

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

Order Instituting Rulemaking to Develop
Additional Methods to Implement the
California Renewables Portfolio Standard
Program.

Rulemaking 06-02-012
(Filed February 16, 2006)

**INDIVIDUAL POST-WORKSHOP COMMENTS OF THE
CALIFORNIA WIND ENERGY ASSOCIATION AND THE
LARGE-SCALE SOLAR ASSOCIATION REGARDING
IMPLEMENTATION OF SB 1036**

Joseph M. Karp
Karleen O'Connor
Winston & Strawn LLP
101 California Street, 39th Floor
San Francisco, California 94111-5894
Telephone: (415) 591-1000
Facsimile: (415) 591-1400
Email: jkarp@winston.com
koconnor@winston.com

*Attorneys for the California Wind Energy Association
and the Large-Scale Solar Association*

July 8, 2008

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I. INTRODUCTION

Pursuant to Administrative Law Judge (“ALJ”) Simon’s ruling on June 20, 2008, the California Wind Energy Association (“CalWEA”) and the Large-Scale Solar Association (“LSA”) hereby submit their Individual Post-Workshop Comments on the unresolved issues regarding the implementation of Senate Bill 1036 (“SB 1036”) (“Individual Comments”). On June 27, 2008 counsel for CalWEA/LSA sought and obtained a ruling by ALJ Simon that extended the time for filing opening comments to July 8 and reply comments to July 14.

Concurrently with the filing of the Individual Comments, CalWEA and LSA join in the Joint Post-Workshop Comments of Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”) and San Diego Gas and Electric Company (“SDG&E”) (collectively, the “Joint Parties”) on those issues where the Joint Parties have reached a consensus.

Despite the consensus on a majority of issues, CalWEA and LSA differ from the investor-owned utilities (“IOUs”) in three primary areas. One, CalWEA and LSA propose that not all contracts that are eligible for AMFs and approved by the Commission should be required

to be applied toward the AMF cost limitation. SB 1036 contains no prohibition against IOUs entering into above-MPR contracts, whether before or after AMFs are expended, and expressly contemplates that the IOUs may voluntarily procure power at above-MPR prices irrespective of the allocation of AMFs. Second, CalWEA and LSA oppose any proposal that tasks the Commission with the responsibility for investigating a developer's financial information. Finally, CalWEA and LSA oppose any pre-determined cost limitation on bilateral contracts.

CalWEA's and LSA's individual responses to the Commission's proposed outline are detailed below, and CalWEA and LSA have reproduced those outline questions for which CalWEA and LSA are filing individual comments. As to the Commission's other outline questions, CalWEA and LSA join in the Joint Comments filed concurrently by the Joint Parties.

II. RESPONSE

A. SB 1036 Guiding Principles

“3. Should all contracts that are eligible for AMFs and approved by the Commission be *required* to be applied toward the AMFs cost limitation? Please include a legal argument based on Pub. Util. Code § 399.15(d) and/or other relevant sources.”

CalWEA and LSA propose that not all contracts that are eligible for AMFs and approved by the Commission be required to be applied toward the AMF cost limitation. The statute provides that the IOUs are not required to enter into RPS contracts at prices above the MPR once AMFs are expended, but contains no prohibition against IOUs entering into above-MPR contracts, whether before or after AMFs are expended. IOUs have the opportunity to enter into such contracts at any time, and the Commission has the authority to approve them. Indeed, Public Utilities Code § 399.15(d)(2)(E)(4) explicitly states:

Nothing in this section prevents an electrical corporation from voluntarily proposing to procure eligible renewable energy resources at above-market prices that are not counted toward the cost limitation. Any voluntary procurement involving above-market costs shall be subject to commission approval prior to the expense being recovered in rates.

This legislation is dispositive of the issue. By stating that the IOUs may enter into above MPR priced contracts “that are not counted toward the cost limitation,” the statute must be read as contemplating that the IOUs have the authority to sign above MPR and request that they not apply to the AMF cost limitation during the period when the AMFs have not been fully allocated. Otherwise, the statutory language quoted above would make no sense. If the Legislature contemplated that all AMF eligible contracts had to be applied toward AMFs, it would have phrased the language in Section (E)(4) to read something like “after the cost limitation has been exceeded” rather than “that are not counted toward the cost limitation.”

In sum, SB 1036 expressly permits the IOUs to voluntarily enter into contracts at prices above the MPR that are not counted toward the AMF cost limitation, but that are still reasonable (e.g., due to a lag in the MPR as compared to market prices, the approximate nature of the MPR, the overall benefits provided by the contract that justify an incrementally higher cost, or for whatever reason). Indeed, IOUs already have such discretion via the bilateral contract approval process. The Commission may not and should not attempt to enact a contradictory regulation.

If the Commission were to adopt more rigorous criteria on contracts for which the utility seeks an AMF allocation (which CalWEA and LSA does not support), allowing the utilities flexibility to choose not to seek an AMF allocations likely would garner even utility support. In this case an IOU may prefer to elect not to seek AMFs in order to expedite approval of a contract. Likewise, if a contract employs an emerging technology or is not otherwise

demonstrably as viable as other projects, an IOU may wish to enter into such contract but may not wish to tie up available AMFs with such a project.

B. Reasonableness Review Standards

“2. What standards should be used in evaluating the reasonableness of an above-MPR contract price?”

Should the same standards apply to AMF-eligible contracts for which AMFs are available, and contracts that would be eligible for AMFs but the IOU has exhausted its AMFs? What changes, if any, should be made?

Please consider and comment on the following examples:

- IOU's least-cost best-fit analysis
- Bid supply curves from recent solicitations
- Technology-specific bid supply curves from recent solicitations
- Technology cost curves developed as part of the Renewable Energy Transmission Initiative (RETI)
- Review of a cash flow model
- Rate impact
- Other

CalWEA and LSA join in the Joint Comments with the exception of the comments on the review of a cash flow model and the comments pertaining to rate impacts. For those items, CalWEA and LSA propose as follows:

Cash Flow Model

CalWEA and LSA propose that project-specific cash flow models should not be subject to regulatory agency review. By statute, RPS procurement is subject to comparison against the market price of long-term power contracts. The examination of a cash flow model implies Commission regulation of a third-party developer's profit margin; there is no statutory or other basis for such intrusive regulation, which would be unduly burdensome both for the Commission and for developers. Moreover, it would be inappropriate to base PPA approval and IOU cost

recovery on a developers' cash flow model. Commission approval should not be contingent upon project development in accordance with a third party's cash flow model.

Rate Impact

All other things being equal, CalWEA and LSA propose that contract approval not separately consider rate impacts, other than whether a contract is priced well per kWh for the product being purchased. . Projects using an emerging technology, however, should be subject to a more flexible approval policy in consideration of other benefits offered by the development, which are part of the product being purchased.

“3. Should additional documentation be required for all price reopeners (whether above or below the MPR) to evaluate the contract price and/or project viability (e.g., a new independent evaluator report, comprehensive project development timeline, permitting matrix, list of project costs, financial models, documentation for price increases, etc.)?”

CalWEA and LSA oppose any proposal that tasks the Commission with responsibility for investigating a project developer's financial information. This will overcomplicate the RPS process and chill developers' willingness to participate in the California market. Nonetheless, if a price re-opener is requested, the Commission should expect and should receive a reasonable explanation for the re-opener. Once determining that the explanation is reasonable, the Commission's responsibility should be satisfied. If the Commission is concerned about a contract's viability or a potential windfall to a developer, the Commission could appoint a utility independent evaluator to comment on the reasonableness of proposed contract price from a market perspective.

“4. When may a project's cash flow model be appropriate to review the price reasonableness of a contract (e.g., for all above-MPR contracts; bilaterals; price amendments; if they result in a material rate impact of X%; and/or other)?”

As stated above, CalWEA and LSA oppose any proposal that would impose the inappropriate and burdensome Commission review of a project's cash flow model in conjunction with an evaluation of reasonableness. The IOUs, and not the Commission, bear the burden of evaluating and demonstrating the viability of a project and presenting its viability to the Commission, along with evidence of robust competition and a fair bid evaluation process. Although the Commission has a stake in evaluating the project viability criterion, the best approach to this question would be to hold the IOUs strictly accountable for meeting their RPS requirements and to limit their ability to rely on developer non-performance as an excuser thereto. Provided that reasonable explanations have been provided for costs, the Commission should award AMFs for the project to the extent they are available.

C. AMFs Limit and AMFs Requests Calculation

“1. Attachment A contains the handout circulated at the workshop by Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) proposing a joint alternative methodology for the AMFs Calculator. Please discuss whether you support the Commission’s original methodology, the joint proposal, or another methodology. If you include a different proposal you should include methodologies for:

- a) Calculation of total cost limitation;
- b) Calculation of a project-specific AMFs request; and
- c) Calculation of IOU’s AMFs balance.

CalWEA and LSA have no comments on Section V at this time.

Please include a modified AMF calculator and a completely worked-out example for any new proposal.

CalWEA and LSA have no comments on Section V at this time.

D. Administration of AMFs

“4. RPS Procurement after AMFs are exhausted.”

- Propose a methodology for notifying an IOU and other parties when AMFs are exhausted.

In contrast to the IOUs, CalWEA and LSA propose that the Commission make available to the public and confirm the amount of AMFs remaining when it approves an RPS-eligible contract. Asymmetric access to this information would create unjustified, improper one-sided uncertainty, making the California market substantially less appealing to renewables developers and unfairly distorting contract negotiations. Public dissemination of AMF status will allow all parties involved, including the Commission, IOUs, suppliers and ratepayers to anticipate the exhaustion of AMF funds. Having such information publicly available informs the parties of the need to return to the Legislature to lobby for more AMFs or other funding alternatives as appropriate.

E. Bilateral Reasonableness Standards

“1. Should a cost cap be established for bilateral contracts with above- MPR costs? If yes, please provide a proposal for what the cap should be (e.g., total cost cap equal to AMFs, percent of AMFs, based on a cumulative rate impact analysis, etc.).”

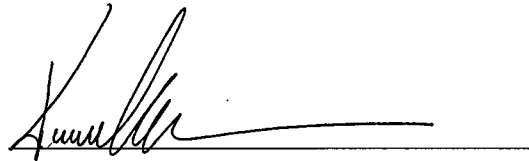
CalWEA and LSA propose that there should be no predetermined cost cap for bilateral contracts with above-MPR costs. Bilateral contracts are not within the scope of SB 1036 and are not eligible for AMFs, and thus a cost-cap in relation to MPR costs would create a significant departure from the Commission’s decisions and practices; such a proposal has no basis in SB 1036, and is not appropriate. As stated in I.3 above, a contract may be above-MPR but still reasonable, and the Commission should retain discretion to review such contracts on a case-by-case basis.

“2. What is the relevant MPR to use when determining whether or not a bilateral contract price is reasonable?”

The most recent MPR is the relevant MPR.

III. CONCLUSION

In sum, CalWEA and LSA respectfully submit these Individual Comments in addition to the Joint Parties' Joint Comments on the AMF issues identified by the Commission at the AMF Workshops.



Joseph M. Karp
Karleen O'Connor
Winston & Strawn LLP
101 California Street, 39th Floor
San Francisco, California 94111-5894
Telephone: (415) 591-1000
Facsimile: (415) 591-1400
Email: jkarp@winston.com
koconnor@winston.com

*Attorneys for the California Wind Energy Association
and the Large-Scale Solar Association*

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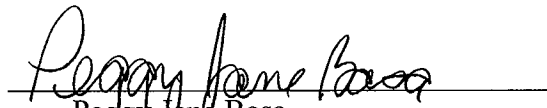
Certificate of Service

I hereby certify that I have this day serviced a copy of the

Individual Post-Workshop Comments of the California Wind Energy Association and the Large-Scale Solar Association Regarding Implementation of SB 1036

On all know parties to R.06-02-012 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address

Executed on July 8, 2008 at San Francisco, California.


Peggy Jane Basa



California Public
Utilities Commission

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Parties

DANIEL V. GULINO
 RIDGEWOOD POWER MANAGEMENT, LLC
 947 LINWOOD AVENUE
 RIDGEWOOD, NJ 07450
 FOR: RIDGEWOOD POWER MANAGEMENT, LLC

RONALD M. CERNIGLIA
 DIRECTOR- NATIONAL ADVOCACY
 DIRECT ENERGY SERVICES, LLC
 40 COLUMBINE DRIVE
 GLENMONT, NY 12077-2966
 FOR: DIRECT ENERGY SERVICES, LLC

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

KEITH MCCREA
 ATTORNEY AT LAW
 SUTHERLAND, ASBILL & BRENNAN
 1275 PENNSYLVANIA AVENUE, NW
 WASHINGTON, DC 20004-2415
 FOR: CA MANUFACTURERS & TECHNOLOGY ASSN.

CAROL A. SMOOTS
 PERKINS COIE LLP
 607 FOURTEENTH STREET, NW, SUITE 800
 WASHINGTON, DC 20005

RHONE RESCH
 SOLAR ENERGY INDUSTRIES ASSOCIATION
 805 FIFTEENTH STREET, N.W., SUITE 510
 WASHINGTON, DC 20005

LARRY F. EISENSTAT
 DICKSTEIN SHAPIRO LLP
 1825 EYE STREET, NW
 WASHINGTON, DC 20006
 FOR: CPV RENEWABLE ENERGY COMPANY, LLC

RICHARD LEHFELDT
 DICKSTEIN SHAPIRO LLP
 1825 EYE STREET, NW
 WASHINGTON, DC 20006
 FOR: CPV RENEWABLE ENERGY COMPANY, LLC

GARSON KNAPP
 FPL ENERGY, LLC
 770 UNIVERSE BLVD.
 JUNO BEACH, FL 33408

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

FOR: CONSTELLATION ENERGY GROUP INC

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

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

APS ENERGY SERVICES COMPANY, INC.
400 E. VAN BUREN STREET, SUITE 750
PHOENIX, AZ 85004

RASHA PRINCE
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH STREET, GT14D6
LOS ANGELES, CA 90013
FOR: SAN DIEGO GAS & ELECTRIC/SOCAL GAS

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

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

MICHAEL MAZUR
3 PHASES RENEWABLES, LLC
2100 SEPULVEDA BLVD., STE 37
MANHATTAN BEACH, CA 90266

3 PHASES ENERGY SERVICES
2100 SEPULVEDA BLVD., SUITE 37
MANHATTAN BEACH, CA 90266

SUSAN MUNVES
ENERGY AND GREEN BLDG. PROG. ADMIN.
CITY OF SANTA MONICA
1212 5TH STREET, FIRST FLOOR
SANTA MONICA, CA 90401

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367
FOR: ALLIANCE FOR RETAIL ENERGY
MARKETS, ENERGY AMERICA, LLC, COMMERCE
ENERGY, INC.

GREGORY S. G. KLATT
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367-8102
FOR: ALLIANCE FOR RETAIL ENERGY
MARKETS/APS ENERGY SERVICES/WESTERN
POWER TRADING FORUM

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

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

AMERICAN UTILITY NETWORK
10705 DEER CANYON DRIVE
ALTA LOMA, CA 91737

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

WILLIAM V. WALSH
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

SOCAL WATER/BEAR VALLEY ELECTRIC
630 EAST FOOTHILL BLVD.
SAN DIMAS, CA 91773

KEITH SWITZER
VP REGULATORY AFFAIRS
GOLDEN STATE WATER COMPANY
630 EAST FOOTHILL BLVD.
SAN DIMAS, CA 91773-9016

ANN MOORE
OFFICE OF THE CITY ATTORNEY
276 FOURTH AVENUE
CHULA VISTA, CA 91910
FOR: THE CITY OF CHULA VISTA

STRATEGIC ENERGY, LTD.
7220 AVENIDA ENCINAS, SUITE 120
CARLSBAD, CA 92009

FREDERICK M. ORTLIEB
OFFICE OF CITY ATTORNEY
CITY OF SAN DIEGO
1200 THIRD AVENUE, SUITE 1200
SAN DIEGO, CA 92101
FOR: CITY OF SAN DIEGO

KIM F. HASSAN
ATTORNEY AT LAW
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, HQ-12
SAN DIEGO, CA 92101
FOR: SAN DIEGO GAS & ELECTRIC

THEODORE ROBERTS
SENIOR COUNSEL
SEMPRA GLOBAL
101 ASH STREET, HQ 12B
SAN DIEGO, CA 92101-3017
FOR: SEMPRA GLOBAL/SEMPRA ENERGY
SOLUTIONS

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

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

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

PILOT POWER GROUP, INC.
8910 UNIVERSITY CENTER LANE, STE 520
SAN DIEGO, CA 92122

JOHN W. LESLIE
ATTORNEY AT LAW
LUCHE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 92130-2592
FOR: CORAL POWER L.L.C.

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

WILL PLAXICO
HELIOS ENERGY, LLC
31897 DEL OBISPO ST. SUITE 220
SAN JUAN CAPISTRANO, CA 92675

AOL UTILITY CORP.
12752 BARRETT LANE
SANTA ANA, CA 92705

KERRY EDEN
ASST. GENERAL MGR.
CITY OF CORONA DEPT. OF WATER & POWER
730 CORPORATION YARD WAY
CORONA, CA 92880

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

JOSEPH LANGENBERG
CENTRAL CALIFORNIA POWER
949 EAST ANNADALE AVE., A210
FRESNO, CA 93706
FOR: CENTRAL CALIFORNIA POWER

DAVID ORTH
GENERAL MANAGER
SAN JOAQUIN VALLEY POWER AUTHORITY
4886 EAST JENSEN AVENUE
FRESNO, CA 93725
FOR: KINGS RIVER CONSERVATION DISTRICT

JANE H. TURNBULL
LEAGUE OF WOMEN VOTERS OF CALIFORNIA
64 LOS ALTOS SQUARE
LOS ALTOS, CA 94022

JANIS C. PEPPER
CLEAN POWER MARKETS, INC.
PO BOX 3206
LOS ALTOS, CA 94024
FOR: CLEAN POWER MARKETS, INC.

MARCEL HAWIGER
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102
FOR: THE UTILITY REFORM NETWORK

GRETCHEN T. DUMAS
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION

NOEL OBIORA
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION

ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: CPUC LEGAL

ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

STEPHEN A. S. MORRISON
CITY & COUNTY OF SAN FRANCISCO
CITY HALL, RM 234
1 DR CARLTON B. GOODLET PLACE
SAN FRANCISCO, CA 94102-4682
FOR: CITY & COUNTY OF SAN FRANCISCO

THERESA L. MUELLER
CHIEF ENERGY & TELECOMMUNICATIONS DEPUTY
SAN FRANCISCO CITY ATTORNEY
CITY HALL, ROOM 234
SAN FRANCISCO, CA 94102-4682
FOR: CITY AND COUNTY OF SAN FRANCISCO

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

EVELYN KAHL
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104
FOR: ENERGY PRODUCERS AND USERS
COALITION

MICHAEL ALCANTAR
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104
FOR: COGENERATION ASSOCIATION OF
CALIFORNIA

NORA SHERIFF
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104
FOR: ENERGY PRODUCERS AND USERS
COALITION

ROD AOKI
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104
FOR: OCCIDENTAL POWER SERVICES, INC.

ARTHUR L. HAUBENSTOCK
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105

CRAIG LEWIS
VP OF GOV. RELATIONS
GREENVOLTS
50 FIRST STREET, SUITE 507
SAN FRANCISCO, CA 94105
FOR: GREENVOLTS

SARA O'NEILL
CONSTELLATION NEWENERGY, INC.
ONE MARKET STREET, SPEAR TOWER, 36TH FR.
SAN FRANCISCO, CA 94105
FOR: CONSTELLATION NEWENERGY, INC.

SARA O'NEILL
CONSTELLATION NEWENERGY, INC.
ONE MARKET ST., SPEAR TOWER 36TH FLOOR
SAN FRANCISCO, CA 94105
FOR: CONSTELLATION NEWENERGY, INC.

BILL BARNES
CLEANTECH AMERICA, INC.
50 CALIFORNIA STREET, SUITE 1500
SAN FRANCISCO, CA 94111
FOR: CLEANTECH AMERICA, INC.

BRIAN CRAGG
ATTORNEY AT LAW
GOODIN, MAC BRIDE, SQUERI, DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
FOR: INDEPENDENT ENERGY PRODUCERS
ASSOCIATION (IEPA)

JAMES D. SQUERI
ATTORNEY AT LAW
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
FOR: CALIFORNIA RETAILERS
ASSOCIATION/POWEREX CORP.

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

KAREN E. BOWEN
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO, CA 94111
FOR: CALIFORNIA WIND ENERGY ASSOCIATION

MICHAEL B. DAY
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP

JOSEPH M. KARP
ATTORNEY AT LAW
WINSTON & STRAWN LLP

505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
FOR: PV NOW/SOLAR ALLIANCE

101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO, CA 94111-5894
FOR: CALIFORNIA WIND ENERGY ASSOCIATION

JEFFREY P. GRAY
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533
FOR: CALPINEPOWERAMERICA-CA,
LLC/FIRENDS OF KIRKWOOD ASSOCIATION

STANDISH O'GRADY
FRIENDS OF KIRKWOOD ASSOCIATION
31 PARKER AVENUE
SAN FRANCISCO, CA 94118

CHARLES MIDDLEKAUFF
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO, CA 94120
FOR: PACIFIC GAS AND ELECTRIC COMPANY

EVELYN C. LEE
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO, CA 94120
FOR: PACIFIC GAS AND ELECTRIC COMPANY

MATHEW A. FOGELSON
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, MC B30A-2487
SAN FRANCISCO, CA 94120-7442

SARA STECK MYERS
LAW OFFICES OF SARA STECK MYERS
122 28TH AVE.
SAN FRANCISCO, CA 94121
FOR: CENTER FOR ENERGY EFFICIENCY AND
RENEWABLE TECHNOLOGIES (CEERT)

GABE PETLIN
3DEGREES
PRESIDIO OF SAN FRANCISCO
6 FUNSTON AVENUE
SAN FRANCISCO, CA 94129

JANICE G. HAMRIN
CENTER FOR RESOURCE SOLUTIONS
PRESIDIO BUILDING 97
PO BOX 29512
SAN FRANCISCO, CA 94129
FOR: CENTER FOR RESOURCE SOLUTIONS

HOLLY GORDON
VP LEGISLATIVE/REGULATORY AFFAIRS
AUSRA, INC.
2585 E. BAYSHORE ROAD
PALO ALTO, CA 94303
FOR: LARGE-SCALE SOLAR ASSOCIATION

JENNIFER CHAMBERLIN
MGR. OF REG. AND GOV. AFFAIRS
STRATEGIC ENERGY, LLC
2633 WELLINGTON CT.
CLYDE, CA 94520

JOHN DUTCHER
VICE PRESIDENT - REGULATORY AFFAIRS
MOUNTAIN UTILITIES
3210 CORTE VALENCIA
FAIRFIELD, CA 94534-7875

LINDA Y. SHERIF
ATTORNEY AT LAW
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON, CA 94588
FOR: CALPINE CORP.

JEREMY D. WEINSTEIN
ATTORNEY AT LAW
LAW OFFICES OF JEREMY D. WEINSTEIN
1512 BONANZA STREET
WALNUT CREEK, CA 94596
FOR: PACIFICORP

WILLIAM H. BOOTH
ATTORNEY AT LAW
LAW OFFICE OF WILLIAM H. BOOTH
67 CARR DRIVE
MORAGA, CA 94596
FOR: RIDGEWOOD RENEWABLE POWER, LLC AND
RIDGEWOOD OLINDA, LLC

JODY S. LONDON
JODY LONDON CONSULTING
PO BOX 3629
OAKLAND, CA 94609
FOR: FOR SUSTAINABLE CONSERVATION

GREGORY MORRIS
GREEN POWER INSTITUTE
2039 SHATTUCK AVE., SUITE 402
BERKELEY, CA 94704
FOR: GREEN POWER INSTITUTE

NEAL DE SNOO
ENERGY OFFICE
CITY OF BERKELEY
2180 MILVIA AVENUE
BERKELEY, CA 94704

CLIFF CHEN
UNION OF CONCERNED SCIENTISTS
2397 SHATTUCK AVENUE, STE 203
BERKELEY, CA 94708
FOR: UNION OF CONCERNED SCIENTISTS

FOR: EAST BAY POWER AUTHORITY/CITY OF
BERKELEY

JP ROSS
VP STRATEGOC RELATIONSHIPS
SUNGEVITY
1625 SHATTUCK AVE., STE 210
BERKELEY, CA 94709
FOR: THE VOTE SOLAR INITIATIVE

R. THOMAS BEACH
PRINCIPAL CONSULTANT
CROSSBORDER ENERGY
2560 NINTH STREET, SUITE 213A
BERKELEY, CA 94710-2557
FOR: CALIFORNIA WIND ENERGY
ASSN/CALIFORNIA COGENERATION
COUNCIL/LARGE-SCALE SOLAR ASSN/SOLAR
ALLIANCE

L. JAN REID
COAST ECONOMIC CONSULTING
3185 GROSS ROAD
SANTA CRUZ, CA 95062
FOR: AGLET CONSUMER ALLIANCE

JOHN R. REDDING
ARCTURUS ENERGY CONSULTING
44810 ROSEWOOD TERRACE
MENDOCINO, CA 95460
FOR: SILICON VALLEY MANUFACTURERS GROUP

JAMES WEILL
DIRECTOR
AGLET CONSUMER ALLIANCE
PO BOX 37
COOL, CA 95614

DAVID MORSE
1411 W, COVELL BLVD., SUITE 106-292
DAVIS, CA 95616-5934
FOR: BEAR VALLEY ELECTRIC SERVICE

JUDITH SANDERS
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630

JOHN DALESSI
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078
FOR: SOUTH SAN JOAQUIN VALLEY POWER
AUTHORITY/KINGS RIVER CONSERVATION
DISTRICT

CAROLYN KEHREIN
ENERGY MANAGEMENT SERVICES
2602 CELEBRATION WAY
WOODLAND, CA 95776

ANDREW B. BROWN
ATTORNEY AT LAW
ELLISON SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95811
FOR: CONSTELLATION NEW ENERGY,
INC./PRAXAIR PLAINFIELD, INC.

GREGGORY L. WHEATLAND
ELLISON SCHNEIDER & HARRIS L.L.P.
2015 H STREET
SACRAMENTO, CA 95811-3109
FOR: THE CITY OF CORONA

LYNN M. HAUG
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95811-3109
FOR: SIERRA PACIFIC POWER COMPANY

AUDRA HARTMANN
DYNEGY INC.
980 NINTH STREET, SUITE 2130
SACRAMENTO, CA 95814
FOR: DYNEGY, INC.

DAN L. CARROLL
ATTORNEY AT LAW
DOWNEY BRAND LLP
555 CAPITOL MALL, 10TH FLOOR
SACRAMENTO, CA 95814
FOR: MOUNTAIN UTILITIES

DOUGLAS K. KERNER
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95814
FOR: INDEPENDENT ENERGY PRODUCERS
ASSOCIATION

JAN MCFARLAND
CAEATFA
915 CAPITOL MALL, RM. 457
SACRAMENTO, CA 95814
FOR: AMERICANS FOR SOLAR POWER

STEVEN KELLY
POLICY DIRECTOR
INDEPENDENT ENERGY PRODUCERS

KAREN MILLS
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE

1215 K STREET, SUITE 900
SACRAMENTO, CA 95814
FOR: IEP

SACRAMENTO, CA 95833
FOR: CALIFORNIA FARM BUREAU FEDERATION

DONALD N. FURMAN
SENIOR VICE PRESIDENT
IBERDROLA RENEWABLES INC
1125 NW COUCH STREET, SUITE 700
PORTLAND, OR 97209
FOR: IBERDROLA RENEWABLES INC.

RYAN FLYNN
ATTORNEY
PACIFICORP
825 NE MULTNOMAH, SUITE 1800
PORTLAND, OR 97232

THOMAS ELGIE
POWEREX CORPORATION
1400, 666 BURRAND ST
VANCOUVER, BC V6C 2X8
CANADA
FOR: POWEREX CORPORATION

Information Only

SEAN J. FINNERTY
SR. VICE PRESIDENT
COMPETITIVE POWER VENTURES, INC.
35 BRAINTREE HILL OFFICE PARK, SUITE 400
BRAintree, MA 02184

DANIEL M. HECHT
ASSOCIATE GENERAL COUNSEL
SEMPRA ENERGY TRADING CORP.
58 COMMERCE ROAD
STANFORD, CT 06902

R. JAMES ANSELL
ALTERNITY WIND POWER
ONE CRAGWOOD ROAD
SOUTH PLAINFIELD, NJ 07080

TODD J. MARTIN
ALTERNITY WIND POWER, LLC
ONE CRAGWOOD ROAD
SOUTH PLAINFIELD, NJ 07080

WILLIAM P. SHORT
RIDGEWOOD POWER MANAGEMENT, LLC
947 LINWOOD AVENUE
RIDGEWOOD, NJ 07450
FOR: RIDGEWOOD POWER MANAGEMENT, LLC

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

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

AMY C. ROMA
HOGAN & HARTSON, LLP
555 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20004

MARK L. PERLIS
DICKSTEIN SHAPIRO LLP
1825 EYE STREET, NW
WASHINGTON, DC 20006

MARY ANNE SULLIVAN
HAGAN & HARTSON, LLP
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20006

CHRISTOPHER O'BRIEN
SHARP SOLAR
VP STRATEGY AND GOVERNMENT RELATIONS
3808 ALTON PLACE NW
WASHINGTON, DC 20016
FOR: SHARP SOLAR SYSTEMS DIVISION

VENKAT SURAVARAPU
ASSOCIATES DIRECTOR
CAMBRIDGE ENERGY RESEARCH ASSOCIATES
1150 CONNECTICUT AVENUE NW, STE. 201
WASHINGTON, DC 20036
FOR: CAMBRIDGE ENERGY RESEARCH
ASSOCIATES

KEVIN PORTER
SENIOR ANALYST
EXETER ASSOCIATES, INC.
5565 STERRETT PLACE, SUITE 310
COLUMBIA, MD 21044

TODD JAFFE
ENERGY BUSINESS BROKERS AND CONSULTANTS
3420 KEYSER ROAD
BALTIMORE, MD 21208

SAMARA MINDEL

CATHY S. WOOLLUMS

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

MIDAMERICAN ENERGY HOLDINGS COMPANY
106 EAST SECOND STREET
DAVENPORT, IA 52801

STEVEN SIEGEL
STAFF ATTORNEY
CENTER FOR BIOLOGICAL DIVERSITY
3421 PARK PLACE
EVANSTON, IL 60201

JASON ABIECUNAS
BLACK & BEATCH GLOBAL RENEWABLE ENERGY
RENEWABLE ENERGY CONSULTANT
11401 LAMAR
OVERLAND PARK, KS 66211
FOR: RENEWABLE ENERGY CONSULTANT

ANN HENDRICKSON
COMMERCE ENERGY, INC.
222 WEST LAS COLINAS BLVD., SUITE 950E
IRVING, TX 75039
FOR: COMMERCE ENERGY, INC.

COURTNEY WEDDINGTON
COMPLIANCE ANALYST
COMMERCE ENERGY INC
222 W. LAS COLINAS BLVD., STE. 950-E
IRVING, TX 75039
FOR: COMMERCE ENERGY INC

ROY D. MCCOY
MANAGER, REGULATORY SUPPORT & REPORTING
ELECTRIC RELIABILITY COUNCIL OF TEXAS
2705 W. LAKE DRIVE
TAYLOR, TX 76574

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

KEVIN J. SIMONSEN
ENERGY MANAGEMENT SERVICES
646 EAST THIRD AVENUE
DURANGO, CO 81301

STACY AGUAYO
APS ENERGY SERVICES
400 E. VAN BUREN STREET, SUITE 750
PHOENIX, AZ 85004

DAVID SAUL
PACIFIC SOLAR & POWER CORPORATION
2850 W. HORIZON RIDGE PKWY, SUITE 200
HENDERSON, NV 89052
FOR: PACIFIC SOLAR & POWER CORPORATION

ELENA MELLO
SIERRA PACIFIC POWER COMPANY
6100 NEIL RD.
RENO, NV 89511

TREVOR DILLARD
SIERRA PACIFIC POWER COMPANY
PO BOX 10100
6100 NEIL ROAD, MS S4A50
RENO, NV 89520-0024

JOE GRECO
TERRA-GEN POWER LLC
9590 PROTOTYPE COURT, SUITE 200
RENO, NV 89521

ELIZABETH DOUGLASS
STAFF WRITER
LOS ANGELES TIMES
202 WEST FIRST STREET
LOS ANGELES, CA 90012

CLAIRE E. TORCHIA
CHADBOURNE & PARKE LLP
350 SOUTH GRAND AVE., STE 3300
LOS ANGELES, CA 90071

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

STEVE CHADIMA
ENERGY INNOVATIONS, INC.
130 WEST UNION STREET
PASADENA, CA 91103

JACK MCNAMARA
ATTORNEY AT LAW
MACK ENERGY COMPANY
PO BOX 1380
AGOURA HILLS, CA 91376-1380

DAVID TOWNLEY
18 BASSWOOD AVENUE
OAK PARK, CA 91377

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

FRANK W. HARRIS
REGULATORY ECONOMIST
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON

GARY L. ALLEN
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

JAMES B. WOODRUFF
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, SUITE 342, G01
ROSEMEAD, CA 91770

LIZBETH MCDANNEL
2244 WALNUT GROVE AVE., QUAD 4D
ROSEMEAD, CA 91770

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

DAN PERKINS
WWW.ENERGYSMARTHOMES.NET
983 PHILLIPS ST.
VISTA, CA 92083

AIMEE M. SMITH
ATTORNEY AT LAW
SEMPRA ENERGY
101 ASH STREET HQ13
SAN DIEGO, CA 92101
FOR: SAN DIEGO GAS & ELECTRIC COMPANY

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

THOMAS P. CORR
SEMPRA ENERGY GLOBAL ENTERPRISES
101 ASH STREET, HQ16C
SAN DIEGO, CA 92101

YVONNE GROSS
REGULATORY POLICY MANAGER
SEMPRA ENERGY
101 ASH STREET, HQ08C
SAN DIEGO, CA 92101

GREG BASS
DIRECTOR, RETAIL COMMODITY OPERATIONS
SEMPRA ENERGY SOLUTIONS
400 WEST A STREET, STE 500
SAN DIEGO, CA 92101-3017

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

MICHAEL SHAMES
ATTORNEY AT LAW
UTILITY CONSUMERS' ACTION NETWORK
3100 FIFTH AVENUE, SUITE B
SAN DIEGO, CA 92103

MARCIE MILNER
CORAL ENERGY RESOURCES, L P
4445 EASTGATE MALL, SUITE 100
SAN DIEGO, CA 92121
FOR: CORAL POWER LLC

CENTRAL FILES
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP31E
SAN DIEGO, CA 92123
FOR: SAN DIEGO GAS & ELECTRIC

JENNIFER WRIGHT
CALIFORNIA REGULATORY AFFAIRS
SAN DIEGO GAS & ELECTRIC CO.
8330 CENTURY PARK, CT
SAN DIEGO, CA 92123
FOR: SAN DIEGO GAS & ELECTRIC

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

TOM HAMILTON
ENERGY PROGRAM MANAGER
QUALITY BUILT
15330 AVENUE OF SCIENCE
SAN DIEGO, CA 92128

BILL MASON
SENIOR ASSET ADMINISTRATOR
ENXCO, INC.
PO BOX 581043
N. PALM SPRINGS, CA 92258

MARK E. IRWIN
EDISON MISSION ENERGY
18101 VON KARMAN AVE. STE 1700
IRVINE, CA 92612
FOR: EDISON MISSION ENERGY

CARL STEEN
BAKER & HOSTETLER LLP
600 ANTON BLVD., SUITE 900
COSTA MESA, CA 92626
FOR: BAKER & HOSTETLER LLP

ROGER LEE
BAKER & HOSTETLER LLP
600 ANTON BLVD., SUITE 900
COSTA MESA, CA 92626

MICHAEL J. GILMORE
INLAND ENERGY
SOUTH TOWER SUITE 606
3501 JAMBOREE RD

FOR: BAKER & HOSTETLER LLP

NEWPORT BEACH, CA 92660

HAROLD M. ROMANOWITZ
OAK CREEK ENERGY SYSTEMS, INC.
14633 WILLOW SPRINGS ROAD
MOJAVE, CA 93501
FOR: OAK CREEK ENERGY SYSTEMS, INC.

MARC D. JOSEPH
ATTORNEY AT LAW
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO, CA 94080
FOR: COALITION OF CALIFORNIA UTILITY
EMPLOYEES/CALIFORNIA UNIONS FOR
RELIABLE ENERGY

BILLY BLATTNER
MANAGER REGULATORY RELATIONS
SAN DIEGO GAS & ELECTRIC COMPANY
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO, CA 94102
FOR: SDG&E/SOCAL GAS

DIANE I. FELLMAN
ATTORNEY AT LAW
FPL ENERGY, LLC
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

MICHEL P. FLORIO
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK (TURN)
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

ROBERT FINKELSTEIN
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., SUITE 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

SANDRA ROVETTI
MANAGER
SAN FRANCISCO PUC
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISCO, CA 94103

BILL GOLOVE
CHEVRON ENERGY SOLUTIONS
345 CALIFORNIA STREET, 18TH FLOOR
SAN FRANCISCO, CA 94104

DOUGLAS E. COVER
ENVIRONMENTAL SCIENCE ASSOCIATES
225 BUSH STREET, SUITE 1700
SAN FRANCISCO, CA 94104

KAREN TERRANOVA
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, STE 2200
SAN FRANCISCO, CA 94104
FOR: COGENERATION ASSOCIATION OF
CALIFORNIA

NICK ALLEN
MORGAN STANLEY RESEARCH
555 CALIFORNIA STREET STE 2200 21ST FLR
SAN FRANCISCO, CA 94104

SEAN HAZLETT
MORGAN STANLEY
555 CALIFORNIA ST., SUITE 2200, 21ST FL
SAN FRANCISCO, CA 94104

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

SETH D. HILTON
STOEL RIVES
111 SUTTER ST., SUITE 700
SAN FRANCISCO, CA 94104

SNULLER PRICE
ENERGY AND ENVIRONMENTAL ECONOMICS
101 MONTGOMERY, SUITE 1600
SAN FRANCISCO, CA 94104
FOR: ENERGY AND ENVIRONMENTAL ECONOMICS

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

BIANCA BOWMAN
CASE COORDINATOR
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MAIL CODE B9A
SAN FRANCISCO, CA 94105

EDWARD V. KURZ
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST., B30A
SAN FRANCISCO, CA 94105

FRED WELLINGTON
 NAVIGANT CONSULTING, INC.
 1 MARKET ST., SPEAR ST. TOWER, STE 1200
 SAN FRANCISCO, CA 94105

GRAIG COOPER
 55 2ND STREET, SUITE 525
 SAN FRANCISCO, CA 94105

LENNY HOCHSCHILD
 EVOLUTION MARKETS, LLC
 RENEWABLE ENERGY MARKETS
 425 MARKET STREET, SUITE 2200
 SAN FRANCISCO, CA 94105
 FOR: RENEWABLE ENERGY MARKETS

MELANIE FALLS
 COMPETITIVE POWER VENTURES, INC.
 55 SECOND STREET, SUITE 525
 SAN FRANCISCO, CA 94105

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

VALERIE WINN
 PROJECT MANAGER
 PACIFIC GAS & ELECTRIC
 77 BEALE STREET, B9A
 SAN FRANCISCO, CA 94105

WILLIAM V. MANHEIM
 ATTORNEY AT LAW
 PACIFIC GAS AND ELECTRIC COMPANY
 77 BEALE STREET, ROOM 3025-B30A
 SAN FRANCISCO, CA 94105
 FOR: PACIFIC GAS AND ELECTRIC COMPANY

CORY M. MASON
 ATTORNEY AT LAW
 PACIFIC GAS AND ELECTRIC COMPANY
 77 BEALE STREET, MC B30A
 SAN FRANCISCO, CA 94105-1814
 FOR: PACIFIC GAS AND ELECTRIC COMPANY

NIELS KJELLUND
 PACIFIC GAS AND ELECTRIC COMPANY
 77 BEALE STREET, MAIL CODE B9A
 SAN FRANCISCO, CA 94105-1814

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

PETER V. ALLEN
 THELEN REID BROWN RAYSMAN & STEINER
 101 SECOND STREET, SUITE 1800
 SAN FRANCISCO, CA 94105-3606

DIARMUID MCGARRY
 GREENWOOD ENVIRONMENTAL
 330 TOWNSEND ST. SUITE 118
 SAN FRANCISCO, CA 94107
 FOR: GREENWOOD ENVIRONMENTAL

ARNO HARRIS
 RECURRENT ENERGY, INC.
 1700 MONTGOMERY ST., SUITE 251
 SAN FRANCISCO, CA 94111

JAMES B. WOODRUFF
 VICE PRESIDENT REGULATORY AND GOVT AFFAI
 NEXTLIGHT RENEWABLE POWER, LLC
 101 CALIFORNIA STREET, STE 2450
 SAN FRANCISCO, CA 94111

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

JUDY PAU
 DAVIS WRIGHT TREMAINE LLP
 505 MONTGOMERY STREET, SUITE 800
 SAN FRANCISCO, CA 94111-6533

ROBERT B. GEX
 ATTORNEY AT LAW,
 DAVIS WRIGHT TREMAINE LLP
 505 MONTGOMERY STREET, SUITE 800
 SAN FRANCISCO, CA 94111-6533

CALIFORNIA ENERGY MARKETS
 425 DIVISADERO ST. SUITE 303
 SAN FRANCISCO, CA 94117
 FOR: CALIFORNIA ENERGY MARKETS

CALIFORNIA ENERGY MARKETS
 425 DIVISADERO ST.
 SAN FRANCISCO, CA 94117

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

LAW DEPARTMENT FILE ROOM
 PACIFIC GAS AND ELECTRIC COMPANY
 PO BOX 7442

GALEN LEMEI
 PRESIDIO BUILDING 97
 PO BOX 29512

SAN FRANCISCO, CA 94120-7442

1/08 EMAIL LUCHA
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

SHAUN HALVERSON
PACIFIC GAS AND ELECTRIC COMPANY
PG&E MAIL CODE B9A
PO BOX 770000
SAN FRANCISCO, CA 94177
FOR: PACIFIC GAS AND ELECTRIC COMPANY

ROBIN J. WALTHER
1380 OAK CREEK DRIVE, NO. 316
PALO ALTO, CA 94304-2016

KERRY HATTEVIK
DIRECTOR OF REG. AND MARKET AFFAIRS
NRG ENERGY
829 ARLINGTON BLVD.
EL CERRITO, CA 94530

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

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

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

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

PHILIPPE AUCLAIR
11 RUSSELL COURT
WALNUT CREEK, CA 94598

SAN FRANCISCO, CA 94129
FOR: CENTER FOR RESOURCE SOLUTIONS

CASE COORDINATION
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000; MC B9A
SAN FRANCISCO, CA 94177

MAGGIE CHAN
PG&E
MAILCODE 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

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

TONY CHEN
SR. MANGER, BUSINESS DEVEL.
COOL EARTH
7665 HAWTHORNE AVE
LIVERMORE, CA 94550
FOR: COOL EARTH SOLAR

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

KEVIN DUGGAN
ATTORNEY AT LAW
CALPINE COPRORATION
3845 HOPYARD ROAD, SUITE 345
PLEASANTON, CA 94588

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

RYAN PLETKA
RENEWABLE ENERGY PROJECT MANAGER
BLACK & VEATCH
2999 OAK ROAD, SUITE 490
WALNUT CREEK, CA 94597
FOR: BLACK & VEATCH

WILLIAM F. DIETRICH
ATTORNEY AT LAW
DIETRICH LAW
2977 YGNACIO VALLEY ROAD, NO. 613
WALNUT CREEK, CA 94598-3535

ALEX KANG
ITRON, INC.
1111 BROADWAY, STE. 1800
OAKLAND, CA 94607

NELLIE TONG
KEMA, INC.
492 NINTH STREET, SUITE 220
OAKLAND, CA 94607

RAMONA GONZALEZ
EAST BAY MUNICIPAL UTILITY DISTRICT
375 ELEVENTH STREET, M/S NO. 205
OAKLAND, CA 94607

PAUL D. HUNT
4929 WEBSTER STREET
OAKLAND, CA 94609-2116

PAUL FENN
LOCAL POWER
4281 PIEDMONT AVE.
OAKLAND, CA 94611

BARRY H. EPSTEIN
FITZGERALD, ABBOTT & BEARDSLEY, LLP
1221 BROADWAY, 21ST FLOOR
OAKLAND, CA 94612
FOR: FITZGERLAND, ABBOTT & BEARDSLEY,
LLP

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

KEVIN FOX
KEYES & FOX LLP
5727 KEITH AVENUE
OAKLAND, CA 94618

CYNTHIA WOOTEN
LUMENX CONSULTING, INC.
1126 DELAWARE STREET
BERKELEY, CA 94702

REED V. SCHMIDT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY, CA 94703-2714

ERIC LARSEN
ENVIRONMENTAL SCIENTIST
RCM INTERNATIONAL, L.L.C.
PO BOX 4716
BERKELEY, CA 94704

LAURA WISLAND
UNION OF CONCERNED SCIENTISTS
2397 SHATTUCK AVE., SUITE 203
BERKELEY, CA 94704

JANICE LIN
MANAGING PARTNER
STRATEGEN CONSULTING LLC
146 VICENTE ROAD
BERKELEY, CA 94705

CLYDE MURLEY
CONSULTANT TO NRDC
1031 ORDWAY STREET
ALBANY, CA 94706
FOR: THE UNION OF CONCERNED SCIENTISTS

BRENDA LEMAY
DIRECTOR OF PROJECT DEVELOPMENT
HORIZON WIND ENERGY
1600 SHATTUCK, SUITE 222
BERKELEY, CA 94709

NANCY RADER
CALIFORNIA WIND ENERGY ASSOCIATION
2560 NINTH STREET, SUITE 213A
BERKELEY, CA 94710

RYAN WISER
BERKELEY LAB
1 CYCLOTRON ROAD, MS-90-4000
BERKELEY, CA 94720
FOR: BERKELEY LAB

ED SMELOFF
SENIOR MANAGER
SUNPOWER CORPORATION
1414 HARBOUR WAY SOUTH
RICHMOND, CA 94804

BRAD BAUER
MP2CAPITAL
1101 FIFTH AVENUE, SUITE 360
SAN RAFAEL, CA 94901

MICHAEL LAINE
MP2CAPITAL
1101 5TH AVENUE, STE. 360
SAN RAFAEL, CA 94901

WHITNEY BARDWICK
MP2 CAPITAL
1101 5TH AVENUE, SUITE 360
SAN RAFAEL, CA 94901

BRIAN C. FRECKMANN
C/O FOUNDATION PARTNERS
100 DRAKES LANDING ROAD NO. 125
GREENBRAE, CA 94904

LYNN M. ALEXANDER
LMA CONSULTING

KEITH WHITE
312 KELLER ST

129 REDWOOD AVENUE
CORTE MADERA, CA 94925

PETALUMA, CA 94952

C. SUSIE BERLIN
MCCARTHY & BERLIN LLP
100 W. SAN FERNANDO ST., SUITE 501
SAN JOSE, CA 95113

DAVID OLIVARES
ELECTRIC RESOURCE
MODESTO IRRIGATION DISTRICT
PO BOX 4060
MODESTO, CA 95352
FOR: ELECTRIC RESOURCE PLANNING AND
DEVELOPMENT MODESTO IRRIGATION DISTRICT

THOMAS S KIMBALL
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95352-4060

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

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

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

TOBIN RICHARDSON
RICHARDSON GROUP
1416 VIGO COURT
DAVIS, CA 95618

BALDASSARO DICAPO
CALIFORNIA ISO
LEGAL AND REGULATORY DEPARTMENT
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
FOR: CALIFORNIA INDEPENDENT SYSTEM
OPERATORS

GRANT A. ROSENBLUM
STAFF COUNSEL
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
FOR: CALIFORNIA ISO

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

LEGAL AND REGULATORY DEPARTMENT
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
FOR: CALIFORNIA ISO

DENNIS W. DE CUIR
ATTY AT LAW
A LAW CORPORATION
2999 DOUGLAS BLVD., SUITE 325
ROSEVILLE, CA 95661
FOR: BEAR VALLEY ELECTRIC SERVICE, DIV.
OF GOLDEN STATE WATER CO.

DAVID OLIVER
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
FOR: SAN JOAQUIN VALLEY POWER AUTHORITY

ERIN RANSLow
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
FOR: NAVIGANT CONSULTING, INC.

PAUL D. MAXWELL
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078

KEVIN DAVIES
SOLAR DEVELOPMENT INC.
5420 DOUGLAS BLVD. STE F
GRANITE BAY, CA 95746-6253

DOUG DAVIE
DAVIE CONSULTING, LLC
3390 BEATTY DRIVE

JEDEDIAH J. GIBSON
ATTORNEY AT LAW
ELLISON SCHNEIDER & HARRIS LLP

EL DORADO HILLS, CA 95762

2015 H STREET
SACRAMENTO, CA 95811
FOR: SIERRA PACIFIC POWER COMPANY

JEFFREY HARRIS
ATTORNEY AT LAW
ELLISON & SCHNEIDER
2015 H STREET
SACRAMENTO, CA 95811
FOR: DYNEGY

BRUCE MCLAUGHLIN
ATTORNEY AT LAW
BRAUN & BLAISING, P.C.
915 L STREET SUITE 1420
SACRAMENTO, CA 95814

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

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

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

SCOTT BLAISING
ATTORNEY AT LAW
BRAUN & BLAISING, P.C.
915 L STREET, SUITE 1420
SACRAMENTO, CA 95814

ROB ROTH
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET MS 75
SACRAMENTO, CA 95817
FOR: SACRAMENTO MUNICIPAL UTILITY
DISTRICT

WILLIAM W. WESTERFIELD III
SR. ATTORNEY
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET
SACRAMENTO, CA 95817
FOR: SACRAMENTO MUNICIPAL UTILITY
DISTRICT

MARCO LEMES
SMUD
6201 S STREET MS B257
SACRAMENTO, CA 95817-1899

MICHAEL DEANGELIS
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET
SACRAMENTO, CA 95817-1899
FOR: SACRAMENTO MUNICIPAL UTILITY
DISTRICT

VIKKI WOOD
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6301 S STREET, MS A204
SACRAMENTO, CA 95817-1899

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

MOHAN NIROULA
CALIF DEPT OF WATER RESOURCES
RESOURCE ADEQUACY SECTION
3310 EL CAMINO AVENUE, STE 256
SACRAMENTO, CA 95821

RICH LAUCKHART
GLOBAL ENERGY
SUITE 200
2379 GATEWAY OAKS DR.
SACRAMENTO, CA 95833

KAREN LINDH
CALIFORNIA ONSITE GENERATION
7909 WALERGA ROAD, NO. 112, PMB 119
ANTELOPE, CA 95843

DONALD BROOKHYSER
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND, OR 97210
FOR: COGENERATION ASSOCIATION OF
CALIFORNIA

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

KYLE L. DAVIS
PACIFICORP
825 NE MULTNOMAH ST., 20TH FLOOR
PORTLAND, OR 97232

CLARE BREIDENICH
224 1/2 24TH AVE. EAST

DONALD SCHOENBECK
RCS, INC.

SEATTLE, WA 98112

900 WASHINGTON STREET, SUITE 780
VANCOUVER, WA 98660
FOR: CAC

TIMOTHY CASTILLE
LANDS ENERGY CONSULTING, INC.
18109 SE 42ND STREET
VANCOUVER, WA 98683

PETER BREHM
INFINIA CORPORATION
6811 OKANOGAN PLACE
KENNEWICK, WA 99336

State Service

JAMES MCMAHON
CRA INTERNATIONAL
50 CHURCH ST.
CAMBRIDGE, MA 02138
FOR: CALIFORNIA DEPARTMENT OF WATER
RESOURCES

AMANDA C. BAKER
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

ANNE E. SIMON
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

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

BRIAN D. SCHUMACHER
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

BURTON MATTSON
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5104
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

DAVID PECK
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4103
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DONALD R. SMITH
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

DOROTHY DUDA
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5109
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

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

JULIE A. FITCH
CALIF PUBLIC UTILITIES COMMISSION

LOUIS M. IRWIN
CALIF PUBLIC UTILITIES COMMISSION

POLICY & PLANNING DIVISION
ROOM 5119
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ENERGY PRICING AND CUSTOMER PROGRAMS BRA
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MARK R. LOY
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRA
ROOM 4205
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

SARA M. KAMINS
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 DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KENNETH SWAIN
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DR., SUITE 600
RANCHO CORDOVA, CA 95670
FOR: NAVIGANT CONSULTING, INC.

GARY COLLORD
STATIONARY SOURCE DIVISION
AIR RESOURCES BOARD
1001 I STREET, PO BOX 2815
SACRAMENTO, CA 95812

CLARE LAUFENBERG
STRATEGIC TRANSMISSION INVESTMNT PROGRAM
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 46
SACRAMENTO, CA 95814

HEATHER RAITT
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 45
SACRAMENTO, CA 95814
FOR: CALIFORNIA ENERGY COMMISSION

JOSEPH FLESHMAN
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-45
SACRAMENTO, CA 95814
FOR: CALIFORNIA ENERGY COMMISSION

KATE ZOCCHETTI
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-45
SACRAMENTO, CA 95814

LORRAINE GONZALES
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET MS-45
SACRAMENTO, CA 95814
FOR: CALIFORNIA ENERGY COMMISSION

MANPREET MATTU
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-45
SACRAMENTO, CA 95814
FOR: CALIFORNIA ENERGY COMMISSION

ROSS MILLER
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
SACRAMENTO, CA 95814

BILL KNOX
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 28
SACRAMENTO, CA 95814-5504

HEATHER LOUIE
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-45
SACRAMENTO, CA 95818
FOR: CALIFORNIA ENERGY COMMISSION

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