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May 21, 2004

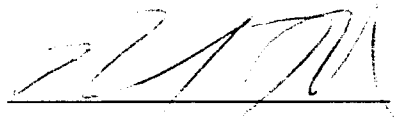
The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: *California Independent System Operator Corporation,*
Docket Nos. ER00-2019-016, ER01-819-002 and ER03-608-001**

Dear Secretary Salas:

Enclosed please find an original and 14 copies of the Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation. Two additional copies of this filing are enclosed to be stamped with the date and time of filing and returned to our messenger. If there are any questions concerning this filing, please contact the undersigned.

Respectfully submitted,



David B. Rubin

Counsel for the California Independent System
Operator Corporation

cc: Service List

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System)	Docket Nos. ER00-2019-006,
Operator Corporation)	ER01-819-002 and
)	ER03-608-001
)	

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2003), the California Independent System Operator Corporation (“ISO”)¹ respectfully submits this Motion for Leave to File Answer and Answer to the Answer of the California Department of Water Resources of the State of California State Water Project (“SWP”) Opposing Motion to Strike filed in the above-identified dockets.

I. MOTION FOR LEAVE TO FILE ANSWER

The ISO recognizes that Rule 213(a)(2), 18 C.F.R. §385.213(a)(2), of the Commission’s Rules of Practice and Procedures, in the ordinary course of events, precludes an answer to an answer. In this instance, SWP’s Answer, which seeks in the alternative to reopen the record, is in substance a motion, to which the ISO may file an answer under Rule 213. More importantly, however, the ISO’s Answer in this circumstance is appropriate because SWP has accused the ISO of

¹ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

misleading discovery and communications and has attempted to support those accusations by the selective use of statements and quotations taken out of context. The ISO believes that the Commission, in order to properly evaluate SWP's assertions, must have before it the relevant entirety of statements made by the ISO and its witnesses. Despite Rule 213(a)(2), the Commission has accepted answers to answers that clarify the issues in dispute, *Southwest Power Pool, Inc.*, 89 FERC ¶61,284 at 61,888 (2000); *Egan Hub Partners, L.P.*, 73 FERC ¶ 61,334 at 61,929 (1995), or assist the Commission, *El Paso Electric Co.*, 72 FERC ¶ 61,292 at 62,256 (1995). This answer clarifies SWP's misstatements concerning the record of this proceeding and thereby assists the Commission's evaluation of allegations that rely upon those misstatements. Accordingly, the Commission should accept this Answer.

II. ANSWER TO MOTION TO REOPEN THE RECORD

The ISO sets forth below the entire context of the materials on which SWP relies for its assertions that it was misled by the ISO. This will enable the Commission to objectively review such materials to evaluate the validity of SWP's assertions. In its review, however, it is important that the Commission recognize the distinction between the allocation of FTRs to the Cities of Anaheim and Riverside pursuant to Section 9.4.3 of the ISO Tariff and the allocation of those FTRs among ISO scheduling branch groups. Section 9.4.3 of the ISO Tariff provides "[A] New Participating TO shall receive FTRs for Inter-Zonal Interfaces to which the transmission facilities and Converted Rights for Inter-Zonal

Interfaces that the New Participating TOs turns over to the ISO's Operational Control give it transmission rights. The amount of FTRs will be determined *when the Transmission Control Agreement is executed* and shall be *commensurate with the transmission capacity* that the New Participating TO is turning over to ISO Operational Control." (Emphasis added.) In contrast, the extra-record material cited by SWP (discussion in the deposition of Dr. Mensah-Bonsu and related materials), pertain to a different matter -- the modeling of ISO branch groups and the allocation of capacity and FTRs among those branch groups.

SWP's assertions fall into three general groups. Each is identified below, followed by presentation of the relevant record.

A. ISO Denial of Documentation

CDWR's Assertions:

SWP's inquiry, in the spring of 2003, whether there was any documentation about FTR decisions made concerning the Southern Cities, in no way referred "entirely to discussions prior to the Southern Cities execution of the Transmission Control Agreement. . . . ISO claims of prejudice must be evaluated against the ISO's own determinations to . . . deny the existence of documentation that led to the information now subject to the request for official notice" [i.e., Mensah-Bonsu deposition and related documents concerning branch group modeling and the assignment of capacity and FTRs to branch groups]. SWP Answer at 2 (emphasis and footnote omitted).

Citations: Exhs. SWP-59 at 9 and SWP-8C at 45.

Reality:

[Exh. SWP-8C at 45 (emphasis added). (Attached.)]

Q. And would you have any e-mail or documents or memos that would address this?

A. Address what?

Q. How you reached the decision that, you know, it was a limited time frame and a small amount and that's how you decided to give the FTRs on path 15 to those folks on a one-to-one basis?

A. It was all during the negotiation process, and it was a discussion as to appendix A to the TCA which was filed, and I'm not sure there are any emails.

Q. Or any other documentation about it.

A. Well, *there's documentation regarding the new branch groups that we put together and the FTRs that [we're] going to give them, but not documentation. It was more of a discussion versus documentation, per se.*

[Exh. SWP-59 at 9 (emphasis added) (Attached)]:

SWP-ISO-43

If you admit that the ISO has allocated FTRs to new Participating Transmission Owner(s) pursuant to ISO Tariff Section 2.4.4.3.1.4, please provide any ISO manuals, directives, guidance documents or similar materials that establish standards under which the ISO allocated FTRs.²

Response:

See response to SWP-ISO-42. The ISO *has no manuals, directives, guidance documents or similar materials that establish standards under which the ISO has allocated FTRs pursuant to ISO Tariff Section 9.4.3.*

² The ISO's response to Data Request SWP-ISO-42, included in Ex. SWP-59 and attached, explained "Section 2.4.4.3.1.4 does not expressly provide for the allocation of FTRs. The ISO has only allocated FTRs to [N]ew Participating Transmission Owner(s) pursuant to ISO Tariff Section 9.4.3."

B. “Person Most Knowledgeable”

CDWR Assertion:

“The ISO offers no justification for identifying as the ‘person most knowledgeable’ about FTR allocation to the Southern Cities an individual whose repeated erroneous deposition testimony showed a striking *lack* of knowledge in this area.” Answer at 1. “ISO claims of prejudice must be evaluated against the ISO’s own determinations to 1) identify as the person most knowledgeable not Dr. Mensah-Bonsu, but rather a person whose lack of knowledge led to admittedly erroneous deposition testimony.” Answer at 2.

Citations: SWP-8C at 43A.

Reality: [SWP-8C at 43A (emphasis added). (Attached).]

Ms. Grammer: I have a document which will be the next deposition exhibit in order, 21.

(Le Vine Exhibit 21 identified.)

By Ms. Grammer:

Q. The reason I give you this is just to make sure – you’ll note that *the answer* is that the person most knowledge about firm transmission rights is yourself, and I want to make sure that’s still accurate.

A. *That’s still accurate.*

[*Le Vine Exhibit No. 21, Data Response SWP-ISO-22* (to which questions referred), (emphasis added). (Attached).]

Please identify by name, title and address *the person most knowledgeable about*:

(1) *Allocation of FTRs pursuant to ISO Tariff Section 2.4.4.3.1.4.*³

(2) *The ISO’s plan for FTR conversion and a definition of the term “commensurate as used above.*

³ See note 3 supra.

Response: (1) *For allocation of FTRs in accordance with ISO Tariff Section 9.4.3*, Deborah A. Le Vine, Director of Contracts, California ISO, 151 Blue Ravine Rd., Folsom, CA 95630.

(2) See response to (1).

C. Erroneous Testimony

CDWR Assertion:

“The person the ISO did identify in this Docket as the ‘most knowledgeable’ about this matter repeatedly insisted in sworn testimony that in dealing with the Southern Cities, the ISO never allocated FTRs on Path 15 until SWP stopped the proceedings. When next deposed, this witness reversed course, stating that the ISO has in fact granted the Cities one-for-one FTRs on that Path.” Answer at 1, note 1 (emphasis added). “ISO claims of prejudice must be evaluated against the ISO’s own determinations to 1) identify as the person most knowledgeable not Dr. Mensah-Bonsu, but rather a person whose lack of knowledge led to admittedly erroneous deposition testimony.” Answer at 2.

Citations: SWP-8C at 43A; SWP-8B at 71

Reality: [*SWP-8B at 62, 63, 71 (Attached)*]

A: And in regards to Path 15, which is where you are trying to get to, there has been no determination by the ISO how we would allocate on a path that PG&E oversold.

Q: Okay. So basically the issue has not been addressed; is that what you are saying? You realize there is an issue out there?

A: We realize there is an issue out there. But because nobody has confronted us with an application, we have not made any determinations.

Q: Now, haven’t you given away FTRs on path 15?

A: No.

Q. How about Southern Cities, have they not gotten any?

A. No.

....

Q: Have you decided how you're going to handle path 15?

A: As I've said I think three times now, no. And part of it is because path 15 has not been presented to us yet. We know it's going to be a hard decision. So we've been busy with other things and haven't taken the time. I haven't had spare time to take to try and plan how we're going to deal with path 15.

MS GRAMMER: Can we please go off the record for a minute?

(Discussion off the record.)

MS WALZ: We're back on the record now. And I believe Ms. Le Vine wants to make a clarification regarding her answer as to whether or not the Southern Cities were allocated any FTRs on path 15.

THE WITNESS: Regarding FTRs on path 15, I'm going to have to check back in California.

[SWP-8C at 32, 44-46 (Attached)]

Q. Well, how would the ISO provide FTRs to existing contract holders for their full firm rights on an oversubscribed line?

A. As stated earlier, based on questions asked by the State Water Project, the firm transmission rights issue for a major holder in path 15 has not been determined yet. The ISO has provided FTRs to the city of Azusa and the city of Banning in accordance with their becoming new PTOs effective January 1, 2003.

. . . These rights are only in existence until October 31st of 2003, in that no other entity came forward as of December 31st, 2002, to be a participating TO effective July 1st, 2003.

... These rights terminate prior to anyone becoming eligible to become a participating TO. So we have them rights consistent with their contract.

....

Q. Again, if I heard you right, I understand that it was given to Banning and Azusa FTRs that were a one-to-one correlation on path 15; is that correct?

A. That's correct, for the finite period of time.

Q. And who made the decision about FTRs on path 15 for Banning and Azusa?

A. Myself and a team that was put together internally.

Q. And were there any discussions at the ISO, given the fact that path 15 is oversubscribed about how to do this FTR allocation?

A. Not really. Because of the finite period of time associated with it and the small quantity, we did not have any type of discussion regarding overselling of the path. You need to remember that they only have FTRs from a period of May 1st to October 31st.

....

Q. Did this establish a policy concerning the granting of FTRs on path 15?

A. No.

III. RESPONSE TO REQUEST REOPEN THE RECORD

The Commission's well established standard for considering a motion to reopen is "whether or not the movant has demonstrated the existence of *extraordinary circumstances* that outweigh the need for finality in the administrative process." *E.g., United States Department of Energy-Western Area Power Administration, Colorado River Storage Project Management Center, et*

al., 100 FERC ¶61,194 at P 17 (2002); *East Texas Electric Cooperative, Inc. v.*

Central and South West Services, Inc., et al., 94 FERC ¶61,218 at 61,801 (2001).

(Emphasis added.) The Commission explained this precedent:

To persuade the Commission to exercise its discretion to reopen the record, the requesting party must demonstrate the existence of ‘extraordinary circumstances.’ The party must demonstrate a change in circumstances that is more than just material—it must be a change that goes to the very heart of the case. This policy against reopening the record except in extraordinary circumstances is based on the need for finality in the administrative process.⁴

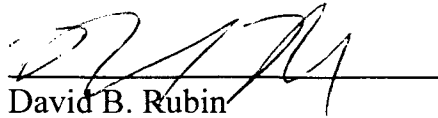
As shown above, SWP has demonstrated no actions by the ISO that would justify reopening the record in this proceeding. SWP’s additional, new argument-- that the Commission’s Opinion No. 466-A, *Pacific Gas & Electric Co.*, Opinion 466-A, 106 FERC ¶ 61,144, at P 10, requires reopening the record in order to evaluate the type of facilities to be included in the ISO’s rates -- fares no better. In *Pacific Gas & Electric Co.*, the Commission specifically reversed its initial decision on the basis that “the Commission contemplated that issues relating to the utilities’ Transmission Revenue Requirements would be resolved in their individual tariff filings.” *Id.* Accordingly, there is no basis to consider such matter in the ISO’s transmission Access Charge filing.

⁴ *East Texas Electric Cooperative* at 61,800 (citing *CMS Midland, Inc., et al.*, 56 FERC ¶61,177, at 61,624, *reh’g denied*, 56 FERC ¶61,361 (1991). See also, e.g., *Southern Company Services, Inc.*, 43 FERC ¶61,003, at 61,024, *reh’g denied*, 43 FERC ¶61,394 (1988), *aff’d mem. sub nom. Gulf States Utilities Co. v. FERC*, 886 F.2d 442 (D.C. Cir. 1989), *cert. denied*, 495 U.S. 947 (1990); *NE Hub Partners, L.P.*, 90 FERC ¶61,142, at 61,456 (2000); *Transwestern Pipeline Co.*, Opinion No. 238, 32 FERC ¶61,009 (1985), *reh’g denied*, Opinion No. 238-A, 36 FERC ¶61,175, at 61,453 (1986)).

IV. CONCLUSION

For the reasons discussed in the ISO's Motion to Strike, the Commission should strike the portions of SWP's Brief on Exceptions identified therein.

Respectfully submitted,



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Counsel for the California Independent System Operator Corporation

Dated: May 21, 2004

Attachments

1 of time associated with it and the small quantity,
2 we did not have any type of discussion regarding
3 overselling of the path. You need to remember that
4 they only have FTRs from a period of May 1st through
5 October 31st.

6 Q And would you have any e-mails or
7 documents or memos that would address this?

8 A Address what?

9 Q How you reached the decision that, you
10 know, it was a limited time frame and a small amount
11 and that's how you decided to give the FTRs on path
12 15 to these folks on a one-to-one basis?

13 A It was all during the negotiation process,
14 and it was a discussion as to appendix A to the TCA
15 which was filed, and I'm not sure there are any
16 e-mails.

17 Q Or any other documentation about it?

18 A Well, there's documentation regarding the
19 new branch groups that we put together and the FTRs
20 that were going to be given to them, but not
21 documentation. It was more of a discussion versus
22 documentation, per se.

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**RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO THE FIRST DISCOVERY REQUEST OF THE
CALIFORNIA DEPARTMENT OF WATER RESOURCES STATE WATER PROJECT**

SWP-ISO-43

If you admit that the ISO has allocated FTRs to new Participating Transmission Owner(s) pursuant to ISO Tariff Section 2.4.4.3.1.4, please provide any ISO manuals, directives, guidance documents or similar materials that establish standards under which the ISO allocated FTRs.

Response:

See response to SWP-ISO-42. The ISO has no manuals, directives, guidance documents or similar materials that establish standards under which the ISO has allocated FTRs pursuant to ISO Tariff Section 9.4.3.

Prepared under the Supervision of Deborah A. Le Vine

Dated: January 9, 2003

1 explain how the impact of amendment 27 affected
2 them. And we asked did you include State Water
3 Project in that muni outreach, and you needed to go
4 check, and I would ask the question again.

5 A We did.

6 Q And you provided the State Water Project
7 documentation of how that would work?

A That's correct.

Q And you gave it to Michael Warner?

A No. It was delivered to Steve Kashiwada.

MS. GRAMMER: I have a document which will
be the next deposition exhibit in order, 21.

(Le Vine Exhibit 21 identified.)

BY MS. GRAMMER:

Q The reason I give this to you is just to
make sure -- you'll note that the answer is that the
person most knowledgeable about firm transmission
rights is yourself, and I want to make sure that's
accurate.

A That's still accurate.

Q I want to, if I can, truncate this a
bit. I want to tell you what I heard you say

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**RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO THE FIRST DISCOVERY REQUEST OF THE
CALIFORNIA DEPARTMENT OF WATER RESOURCES STATE WATER PROJECT**

SWP-ISO-22

Please identify, by name, title and address the person most knowledgeable about:

- (1) Allocation of FTRs pursuant to ISO Tariff Section 2.4.4.3.1.4
- (2) The ISO's plan for FTR conversion and a definition of the term "commensurate" as used above
- (3) Consideration from the ISO or others to the SWP for continued SWP provision of reliability support (e.g., the RAS supporting Path 15) after the SWP converts its ETCs
- (4) The ISO's plans or intent to use SWP reliability support (e.g., the RAS supporting Path 15) after the SWP converts its ETCs

Response:

- (1) For allocation of FTRs in accordance with ISO Tariff Section 9.4.3, Deborah Le Vine, Director of Contracts, California ISO, 151 Blue Ravine Rd., Folsom, CA 95630.
- (2) See response to (1).
- (3) Deborah Le Vine, Director of Contracts, California ISO, 151 Blue Ravine Rd., Folsom, CA 95630.
- (4) Jim McIntosh, Director of Grid Operations, California ISO, 151 Blue Ravine Rd., Folsom, CA 95630.

Prepared under the Supervision of Deborah A. Le Vine

Dated: January 9, 2003

1 transmission that they're insured under their
2 contract?

3 A As stated at the technical conference, the
4 determination of the amount of FTRs on any path is
5 determined at the time of the application process
6 and the execution of the transmission control
7 agreement.

8 Q Right.

9 A And in regards to path 15, which is where
10 you're trying to get to, there has been no
11 determination by the ISO how we would allocate FTRs
12 on a path that PG&E oversold.

13 Q Okay. So basically the issue has not been
14 addressed; is that what you're saying? You realize
15 there's an issue out there?

16 A We realize there's an issue out there.
17 But because nobody has confronted us with an
18 application, we have not made any determinations.

19 Q Now, haven't you given away FTRs on path
20 15?

21 A No.

22 Q How about Southern Cities, have they not

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1 gotten any?

2 A No.

3 Q And is path 15 the only line that you know
4 of that's been, as you say, oversold?

5 A To the best of my knowledge, yes.

6 Q Ms. Le Vine, would you refer to Exhibit 1
7 to your deposition, please.

8 A I have it.

9 Q And the spreadsheets that are attached to
10 the front page have in the right-hand two columns --

11 A That's TANC 9.

12 MR. WARD: It's Exhibit 1 to your
13 deposition.

14 THE WITNESS: Okay. Hold on. Got to move
15 papers. Hold on.

16 MS. GAST: It was TANC 12.

17 THE WITNESS: Got it. I have it.

18 BY MS. WALZ:

19 Q The right two columns are labeled
20 respectively, "on-peak" and "off-peak"?

21 A They are.

22 Q And how are those defined, as far as you

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1 how we can work together to get them the FTRs that
2 they need to have, commensurate with the existing
3 rights that they're converting.

4 Q Have you decided how you're going to
5 handle path 15?

6 A As I've said I think three times now, no.
7 And part of it is because path 15 has not been
8 presented to us yet. We know it's going to be a
9 hard decision. So we've been busy with other things
10 and haven't taken the time. I haven't had spare
11 time to take to try and plan how we're going to deal
12 with path 15.

13 MS. GRAMMER: Can we please go off the
14 record for a minute.

15 (Discussion off the record.)

16 MS. WALZ: We're back on the record now.
17 And I believe Ms. Le Vine wants to make a
18 clarification regarding her answer as to whether or
19 not the Southern Cities were allocated any FTRs on
20 path 15.

21 THE WITNESS: Regarding FTRs on path 15,
22 I'm going to have to check back in California.

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1 the city of Banning. Those rights are only in
2 existence until October 31st of 2003, in that no
3 other entity came forward as of December 31st, 2002,
4 to be a participating TO effective July 1st, 2003.

5 The ISO is not concerned with providing
6 FTRs for that 20 megawatts, because in essence, it
7 was consistent with the existing contract rights
8 that they had. Those rights terminate prior to
9 anyone being eligible to become a participating TO.
10 So we gave them the rights consistent with their
11 contract.

12 Q And back to price signals, in developing
13 the access charge, is the price signal provided by
14 the access charge and the other components of the
15 ISO tariff, and how they work collectively a
16 relevant consideration?

17 A In determining the access charge?

18 Q Yes, in determining the access charge.

19 A Yes.

20 Q And let's focus on the customer for a
21 moment. How is a -- the price signal a customer
22 receives from the access charge in combination with

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1 Q What I wanted to ask you, if I may is, is
2 this set of documents here the complete set of ISO
3 description of the FTRs that were given to the
4 southern cities upon their joining the ISO? In
5 other words, do you know of any other ISO filing
6 that would describe the allocation of FTRs to these
7 entities?

8 A ISO filing, no.

9 Q Again, if I heard you right, I understand
10 that it was given to Banning and Azusa FTRs that
11 were a one-to-one correlation on path 15; is that
12 correct?

13 A That's correct, for the finite period of
14 time.

15 Q And who made the decision about FTRs on
16 path 15 for Banning and Azusa?

17 A Myself and a team that was put together
18 internally.

19 Q And were there any discussions at the ISO,
20 given the fact that path 15 is oversubscribed about
21 how to do this FTR allocation?

22 A Not really. Because of the finite period

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1 of time associated with it and the small quantity,
2 we did not have any type of discussion regarding
3 overselling of the path. You need to remember that
4 they only have FTRs from a period of May 1st through
5 October 31st.

6 Q And would you have any e-mails or
7 documents or memos that would address this?

8 A Address what?

9 Q How you reached the decision that, you
10 know, it was a limited time frame and a small amount
11 and that's how you decided to give the FTRs on path
12 15 to these folks on a one-to-one basis?

13 A It was all during the negotiation process,
14 and it was a discussion as to appendix A to the TCA
15 which was filed, and I'm not sure there are any
16 e-mails.

17 Q Or any other documentation about it?

18 A Well, there's documentation regarding the
19 new branch groups that we put together and the FTRs
20 that were going to be given to them, but not
21 documentation. It was more of a discussion versus
22 documentation, per se.

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1 Q Did this establish any policy concerning
2 the granting of FTRs on path 15?

3 A No.

4 MS. GRAMMER: I would like to have this
5 marked as the next Le Vine deposition exhibit and it
6 consists of SWP-ISO-23, which has an excerpt of
7 something, and a more complete version of what's
8 excerpted is also included. This was an ISO filing
9 made on November 25th, 2002, concerning transmission
10 control agreement rate schedule number 7.

11 (Le Vine Exhibit 23 identified.)

12 BY MS. GRAMMER:

13 Q You'll note that in the data response, you
14 say that the ISO is aware of the degree of firmness
15 differing among ETCs, and of course, this relates to
16 path 15. The question I would have is did you, in
17 allocating FTRs to the Southern Cities, give any
18 consideration to the degree of firmness that the
19 Southern Cities might have on path 15, Banning and
20 Azusa?

21 A If you look back in the FERC filing that
22 you have attached to this, which is the transmission

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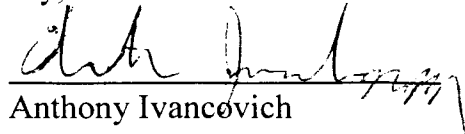
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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 21st day of May, 2004.


Anthony Ivancovich