

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Imbalance Provisions for Intermittent Resources) Docket No. RM05-10-000
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Assessing the State of Wind Energy in Wholesale Electricity Markets) Docket No. AD04-13-000
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**SUPPLEMENTAL COMMENTS OF THE
AMERICAN WIND ENERGY ASSOCIATION**

Pursuant to the Commission’s Notice of Proposed Rulemaking (“NOPR”) in the above-referenced dockets dated April 14, 2005, and in response to the comments filed by approximately 50 intervenors, the American Wind Energy Association (“AWEA”) respectfully files the following supplemental comments. AWEA recognizes that the comment deadline has passed.¹ We offer these comments with the hope that they aid the Commission’s review of the filed interventions by identifying areas where consensus exists that may not be readily apparent.

I. INTRODUCTION

As set forth in AWEA’s initial comments, the wind industry strongly supports the Commission’s findings of undue discrimination and unjust and unreasonable rates caused by current generator imbalance penalties as applied to intermittent generators such as wind facilities. AWEA further supports the proposed solutions presented in the NOPR.

In reviewing the comments from other parties, AWEA believes there is considerable confusion regarding the scope and intent of the proposed rule. AWEA does not read the proposed rule as exempting wind facilities from proven imbalance costs or other actual costs caused by wind facilities. Rather, AWEA believes the Commission’s proposed rule is intended to remove unjust imbalance *penalties* that are not cost-based, while leaving the door open for transmission providers to recover actual, proven costs through appropriate ancillary service charges and, if necessary, tariff amendments. Of course, the burden would remain with the provider to demonstrate that the costs are real and the charge for them is just and reasonable.

In a similar vein, AWEA believes many parties have misperceived the scope of this rulemaking as addressing many issues related to cost recovery under the Order 888 tariffs. By its terms, the scope of this rulemaking is much narrower. The Commission’s order makes clear that it is intended to address only those imbalance penalties that have

¹ The NOPR called for comments to be filed on May 26, 2005, and AWEA filed comments on that date. These supplemental comments address issues raised in other parties’ comments and therefore the points made here could not have been included in AWEA’s initial filing. To the extent necessary to accept these supplemental comments, AWEA asks that this filing be considered a motion to accept late-filed comments pursuant to Section 385.212 of the Commission’s rules.

been found unjust and unreasonable as applied to intermittent generation. AWEA urges the Commission to resist requests to greatly expand the scope of this proceeding, as suggested in many comments. Rather, AWEA encourages the Commission to proceed rapidly to a final rule.

II. DISCUSSION

A. The Proposed Rule Should Not Be Interpreted As Exempting Wind Generation From Paying For Actual Imbalance Costs.

A number of parties urged that transmission customers seeking to supply or purchase intermittent resources should not be exempted from paying actual imbalance costs they individually impose upon the provider. AWEA shares their concern. Doing so would inappropriately shift cost responsibility for those additional, actual costs to the affected utility and its ratepayers. We believe the NOPR accomplishes this important cost causation objective. The purpose of the NOPR was not to exempt wind facilities from responsibility for actual costs they impose. Rather, the purpose of the NOPR was to eliminate penalties that have been historically justified not based on cost causation, but rather on the basis of influencing voluntary generator behavior. Specifically, these penalties have been justified by the perceived need to encourage generators to control their output to match their schedules—a control of generation that intermittent facilities inherently cannot provide. That inherent inability to avoid the penalty is the obvious basis for the Commission’s finding that these penalties as applied to intermittent resources are not just and reasonable.

Many of these same parties, however, mistakenly criticized the Commission for allegedly proposing to provide intermittent resources preferential pricing treatment, which they contended resulted in the NOPR unfairly subsidizing intermittent resources. Similarly, these parties erroneously contended that the NOPR largely ignores the capacity and operating costs most transmission providers are likely to incur to provide the proposed Intermittent Generator Imbalance Service. For several reasons, AWEA believes such charges misconstrue what we see to be both the true intent and effect of the NOPR. Together, these mischaracterizations amount to an unwarranted rationale for the Commission not to move forward to issuing a final rule in this proceeding. First, we understand the NOPR does not relieve a transmission customer/intermittent resource from otherwise applicable ancillary service tariff obligations to support recovery of necessary regulation and reserves costs, only from the current imbalance penalty provisions that are not cost-based and which the Commission has found correctly are unjust and unreasonable, unduly discriminatory, and preferential as applied to intermittent generation. Second, we believe the NOPR does not preclude a transmission provider from seeking to recover the full costs associated with acquiring any additional resources that may be needed to provide the generator imbalance service under the terms set forth in the NOPR. AWEA suggests that much of the unfortunate confusion underlying the opposition expressed to the NOPR could be resolved if the Commission could clarify this important point.

B. The Commission Need Not Heed Proposals To Dramatically Expand The Scope Of This Proceeding.

The proposed rules seek to eliminate unfair penalties that result from unavoidable scheduling deviations. This narrow issue can and should be decided by the Commission in order to remove an artificial barrier to wind development.

However, many parties² urge the Commission to dramatically expand the scope of this proceeding to address, allocate or assign an undefined range of additional costs that these parties allege are associated with the integration of wind. These parties state that wind's variability creates a need for system operators to procure additional operating reserves, regulation and day-ahead unit commitment. These parties argue that if imbalance penalties are removed these so-called, integration costs will be unfairly shifted to other parties.

AWEA does not dispute that in some systems, particularly small control areas with few other dispatchable resources, high penetrations of wind could affect the costs that these parties identify. Whether the costs are increased or decreased will be a matter that can be explored and estimated only in the context of the particular facts and attributes of that control area. While AWEA welcomes such evaluations if they are found to be needed, such a detailed analysis is well beyond the narrow scope of this proceeding.

In cases where parties can demonstrate cost impacts (which none of the parties have done in comments) those parties have sufficient remedies available to them. Specifically, transmission providers have authority under Section 205 of the Federal Power Act to make filings to revise ancillary service rates, and to revise the allocation of such charges.

A tariff filing on wind integration costs would also require the Commission to determine how such ancillary service costs should be allocated. The Commission would need to determine whether, and to what extent, wind – and wind alone – should bear the costs of integration. Other resources also impose integration costs and it would be unfair and unduly discriminatory to charge these costs only to wind resources. . For example, non-dispatchable base-load units (e.g., nuclear units) are often responsible for the level of operating reserves required on a system because they are the largest single contingency. Yet their interconnection agreements do not add penalties to cover this cost that they directly and indisputably cause. Moreover, as a general matter, all operating reserves and some regulation needs are caused by generators' outage risk. It is standard practice to pool these risks, determine the aggregate system operating reserve and regulation needs, and then assign related costs to transmission customers. The Commission would need to determine whether this long-standing practice should be changed. In summary, the determination of wind integration costs and issues associated with their allocation is an issue that is well beyond the narrow scope of this proceeding and can be resolved with current procedural remedies.

² EEI, APPA, PNM, Nevada Power/Sierra Pacific, Southern, National Grid, Western Farmers Co-op, Avista.

C. Intervenor Claims That Imbalances Harm Reliability Are Misleading.

AWEA supports NERC's statement that the proposal does not harm reliability because it does not relieve responsible entities from their obligations to observe NERC's reliability standards for balancing authorities.

It is not always the case that even high integration levels have negative impacts. In fact the most thorough study of higher level integration was done for the New York State Energy Research and Development Authority by General Electric, and it found that wind integration of 3,300 MW or 10 percent of New York Independent System Operator's ("NYISO") peak load could be accommodated with only minor changes to system planning, operation, and reliability practices.³ While a number of parties in this proceeding claim that there would be increased need for regulation and spinning reserves, this study found that reliability criteria could be met with no change in regulation capacity or spinning reserves requirements. The study also found that system stability actually increased with wind on the system: "State-of-the-art wind generators do not participate in power swings, and improve post-fault response of the interconnected power grid."⁴ It may well be that these modest impacts are due to unique features of the NYISO system such as its relatively large control area, but the point is that integration effects are highly system-specific and should not be the subject of a generic rulemaking.

AWEA and its members are sensitive to the fact that there may be reliability-based, wind-penetration limits in some areas of the country. Those limits may be directly related to control area size, transmission system configuration, availability of ramping capability or other factors. But the Commission should not construe these limits as reliability problems. In most areas of the country, the limits (to the extent they exist at all) are well beyond current penetration. In those areas where incremental wind generation will allegedly cause reliability concerns, transmission providers can address this in interconnection proceedings or system-specific tariff filings.

The rightful elimination of inappropriate imbalance penalties will not result in an uncontrollable flood of wind projects in areas where they cannot be reliably supported. AWEA believes that reliability issues will be raised and resolved in the context of interconnection applications based on proven system impacts rather than "one-size fits all" penalties.

D. AWEA Supports The Definition Of Intermittent Resources Proposed By EEI.

The Edison Electric Institute ("EEI") and a number of parties commented on the definition of intermittent resources. In our initial comments, AWEA supported the Commission's proposed definition but suggested possible modifications for technical accuracy. Having reviewed EEI's comments, AWEA supports the definition put forward

³ http://www.nyserda.org/publications/wind_integration_report.pdf

⁴ NYSERDA study page 2.6.

there: “an electric generator that meets all of the following criteria: a) it cannot store its fuel source, b) it is by nature weather-driven, and c) it has limited capabilities to be dispatched, and to respond to changes in system demand and transmission security constraints.”

E. Intervenor Suggestions To Leave Generator Imbalance Penalties In Interconnection Agreements Undermine The Letter And Spirit Of The Commission’s Proposal.

A number of parties proposed that generator imbalance penalties remain in interconnection agreements. It would be entirely arbitrary for the Commission to prohibit these penalties in transmission tariffs as not just and reasonable but then allow them in interconnection agreements. The penalty is no more just and reasonable as applied to intermittent resources in the context of an interconnection agreement than it is in the context of a transmission service tariff. Plainly, if the penalty is permitted in a generator’s interconnection agreement, and is prohibited only in transmission service tariffs, then those providers that wish to maintain this unreasonable practice will simply seek to place the penalty in their interconnection agreements. This will provide no relief to the wind industry and will not eliminate this unjust and unreasonable practice.

On this point, the NOPR is somewhat ambiguous. The preamble of the NOPR states in a footnote that:

If the Commission adopts this proposal as a Final Rule, all public utilities that currently have generator imbalance schedules in their OATTs on file would be required to update those existing schedules to exempt intermittent resources. The applicability of this proposed rule is limited to situations where the generator imbalance provisions are not already addressed in existing interconnection agreements between the generator and the transmission provider. To the extent there are existing interconnection agreements that contain generator imbalance service provisions, such agreements should be listed in Appendix 1 to Schedule XYZ.⁵

This is inconsistent with statements throughout the NOPR suggesting that the Commission’s intent is to: 1) eliminate the current unjust penalties as applied to intermittent resources; and 2) substitute the proposed rule set forth in the NOPR. Moreover, the footnote is inconsistent with the text of the regulation the NOPR proposes to adopt. That rule would require “[e]very public utility that is required to have on file a non-discriminatory open access transmission tariff under this section” to include the proposed intermittent generator imbalance provisions in its OATT. There is no exception for utilities that have (or propose to have) contrary provisions in their interconnection agreements, as suggested in the above-quoted footnote. To the contrary, the proposed rule only allows a utility to deviate from the proposed intermittent generation imbalance protocol upon seeking and obtaining a waiver pursuant to the rule itself. While the waiver may be granted “for good cause shown”, nowhere in the waiver provision is there

⁵ NOPR at footnote No. 5, pp. 2-3.

any suggestion that a contrary provision in an interconnection agreement constitutes “good cause.”

As AWEA noted in our initial comments, clarifying this point is of critical importance. AWEA reiterates its request that the Commission delete footnote No. 5 and replace it with text making clear that generator imbalance service for intermittent generators is a matter utilities must address in their transmission service tariffs and that they must do so in accordance with the rule proposed in the NOPR. The Commission should specifically make clear that a utility may not evade the effect of the proposed rule simply by placing the unjust and unreasonable penalty in its interconnection agreements.

In reviewing the comments, AWEA notes that some parties advocate keeping imbalance penalties in interconnection agreements because this gives the utility greater flexibility in assigning charges to individual resources. That statement should give the Commission great concern. The whole point of transmission tariffs is to ensure that all customers are treated the same way and follow the same rules. Allowing flexibility for transmission providers to assign charges as they wish openly invites discrimination.

F. AWEA Supports EEI’s Suggestion To Have Conferences On Integration Costs, But That Should Not Delay Prompt Action To Eliminate Unfair Imbalance Practices.

EEI suggested that the Commission facilitate a collaborative process to discuss imbalances and wind integration operational impacts. They further suggest that the Commission not issue a final rule in this proceeding until those discussions occur. AWEA is open to such discussions, but believes that the Commission can act now on the issues raised in the NOPR.

There is a great deal of interest in these topics and they are being discussed in several forums in which EEI and its members are well-represented – e.g., NERC committees, the Institute of Electrical and Electronics Engineers, Inc., RTOs, the Utility Wind Interest Group, and the National Wind Coordinating Committee. However, the particular issues that EEI and a number of utilities raised in this proceeding were what effect wind integration has on ancillary service costs and how those costs should be allocated. These are economic regulation questions that lie squarely in the Commission’s jurisdiction. Therefore, AWEA would welcome a FERC-facilitated discussion on this issue. To be clear, this discussion need not delay prompt action in this docket. In fact since it is beyond the scope of this proceeding it should be in a new separate docket.

G. There Is No Need To Hold Up This Solution To Imbalance Penalties To Wait For General Tariff Reform.

Some parties⁶ argued that generator imbalances are so closely tied to energy imbalances and other issues that may be the subject of general *pro forma* tariff reform, that the

⁶ NRECA, TDU Systems.

proposed actions in this docket should be delayed and addressed at the same time as the rest of the tariff reforms. AWEA does not dispute that there are many other *pro forma* tariff provisions needing reform and wholeheartedly supports such reform. However it is senseless to hold up one workable reform just because there is another vehicle to address it in the future. Nothing would ever be accomplished if every reform had to wait for every other reform to be developed.

H. AWEA Agrees The Commission Should Affirmatively Support Centralized Forecasting.

Long Island Power Authority states, “encouraging better RTO/ISO forecasting should be the Commission's primary focus,” and NYISO, California Independent System Operator, and Edison Mission Group also support the use of centralized forecasting. AWEA believes centralized forecasting is economically efficient, informs the transmission provider on expected changes in intermittent generation, increases the level of operational awareness by the transmission provider and minimizes system impacts. The Commission should affirmatively support the use of centralized forecasting. However, AWEA believes regional differences can be accommodated because centralized forecasting may be burdensome in some areas.

I. Many Parties Agree With The Commission That Current Penalties Are Excessively Punitive.

A number of parties agreed with the Commission that charges should be cost-based and not punitive. For example, even the utility facing perhaps the greatest concerns about ancillary service cost impacts, Public Service of New Mexico (“PNM”), stated, “PNM concurs that, for intermittent resources, imbalance energy costs should not be punitive, but rather should be designed to allow the Transmission Provider to recover its full costs of providing the generator imbalance service.”

J. Dynamic Scheduling Is Not An Alternative Generic Remedy.

Xcel Energy and PNM suggested that dynamic scheduling would be a preferred alternative to the proposed schedule XYZ. While dynamic scheduling can work in some instances, it does not in others. Dynamic scheduling requires that the sink be adjacent to the transmission provider. It is a valuable alternative, but is inappropriate as a generic solution. Transmission providers could make a showing that with dynamic scheduling their tariffs are consistent with or superior to the proposed schedule XYZ.

III. CONCLUSION

The comments submitted in response to the NOPR reflect considerable confusion within the industry regarding the intent and scope of this rulemaking. As set forth above, AWEA urges the Commission to clarify that the intent of the rule is not to exempt or subsidize wind facilities with respect to actual costs they impose on transmission providers. Rather, the intent is solely to address the Commission’s finding that penalties

aimed at inducing behavior from dispatchable generation are not just and reasonable when applied to intermittent generation that inherently cannot avoid the penalties. The Commission should also make clear that it will not expand this rulemaking to address the many other issues related to the Order 888 open-access tariffs that were raised in the comments. The Commission should keep the focus of this rulemaking narrow and move quickly to address the manifest inequity it has correctly identified.

Finally, the Commission should clarify that its proposed rule applies as written and that it did not intend to allow a utility to evade it by means of placing the unjust penalties in an interconnection agreement.

AWEA appreciates the Commission's consideration of these Supplemental Comments and hopes that they point the way to clarifications that allow quick adoption of the proposed rule.

Dated: July 12, 2005

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list in this proceeding.

Dated at Sacramento, California, this 12th day of July, 2005.

Ron O'Connor