

**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

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

AB 32 Implementation

CEC Docket
07-OIIP-01

**REPLY COMMENTS OF THE ENERGY PRODUCERS AND USERS COALITION AND
THE COGENERATION ASSOCIATION OF CALIFORNIA ON PROPOSED FINAL
OPINION**

Michael Alcantar
Nora Sherif
Alcantar & Kahl LLP
1300 SW Fifth Avenue
Suite 1750
Portland, OR 97201
503.402.9900 office
503.402.8882 fax
mpa@a-klaw.com
nes@a-klaw.com

Counsel to the
Cogeneration Association of California

Evelyn Kahl
Seema Srinivisan
Alcantar & Kahl LLP
120 Montgomery Street
Suite 2200
San Francisco, CA 94104
415.421.4143 office
415.989.1263 fax
ek@a-klaw.com
sls@a-klaw.com

Counsel to the
Energy Producers and Users Coalition

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The Energy Producers and Users Coalition¹ (EPUC) and the Cogeneration Association of California² (CAC) (collectively EPUC/CAC) submit these reply comments on the Proposed Final Opinion (PFO) under Article 14 of the Commission's Rules of Practice and Procedure.

I. INTRODUCTION AND OVERVIEW

The PFO recognizes the importance of CHP as a greenhouse gas (GHG) reduction measure. Opening comments of Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E), among others, aim to undermine the PFO's support for CHP. In response, EPUC/CAC explain:

1. CHP is a cost-effective and feasible tool to achieve AB 32 GHG reduction goals.
2. Existing CHP contributes materially to GHG reduction.

¹ EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP West Coast Products LLC, Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Power and Gas Services Inc., Shell Oil Products US, THUMS Long Beach Company, Occidental Elk Hills, Inc., and Valero Refining Company – California.

² CAC represents the combined heat and power and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

3. Record evidence precludes an assumption that GHG compliance costs will be fully recovered in the MRTU market.
4. CHP generation serving on-site electrical load is appropriately included within the scope of the PFO's recommendations.
5. The PFO recommendations to treat load served by CHP comparably with load served by other retail providers is sound.

In addition, EPUC/CAC support the comments of other stakeholders who observe that further consideration of the design of a 33% renewables program is required. An improperly designed requirement could undermine the state's CHP goals.

II. CHP IS A COST-EFFECTIVE, FEASIBLE TOOL TO REDUCE GHG.

AB 32 requires the California Air Resources Board (ARB) to “*adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions . . .*”³ Some parties question the value of mandatory measures to promote EE, RPS and CHP due to cost and feasibility concerns.⁴ While cost and technical feasibility may be issues with respect to energy efficiency and the 33% renewables requirement, the same cannot be said about CHP. First, E3 modeling demonstrates that from a ratepayer perspective, the cost of GHG reduction achieved by CHP is a **negative** \$161/tonne CO₂e.⁵ Second, the technology and infrastructure to promote California's reliance on CHP already exist, overcoming any question of feasibility. The only action required to facilitate increased CHP is to remove regulatory disincentives and barriers – a step contemplated by the PFO.

III. EXISTING CHP CONTRIBUTES MATERIALLY TO GHG REDUCTIONS.

SCE's comments acknowledge that efficient CHP can promote emission reductions and that use of a double benchmark standard is an appropriate way to ensure the efficiency

³ AB 32.

⁴ See SCE Comments on PFO, at 5-7; Morgan Stanley Comments, at 5-7; PG&E Comments, at 17-18; SEU Comments, at 2, 5-6.

⁵ See E3's May 13, 2008 Electricity and Natural Gas GHG Modeling—Revised Results and Sensitivities, at 16.

of CHP.⁶ EPUC/CAC fully agree with these observations.

SCE goes astray, however, in challenging the efficiency of CHP currently serving its service territory.⁷ It notes that only 5% of its CHP fleet “*operates at efficiencies high enough to actually reduce GHG emissions when compared to the use of today’s efficient combined cycle gas turbine (“CCGT”) and industrial boiler systems.*” As a preliminary matter, SCE provides absolutely no support for this conclusion. SCE further fails to clarify whether this is 5% of the facilities serving its territory, 5% of installed capacity or 5% of the CHP MWh delivered in its territory – materially different propositions.⁸ Finally, while the basis of SCE’s assertion is difficult to surmise, EPUC/CAC assume that SCE’s position is based on the same data distortions challenged in 2007, as evidenced in the letter attached as Exhibit A. SCE’s own monitoring records demonstrate that the average efficiency in the SCE service territory on a MWh basis is a robust 73. SCE’s comment should be disregarded.

IV. RECORD EVIDENCE PRECLUDES THE ASSUMPTION THAT GHG COMPLIANCE COSTS WILL BE FULLY RECOVERED IN MRTU PRICES.

SCE states that it “*disagrees with EPUC/CAC’s concern that the California Independent System Operator’s (“CAISO”) Market Redesign and Technology Upgrade (“MRTU”) will limit generators’ ability to recover their GHG compliance costs.*”⁹

EPUC/CAC’s prior comments have gone to great lengths to highlight several features in MRTU, including price caps, that would limit a generator’s ability to recover costs as well as statements by other experts supporting this general conclusion.¹⁰ Once again, however, SCE fails to provide any rationale or support for this statement. This issue is critical to the

⁶ SCE Comments on PFO, at 10-11.

⁷ SCE Comments on PFO, at 10.

⁸ SCE Comments on PFO, at 10.

⁹ SCE Comments on PFO, at 14, n. 35.

¹⁰ Comments of EPUC/CAC on Allowance Allocation, Combined Heat and Power, Modeling and Flexible Compliance (EPUC/CAC Comments), June 2, 2008, at 13-18.

viability of the CPUC's Qualifying Facility program and mere assumptions regarding recovery of compliance costs are inadequate to ensure CHP targets are achieved.¹¹

V. CHP ELECTRICAL OUTPUT IS PROPERLY INCLUDED IN PFO'S RECOMMENDATIONS.

PG&E claims that the "*PD errs in not assigning regulation of emission associated with on-site CHP generation to the industrial sector, instead of the electricity sector.*"¹² It is PG&E's unsupported conclusion, rather than the PD, which errs.

First, PG&E's sole reasoning is that "*such emissions are clearly related to the industrial processes....*" PG&E conveniently overlooks the fact that much of the power it sells is used in "industrial processes" and does not suggest that these emissions should be excluded. Second, the Commissions are charged with developing recommendations for the entire electricity sector. But for the investment in CHP, on-site electrical load would be served by utilities such as PG&E, which would be subject to electricity sector GHG regulations. Third, PG&E's proposal would distort project economics. If the industrial sector GHG regulations were less favorable than the electricity sector regulations, CHP project economics, which compare favorably to the alternative, would be biased against CHP investment.

VI. PFO PROPOSAL TO TREAT LOAD SERVED BY CHP COMPARABLY WITH LOAD SERVED BY OTHER RETAIL PROVIDERS IS SOUND.

PG&E mistakenly claims that by allocating allowances to CHP as a retail provider, the PFO double allocates allowances to CHP.¹³ PG&E is wrong.

The PFO's proposal would treat all California load comparably, regardless of the type of retail provider serving that load. If PG&E's assertions regarding double allocation were correct, it would mean that the PFO double allocates allowances and auction value to all retail providers, including PG&E. In addition, PG&E's proposal would result in

¹¹ See EPUC/CAC Comments, at 58-59. See also EPUC/CAC Comments, at 7-23.

¹² PG&E Comments on PFO, at 19.

¹³ PG&E Comments on PFO, at 19.

unsupportable discrimination against load served by CHP. To the extent a utility receives allowance value on behalf of its load, there is no reason to discriminate against providing the same value to CHP on behalf of its load. Indeed, this sort of discrimination would, once again, bias CHP project economics in favor of utility service.

VII. THE DESIGN OF THE 33% RENEWABLES REQUIREMENT REQUIRES FURTHER EXAMINATION

Several parties observe that the PFO's recommendation to mandate procurement of 33% renewables will require additional evaluation of costs and technological feasibility.¹⁴ As noted in EPUC/CAC's opening comments, the design of this mandate will influence the State's ability to achieve other policy objectives, including CHP expansion targets.¹⁵ The wrong mix of resources during minimum load hours, in particular, could limit policy fulfillment.

SCE attempts to mislead the Commission, suggesting that the problem lies with CHP.¹⁶ SCE conveniently overlooks the broad range of resources on line during minimum load periods that can contribute to an overgeneration problem.¹⁷ If, in fact, SCE and PG&E can substantiate their claims of overgeneration during minimum load periods, the Commissions must examine *all* resources in the minimum load stack.

Respectfully submitted,



Michael Alcantar
Nora Sherif
Counsel to the
Cogeneration Association of California



Evelyn Kahl
Seema Srinivasan
Counsel to the
Energy Producers and Users Coalition

¹⁴ See SCE Comments on PFO, at 5-7; PG&E Comments on PFO, at 17-18; SEU Comments on PFO, at 2, 5-6.

¹⁵ EPUC/CAC Comments on PFO, at 21.

¹⁶ SCE Comments on PFO, at 12.

¹⁷ See *Integration of Renewable Resources*, prepared by the CAISO, dated November 2007 (minimum load mix includes thermal, interchange, hydro, nuclear and wind resources).

Exhibit A



ALCANTAR & KAHL LLP

120 Montgomery Street
Suite 2200
San Francisco CA 94104
415.421.4143 phone
415.989.1263 fax

By Registered Mail and E-mail

May 21, 2007

John Fielder
President
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
Email FIELDEJR@sce.com

Ann Cohn
VP and Assistant General Counsel
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
Email ann.cohn@sce.com

Gary Schoonyan
Southern California Edison Company
1201 K Street
Suite 1800
Sacramento, CA 95814
Email schoongl@sce.com

**Re: ACTION NECESSARY -- SCE Misrepresentations before the CEC and CPUC
on QF Efficiency**

Dear Mr. Fielder, Ms.Cohn & Mr. Schoonyan,

On May 7, 2007, Mr. Schoonyan, representing Southern California Edison Company (SCE) presented an analysis of "actual" Qualifying Facility (QF) cogeneration efficiency for specific projects on the SCE system. The analysis was presented to the general public, and to Commissioners and staff of both the California Energy Commission (CEC) and the California Public Utilities Commission (CPUC). The express purpose of the presentation was to "demonstrate" that of 59 QF projects on SCE's system, only three attain an 80% efficiency standard contrary to statements on CHP efficiency by some CHP advocacy groups. (See Workshop Transcript posted May 17, 2007 at 138; see also slides 3, 5, 6) The implication of Mr. Schoonyan's presentation is that most QFs achieve efficiency factors much lower than 80%.

Mr. Schoonyan's presentation on behalf of SCE materially distorts the source data or is in error in at least three ways:

- SCE's calculations are incorrectly based on the higher heating value (HHV) of fuel rather than the lower heating value (LHV) utilized in testimony on CHP efficiency cited to by Mr. Schoonyan (SCE Presentation at 5). This error alone systematically understates each CHP efficiency calculation by 11%.

- SCE did not appropriately weight the projects listed in its presentation by size and instead treated all projects, regardless of size, the same.
- Lastly, according to a very restricted sampling of the data by CAC/EPUC, specific facility reporting errors in the HHV versus LHV data were used by SCE which SCE knew or should have known was inappropriate to include in a CHP efficiency presentation.

The result of these inaccuracies is SCE's misstated conclusion that only three of the SCE QF projects meet an 80% efficiency standard. This information is simply wrong. Using the appropriate LHV standard for the calculation of efficiency, approximately 12 QFs on SCE's system meet the 80% efficiency standard. Moreover, on a weighted average basis, the efficiency of all SCE CHP projects is an extraordinary 73%.

The Cogeneration Association of California and the Energy Producers and Users Coalition (jointly, CAC/EPUC) obtained a copy of SCE's presentation from the CEC website on May 8, 2007. On May 11, 2007, as a courtesy, Donald Schoenbeck, consultant to CAC/EPUC, left Mr. Schoonyan a voicemail message alerting him to problems with the data in the presentation, asked for a discussion and a return telephone call. As yet, there has been no response or reply.

SCE's presentation appears to violate explicit CPUC confidentiality orders applicable to SCE related to the proprietary and confidential operating data of the QFs. (See D.91-05-007, Ordering Paragraph 3 ("*SDG&E, PG&E and Edison shall not permit any person who is not charged with monitoring power producer operating efficiencies to gain access to power producers' operating data. SDG&E, PG&E and Edison shall not permit any employee of any utility affiliate to gain access to power producers' operating data.*")¹⁸) It is apparent from Mr. Schoonyan's presentation, including the underlying data in support of the presentation which is all accessible, that SCE inappropriately disclosed confidential QF operating data to the public. Furthermore, it appears from a plain reading of the Commission's order that even Mr. Schoonyan should not have access to the confidential data he has now disclosed.

In light of these facts, and the material concerns over timely and accurate representation of data before California administrative agencies, the following actions are sought from SCE in advance of the Tuesday, May 22, 2007 Joint CPUC CEC EAP II meeting, or as soon thereafter as possible

1. SCE shall provide in written response to this letter any justification for failing to comply with the confidentiality order applicable to SCE in CPUC Decision 91-05-007; and

¹⁸ It is due to the confidential nature of this data that CAC/EPUC for years have relied upon publicly available data from either the CEC or the Energy Information Administration in their presentations.

2. SCE shall provide in written response to this letter a list of all meetings, including participants, dates, and locations, where the QF operating data and SCE's referenced efficiency analysis or any derivation of such analysis was presented or discussed. The list should include any and all meetings, formal or informal discussions or presentations or communication of any sort (including electronic) with any and all of the following, jointly or singly: CPUC Commissioners; CPUC staff; CEC Commissioners; CEC staff; California state legislators; state legislative staff; California Governor's Office and/or administrative staff.

We know of no justification or basis for SCE's violation of the referenced confidentiality order. Assuming there is none; SCE has at a minimum an obligation to retract its statements.

Whether or not there is a violation of the confidentiality order, there are material mis-statements and factually misleading aspects of SCE's presentation that were known or should have been known by SCE. These misleading statements do not fall within the reasonable bound of advocacy, but are either negligent or intentional SCE actions that must be remedied immediately. SCE should be mindful of Rule 1.1 of the CPUC's Rules of Practice and Procedure and the fact that CPUC Commissioner Dian Grueneich was present at its May 7, 2007 presentation. SCE has an obligation to correct the misrepresentations it has made, even assuming it can justify the violation of the referenced confidentiality order.

Accordingly, we seek the following actions by SCE in light of the pending consideration of QF policies by both the CEC and CPUC:

1. Before the close of the Joint EAP II meeting on Tuesday, May 22, 2007, SCE shall withdraw and retract in writing the misleading statements and presentation on QF efficiencies, particularly those that rely on confidential data; and
2. At the Joint EAP II meeting, SCE shall correct publicly the misleading statements on QF efficiencies by either providing the correct average efficiency percentages calculated with the proper heating value and properly weighted, or by relying on publicly available and accurate sources of data for its presentation.

Respectfully,



Evelyn Kahl



Michael Alcantar

cc: CPUC and CEC Commissioners

CERTIFICATE OF SERVICE

I, Karen Terranova hereby certify that I have on this date caused the attached **Reply Comments of the Energy Producers and Users Coalition and the Cogeneration Association of California on the Proposed Final Opinion** in R.06-04-009 to be served to all known parties by either United States mail or electronic mail, to each party named in the official attached service list obtained from the Commission's website, attached hereto, and pursuant to the Commission's Rules of Practice and Procedure.

Dated October 7, 2008, at San Francisco, California.

A handwritten signature in dark ink, appearing to read "Karen Terranova", with a long horizontal flourish extending to the right.

Karen Terranova

STEVEN S. SCHLEIMER
BARCLAYS BANK, PLC
200 PARK AVENUE, FIFTH FLOOR
NEW YORK, NY
steven.schleimer@barclayscapital.com

STEVEN HUHMAN
MORGAN STANLEY CAPITAL GROUP INC.
2000 WESTCHESTER AVENUE
PURCHASE, NY
steven.huhman@morganstanley.com

RICK C. NOGER
PRAXAIR PLAINFIELD, INC.
2711 CENTERVILLE ROAD, SUITE 400
WILMINGTON, DE
rick_noger@praxair.com

KEITH R. MCCREA
SUTHERLAND, ASBILL & BRENNAN, LLP
1275 PENNSYLVANIA AVE., N.W.
WASHINGTON, DC
keith.mccrea@sablaw.com

ERIN M. MURPHY
MCDERMOTT WILL & EMERY LLP
600 THIRTEENTH STREET, N.W.
WASHINGTON, DC
emmurphy@mwe.com

MICHAEL A. YUFFEE
MCDERMOTT WILL & EMERY LLP
600 THIRTEENTH STREET, N.W.
WASHINGTON, DC
myuffee@mwe.com

LISA M. DECKER
CONSTELLATION ENERGY GROUP, INC.
111 MARKET PLACE, SUITE 500
BALTIMORE, MD
lisa.decker@constellation.com

KEVIN BOUDREAUX
CALPINE POWER AMERICA-CA, LLC
717 TEXAS AVENUE, SUITE 1000
HOUSTON, TX
kevin.boudreaux@calpine.com

E.J. WRIGHT
OCCIDENTAL POWER SERVICES, INC.
5 GREENWAY PLAZA, SUITE 110
HOUSTON, TX
ej_wright@oxy.com

THOMAS DILL
LODI GAS STORAGE, L.L.C.
14811 ST. MARYS LANE, SUITE 150
HOUSTON, TX
trdill@westernhubs.com

PAUL M. SEBY
MCKENNA LONG & ALDRIDGE LLP
1875 LAWRENCE STREET, SUITE 200
DENVER, CO
pseby@mckennalong.com

TIMOTHY R. ODIL
MCKENNA LONG & ALDRIDGE LLP
1875 LAWRENCE STREET, SUITE 200
DENVER, CO
todil@mckennalong.com

STEVE MICHEL
WESTERN RESOURCE ADVOCATES
2260 BASELINE ROAD, SUITE 200
BOULDER, CO
smichel@westernresources.org

JENINE SCHENK
APS ENERGY SERVICES
400 E. VAN BUREN STREET, SUITE 750
PHOENIX, AZ
jenine.schenk@apses.com

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

KELLY BARR
SALT RIVER PROJECT
PO BOX 52025, PAB 221
PHOENIX, AZ
kelly.barr@srpnet.com

ROGER C. MONTGOMERY
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS, NV
roger.montgomery@swgas.com

DARRELL SOYARS
SIERRA PACIFIC RESOURCES
6100 NEIL ROAD
RENO, NV
dsoyars@sppc.com

SID NEWSOME
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH STREET
LOS ANGELES, CA
snewsom@semprautilities.com

DAVID L. HUARD
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES, CA
dhuard@manatt.com

CURTIS L. KEBLER
J. ARON & COMPANY
2121 AVENUE OF THE STARS
LOS ANGELES, CA
curtis.kebler@gs.com

DENNIS M.P. EHLING
KIRKPATRICK & LOCKHART NICHOLSON
GRAHAM
10100 SANTA MONICA BLVD., 7TH FLOOR
LOS ANGELES, CA
dehling@klnj.com

GREGORY KOISER
CONSTELLATION NEW ENERGY, INC.
350 SOUTH GRAND AVENUE, SUITE 3800
LOS ANGELES, CA
gregory.koiser@constellation.com

NORMAN A. PEDERSEN
HANNA AND MORTON, LLP
444 SOUTH FLOWER STREET, NO. 1500
LOS ANGELES, CA
npedersen@hanmor.com

MICHAEL MAZUR
3 PHASES ENERGY SERVICES, LLC
2100 SEPULVEDA BLVD., SUITE 38
MANHATTAN BEACH, CA
mmazur@3phases.com

TIFFANY RAU
CARSON HYDROGEN POWER PROJECT LLC
ONE WORLD TRADE CENTER, SUITE 1600
LONG BEACH, CA
tiffany.rau@bp.com

GREGORY KLATT
DOUGLASS & LIDDELL
411 E. HUNTINGTON DRIVE, STE. 107-356
ARCADIA, CA
klatt@energyattorney.com

MAUREEN LENNON
CALIFORNIA COGENERATION COUNCIL
595 EAST COLORADO BLVD., SUITE 623
PASADENA, CA
maureen@lennonassociates.com

RICHARD HELGESON
SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY
225 S. LAKE AVE., SUITE 1250
PASADENA, CA
rhelgeson@scppa.org

DANIEL W. DOUGLASS
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA
douglass@energyattorney.com

PAUL DELANEY
AMERICAN UTILITY NETWORK (A.U.N.)
10705 DEER CANYON DRIVE
ALTA LOMA, CA
pssed@adelphia.net

AKBAR JAZAYEIRI
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. ROOM 390
ROSEMEAD, CA
akbar.jazayeri@sce.com

ANNETTE GILLIAM
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA
annette.gilliam@sce.com

LAURA I. GENAO
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA
Laura.Genao@sce.com

RONALD MOORE
GOLDEN STATE WATER/BEAR VALLEY
ELECTRIC
630 EAST FOOTHILL BOULEVARD
SAN DIMAS, CA
rkmoore@gswater.com

DON WOOD
PACIFIC ENERGY POLICY CENTER
4539 LEE AVENUE
LA MESA, CA
dwood8@cox.net

ALLEN K. TRIAL
SDGE&SCG
101 ASH STREET
SAN DIEGO, CA
atrial@sempra.com

DAN HECHT
SEMPRA ENERGY
101 ASH STREET
SAN DIEGO, CA
dhecht@sempratrading.com

DANIEL A. KING
SEMPRA ENERGY
101 ASH STREET, HQ 12
SAN DIEGO, CA
daking@sempra.com

SYMONE VONGDEUANE
SEMPRA ENERGY SOLUTIONS
101 ASH STREET, HQ09
SAN DIEGO, CA
svongdeuane@semprasolutions.com

THEODORE ROBERTS
SEMPRA GLOBAL
101 ASH STREET, HQ 13D
SAN DIEGO, CA
troberts@sempra.com

JOSEPH R. KLOBERDANZ
SAN DIEGO GAS & ELECTRIC
PO BOX 1831
SAN DIEGO, CA
jkloberdanz@semprautilities.com

BILL LYONS
CORAL POWER, LLC
4445 EASTGATE MALL, SUITE 100
SAN DIEGO, CA
Bill.Lyons@shell.com

THOMAS DARTON
PILOT POWER GROUP, INC.
9320 CHESAPEAKE DRIVE, SUITE 112
SAN DIEGO, CA
tdarton@pilotpowergroup.com

STEVE RAHON
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32C
SAN DIEGO, CA
lschavrien@semprautilities.com

GLORIA BRITTON
ANZA ELECTRIC COOPERATIVE, INC.
PO BOX 391909
ANZA, CA
GloriaB@anzaelectric.org

LYNELLE LUND
COMMERCE ENERGY, INC.
600 ANTON BLVD., SUITE 2000
COSTA MESA, CA
llund@commerceenergy.com

TAMLYN M. HUNT
COMMUNITY ENVIRONMENTAL COUNCIL
26 W. ANAPAMU ST., 2/F
SANTA BARBARA, CA
thunt@cecmail.org

JEANNE M. SOLE
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM.
234
SAN FRANCISCO, CA
jeanne.sole@sfgov.org

JOHN P. HUGHES
SOUTHERN CALIFORNIA EDISON COMPANY
601 VAN NESS AVENUE, STE. 2040
SAN FRANCISCO, CA
john.hughes@sce.com

LAD LORENZ
SOUTHERN CALIFORNIA GAS COMPANY
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO, CA
llorenz@semprautilities.com

MARCEL HAWIGER
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA
marcel@turn.org

NINA SUETAKE
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., STE 350
SAN FRANCISCO, CA
nsuetake@turn.org

Diana L. Lee
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
dil@cpuc.ca.gov

F. Jackson Stoddard
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
fjs@cpuc.ca.gov

AUDREY CHANG
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA
achang@nrdc.org

EVELYN KAHL
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA
ek@a-klaw.com

MICHAEL P. ALCANTAR
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA
mpa@a-klaw.com

SEEMA SRINIVASAN
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA
sls@a-klaw.com

WILLIAM H. CHEN
CONSTELLATION NEW ENERGY, INC.
ONE MARKET STREET
SAN FRANCISCO, CA
bill.chen@constellation.com

BRIAN K. CHERRY
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B10C
SAN FRANCISCO, CA
bk7@pge.com

EDWARD G POOLE
ANDERSON DONOVAN & POOLE
601 CALIFORNIA STREET SUITE 1300
SAN FRANCISCO, CA
epoole@adplaw.com

ANN G. GRIMALDI
MCKENNA LONG & ALDRIDGE LLP
101 CALIFORNIA STREET, 41ST FLOOR
SAN FRANCISCO, CA
agrimaldi@mckennalong.com

BRIAN T. CRAGG
GOODIN, MACBRIDE, SQUERI, RITCHIE &
DAY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA
bcragg@goodinmacbride.com

JAMES D. SQUERI
GOODIN MACBRIDE SQUERI RITCHIE & DAY
LLP
505 SANSOME STREET, STE 900
SAN FRANCISCO, CA
jsqueri@gmssr.com

JEANNE B. ARMSTRONG
GOODIN MACBRIDE SQUERI RITCHIE & DAY
LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA
jarmstrong@gmssr.com

KAREN BOWEN
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO, CA
kbowen@winston.com

LISA A. COTTLE
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO, CA
lcottle@winston.com

SEAN P. BEATTY
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA ST., 17TH FLOOR
SAN FRANCISCO, CA
sbeatty@cwclaw.com

JOSEPH M. KARP
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO, CA
jkarp@winston.com

JEFFREY P. GRAY
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA
jeffgray@dwt.com

CHRISTOPHER J. WARNER
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, PO BOX 7442
SAN FRANCISCO, CA
cjw5@pge.com

SARA STECK MYERS
122 28TH AVENUE
SAN FRANCISCO, CA
ssmyers@att.net

LARS KVALE
CENTER FOR RESOURCE SOLUTIONS
PO BOX 39512
SAN FRANCISCO, CA
lars@resource-solutions.org

ANDREA WELLER
STRATEGIC ENERGY
3130 D BALFOUR RD., SUITE 290
BRENTWOOD, CA
aweller@sel.com

JENNIFER CHAMBERLIN
STRATEGIC ENERGY, LLC
2633 WELLINGTON CT.
CLYDE, CA
jchamberlin@strategicenergy.com

KERRY HATTEVIK
MIRANT CORPORATION
696 WEST 10TH STREET
PITTSBURG, CA
kerry.hattevik@mirant.com

AVIS KOWALEWSKI
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON, CA
kowalewskia@calpine.com

WILLIAM H. BOOTH
LAW OFFICES OF WILLIAM H. BOOTH
1500 NEWELL AVENUE, 5TH FLOOR
WALNUT CREEK, CA
wbooth@booth-law.com

J. ANDREW HOERNER
REDEFINING PROGRESS
1904 FRANKLIN STREET
OAKLAND, CA
hoerner@redefiningprogress.org

JANILL RICHARDS
CALIFORNIA ATTORNEY GENERAL'S OFFICE
1515 CLAY STREET, 20TH FLOOR
OAKLAND, CA
janill.richards@doj.ca.gov

CLIFF CHEN
UNION OF CONCERNED SCIENTIST
2397 SHATTUCK AVENUE, STE 203
BERKELEY, CA
cchen@ucsusa.org

GREGG MORRIS
GREEN POWER INSTITUTE
2039 SHATTUCK AVENUE, STE 402
BERKELEY, CA
gmorris@emf.net

JOHN GALLOWAY
UNION OF CONCERNED SCIENTISTS
2397 SHATTUCK AVENUE, SUITE 203
BERKELEY, CA
jgalloway@ucsusa.org

R. THOMAS BEACH
CROSSBORDER ENERGY
2560 NINTH STREET, SUITE 213A
BERKELEY, CA
tomb@crossborderenergy.com

BARRY F. MCCARTHY
MCCARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, SUITE 501
SAN JOSE, CA
bmcc@mccarthyllaw.com

C. SUSIE BERLIN
MC CARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, SUITE 501
SAN JOSE, CA
sberlin@mccarthyllaw.com

MIKE LAMOND
ALPINE NATURAL GAS OPERATING CO. #1
LLC
PO BOX 550
VALLEY SPRINGS, CA
anginc@goldrush.com

JOY A. WARREN
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA
joyw@mid.org

BALDASSARO DI CAPO, ESQ.
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA
bdicapo@caiso.com

JOHN JENSEN
MOUNTAIN UTILITIES
PO BOX 205
KIRKWOOD, CA
jjensen@kirkwood.com

MARY LYNCH
CONSTELLATION ENERGY COMMODITIES
GROUP
2377 GOLD MEDAL WAY
GOLD RIVER, CA
mary.lynn@constellation.com

LEONARD DEVANNA
CLEAN ENERGY SYSTEMS, INC.
11330 SUNCO DRIVE, SUITE A
RANCHO CORDOVA, CA
lrdevanna-rf@cleanenergysystems.com

ANDREW BROWN
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA
abb@eslawfirm.com

BRUCE MCLAUGHLIN
BRAUN & BLAISING, P.C.
915 L STREET, SUITE 1420
SACRAMENTO, CA
mclaughlin@braunlegal.com

GREGGORY L. WHEATLAND
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA
glw@eslawfirm.com

JANE E. LUCKHARDT
DOWNEY BRAND LLP
555 CAPITOL MALL, 10TH FLOOR
SACRAMENTO, CA
jluckhardt@downeybrand.com

JEFFERY D. HARRIS
ELLISON, SCHNEIDER & HARRIS LLP
2015 H STREET
SACRAMENTO, CA
jdh@eslawfirm.com

VIRGIL WELCH
ENVIRONMENTAL DEFENSE
1107 9TH STREET, SUITE 540
SACRAMENTO, CA
vwelch@environmentaldefense.org

WILLIAM W. WESTERFIELD, 111
ELLISON, SCHNEIDER & HARRIS L.L.P.
2015 H STREET
SACRAMENTO, CA
www@eslawfirm.com

DOWNEY BRAND
JANE E. LUCKHARDT
555 CAPITOL MALL, 10TH FLOOR
SACRAMENTO, CA

RAYMOND J. CZAHAR, C.P.A.
WEST COAST GAS COMPANY
9203 BEATTY DRIVE
SACRAMENTO, CA
westgas@aol.com

STEVEN M. COHN
SACRAMENTO MUNICIPAL UTILITY DISTRICT
PO BOX 15830
SACRAMENTO, CA
scohn@smud.org

ANN L. TROWBRIDGE
DAY CARTER & MURPHY, LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO, CA
atrowbridge@daycartermurphy.com

DAN SILVERIA
SURPRISE VALLEY ELECTRIC COOPERATIVE
PO BOX 691
ALTURAS, CA
dansvec@hdo.net

JESSICA NELSON
PLUMAS-SIERRA RURAL ELECTRIC CO-OP
73233 STATE ROUTE 70, STE A
PORTOLA, CA
notice@psrec.coop

DONALD BROOKHYSER
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND, OR
deb@a-klaw.com

CYNTHIA SCHULTZ
PACIFIC POWER AND LIGHT COMPANY
825 N.E. MULTNOMAH
PORTLAND, OR
cynthia.schultz@pacificcorp.com

KYLE L. DAVIS
PACIFICORP
825 NE MULTNOMAH,
PORTLAND, OR
kyle.l.davis@pacificcorp.com

RYAN FLYNN
PACIFICORP
825 NE MULTNOMAH STREET
PORTLAND, OR
ryan.flynn@pacificcorp.com

SHAY LABRAY
PACIFICORP
825 NE MULTNOMAH, SUITE 2000
PORTLAND, OR
shayleah.labray@pacificcorp.com

TARA KNOX
AVISTA CORPORATION
PO BOX 3727
SPOKANE, WA

IAN CARTER
INTERNATIONAL EMISSIONS TRADING ASSN.
350 SPARKS STREET, STE. 809
OTTAWA, ON
carter@ieta.org

JASON DUBCHAK
NISKA GAS STORAGE
1200 855 2ND STREET, S.W.
CALGARY, AB
jason.dubchak@niskags.com

BRIAN M. JONES
M. J. BRADLEY & ASSOCIATES, INC.
47 JUNCTION SQUARE DRIVE
CONCORD, MA
bjones@mjb Bradley.com

KENNETH A. COLBURN
SYMBIOTIC STRATEGIES, LLC
26 WINTON ROAD
MEREDITH, NH
kcolburn@symbioticstrategies.com

RICHARD COWART
REGULATORY ASSISTANCE PROJECT
50 STATE STREET, SUITE 3
MONTPELIER, VT
rapcowart@aol.com

KATHRYN WIG
NRG ENERGY, INC.
211 CARNEGIE CENTER
PRINCETON, NY
Kathryn.Wig@nrgenergy.com

SAKIS ASTERIADIS
APX INC
1270 FIFTH AVE., SUITE 15R
NEW YORK, NY
sasteriadis@apx.com

GEORGE HOPLEY
BARCLAYS CAPITAL
200 PARK AVENUE
NEW YORK, NY
george.hopley@barcap.com

ADAM J. KATZ
MCDERMOTT WILL & EMERY LLP
600 13TH STREET, NW.
WASHINGTON, DC
ajkatz@mwe.com

ELIZABETH ZELLJADT
1725 I STREET, N.W. SUITE 300
WASHINGTON, DC
ez@pointcarbon.com

DALLAS BURTRAW
1616 P STREET, NW
WASHINGTON, DC
burtraw@rff.org

VERONIQUE BUGNION
POINT CARBON
205 SEVERN RIVER RD
SEVERNA PARK, MD
vb@pointcarbon.com

KYLE D. BOUDREAU
FPL GROUP
700 UNIVERSE BLVD., JES/JB
JUNO BEACH, FL
kyle_boudreaux@fpl.com

ANDREW BRADFORD
FELLON-MCCORD & ASSOCIATES
9960 CORPORATE CAMPUS DRIVE
LOUISVILLE, KY
andrew.bradford@constellation.com

GARY BARCH
FELLON-MCCORD & ASSOCIATES, INC.
9960 CORPORATE CAMPUS DRIVE
LOUISVILLE, KY
gbarch@knowledgeinenergy.com

RALPH E. DENNIS
FELLON-MCCORD & ASSOCIATES
9960 CORPORATE CAMPUS DRIVE, STE 2000
LOUISVILLE, KY
ralph.dennis@constellation.com

SAMARA MINDEL
FELLON-MCCORD & ASSOCIATES
9960 CORPORATE CAMPUS DRIVE, SUITE
2000
LOUISVILLE, KY
samara.mindel@constellation.com

BARRY RABE
1427 ROSS STREET
PLYMOUTH, MI
brabe@umich.edu

CATHY S. WOOLLUMS
MIDAMERICAN ENERGY HOLDINGS
COMPANY
106 EAST SECOND STREET
DAVENPORT, IA
cswoolums@midamerican.com

BRIAN POTTS
ONE SOUTH PINCKNEY STREET
MADISON, WI
bhpotts@michaelbest.com

JAMES W. KEATING
BP AMERICA, INC.
150 W. WARRENVILLE RD.
NAPERVILLE, IL
james.keating@bp.com

JAMES ROSS
RCS, INC.
500 CHESTERFIELD CENTER, SUITE 320
CHESTERFIELD, MO
jimross@r-c-s-inc.com

TRENT A. CARLSON
RELIANT ENERGY
1000 MAIN STREET
HOUSTON, TX
tcarlson@reliant.com

GARY HINNERS
RELIANT ENERGY, INC.
PO BOX 148
HOUSTON, TX
ghinners@reliant.com

JULIE L. MARTIN
NORTH AMERICA GAS AND POWER
501 WESTLAKE PARK BLVD.
HOUSTON, TX
julie.martin@bp.com

ED CHIANG
ELEMENT MARKETS, LLC
ONE SUGAR CREEK CENTER BLVD., SUITE
250
SUGAR LAND, TX
echiang@elementmarkets.com

NADAV ENBAR
ENERGY INSIGHTS
1750 14TH STREET, SUITE 200
BOULDER, CO
nenbar@energy-insights.com

NICHOLAS LENSSEN
ENERGY INSIGHTS
1750 14TH STREET, SUITE 200
BOULDER, CO
nlenssen@energy-insights.com

STEVEN MICHEL
WESTERN RESOURCE ADVOCATES
2260 BASELINE RD., STE. 200
BOULDER, CO
smichel@westernresources.org

ELIZABETH BAKER
SUMMIT BLUE CONSULTING
1722 14TH STREET, SUITE 230
BOULDER, CO
bbaker@summitblue.com

KEVIN J. SIMONSEN
ENERGY MANAGEMENT SERVICES
646 EAST THIRD AVENUE
DURANGO, CO
kjsimonsen@ems-ca.com

PHILIP D. LUSK
WESTERN ELECTRICITY COORDINATING
COUNCIL
615 ARAPEEN DRIVE, SUITE 210
SALT LAKE CITY, UT
plusk@wecc.biz

SANDRA ELY
NEW MEXICO ENVIRONMENT DEPARTMENT
1190 ST FRANCIS DRIVE
SANTA FE, NM
Sandra.ely@state.nm.us

BRIAN MCQUOWN
RELIANT ENERGY
7251 AMIGO ST., SUITE 120
LAS VEGAS, NV
bmcquown@reliant.com

DOUGLAS BROOKS
SIERRA PACIFIC POWER COMPANY
6226 WEST SAHARA AVENUE
LAS VEGAS, NV
dbrooks@nevpc.com

BILL SCHRAND
SOUTHWEST GAS CORPORATON
PO BOX 98510
LAS VEGAS, NV
bill.schrand@swgas.com

JJ PRUCNAL
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS, NV
jj.prucnal@swgas.com

MERIDITH J. STRAND
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS, NV
meridith.strand@swgas.com

CYNTHIA MITCHELL
ENERGY ECONOMICS, INC.
530 COLGATE COURT
RENO, NV
ckmitchell1@sbcglobal.net

CHRISTOPHER A. HILEN
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO, NV
chilen@sppc.com

ELENA MELLO
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO, NV
emello@sppc.com

TREVOR DILLARD
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO, NV
tdillard@sierrapacific.com

FRANK LUCHETTI
NEVADA DIV. OF ENVIRONMENTAL
PROTECTION
901 S. STEWART ST., SUITE 4001
CARSON CITY, NV
fluchetti@ndep.nv.gov

LEILANI JOHNSON KOWAL
LOS ANGELES DEPT. OF WATER AND
POWER
111 N. HOPE STREET, ROOM 1050
LOS ANGELES, CA
leilani.johnson@ladwp.com

RANDY S. HOWARD
LOS ANGELES DEPT. OF WATER AND
POWER
111 NORTH HOPE STREET, ROOM 921
LOS ANGELES, CA
randy.howard@ladwp.com

ROBERT L. PETTINATO
LOS ANGELES DEPARTMENT OF WATER &
POWER
111 NORTH HOPE STREET, SUITE 1150
LOS ANGELES, CA
robert.pettinato@ladwp.com

HUGH YAO
SOUTHERN CALIFORNIA GAS COMPANY
555 W. 5TH ST, GT22G2
LOS ANGELES, CA
hyao@semprautilities.com

RASHA PRINCE
SAN DIEGO GAS & ELECTRIC
555 WEST 5TH STREET, GT14D6
LOS ANGELES, CA
rprince@semprautilities.com

RANDALL W. KEEN
MANATT PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES, CA
rkeen@manatt.com

S. NANCY WHANG
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES, CA
nwhang@manatt.com

MICHAEL MCCORMICK
CALIFORNIA CLIMATE ACTION REGISTRY
515 S. FLOWER ST. SUITE 1640
LOS ANGELES, CA
mike@climateregistry.org

HARVEY EDER
PUBLIC SOLAR POWER COALITION
1218 12TH ST., 25
SANTA MONICA, CA
harveyederpspc.org@hotmail.com

STEVE ENDO
DEPARTMENT OF WATER & POWER
150 S LOS ROBLES AVE., STE. 200
PASADENA, CA
sendo@ci.pasadena.ca.us

STEVEN G. LINS
CITY OF GLENDALE
613 EAST BROADWAY, SUITE 220
GLENDALE, CA
slins@ci.glendale.ca.us

TOM HAMILTON
ENERGY CONCIERGE SERVICES
321 MESA LILA RD
GLENDALE, CA
THAMILTON5@CHARTER.NET

BRUNO JEIDER
BURBANK WATER & POWER
164 WEST MAGNOLIA BLVD.
BURBANK, CA
bjneider@ci.burbank.ca.us

ROGER PELOTE
WILLIAMS POWER COMPANY
12736 CALIFA STREET
VALLEY VILLAGE, CA
roger.pelote@williams.com

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE., RM. 370
ROSEMEAD, CA
case.admin@sce.com

CATHY KARLSTAD
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD, CA
cathy.karlstad@sce.com

TIM HEMIG
NRG ENERGY, INC.
1819 ASTON AVENUE, SUITE 105
CARLSBAD, CA
tim.hemig@nrgenergy.com

BARRY LOVELL
15708 POMERADO RD., SUITE 203
POWAY, CA
bjl@bry.com

AIMEE M. SMITH
SEMPRA ENERGY
101 ASH STREET HQ13
SAN DIEGO, CA
amsmith@sempra.com

ALDYN HOEKSTRA
PACE GLOBAL ENERGY SERVICES
420 WEST BROADWAY, 4TH FLOOR
SAN DIEGO, CA
aldyn.hoekstra@paceglobal.com

DONALD C. LIDDELL, P.C.
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA
liddell@energyattorney.com

YVONNE GROSS
SEMPRA ENERGY
101 ASH STREET
SAN DIEGO, CA
ygross@sempraglobal.com

JOHN LAUN
APOGEE INTERACTIVE, INC.
1220 ROSECRANS ST., SUITE 308
SAN DIEGO, CA
jlaun@apogee.net

SCOTT J. ANDERS
UNIVERSITY OF SAN DIEGO SCHOOL OF
LAW
5998 ALCALA PARK
SAN DIEGO, CA
scottanders@sandiego.edu

ANDREW MCALLISTER
CALIFORNIA CENTER FOR SUSTAINABLE
ENERGY
8690 BALBOA AVE., SUITE 100
SAN DIEGO, CA
andrew.mcallister@energycenter.org

JACK BURKE
CALIFORNIA CENTER FOR SUSTAINABLE
ENERGY
8690 BALBOA AVE., SUITE 100
SAN DIEGO, CA
jack.burke@energycenter.org

JENNIFER PORTER
CALIFORNIA CENTER FOR SUSTAINABLE
ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO, CA
jennifer.porter@energycenter.org

SEPHRA A. NINOW
CALIFORNIA CENTER FOR SUSTAINABLE
ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO, CA
sephra.ninow@energycenter.org

JOHN W. LESLIE
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA
jleslie@luce.com

ORLANDO B. FOOTE, III
HORTON, KNOX, CARTER & FOOTE
895 BROADWAY, SUITE 101
EL CENTRO, CA
ofoote@hkcf-law.com

ELSTON K. GRUBAUGH
IMPERIAL IRRIGATION DISTRICT
333 EAST BARIONI BLVD.
IMPERIAL, CA
ekgrubaugh@iid.com

MWIRIGI IMUNGI
15615 ALTON PARKWAY
IRVINE, CA
Mlimgi@energycoalition.org

JAN PEPPER
CLEAN POWER MARKETS, INC.
418 BENVENUE AVENUE
LOS ALTOS, CA
pepper@cleanpowermarkets.com

GLORIA D. SMITH
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., SUITE 1000
SOUTH SAN FRANCISCO, CA
gsmith@adamsbroadwell.com

MARC D. JOSEPH
ADAMS BRADWELL JOSEPH & CARDOZO
601 GATEWAY BLVD. STE 1000
SOUTH SAN FRANCISCO, CA
mdjoseph@adamsbroadwell.com

DIANE I. FELLMAN
LAW OFFICES OF DIANE I. FELLMAN
234 VAN NESS AVENUE
SAN FRANCISCO, CA
diane_fellman@fpl.com

HAYLEY GOODSON
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA
hayley@turn.org

MATTHEW FREEDMAN
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA
freedman@turn.org

MICHEL FLORIO
711 VAN NESS AVE., STE. 350
SAN FRANCISCO, CA
mflorio@turn.org

DAN ADLER
CALIFORNIA CLEAN ENERGY FUND
5 THIRD STREET, SUITE 1125
SAN FRANCISCO, CA
Dan.adler@calcef.org

MICHAEL A. HYAMS
SAN FRANCISCO PUBLIC UTILITIES COMM
1155 MARKET ST., 4TH FLOOR
SAN FRANCISCO, CA
mhyams@sfwater.org

NORMAN J. FURUTA
FEDERAL EXECUTIVE AGENCIES
1455 MARKET ST., SUITE 1744
SAN FRANCISCO, CA
norman.furuta@navy.mil

ANNABELLE MALINS
BRITISH CONSULATE-GENERAL
ONE SANSOME STREET, SUITE 850
SAN FRANCISCO, CA
annabelle.malins@fco.gov.uk

DEVRA WANG
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA
dwang@nrdc.org

ERIC WANLESS
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA
ewanless@nrdc.org

KAREN TERRANOVA
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, STE 2200
SAN FRANCISCO, CA
filings@a-klaw.com

NORA SHERIFF
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA
nes@a-klaw.com

OLOF BYSTROM
CAMBRIDGE ENERGY RESEARCH
ASSOCIATES
555 CALIFORNIA STREET, 3RD FLOOR
SAN FRANCISCO, CA
obystrom@cera.com

SHERYL CARTER
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA
scarter@nrdc.org

CARMEN E. BASKETTE
594 HOWARD ST., SUITE 400
SAN FRANCISCO, CA
cbaskette@enernoc.com

COLIN PETHERAM
SBC CALIFORNIA
140 NEW MONTGOMERY ST., SUITE 1325
SAN FRANCISCO, CA
colin.petheram@att.com

DAVID R MILLER
TETRA TECH EM INC.
135 MAIN STREET, SUITE 1800
SAN FRANCISCO, CA
dave.millar@ttemi.com

DEBORAH BROCKETT
NAVIGANT CONSULTING, INC.
ONE MARKET STREET
SAN FRANCISCO, CA
dbrockett@navigantconsulting.com

KEVIN FOX
WILSON SONSINI GOODRICH & ROSATI
ONE MARKET STREET, SPEAR TOWER, 3300
SAN FRANCISCO, CA
kfox@wsgr.com

KHURSHID KHOJA
THELEN REID BROWN RAYSMAN & STEINER
101 SECOND STREET, SUITE 1800
SAN FRANCISCO, CA
kkhoja@thelenreid.com

STEPHANIE LA SHAWN
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, RM. 996B
SAN FRANCISCO, CA
S1L7@pge.com

CALIFORNIA ENERGY MARKETS
517-B POTRERO AVENUE
SAN FRANCISCO, CA
cem@newsdata.com

HOWARD V. GOLUB
NIXON PEABODY LLP
2 EMBARCADERO CENTER, STE. 2700
SAN FRANCISCO, CA
hgolub@nixonpeabody.com

JANINE L. SCANCARELLI
FOLGER, LEVIN & KAHN, LLP
275 BATTERY STREET, 23RD FLOOR
SAN FRANCISCO, CA
jscancarelli@flk.com

JOSEPH F. WIEDMAN
GOODIN MACBRIDE SQUERI DAY & LAMPREY
LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA
jwiedman@goodinmacbride.com

MARTIN A. MATTES
NOSSAMAN, GUTHNER, KNOX & ELLIOTT,
LLP
50 CALIFORNIA STREET, 34TH FLOOR
SAN FRANCISCO, CA
mmattes@nossaman.com

JEN MCGRAW
CENTER FOR NEIGHBORHOOD
TECHNOLOGY
PO BOX 14322
SAN FRANCISCO, CA
jen@cnt.org

LISA WEINZIMER
PLATTS
695 NINTH AVENUE, NO. 2
SAN FRANCISCO, CA
lisa_weinzimer@platts.com

STEVEN MOSS
SAN FRANCISCO COMMUNITY POWER COOP
2325 3RD STREET, SUITE 344
SAN FRANCISCO, CA
steven@moss.net

SHAUN ELLIS
2183 UNION STREET
SAN FRANCISCO, CA
sellis@fypower.org

ARNO HARRIS
RECURRENT ENERGY, INC.
220 HALLECK ST., SUITE 220
SAN FRANCISCO, CA
arno@recurrentenergy.com

DAREN CHAN
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO, CA
d1ct@pge.com

ED LUCHA
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE: B9A
SAN FRANCISCO, CA
ell5@pge.com

GRACE LIVINGSTON-NUNLEY
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO, CA
gxl2@pge.com

JASMIN ANSAR
PG&E
PO BOX 770000
SAN FRANCISCO, CA
jxa2@pge.com

JONATHAN FORRESTER
PG&E
PO BOX 770000
SAN FRANCISCO, CA
JDF1@PGE.COM

SEBASTIEN CSAPO
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000
SAN FRANCISCO, CA
sscb@pge.com

SOUMYA SASTRY
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000
SAN FRANCISCO, CA
svs6@pge.com

VALERIE J. WINN
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, B9A
SAN FRANCISCO, CA
vjw3@pge.com

FARROKH ALBUYEH
OPEN ACCESS TECHNOLOGY
INTERNATIONAL INC
1875 SOUTH GRANT STREET
SAN MATEO, CA
farrokh.albuyeh@oati.net

GREG BLUE
140 MOUNTAIN PKWY.
CLAYTON, CA
greg.blue@sbcglobal.net

DEAN R. TIBBS
ADVANCED ENERGY STRATEGIES, INC.
1390 WILLOW PASS ROAD, SUITE 610
CONCORD, CA
dtibbs@aes4u.com

JEFFREY L. HAHN
COVANTA ENERGY CORPORATION
876 MT. VIEW DRIVE
LAFAYETTE, CA
jhahn@covantaenergy.com

ANDREW J. VAN HORN
VAN HORN CONSULTING
12 LIND COURT
ORINDA, CA
andy.vanhorn@vhcenergy.com

SUE KATELEY
CALIFORNIA SOLAR ENERGY INDUSTRIES
ASSN
PO BOX 782
RIO VISTA, CA
info@calseia.org

JOSEPH M. PAUL
DYNEGY, INC.
2420 CAMINO RAMON, SUITE 215
SAN RAMON, CA
Joe.paul@dynegy.com

MONICA A. SCHWEBS, ESQ.
BINGHAM MCCUTCHEN LLP
1333 N. CALIFORNIA BLVD.
WALNUT CREEK, CA
monica.schwebs@bingham.com

JOSEPH HENRI
31 MIRAMONTE ROAD
WALNUT CREEK, CA
josephhenri@hotmail.com

PATRICIA THOMPSON
SUMMIT BLUE CONSULTING
2920 CAMINO DIABLO, SUITE 210
WALNUT CREEK, CA
pthompson@summitblue.com

WILLIAM F. DIETRICH
DIETRICH LAW
2977 YGNACIO VALLEY ROAD, 613
WALNUT CREEK, CA
dietrichlaw2@earthlink.net

BETTY SETO
KEMA, INC.
492 NINTH STREET, SUITE 220
OAKLAND, CA
Betty.Seto@kema.com

GERALD L. LAHR
ABAG POWER
101 EIGHTH STREET
OAKLAND, CA
JerryL@abag.ca.gov

JODY S. LONDON
JODY LONDON CONSULTING
PO BOX 3629
OAKLAND, CA
jody_london_consulting@earthlink.net

STEVEN SCHILLER
SCHILLER CONSULTING, INC.
111 HILLSIDE AVENUE
PIEDMONT, CA
steve@schiller.com

MRW & ASSOCIATES, INC.
1814 FRANKLIN STREET, SUITE 720
OAKLAND, CA
mrw@mrwassoc.com

REED V. SCHMIDT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY, CA
rschmidt@bartlewells.com

ADAM BRIONES
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVENUE, 2ND FLOOR
BERKELEY, CA
adamb@greenlining.org

CLYDE MURLEY
CONSULTANT
600 SAN CARLOS AVENUE
ALBANY, CA
clyde.murley@comcast.net

BRENDA LEMAY
HORIZON WIND ENERGY
1600 SHATTUCK, SUITE 222
BERKELEY, CA
brenda.lemay@horizonwind.com

CARLA PETERMAN
UCEI
2547 CHANNING WAY
BERKELEY, CA
carla.peterman@gmail.com

EDWARD VINE
LAWRENCE BERKELEY NATIONAL
LABORATORY
BUILDING 90-4000
BERKELEY, CA
elvine@lbl.gov

RYAN WISER
BERKELEY LAB
ONE CYCLOTRON ROAD
BERKELEY, CA
rhwiser@lbl.gov

CHRIS MARNAY
1 CYCLOTRON RD MS 90R4000
BERKELEY, CA
C_Marnay@1b1.gov

PHILLIP J. MULLER
SCD ENERGY SOLUTIONS
436 NOVA ALBION WAY
SAN RAFAEL, CA
philm@scdenergy.com

RITA NORTON
RITA NORTON AND ASSOCIATES, LLC
18700 BLYTHSWOOD DRIVE,
LOS GATOS, CA
rita@ritanortonconsulting.com

CARL PECHMAN
POWER ECONOMICS
901 CENTER STREET
SANTA CRUZ, CA
cpechman@powereconomics.com

KENNY SWAIN
POWER ECONOMICS
901 CENTER STREET
SANTA CRUZ, CA
kswain@powereconomics.com

MAHLON ALDRIDGE
ECOLOGY ACTION
PO BOX 1188
SANTA CRUZ, CA
emahlon@ecoact.org

RICHARD SMITH
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA
richards@mid.org

CHRISTOPHER J. MAYER
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA
chrism@mid.org

ROGER VAN HOY
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA
rogerv@mid.org

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO, CA
brbarkovich@earthlink.net

JOHN R. REDDING
ARCTURUS ENERGY CONSULTING
44810 ROSEWOOD TERRACE
MENDOCINO, CA
johnrredding@earthlink.net

CLARK BERNIER
RLW ANALYTICS
1055 BROADWAY, SUITE G
SONOMA, CA
clark.bernier@rlw.com

RICHARD MCCANN, PH.D
M. CUBED
2655 PORTAGE BAY, SUITE 3
DAVIS, CA
rmccann@umich.edu

CAROLYN M. KEHREIN
ENERGY MANAGEMENT SERVICES
1505 DUNLAP COURT
DIXON, CA
cmkehrein@ems-ca.com

CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA
e-recipient@caiso.com

GRANT ROSENBLUM, ESQ.
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA
grosenblum@caiso.com

KAREN EDSON
151 BLUE RAVINE ROAD
FOLSOM, CA

ROBIN SMUTNY-JONES
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA
rsmutny-jones@caiso.com

SAEED FARROKHPAY
FEDERAL ENERGY REGULATORY
COMMISSION
110 BLUE RAVINE RD., SUITE 107
FOLSOM, CA
saeed.farrokhpay@ferc.gov

DAVID BRANCHCOMB
BRANCHCOMB ASSOCIATES, LLC
9360 OAKTREE LANE
ORANGEVILLE, CA
david@branchcomb.com

KIRBY DUSEL
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA
kdusel@navigantconsulting.com

LAURIE PARK
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA
lpark@navigantconsulting.com

SCOTT TOMASHEFSKY
NORTHERN CALIFORNIA POWER AGENCY
180 CIRBY WAY
ROSEVILLE, CA
scott.tomashefsky@ncpa.com

ELLEN WOLFE
RESERO CONSULTING
9289 SHADOW BROOK PL.
GRANITE BAY, CA
ewolfe@resero.com

AUDRA HARTMANN
980 NINTH STREET, SUITE 2130
SACRAMENTO, CA
Audra.Hartmann@Dynergy.com

CURT BARRY
717 K STREET, SUITE 503
SACRAMENTO, CA
curt.barry@iwpnews.com

DAVID L. MODISETTE
CALIFORNIA ELECTRIC TRANSP. COALITION
1015 K STREET, SUITE 200
SACRAMENTO, CA
dave@ppallc.com

RACHEL MCMAHON
CEERT
1100 11TH STREET, SUITE 311
SACRAMENTO, CA
rachel@ceert.org

STEVEN KELLY
INDEPENDENT ENERGY PRODUCERS ASSN
1215 K STREET, SUITE 900
SACRAMENTO, CA
steven@iepa.com

EDWARD J. TIEDEMANN
KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
400 CAPITOL MALL, 27TH FLOOR
SACRAMENTO, CA
etiedemann@kmtg.com

LYNN HAUG
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA
lmh@eslawfirm.com

OBADIAH BARTHOLOMY
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S. STREET
SACRAMENTO, CA
obarto@smud.org

BUD BEEBE
SACRAMENTO MUNICIPAL UTIL DIST
6201 S STREET
SACRAMENTO, CA
bbeebe@smud.org

BALWANT S. PUREWAL
DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., LL-90
SACRAMENTO, CA
bpurewal@water.ca.gov

DOUGLAS MACMULLEN
CA DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., ROOM 356
SACRAMENTO, CA
dmacmll@water.ca.gov

HOLLY B. CRONIN
CALIFORNIA DEPARTMENT OF WATER
RESOURCES
3310 EL CAMINO AVE., LL-90
SACRAMENTO, CA
hcronin@water.ca.gov

KAREN NORENE MILLS
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO, CA
kmills@cbbf.com

KAREN LINDH
LINDH & ASSOCIATES
7909 WALERGA ROAD, NO. 112, PMB 119
ANTELOPE, CA
karen@klindh.com

DENISE HILL
4004 KRUSE WAY PLACE, SUITE 150
LAKE OSWEGO, OR
Denise_Hill@transalta.com

ANNIE STANGE
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND, OR
sas@a-klaw.com

ELIZABETH WESTBY
ALCANTAR & KAHL, LLP
1300 SW FIFTH AVENUE, SUITE 1750
PORTLAND, OR
egw@a-klaw.com

ALEXIA C. KELLY
THE CLIMATE TRUST
65 SW YAMHILL STREET, SUITE 400
PORTLAND, OR
akelly@climatetrust.org

ALAN COMNES
WEST COAST POWER
3934 SE ASH STREET
PORTLAND, OR
alan.comnes@nrgenergy.com

KYLE SILON
ECOSECURITIES CONSULTING LIMITED
529 SE GRAND AVENUE
PORTLAND, OR
kyle.silon@ecosecurities.com

PHIL CARVER
OREGON DEPARTMENT OF ENERGY
625 MARION ST., NE
SALEM, OR
Philip.H.Carver@state.or.us

SAM SADLER
OREGON DEPARTMENT OF ENERGY
625 NE MARION STREET
SALEM, OR
samuel.r.sadler@state.or.us

LISA SCHWARTZ
ORGEON PUBLIC UTILITY COMMISSION
PO BOX 2148
SALEM, OR
lisa.c.schwartz@state.or.us

CLARE BREIDENICH
224 1/2 24TH AVENUE EAST
SEATTLE, WA
cbreidenich@yahoo.com

JESUS ARREDONDO
NRG ENERGY INC.
4600 CARLSBAD BLVD.
CARLSBAD, CA
jesus.arredondo@nrgenergy.com

KAREN MCDONALD
POWEREX CORPORATION
666 BURRAND STREET
VANCOUVER, BC
karen.mcdonald@powerex.com

James Loewen
CALIF PUBLIC UTILITIES COMMISSION
320 WEST 4TH STREET SUITE 500
LOS ANGELES, CA
loe@cpuc.ca.gov

Andrew Campbell
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
agc@cpuc.ca.gov

Anne Gillette
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
aeg@cpuc.ca.gov

Charlotte TerKeurst
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
cft@cpuc.ca.gov

Christine S. Tam
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
tam@cpuc.ca.gov

Donald R. Smith
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
dsh@cpuc.ca.gov

Ed Moldavsky
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
edm@cpuc.ca.gov

Eugene Cadenasso
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
cpe@cpuc.ca.gov

Harvey Y. Morris
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
hym@cpuc.ca.gov

Jaclyn Marks
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
jm3@cpuc.ca.gov

George S. Tagnipes
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
jst@cpuc.ca.gov

Joel T. Perlstein
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
jtp@cpuc.ca.gov

Jonathan Lakritz
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
jol@cpuc.ca.gov

Judith Ikle
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
jci@cpuc.ca.gov

Julie A. Fitch
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
jf2@cpuc.ca.gov

Kristin Ralff Douglas
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
krd@cpuc.ca.gov

Lainie Motamedi
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
lrm@cpuc.ca.gov

Matthew Deal
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
mjd@cpuc.ca.gov

Meg Gottstein
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
meg@cpuc.ca.gov

Merideth Sterkel
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
mts@cpuc.ca.gov

Nancy Ryan
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
ner@cpuc.ca.gov

Pamela Wellner
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
pw1@cpuc.ca.gov

Paul S. Phillips
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
psp@cpuc.ca.gov

Sara M. Kamins
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
smk@cpuc.ca.gov

Scott Murtishaw
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
sgm@cpuc.ca.gov

Steve Roscow
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
scr@cpuc.ca.gov

Suzy Hong
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
suh@cpuc.ca.gov

Theresa Cho
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
tcx@cpuc.ca.gov

Tim G. Drew
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA
zap@cpuc.ca.gov

BILL LOCKYER
STATE OF CALIFORNIA, DEPT OF JUSTICE
PO BOX 944255
SACRAMENTO, CA
ken.alex@doj.ca.gov

KEN ALEX
1300 I STREET, SUITE 125
SACRAMENTO, CA
ken.alex@doj.ca.gov

JUDITH B. SANDERS
CALIFORNIA INDEPENDENT SYSTEM
OPERATOR
151 BLUE RAVINE ROAD
FOLSOM, CA
jsanders@caiso.com

JULIE GILL
CALIFORNIA INDEPENDENT SYSTEM
OPERATOR
151 BLUE RAVINE ROAD
FOLSOM, CA
jgill@caiso.com

MARY MCDONALD
CALIFORNIA INDEPENDENT SYSTEM
OPERATOR
151 BLUE RAVINE ROAD
FOLSOM, CA

PHILIP D. PETTINGILL
CALIFORNIA INDEPENDENT SYSTEM
OPERATOR
151 BLUE RAVINE ROAD
FOLSOM, CA
ppettingill@caiso.com

MICHAEL SCHEIBLE
CALIFORNIA AIR RESOURCES BOARD
1001 I STREET
SACRAMENTO, CA
mscheibl@arb.ca.gov

MEG GOTTSTEIN
PO BOX 210/21496 NATIONAL STREET
VOLCANO, CA
gottstein@volcano.net

PAM BURMICH
AIR RESOURCES BOARD
1001 I STREET, BOX 2815
SACRAMENTO, CA
pburmich@arb.ca.gov

B. B. BLEVINS
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-39
SACRAMENTO, CA
bblevins@energy.state.ca.us

DEBORAH SLON
OFFICE OF THE ATTORNEY GENERAL
1300 I STREET, 15TH FLOOR
SACRAMENTO, CA
deborah.slon@doj.ca.gov

Don Schultz
CALIF PUBLIC UTILITIES COMMISSION
770 L STREET, SUITE 1050
SACRAMENTO, CA
dks@cpuc.ca.gov

KAREN GRIFFIN
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 39
SACRAMENTO, CA
kgriffin@energy.state.ca.us

LISA DECARLO
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET MS-14
SACRAMENTO, CA
ldecarlo@energy.state.ca.us

MICHELLE GARCIA
AIR RESOURCES BOARD
1001 I STREET
SACRAMENTO, CA
mgarcia@arb.ca.gov

PIERRE H. DUVAIR
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS-41
SACRAMENTO, CA
pduvair@energy.state.ca.us

Wade McCartney
CALIF PUBLIC UTILITIES COMMISSION
770 L STREET, SUITE 1050
SACRAMENTO, CA
wsm@cpuc.ca.gov

CAROL J. HURLOCK
CALIFORNIA DEPT. OF WATER RESOURCES
3310 EL CAMINO AVE. RM 300
SACRAMENTO, CA
hurlock@water.ca.gov