

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement the  
Commission's Procurement Incentive Framework and  
to Examine the Integration of Greenhouse Gas  
Emissions Standards into Procurement Policies.

R. 06-04-009

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**BEFORE THE CALIFORNIA ENERGY COMMISSION**

AB 32 Implementation – Greenhouse Gas  
Emissions.

Docket 07-OIIP-01

**REPLY COMMENTS OF  
THE ALLIANCE FOR RETAIL ENERGY MARKETS  
ON THE DISTRIBUTION OF EMISSIONS ALLOWANCES**

Gregory S. G. Klatt  
DOUGLASS & LIDDELL  
21700 Oxnard Street, Suite 1030  
Woodland Hills, California 91367  
Telephone: (818) 961-3002  
Facsimile: (818) 961-3004  
Email: [klatt@energyattorney.com](mailto:klatt@energyattorney.com)

Attorneys for the  
**ALLIANCE FOR RETAIL ENERGY MARKETS**

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In accordance with the Administrative Law Judge's Ruling Requesting Comments and Noticing Workshop on Allowance Allocation Issues dated October 15, 2007 ("ALJ's Ruling"), the Alliance for Retail Energy Markets ("AReM") respectfully submits its reply to the opening comments on issues relating to the distribution of greenhouse gas ("GHG") emission allowances under a load-based system.<sup>1</sup>

**I. INTRODUCTION**

AReM's members are energy service providers ("ESPs") that would be most directly affected by the regulation of greenhouse gas ("GHG") emissions in the electricity sector at the retail provider level (i.e., a load-based system), and AReM's opening

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<sup>1</sup> AReM is a California non-profit mutual benefit corporation formed by energy service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

comments focused on issues that would impact ESPs under such a system. Given the large number of parties that submitted opening comments and the widely varying interests they represent, it is unsurprising that the recommendations presented in the opening comments cover the full spectrum of options. Notably, however, there appears to be broad agreement regarding key features of a load-based system among the parties that are most concerned about the potential impact of GHG regulations on consumers, including the Division of Ratepayer Advocates (“DRA”), The Utility Reform Network (“TURN”), Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), San Diego Gas & Electric Company (“SDG&E”), Los Angeles Department of Water and Power (“LADWP”), Modesto Irrigation District (“MID”), the Western Power Trading Forum (“WPTF”), and AReM. While there are some differences of opinion among these parties regarding certain details (and not every party commented on every issue), areas of broad agreement include the following:

- Administrative allocation should be the primary means by which emission allowances are distributed to retail providers during the early years of the program.
- Administrative allocations should be adjusted periodically to account for load migration.
- New market entrants should have access to allowances either through set-asides or as a function of the allocation process.
- Retail providers should be allowed to use flexible compliance.
- The transition to allowance auctions should be gradual.

In this reply, AReM will comment on the various proposals concerning the method by which emission allowances could be allocated to retail providers, the need for a true-up mechanism to account for load migration, the need for flexible compliance, the risks of moving too rapidly toward 100% auctioning of allowances, and the various proposals concerning the use of auction revenues. AReM's comments are limited to these program elements under a load-based system.<sup>2</sup> In summary, AReM recommends:

- For fairness and policy reasons, allowances should be allocated to retail providers in proportion to their relative shares of *projected* retail sales or, possibly, the estimated “economic harm” resulting from GHG regulation. AReM recommends that a separate workshop be held on this topic.
- If allocations are based on retail sales, energy efficiency savings should not be considered since the investor-owned utilities (“IOUs”) are already compensated for the corresponding reductions in their retail sales, and direct access customers not only help fund the IOUs’ energy efficiency programs but are also responsible for a significant portion of the load reductions under those programs.
- Allocations to individual retail providers should be trued-up for load migration on a regular basis (monthly or, at a minimum, quarterly), particularly given the possibility that the direct access market will be reopened when the state’s cap and trade program is in place.
- Retail providers should be allowed a wide range of “flexible compliance” options.

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<sup>2</sup> Since AReM’s members would not be significantly affected by GHG regulation under a “deliverer/first seller” system, AReM is not commenting on the various proposals specific to such a system.

- The transition to 100% auctioning of allowances should be gradual so as to protect against market power abuse and mitigate consumer costs.
- Auction revenues should be allocated among retail providers in proportion to their share of load, and the ultimate disposition of the revenues allocated to each retail provider should be left to its discretion.

## **II. THE METHOD BY WHICH EMISSION ALLOWANCES ARE ALLOCATED TO RETAIL PROVIDERS SHOULD BE FAIR AND EQUITABLE.**

Methods for the administrative allocation of emission allowances to retail providers proposed in the opening comments include proportional allocations based on:

- (1) Projected retail sales (AReM);
- (2) Projected retail sales and energy efficiency savings (DRA);
- (3) “Current” (historical) retail sales and energy efficiency savings (PG&E);
- (4) “Economic harm” (SCE);
- (5) Current emissions (LADWP); and
- (6) Historical emissions (MID).

For the reasons explained below, AReM recommends that allowances be allocated to retail providers in proportion to their shares of projected retail sales (without consideration of energy efficiency savings) or, possibly, the “economic harm” (i.e., increased costs) resulting from GHG regulation.

**A. Allocating Allowances Based Solely on Historical or Current Emissions Would Be Counterproductive, Administratively Complex, and Contentious.**

AReM strongly opposes proposals to allocate GHG emission allowances to retail providers based simply on the historical or current emissions of their resource portfolios, without any consideration of a retail provider's market share or other important factors. As TURN, PG&E and other parties pointed out in their opening comments, the State of California has already determined as a matter of public policy that allowances should not be allocated based solely on historical emissions since that "will only serve to reward the biggest polluters at the expense of consumers and penalize early leadership."<sup>3</sup> Under a load-based system, retail providers that procure a significant portion of their power from resources with higher GHG emissions (e.g., coal-fired generation) would be rewarded at the expense of those that have invested in or procure power from zero or low-emissions resources, in that the former would receive a proportionally greater share of allowances.

That would be particularly unfair to ESPs, which typically purchase most of their energy through contracts for the output from relatively low-emitting gas-fired resources and relatively clean "system" power. It would also be unfair to those LSEs, including several ESPs, with customers that voluntarily purchase "green" energy or have installed distributed generation facilities with low emissions. It would also punish LSEs that meet the State's goal of 20% of retail sales from renewable energy by 2010. Indeed, basing allocations solely on historical or current emissions will create a disincentive for retail providers with high emissions profiles to reduce their emissions or invest in new renewable resources and emissions reduction technologies.

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<sup>3</sup> State of California, Recommendations for Federal Climate Policy.

Lastly, as PG&E has pointed out, the allocation process itself would be administratively complex and contentious, as regulators would have to assign responsibility to LSEs individually for the emissions from merchant generators and short-term imports, in many cases without there being a clear “line-of-sight” between the source of emissions and a particular LSE.

**B. Allocating Allowances Based on Projected Retail Sales Would Be Preferable to Using Historical Retail Sales.**

AReM believes that using projected retail sales as the basis for allowance allocations is preferable to using historical sales. Historical sales would be a reasonable basis for allocating allowances if all of the retail providers in California were public utilities and all of their customers were captive. However, that is not the existing market paradigm. Retail customers of PG&E, SCE and SDG&E have the option of purchasing their power from an ESP or a community choice aggregator (“CCA”).<sup>4</sup> While the proportional share of statewide load served by each of the utilities has been fairly constant over time, the load served by individual ESPs (and future CCAs) can vary significantly from year to year. This phenomenon could be even more pronounced if and the direct access market is reopened, a possibility the Commission is currently exploring. If allowances for a particular year are allocated on the basis of historical sales and the load served by an ESP (or a CCA) increases significantly before or during the compliance year, the ESP (or CCA) will need to secure a significant amount of additional allowances

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<sup>4</sup> Although the right of customers to elect direct access service was suspended in 2001, customers that had direct access arrangements in place at the time the suspension went into effect remain eligible for direct access service. Those customers account for more than ten percent of the load in the utilities’ service territories. Moreover, the suspension of direct access is not permanent, and the Commission is currently conducting proceedings on reopening the direct access market. And while no CCAs are currently providing service to customers, several are in the process of being formed.



in the secondary market, potentially at a very high cost, due to market illiquidity in the early years of a cap and trade program.

This highlights the need for the administrative allocation process to include a true-up process, whether the initial allocations are based on historical sales or projected sales. An advantage of basing allocations on projected sales, however, is that the magnitude of adjustments to the allocations to ESPs and CCAs would be much smaller than if the allocations were based on historical sales. That is because the total load that is expected to be served by ESPs (and CCAs) would be known in advance. As a result, the amount of allowances that would have to be reallocated from the utilities to (ESPs or CCAs) should be much less than if the initial allocations were based on historical sales data.

Some parties have expressed concern that allocating allowances on the basis of projected sales would create an incentive for an LSE to inflate its sales forecast in order to receive a larger allocation. However, there is a simple solution to this potential problem: Use the same load forecast that is used to determine an LSE's resource adequacy obligations as the basis for the LSE's allocation of emission allowances.<sup>5</sup> Since an LSE's resource adequacy obligations would most likely be higher under an inflated forecast, it would have a strong incentive to submit an accurate forecast.

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<sup>5</sup> Under state law, IOUs, ESPs and CCAs are subject to resource adequacy requirements established by the Commission. As part of the reporting requirements for the Commission's resource adequacy program, these LSEs are required to submit hourly load forecasts to the Energy Commission, which calculates the resource adequacy requirements for each LSE. While the resource adequacy requirements are for capacity, not energy, each LSE's resource adequacy requirements are determined based largely on their hourly load forecast. Publicly-owned utilities are subject to similar requirements under the CAISO's tariffs.

**C. Energy Efficiency “Savings” Should Not Be Considered “Retail Sales” for Purposes of Allocating Allowances.**

Assuming allowances are allocated on the basis of retail sales, AReM opposes the proposals to count load reductions attributable to energy efficiency programs administered by the IOUs as retail sales. While there obviously is a connection between reduced consumption from energy efficiency measures and reduced GHG emissions, it would be unreasonable and unfair to reward the IOUs for energy efficiency savings with increased allocations of emission allowances. The utilities are already paid handsomely for each MWh that is not consumed due to the energy efficiency programs they administer, and it would be unreasonable to allow the IOUs to double-count those MWh for purposes of the allocation of GHG emission allowances. Double-counting of energy efficiency savings by the IOUs would be particularly unfair to ESPs and their customers, given that direct access customers help fund the utilities’ energy efficiency programs and are responsible for a significant portion of the energy efficiency savings achieved thereby. If energy efficiency savings are to be treated as retail sales for purposes of allowance allocations, then all LSEs whose customers fund those programs should be credited with proportional shares of those benefits.

**D. SCE’s Proposal to Allocate Allowances Based on “Economic Harm” Deserves Consideration.**

While AReM is opposed to allocating allowances *solely* on the basis of historical or current emissions, AReM believes that SCE’s proposal to allocate allowances to LSEs based on their share of the “economic harm” (i.e., increased costs) resulting from GHG regulations, as calculated based on historical and/or current emissions and wholesale purchases, deserves further consideration. AReM has not fully analyzed SCE’s proposal,

but believes that it could result in allocations to the different types of LSEs that are even more fair and equitable than allocations based on retail sales alone. AReM therefore recommends that a workshop be held to allow parties to examine SCE's proposal in more detail.

**E. Initial Allocations Should Be Trued-up for Load Growth and Load Migration.**

Whatever metric or formula may be used to allocate allowances to retail providers, AReM strongly agrees with DRA and the utilities that the allocations to individual LSEs should be adjusted periodically to account for load growth and load migration. Load growth is less of a concern for ESPs while the suspension of direct access remains in effect. However, load migration can and does have a material effect on the load served by individual ESPs. That is because ESPs contract with customers on an individual basis. Customers can move to a different ESP at the end of their contracts, and customers that are on bundled service but remain eligible for direct access can move to direct access at the end of their minimum three-year commitments. Therefore, as noted previously, individual ESPs can experience significant changes in their customer base, and thus their loads, from year to year and even month to month.

Load growth and load migration could be even more significant factors for ESPs if the direct access market is reopened, a possibility the Commission is actively considering. Currently, there is an effective cap on the total amount of load that is eligible for direct access. If the direct access market is reopened, however, this de facto cap on direct access load growth will either be eliminated or increased, as ESPs would be allowed to serve new load added by existing direct access customers and new customers will become eligible for direct access.

If the allocations of allowances to individual LSEs are set in stone for the duration of the compliance period, then LSEs that gain load would be punished and those that lose load would be rewarded. While some ESPs could benefit from this approach to the extent they lose load during the compliance period, the primary winners would most likely be the IOUs, particularly if the direct access market is reopened and load migrates to ESPs. Accordingly, fairness dictates that allowance allocations be adjusted to account for both load growth and load migration.

The frequency that allowances allocations should be adjusted will depend in part on the length of each compliance period. Assuming the compliance period is 12 months, AReM recommends that the true up of allocations be performed on a monthly basis. At a minimum, there should be quarterly true ups, whether the compliance timeframe is 12 months or some longer period.

### **III. RETAIL PROVIDERS SHOULD BE ALLOWED TO USE A WIDE RANGE OF “FLEXIBLE COMPLIANCE” TOOLS.**

Under a load-based system, retail providers in general and smaller LSEs in particular will face challenges in meeting GHG emissions reduction goals similar to those they face in complying with RPS requirements, including potential market power abuse, limited availability of desired resources, delays in new resources coming on line, a “building block” supply curve, and price volatility. To mitigate the effect of these barriers to RPS compliance, the Commission allows LSEs to utilize a variety of “flexible compliance” tools, including banking excess procurement and carrying over procurement deficits. AReM strongly agrees with DRA and other parties that recommend a similar approach with respect to compliance with GHG emissions reduction requirements. More specifically, LSEs should be allowed unlimited banking of excess emission allowances,

the carry over of allowance deficits for up to three years, and the use of emission offsets. Allowing LSEs to utilize these options will facilitate compliance by smaller LSEs, mitigate customer costs, and promote long-term investments in GHG reductions.

#### **IV. THE TRANSITION TO 100% AUCTIONING OF ALLOWANCES SHOULD BE GRADUAL.**

Philosophically and as a practical matter, AReM believes that market solutions to public policy objectives are superior to “command-and-control” regulation and administratively determined outcomes. Accordingly, AReM supports the transition to 100% auctioning of GHG emission allowances. As several parties have pointed out, however, there are grave risks associated with going to 100% auctioning immediately or too rapidly.

There is little disagreement that the imposition of GHG emission reduction requirements in the electricity sector will significantly increase consumer costs. While the auctioning of allowances would be less complex and more efficient than administrative allocations, and the resulting price signals can be expected to promote more efficient investment in GHG reduction measures, there is a trade off between the benefits from auctions and the increased costs they can be expected to create for consumers. In order to mitigate those costs and allow time for a liquid market for emission allowances to develop, the transition to 100% auctioning of allowances should be gradual. AReM does not have a specific proposal at this time for how long that transition should be or the increments by which auctions should replace administrative allocations. AReM believes, however, that the transition period should be no less than ten years.

**V. AUCTION REVENUES SHOULD BE RETURNED TO RETAIL PROVIDERS OR THEIR CUSTOMERS ON A PROPORTIONAL BASIS.**

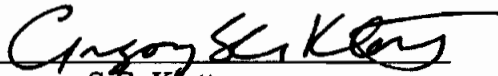
There is broad agreement among the parties that directly or indirectly represent customers that at least some portion of auction revenues should be used to mitigate customer costs and invest in GHG reduction measures. To the extent the allowances being auctioned are “owned” by retail providers, fairness dictates that auction revenues be returned to the retail providers on a proportional basis. If under a first-seller system, as some parties propose, allowances are first allocated to retail providers and then auctioned to first sellers, the auction revenues should be returned to retail providers in proportion to their initial allocations. Under a load-based system, auction revenues should be returned to retail providers in proportion to their share of the total amount of allowances that are auctioned.

AReM agrees with SDG&E that the ultimate disposition of the revenues returned to retail providers should be left to the discretion of those entities, rather than being dictated by the Commission or some other regulatory body. Alternatively, the revenues should be returned directly to customer through the utilities’ wires charges, which are paid by all customers. AReM strongly disagrees with TURN’s suggestion that bundled customers should receive a greater share of auction revenues than direct access customers. Bundled customers and direct access customers pay the same charges for public purposes programs, and should therefore receive the same auction benefits.

## VI. CONCLUSION

For the foregoing reasons, AReM urges the adoption of the recommendations set forth in its opening comments and these reply comments.

Respectfully submitted,

  
Gregory S.G. Klatt

DOUGLASS & LIDDELL  
21700 Oxnard Street, Suite 1030  
Woodland Hills, California 91367  
Telephone: (818) 961-3002  
Facsimile: (818) 961-3004  
Email: [klatt@energyattorney.com](mailto:klatt@energyattorney.com)

Attorneys for the  
ALLIANCE FOR RETAIL ENERGY MARKETS

Date: November 14, 2007

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the **Reply Comments of the Alliance For Retail Energy Markets on the Distribution of Emissions Allowances** on all parties of record in R.06-04-009 by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on November 14, 2007, at Woodland Hills, California.

  
Michelle Dangott



## SERVICE LIST

R.06-04-009

cadams@covantaenergy.com  
steven.schleimer@barclayscapital.com  
steven.huhman@morganstanley.com  
rick\_noger@praxair.com  
keith.mccrea@sablax.com  
ajkatz@mwe.com  
ckrupka@mwe.com  
lisa.decker@constellation.com  
cswollums@midamerican.com  
kevin.boudreaux@calpine.com  
trdill@westernhubs.com  
ej\_wright@oxy.com  
pseby@mckennalong.com  
todil@mckennalong.com  
steve.koerner@elpaso.com  
jenine.schenk@apses.com  
jbw@slwplc.com  
kelly.barr@srpnet.com  
rrtaylor@srpnet.com  
smichel@westernresources.org  
roger.montgomery@swgas.com  
Lorraine.Paskett@ladwp.com  
ron.deaton@ladwp.com  
snewsom@semprautilities.com  
dhuard@manatt.com  
curtis.kebler@gs.com  
dehling@klng.com  
gregory.koiser@constellation.com  
npedersen@hanmor.com  
mmazur@3phasesRenewables.com  
vitaly.lee@aes.com  
tiffany.rau@bp.com  
klatt@energyattorney.com  
rhelgeson@scppa.org  
douglass@energyattorney.com  
pssed@adelphia.net  
akbar.jazayeri@sce.com  
annette.gilliam@sce.com  
cathy.karlstad@sce.com  
Laura.Genao@sce.com  
rkmoore@gswater.com  
dwood8@cox.net  
amsmith@sempra.com  
atrial@sempra.com  
apak@sempraglobal.com  
dhecht@sempratrading.com  
daking@sempra.com  
svongdeuane@semprasolutions.com  
troberts@sempra.com  
liddell@energyattorney.com  
marcie.milner@shell.com  
rwinthrop@pilotpowergroup.com  
tdarton@pilotpowergroup.com  
lschavrien@semprautilities.com  
GloriaB@anzaelectric.org  
llund@commerceenergy.com  
thunt@cecmail.org  
diane\_fellman@fpl.com  
jeanne.sole@sfgov.org  
john.hughes@sce.com  
llorenz@semprautilities.com  
marcel@turn.org  
nsuetake@turn.org  
dil@cpuc.ca.gov  
fjs@cpuc.ca.gov  
achang@nrdc.org  
rsa@a-klaw.com  
ek@a-klaw.com  
kgrenfell@nrdc.org  
mpa@a-klaw.com  
sls@a-klaw.com  
bill.chen@constellation.com  
bkc7@pge.com  
epoole@adplaw.com  
agrimaldi@mckennalong.com  
bcragg@goodinmacbride.com  
jsqueri@gmssr.com  
jarmstrong@goodinmacbride.com  
kbowen@winston.com  
lcottle@winston.com  
sbeatty@cwclaw.com  
vprabhakaran@goodinmacbride.com  
jkarp@winston.com  
jeffgray@dwt.com  
cjlw5@pge.com  
ssmyers@att.net  
lars@resource-solutions.org  
alho@pge.com  
aweller@sel.com  
jchamberlin@strategicenergy.com  
beth@beth411.com  
kerry.hattevik@mirant.com  
kowalewska@calpine.com  
wbooth@booth-law.com  
hoerner@redefiningprogress.org  
janill.richards@doj.ca.gov  
cchen@ucsusa.org  
gmorris@emf.net  
tomb@crossborderenergy.com  
kjinnovation@earthlink.net  
bmcc@mccarthyllaw.com  
sberlin@mccarthyllaw.com  
Mike@alpinenaturalgas.com  
joyw@mid.org  
UHelman@caiso.com  
jjensen@kirkwood.com  
mary.lynn@constellation.com  
lrdevanna-rf@cleanenergysystems.com  
abb@eslawfirm.com  
mclaughlin@braunlegal.com  
glw@eslawfirm.com  
jluckhardt@downeybrand.com  
jdh@eslawfirm.com  
vwelch@environmentaldefense.org  
www@eslawfirm.com  
westgas@aol.com  
schohn@smud.org  
atrowbridge@daycartermurphy.com  
dansvec@hdo.net  
notice@psrec.coop  
deb@a-klaw.com  
cynthia.schultz@pacificorp.com  
kyle.l.davis@pacificorp.com  
ryan.flynn@pacificorp.com  
carter@ieta.org  
jason.dubchak@niskags.com  
bjones@mjbardley.com  
kcolburn@symbioticstrategies.com  
rapcowart@aol.com  
Kathryn.Wig@nrgenergy.com  
sasteriadis@apx.com  
george.hopley@barcap.com  
ez@pointcarbon.com  
burtraw@rff.org  
vb@pointcarbon.com  
kyle\_boudreaux@fpl.com  
andrew.bradford@constellation.com  
gbarch@knowledgeinenergy.com  
ralph.dennis@constellation.com  
smindel@knowledgeinenergy.com  
brabe@umich.edu  
bpotts@foley.com  
james.keating@bp.com  
Cynthia.A.Fonner@constellation.com  
jimross@r-c-s-inc.com  
tcarlson@reliant.com  
ghinners@reliant.com

zaiontj@bp.com  
julie.martin@bp.com  
fiji.george@elpaso.com  
echiang@elementmarkets.com  
fstern@summitblue.com  
nenbar@energy-insights.com  
nlenssen@energy-insights.com  
bbaker@summitblue.com  
william.tomlinson@elpaso.com  
kjsimonsen@ems-ca.com  
Sandra.ely@state.nm.us  
bmcquown@reliant.com  
dbrooks@nevp.com  
anita.hart@swgas.com  
randy.sable@swgas.com  
bill.schrand@swgas.com  
jj.prucnal@swgas.com  
sandra.carolina@swgas.com  
ckmitchell1@sbcglobal.net  
chilen@sppc.com  
emello@sppc.com  
tdillard@sierrapacific.com  
dsoyars@sppc.com  
jgreco@caithnessenergy.com  
fluchetti@ndep.nv.gov  
leilani.johnson@ladwp.com  
randy.howard@ladwp.com  
Robert.Rozanski@ladwp.com  
robert.pettinato@ladwp.com  
HYao@SemptraUtilities.com  
rprince@semprautilities.com  
rkeen@manatt.com  
nwhang@manatt.com  
pjazayeri@stroock.com  
derek@climaterestry.org  
david@nemtzow.com  
harveyederpspc.org@hotmail.com  
sendo@ci.pasadena.ca.us  
slins@ci.glendale.ca.us  
thamilton5@charter.net  
bjeider@ci.burbank.ca.us  
rmorillo@ci.burbank.ca.us  
roger.pelote@williams.com  
aimee.barnes@ecosecurities.com  
case.admin@sce.com  
tim.hemig@nrgeenergy.com  
bjl@bry.com  
aldyn.hoekstra@paceglobal.com  
ygross@sempraglobal.com  
jlaun@apogee.net  
kmkiener@fox.net  
scottanders@sandiego.edu  
jkloberdanz@semprautilities.com  
andrew.mcallister@energycenter.org

jack.burke@energycenter.org  
jennifer.porter@energycenter.org  
sephra.ninow@energycenter.org  
dniehaus@semprautilities.com  
jleslie@luce.com  
ofoote@hkcf-law.com  
ekgrubaug@iid.com  
pepper@cleanpowermarkets.com  
gsmith@adamsbroadwell.com  
mdjoseph@adamsbroadwell.com  
hayley@turn.org  
mflorio@turn.org  
Dan.adler@calcef.org  
mhyams@sfwater.org  
tburke@sfwater.org  
norman.furuta@navy.mil  
amber@ethree.com  
annabelle.malins@fco.gov.uk  
dwang@nrdc.org  
filings@a-klaw.com  
nes@a-klaw.com  
obystrom@cera.com  
sdhilton@stoel.com  
scarter@nrdc.org  
abonds@thelen.com  
cbaskette@enernoc.com  
colin.petheram@att.com  
jwmctarnaghan@duanemorris.com  
kfox@wsgr.com  
kkhoja@thelenreid.com  
pvalien@thelen.com  
spauker@wsgr.com  
rreinhard@mofo.com  
cem@newsdata.com  
hgolub@nixonpeabody.com  
jscancarelli@flk.com  
jwiedman@goodinmacbride.com  
mmattes@nossaman.com  
jen@cnt.org  
lisa\_weinzimer@platts.com  
steven@moss.net  
sellis@fypower.org  
arno@recurrentenergy.com  
ELL5@pge.com  
gxl2@pge.com  
jxa2@pge.com  
JDF1@PGE.COM  
RHHJ@pge.com  
sscb@pge.com  
svs6@pge.com  
S1L7@pge.com  
vjw3@pge.com  
karla.dailey@cityofpaloalto.org  
farrokh.albuyeh@oati.net

dtibbs@aes4u.com  
jhahn@covantaenergy.com  
andy.vanhorn@vhcenergy.com  
Joe.paul@dynegey.com  
info@calseia.org  
gblue@enxco.com  
sbeserra@sbcglobal.net  
monica.schwebs@bingham.com  
phanschen@mofo.com  
josephhenri@hotmail.com  
pthompson@summitblue.com  
dietrichlaw2@earthlink.net  
Betty.Seto@kema.com  
JerryL@abag.ca.gov  
jody\_london\_consulting@earthlink.net  
steve@schiller.com  
mrw@mrwassoc.com  
rschmidt@bartlells.com  
adamb@greenlining.org  
stevek@kromer.com  
clyde.murley@comcast.net  
brenda.lemay@horizonwind.com  
carla.peterman@gmail.com  
elvine@lbl.gov  
rhwisner@lbl.gov  
C\_Marnay@lbl.gov  
phil@scdenergy.com  
rita@ritanortonconsulting.com  
cpechman@powereconomics.com  
emahlon@ecoact.org  
richards@mid.org  
rogerv@mid.org  
tomk@mid.org  
fwmonier@tid.org  
brbarkovich@earthlink.net  
johnrredding@earthlink.net  
clark.bernier@rlw.com  
rmccann@umich.edu  
cmkehrein@ems-ca.com  
e-recipient@caiso.com  
grosenblum@caiso.com  
rsmutny-jones@caiso.com  
saeed.farrokhpay@ferc.gov  
david@branchcomb.com  
kenneth.swain@navigantconsulting.com  
kdusel@navigantconsulting.com  
gpickering@navigantconsulting.com  
lpark@navigantconsulting.com  
davidreynolds@ncpa.com  
scott.tomashefsky@ncpa.com  
ewolfe@resero.com  
Audra.Hartmann@Dynegey.com  
Bob.lucas@calobby.com  
curt.barry@iwpnews.com

danskopec@gmail.com  
dseperas@calpine.com  
dave@ppallc.com  
dkk@eslawfirm.com  
wynne@braunlegal.com  
kgough@calpine.com  
kellie.smith@sen.ca.gov  
kdw@woodruff-expert-services.com  
mwaugh@arb.ca.gov  
pbarthol@energy.state.ca.us  
pstoner@lgc.org  
rachel@ceert.org  
bernardo@braunlegal.com  
steven@lipmanconsulting.com  
steven@iepa.com  
wtasat@arb.ca.gov  
etiedemann@kmtg.com  
ltenhope@energy.state.ca.us  
bushinskyj@pewclimate.org  
lmh@eslawfirm.com  
obartho@smud.org  
bbeebe@smud.org  
bpurewal@water.ca.gov  
dmacmll@water.ca.gov  
kmills@cfbf.com  
karen@klindh.com  
ehadley@reupower.com  
Denise\_Hill@transalta.com  
sas@a-klaw.com  
egw@a-klaw.com  
akelly@climatetrust.org  
alan.comnes@nrgenergy.com

lisa.c.schwartz@state.or.us  
cbreidenich@yahoo.com  
dws@r-c-s-inc.com  
jesus.arredondo@nrgenergy.com  
charlie.blair@delta-ee.com  
karen.mcdonald@powerex.com  
clarence.binninger@doj.ca.gov  
david.zonana@doj.ca.gov  
agc@cpuc.ca.gov  
aeg@cpuc.ca.gov  
blm@cpuc.ca.gov  
cfl@cpuc.ca.gov  
cft@cpuc.ca.gov  
tam@cpuc.ca.gov  
dsh@cpuc.ca.gov  
edm@cpuc.ca.gov  
cpe@cpuc.ca.gov  
hym@cpuc.ca.gov  
hs1@cpuc.ca.gov  
jm3@cpuc.ca.gov  
jnm@cpuc.ca.gov  
jbf@cpuc.ca.gov  
jkl@cpuc.ca.gov  
jst@cpuc.ca.gov  
jtp@cpuc.ca.gov  
jol@cpuc.ca.gov  
jci@cpuc.ca.gov  
jf2@cpuc.ca.gov  
krd@cpuc.ca.gov  
lrm@cpuc.ca.gov  
ltd@cpuc.ca.gov  
mjd@cpuc.ca.gov

rmm@cpuc.ca.gov  
ram@cpuc.ca.gov  
smk@cpuc.ca.gov  
sgm@cpuc.ca.gov  
svn@cpuc.ca.gov  
scr@cpuc.ca.gov  
tcx@cpuc.ca.gov  
ken.alex@doj.ca.gov  
ken.alex@doj.ca.gov  
bdicapo@caiso.com  
jsanders@caiso.com  
jgill@caiso.com  
ppetgill@caiso.com  
mscheibl@arb.ca.gov  
epowers@arb.ca.gov  
jdoll@arb.ca.gov  
pburmich@arb.ca.gov  
bblevins@energy.state.ca.us  
dmetz@energy.state.ca.us  
deborah.slone@doj.ca.gov  
dks@cpuc.ca.gov  
kgriffin@energy.state.ca.us  
ldecarlo@energy.state.ca.us  
mprior@energy.state.ca.us  
californiadockets@pacificorp.com  
Philip.H.Carver@state.or.us  
samuel.r.sadler@state.or.us  
pw1@cpuc.ca.gov  
psp@cpuc.ca.gov  
pzs@cpuc.ca.gov  
kyle.silon@ecosecurities.com  
ner@cpuc.ca.gov