



applicable restrictions on participation in the CRR allocation process, which include meeting the CAISO tariff definition of Load Serving Entity.<sup>3</sup> BART holds expiring ETCs and would be eligible to convert them into CRRs but for its failure to meet that tariff definition. However, BART is similarly situated to Load Serving Entities because its load will be subject to the Transmission Access Charges (TAC) and its scheduling coordinator will be exposed to congestion charges associated with locational marginal pricing in the day-ahead market. Under these circumstances, BART also should be eligible to request CRRs through the allocation process.

Later in 2016, the CAISO intends to submit a tariff amendment revising the definition of Load Serving Entity to include BART and any other similarly situated entity effective at the start of 2017. Pending that tariff revision, the CAISO requests a limited waiver of tariff provisions to allow BART to participate in the CRR monthly and annual allocation processes that are conducted in 2016 for CRRs that are settled in 2017 even if it does not meet the current tariff definition of Load Serving Entity.<sup>4</sup>

As is the case with CRRs, the CAISO administers annual and monthly RA processes. These RA processes also occur in advance of the year and month, respectively, to which they apply. If BART were a Load Serving Entity in 2017, then it

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<sup>3</sup> The tariff defines a Load Serving Entity as: “Any entity . . . that (a) (i) serves End Users within the CAISO Balancing Authority Area and (ii) has been granted authority or has an obligation pursuant to California state or local law, regulation, or franchise to sell electric energy to End Users located within the CAISO Balancing Authority Area; (b) is a federal power marketing authority that serves End Users; or (c) is the State Water Resources Development System commonly known as the State Water Project of the California Department of Water Resources.”

<sup>4</sup> With respect to CRRs provisions, the CAISO seeks waiver of section 4.10.1.5.2, the first sentence of section 36.8.2 (“Any entity that wishes to participate in the CRR Allocation process must provide information that demonstrates that it has an obligation to serve load.”), and any incidental reference in section 36 to a LSE or Load Serving Entity that could be construed to prevent BART from participating in CRR allocation processes in 2016 for CRRs in 2017.

would be subject to the RA requirements generally applicable to any other Load Serving Entity. It would not be a Load Serving Entity, however, at the time the processes for 2017 will be conducted in 2016. Accordingly, the CAISO also seeks waiver of the definition of the term Load Serving Entity to include BART with respect to all provisions of section 40 of the CAISO tariff that use the term Load Serving Entity in reference to RA processes the CAISO will conduct in 2016 that are relevant for 2017.

The CAISO requests that the Commission issue an order granting this waiver request by September 2, 2016, so BART can participate in the 2017 annual CRR process that is conducted in September-October 2016, and the monthly allocation processes held in December 2016 for CRRs that are in effect January 2017. The waiver, if granted, also will require that BART make a showing of its RA requirements in the 2017 annual RA process that begins at the end of October, and in the January 2017 and February 2017 monthly RA processes that begin in November 2016 and December 2016, respectively.

## **I. BACKGROUND**

### **A. Allocation of Congestion Revenue Rights to Load Serving Entities**

CRRs are an integral component in the CAISO markets. CRRs are a financial instrument settled on the difference in the marginal cost of congestion<sup>5</sup> between two points (the source and the sink) on the CAISO's system (as determined in the CAISO day-ahead market), multiplied by the MW value of the CRR the party holds between the two points. The quantity of CRRs available is based on a model of the CAISO's electric

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<sup>5</sup> The marginal cost of congestion is one of the components of the CAISO's locational marginal prices.

system. Based on the CRRs requested, the CAISO conducts a simultaneous feasibility test to determine which CRRs it will release in each round of the CRR process.

The CAISO releases Monthly, Seasonal, and Long Term CRRs, with one month, three month, and ten year terms, respectively. The CAISO releases CRRs through both an allocation process, in which parties are awarded CRRs at no cost, and an auction mechanism, in which parties are awarded CRRs based on the market-clearing prices in an auction. The CAISO conducts both an annual process, in which it allocates Seasonal and Long Term CRRs and auctions Seasonal CRRs, and a monthly process, in which it both allocates and auctions Monthly CRRs. The allocation is an iterative, multi-tier process in which internal and external Load Serving Entities are entitled to nominate CRRs based on their load-serving obligations. The auction, in contrast, is open to all registered parties wishing to obtain CRRs. Eligibility to participate in the auctions is not based on an entity's load-serving obligations.

The tariff explicitly states that only Load Serving Entities may participate in the allocation. Section 4.10.1.5.2 states that an entity that "intends to obtain CRRs through the CRR Allocation process must certify that it qualifies as a Load Serving Entity as defined in the CAISO Tariff." Similarly, section 36.8.2 of the tariff states that an "entity that wishes to participate in the CRR Allocation process must provide information that demonstrates that it has an obligation to serve load." The tariff defines a Load Serving Entity as a party "that (a) (i) serves End Users within the CAISO Balancing Authority Area and (ii) has been granted authority or has an obligation pursuant to California state or local law, regulation, or franchise to sell electric energy to End Users located within the CAISO Balancing Authority Area; (b) is a federal power marketing authority that

serves End Users; or (c) is the State Water Resources Development System commonly known as the State Water Project of the California Department of Water Resources.”

The rationale behind limiting allocated CRRs to Load Serving Entities is that they, on behalf of the load they serve, have paid for the embedded costs of the grid by paying transmission access charges and, thus, the CAISO should allocate them CRRs to enable them to hedge the volatility in the marginal cost of congestion component of locational marginal prices. The CAISO was clear in establishing this system that it was a forward-looking principle because it allocates CRRs for a future CRR term in which the Load Serving Entity will be paying access charges and will be exposed to congestion costs to serve its load, as opposed to an entitlement based on past payment of access charges.<sup>6</sup> In sum, the two key factors that support an entity receiving allocated CRRs is that it pays TAC and faces exposure to congestion costs.

The CAISO notes that the tariff definition of Load Serving Entity includes the State Water Project even though it is not a retail electric utility that serves load. However, the State Water Project purchases power at wholesale and consumes it. It also pays TAC and is exposed to congestion costs just like other Load Serving Entities. During the tariff approval process associated with the CAISO’s transition to its locational marginal price-based market, the CAISO explained that the State Water Project should be treated as a Load Serving Entity the same as a retail electric utility.<sup>7</sup> The Commission agreed but found the then-pending tariff definition ambiguous and ordered

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<sup>6</sup> *Cal. Indep. Sys. Operator Corp.*, Tariff Filing to Reflect Market Redesign and Technology Upgrade, Kristov Testimony at 88-89, FERC Docket No. ER06-615-000 (Feb. 9, 2006).

<sup>7</sup> *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61274, P 1131 (2006).

the CAISO to offer further clarity.<sup>8</sup> On compliance, the CAISO added the third prong of the current tariff definition, which specifically mentions the State Water Project.<sup>9</sup>

**B. Existing Transmission Contracts in the CAISO Nodal Market and Conversion to Congestion Revenue Rights**

Section 16 of the CAISO tariff provides that the CAISO will honor the contractual rights non-participating transmission owners hold to use the transmission assets of Participating Transmission Owners (PTO) that pre-date CAISO operations. Holders of these ETC rights do not pay TAC to the CAISO. Instead, they pay the PTO in accordance with their contracts. In recognition of their contractual rights, ETC holders receive the so-called “perfect hedge,” by which the CAISO essentially does not assess congestion charges for volumes scheduled within their ETC rights. When ETC rights expire, however, the ETC holder can seek CRRs in the initial round of the annual allocation process as if the expiring ETCs were expiring annual CRRs from the previous year, “subject to any applicable quantity limitations specified in this Section 36.”<sup>10</sup> This enables a holder of expiring ETC rights to be allocated CRRs, on a basis fully comparable to other Load Serving Entities, for the upcoming year in which their ETCs will have expired.

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<sup>8</sup> *Id.* at P 1138.

<sup>9</sup> *Cal. Indep. Sys. Operator Corp.*, Compliance Filing, FERC Docket No. ER06-615-000 (Nov. 20, 2006).

<sup>10</sup> CAISO tariff, section 36.8.3.5.5.

**C. BART's Expiring Existing Transmission Contracts and Eligibility to Hold Congestion Revenue Rights**

BART is a special-purpose transit district that operates a public transportation system serving the San Francisco Bay Area. BART holds ETCs with Pacific Gas and Electric Co. (PG&E) that expire at the end of 2016. BART has inquired with the CAISO about converting the expiring ETCs to CRRs pursuant to section 36.8.3.5.5 of the CAISO tariff. BART, however, is not eligible under the tariff to participate in the CRR allocation because it does not meet the literal tariff definition of Load Serving Entity. It does not serve end users of electricity pursuant to state law, and it is not a federal power marketing authority. Instead, it is an end-use customer that consumes power to meet its mandated service obligations and has special status under California state law not to rely on a utility to serve its load.<sup>11</sup> Upon expiration of its ETCs, BART will pay TAC and face exposure to congestion costs for the power it takes from the CAISO grid to serve its own load. This will make BART similarly situated to the State Water Project, but without an explicit accommodation in the tariff definition of Load Serving Entity.

Accordingly, the CAISO soon will begin a stakeholder initiative to explore amending the tariff definition of Load Serving Entity to capture entities, like BART, that are permitted by state or local law to purchase their own power at wholesale, rather than rely on a retail service provider, and that would pay TAC and congestion charges.<sup>12</sup> The CAISO will seek to submit a tariff amendment that would be effective as of January 1, 2017. BART, and any other similarly situated entities, would then be eligible to

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<sup>11</sup> CAL. PUB. UTIL CODE § 701.8.

<sup>12</sup> If, after any relevant changes, BART were to meet its needs through a traditional Load Serving Entity, that Load Serving Entity would be permitted to request CRRs based on BART's load. In such case, the CRRs would not be allocated directly to BART.

participate in subsequent monthly and annual CRR processes under the revised definition, subject to any applicable eligibility restrictions.

In the interim, however, the CAISO's CRR allocation process would reflect the transmission capacity that becomes available when BART's ETCs expire at the start of 2017. Thus without a waiver permitting BART to participate in the 2017 CRR processes and obtain whatever CRRs it would be entitled to hold as if it met the current tariff definition of Load Serving Entity, BART either will be exposed to congestion costs without the CRR hedge or have to incur the cost of purchasing CRRs in the auction to cover its congestion exposure. Moreover, because the CAISO conducts the allocation prior to the auction, the transmission capacity freed up by the expiration of BART's ETCs could be used in whole or in part to allocate CRRs to other Load Serving Entities, making it less likely or more expensive for BART to obtain the CRRs it needs in the auction. In principle, BART should be allocated CRRs to hedge its exposure to congestion costs once the contemplated tariff amendments are in place and BART's ETC rights expire. Without the requested waiver, however, the CAISO cannot set aside the expiring BART ETC capacity in advance of the expiration to prevent other Load Serving Entities from requesting such capacity as annual or long-term CRRs in the 2017 allocation process. This would have impacts beyond the 2017 CRR allocation because if BART cannot participate in the upcoming annual and monthly allocation processes, it will not be able to receive tier 1 CRRs that are used for purposes of allocating CRRs in subsequent years and ensuring its load is adequately protected against congestion volatility in the longer-term. To be fully and fairly protected, BART must be able to receive the appropriate allocation of CRRs for 2017.

#### **D. Resource Adequacy Showings**

Each Load Serving Entity with demand in the CAISO balancing authority area must demonstrate that it satisfies the RA provisions outlined in section 40 of the CAISO tariff. Under those provisions, Load Serving Entities must procure capacity to meet their forecasted load, plus a reserve margin, local area capacity needs, and flexible resource adequacy requirements.<sup>13</sup> To demonstrate that procurement, under section 40.2.2.4 Load Serving Entities must submit annual and monthly Resource Adequacy Plans to the CAISO.<sup>14</sup> Load Serving Entities must submit their annual plans “on a schedule and in the reporting format(s) set forth in the Business Practice Manual,” which is defined as the last business day of October,<sup>15</sup> while monthly plans are due “at least 45 days in advance of the first day of the month covered by the plan . . . .”<sup>16</sup> Once the plans are submitted the CAISO performs a verification process, in which it cross-validates the RA plans against the corresponding plans submitted by generators supplying RA capacity, and resolves potential inconsistencies.

Assuming the Commission accepts the CAISO’s upcoming modifications to the CAISO tariff that will allow BART to become a Load Serving Entity for purposes of the CAISO markets on January 1, 2017, it will be subject to the various provisions of section 40 applicable to Load Serving Entities, including submission of annual and monthly RA

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<sup>13</sup> The specific requirements are developed by the CAISO in collaboration with the California Public Utilities Commission and other local regulatory authorities to develop procurement requirements to ensure that the capacity procured by the Load Serving Entities under their respective jurisdictions is adequate to meet the CAISO’s operational needs and maintain grid reliability.

<sup>14</sup> Section 40.2.2.4 applies to a Non-CPUC Load Serving Entity (which BART would be), while section 40.2.3.4, which contains parallel provisions, applies to “a Load Serving Entity electing Modified Reserve Sharing LSE status . . . .”

<sup>15</sup> Business Practice Manual for Reliability Requirements, at Exhibit A-2.

<sup>16</sup> CAISO tariff, section 40.2.2.4(b).

plans. BART, however, would not have been a Load Serving Entity at the time the 2017 annual plan is due for submission at the end of October nor at the time the January and February monthly plans are due for submission in mid-November and mid-December, respectively. To ensure a seamless transition for BART and mitigate any potential gaps in the RA program that would arise from BART being treated as a Load Serving Entity yet not procuring RA capacity, the CAISO also seeks waiver of the definition of the term Load Serving Entity to include BART with respect to all provisions of section 40 of the CAISO tariff that use the term Load Serving Entity in reference to RA processes the CAISO will conduct in 2016 that are relevant for 2017.

## **II. Request for Limited Waiver**

To address the circumstances described above, the CAISO requests that the Commission grant the CAISO a limited waiver of the CAISO tariff definition of the term Load Serving Entity as it applies to BART. Pending an anticipated tariff change, the CAISO seeks a tariff waiver that will permit it to treat BART as a Load Serving Entity with respect to tariff provisions that describe the rights and obligations of Load Serving Entities or LSEs regarding CRR and RA processes. Specifically, the CAISO seeks waiver of the tariff definition of Load Serving Entity as it applies in section 4.10.1.5.2, any incidental reference in section 36 to Load Serving Entity or LSE<sup>17</sup> that could be construed to prevent BART from participating in CRR allocation processes in 2016 for CRRs in 2017, the requirements in section 40.2.2.4 for a Load Serving Entity to submit annual and monthly RA plans, and all other references in section 40 to Load Serving

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<sup>17</sup> The CAISO tariff uses the term Load Serving Entity and its abbreviation, LSE, interchangeably.

Entity that refers to RA processes the CAISO will conduct in 2016 that are relevant for 2017.<sup>18</sup>

The Commission previously has granted requests for tariff waivers in situations where (1) the waiver is of limited scope; (2) a concrete problem needed to be remedied; and (3) the waiver did not have undesirable consequences, such as harming third parties, and will benefit customers.<sup>19</sup> This request satisfies all three elements.

Therefore, good cause exists to grant the CAISO's request for waiver.

#### **A. Limited Scope**

The waiver is of limited scope and is requested for the sole purpose of facilitating BART's expected transition to Load Serving Entity status in 2017. It will apply to one market participant that, but for an incomplete tariff definition, otherwise would have the right to participate in the CRR allocation processes and the responsibility to participate in the RA processes. With respect to CRRs, this limited waiver would eliminate unfair application of a tariff rule that otherwise would prevent BART from obtaining allocated CRRs even though it is a load that will pay TAC and be exposed to congestion just like a Load Serving Entity (as that term is defined at present).

In addition, while all similarly situated entities should be treated equally, the CAISO is not aware of any other entity that would need to participate in the 2017 CRR

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<sup>18</sup> The term Load Serving Entity or LSE appears approximately 250 times throughout section 40. Therefore, the CAISO does not identify specifically all instances of the term in section 40 for which it seeks waiver.

<sup>19</sup> See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,061, at P 19 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 5 (2014); *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,103, at P 8 (2012); *N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010).

allocation processes for the same reasons. The waiver requested would be applied only for purposes of BART's participation.

The duration of the waiver is also limited – it only applies for the balance of 2016. The CAISO will make a tariff change to enable BART and other similarly situated entities to hold CRRs and require BART to submit RA plans effective as of January 1, 2017. The waiver will provide the CAISO with sufficient time to conduct a stakeholder process and submit tariff amendments to the Commission that provide for a long-term solution.

#### **B. Remediation of Concrete Problem**

The waiver will remediate a concrete problem. It is not feasible to effect a tariff amendment in time either to allow BART to participate in the first tier of the 2017 annual allocation process, which opens in September 2016, or the 2017 annual RA process, which begin in late October 2016.

BART would need to participate in the 2017 annual allocation in order to obtain the CRRs it will need to hedge its load that will be exposed to congestion charges when it participates in the CAISO markets at the start of 2017 when it no longer has the congestion protection of the ETC. Absent the waiver, BART will be exposed to congestion costs from which it would be protected if it held allocated CRRs even though it meets the basic principles the CAISO has previously identified for parties to be eligible to participate in the CRR allocation. Alternatively, BART will incur costs to acquire auctioned CRRs.

Even if the tariff were revised to ensure that entities like BART were eligible to receive allocated CRRs, BART would face the inappropriate risk of not being able to

participate in the 2017 annual process and request the capacity that previously was reserved under its expired ETCs. The annual process commences in September 2016. If BART does not participate in the annual allocation process, it will not be able to obtain CRRs that would cover its load in subsequent CRR processes, and the capacity that was reserved for their ETCs and that would otherwise support their CRRs would be made available to the rest of the market thereby allocating more CRRs to other participants to the detriment of BART. A tariff amendment cannot protect BART in this regard; only the waiver can.

If BART were not obligated to submit RA plans in the 2017 annual RA process and monthly RA plans for January 2017 and February 2017, then BART's load would not necessarily be covered by sufficient capacity. Ensuring BART's full participation in RA program for all of 2017 addresses that concern.

### **C. No Undesirable Consequences**

There will be no undesirable consequences, such as harming third parties, if the Commission grants the waiver. Importantly, BART has represented to the CAISO that BART concurs with this filing. The waiver essentially maintains the status quo. The "perfect hedge" mechanism roughly matches what would occur if an entity such as BART had corresponding CRRs. In this regard, BART should see no significant change in its congestion exposure. The CRR modeling process separately accounts for capacity covered by ETCs to ensure the CAISO does not allocate CRRs in excess of the amount of capacity needed to provide the "perfect hedge" to ETCs in the day-ahead market. Because more CRRs are available when ETCs expire, BART would not be taking CRRs from any party that currently receives CRRs.

#### IV. Request for Effective Date, Commission Order, and Shortened Comment Period

The CAISO requests that the Commission issue an order on this request by September 2, 2016, and that the waiver be effective as of that date. An order by this date will allow the annual CRR allocation process to move forward on its regular schedule. The annual RA plan submission processes are also relevant to this overall matter. However, the regular deadline for submission of annual RA plans is the last business day of October.<sup>20</sup> Because the annual CRR process begins earlier than the annual RA process, the start of the CRR process creates the more urgent timing constraint regarding an order on this waiver request.

This request for an order by September 2 is analogous to a request for waiver of the 60-day notice period for tariff amendments, which the Commission waives on a showing of good cause.<sup>21</sup> The Commission has recognized that certain rules and tariff flaws may require prompt revision to assure that prices in wholesale markets continue to be just and reasonable.<sup>22</sup> Although the *Guidance Order* addresses expedited treatment of tariff amendments, the CAISO submits that the same considerations are relevant here. In the *Guidance Order*, the Commission stated that a request by a regional transmission organization or independent system operator for expedited treatment of a tariff revision should clearly demonstrate that a rule change is required due to a flaw, why action is necessary in the market, and that the proposed tariff

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<sup>20</sup> Business Practice Manual for Reliability Requirements, at Exhibit A-2.

<sup>21</sup> See, e.g. *Midwest Indep. Transmission Sys. Operator*, 127 FERC ¶ 61,310 (2009).

<sup>22</sup> *Guidance Order on Expedited Tariff Revisions for Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,009 at P 1. (2005) (“*Guidance Order*”).

revision will correct the flaw.<sup>23</sup> The tariff revision qualifies for the use of expedited tariff revision procedures if the flaw that meets the following criteria:

- (1) it materially adversely impacts the market (due to the unanticipated workings of the tariff or unanticipated actions by market participants);
- (2) it requires prompt action to prospectively revise the tariff to remove the ability to cause such material adverse impacts; and
- (3) it is susceptible to a clear-cut revision or interim tariff revision or market rule.<sup>24</sup>

The requested waiver is consistent with these criteria. As to the first factor, the current tariff contains an exception for the State Water Project, which is similarly situated to BART. BART, like the State Water Project, would be adversely affected by being ineligible to receive allocated CRRs. The waiver ensures that similarly situated entities are treated similarly and there is no undue discrimination. As to the second factor, the CRR allocation process is a complex iterative exercise in which the outcome of each round depends on what happened in the prior round. Without BART's status clearly established at the outset of the allocation process, it would be exceptionally difficult for the CAISO to remedy the situation after the allocation process begins. As to the third factor, the CAISO already has identified a likely tariff amendment that it can discuss in a stakeholder process and have in place by the time the waiver expires. Given the timing, to remedy BART's situation, the CAISO did not have time to conduct a

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<sup>23</sup> Guidance Order at P 2.

<sup>24</sup> *Id.* See also *Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶ 61,110, at PP 24, 26 (2011) (granting expedited treatment and waiver of prior notice requirement pursuant to Guidance Order to accept tariff revisions modifying bid cost recovery settlement rule); *ISO New England Inc.*, 111 FERC ¶ 61,184, at PP 1, 10 (2005) (granting expedited treatment and waiver of prior notice requirement pursuant to Guidance Order to accept tariff revisions ending use of market-based reference levels for units that run out-of-merit more than 50 percent of the time).

stakeholder process and obtain Board approval of a tariff amendment. Accordingly, this limited-time waiver request is necessary.

Because of the limited amount of time before the requested waiver date of September 2, 2016, the CAISO respectfully requests that the Commission provide for a shortened comment period regarding this petition for limited tariff waiver of no more than 10 calendar days from the date of this filing.

#### **VI. Service**

The CAISO has served copies of this filing upon the California Public Utilities Commission and all parties with effective scheduling coordinator service agreements under the CAISO tariff. In addition, the CAISO has posted this filing on its website.

#### **IV. COMMUNICATIONS**

Communications regarding this filing should be addressed to the following. The individual identified with an asterisk is the person whose name should be placed on the official service list established by the Secretary with respect to this submittal:

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## V. CONCLUSION

For the foregoing reasons, the CAISO requests that the Commission grant a limited waiver of CAISO tariff limited waiver of the first sentence of CAISO tariff sections 4.10.1.5.2 and 36.8.2, respectively, and any other incidental use of the term LSE or Load Serving Entity in section 36, that would prevent BART from participating in the CRR processes for 2017 that are conducted in 2016.

Respectfully submitted,

/s/ David S. Zlotlow

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## CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceedings, 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 29<sup>th</sup> day of July, 2016.

*/s/ Grace Clark*

Grace Clark