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Comments of Cogentrix Energy, LLC
Regarding
"Generator Interconnection Procedures:
Deliverability Requirements for Clusters 1 and 2,"
Revised Discussion Paper, dated January 10, 2012

Cogentrix Energy, LLC ("Cogentrix") appreciates the opportunity to comment on the California Independent System Operator ("CAISO's") Revised Discussion Paper entitled: "*Generator Interconnection Procedures: Deliverability Requirements for Clusters 1 and 2,*" dated January 10, 2012 ("Revised Discussion Paper"). Cogentrix believes that the Revised Discussion Paper goes a long way toward improving the methodology the CAISO intends to use to determine the delivery network upgrades for interconnection customers with interconnection requests in Clusters 1 and 2.

Cogentrix, through its wholly owned subsidiary Quail Brush Genco, LLC ("Quail Brush"), is developing the 100 MW Quail Brush Generating Project ("Project") in San Diego. Quail Brush has an interconnection request for the Project in the Cluster 1 and 2 group. The Project will consist of 11 natural gas-fired reciprocating engines with fast-ramping capability that will help integrate intermittent renewable resources. Quail Brush executed a power purchase agreement with SDG&E in April of 2011 and SDG&E submitted an application for approval of the power purchase agreement to the California Public Utilities Commission ("CPUC") on May 19, 2011, which is currently pending at the CPUC. An Application for Certification of the Project has been submitted to the California Energy Commission ("CEC") and deemed data adequate.

Cogentrix generally supports the new methodology described in the Revised Discussion Paper for determining Cluster 1 and 2 interconnection customer responsibility for delivery network upgrades and associated postings of Interconnection Financial Security. Insofar as the new methodology would base this determination on reasonable projections of future generation levels in relevant areas, rather than simply assuming that all higher queued projects are built, it will yield more realistic results and facilitate quicker contracting and development of economically viable projects. Cogentrix is concerned, however, about the portion of the Revised Discussion Paper concerning what the CAISO intends to do in the event more generation materializes in an area than expected and, in particular, the possibility of reductions in the Net Qualifying Capacity ("NQC") of generating resources for Resource Adequacy ("RA") purposes. *See* Revised Discussion Paper at Section 2.3.1. The potential for significant curtailments of NQC for a project at an uncertain time in the future and for a material and uncertain duration introduces risks which will likely be difficult for projects to contract around in their power purchase agreements and financing arrangements.

The CAISO indicates that if it becomes necessary to reduce NQC, it would only reduce NQC for "new" generating resources and specifically requests comments regarding what should be considered a "new" generating resource for this purpose. *Id.* As the CAISO explained:

> The concept is that the adjustments to NQC, if needed, would apply to resources in the current interconnection queue (serial queue through cluster 4) that have not achieved certain development milestones by a specific date that follows closely on posting of the final technical bulletin documenting the approach described in this discussion paper; for example, the ISO plans to issue the technical bulletin by January 31 and may set the qualification date for exemption from potential NQC adjustments as March 31, 2012. The ISO is considering several development milestones that may be used for this purpose, either singly or in combination, including: having a PPA approved by the relevant regulatory authority; completing all permitting requirements to construct the project; and having executed the GIA.
>
> Generating resources that are in operation today or otherwise do not meet the definition of "new" resources would not be subject to the NQC adjustments that the ISO would apply if and when enough new generation comes on-line in their areas to adversely impact deliverability.

Id.

Due to the concerns referenced above about subsequent curtailment of NQC, Cogentrix believes it is critical that the CAISO establish clear objective criteria for determining when interconnection customers vest their entitlement to available deliverability within the CAISO system so that they cannot be subject to future reductions in NQC due to an overbuild scenario (i.e., are no longer "new" projects for purposes of CAISO's NQC analysis). Apart from execution of a PPA, which Cogentrix agrees should be a criterion for full deliverability rights, the date of such vesting should turn on events early enough in the development process to allow the interconnection customer through diligent action to eliminate the risk associated with such events prior to the date of the second posting of Interconnection Financial Security. The second posting date is critical because it is typically then that interconnection customers are first required to put very significant sums at risk to maintain their interconnection rights. It is therefore important that the interconnection customer know as of the date of such posting that it will be entitled to full deliverability interconnection rights subject to timely execution of a PPA. Accordingly, apart from execution of a PPA, which can occur prior to the second posting of Interconnection Financial Security, the date of such vesting should hinge on milestones within the interconnection customer's control (e.g., submission of permit applications to permitting authorities) or which would be expected to occur before the second posting of security. Conversely, the date of such vesting should not turn on the occurrence of events largely beyond the interconnection customer's control for which there is a significant likelihood they could occur after the deadline for the second posting of Interconnection Financial Security. For example, requiring actual receipt of government approvals, such as CPUC approval of a power purchase agreement ("PPA") or other permits, or execution of GIAs would not be appropriate milestones because in either case their timing would depend on the timely action of third parties and it is common for such events to occur later than the second posting date. Absent clarity around the question of NQC at the time of the second posting deadline, interconnection customers might be unwilling to risk such deposits, and economically viable projects may be prematurely abandoned.

The need for clarity as to full deliverability of a project prior to the second posting of Interconnection Financial Security would argue against any NQC allocation scheme based simply on the relative position of projects in the interconnection queue. Allowing an interconnection customer that executes a power purchase agreement and achieves commercial operation many years after another interconnection customer has achieved commercial operation to have priority over, or achieve a *pari passu* status with, the earlier customer in the NQC allocation process simply because the later project was originally higher up in the interconnection queue would prevent certainty as to an interconnection customer's full deliverability status and inhibit such customer's ability to finance construction, largely eliminating the benefits achieved by CAISO's proposed new methodology.

With respect to the present question of how to allocate risk of curtailments in NQC for purposes of interconnection customers in Clusters 1 and 2, Cogentrix proposes that CAISO distinguish between: (1) interconnection customers in Clusters 1 and 2 that already have PPAs; and (2) interconnection customers in Clusters 1 and 2 that do not currently have PPAs.

1. For Interconnection Customers that Already Have PPAs: Proposed Exemption from NQC Reductions

Cogentrix believes that if interconnection requests in Clusters 1 and 2 are for a generating resource for which a PPA was executed before the Revised Discussion Paper was announced, the generating resource should not be considered "new" for purposes of potential NQC reductions. These PPAs were negotiated at a time when the parties expected interconnection customers to be able to get full capacity deliverability by paying no more than a capped amount that would entitle purchasers to claim full RA benefits for the generating resource. The only way for parties to preserve the deal struck in these PPAs without forcing renegotiation is for the CAISO to find that since it now appears the delivery network upgrades are not needed, generators will be entitled to full capacity deliverability that is not subject to subsequent NQC reductions.

If the CAISO does not exempt interconnection customers that have PPAs, there will be a possibility that during the term of the PPA there will be reductions in NQC due to an overbuild of generation beyond levels initially assumed. This would very likely require the PPAs to be amended now to address the risks posed by a possible curtailment of NQC and avoid disputes between the parties. This is particularly true for PPAs that have not yet been approved by the CPUC since the CPUC has an interest in knowing what the RA benefits will be under the PPAs. It is also likely to be necessary to amend PPAs for projects to be financed, since without amendments to the PPAs, there will be unknown risks that will make it difficult to arrange financing.

If it becomes necessary for parties to amend PPAs to take into account the CAISO's new methodology, it is likely that it will take several months to amend the PPAs. It will not be possible for parties to agree to amendments until there is sufficient clarity regarding the process the CAISO will use to reduce NQC and what applying that process will mean for RA for the generating resource. While parties are attempting to get sufficient clarity to amend PPAs, there may be resulting project delays. Such delays are likely to have adverse impacts not only on interconnection customers, but also on the load-serving entities which signed the PPAs and on the transmission providers that are making plans to interconnect the generating resources.

Cogentrix realizes that if the CAISO exempts all interconnection customers in Clusters 1 and 2 with generating resources for which there are executed PPAs from possible future reductions in NQC, there is some risk that these projects will fail and tie up deliverability that could be assigned to other interconnection customers. Cogentrix believes this risk is minimal for several reasons:

- Interconnection customers that have generating resources for which there are PPAs are highly viable.[1] There are substantial penalties for failure to meet milestones in PPAs that help ensure that projects come on-line as planned, and it is unlikely that an interconnection customer with a PPA who fails to make progress in development and construction of their project will be able to retain that PPA indefinitely.
- The interconnection customers with PPAs will be making postings of Interconnection Financial Security for PTO Interconnection Facilities and Reliability Network Upgrades which will not necessarily be fully refundable.
- Interconnection customers with PPAs that have not already signed GIAs will be signing GIAs soon in accordance with the CAISO tariff, and a breach of the GIA would mean that deliverability to be used by the interconnection customers would be available to other generators.
- The conditions proposed below for subsequent loss of full deliverability rights should apply to interconnection customers with PPAs today and should serve to eliminate projects which become non-viable later.

Cogentrix does not believe it is appropriate for the CAISO to require execution of the GIA by a date certain. Interconnection customers often find it difficult to execute GIAs promptly due to factors beyond their control, and it is not uncommon for execution of GIAs to be delayed beyond stated tariff deadlines despite exercise of good faith efforts by interconnection customers. Cogentrix notes that interconnection customers in Clusters 1 and 2 will experience delays in signing GIAs due to anticipated revisions to their Phase II transmission studies resulting from the revised methodology under discussion. Moreover, making execution of a GIA a factor would be inconsistent with the CAISO tariff since the tariff gives interconnection customers the right to file unexecuted GIAs at FERC.

2. For Interconnection Customers that Do Not Currently Have PPAs: Proposed Criteria for Establishing that NQC Reductions Will Not Be Required

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[1] This is particularly true for PPAs for natural gas-fired generating resources, like the Quail Brush Project, since the CPUC does not permit over-procurement of such resources due to concerns regarding possible contract failure as it does for PPAs for generating resources that will use renewable resources.

Cogentrix recognizes that there are interconnection customers in Clusters 1 and 2 that do not yet have PPAs and the CAISO needs to develop criteria for determining the circumstances under which these interconnection customers will no longer be subject to NQC reductions.

Cogentrix proposes that such interconnection customers should become entitled to available system deliverability rights without risk of subsequent reduction in NQC due to a later overbuild through achievement of the following milestones:

> (1) execution (but not necessarily CPUC approval) of a PPA for the generating resource;
> (2) receipt of confirmation from the lead federal, state, or local primary permitting agency that its permit application for the generating resource has been accepted for review under the applicable NEPA and/or CEQA application requirements (but without the need to have received yet the actual permits); and
> (3) demonstration of possession of actual (i.e., not established through posting of a bond) control over the main project site (but not including land rights relating to ancillary facilities such as gen-tie lines or gas pipelines, which are often acquired later in the development process).

Cogentrix believes that achievement of such objective milestones would adequately demonstrate the project's commercial viability and likelihood of achieving commercial operation so that an allocation of available system deliverability without risk of future curtailment for an overbuild scenario would be warranted. Furthermore, apart from the PPA requirement (which can be satisfied prior to the second posting deadline), such milestones should be achievable by interconnection customers prior to the second posting of Interconnection Financial Security.

The Revised Discussion Paper suggests that the CAISO is considering taking into account whether an interconnection customer has executed a GIA. Again, Cogentrix does not believe that execution of a GIA should be a factor in determining whether an interconnection customer is entitled to be treated as no longer "new" under CAISO's deliverability determination process. As explained above: (1) interconnection customers often find it difficult to execute GIAs promptly due to factors beyond their control; and (2) making execution of a GIA a factor would be inconsistent with the CAISO tariff since the tariff gives interconnection customers the right to file unexecuted GIAs at FERC.

The Revised Discussion Paper also suggests that the CAISO is considering imposing a short-term deadline of March 31, 2012, for attaining milestones to qualify as not new for purposes of establishing deliverability rights. Per above, Cogentrix believes that all Cluster 1 and Cluster 2 interconnection customers with PPAs should be entitled immediately to an allocation of available deliverability rights without risk of subsequent curtailment due to an overbuild, and remaining Cluster 1 and Cluster 2 interconnection customers should be able to achieve similar rights on an ongoing rolling basis by achieving the above milestones until the system can support no further deliverable capacity. Cogentrix does not believe it is desirable to impose a short-term deadline since, until the Revised Discussion Paper was issued, interconnection customers had no reason to know any short-term deadlines might be imposed and having to meet them may adversely affect worthwhile projects. Nonetheless, Cogentrix recognizes that it may be desirable for interconnection customers with interconnection requests in Clusters 3 and 4 to have up-to-date information regarding whether their projects will be deliverable, so if a deadline will be imposed, Cogentrix recommends that it be no sooner than the issuance of the Phase II Interconnection Study report for Clusters 3 and 4, which Cogentrix understands will be the fourth quarter of 2012.

3. Loss of Deliverability Rights

Once an interconnection customer has qualified for available deliverability rights on the CAISO system, there should be only clearly defined and limited circumstances under which such rights can be lost. Specifically, Cogentrix proposes that the only way interconnection customers that have qualified for such rights should later become subject to their loss and possible NQC reductions are:

(1) Their PPA is terminated or is rejected by the CPUC without rights of appeal;
(2) A material permit for the generating resource is rejected without rights of appeal;
(3) The GIA is terminated for interconnection customer default or the interconnection customer otherwise loses its interconnection queue position due to material violation of the interconnection requirements of the tariff; or
(4) Loss of control over the main project site.

In the event any of such criteria for loss of deliverability rights are triggered, interconnection customers should be given a right to cure within a reasonable period, such as 120 days, before final loss of such rights.

We thank you for your consideration of our above comments.

Very truly yours,

Jacob A. Pollack

Jacob A. Pollack
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