

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

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

Rulemaking 06-04-009
(Filed April 13, 2006)

Order Instituting Informational Proceeding –
AB-32

CEC Docket Number 07-OIIP-01

**COMMENTS OF KENNETH C. JOHNSON
PERTAINING TO TYPE AND POINT OF REGULATION ISSUES**

Kenneth C. Johnson
2502 Robertson Rd
Santa Clara, CA 95051
408-244-4721
kjinnovation@earthlink.net

November 21, 2007

COMMENTS OF KENNETH C. JOHNSON
PERTAINING TO TYPE AND POINT OF REGULATION ISSUES

Kenneth C. Johnson, an unaffiliated individual, U.S. citizen, and resident of California having a personal interest in and concern about climate change, respectfully submits the following comments in response to the *Administrative Law Judge's Ruling Requesting Comments on Type and Point of Regulation Issues* (11/09/2007).

The November 11 ALJ ruling invites parties' comments on the general type and point of regulation to be used to reduce greenhouse gas (GHG) emissions in the electricity sector, and "any other issues they deem to be related to this topic". The following comments are responsive primarily to Q3 (relating to policy evaluation criteria) and Q28-29 (recommended type of regulation), and they focus on policy issues that are independent of the point of regulation.

1. Policy evaluation criteria

The preface to Q3 includes the following proposed evaluation criterion:

Cost minimization: *Is the approach likely to minimize the total cost to end users of achieving a given GHG reduction target?*

This criterion is not responsive to the precise statutory requirements of AB 32 because the question seems to be based on an implicit notion of "target" that is not supported by AB 32, and because "minimum cost" does not necessarily equate to low or acceptable cost and does not imply conformance to any standard of "cost effectiveness".

Although the term "target" does not appear anywhere in AB 32, the meaning and intent of the statute is clear. It defines a "Statewide greenhouse gas emissions limit," which establishes an upper limit on the allowable level of statewide greenhouse gas emissions in 2020 (Sec. 38505(n)). It also requires that the GHG regulations be "technologically feasible and cost-effective," establishing a lower limit below which further emission reductions are not required (Sec. 38560). More specifically, the statute requires that the regulations achieve "the *maximum* technologically feasible and cost-effective greenhouse gas emission reductions" (emphasis added), making it clear that the target level is the lower limit, that determined by feasibility and cost effectiveness, and

not the upper limit. The 2020 emission cap represents a minimal requirement, a necessary but insufficient condition for compliance. It does not represent a de minimis threshold below which further GHG reductions should not apply.

The ALJ ruling appears to tacitly accept and promulgate an interpretation of AB 32 that ascribes no meaning to the Sec. 38560 maximality requirement, in that none of the proposed evaluation criteria or questions in the ruling address this requirement. The relevant question pertaining to Sec. 38560 is not whether the regulations will minimize costs subject to an emission cap constraint; the issue is whether they will minimize emissions subject to feasibility and cost effectiveness constraints. The Commissions' recommendations to ARB will be deficient and incomplete if they are not responsive to the Sec. 38560 requirement and are not informed by stakeholder input on how to address this requirement.

2. Proposal regarding type of regulation

A regulatory structure incorporating the following elements is proposed to implement the statutory requirements of AB 32:

- (1) A cap-and-trade system covering at least the electricity sector.
- (2) 100% auctioning of allowances, with auction revenue being allocated to achieve policy objectives.
- (3) A price floor (reservation price), with retirement of unsold allowances.
- (4) A Governor-authorized safety valve (price cap).
- (5) No banking, but unused allowances can be refunded at the floor price.
- (6) Noncompliance penalty: compulsory, retroactive purchase of allowances, at the safety-valve price, to cover unauthorized emissions.

3. Distribution of auction revenue

A variety of distributional policy objectives and allocation methodologies were discussed in the October 15 ALJ ruling on allowance allocation issues and in respondents' comments. These include grandfathering, distribution proportionate to "economic harm", direct distribution to the public or "in the public interest", and output-based refunding. None of these methods requires administrative allocation of allowances.

Any proportionate allocation formula for allowance distribution can alternatively be applied to auction revenue distribution to achieve equivalent policy objectives.

The above-outlined regulatory framework can work with any of the aforementioned allocation methods. Moreover, the proposed framework has advantages that are independent of the allocation method.

4. The price floor in relation to environmental integrity and contract shuffling

A fundamental advantage of auctioning is that it can accommodate a price floor, which will motivate maximal emission reductions subject to a marginal cost limit defined by the limit price. This would help maintain price stability and avoid the possibility of regulated entities' investments in emission reduction being lost or diluted by price erosion. As noted in the MAC report¹, "A price floor has the attraction of giving investors certainty that the price of emission allowances would never fall below a specified level ... a price floor would reinforce environmental integrity and the value of clean investments." (One other consideration: Even if the emission cap does not survive legal challenges it may still be possible to maintain the price floor as a "monetary incentive" for emission reduction.)

A price floor would also neutralize the effect of contract shuffling. Without a price floor, regulated entities may use contract shuffling in lieu of more costly compliance mechanisms to achieve the emission cap. In effect, the cap would be achieved, in part, by exporting some of California's emissions. But with a price floor, the incentive for further emission reductions would not cease when the cap is achieved. Regulated entities will be motivated to exploit all emission reduction strategies within the marginal cost limit defined by the price floor irrespective whether those strategies include contract shuffling. In effect, the over-compliance motivated by the price floor would neutralize any emission "exports" resulting from contract shuffling.

In the context of a price floor, contract shuffling would perform a useful function of fostering competition for low-GHG energy resources in the California import market. However, this would only be the case if importers' rated GHG emissions are based on

¹ Market Advisory Committee, Final Report, June 29, 2007, p. 68:
http://www.climatechange.ca.gov/policies/market_advisory.html

their actual contracts. If they are based on some larger aggregate, such as the WECC-wide average emission intensity, then competitive incentives for low-GHG imports would be substantially eliminated. One possible interim policy approach would be to allow imported power to be rated, by default, according to WECC-average emission intensity, but also allow out-of-state generators and resellers the alternative option of adopting California-certified GHG accounting standards under which GHG accounting certificates would be sold along with generated power for crediting in the California market. The WECC-average emission rating would be calculated excluding the accounted source emissions, so the competitive incentive to adopt GHG accounting standards would increase as more firms adopt such standards. To maintain regulatory parity between imports and in-state generation, the same voluntary approach could be applied to the latter, but the price floor ensures that competition would soon induce universal adoption of certified GHG accounting protocols for virtually all sources serving the California market.

5. Deficiencies of banking

Banking is, in essence, a form of market speculation. In theory banking can be used to maintain price stability, but due to predictive uncertainty the market may tend to over-invest in banked allowances, causing short-term price increases and market illiquidity followed by long-term price erosion as unneeded allowances are used or sold. Alternatively, the market may under-invest in banking, leaving it vulnerable to price hikes and market manipulation.

Banking is antithetical to climate policy objectives because it motivates entities to acquire more allowances than they need; and banking would interfere with the function of a price floor, which creates a disincentive to acquire unneeded allowances. Under the U.S. SO₂ trading program the industry was able to make extensive use of banking only because the emission cap was nowhere near the threshold of feasibility and cost effectiveness. With an emission cap set at the maximum feasible and cost-effective reduction level, there would be no surplus allowances available for banking. If the cap is set at a higher level, either banking or a price floor could induce short-term emission reductions below the cap level; but with banking the surplus reductions would be

balanced by long-term emission increases in excess of the cap whereas a price floor will maintain long-term incentives for over-compliance.

6. Safety valve

A practical and sensible alternative to banking would be a safety valve, which would release excess allowances only if and when they are needed, and only in the amount needed. Furthermore, a safety valve would not interfere with the price floor incentive for over-compliance in the event that emission prices remain low. In the context of AB 32, a safety valve would be activated by an Executive Order of the Governor under the authority of Sec. 38599(a), which allows the Governor to suspend the regulations under the “threat of significant economic harm”. Although the emission cap may be suspended, maximum feasible and cost-effective emission reductions could still be maintained, via the safety valve, until such time as the cap can be reinstated.

7. Other provisions

Without banking, unused emission allowances cannot be carried over into subsequent compliance periods, but they would be refunded at the floor price. They would not be refunded at the purchase price because a market price in excess of the floor price would be indicative of allowance scarcity, and allowance holders should be induced to trade excess allowances to entities who need them rather than keeping them off the market. This regulatory approach would deter speculation, hoarding, and market manipulation in the emissions market.

The penalty for noncompliance would be compulsory, retroactive purchase of emission allowances, at the safety valve price, to cover the unauthorized emissions. If the sector-wide emission cap is breached as a result of the noncompliance, emissions in excess of the cap should be debited against the succeeding compliance period’s cap and the corresponding penalty fees should be credited to auction revenues for the succeeding period.

Respectfully submitted,

/s/ Kenneth C. Johnson

Kenneth C. Johnson
2502 Robertson Rd
Santa Clara, CA 95051
408-244-4721
kjinnovation@earthlink.net

Dated: November 21, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of COMMENTS OF KENNETH C. JOHNSON PERTAINING TO TYPE AND POINT OF REGULATION ISSUES on the service list for CPUC Docket No. R.06-04-009 and CEC Docket No. 07-OIIP-01 by serving a copy to each party by electronic mail and/or by mailing a properly addressed copy by first-class mail with postage prepaid.

Executed on November 21, 2007, at Santa Clara, California.

/s/ Kenneth C. Johnson

Kenneth C. Johnson
2502 Robertson Rd
Santa Clara, CA 95051
408-244-4721
kjinnovation@earthlink.net

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service List

Proceeding: R0604009

Last changed: November 16, 2007

CINDY ADAMS
COVANTA ENERGY CORPORATION
40 LANE ROAD
FAIRFIELD, NJ 07004

STEVEN S. SCHLEIMER
DIRECTOR, COMPLIANCE & REGULATORY AFFAIRS
BARCLAYS BANK, PLC
200 PARK AVENUE, FIFTH FLOOR
NEW YORK, NY 10166

STEVEN HUHMANN
MORGAN STANLEY CAPITAL GROUP INC.
2000 WESTCHESTER AVENUE
PURCHASE, NY 10577

RICK C. NOGER
PRAXAIR PLAINFIELD, INC.
2711 CENTERVILLE ROAD, SUITE 400
WILMINGTON, DE 19808

KEITH R. MCCREA
ATTORNEY AT LAW
SUTHERLAND, ASBILL & BRENNAN, LLP
1275 PENNSYLVANIA AVE., N.W.
WASHINGTON, DC 20004-2415

ADAM J. KATZ
MCDERMOTT WILL & EMERY LLP
600 13TH STREET, NW.
WASHINGTON, DC 20005

CATHERINE M. KRUPKA
MCDERMOTT WILL AND EMERY LLP
600 THIRTEEN STREET, NW
WASHINGTON, DC 20005

KYLE D. BOUDREAUX
FPL GROUP
700 UNIVERSE BLVD., JES/JB
JUNO BEACH, FL 33408

CATHY S. WOOLLUMS
MIDAMERICAN ENERGY HOLDINGS COMPANY
106 EAST SECOND STREET
DAVENPORT, IA 52801

CYNTHIA A. FONNER
SENIOR COUNSEL
CONSTELLATION ENERGY GROUP INC
550 W. WASHINGTON ST, STE 300
CHICAGO, IL 60661

KEVIN BOUDREAUX
CALPINE POWER AMERICA-CA, LLC
717 TEXAS AVENUE, SUITE 1000
HOUSTON, TX 77002

THOMAS DILL
PRESIDENT
LODI GAS STORAGE, L.L.C.
1021 MAIN ST STE 1500
HOUSTON, TX 77002-6509

E.J. WRIGHT
OCCIDENTAL POWER SERVICES, INC.
5 GREENWAY PLAZA, SUITE 110
HOUSTON, TX 77046

PAUL M. SEBY
MCKENNA LONG & ALDRIDGE LLP
1875 LAWRENCE STREET, SUITE 200
DENVER, CO 80202

TIMOTHY R. ODIL
MCKENNA LONG & ALDRIDGE LLP
1875 LAWRENCE STREET, SUITE 200
DENVER, CO 80202

STEPHEN G. KOERNER, ESQ.
EL PASO CORPORATION
WESTERN PIPELINES
2 NORTH NEVADA AVENUE
COLORADO SPRINGS, CO 80903

JENINE SCHENK
APS ENERGY SERVICES
400 E. VAN BUREN STREET, SUITE 750
PHOENIX, AZ 85004

JOHN B. WELDON, JR.
SALMON, LEWIS & WELDON, P.L.C.
2850 EAST CAMELBACK ROAD, SUITE 200
PHOENIX, AZ 85016

KELLY BARR
MANAGER, REGULATORY AFFAIRS & CONTRACTS
SALT RIVER PROJECT
PO BOX 52025, PAB 221
PHOENIX, AZ 85072-2025

ROBERT R. TAYLOR
AGRICULTURAL IMPROVEMENT AND POWER DIST.
1600 NORTH PRIEST DRIVE, PAB221
TEMPE, AZ 85281

STEVEN S. MICHEL
WESTERN RESOURCE ADVOCATES
2025 SENDA DE ANDRES
SANTA FE, NM 87501

ROGER C. MONTGOMERY
VICE PRESIDENT, PRICING
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS, NV 89193-8510

LORRAINE PASKETT
DIRECTOR, LEGISLATIVE AND REG. AFFAIRS
LA DEPT. OF WATER & POWER
PO BOX 51111
111 N. HOWARD ST., ROOM 1536
LOS ANGELES, CA 90012

RONALD F. DEATON
LOS ANGELES DEPARTMENT OF WATER & POWER
111 NORTH HOPE STREET, ROOM 1550
LOS ANGELES, CA 90012

SID NEWSOM
TARIFF MANAGER
SOUTHERN CALIFORNIA GAS COMPANY
GT 14 D6
555 WEST 5TH STREET
LOS ANGELES, CA 90051

DAVID L. HUARD
ATTORNEY AT LAW
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES, CA 90064

CURTIS L. KEBLER
J. ARON & COMPANY
SUITE 2600
2121 AVENUE OF THE STARS
LOS ANGELES, CA 90067

DENNIS M.P. EHLLING
ATTORNEY AT LAW
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM
10100 SANTA MONICA BLVD., 7TH FLOOR
LOS ANGELES, CA 90067

GREGORY KOISER
CONSTELLATION NEW ENERGY, INC.
350 SOUTH GRAND AVENUE, SUITE 3800
LOS ANGELES, CA 90071

NORMAN A. PEDERSEN
ATTORNEY AT LAW
HANNA AND MORTON, LLP
444 SOUTH FLOWER STREET, NO. 1500
LOS ANGELES, CA 90071

MICHAEL MAZUR
CHIEF TECHNICAL OFFICER
3 PHASES RENEWABLES, LLC
2100 SEPULVEDA BLVD., SUITE 37
MANHATTAN BEACH, CA 90266

VITALY LEE
AES ALAMITOS, LLC
690 N. STUDEBAKER ROAD
LONG BEACH, CA 90803

TIFFANY RAU
POLICY AND COMMUNICATIONS MANAGER
CARSON HYDROGEN POWER PROJECT LLC
ONE WORLD TRADE CENTER, SUITE 1600
LONG BEACH, CA 90831-1600

GREGORY KLATT
ATTORNEY AT LAW
DOUGLASS & LIDDELL
411 E. HUNTINGTON DRIVE, STE. 107-356
ARCADIA, CA 91006

RICHARD HELGESON
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
225 S. LAKE AVE., SUITE 1250
PASADENA, CA 91101

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367

PAUL DELANEY
AMERICAN UTILITY NETWORK (A.U.N.)
10705 DEER CANYON DRIVE
ALTA LOMA, CA 91737

AKBAR JAZAYEIRI
DIRECTOR OF REVENUE & TARRIFFS
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. ROOM 390
ROSEMEAD, CA 91770

ANNETTE GILLIAM
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

CATHY A. KARLSTAD
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770

LAURA I. GENAO
ATTORNEY
SOUTHERN CALIFORNIA EDISON
PO BOX 800
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

RONALD MOORE
GOLDEN STATE WATER/BEAR VALLEY ELECTRIC
630 EAST FOOTHILL BOULEVARD
SAN DIMAS, CA 91773

DON WOOD
PACIFIC ENERGY POLICY CENTER
4539 LEE AVENUE
LA MESA, CA 91941

AIMEE M. SMITH
ATTORNEY AT LAW
SEMPRA ENERGY
101 ASH STREET HQ13
SAN DIEGO, CA 92101

ALLEN K. TRIAL
SAN DIEGO GAS & ELECTRIC COMPANY
HQ-13
101 ASH STREET
SAN DIEGO, CA 92101

ALVIN PAK
SEMPRA GLOBAL ENTERPRISES
101 ASH STREET
SAN DIEGO, CA 92101

DAN HECHT
SEMPRA ENERGY
101 ASH STREET
SAN DIEGO, CA 92101

DANIEL A. KING
SEMPRA ENERGY
101 ASH STREET, HQ 12
SAN DIEGO, CA 92101

SYMONE VONGDEUANE
SEMPRA ENERGY SOLUTIONS
101 ASH STREET, HQ09
SAN DIEGO, CA 92101-3017

THEODORE ROBERTS
ATTORNEY AT LAW
SEMPRA GLOBAL
101 ASH STREET, HQ 13D
SAN DIEGO, CA 92101-3017

DONALD C. LIDDELL, P.C.
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103

MARCIE MILNER
DIRECTOR - REGULATORY AFFAIRS
SHELL TRADING GAS & POWER COMPANY
4445 EASTGATE MALL, SUITE 100
SAN DIEGO, CA 92121

REID A. WINTHROP
PILOT POWER GROUP, INC.
8910 UNIVERSITY CENTER LANE, SUITE 520
SAN DIEGO, CA 92122

THOMAS DARTON
PILOT POWER GROUP, INC.
SUITE 520
8910 UNIVERSITY CENTER LANE
SAN DIEGO, CA 92122

STEVE RAHON
DIRECTOR, TARIFF & REGULATORY ACCOUNTS
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32C
SAN DIEGO, CA 92123-1548

GLORIA BRITTON
ANZA ELECTRIC COOPERATIVE, INC.
58470 HWY 371
PO BOX 391909
ANZA, CA 92539

LYNELLE LUND
COMMERCE ENERGY, INC.
600 ANTON BLVD., SUITE 2000
COSTA MESA, CA 92626

TAMLYN M. HUNT
ENERGY PROGRAM DIRECTOR
COMMUNITY ENVIRONMENTAL COUNCIL
26 W. ANAPAMU ST., 2ND FLOOR
SANTA BARBARA, CA 93101

JEANNE M. SOLE
DEPUTY CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM. 234
SAN FRANCISCO, CA 94102

JOHN P. HUGHES
MANAGER, REGULATORY AFFAIRS
SOUTHERN CALIFORNIA EDISON COMPANY
601 VAN NESS AVENUE, STE. 2040
SAN FRANCISCO, CA 94102

LAD LORENZ
V.P. REGULATORY AFFAIRS
SEMPRA UTILITIES
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO, CA 94102

MARCEL HAWIGER
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102

NINA SUETAKE
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., STE. 350
SAN FRANCISCO, CA 94102

DIANA L. LEE
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

F. JACKSON STODDARD
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5125
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

AUDREY CHANG
STAFF SCIENTIST
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA 94104

DONALD BROOKHYSER
ATTORNEY AT LAW
ALCANTAR & KAHL
120 MONTGOMERY STREET
SAN FRANCISCO, CA 94104

EVELYN KAHL
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104

KRISTIN GRENFELL
PROJECT ATTORNEY, CALIF. ENERGY PROGRAM
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR

MICHAEL P. ALCANTAR
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200

SAN FRANCISCO, CA 94104

SAN FRANCISCO, CA 94104

SEEMA SRINIVASAN
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104

WILLIAM H. CHEN
DIRECTOR, ENERGY POLICY WEST REGION
CONSTELLATION NEW ENERGY, INC.
SPEAR TOWER, 36TH FLOOR
ONE MARKET STREET
SAN FRANCISCO, CA 94105

BRIAN K. CHERRY
DIRECTOR REGULATORY RELATIONS
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B10C
SAN FRANCISCO, CA 94106

EDWARD G POOLE
ANDERSON DONOVAN & POOLE
601 CALIFORNIA STREET SUITE 1300
SAN FRANCISCO, CA 94108

ANN G. GRIMALDI
MCKENNA LONG & ALDRIDGE LLP
101 CALIFORNIA STREET, 41ST FLOOR
SAN FRANCISCO, CA 94111

BRIAN T. CRAGG
ATTORNEY AT LAW
GOODIN, MACBRIDE, SQUERI, RITCHIE & DAY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111

JAMES D. SQUERI
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP
505 SANSOME STREET, STE 900
SAN FRANCISCO, CA 94111

JEANNE B. ARMSTRONG
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111

KAREN BOWEN
ATTORNEY AT LAW
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO, CA 94111

LISA A. COTTLE
ATTORNEY AT LAW
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO, CA 94111

SEAN P. BEATTY
ATTORNEY AT LAW
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA ST., 17TH FLOOR
SAN FRANCISCO, CA 94111

VIDHYA PRABHAKARAN
GOODIN, MACBRIDE, SQUERI, DAY, LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111

JOSEPH M. KARP
ATTORNEY AT LAW
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO, CA 94111-5802

JEFFREY P. GRAY
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

CHRISTOPHER J. WARNER
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, PO BOX 7442
SAN FRANCISCO, CA 94120-7442

SARA STECK MYERS
ATTORNEY AT LAW
122 28TH AVENUE
SAN FRANCISCO, CA 94121

LARS KVALE
CENTER FOR RESOURCE SOLUTIONS
PRESIDIO BUILDING 97

ANDREW L. HARRIS
PACIFIC GAS & ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A

PO BOX 39512
SAN FRANCISCO, CA 94129

SAN FRANCISCO, CA 94177

ANDREA WELLER
STRATEGIC ENERGY
3130 D BALFOUR RD., SUITE 290
BRENTWOOD, CA 94513

JENNIFER CHAMBERLIN
STRATEGIC ENERGY, LLC
2633 WELLINGTON CT.
CLYDE, CA 94520

BETH VAUGHAN
CALIFORNIA COGENERATION COUNCIL
4391 N. MARSH ELDER COURT
CONCORD, CA 94521

KERRY HATTEVIK
MIRANT CORPORATION
696 WEST 10TH STREET
PITTSBURG, CA 94565

AVIS KOWALEWSKI
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON, CA 94588

WILLIAM H. BOOTH
ATTORNEY AT LAW
LAW OFFICES OF WILLIAM H. BOOTH
1500 NEWELL AVENUE, 5TH FLOOR
WALNUT CREEK, CA 94596

J. ANDREW HOERNER
REDEFINING PROGRESS
1904 FRANKLIN STREET
OAKLAND, CA 94612

JANILL RICHARDS
DEPUTY ATTORNEY GENERAL
CALIFORNIA ATTORNEY GENERAL'S OFFICE
1515 CLAY STREET, 20TH FLOOR
OAKLAND, CA 94702

CLIFF CHEN
UNION OF CONCERNED SCIENTIST
2397 SHATTUCK AVENUE, STE 203
BERKELEY, CA 94704

GREGG MORRIS
DIRECTOR
GREEN POWER INSTITUTE
2039 SHATTUCK AVENUE, STE 402
BERKELEY, CA 94704

R. THOMAS BEACH
CROSSBORDER ENERGY
2560 NINTH STREET, SUITE 213A
BERKELEY, CA 94710-2557

KENNETH C. JOHNSON
KENNETH CARLISLE JOHNSON
2502 ROBERTSON RD
SANTA CLARA, CA 95051

BARRY F. MCCARTHY
ATTORNEY AT LAW
MCCARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, SUITE 501
SAN JOSE, CA 95113

C. SUSIE BERLIN
ATTORNEY AT LAW
MC CARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, SUITE 501
SAN JOSE, CA 95113

MIKE LAMOND
ALPINE NATURAL GAS OPERATING CO. #1 LLC
PO BOX 550
VALLEY SPRINGS, CA 95252

JOY A. WARREN
REGULATORY ADMINISTRATOR
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95354

UDI HELMAN
CALIFORNIA INDEPENDENT SYS. OPER. CORP

JOHN JENSEN
PRESIDENT

151 BLUE RAVINE ROAD
FOLSOM, CA 95630

MOUNTAIN UTILITIES
PO BOX 205
KIRKWOOD, CA 95646

MARY LYNCH
VP - REGULATORY AND LEGISLATIVE AFFAIRS
CONSTELLATION ENERGY COMMODITIES GROUP
2377 GOLD MEDAL WAY, SUITE 100
GOLD RIVER, CA 95670

LEONARD DEVANNA
EXECUTIVE VICE PRESIDENT
CLEAN ENERGY SYSTEMS, INC.
11330 SUNCO DRIVE, SUITE A
RANCHO CORDOVA, CA 95742

ANDREW BROWN
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95811

BRUCE MCLAUGHLIN
BRAUN & BLAISING, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814

GREGGORY L. WHEATLAND
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95814

JANE E. LUCKHARDT
ATTORNEY AT LAW
DOWNEY BRAND LLP
555 CAPITOL MALL, 10TH FLOOR
SACRAMENTO, CA 95814

JEFFERY D. HARRIS
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS LLP
2015 H STREET
SACRAMENTO, CA 95814

VIRGIL WELCH
STAFF ATTORNEY
ENVIRONMENTAL DEFENSE
1107 9TH STREET, SUITE 540
SACRAMENTO, CA 95814

WILLIAM W. WESTERFIELD, 111
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS L.L.P.
2015 H STREET
SACRAMENTO, CA 95814

DOWNEY BRAND
DOWNEY BRAND
555 CAPITOL MALL, 10TH FLOOR
SACRAMENTO, CA 95814-4686

RAYMOND J. CZAHAH, C.P.A.
CHIEF FINANCIAL OFFICER
WEST COAST GAS COMPANY
9203 BEATTY DRIVE
SACRAMENTO, CA 95826

STEVEN M. COHN
ASSISTANT GENERAL COUNSEL
SACRAMENTO MUNICIPAL UTILITY DISTRICT
PO BOX 15830
SACRAMENTO, CA 95852-1830

ANN L. TROWBRIDGE
ATTORNEY AT LAW
DAY CARTER & MURPHY, LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO, CA 95864

DAN SILVERIA
SURPRISE VALLEY ELECTRIC CORPORATION
PO BOX 691
ALTURAS, CA 96101

JESSICA NELSON
PLUMAS-SIERRA RURAL ELECTRIC CO-OP
73233 STATE ROUTE 70, STE A
PORTOLA, CA 96122-7064

DONALD BROOKHYSER
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND, OR 97210

CYNTHIA SCHULTZ

KYLE L. DAVIS

REGULATORY FILING COORDINATOR
PACIFIC POWER AND LIGHT COMPANY
825 N.E. MULTNOMAH
PORTLAND, OR 97232

PACIFICORP
825 NE MULTNOMAH ST., SUITE 2000
PORTLAND, OR 97232

RYAN FLYNN
PACIFICORP
825 NE MULTNOMAH STREET, 18TH FLOOR
PORTLAND, OR 97232

IAN CARTER
POLICY COORDINATOR-NORTH AMERICA
INTERNATIONAL EMISSIONS TRADING ASSN.
350 SPARKS STREET, STE. 809
OTTAWA, ON K1R 7S8
CANADA

JASON DUBCHAK
ASSOCIATE GENERAL COUNSEL
WILD GOOSE STORAGE LLC
C/O NISKA GAS STORAGE, SUITE 400
607 8TH AVENUE S.W.
CALGARY, AB T2P 0A7
CANADA

Information Only

BRIAN M. JONES
M. J. BRADLEY & ASSOCIATES, INC.
47 JUNCTION SQUARE DRIVE
CONCORD, MA 01742

MATTHEW MOST
EDISON MISSION MARKETING & TRADING, INC.
160 FEDERAL STREET
BOSTON, MA 02110-1776

KENNETH A. COLBURN
SYMBILITIC STRATEGIES, LLC
26 WINTON ROAD
MEREDITH, NH 03253

RICHARD COWART
REGULATORY ASSISTANCE PROJECT
50 STATE STREET, SUITE 3
MONTPELIER, VT 05602

KATHRYN WIG
PARALEGAL
NRG ENERGY, INC.
211 CARNEGIE CENTER
PRINCETON, NY 08540

SAKIS ASTERIADIS
APX INC
1270 FIFTH AVE., SUITE 15R
NEW YORK, NY 10029

GEORGE HOPLEY
BARCLAYS CAPITAL
200 PARK AVENUE
NEW YORK, NY 10166

ELIZABETH ZELLJADT
1725 I STREET, N.W. SUITE 300
WASHINGTON, DC 20006

DALLAS BURTRAW
1616 P STREET, NW
WASHINGTON, DC 20036

VERONIQUE BUGNION
POINT CARBON
205 SEVERN RIVER RD
SEVERNA PARK, MD 21146

ANDREW BRADFORD
SENIOR MARKET RESEARCH ASSOCIATE
FELLON-MCCORD & ASSOCIATES
SUITE 2000

GARY BARCH
FELLON-MCCORD & ASSOCIATES, INC.
SUITE 2000
9960 CORPORATE CAMPUS DRIVE

9960 CORPORATE CAMPUS DRIVE
LOUISVILLE, KY 40223

LOUISVILLE, KY 40223

RALPH E. DENNIS
DIRECTOR, REGULATORY AFFAIRS
FELLON-MCCORD & ASSOCIATES
CONSTELLATION NEWENERGY-GAS DIVISION
9960 CORPORATE CAMPUS DRIVE, STE 2000
LOUISVILLE, KY 40223

SAMARA MINDEL
REGULATORY AFFAIRS ANALYST
FELLON-MCCORD & ASSOCIATES
9960 CORPORATE CAMPUS DRIVE, SUITE 2000
LOUISVILLE, KY 40223

BARRY RABE
1427 ROSS STREET
PLYMOUTH, MI 48170

BRIAN POTTS
FOLEY & LARDNER
PO BOX 1497
150 EAST GILMAN STREET
MADISON, WI 53701-1497

JAMES W. KEATING
BP AMERICA, INC.
MAIL CODE 603-1E
150 W. WARRENVILLE RD.
NAPERVILLE, IL 60563

JAMES ROSS
RCS, INC.
500 CHESTERFIELD CENTER, SUITE 320
CHESTERFIELD, MO 63017

TRENT A. CARLSON
RELIANT ENERGY
1000 MAIN STREET
HOUSTON, TX 77001

GARY HINNERS
RELIANT ENERGY, INC.
PO BOX 148
HOUSTON, TX 77001-0148

JEANNE ZAIONTZ
BP ENERGY COMPANY
501 WESTLAKE PARK BLVD, RM. 4328
HOUSTON, TX 77079

JULIE L. MARTIN
WEST ISO COORDINATOR
NORTH AMERICA GAS AND POWER
BP ENERGY COMPANY
501 WESTLAKE PARK BLVD.
HOUSTON, TX 77079

FIJI GEORGE
EL PASO CORPORATION
EL PASO BUILDING
PO BOX 2511
HOUSTON, TX 77252

ED CHIANG
ELEMENT MARKETS, LLC
ONE SUGAR CREEK CENTER BLVD., SUITE 250
SUGAR LAND, TX 77478

FRANK STERN
SUMMIT BLUE CONSULTING
1722 14TH STREET, SUITE 230
BOULDER, CO 80302

NADAV ENBAR
ENERGY INSIGHTS
1750 14TH STREET, SUITE 200
BOULDER, CO 80302

NICHOLAS LENSSEN
ENERGY INSIGHTS
1750 14TH STREET, SUITE 200
BOULDER, CO 80302

ELIZABETH BAKER
SUMMIT BLUE CONSULTING
1722 14TH STREET, SUITE 230
BOULDER, CO 80304

WAYNE TOMLINSON
EL PASO CORPORATION
WESTERN PIPELINES

KEVIN J. SIMONSEN
ENERGY MANAGEMENT SERVICES
646 EAST THIRD AVENUE

2 NORTH NEVADA AVENUE
COLORADO SPRINGS, CO 80903

DURANGO, CO 81301

SANDRA ELY
NEW MEXICO ENVIRONMENT DEPARTMENT
1190 ST FRANCIS DRIVE
SANTA FE, NM 87501

BRIAN MCQUOWN
RELIANT ENERGY
7251 AMIGO ST., SUITE 120
LAS VEGAS, NV 89119

DOUGLAS BROOKS
NEVADA POWER COMPANY
SIERRA PACIFIC POWER COMPANY
6226 WEST SAHARA AVENUE
LAS VEGAS, NV 89151

ANITA HART
SENIOR SPECIALIST/STATE REGULATORYAFFAIR
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89193

RANDY SABLE
SOUTHWEST GAS CORPORATION
MAILSTOP: LVB-105
5241 SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89193

BILL SCHRAND
SOUTHWEST GAS CORPORATON
PO BOX 98510
LAS VEGAS, NV 89193-8510

JJ PRUCNAL
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS, NV 89193-8510

SANDRA CAROLINA
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS, NV 89193-8510

CYNTHIA MITCHELL
ENERGY ECONOMICS, INC.
530 COLGATE COURT
RENO, NV 89503

CHRISTOPHER A. HILEN
ASSISTANT GENERAL COUNSEL
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO, NV 89511

ELENA MELLO
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO, NV 89520

TREVOR DILLARD
SIERRA PACIFIC POWER COMPANY
PO BOX 10100
6100 NEIL ROAD, MS S4A50
RENO, NV 89520

DARRELL SOYARS
MANAGER-RESOURCE PERMITTING&STRATEGIC
SIERRA PACIFIC RESOURCES
6100 NEIL ROAD
RENO, NV 89520-0024

JOSEPH GRECO
VICE PRESIDENT - WESTERN REGION
CAITHNESS ENERGY, LLC.
9590 PROTOTYPE COURT, SUITE 200
RENO, NV 89521

FRANK LUCHETTI
NEVADA DIV. OF ENVIRONMENTAL PROTECTION
901 S. STEWART ST., SUITE 4001
CARSON CITY, NV 89701

LEILANI JOHNSON KOWAL
LOS ANGELES DEPT. OF WATER AND POWER
111 N. HOPE STREET, ROOM 1050
LOS ANGELES, CA 90012

RANDY S. HOWARD
LOS ANGELES DEPT. OF WATER AND POWER

ROBERT K. ROZANSKI
LOS ANGELES DEPT OF WATER AND POWER

111 NORTH HOPE STREET, ROOM 921
LOS ANGELES, CA 90012

111 NORTH HOPE STREET, ROOM 1520
LOS ANGELES, CA 90012

ROBERT L. PETTINATO
LOS ANGELES DEPARTMENT OF WATER & POWER
111 NORTH HOPE STREET, SUITE 1151
LOS ANGELES, CA 90012

HUGH YAO
SOUTHERN CALIFORNIA GAS COMPANY
555 W. 5TH ST, GT22G2
LOS ANGELES, CA 90013

RASHA PRINCE
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH STREET, GT14D6
LOS ANGELES, CA 90013

RANDALL W. KEEN
ATTORNEY AT LAW
MANATT PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES, CA 90064

S. NANCY WHANG
ATTORNEY AT LAW
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES, CA 90064

PETER JAZAYERI
STROOCK & STROOCK & LAVAN LLP
2029 CENTURY PARK EAST, SUITE 1800
LOS ANGELES, CA 90067

DEREK MARKOLF
CALIFORNIA CLIMATE ACTION REGISTRY
515 S. FLOWER STREET, SUITE 1640
LOS ANGELES, CA 90071

DAVID NEMTZOW
1254 9TH STREET, NO. 6
SANTA MONICA, CA 90401

HARVEY EDER
PUBLIC SOLAR POWER COALITION
1218 12TH ST., 25
SANTA MONICA, CA 90401

STEVE ENDO
PASADENA DEPARTMENT OF WATER & POWER
45 EAST GLENARM STREET
PASADENA, CA 91105

STEVEN G. LINS
GENERAL COUNSEL
GLENDALE WATER AND POWER
613 EAST BROADWAY, SUITE 220
GLENDALE, CA 91206-4394

TOM HAMILTON
MANAGING PARTNER
ENERGY CONCIERGE SERVICES
321 MESA LILA RD
GLENDALE, CA 91208

BRUNO JEIDER
BURBANK WATER & POWER
164 WEST MAGNOLIA BLVD.
BURBANK, CA 91502

RICHARD J. MORILLO
ASSISTANT CITY ATTORNEY
CITY OF BURBANK
215 E. OLIVE AVENUE
BURBANK, CA 91502

ROGER PELOTE
WILLIAMS POWER COMPANY
12736 CALIFA STREET
VALLEY VILLAGE, CA 91607

AIMEE BARNES
MANAGER REGULATORY AFFAIRS
ECOSECURITIES
HARVARD SQUARE
206 W. BONITA AVENUE
CLAREMONT, CA 91711

CASE ADMINISTRATION

TIM HEMIG

SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE., RM. 370
ROSEMEAD, CA 91770

NRG ENERGY, INC.
1819 ASTON AVENUE, SUITE 105
CARLSBAD, CA 92008

BARRY LOVELL
15708 POMERADO RD., SUITE 203
POWAY, CA 92064

ALDYN HOEKSTRA
PACE GLOBAL ENERGY SERVICES
420 WEST BROADWAY, 4TH FLOOR
SAN DIEGO, CA 92101

YVONNE GROSS
REGULATORY POLICY MANAGER
SEMPRA ENERGY
HQ08C
101 ASH STREET
SAN DIEGO, CA 92103

JOHN LAUN
APOGEE INTERACTIVE, INC.
1220 ROSECRANS ST., SUITE 308
SAN DIEGO, CA 92106

KIM KIENER
504 CATALINA BLVD.
SAN DIEGO, CA 92106

SCOTT J. ANDERS
RESEARCH/ADMINISTRATIVE DIRECTOR
UNIVERSITY OF SAN DIEGO SCHOOL OF LAW
5998 ALCALA PARK
SAN DIEGO, CA 92110

JOSEPH R. KLOBERDANZ
SAN DIEGO GAS & ELECTRIC
PO BOX 1831
SAN DIEGO, CA 92112

ANDREW MCALLISTER
DIRECTOR OF OPERATIONS
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVE., SUITE 100
SAN DIEGO, CA 92123

JACK BURKE
LEGISLATIVE AFFAIRS MANAGER
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVE., SUITE 100
SAN DIEGO, CA 92123

JENNIFER PORTER
POLICY ANALYST
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO, CA 92123

SEPHRA A. NINOW
POLICY ANALYST
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO, CA 92123

DESPINA NIEHAUS
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32H
SAN DIEGO, CA 92123-1530

JOHN W. LESLIE
ATTORNEY AT LAW
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 92130

ORLANDO B. FOOTE, III
ATTORNEY AT LAW
HORTON, KNOX, CARTER & FOOTE
895 BROADWAY, SUITE 101
EL CENTRO, CA 92243

ELSTON K. GRUBAUGH
IMPERIAL IRRIGATION DISTRICT
333 EAST BARIONI BLVD.
IMPERIAL, CA 92251

THOMAS MCCABE
EDISON MISSION ENERGY
18101 VON KARMAN AVE., SUITE 1700
IRVINE, CA 92612

JAN PEPPER
CLEAN POWER MARKETS, INC.
PO BOX 3206
418 BENVENUE AVENUE
LOS ALTOS, CA 94024

GLORIA D. SMITH
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., SUITE 1000
SOUTH SAN FRANCISCO, CA 94080

MARC D. JOSEPH
ADAMS BRADWELL JOSEPH & CARDOZO
601 GATEWAY BLVD. STE 1000
SOUTH SAN FRANCISCO, CA 94080

DIANE I. FELLMAN
DIRECTOR, REGULATORY AFFAIRS
FPL ENERGY PROJECT MANAGEMENT, INC.
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

HAYLEY GOODSON
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102

MICHEL FLORIO
ATTORNEYS AT LAW
711 VAN NESS AVE., STE. 350
SAN FRANCISCO, CA 94102

DAN ADLER
DIRECTOR, TECH AND POLICY DEVELOPMENT
CALIFORNIA CLEAN ENERGY FUND
5 THIRD STREET, SUITE 1125
SAN FRANCISCO, CA 94103

MICHAEL A. HYAMS
POWER ENTERPRISE-REGULATORY AFFAIRS
SAN FRANCISCO PUBLIC UTILITIES COMM
1155 MARKET ST., 4TH FLOOR
SAN FRANCISCO, CA 94103

THERESA BURKE
REGULATORY ANALYST
SAN FRANCISCO PUC
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISCO, CA 94103

NORMAN J. FURUTA
ATTORNEY AT LAW
FEDERAL EXECUTIVE AGENCIES
1455 MARKET ST., SUITE 1744
SAN FRANCISCO, CA 94103-1399

AMBER MAHONE
ENERGY & ENVIRONMENTAL ECONOMICS, INC.
101 MONTGOMERY STREET, SUITE 1600
SAN FRANCISCO, CA 94104

ANNABELLE MALINS
CONSUL-SCIENCE AND TECHNOLOGY
BRITISH CONSULATE-GENERAL
ONE SANSOME STREET, SUITE 850
SAN FRANCISCO, CA 94104

DEVRA WANG
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA 94104

KAREN TERRANOVA
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, STE 2200
SAN FRANCISCO, CA 94104

NORA SHERIFF
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104

OLOF BYSTROM
DIRECTOR, WESTERN ENERGY
CAMBRIDGE ENERGY RESEARCH ASSOCIATES
555 CALIFORNIA STREET, 3RD FLOOR
SAN FRANCISCO, CA 94104

SETH HILTON
ATTORNEY AT LAW
STOEL RIVES
111 SUTTER ST., SUITE 700
SAN FRANCISCO, CA 94104

SHERYL CARTER
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA 94104

ASHLEE M. BONDS
THELEN REID BROWN RAYSMAN&STEINER LLP
SUITE 1800
101 SECOND STREET
SAN FRANCISCO, CA 94105

CARMEN E. BASKETTE
CORPORATE DEVELOPMENT PRINCIPAL
ENERNOC
594 HOWARD ST., SUITE 400
SAN FRANCISCO, CA 94105

COLIN PETHERAM
DIRECTOR-REGULATORY
SBC CALIFORNIA
140 NEW MONTGOMERY ST., SUITE 1325
SAN FRANCISCO, CA 94105

JAMES W. TARNAGHAN
DUANE MORRIS LLP
SUITE 2000
ONE MARKET, SPEAR TOWER
SAN FRANCISCO, CA 94105

KEVIN FOX
WILSON SONSINI GOODRICH & ROSATI
ONE MARKET STREET, SPEAR TOWER, 3300
SAN FRANCISCO, CA 94105

KHURSHID KHOJA
ASSOCIATE
THELEN REID BROWN RAYSMAN & STEINER
101 SECOND STREET, SUITE 1800
SAN FRANCISCO, CA 94105

PETER V. ALLEN
THELEN REID BROWN RAYSMAN & STEINER
101 SECOND STREET, SUITE 1800
SAN FRANCISCO, CA 94105

SHERIDAN J. PAUKER
WILSON SONSINI GOODRICH & ROSATI
SPEAR TOWER, SUITE 3300
ONE MARKET ST
SAN FRANCISCO, CA 94105

ROBERT J. REINHARD
MORRISON AND FOERSTER
425 MARKET STREET
SAN FRANCISCO, CA 94105-2482

CALIFORNIA ENERGY MARKETS
517-B POTRERO AVENUE
SAN FRANCISCO, CA 94110

HOWARD V. GOLUB
NIXON PEABODY LLP
2 EMBARCADERO CENTER, STE. 2700
SAN FRANCISCO, CA 94111

JANINE L. SCANCARELLI
ATTORNEY AT LAW
FOLGER, LEVIN & KAHN, LLP
275 BATTERY STREET, 23RD FLOOR
SAN FRANCISCO, CA 94111

JOSEPH F. WIEDMAN
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111

MARTIN A. MATTES
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
50 CALIFORNIA STREET, SUITE 3400
SAN FRANCISCO, CA 94111

JEN MCGRAW
CENTER FOR NEIGHBORHOOD TECHNOLOGY
PO BOX 14322
SAN FRANCISCO, CA 94114

LISA WEINZIMER
ASSOCIATE EDITOR
PLATTS MCGRAW-HILL
695 NINTH AVENUE, NO. 2
SAN FRANCISCO, CA 94118

STEVEN MOSS
SAN FRANCISCO COMMUNITY POWER COOP
2325 3RD STREET, SUITE 344
SAN FRANCISCO, CA 94120

SHAUN ELLIS
2183 UNION STREET
SAN FRANCISCO, CA 94123

ARNO HARRIS
RECURRENT ENERGY, INC.
220 HALLECK ST., SUITE 220
SAN FRANCISCO, CA 94129

BIANCA BOWMAN
PACIFIC GAS AND ELECTRIC COMPANY
PG&E MAIL CODE B9A
PO BOX 770000
SAN FRANCISCO, CA 94177

ED LUCHA
CASE COORDINATOR
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO, CA 94177

GRACE LIVINGSTON-NUNLEY
ASSISTANT PROJECT MANAGER
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO, CA 94177

JASMIN ANSAR
PG&E
MAIL CODE B24A
PO BOX 770000
SAN FRANCISCO, CA 94177

JONATHAN FORRESTER
PG&E
MAIL CODE N13C
PO BOX 770000
SAN FRANCISCO, CA 94177

RAYMOND HUNG
PG&E
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO, CA 94177

SEBASTIEN CSAPO
PROJECT MANAGER
PACIFIC GAS AND ELECTRIC COMPANY
MAIL CODE B9A
PO BOX 770000
SAN FRANCISCO, CA 94177

SOUMYA SASTRY
PACIFIC GAS AND ELECTRIC COMPANY
MAIL CODE B9A
PO BOX 770000
SAN FRANCISCO, CA 94177

STEPHANIE LA SHAWN
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO, CA 94177

VALERIE J. WINN
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, B9A
SAN FRANCISCO, CA 94177-0001

KARLA DAILEY
CITY OF PALO ALTO
UTILITIES DEPARTMENT
BOX 10250
PALO ALTO, CA 94303

FARROKH ALBUYEH
VICE PRESIDENT
OPEN ACCESS TECHNOLOGY INTERNATIONAL INC
SUITE 910
1875 SOUTH GRANT STREET
SAN MATEO, CA 94402

DEAN R. TIBBS
PRESIDENT
ADVANCED ENERGY STRATEGIES, INC.
1390 WILLOW PASS ROAD, SUITE 610
CONCORD, CA 94520

JEFFREY L. HAHN
COVANTA ENERGY CORPORATION
876 MT. VIEW DRIVE
LAFAYETTE, CA 94549

ANDREW J. VAN HORN
VAN HORN CONSULTING
12 LIND COURT
ORINDA, CA 94563

JOSEPH M. PAUL
SENIOR CORPORATE COUNSEL
DYNEGY, INC.
4140 DUBLIN BLVD., STE. 100
DUBLIN, CA 94568

SUE KATELEY
EXECUTIVE DIRECTOR
CALIFORNIA SOLAR ENERGY INDUSTRIES ASSN
PO BOX 782
RIO VISTA, CA 94571

GREG BLUE
ENXCO DEVELOPMENT CORP
5000 EXECUTIVE PARKWAY, STE.140
SAN RAMON, CA 94583

SARAH BESERRA
CALIFORNIA REPORTS
39 CASTLE HILL COURT
VALLEJO, CA 94591

MONICA A. SCHWEBS, ESQ.
BINGHAM MCCUTCHEN LLP
PO BOX V
1333 N. CALIFORNIA BLVD., SUITE 210
WALNUT CREEK, CA 94596

PETER W. HANSCHEN
ATTORNEY AT LAW
MORRISON & FOERSTER, LLP
101 YGNACIO VALLEY ROAD, SUITE 450
WALNUT CREEK, CA 94596

JOSEPH HENRI
31 MIRAMONTE ROAD
WALNUT CREEK, CA 94597

PATRICIA THOMPSON
SUMMIT BLUE CONSULTING
2920 CAMINO DIABLO, SUITE 210
WALNUT CREEK, CA 94597

WILLIAM F. DIETRICH
ATTORNEY AT LAW
DIETRICH LAW
2977 YGNACIO VALLEY ROAD, 613
WALNUT CREEK, CA 94598-3535

BETTY SETO
POLICY ANALYST
KEMA, INC.
492 NINTH STREET, SUITE 220
OAKLAND, CA 94607

GERALD L. LAHR
ABAG POWER
101 EIGHTH STREET
OAKLAND, CA 94607

JODY S. LONDON
JODY LONDON CONSULTING
PO BOX 3629
OAKLAND, CA 94609

STEVEN SCHILLER
SCHILLER CONSULTING, INC.
111 HILLSIDE AVENUE
PIEDMONT, CA 94611

MRW & ASSOCIATES, INC.
1814 FRANKLIN STREET, SUITE 720
OAKLAND, CA 94612

REED V. SCHMIDT
VICE PRESIDENT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY, CA 94703

ADAM BRIONES
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVENUE, 2ND FLOOR
BERKELEY, CA 94704

STEVE KROMER
3110 COLLEGE AVENUE, APT 12
BERKELEY, CA 94705

CLYDE MURLEY
1031 ORDWAY STREET
ALBANY, CA 94706

BRENDA LEMAY
DIRECTOR OF PROJECT DEVELOPMENT
HORIZON WIND ENERGY
1600 SHATTUCK, SUITE 222

CARLA PETERMAN
UCEI
2547 CHANNING WAY
BERKELEY, CA 94720

BERKELEY, CA 94709

EDWARD VINE
LAWRENCE BERKELEY NATIONAL LABORATORY
BUILDING 90R4000
BERKELEY, CA 94720

RYAN WISER
BERKELEY LAB
MS-90-4000
ONE CYCLOTRON ROAD
BERKELEY, CA 94720

CHRIS MARNAY
BERKELEY LAB
1 CYCLOTRON RD MS 90R4000
BERKELEY, CA 94720-8136

PHILLIP J. MULLER
SCD ENERGY SOLUTIONS
436 NOVA ALBION WAY
SAN RAFAEL, CA 94903

RITA NORTON
RITA NORTON AND ASSOCIATES, LLC
18700 BLYTHSWOOD DRIVE,
LOS GATOS, CA 95030

CARL PECHMAN
POWER ECONOMICS
901 CENTER STREET
SANTA CRUZ, CA 95060

MAHLON ALDRIDGE
ECOLOGY ACTION
PO BOX 1188
SANTA CRUZ, CA 95060

RICHARD SMITH
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95352-4060

ROGER VAN HOY
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95354

THOMAS S. KIMBALL
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95354

WES MONIER
STRATEGIC ISSUES AND PLANNING MANAGER
TURLOCK IRRIGATION DISTRICT
333 EAST CANAL DRIVE, PO BOX 949
TURLOCK, CA 95381-0949

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO, CA 95460

JOHN R. REDDING
ARCTURUS ENERGY CONSULTING
44810 ROSEWOOD TERRACE
MENDOCINO, CA 95460

CLARK BERNIER
RLW ANALYTICS
1055 BROADWAY, SUITE G
SONOMA, CA 95476

RICHARD MCCANN, PH.D
M. CUBED
2655 PORTAGE BAY, SUITE 3
DAVIS, CA 95616

CAROLYN M. KEHREIN
ENERGY MANAGEMENT SERVICES
1505 DUNLAP COURT
DIXON, CA 95620-4208

CALIFORNIA ISO
LEGAL AND REGULATORY DEPARTMENT

GRANT ROSENBLUM, ESQ.
CALIFORNIA ISO
LEGAL AND REGULATORY DEPARTMENT

151 BLUE RAVINE ROAD
FOLSOM, CA 95630

151 BLUE RAVINE ROAD
FOLSOM, CA 95630

KAREN EDSON
151 BLUE RAVINE ROAD
FOLSOM, CA 95630

ROBIN SMUTNY-JONES
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630

SAEED FARROKHPAY
FEDERAL ENERGY REGULATORY COMMISSION
110 BLUE RAVINE RD., SUITE 107
FOLSOM, CA 95630

DAVID BRANCHCOMB
BRANCHCOMB ASSOCIATES, LLC
9360 OAKTREE LANE
ORANGEVILLE, CA 95662

KENNY SWAIN
NAVIGANT CONSULTING
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670

KIRBY DUSEL
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670

GORDON PICKERING
PRINCIPAL
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078

LAURIE PARK
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078

DAVID REYNOLDS
MEMBER SERVICES MANAGER
NORTHERN CALIFORNIA POWER AGENCY
180 CIRBY WAY
ROSEVILLE, CA 95678-6420

SCOTT TOMASHEFSKY
NORTHERN CALIFORNIA POWER AGENCY
180 CIRBY WAY
ROSEVILLE, CA 95678-6420

ELLEN WOLFE
RESERO CONSULTING
9289 SHADOW BROOK PL.
GRANITE BAY, CA 95746

AUDRA HARTMANN
DYNEGY INC.
980 NINTH STREET, SUITE 1420
SACRAMENTO, CA 95814

BOB LUCAS
LUCAS ADVOCATES
1121 L STREET, SUITE 407
SACRAMENTO, CA 95814

CURT BARRY
717 K STREET, SUITE 503
SACRAMENTO, CA 95814

DAN SKOPEC
CLIMATE & ENERGY CONSULTING
1201 K STREET SUITE 970
SACRAMENTO, CA 95814

DANIELLE MATTHEWS SEPERAS
CALPINE CORPORATION
1127 11TH STREET, SUITE 242
SACRAMENTO, CA 95814

DAVID L. MODISETTE
EXECUTIVE DIRECTOR

DOUGLAS K. KERNER
ATTORNEY AT LAW

CALIFORNIA ELECTRIC TRANSP. COALITION
1015 K STREET, SUITE 200
SACRAMENTO, CA 95814

ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95814

JUSTIN C. WYNNE
BRAU & BLAISING, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814

KASSANDRA GOUGH
CALPINE CORPORATION
1127 11TH STREET, SUITE 242
SACRAMENTO, CA 95814

KELLIE SMITH
SENATE ENERGY/UTILITIES & COMMUNICATION
STATE CAPITOL, ROOM 4038
SACRAMENTO, CA 95814

KEVIN WOODRUFF
WOODRUFF EXPERT SERVICES
1100 K STREET, SUITE 204
SACRAMENTO, CA 95814

MICHAEL WAUGH
AIR RESOURCES BOARD
1001 10TH STREET
SACRAMENTO, CA 95814

PANAMA BARTHOLOMY
ADVISOR TO CHAIR PFANNENSTIEL
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
SACRAMENTO, CA 95814

PATRICK STONER
PROGRAM DIRECTOR
LOCAL GOVERNMENT COMMISSION
1303 J STREET, SUITE 250
SACRAMENTO, CA 95814

RACHEL MCMAHON
CEERT
1100 11TH STREET, SUITE 311
SACRAMENTO, CA 95814

RYAN BERNARDO
BRAUN & BLAISING, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814

STEVEN A. LIPMAN
STEVEN LIPMAN CONSULTING
500 N. STREET 1108
SACRAMENTO, CA 95814

STEVEN KELLY
INDEPENDENT ENERGY PRODUCERS
1215 K STREET, SUITE 900
SACRAMENTO, CA 95814

WEBSTER TASAT
AIR RESOURCES BOARD
1001 I STREET
SACRAMENTO, CA 95814

EDWARD J. TIEDEMANN
ATTORNEY AT LAW
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
400 CAPITOL MALL, 27TH FLOOR
SACRAMENTO, CA 95814-4416

LAURIE TEN HOPE
ADVISOR TO COMMISSIONER BYRON
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-32
SACRAMENTO, CA 95814-5512

JOSHUA BUSHINSKY
WESTERN POLICY COORDINATOR
PEW CENTER ON GLOBAL CLIMATE CHANGE
2101 WILSON BLVD., SUITE 550
ARLINGTON, VA 95816

LYNN HAUG
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95816

OBADIAH BARTHOLOMY

BUD BEEBE

MECHANICAL ENGINEER
SACRAMENTO MUNICIPAL UTILITY DISTRICT
M.S. B257
6201 S. STREET
SACRAMENTO, CA 95817

SACRAMENTO MUNICIPAL UTIL DIST
MS B257
6201 S STREET
SACRAMENTO, CA 95817-1899

BALWANT S. PUREWAL
DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., LL-90
SACRAMENTO, CA 95821

DOUGLAS MACMULLEN
CHIEF, POWER PLANNING SECTION
CA DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., ROOM 356
SACRAMENTO, CA 95821

KAREN NORENE MILLS
ATTORNEY AT LAW
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO, CA 95833

KAREN LINDH
LINDH & ASSOCIATES
7909 WALERGA ROAD, NO. 112, PMB 119
ANTELOPE, CA 95843

ELIZABETH W. HADLEY
CITY OF REDDING
777 CYPRESS AVENUE
REDDING, CA 96001

DENISE HILL
DIRECTOR
4004 KRUSE WAY PLACE, SUITE 150
LAKE OSWEGO, OR 97035

ANNIE STANGE
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND, OR 97201

ELIZABETH WESTBY
ALCANTAR & KAHL, LLP
1300 SW FIFTH AVENUE, SUITE 1750
PORTLAND, OR 97201

ALEXIA C. KELLY
THE CLIMATE TRUST
65 SW YAMHILL STREET, SUITE 400
PORTLAND, OR 97204

ALAN COMNES
WEST COAST POWER
3934 SE ASH STREET
PORTLAND, OR 97214

KYLE SILON
ECOSECURITIES CONSULTING LIMITED
529 SE GRAND AVENUE
PORTLAND, OR 97214

CATHIE ALLEN
CA STATE MGR.
PACIFICORP
825 NE MULTNOMAH STREET, SUITE 2000
PORTLAND, OR 97232

PHIL CARVER
OREGON DEPARTMENT OF ENERGY
625 MARION ST., NE
SALEM, OR 97301-3737

SAM SADLER
OREGON DEPARTMENT OF ENERGY
625 NE MARION STREET
SALEM, OR 97301-3737

LISA SCHWARTZ
SENIOR ANALYST
ORGEON PUBLIC UTILITY COMMISSION
PO BOX 2148
SALEM, OR 97308-2148

CLARE BREIDENICH
224 1/2 24TH AVENUE EAST
SEATTLE, WA 98112

DONALD SCHOENBECK
RCS, INC.
900 WASHINGTON STREET, SUITE 780
VANCOUVER, WA 98660

JESUS ARREDONDO
NRG ENERGY INC.
4600 CARLSBAD BLVD.
CARLSBAD, CA 99208

CHARLIE BLAIR
DELTA ENERGY & ENVIRONMENT
15 GREAT STUART STREET
EDINBURGH, UK EH2 7TP
UNITED KINGDOM

KAREN MCDONALD
POWEREX CORPORATION
1400,
666 BURRAND STREET
VANCOUVER, BC V6C 2X8
CANADA

State Service

CLARENCE BINNINGER
DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102

DAVID ZONANA
DEPUTY ATTORNEY GENERAL
CALIFORNIA ATTORNEY GENERAL'S OFFICE
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102

ANDREW CAMPBELL
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5203
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ANNE GILLETTE
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

BETH MOORE
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY RESOURCES & PRICING BRANCH
ROOM 4103
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

CATHLEEN A. FOGEL
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

CHARLOTTE TERKEURST
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5117
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

CHRISTINE S. TAM
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY RESOURCES & PRICING BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DONALD R. SMITH
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY RESOURCES & PRICING BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ED MOLDAVSKY
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5037
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

EUGENE CADENASSO
CALIF PUBLIC UTILITIES COMMISSION
RATEMAKING BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

HARVEY Y. MORRIS
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5036
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

HENRY STERN
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES

JACLYN MARKS
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION

ROOM 2106
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ROOM 5306
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JACQUELINE GREIG
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRA
ROOM 4102
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JAMIE FORDYCE
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF STRATEGIC PLANNING
AREA 5-B
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JASON R. SALMI KLOTZ
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

GEORGE S. TAGNIPES
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JOEL T. PERLSTEIN
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5133
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JONATHAN LAKRITZ
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5020
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JUDITH IKLE
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
ROOM 4012
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JULIE A. FITCH
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF STRATEGIC PLANNING
ROOM 5119
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KRISTIN RALFF DOUGLAS
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF STRATEGIC PLANNING
ROOM 5119
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LAINIE MOTAMEDI
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF STRATEGIC PLANNING
ROOM 5119
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LANA TRAN
CALIF PUBLIC UTILITIES COMMISSION
ELECTRIC GENERATION PERFORMANCE BRANCH
AREA 2-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MATTHEW DEAL
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5215
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

NANCY RYAN
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5217
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

PAMELA WELLNER
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

PAUL S. PHILLIPS
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY RESOURCES & PRICING BRANCH
ROOM 4101
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

PEARLIE SABINO
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRA
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

RAHMOM MOMOH
CALIF PUBLIC UTILITIES COMMISSION

RICHARD A. MYERS
CALIF PUBLIC UTILITIES COMMISSION

ELECTRICITY RESOURCES & PRICING BRANCH
ROOM 4205
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

RATEMAKING BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SARA M. KAMINS
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SCOTT MURTISHAW
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SEAN A. SIMON
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

STEVE ROSCOW
CALIF PUBLIC UTILITIES COMMISSION
RATEMAKING BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

THERESA CHO
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5207
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

BILL LOCKYER
STATE ATTORNEY GENERAL
STATE OF CALIFORNIA, DEPT OF JUSTICE
PO BOX 944255
SACRAMENTO, CA 94244-2550

KEN ALEX
PO BOX 944255
1300 I STREET, SUITE 125
SACRAMENTO, CA 94244-2550

BALDASSARO DI CAPO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630

JUDITH B. SANDERS
ATTORNEY AT LAW
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM, CA 95630

JULIE GILL
EXTERNAL AFFAIRS MANAGER
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM, CA 95630

MARY MCDONALD
DIRECTOR OF STATE AFFAIRS
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM, CA 95630

PHILIP D. PETTINGILL
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM, CA 95630

MICHAEL SCHEIBLE
DEPUTY EXECUTIVE OFFICER
CALIFORNIA AIR RESOURCES BOARD
1001 I STREET
SACRAMENTO, CA 95677

EVAN POWERS
CALIFORNIA AIR RESOURCES BOARD
1001 I ST, PO BOX 2815
SACRAMENTO, CA 95812

JEFFREY DOLL
CALIFORNIA AIR RESOURCES BOARD
PO BOX 2815 1001 I STREET
SACRAMENTO, CA 95812

PAM BURMICH
AIR RESOURCES BOARD
1001 I STREET, BOX 2815
SACRAMENTO, CA 95812

B. B. BLEVINS

DARYL METZ

EXECUTIVE DIRECTOR
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-39
SACRAMENTO, CA 95814

CALIFORNIA ENERGY COMMISSION
1516 9TH ST., MS-20
SACRAMENTO, CA 95814

DEBORAH SLON
DEPUTY ATTORNEY GENERAL, ENVIRONMENT
OFFICE OF THE ATTORNEY GENERAL
1300 I STREET, 15TH FLOOR
SACRAMENTO, CA 95814

DON SCHULTZ
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY RESOURCES & PRICING BRANCH
770 L STREET, SUITE 1050
SACRAMENTO, CA 95814

KAREN GRIFFIN
EXECUTIVE OFFICE
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 39
SACRAMENTO, CA 95814

LISA DECARLO
STAFF COUNSEL
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET MS-14
SACRAMENTO, CA 95814

MARC PRYOR
CALIFORNIA ENERGY COMMISSION
1516 9TH ST., MS-20
SACRAMENTO, CA 95814

MICHELLE GARCIA
AIR RESOURCES BOARD
1001 I STREET
SACRAMENTO, CA 95814

PIERRE H. DUVAIR
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS-41
SACRAMENTO, CA 95814

WADE MCCARTNEY
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF STRATEGIC PLANNING
770 L STREET, SUITE 1050
SACRAMENTO, CA 95814

CAROL J. HURLOCK
CALIFORNIA DEPT. OF WATER RESOURCES
JOINT OPERATIONS CENTER
3310 EL CAMINO AVE. RM 300
SACRAMENTO, CA 95821

HOLLY B. CRONIN
STATE WATER PROJECT OPERATIONS DIV
CALIFORNIA DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., LL-90
SACRAMENTO, CA 95821

ROSS A. MILLER
ELECTRICITY ANALYSIS OFFICE
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET MS 20
SACRAMENTO, CA 96814-5512