWEA advocated that CAISO continue to apply the monthly netting features of PIRP (i.e., PIRP Protective Measures) to those resources that were both at risk for CAISO imbalance costs and unable to mitigate these costs effectively as a result of physical or contractual limitations.

CalWEA pointed out that the IOUs had revised their view regarding their pro forma contracts as to which contract party should be the Scheduling Coordinator and absorb imbalance exposure under RPS contracts. Under their more recent pro forma RPS contracts, the IOUs took on the Scheduling Coordinator role and, absent generator failure to comply with specific data and communications requirements, agreed to manage imbalances. As such, CalWEA supported the concept that the extension of PIRP Protective Measures could be accompanied by an obligation for generators to try to modernize their facilities and/or their contracts so as to avoid the need for the PIRP Protective Measures.

CAISO staff proposed to CAISO's Governing Board that a firm three-year transition period be established for qualifying resources, and that after these three years no PIRP Protective Measures would apply. CalWEA opposed this firm three-year deadline, largely on the grounds that the generators do not have the unilateral right to change their contracts and that establishing a firm deadline would unduly enhance the bargaining power of their IOU counterparties, effectively raising a Sword of Damocles over the head of the generators that would drop after three years. In the end, CAISO's Governing Board adopted a compromise between CAISO staff's firm-deadline proposal and CalWEA's proposal to extend PIRP Protective Measures until the underlying contracts expired. CAISO adopted a three-year transition period, but agreed that it would evaluate later whether PIRP Protective Measures should be extended beyond the original three-year period.

3. Successful implementation of PIRP Protective Measures

As with the original implementation of PIRP, PIRP Protective Measures has been a successful program. According to CAISO staff, only nine resources have employed PIRP Protective Measures. One such resource has successfully amended its RPS contract, the amended contract has been approved by the California Public Utilities Commission (“CPUC”) and the facility no longer needs (or qualifies for) PIRP Protective Measures. Of the remaining eight facilities, several are in very advanced stages of negotiations with their counterparty and can be expected to complete their negotiations prior to the expiration of PIRP Protective Measures on May 1, 2017 (although, as discussed below, it is extremely unlikely that the amended contracts will be implemented by this date because of the need for CPUC approval). In addition, several projects have made technology changes that better enable them to respond to CAISO market price signals. In sum, generators have responded while under PIRP Protective Measures and have worked in good faith to address the obstacles to their full participation in CAISO markets.

In addition, application of PIRP Protective Measures has served a critical function. In several cases, application of the new scheduling time-frames and forecasts for intermittent resources that accompanied the Order 764 market enhancements would have disrupted various contractual provisions related to Inter-SC Trades, Scheduling and settlements. Major contract disputes were brewing between generators and their counterparties, and only the refinement and application of PIRP Protective Measures served to resolve the problems. Without the PIRP Protective Measures, there would have been considerable market disruption for certain intermittent resources.

Discussion

1. PIRP Protective Measures should be extended

As CalWEA anticipated, notwithstanding their good faith efforts, not all of the generators that need PIRP Protective Measures have been able to address the physical or contractual limitations that precluded them from utilizing the Order 764 market mechanisms and mitigating their exposure to imbalance risk. As mentioned above, of the nine resources that obtained PIRP Protective Measures, only one has been able to fully avoid the need for PIRP Protective Measures by amending its contract and obtaining CPUC approval of the amended contract. While several other generators are close to completing similar contract amendments, there is virtually no chance that these amendments will be approved by the CPUC and implemented prior to May 1, 2017. Still other generators are working in good faith to amend their contracts, although they do not expect to finish by May 1. And at least one, notwithstanding its attempts, is not likely to be able to amend its contract because its buyer has simply refused to renegotiate the contract.

Under these circumstances, CAISO should extend the PIRP Protective Measures. As explained above, the existence of the monthly netting feature of PIRP and other features of PIRP that are carried forward in the PIRP Protective Measures are essential underpinnings of several

pre-existing contracts between generators and their utility counter-parties. Changing the rules of the game in the middle would cause undue harm to these generators and threaten their continued existence. It would also cause more general market disruption, as participants will be less secure in the stability of CAISO market features and their ability to rely on CAISO market mechanisms in making long-term commitments. Protecting existing resources from undue harm resulting from CAISO's Order 764 market changes was the basic premise of the PIRP Protective Measures and it remains a valid consideration today.

CalWEA acknowledges that there is a cost associated with extending the PIRP Protective Measures. CAISO has quantified this at roughly \$5,600,000 over the past 32 months. This roughly \$2,000,000 annual cost, when absorbed over the entire CAISO market via charges to net-negative deviations, is clearly justified by the reaffirmation of market stability and preservation of existing renewable resources that relied on the then-existing market institutions when making long-term contractual commitments. And, of course, CAISO should expect that the cost associated with PIRP Protective Measures will decline because (i) one resource already amended its contract and no longer needs, or is eligible for, PIRP Protective Measures, (ii) several additional resources are poised to amend their contracts and end their reliance on PIRP Protective Measures, and (iii) certain of the underlying, outdated contracts are set to expire in the near future and the generators will no longer need, or qualify for, PIRP Protective Measures. CalWEA recommends that CAISO compile and present up-to-date information about the likely future cost of PIRP Protective Measures in light of the foregoing.

2. PIRP Protective Measures should be extended for all resources that desire them and that continue to meet the original eligibility criteria

In its recent presentation to stakeholders, CAISO staff characterized those generators obtaining PIRP Protective Measures as falling within three categories. Because all of the resources obtaining PIRP Protective Measures asserted that their existing contracts allocate to them the risks associated with real-time energy settlements and deprive them of effective means to mitigate this exposure (even if some also had physical constraints), CalWEA agrees that there are three general categories of resources, although our definitions of the categories do not exactly overlap with CAISO's. With the expectation that any resource claiming both physical and contractual constraints would need to address any physical constraint as part of its contract re-negotiation process, CalWEA focuses its categories on the continued existence of contractual constraints. As discussed below, assuming that a resource still desires to obtain PIRP Protective Measures and continues to meet the original eligibility criteria, the Protective Measures should be extended beyond April 30, 2017.

The first general category of resources for whom PIRP Protective Measures should be extended are those that are nearing completion of their contract amendments, likely will complete such negotiations by May 1, 2017, but will not be able to obtain CPUC approval of the amendments in time for implementation by May 1, 2017. Simply put, it would make no sense to require these resources and their contract counterparties to undertake the difficult and disruptive task of trying to conform their existing, outdated contracts to the new market structure mechanisms when these contracts are likely to be completely replaced in a matter of a few

months. Recall that, as discussed above, in the absence of PIRP Protective Measures, there would have been significant contract disputes among at least a number of parties concerning how the now-outdated contracts would be implemented.

While one might take the position that a deadline is a deadline and extensions only serve to reward behavior that is less than diligent, this position would be completely erroneous as applied to present circumstances. One, the CAISO Governing Board understood, when it modified CAISO staff's proposal to establish a firm three-year deadline for PIRP Protective Measures, that individual generators are not in complete control of the contract amendment process and may not be able to complete all the necessary work within the initial three-year window, despite fully diligent attempts. In other words, the CAISO Governing Board rejected the notion that anything done after three years can be considered "late" or that extending the PIRP Protective Measures is somehow rewarding sluggish behavior. Two, the individual generators that fall into this category have, in fact, diligently pursued contract amendments and are nearly done. There is no reason to penalize them for circumstances that they do not fully control.

The second general category of resources for whom PIRP Protective Measures should be extended are those that are still negotiating changes to their contracts, but do not expect to complete the negotiations in the near term. These resources should be encouraged to complete their negotiations and make whatever technological changes may be necessary so as to terminate their reliance on PIRP Protective Measures as quickly as possible. However, these resources should not be penalized for having relied upon the existence of the monthly netting feature of PIRP by losing the benefit of PIRP Protective Measures after expiration of the arbitrary initial three-year time period. So long as these resources continue to pursue contract amendments and necessary technology upgrades in good faith, PIRP Protective Measures should continue to apply.

The third general category of resources for whom PIRP Protective Measures should be extended are those that attempted, but were not able, to obtain a contract amendment and do not expect to be able to do so during the term of the contracts. Like the resources in the second category, these resources should not be penalized for having relied upon the existence of the monthly netting feature of PIRP by losing the benefit of PIRP Protective Measures. Although they do not expect to be able to mitigate their exposure to real-time market settlements, so long as they have made good faith efforts to update their contracts and technology (and remain willing to do so should circumstances change), they should not have the proverbial rug pulled out from under them.

In sum, PIRP Protective Measures should be extended for all resources that desire them, so long as (i) the contracts that existed before the Order 764 market changes remain in effect, continue to subject the generators to the risks associated with real-time energy settlements and deprive them of effective means to mitigate this exposure, (ii) the generator pursues in good faith necessary technology changes and (iii) either (a) the generator continues to use good faith efforts to negotiate changes to its contract, if the counterparty is willing to engage in such negotiations, or (b) for generators whose counterparty has indicated a lack of willingness to negotiate, the

generator remains willing to engage in such negotiations should circumstances with the counterparty change.

3. PIRP Protective Measures should be extended for each eligible resource until its original contract is amended or expires

As CalWEA originally proposed, the only way to ensure that generators with pre-existing contracts are not unduly penalized by the Order 764 market changes adopted by CAISO is to provide for the potential continuation of PIRP Protective Measures until amendment or expiration of the initial contracts. Once the underlying contract is amended or expires, the resource will not be hampered by the contract terms that were entered into based upon the monthly netting features of PIRP. As such, it is appropriate to end PIRP Protective Measures upon the amendment or expiration of the underlying contract.

If an arbitrary deadline is imposed, however, the contract counterparty will effectively hold the Sword of Damocles over the head of the generator, subjecting the generator to undue prejudice in any negotiation process. This recognition, as discussed above, is what led the CAISO Governing Board to re-evaluate the three-year window originally proposed by CAISO staff. The fact that one out of nine resources already amended its contract and others are very close to completing their negotiations should provide comfort that generators are not simply coasting on the PIRP Protective Measures.

4. CAISO should consider changing the allocation of uplift costs associated with PIRP Protective Measures

CalWEA recommends that CAISO consider changing its method of allocating the costs associated with PIRP Protective Measures. Currently, these costs are allocated to market participants based on net-negative deviations. In order to better align the costs with the benefits, and to provide some inducement to the contract counterparties to engage in negotiations with generators, CalWEA believes that it might be appropriate to allocate the uplift costs associated with each generator receiving PIRP Protective Measures to the utility that is under contract with the generator.