

**Comments of the California Wind Energy Association
On FERC Order 764 Market Changes;
CAISO August 15, 2013, Intermittent Resource Protective Measures Draft Final Proposal**

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The California Wind Energy Association (“CalWEA”) appreciates the continuing efforts of California Independent System Operator Corporation (“CAISO”) staff in connection with the development of protective measures for certain intermittent facilities that will be unable to control their exposure to deviation charges utilizing the new market mechanisms being proposed in connection with the FERC Order 764 Market Changes. Unfortunately, the August 15, 2013, Intermittent Resource Protective Measures Draft Final Proposal (“Draft Final Proposal”) suffers from four critical defects that will render the proposed protective measures virtually useless.

In general, few if any facilities that will be hamstrung in the new market will be eligible for the proposed protective measures as a result of unduly restrictive eligibility requirements and, even if eligible, the proposed start and end dates for the proposed protective measures undermine their utility. As discussed in detail below, unless CAISO intends that the protective measures should be largely ineffective in serving their intended purpose, leaving impacted generators to the mercy of their contract counterparties, CAISO should make the following four changes to the Draft Final Proposal:

1. Generators whose existing long-term power purchase agreements (“PPAs”) prevent them from reducing their output should be eligible for protective measures.
2. The duration of protective measures for generators under existing long-term PPAs should be longer than three years.
3. Qualifying Facilities (“QFs”) that are 20 MW or less should not be ineligible for protective measures.
4. Protective measures for generators under expiring legacy QF PPAs should start upon the expiration of the PPAs.

Although CalWEA pointed out in prior comments a number of problems with CAISO's original Straw Proposal that have not been fully addressed by CAISO in its Draft Final Proposal (and the Draft Final Proposal adds at least one additional problem – requiring generators seeking protective measures to utilize them for three years whether they work or not), these comments focus on the four threshold problems that need to be addressed if the protective measures are to serve any real purpose.

It is worth noting at the outset that CAISO received initial requests for protective measures from roughly 2,000 MW of generators. Of this total, several entities requesting protective measures reportedly withdrew their requests and roughly 1,000 MW reportedly operate under contracts in which the utility absorbs the deviation risk. With more than 28,000 MW of renewable generation expected to be on line in the near future (according to CAISO presentations in recent CPUC forums), the universe of projects that may legitimately be entitled to protective measures, even if CalWEA's proposals are adopted, is a small fraction of the market and that fraction will diminish over time.

1. The proposed eligibility criteria should be modified to include generators that are contractually prevented from limiting their exposure to deviation charges or responding to CAISO market price signals.

CAISO has previously recognized that there are two ways in which a generator might be unable to respond to market price signals or otherwise mitigate its exposure to deviation charges in the new market: (i) the generator might be physically incapable of adjusting its output on a timely basis because it has old equipment; or (ii) the generator may have a PPA that prevents the generator from adjusting its output.¹ The Draft Final Proposal continues to define the physical eligibility criterion for protective measures in such a way that most, if not all, facilities installed under the California RPS program (i.e., in 2004 or later) will be ineligible for protective measures. That is because the Draft Final Proposal indicates that a need to change dispatch or control systems will not satisfy the physical eligibility criterion, irrespective of the cost of these changes, and most, if not all, facilities installed after 2004 likely have the capability to change output readily if their dispatch and control systems are sufficiently robust. This means that only the original fleet of QF generators likely will be able to satisfy the physical eligibility criterion (and as discussed below, CAISO proposes to eliminate eligibility for most of these resources based upon their size).

Rather than continue to press for modification of the physical eligibility criterion, however, CalWEA proposes that CAISO extend protective measures to facilities that are contractually prohibited from controlling their output such that they cannot mitigate their exposure to deviation charges or negative CAISO prices. Although the source of its handicap may be different from an old facility that cannot physically control its output, the practical reality for a facility that is contractually prevented from controlling its output is the same: it cannot take advantage of the new market mechanisms designed to enable generators to mitigate their exposure to deviation charges or negative CAISO prices.

¹ CAISO Market Notice, FERC Order No. 764 Market Changes - Protective Measures, May 16, 2013 (recognizing PIRP resources that are “contractually prohibited from curtailing output”).

There is no valid reason why CAISO should discriminate against facilities that, by contract, are unable to manage their exposure to deviation charges. CAISO's own protective measures proposal is replete with references to existing contract provisions, including proposing that generators that can avoid deviation charges through bilateral contract provisions are ineligible for protective measures. CalWEA has already presented various CAISO RPS pro forma contracts in which there is no ambiguity on the issue at hand: under certain RPS contracts intermittent, or "as-available," resources must generate without restriction whenever the wind is blowing or the sun is shining (absent a forced outage or force majeure event), and in some contracts the generators are subject to express liquidated damages if they fail to do so. And, protective measures, or similar grandfathering-type provisions, are routinely extended to address pre-existing contractual rights and obligations, not just to reflect physical operating restrictions; CAISO's grandfathering of pre-existing transmission rights and Regulatory Must Take Generator requirements are well known examples.

Without question, contractual restrictions may be changed if both contracting parties agree. The CalWEA members that have contractual restrictions have all sought to commence negotiations with their counterparties to address the changed market circumstances. To date, none of the CalWEA members have come close to a negotiated solution notwithstanding their efforts. If protective measures are not provided to resources with contractual restrictions, CalWEA is concerned that its members will never arrive at a reasonable solution with their counterparties. In order to protect these facilities from the potential harm that would result if the negotiations do not take place or do not succeed, and in order to provide appropriate incentives for both parties to cooperate, CAISO should extend protective measures to facilities with contractual restrictions on their ability to manage deviation risk.

CAISO has previously reported that 436 MW of generators sought protective measures because they are parties to long term PPAs under which they are, or have retained, their own Scheduling Coordinators and absorb deviation charges under their PPAs. CalWEA expects that most of these generators are relatively modern (i.e., post-2004) projects that operate under RPS contracts. Unless CAISO extends eligibility to cover contractual restrictions, CalWEA would not be surprised if all of these modern facilities are ineligible for protective measures.

2. For a generator under a PPA pursuant to which the generator bears deviation risk, protective measures should last for the term of the underlying PPA.

Assuming that a facility covered under a long-term PPA is eligible for protective measures, which likely will not be the case unless the change requested to the eligibility criteria discussed above is made, the protective measures proposed in the Final Draft Proposal will be wholly inadequate unless they last for the full term of the PPA or otherwise provide an incentive for the contract buyer to negotiate a solution with the generator. The Final Draft Proposal would limit the duration of protective measures to three years from the FERC order adopting the CAISO's Order 764 market design changes. The three-year proposed term makes no sense for a project that is locked into a long-term PPA that obligates the generator to bear deviation risk for the full term of the contract.

Again, without a mechanism that protects generators subject to contractual limitations, or provides some incentive for the buyers to cooperate, CalWEA has no confidence that the utility buyers under these PPAs will cooperate with the generators to address the underlying commercial issues.

3. QFs with generating capacity of 20 MW or less should be eligible for protective measures.

As with CAISO's Straw Proposal, the Final Draft Proposal states that QF generators of 20 MW or less are ineligible for protective measures because they have at their disposal a new PURPA standard offer contract under which the utility buyer absorbs deviation risk. CalWEA discussed the problems with this approach at length in its comments on the Straw Proposal and will not repeat them here. Rather, CalWEA points out that, among the 577 MW of QF projects that sought protective measures, a significant amount, perhaps more than half, are likely to be smaller than 20 MW. If it is CAISO's intention to deny protective measures to those that need them and that will benefit most from having them, CAISO's proposed eligibility criteria are well targeted.

4. Protective measures for QFs should start upon expiration of the QFs' existing PURPA standard offer contract.

As with the Straw Proposal, the Final Draft Proposal would provide protective measures for three years from the FERC order approving the CAISO's Order 764 market structure. For a QF that is eligible for protective measures but whose existing QF PPA expires more than three years from the FERC order approving the CAISO's Order 764 market structure, this means that the QF effectively is ineligible for protective measures. In order to provide an intended three-year transition from the existing QF PPA to a new PPA, CAISO should start the protective measures upon expiration of the QF contract.