

October 28, 2016

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: California Independent System Operator Corporation
Docket No. ER17-_____-000**

Tariff Amendment to Modify Tariff Definition of *Load Serving Entity*

Dear Secretary Bose:

The California Independent System Operation Corporation (CAISO) respectfully requests that the Commission issue an order by December 30, 2016, approving the proposed revisions to the tariff definition of Load Serving Entity.¹ The primary purpose of the revisions is to recognize that an End User that has the right under state or local law to serve its own load through the direct purchase of wholesale energy and exercises that right is a Load Serving Entity. The CAISO tariff currently identifies one such entity, the State Water Project of the California Department of Water Resources, as a Load Serving Entity. Through this amendment the CAISO would create a generally applicable rule that treats all similarly situated entities similarly. The revision also acknowledges that parties engaging in certain unregulated retail transactions permitted under state law are not Load Serving Entities solely because they take part in such transactions. Finally, the revision removes an errant reference to California law that should have been removed when Valley Electric Association, Inc., joined the CAISO Balancing Authority Area.

¹ The CAISO submits this filing pursuant to Section 205 of the Federal Power Act, 16 USC § 824d, Part 35 of the Commission's Regulations, 18 C.F.R. § 35, *et seq.*, and rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.207. The Capitalized terms not otherwise defined herein have the meanings set forth in the CAISO tariff, and references to specific sections, articles, and appendices are references to sections, articles, and appendices in the current CAISO tariff and revised or proposed in this filing, unless otherwise indicated.

I. Background

A. The Current Tariff Definition of Load Serving Entity

In 2006, during the CAISO's transition to its current locational marginal price-based market, the CAISO initially proposed the following definition of Load Serving Entity:

Any entity (or the duly designated agent of such an entity, including, e.g. a Scheduling Coordinator), including a load aggregator or power marketer; (i) serving End Users within the CAISO Control Area and (ii) that 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 Control Area or (iii) is a Federal Power Marketing Authority that serves retail Load.²

In the Commission's consideration of the proposal, the question arose whether the State Water Project was a Load Serving Entity under the proposed definition. The CAISO explained that the State Water Project should be treated as a Load Serving Entity in the same manner as a retail electric utility and that the first prong of the proposed definition was broad enough to cover the State Water Project.³ The Commission agreed that the State Water Project should be considered a Load Serving Entity but found the proposed tariff language ambiguous and ordered the CAISO to clarify it.⁴ On compliance, the CAISO added a third prong to the definition, which identifies the State Water Project by name as a Load Serving Entity.⁵ With only cosmetic changes, the definition has remained unchanged since November 2006. In current form it states:

Any entity (or the duly designated agent of such an entity, including, e.g., a Scheduling Coordinator), including a load aggregator or power marketer, 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.

² *Cal. Indep. Sys. Operator Corp.*, Tariff Filing to Reflect Market Redesign and Technology Upgrade, FERC Docket No. ER06-615-000 (Feb. 9, 2006).

³ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61274, P 1131 (2006).

⁴ *Id.* at P 1138.

⁵ *Cal. Indep. Sys. Operator Corp.*, Compliance Filing, FERC Docket No. ER06-615-000 (Nov. 20, 2006).

B. Resource Adequacy Obligations for Load Serving Entities

Every Load Serving Entity with demand in the CAISO Balancing Authority Area must demonstrate, through its Scheduling Coordinator, that it satisfies the Resource Adequacy provisions set forth in section 40 of the CAISO tariff. Load Serving Entities must procure capacity to meet their forecasted load, plus a reserve margin, local area capacity needs, and flexible Resource Adequacy requirements.⁶ Section 40.2 requires Load Serving Entities to submit annual and monthly Resource Adequacy Plans to the CAISO to demonstrate that procurement.⁷ 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,⁸ while monthly plans are due “at least 45 days in advance of the first day of the month covered by the plan”⁹ Once Load Serving Entities submit the plans, the CAISO performs a verification process, in which it cross-validates the plans against the corresponding plans submitted by generators supplying capacity, and resolves potential inconsistencies.

C. Allocating Congestion Revenue Rights to Load Serving Entities

Congestion Revenue Rights (CRRs) are financial instruments settled on the difference in the marginal cost of congestion 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 CRRs the party holds between the two points. 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 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 rationale for limiting allocated CRRs to Load Serving Entities is that they, on behalf of the load they serve, pay for the embedded costs of the grid by paying Transmission Access Charge (TAC) and, thus, they should receive CRRs to hedge the

⁶ The specific requirements are developed by the CAISO in collaboration with the California Public Utilities Commission and other local regulatory authorities 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.

⁷ Section 40.2.2.4 applies to a Non-CPUC Load Serving Entity, while section 40.2.3.4, which contains parallel provisions, applies to “a Load Serving Entity electing Modified Reserve Sharing LSE status”

⁸ Business Practice Manual for Reliability Requirements, at Exhibit A-2.
<https://bpmcm.caiso.com/Pages/BPMLibrary.aspx>

⁹ CAISO tariff, section 40.2.2.4(b).

volatility in the marginal cost of congestion component of locational marginal prices. In establishing this system, the CAISO stated that it was forward-looking because it allocates CRRs for a future CRR term in which the Load Serving Entity will pay access charges and be exposed to congestion costs to serve its load, as opposed to an entitlement based on past payment of access charges.¹⁰ In sum, the two key factors that support an entity receiving allocated CRRs is that it pays TAC and is exposed to congestion costs.

D. Tariff Waiver for San Francisco Bay Area Rapid Transit District

On July 29, 2016, the CAISO filed a request in Docket No. ER16-2327-000 for a limited waiver of the CAISO tariff to treat the San Francisco Bay Area Rapid Transit District (BART) as a Load Serving Entity even though it did not meet the current tariff definition of that term.

The CAISO tariff obligates the CAISO to honor non-participating transmission owners' Existing Transmission Contract Rights (ETCs) to use the transmission assets of Participating Transmission Owners that pre-date CAISO operations. The CAISO honors ETCs by not assessing congestion charges for volumes scheduled within contractual rights. When ETCs expire, the holder can request CRRs in the allocation process up to the megawatt quantity of its expiring contractual rights. A prerequisite for participating in the CRR allocation process is meeting the tariff definition of a Load Serving Entity.

BART holds ETCs that expire at the end of 2016 and in mid-2016 expressed interest to the CAISO in converting its expiring ETCs to CRRs. The CAISO concluded that BART was not eligible to participate in the CRR allocation process because it did not meet the tariff definition of Load Serving Entity—it does not serve end users of electricity pursuant to state law, is not a federal power marketing authority, and is not the State Water Project. The CAISO, nevertheless, concluded that BART, and any other similarly situated entity, should be treated as a Load Serving Entity because, 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. These facts would make BART similarly situated to the State Water Project, but without an explicit accommodation in the tariff definition of Load Serving Entity. Even if BART could not meet the tariff definition of Load Serving Entity, upon expiration of its ETCs, BART functionally would be serving as its own load serving entity similar to the State Water Project.

By the time the CAISO made this conclusion, the CAISO did not have the time necessary to complete a full stakeholder process and present the necessary tariff amendments to the Commission in time for BART to participate in the 2017 CRR and

¹⁰ *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).

Resource Adequacy processes, which began in fall 2016. Accordingly the CAISO requested a tariff waiver through the end of 2016 allowing the CAISO to treat BART as a Load Serving Entity, with the explicit understanding that the CAISO would propose a follow-up tariff amendment with a requested effective date of January 1, 2017. The Commission granted the waiver request on September 1, 2016.¹¹

II. Discussion of Tariff Amendment

The CAISO now submits the tariff amendment contemplated in the July 29 waiver request. The language below shows in redline the CAISO's proposed revisions to the definition of Load Serving Entity:

Any entity (or the duly designated agent of such an entity, including, e.g., a Scheduling Coordinator), including a load aggregator or power marketer, 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) (i) is an End User, (ii) has been granted authority pursuant to state or local law or regulation to serve its own Load through the purchase of electric energy from an entity that does not qualify as a Load Serving Entity, and (iii) serves its own Load through purchases of electric energy from an entity that does not qualify as a Load Serving Entity with respect to such purchases of electric energy; or (bc) 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. Notwithstanding the above, an entity is not a Load Serving Entity under this definition solely because it provides electric energy at no cost to its tenants or because it purchases or sells electric energy from a generating resource pursuant to a state or local law or regulation that permits the generating resource to make direct sales of electric energy to an End User, the rates, terms, and conditions of which sale are not subject to regulation by a Local Regulatory Authority.

A. Creating the New End User Load Serving Entity Category is a Just and Reasonable Response to Changed Circumstances

The primary revision to the definition is the addition of part b., which is comprised of three sub-parts. Part b. creates the concept of an End User Load Serving Entity and is based on the premise that an End User is essentially a Load Serving Entity if it lawfully serves its own load.

Sub-part i. requires the entity to be an End User. This requirement establishes that the entity involved does not serve other consumers of electricity but is the ultimate consumer of electricity.

¹¹ *Cal. Indep. Sys. Operator Corp.*, 156 FERC ¶ 61,153 (2016).

Sub-part ii. requires the End User to have legal authority to serve its load through purchases of energy from an entity that is not a Load Serving Entity. This sub-part captures the notion that the End User has been granted the legal right to serve its load directly rather than rely on an existing Load Serving Entity. A typical End User, such as a residential customer, could not bypass its traditional retail utility to transact directly with electric generators to serve its load. In certain cases, however, state or local law provides specific exemptions to End Users allowing them to serve their load.¹² Using the word “purchase” in sub-part ii. (and iii.) is important because it excludes instances where a generator serves behind-the-meter load or station power load. The CAISO does not intend to make a generator a Load Serving Entity merely because it serves its own load directly from its own generation. By requiring a purchase, the CAISO excludes that scenario from the definition.

Sub-part iii. requires the End User to have exercised its right to purchase electricity from a party that is not serving as the Load Serving Entity for the transaction. The phrase “that does not qualify as a Load Serving Entity with respect to such purchases of electric energy” captures the concept that the End User that wishes to qualify as a Load Serving Entity may engage in non-retail energy market transactions with an entity that also performs a Load Serving Entity function so long as the End User’s purchase is not in the role of a regulated retail electricity transaction.

The following example illustrates how sub-part iii. would function. Consider a hypothetical municipal water district that is permitted under state law to serve its load directly through market purchases of power. Alternatively, it can purchase its power as a retail customer of the retail electric utility in whose service territory it resides. If that retail utility has a load serving entity function and a wholesale supply function and the water district secures its supply from the marketing arm of the utility, then the water district would not lose its status as a Load Serving Entity under the proposed definition. Although the water district purchased energy from a company that is a Load Serving Entity, and is even its default provider, the default provider’s sale to the municipal water district in these circumstances was not in the default provider’s role as a Load Serving Entity; so, the water district would still meet sub-part iii. of the proposed definition.

Under sub-part iii., if an End User meets any portion of its load through direct purchases of energy through market transactions, then it would become a Load Serving Entity. This is the case even if the bulk of its load is served by another Load Serving Entity. Where an End User meets its load through both approaches, however, the End User Load Serving Entity only would hold Resource Adequacy obligations and be eligible for CRRs in relation to the load it served for itself. This would be accounted for in the normal operation of both the Resource Adequacy and CRR business processes. Likewise, the portion of its load served by another Load Serving Entity would be allocated to that Load Serving Entity for purposes of the Resource Adequacy and CRR

¹² For example, the California Public Utilities Code permits BART to purchase power from certain defined sources and obligates the utilities whose transmission and distribution facilities connect to BART’s system to deliver the electricity procured from those defined sources. CAL. PUB. UTIL CODE § 701.8.

processes. That other Load Serving Entity would have to procure Resource Adequacy capacity in proportion to the load it serves of the End User Load Serving Entity and also would be eligible to receive CRRs for that load.

Creating this new class of End User Load Serving Entity is just and reasonable because it ensures that all load in the CAISO Balancing Authority will correspond to a Load Serving Entity that in turn holds Resource Adequacy obligations for its load and can request CRRs to hedge the costs of serving that load. Without this amendment, entities meeting part b. would be able to serve their own load but not be obligated to procure Resource Adequacy capacity necessary to meet the CAISO's operational needs and maintain grid reliability. That would undercut the important purposes underlying the Resource Adequacy program. At the same time, the load for entities meeting part b. will be subject to TAC, and their scheduling coordinators will be exposed to congestion charges associated with locational marginal pricing in the CAISO's day-ahead market. This makes them similarly situated to current Load Serving Entities that are permitted to participate in the CRR allocation process in proportion to the load they serve, and thus it is appropriate that they be eligible for allocated CRRs. The Commission should accept these tariff revisions for the same reasons it granted the waiver for BART.

The CAISO anticipates virtually no impact on either the Resource Adequacy program or the CRR process from the proposed part b. of the definition because the change in definition does not create new load; it only provides the opportunity for existing load to be represented by a different Load Serving Entity. The existing Resource Adequacy obligations and CRR eligibility will migrate from the existing Load Serving Entity to the new one.¹³

B. Removing Specific Reference to the State Water Project

In conjunction with adding part b. to the definition, the CAISO proposes to delete part c. of the current definition. Part c. identifies the State Water Project by name as a Load Serving Entity. As discussed above, the CAISO included part c. in the definition to comply with a Commission directive to clarify that the State Water Project is a Load Serving Entity under the CAISO tariff.

An alternative approach to comply with the Commission's directive would have been to propose a functional definition that identified the key characteristics of the State Water Project that made it a Load Serving Entity. That is essentially what the CAISO now proposes in part b. When the CAISO initially introduced the term Load Serving Entity this more sophisticated approach was not necessary because the State Water

¹³ The Draft Final Proposal Addendum also considers more complicated scenarios involving expiring Existing Transmission Contracts, unexpired Existing Transmission Contracts, and Transmission Ownership Rights. In these more complex cases again there was at most a minimal impact to other Load Serving Entities from this proposed change. Draft Final Proposal Addendum, at 13-14.
<http://www.aiso.com/Documents/Addendum-DraftFinalProposal-LoadServingEntityDefinitionRefinement.pdf>

Project was the only End User that exercised its right to serve its own load. Circumstances have changed since then. Given the changes in BART's contractual situation, combined with the potential changes in arrangements for other entities that have the right to serve their own load but have so far not exercised that right, it is more sensible now to have a functional definition that can apply to multiple entities than to identify the individual entities that are Load Serving Entities. It is not practical to add individual entities to the tariff by name each time they choose to change their contractual arrangements and become a Load Serving Entity.

With the addition of part b., the specific reference to the State Water Project is now superfluous because the State Water Project meets the provisions of part b. Retaining the reference, while including the new part b. potentially could lead to confusion, potentially suggesting that the State Water Project somehow does not meet part b. and thus needed to be mentioned by name. To avoid potential confusion, the CAISO proposes to delete the reference.

C. The “Notwithstanding” Clause and Unregulated Retail Sales

During the stakeholder initiative leading to this tariff filing, stakeholders raised concerns that the definition might apply to entities that engaged in transactions authorized by section 218 of the California Public Utilities Code. This section permits combined heat and power, landfill gas, digester gas, and independent solar generators to make unregulated retail sales of electricity to tenants located on the property where the power is produced, parties on immediately adjacent properties (a “through-the-fence” transaction), and public agencies.¹⁴ Generators making sales described under section 218 meet the literal terms of part a. of the definition of Load Serving Entity. The CAISO, however, has never treated these generators as Load Serving Entities and agrees that it would not be appropriate to treat these generators as Load Serving Entities under the CAISO tariff because their highly localized operations do not create grid operations concerns that would give rise to Resource Adequacy obligations. Further, because they do not pay TAC and are not exposed to congestion charges, they do not warrant CRR allocations.

Accordingly, the CAISO proposes to add the “notwithstanding clause” to the end of the definition. This clause exempts a party from becoming a Load Serving Entity if the only reason it would be considered one under the CAISO tariff is because “it provides electric energy at no cost to its tenants or because it purchases or sells electric energy from a generating resource pursuant to a state or local law or regulation that permits the generating resource to make direct sales of electric energy to an End User, the rates, terms, and conditions of which sale are not subject to regulation by a Local Regulatory Authority.” Although it is extremely unlikely, if an entity that makes sales

¹⁴ CAL. PUB. UTIL CODE § 218.

contemplated under section 218 were also to engage in other activities that meet the definition, then that entity would not avoid being a Load Serving Entity.¹⁵

The “notwithstanding clause” specifically mentions purchases and sales of electric energy. The reference to purchases is important to ensure that a tenant or a neighbor that purchases electricity from a generator covered under section 218 does not itself become an End User Load Serving Entity under part b. of the definition solely because it engages in that purchase.

D. Removing Errant Reference to California Law

Part a. of the existing definition applies to retail electric utilities, which constitute the overwhelming share of Load Serving Entities in the CAISO. Sub-part ii. of part a. refers to “California state or local law” in describing the source from which an entity must have authority or an obligation to serve End Users to be considered a Load Serving Entity. On January 3, 2013, Valley Electric Association, Inc., an electric cooperative serving retail customers primarily in Nevada, joined the CAISO as a Participating Transmission Owner. In making the filings with the Commission necessary to effectuate Valley Electric joining the CAISO, the CAISO should have struck the reference to California law in sub-part ii. but did not appreciate that reference remained until it began the stakeholder initiative leading to this filing.¹⁶ To remove any doubt that Valley Electric is a Load Serving Entity under the CAISO tariff, consistent with how the CAISO has treated it since January 3, 2013, the CAISO now proposes to delete that reference.

III. Stakeholder Process

The CAISO commenced the stakeholder process on August 15, 2016, by publishing a combined issue paper and straw proposal and holding a stakeholder teleconference on August 23, 2016, to discuss the paper.¹⁷ Following the initial call, the CAISO posted its draft final proposal on September 12, 2016, and held another stakeholder call. The CAISO then published a draft final proposal addendum on

¹⁵ For example, an entity making a “through-the-fence” transaction to a neighboring property from a landfill gas generator that it owns that also becomes an electric service provider (i.e., a non-utility entity that is authorized to offer electric service to customers in the service territory of an incumbent electric utility) cannot avoid becoming a Load Serving Entity under the CAISO tariff solely because it also owns a generator that makes an allowable “through-the-fence” transaction. In this example, however, whatever sales are made under section 218 would be excluded from the Load Serving Entity’s load figures for purposes of calculating its Resource Adequacy requirements and determining its Congestion Revenue Rights eligibility.

¹⁶ The dockets involved with Valley Electric’s integration into the CAISO were Docket Nos. ER13-71, ER12-2623, and ER12-84.

¹⁷ Complete details of the stakeholder process leading to this filing are available on the stakeholder initiative site at <http://www.caiso.com/informed/Pages/StakeholderProcesses/LoadServingEntityDefinitionRefinement.aspx>.

October 14, 2016, to further clarify the proposal in response to stakeholder feedback. The CAISO Board of Governors approved the proposal on October 27, 2016.

The Metropolitan Water District of Southern California initially was concerned the proposed definition involuntarily would capture holders of ETCs or Transmission Ownership Rights that are not serving their own load through wholesale purchases. Other stakeholders, such as the Independent Energy Producers Association, initially were concerned that the proposed definition would capture electric generators making unregulated retail sales to end-users on adjacent properties. The CAISO added language to the definition that it understands has resolved these concerns.

Powerex asked the CAISO to update its tariff to allow non-load serving exporters to receive CRR allocations because those non-Load Serving Entity exporters also pay TACs. Section 36.9 of the CAISO tariff already allows exporters to receive CRR allocations if they can demonstrate they have an ongoing obligation to serve load and have a contract with a supply resource in the CAISO Balancing Authority Area.

IV. Effective Date

The CAISO respectfully requests that the Commission issue an order by December 30, 2016, approving the tariff revisions contained in this filing effective January 1, 2017. A January 1 effective date is necessary to ensure that BART will maintain its status as a Load Serving Entity upon expiration of the waiver granted in Docket No. ER16-2327-000. A break in BART's status would raise questions about the CAISO's ability both to settle BART's CRRs and rely on any resource adequacy capacity BART shows during the gap period.

V. Communications

Correspondence and other communications regarding this filing should be directed to:

David S. Zlotlow
Senior Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 351-4400
Fax: (916) 608-7222
Email: dzlotlow@caiso.com

VI. Service

The CAISO has served copies of this filing on the California Public Utilities Commission, the California Energy Commission, and all parties with Scheduling Coordinator Agreements under the CAISO tariff. In addition, the CAISO has posted a copy of the filing on the CAISO website.

VII. Contents of Filing

In addition to this transmittal letter, this filing includes the following attachments:

- Attachment A – Clean CAISO tariff sheets incorporating its tariff amendment.
- Attachment B – Red-lined document showing the revisions contained in this tariff amendment.

VIII. Conclusion

For the reasons set forth in this filing, the CAISO respectfully requests that the Commission issue an order by December 30, 2016, accepting the tariff changes contained in this filing.

Respectfully submitted,

By: David S. Zlotlow

Roger E. Collanton

General Counsel

Anna A. McKenna

Assistant General Counsel

David S. Zlotlow

Senior Counsel

California Independent System

Operator Corporation

250 Outcropping Way

Folsom, CA 95630

Tel: (916) 351-4400

Fax: (916) 608-7222

Email: dzlotlow@caiso.com

Counsel for the California Independent
System Operator Corporation

Attachment A – Clean Tariff Records

Tariff Amendment to Modify Tariff Definition of Load Serving Entity

California Independent System Operator Corporation

- Load Serving Entity

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Attachment B – Marked Tariff Records

Tariff Amendment to Modify Tariff Definition of Load Serving Entity

California Independent System Operator Corporation

- Load Serving Entity

Any entity (or the duly designated agent of such an entity, including, e.g., a Scheduling Coordinator), including a load aggregator or power marketer, 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) (i) is an End User, (ii) has been granted authority pursuant to state or local law or regulation to serve its own Load through the purchase of electric energy from an entity that does not qualify as a Load Serving Entity, and (iii) serves its own Load through purchases of electric energy from an entity that does not qualify as a Load Serving Entity with respect to such purchases of electric energy, or (bc) 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.~~ Notwithstanding the above, an entity is not a Load Serving Entity under this definition solely because it provides electric energy at no cost to its tenants or because it purchases or sells electric energy from a generating resource pursuant to a state or local law or regulation that permits the generating resource to make direct sales of electric energy to an End User, the rates, terms, and conditions of which sale are not subject to regulation by a Local Regulatory Authority.

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