

**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)

**JOINT POST-WORKSHOP COMMENTS OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39-E)
SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E);
SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E); AND
CALIFORNIA WIND ENERGY ASSOCIATION /
LARGE SCALE SOLAR ASSOCIATION
REGARDING IMPLEMENTATION OF SB 1036**

WILLIAM V. MANHEIM
EVELYN C. LEE

Law Department
Pacific Gas and Electric Company
Post Office Box 7442
San Francisco, CA 94120
Telephone: (415) 973-2786
Facsimile: (415) 973-5520
E-mail: ecl8@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

CATHY KARLSTAD

Southern California Edison
2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6961
Facsimile: (626) 302-7740
E-mail: Cathy.Karlstad@sce.com

Attorney for
SOUTHERN CALIFORNIA EDISON

AIMEE SMITH

San Diego Gas & Electric Company
101 Ash Street, HQ-12
San Diego, California 92101
Telephone: (619) 699-5042
Facsimile: (619) 669-5027
E-mail: amsmith@sempra.com

Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

JOSEPH KARP

Winston & Strawn LLP
101 California Street
San Francisco, California 94111
Telephone: (415) 591-1529
Facsimile: (415) 591-1400
E-mail: jkarp@winston.com

Attorney for
California Wind Energy Association/Large Scale Solar

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I. INTRODUCTION

The Joint Parties, which include Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), California Wind Energy Association/Large Scale Solar Association (CalWEA/LSA) and Pacific Gas and Electric Company (PG&E), hereby submit their post-workshop comments on the unresolved issues regarding the implementation of Senate Bill (SB) 1036 (Joint Comments) pursuant to the June 20, 2008 ruling of Administrative Law Judge (ALJ) Simon and ALJ Simon's June 27, 2008 ruling extending the time to file post-workshop comments to July 8, 2008.^{1/} These Joint Comments address those areas of agreement among the Joint Parties. The Joint Parties are also filing individual comments on those few areas where they did not reach a consensus.

A. Procedural Background

SB 1036 eliminated the Supplemental Energy Payment (SEP) program, under which the California Energy Commission (CEC) was to pay the seller of renewable energy the above-market price portion of a utility's renewable energy purchases. In this context, the "market price" is the "market price referent" (MPR). In place of SEPs, SB 1036 created an Above-

^{1/} Pursuant to Rule 1.8(d) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, PG&E has been fully authorized by the Joint Parties to sign and tender this document and to make the representations stated in Rule 1.8(b) on their behalf.

Market Fund (AMF), which has a virtual “balance” equal to the amount that would have been available to pay above-market costs had the SEP program continued in effect through 2011. The Commission is to track the cumulative above-market cost of renewable energy purchases that meet the statutory criteria.^{2/} Once the AMF tracking account has been exhausted, the utility has no further obligation to purchase renewable energy priced above the MPR.^{3/}

On May 29, 2008, the Energy Division held a workshop to receive input on how the AMF should be administered. On June 20, 2008, ALJ Simon issued a ruling allowing post-workshop comments to be filed and encouraging parties with similar views to present joint proposals (ALJ’s Ruling).

B. Scope of the Joint Proposal

The Joint Parties strongly agree that the primary goal of implementing SB 1036 is to carry out the plain meaning and intent of the statute and that there is no legal basis for subjecting a reasonable renewable power purchase agreement (PPA) that meet the statutory eligibility criteria to additional requirements before it can be credited against an investor-owned utility’s (IOU’s) AMF account. Additionally, the administration of the AMF should be consistent with SB 1036’s goals of providing sellers revenue certainty with respect to Renewables Portfolio Standard (RPS) PPA approvals and above-MPR payments to ensure that such PPAs are financeable, protecting electric customers from unlimited above-MPR prices for renewable energy procurement, and streamlining and minimizing delay in connection with the Commission’s existing and thorough PPA approval process.

The following key areas of agreement, among others, should be adopted in the Commission’s final SB 1036 resolution:

- The Commission should adopt a first-come, first-served policy for crediting any above-market costs for PPAs against the AMF.
- The Commission should not adopt AMF eligibility criteria in addition to those specified in statute.

^{2/} Eligibility criteria for contracts to count against the AMF is established at Public Utilities Code Section 399.15 (d)(2).

^{3/} Public Utilities Code section 399.15subdiv.(d) states: (d) The commission shall establish, for each electrical corporation, a limitation on the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources to achieve the annual procurement targets established under this article.

- The Commission should not attempt to prevent the exhaustion of the AMF by picking “winners” because that will create uncertainty and discourage potential sellers.
- Uniform reasonableness standards should apply to the review of all RPS procurement contracts, regardless of whether the contract was initiated in response to a competitive solicitation or on a bilateral basis, and whether the contract is credited against the AMF or not.
- The Commission should continue to use its existing reasonableness review standards.
- The Commission should not attempt to create complex rules to exclude as “indirect costs” the costs that are required to procure renewable energy.

The remarkable degree of consensus achieved by the Joint Parties will become clear in the following, detailed comments on SB 1036 issues. For ease of reference, the discussion is numbered in accordance with the outline provided in the ALJ’s ruling.

I. SB 1036 GUIDING PRINCIPLES

1. What should be the overarching goals of implementing SB 1036?

The overarching goal of SB 1036 implementation should be consistency with the legal requirements and statutory intent of SB 1036.

The Legislature clearly expressed its intent in enacting SB 1036:

It is the intent of the Legislature to reform elements of the renewables portfolio standard program relating to cost containment. In recognition of numerous problems associated with the current process for awarding supplemental energy payments, the Legislature intends to restructure the renewables portfolio standard program to streamline the approval of contracts executed by electrical corporations for the purchase of electricity generated by eligible renewable energy resources involving costs above the market prices determined in subdivision (c) of Section 399.15 of the Public Utilities Code, to ensure that any above-market costs sought by generators may be relied upon in obtaining project financing, and to minimize both unnecessary delays and duplicative agency reviews. In achieving these objectives, the Legislature intends to continue meaningful ratepayer protections through limits on the total costs of meeting the renewable energy goals established pursuant to [the RPS legislation].^{4/}

In addition to continuing the meaningful ratepayer cost protections in the RPS legislation, SB 1036 was enacted to ensure that all Commission-approved RPS procurement contracts are

^{4/} SB 1036, § 1, emphasis added.

financeable, regardless of whether the contract price exceeds the MPR. The Legislature also adopted SB 1036 to streamline the regulatory approval process and minimize delays. The analyses of SB 1036 prepared for the Senate Energy and Utilities Committee and the Assembly Committee on Utilities and Commerce explicitly described the threefold benefits of SB 1036 – seller certainty, customer cost protection, and streamlined regulatory approval – to the members of each legislative policy committee.^{5/} Achievement of these results should be the paramount goal of the Commission’s implementation of SB 1036. The Legislature recognized that the IOUs will execute above-MPR RPS contracts and limited the IOUs’ obligation to purchase renewable energy priced above the MPR to the amount of AMFs specified in the statute. The Commission should not attempt to artificially conserve AMFs as that would weaken the contractual certainty that is one of the primary goals of SB 1036.

Consistency with the Legislature’s goals of creating a streamlined and certain process for the approval of RPS contract costs requires compliance with the AMF eligibility factors expressly set forth in SB 1036 and no substantive change to the Commission’s existing process for RPS contract approval.

The Commission should not recreate the complications and uncertainty of the SEP process that SB 1036 was adopted to remedy. The general consensus at the workshop was that the overall review process for RPS contracts is already very thorough and does not need modification. At a time when the Commission should be implementing policies that will encourage renewable energy growth in California and removing barriers to reaching 20% renewables, RPS procurement should not be discouraged by imposition of additional data requirements and approval standards that make the regulatory process more burdensome for the IOUs and create a Catch-22 for developers.

For example, a renewable developer generally cannot obtain financing for its project without first having a Commission-approved RPS contract. Only after a developer obtains financing will the developer be able to procure equipment, entitle property, and proceed toward meeting most of the development milestones. Additional Commission approval requirements,

^{5/} A copy of these analyses is provided as Attachments 1 and 2 to these Comments, respectively. Pursuant to Rule 13.9 of the Commission’s Rules of Practice and Procedure, the Joint Parties request that the Commission take official notice of these government records. Such records are subject to judicial notice under California Evidence Code Sections 452(c) and 453 as “[o]fficial acts of the legislative . . . department . . . of any state of the United States,” and therefore are subject to official notice under Rule 13.9.

such as demonstrating financial viability and achievement of milestones, would put developers in the untenable position of having to obtain Commission approval to obtain financing and achieve milestones, but simultaneously having to obtain financing and achieve milestones in order to obtain the requisite Commission approval.

It is critical that for developers and the IOUs that many quality renewable project be completed and begin operation. Imposing restrictive approval standards could cause developers to forego bidding into California solicitations and focus on other states instead – or sell to municipalities or other entities that are not required to garner Commission approval of their contracts. The Commission should ensure that its new policies advance, not thwart, renewables development in California.

2. Please discuss your priorities for allocating and administering limited above-market funds and for developing a win-win solution for implementing SB 1036.

The highest priority is to enable projects with executed RPS contracts to proceed to development to support the achievement of the State’s RPS goal. The AMF account tracks the above-MPR payments to be paid by each of the major IOUs for eligible renewable energy procurement under the limitations adopted by SB 1036. It should not be described as a fund to be allocated to sellers of renewable power, although the Commission should be careful not to create a process for crediting AMFs that discourages new renewable development in California.

The Commission should take a first-come, first-served approach to crediting proposed PPAs toward the IOUs’ AMF accounts. This policy benefits both renewable energy developers and the IOUs because it is easy to implement and minimizes uncertainty surrounding contract approval. This direct approach also promotes renewable development by minimizing delay in the approval process. The Commission should not prioritize PPAs based on other criteria because any attempts to pick “winners” among executed PPAs introduces uncertainty that will only discourage PPA development.

The reasonableness of a PPA as an agreement to procure eligible renewable energy resources in fulfillment of the buyer’s RPS obligations should govern the eligibility of the project for AMFs. Any PPA found that is found by the Commission to be reasonable should be eligible for AMFs so long as it meets the statutory AMF eligibility criteria.

Priorities should not be affected by the fact that the IOUs are allowed to limit renewables procurement to resources priced at or below the MPR once AMFs are exhausted. The

Legislature made the determination to include this IOU option in SB 1036. Deviating from a first-come, first-served policy and reserving Commission decision on individual PPAs in an attempt to preserve AMFs will only discourage bidders and undermine the State's ability to achieve 20% renewables.

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.

Please see each party's individual response.

4. Based on the above guiding principles and goals, what is your preferred approach for allocating AMFs, and why? Please describe the implementation framework for applying your preferred approach.

Eligible and approved RPS contracts should be credited against the AMF account on a first-come, first-served basis. The only criteria for AMF allocation beyond the eligibility criteria set forth in SB 1036 should be the existing standards used to assess the reasonableness of all RPS contracts. If a contract meets the statutory eligibility criteria for AMFs and is approved under the Commission's existing standards for approving the reasonableness of RPS contracts, the contract should be credited against the AMF account on a first-come, first-served basis.

Allocating on a first-come, first-served basis will serve SB 1036's goals of streamlining the RPS contract approval process and minimizing delay. It will also provide certainty to renewable developers and IOUs seeking AMF approval by providing a simple and transparent method of utilizing the AMF account.

AMFs should not be credited towards eligible and approved contracts based on criteria developed by the Energy Division to identify projects most likely to promote RPS program goals. The discretionary allocation of the AMF account by the Commission would create additional uncertainty for developers, delay project approval and construction, potentially increase project costs, and potentially discourage renewable developers from bidding into California IOU RPS solicitations. Moreover, as discussed below, it is clear that SB 1036 does not contemplate development of different or more stringent review criteria to be applied to contracts seeking AMFs.

No criteria other than the statutory eligibility factors and "first come first served" should be adopted. As discussed above, PPAs should be credited towards the AMF on a first-come,

first-served basis based on the same existing criteria used to determine the reasonableness of the PPAs. If AMFs are available, the AMF balance should be debited by the PPA's above-MPR payments in the same resolution or decision finding the PPA to be reasonable.

- Would your preferred approach change based on the decision of whether or not all Commission-approved, AMFs-eligible contracts *must* be applied to the cost limitation?

No. The preferred approach is required in any case to provide certainty to renewable energy project developers and serve the other goals of SB 1036.

- Should the Commission have discretion to award less than the requested amount of AMFs to any particular contract?

No. AMFs are not awards. They are an accounting of an IOU's progress toward the established spending cap on above-market renewable procurement. If a contract is reasonable and meets the statutory AMF eligibility criteria, all above-MPR contract payments should be applied towards the IOU's AMFs cost limitation.

II. AMFS ELIGIBILITY CRITERIA

1. How should the Commission quantify the indirect expenses (including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades), and subtract them from the AMFs request? Please provide a methodology and example for how indirect costs included in a contract would be subtracted out to determine amount of AMFs needed for the contract.

Actually, the task of the Commission does not involve quantifying and subtracting these costs from the AMF request. The Commission's task is to ensure that these costs do not get added into the AMF request. Indirect costs are costs which are not bargained for in the PPA, but may occur as a result of the PPA. For example, accepting deliveries under a PPA may impact the utility portfolio and result in sales of excess energy or decreased generation from existing resources. Similarly, the costs of transmission upgrades, which are funded separate from the consideration for performance under the PPA and may be attributable to a combination of generation resources and/or load growth, are examples of indirect costs. Such indirect costs are not typically included in a PPA and therefore would not generally be included in an AMFs request. While it is conceivable that what is normally an indirect cost could be contractually converted into a direct cost under a contract, these situations should be easily identifiable by the Commission and should be dealt with on a case-by-case basis. It would not make sense to try to

build in complex rules for a problem that does not at this point exist.

2. Please discuss whether the Commission should implement additional AMFs eligibility criteria (*e.g.*, AMFs should be awarded only to in-state renewable generation facilities as defined in Pub. Res. Code § 25471). Please provide any necessary legal and policy justifications for your suggestion, including for a suggestion that no additional criteria are needed.

SB 1036 sets forth only five pre-conditions for counting above-MPR costs of a PPA against the AMFs cost limitation:

- (A) The contract has been approved by the Commission and was selected through a competitive solicitation pursuant to the requirements of subdivision (d) of Section 399.14.
- (B) The contract covers a duration of no less than 10 years.
- (C) The contracted project is a new or repowered facility commencing commercial operations on or after January 1, 2005.
- (D) No purchases of renewable energy credits may be eligible for consideration as an above-market cost.
- (E) The above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.^{6/}

These should be the only criteria for AMF eligibility. No additional AMFs eligibility criteria such as those included in the initial draft of Resolution E-4160 should be adopted. The Legislature expressly set forth the standards for AMF eligibility criteria in SB 1036. SB 1036 is clear on its face; there is no legal basis for imposing additional criteria.

The legislative history of SB 1036 supports the Joint Parties' position that the review criteria currently applied to RPS contracts is sufficient and that no additional review framework is either authorized or required for above-MPR contracts. The bill analysis performed for consideration of SB 1036 in the Assembly policy committee expressly articulates the expectation that "[t]he PUC would use current practices it has in place to review renewable contracts for reasonableness, and to make sure the specific contracts are written so they are the least costs and best fit for the IOU's needs."^{7/} There is no support in the statutory language or legislative history of SB 1036 for a more stringent review process for above-MPR contracts.

^{6/} Cal. Pub. Util. Code § 399.15(d)(2).

^{7/} Analysis of SB 1036 by the Assembly Committee on Utilities and Commerce, June 29, 2007, page D (emphasis added). Available at: http://info.sen.ca.gov/pub/07-08/bill/sen/sb_1001-1050/sb_1036_cfa_20070629_131705_asm_comm.html

It is clear that ratepayer cost protection is one of the goals of SB 1036. Once the IOUs' AMFs are exhausted, the IOUs cannot be required by the Commission to purchase above-MPR renewable energy.^{8/} In addition, SB 1036 unambiguously states that "the Legislature intends to continue meaningful ratepayer protections through limits on the total costs of meeting the renewable energy goals established pursuant to Article 15 (the RPS statute)," and refers to prior process of awarding supplemental energy payments (SEPs) as "an element of the renewables portfolio standard program relating to cost containment."^{9/}

There is no doubt that AMFs and the AMFs cost limitations of the IOUs function as a cap on the IOUs' RPS procurement obligations the way that SEP funds did prior to the enactment of SB 1036; thus there is no need to resort to legislative history to understand the purpose of AMFs. However, the legislative history of SB 1036 confirms that customer protection against renewables at any price has consistently been one of the justifications for SB 1036. The following passage from the Assembly Committee on Utilities and Commerce bill analysis illuminates this theme:

3) Keeping Costs in check: This bill maintains another goal of the RPS, which was to ensure that the RPS was not a renewable energy at all costs program. The SEPs provision in current law that provide that retail electivity sellers are not required to procure renewable electricity above the MPR if there are no funds available for SEPs acts as a de facto cost cap since there is a limited amount of funding allocated to the SEPs accounts. This bill leaves that same cost cap in place by imposing a direct cost cap on renewable procurement that equals the amount of funds the IOUs would have been obligated to collect for SEPs.^{10/}

Imposition of additional eligibility criteria for AMF allocation, aside from the criteria for CPUC approval, would have the effect of limiting the number of contracts that draw down the IOUs' AMF balances, thus prolonging IOU customers' exposure to mandatory purchases at above-market prices for renewable energy. Furthermore, if cost-effective renewable projects that

^{8/} Cal. Pub. Util. Code § 399.15(d)(3).

^{9/} SB 1036, § 1.

^{10/} Analysis of SB 1036 by the Assembly Committee on Utilities and Commerce, June 29, 2007, page D (emphasis added). Available at: http://info.sen.ca.gov/pub/07-08/bill/sen/sb_1001-1050/sb_1036_cfa_20070629_131705_asm_comm.html

meet the statutory eligibility criteria are found ineligible for AMFs because they do not meet Commission-imposed additional standards, the result may be other contracts and requests for AMFs that are far less cost effective. The adoption of additional hurdles to AMF allocation would simply evade the cost control mechanism established in the original RPS legislation and reaffirmed in SB 1036.

Implementation of the eligibility criteria proposed at various times by the Energy Division would also be wholly inconsistent with SB 1036’s intent to “streamline the approval of contracts,” and “to ensure that any above-market costs sought by generators may be relied upon in obtaining project financing, and to minimize both unnecessary delays and duplicative agency reviews.”^{11/} Additional AMF eligibility criteria would complicate the approval of contracts and introduce uncertainty that may undermine renewable developers’ willingness to undertake projects in California.

For example, the Commission should not discourage the development of renewable generation in geographic locations where there is renewable potential. Eligibility for AMFs should not be based upon whether the renewable facility is located in California. Eligibility for AMFs should extend to any facility that meets the definition of “in-state renewable electricity generation facility” set forth in Public Resources Code Section 25741(b), including out-of-state facilities that otherwise meet the criteria set forth in Public Resources Code Section 25741(b)(2). AMF eligibility should include otherwise eligible renewable generation facilities that are located in the Western Electricity Coordinating Council, and that deliver electricity to an in-state location within the meaning of the statute. Eligibility for AMFs – and opportunities for private-sector investment in renewables – should not be limited to the geographic boundaries of the State. Shell Energy America (US) LP supports the Joint Parties’ desire for eligible renewable energy facilities located out of state to be fully eligible to count against the AMF.

III. REASONABLENESS REVIEW STANDARDS

1. To what extent should the Commission assess an above-MPR contract’s project viability?

- Should this assessment be different depending on whether a contract is eligible for AMFs, is not eligible for AMFs, or would be eligible for AMFs but AMFs have been exhausted?

^{11/} SB 1036, § 1.

As noted above, the legislative history of SB 1036 specifically indicates that the Legislature expected that “(t)he PUC would use current practices it has in place to review renewable contracts for reasonableness, and to make sure that specific contracts are written so they are the least cost and best fit for the IOU’s needs.”^{12/}

The Commission should not maintain different review standards; the same standards should be applied regardless of whether a contract is eligible for AMFs. All RPS contracts should be approved if the Commission, using “current practices that it has in place,” finds that the terms and conditions of the PPA are reasonable, that the procurement under the PPA may count against the IOU’s RPS procurement obligation, and that the costs of such contract are recoverable in the IOU’s rates.^{13/}

- What are the current at/below MPR project viability review standards? Should these standards be applied to above-MPR contracts? What alterations, if any, should be made to apply them to above-MPR contracts?

Project viability is currently assessed through consideration of several factors, including, but not limited to, the extent to which the project involves a technology that is mature and proven, whether the seller has site control, the status of financing and permitting, whether resource studies have been prepared, whether adequate transmission is available and the existence of performance obligations. Assessment of project viability is not an exact science. It involves weighing the above-mentioned objective factors, along with others that may exist in a particular instance, and applying a certain degree of subjective judgment to develop a best estimate as to viability. It is also important to note that access to information concerning project development status does not guarantee accurate predictions regarding a project’s viability since unforeseen events may alter the viability assessment.

RPS Projects considered by the Commission via IOU Advice Letter have already been the subject of significant due diligence during both the selection and negotiation processes. In the absence of any change in circumstances, it is parties’ expectation that the Commission would not reject any RPS contract at the advice letter stage based upon its independent judgment of the

^{12/} Analysis of SB 1036 by the Assembly Committee on Utilities and Commerce, June 29, 2007, page D. Available at: http://info.sen.ca.gov/pub/07-08/bill/sen/sb_1001-1050/sb_1036_cfa_20070629_131705_asm_comm.html.

^{13/} CalWEA and LSA discuss a possible exception to this general rule in their individually filed comments.

project's viability.

As is discussed elsewhere in these comments, the standards applied regardless of whether procurement is priced at or below the MPR, the Commission does not need another project viability standard to approve AMFs. The Commission should avoid the misconception that information about a project's development status enables reliable predictions about the project's viability because independent events may intervene.

The IOUs have found that credit requirements and performance guarantees provide one of the greatest incentives to comply with delivery obligations and thus ensure the "viability" of a PPA. The IOUs also negotiate performance requirements that are appropriate to the circumstances of each development. It would be time consuming and not necessarily productive to mandate a uniform performance requirement for all projects regardless of technology or size.

- What contract terms or conditions and project development milestones should be evaluated to assess a project's viability?

All of the criteria listed in the ALJ's Ruling, including site control, financing, permitting, resource studies, transmission upgrade needs, performance obligations and technology track record, contribute to the viability of an electric generation facility development project. Certain factors, such as transmission upgrade needs, cannot be mitigated or avoided, while others can be addressed over time.

- What weight should be given to each element you think is appropriate?

These factors are necessarily subjective, and quantitative weightings would not improve decision making.

- What documentation or analysis should the IOU include in the advice letter to provide the Commission with sufficient information to evaluate project's viability?

The Commission has spent substantial time and effort developing the advice letter template for IOU advice letters seeking approval of RPS contracts. The IOUs already provide substantial information with each advice letter that, in the aggregate, demonstrate the likelihood that the contracted amount of generation will be delivered by the firm operation date. As stated above, a definitive finding of project viability is not required for contract approval because experience has shown that subsequent, independent events will probably reduce the predictive value of a regulatory determination of viability. No additional changes are needed.

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?

Yes, the same review criteria should apply because the accounting treatment applied to a PPA should not affect the analysis regarding reasonableness of the transaction.

- Please consider and comment on the following examples:

Uniform reasonableness standards should apply to the review of all above-MPR RPS procurement contracts, regardless of whether the contract was initiated in response to a competitive solicitation or on a bilateral basis, and whether AMF is allocated to the contract or not.

The IOUs currently use market benchmarks for establishing a reasonable price, which are subject to flexibility depending on the circumstances of each individual development. These include a combination of least-cost best-fit evaluation and bid supply curves from recent solicitations. A project selected through a solicitation, that has competed against the market and been found to be the best choice for customers, should be found to be reasonable, whether above or below the MPR. Any bilateral transaction that performs well against the competition that it would have faced if bid into the RPS solicitation should also be deemed reasonable whether above or below the MPR.

The information cited in the ruling and described below do not truly constitute “standards of reasonableness” but provide a context for evaluating proposed PPAs resulting from both competitive solicitation and bilateral negotiations. The least-cost best-fit process, which is required by statute and has been refined with each successive RPS solicitation, and the bid supply curves from recent solicitations for similar resources, provide the most relevant and reliable guidance for the reasonableness of each renewable PPA.

- IOU’s least-cost best-fit (LCBF) analysis: LCBF analysis is used to evaluate and rank bids from the RPS solicitation. LCBF is also used to calculate the value of the RPS contract and compare each offer against all other offers.
- Bid supply curves from recent solicitations: Bid supply curves developed from the results of requests for offers may be used to demonstrate the transaction is reasonable relative to other offers.

- Technology-specific bid supply curves from recent solicitations: It is also reasonable to compare the price for a particular offer with comparable offers of the same technology in the solicitation making project-specific adjustments where warranted (for instance, to adjust for relative capacity factors).
- Technology cost curves developed as part of the Renewable Energy Transmission Initiative (RETI): The Commission should assess the reasonableness of RPS PPAs based on actual market information such as bid supply curves from recent solicitation and not on RETI estimates that may not reflect the actual market. Moreover, it is likely that the RETI estimates, based upon engineering studies, will be outdated almost as soon as they are developed.
- Review of a cash flow model: During initial review of a proposed PPA (*i.e.*, where a contract is submitted for Commission approval after being selected in a competitive solicitation), the Commission should not require submission of project-specific cash flow models. This issue is addressed further in individual comments filed by the respective joint parties.

IV. CALCULATING AMFS REQUESTS

1. Choosing the appropriate MPR.

Please discuss whether AMFs should be given to contracts (that are otherwise AMFs eligible) in the following situations, and propose a methodology for determining the appropriate MPR to use to calculate the AMFs need. Also, answer the specific questions associated with each scenario.

All contracts that are eligible to receive AMFs under the statutory criteria should be credited against the AMF account.

a) A contract is negotiated through a competitive solicitation, but is executed more than 18 months after the close of the solicitation. Should this contract:

- Be required to be bid into the next solicitation.

No. Mandating that a proposal be re-bid would simply delay execution of the contract and penalize the developer for delays and contingencies that may be beyond its control.

However, the IOU should continue to compare the contract with its other alternatives, which may include offers from a subsequent solicitation.

- Be compared against the most recent MPR; if so, should the TODs for that MPR also be used.

The project should be compared against the most recent MPR. The IOU-specific TOD factors in the most recent MPR should also be used.

- Be considered a bilateral contract, thus not eligible for AMFs, and compared against the MPR for the year the contract is signed.

No. As described above, there is no reason to penalize a developer simply because contract negotiations may be particularly complex and may have exceeded an arbitrary time allotment. The contract should not be considered a bilateral contract and should remain eligible for AMFs.

b) A Commission-approved project has negotiated an amendment to the price or another term that affects the contract price or AMFs request amount.

- Identify the benefits and risks of using a newer MPR to evaluate this contract.

Use of the updated MPR will more accurately reflect current energy prices (and reasonableness) at the time that the contract is amended. The risk of using an outdated MPR is that it simply does not reflect current market conditions. AMFs should be assigned to the amended contract.

c) The on-line date in the contract is not realistic (*e.g.*, permitting is delayed).

- Discuss whether and how the Commission should make a determination that the contractual on-line date is not realistic.

Parties currently undertake every effort to identify a realistic commercial on-line date (COD) at the time a PPA is signed. Indeed, developers are legally obligated to ensure that representations contained in a PPA regarding the COD are made in good faith. The IOUs keep the Commission informed of changes to the COD through informal communications as well as through the semi-annual Project Development Status Report. If, under the totality of the circumstances the Commission cannot find that the project is a viable one, the Commission should reject the PPA as written. Otherwise, the Commission should approve the contract as is, including the on-line date, and use that date in determining the project AMFs. Subsequent to Commission approval, the IOUs biannual Project Status Development Reports should be the principal reference of project on-line dates. These reports reflect current information and provide updated estimates of project development timing.

- Propose a methodology for the Commission and IOU to follow if choosing a new on-line date and/or amending the contract are warranted in order to more accurately choose an MPR and calculate an AMF request.

If the IOU amends the contract with a new price or on-line date and submits such amendment for Commission approval, that submittal should include an updated AMFs calculation. Similarly, as described below, if the IOU updates the estimate of on-line date in its semi-annual compliance filing, the AMF calculation may be updated as well.

2. Calculating a contract's levelized price. Please discuss whether AMFs should be given to the following types of contracts (that are otherwise AMFs eligible). Propose methodologies and provide examples for calculating the levelized price used to calculate the AMFs needed for each.

All contracts that are eligible for AMFs under the statutory criteria should be credited against the AMF account. The Commission should estimate the AMFs for each contract in the same manner that it estimates payment streams over the term of the contract when reviewing the reasonableness of the contract price. In all cases, the Commission should determine the AMFs only when it reviews contracts.

a) Contracts with contract prices indexed to a forward energy price.

A forecast of contract prices at the time an advice letter is filed can be used to calculate the project's AMFs. It is not reasonable to make monthly updates to AMFs to reflect changing market prices.

b) Contracts with contract prices indexed to the Consumer Price Index.

As described above, the Commission should use a forecast of the contract prices submitted with the advice letter filing.

c) Contracts with contract prices indexed to equipment costs (*e.g.*, wind turbines).

As described above, the Commission should use a forecast of the contract prices submitted with the advice letter filing. The final AMFs for the project could be updated when the final price is set upon commercial operation.

d) Contracts that allow for a range of project capacities, capacity factors or prices depending on the final results of transmission or resources studies.

In the case of contracts that allow for a range of capacities, capacity factors, or prices, the AMFs should initially be calculated based on the maximum capacity, capacity factor, or price.

The AMFs should then be “trued-up” at commercial operation or another time when the final capacity, capacity factor, or price is set.

V. AMFS LIMIT AND AMFS REQUESTS CALCULATION

Please see each party’s individual response.

VI. ADMINISTRATION OF AMFS

1. AMFs allocations for Commission-approved contracts.

- Identify a process and timeline for calculating and adopting the precise AMFs allocations for above-MPR RPS projects that have already been approved and applied to an IOU’s AMFs cost limitation.

Each IOU could submit a confidential accounting of AMF balance, previous credits against the account, and the remaining AMF balance within 30 days of the adoption of the counting methodologies. CalWEA and LSA do not support making this aggregate filing confidential.

2. “True-up” process.

- Identify the situations in which an AMF’s allocation may need to be amended.

A credit against the AMF balance may need to be reversed or “trued-up” in the event a contract is terminated or in the event of changes in on-line date, capacity, or price. Such true-ups should only be made based on objective and certain evidence and should not be made unilaterally by the Commission. Moreover, true-ups should occur after the filing of the IOUs’ semi-annual Project Development Status Report which will contain the most recent information on on-line date and capacity. True-ups based on price changes may also occur at other times as necessary (e.g., in a Commission approval of a contract amendment). The Commission should not continuously revise AMFs. Constant changes to AMFs would create uncertainty and seriously complicate the approval and procurement process.

Please see each party’s individual response for additional recommendations.

VII. BILATERAL REASONABLENESS STANDARDS

Please see each party’s individual response.

VIII. CONCLUSION

The Joint Parties urge the Commission to administer the AMF established by SB 1036 by adhering to the plain letter of the statute. This straightforward and transparent approach is

necessary to provide renewable energy stakeholders with the benefits envisioned by the legislature and to provide electricity customers with the rate protection envisioned by the drafters of SB 1036. In addition, the Joint Parties respectfully request the Commission to consider the additional comments on the AMF issues that each has submitted on an individual basis.

Respectfully submitted,

WILLIAM V. MANHEIM
EVELYN C. LEE

AIMEE SMITH

By: _____/s/_____
EVELYN LEE

By: _____/s/_____
Aimee Smith

Law Department
Pacific Gas and Electric Company
Post Office Box 7442
San Francisco, CA 94120
Telephone: (415) 973-2786
Facsimile: (415) 973-5520
E-mail: ecl8@pge.com

Signed by Evelyn Lee on behalf of Aimee Smith

San Diego Gas & Electric Company
101 Ash Street, HQ-12
San Diego, California 92101
Telephone: (619) 699-5042
Facsimile: (619) 669-5027
E-mail: amsmith@sempra.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

CATHY KARLSTAD

JOSEPH KARP

By: _____/S/_____
Cathy Karlstad

BY: _____/S/_____
JOSEPH KARP

Signed by Evelyn Lee on behalf
of Cathy Karlstad

Signed by Evelyn Lee on behalf of Joseph Karp

Southern California Edison
2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6961
Facsimile: (626) 302-7740
E-mail: Cathy.Karlstad@sce.com

Winston & Strawn LLP
101 California Street
San Francisco, California 94111
Telephone: (415) 591-1529
Facsimile: (415) 591-1400
E-mail: jkarp@winston.com

Attorney for
SOUTHERN CALIFORNIA EDISON

Attorney for
California Wind Energy Association/Large Scale Solar
Association

July 8, 2008

SB 1036

Page A

Date of Hearing: July 2, 2007

ASSEMBLY COMMITTEE ON UTILITIES AND COMMERCE

Lloyd E. Levine, Chair

SB 1036 (Perata) - As Introduced: February 23, 2007

SENATE VOTE : 39-0SUBJECT : Energy: renewable energy resource.

SUMMARY : Deletes the authority for the California Energy Commission (CEC) to award Supplemental Energy Payments (SEPs) for the above-market cost of renewable power and instead authorizes the PUC to allow the investor-owned utilities (IOUs) to pay renewable developers for above-market costs as approved by the PUC with a cap on the total amount of above-market costs an IOU must pay set at a level equal to the maximum SEP payments that would have been allowed for each investor-owned utility.

EXISTING LAW :

- 1) Requires retail sellers of electricity, except municipal utilities, to increase their existing level of renewable resources by 1% of sales per year such that 20% of their retail sales are procured from eligible renewable resources by 2010.
- 2) Defines eligible renewable resources to include all generation from a renewable electricity generation facility that uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.
- 3) Allows the CEC to award SEPs to generators of eligible renewable resources to cover above-market costs of renewable energy. Once SEP funding is exhausted, they are no longer required to purchase additional renewable energy at above-market prices. Funding for the SEPs comes from an existing surcharge on electric bills which is designated for developing new in-state renewable electricity generation facilities.

SB 1036

Page B

THIS BILL :

- 1) Deletes provisions allowing the CEC to award 51.1% (currently

\$64,500,000 per year) of Public Goods Charge Funds (PGCs) deposited in the New Renewable Resources Account to fund SEPs for the above-market costs of renewable generators who bid into a retail seller of electricity's RPS solicitations.

- 2) Requires the CEC to transfer all funds currently in the New Renewable Resources Account that could have been allocated as SEPs back to the retail sellers of electricity, and requires the retail sellers to refund those funds to its ratepayers.
- 3) Eliminates the authority of the PUC to collect \$64,500,000 annually from IOU ratepayers to fund renewable resource projects. This is the amount of funds that were allocated to fund SEPs.
- 4) Provides that the PUC shall establish a cap on the total amount of money each IOU ratepayers could be required to pay for above market-costs of renewable electricity. The cap will be equal to the amount of funds each IOU would have transferred to the CEC to fund SEPs out of the New Renewable Resources Account. (Roughly \$600 million through 2012)
- 5) Provides that the if above-market costs of an IOU's renewable solicitations to meet its RPS obligations exceeds the cost caps, the IOU shall be allowed to limit its renewable procurement to the amount of renewable electricity that can be purchased at or below the cost cap.

FISCAL EFFECT : Unknown.

COMMENTS :

1) Brief history : Under California's RPS, the IOUs are required to increase their renewable procurement each year by at least 1% of total sales, so that 20% of their sales are from renewable energy sources by December 31, 2010. The PUC is required to adopt comparable requirements for direct access providers (Electricity Service Providers or ESPs) and community choice aggregators. Municipal utilities are not required to meet the same RPS as the IOUs, but instead must implement and enforce their own RPS program that recognizes the intent of the Legislature to encourage renewable resources.

SB 1036
Page C

To ensure that IOU ratepayers are not saddled with unlimited above-market costs, the RPS requires the PUC to determine the market price for electricity (known as the Market Price Referent or MPR) and then provides that the IOU are only required to pay the renewable generators the contract costs that do not exceed the MPR. The RPS also allows new renewable energy providers to apply to the CEC for SEPs to cover any costs above the MPR. The RPS requires IOUs, and certain other retail energy providers, to buy renewable electricity only to the extent PGC funds are available to pay for SEPs. If no PGC funds are available, the retail energy providers are not required to purchase additional renewable power.

Since 2004, the IOUs have issued three Requests for Proposals (RFPs) for renewable energy contracts that would comply with the RPS and potentially be eligible to receive SEPs. These RFPs have resulted in the IOUs signing a number of contracts for renewable power. To date all but one approved contract has been for prices below the MPR and thus no SEPs have been issued. However, reports from parties involved in the current renewable procurement process indicate that a significant amount of SEPs will be needed for contracts that will be approved this year and next.

2) The problem with SEPs : In the first few years after the RPS was implemented, the IOUs signed no contracts for renewable electricity that exceeded the MPR. Consequently, no request for SEPs were made and the system of awarding SEPs was not tested. However, starting last year, renewable developers began to express concerns that the mechanism for funding above market costs was making it impossible for them to get project financing.

The first part of the problem is the fact that the current SEP system requires reasonableness reviews of all contracts by two separate agencies. The contracts must first be approved as reasonable by the PUC, then if the developer wants to apply for SEPs the CEC can review the reasonableness of the contract a second time, and may deny SEPs even if the PUC determined the contract was reasonable.

The second problem is that since the funds for above-market costs are held in a state account for which the Legislature has the authority to change the expenditure requirements at any

SB 1036

Page D

time, financial institutions do not view that funding source as reliable enough to issue low-cost loans against. Thus projects that could exceed the MPR may not be able to get the financing they need.

This bill attempts to resolve these problems by eliminating the SEP provisions entirely. The bill then provides that the IOU will pay the entire costs of renewable contracts that are deemed reasonable, including the above market costs. The PUC would use current practices it has in place to review renewable contracts for reasonableness, and to make sure the specific contracts are written so they are the least costs and best fit for the IOU's needs.

3) Keeping costs in check : This bill maintains another goal of the RPS, which was to ensure that the RPS was not a renewable energy at all costs program. The SEPs provision in current law that provide that retail electricity sellers are not required to procure renewable electricity above the MPR if there are no funds available for SEPs acts as a de facto cost cap since there is a limited amount of funding allocated to the SEPs accounts. This bill leaves that same cost cap in place by imposing a direct cost cap on renewable procurement that equals the amount

of funds the IOUs would have been obligated to collect for SEPs.

4) Refund to Ratepayers: Current projections for the SEP balance are about \$300 million as of July 2007, though this amount could decline if the CEC makes SEP awards before this bill is enacted. The refund provided for in this bill will be a significant amount of money in terms of total dollars; however, if the money were actually refunded directly to each IOU customer, once the administrative costs of issuing a direct refund are subtracted, each customer refund would be minor. Alternative, the funds could be held in a balancing account with each utility and be used to offset future IOU ratepayer costs. The committee may wish to consider amending the bill to provide that the PUC shall determine the appropriate mechanism that ensures ratepayers receive the maximum direct economic benefit of the \$300 million.

RELATED LEGISLATION: AB 94 (Levine) and SB 411 (Simitian) both advance the RPS to a 33% renewable electricity goal by 2020. AB 94 was approved by this committee on April 9, 2007, on a 9-3 vote but was held in Assembly Natural Resources after the author

SB 1036

Page E

and the committee agreed that the committees should hold more thorough discussions on the feasibility of a 33% RPS target during the interim recess. SB 411 is pending in this committee.

REGISTERED SUPPORT / OPPOSITION :

Support

American Federation of State, County and Municipal Employees
(AFSCME)
Sempra Energy
Union of Concerned Scientist

Opposition

None on file.

Analysis Prepared by : Edward Randolph / U. & C. / (916)
319-2083

**CERTIFICATE OF SERVICE
BY ELECTRONIC MAIL OR U.S. MAIL**

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 8th day of July, 2008, I caused to be served a true copy of:

**JOINT POST-WORKSHOP COMMENTS OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39-E)
SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E);
SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E); AND
CALIFORNIA WIND ENERGY ASSOCIATION /
LARGE SCALE SOLAR ASSOCIATION
REGARDING IMPLEMENTATION OF SB 1036**

[XX] By Electronic Mail – serving the enclosed, via E-mail transmission, to each of the parties listed on the official service list for R.06-02-012 with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official list for R.06-02-012 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 8th day of July, 2008 at San Francisco, California.

_____/s/_____
Karen J. Price

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**JASON ABIECUNAS BLACK & BEATCH GLOBAL
RENEWABLE ENERGY
RENEWABLE ENERGY CONSULTANT**
11401 LAMAR
OVERLAND PARK KS 66211
FOR: RENEWABLE ENERGY CONSULTANT
Email: abiecunasjp@bv.com
Status: INFORMATION

APS ENERGY SERVICES COMPANY, INC.
400 E. VAN BUREN ST, STE 750
PHOENIX AZ 85004
Email: stacy.aguayo@apses.com
Status: PARTY

CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. STE 303
SAN FRANCISCO CA 94117
FOR: CALIFORNIA ENERGY MARKETS
Email: cem@newsdata.com
Status: INFORMATION

MRW & ASSOCIATES, INC.
1814 FRANKLIN ST, STE 720
OAKLAND CA 94612
Email: mrw@mrwassoc.com
Status: INFORMATION

LEGAL AND REGULATORY DEPARTMENT
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
FOR: CALIFORNIA ISO
Email: e-recipient@caiso.com
Status: INFORMATION

STRATEGIC ENERGY, LTD.
7220 AVENIDA ENCINAS, STE 120
CARLSBAD CA 92009
Email: customerrelations@sel.com
Status: PARTY

PILOT POWER GROUP, INC.
8910 UNIVERSITY CENTER LANE, STE 520
SAN DIEGO CA 92122
Email: tdarton@pilotpowergroup.com
Status: PARTY

OCCIDENTAL POWER SERVICES, INC.
5 GREENWAY PLAZA, STE 110
HOUSTON TX 77046
Email: ej_wright@oxy.com
Status: PARTY

3 PHASES ENERGY SERVICES
2100 SEPULVEDA BLVD., STE 37
MANHATTAN BEACH CA 90266
Status: PARTY

CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST.
SAN FRANCISCO CA 94117
Email: cem@newsdata.com
Status: INFORMATION

AMERICAN UTILITY NETWORK
10705 DEER CANYON DRIVE
ALTA LOMA CA 91737
Email: pssed@adelphia.net
Status: PARTY

SOCAL WATER/BEAR VALLEY ELECTRIC
630 EAST FOOTHILL BLVD.
SAN DIMAS CA 91773
Email: kswitzer@gswater.com
Status: PARTY

SEMPRA ENERGY SOLUTIONS
101 ASH ST, HQ09
SAN DIEGO CA 92101-3017
Email: email@semprasure.com
Status: PARTY

PRAXAIR PLAINFIELD, INC.
2711 CENTERVILLE ROAD, STE 400
WILMINGTON DE 19808
Email: rick_noger@praxair.com
Status: PARTY

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AOL UTILITY CORP.
12752 BARRETT LANE
SANTA ANA CA 92705
Status: PARTY

DAN ADLER DIRECTOR, TECH AND POLICY
DEVELOPMENT
CALIFORNIA CLEAN ENERGY FUND
5 THIRD ST, STE 1125
SAN FRANCISCO CA 94103
Email: Dan.adler@calcef.org
Status: INFORMATION

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY
Email: case.admin@sce.com
Status: INFORMATION

STACY AGUAYO
APS ENERGY SERVICES
400 E. VAN BUREN ST, STE 750
PHOENIX AZ 85004
Email: stacy.aguayo@apses.com
Status: INFORMATION

MICHAEL ALCANTAR ATTORNEY
ALCANTAR & KAHL, LLP
120 MONTGOMERY ST, STE 2200
SAN FRANCISCO CA 94104
FOR: Cogeneration Association of California
Email: mpa@a-klaw.com
Status: PARTY

LYNN M. ALEXANDER
LMA CONSULTING
129 REDWOOD AVE
CORTE MADERA CA 94925
Email: lynn@lmaconsulting.com
Status: INFORMATION

CATHIE ALLEN CA STATE MGR.
PACIFICORP
825 NE MULTNOMAH ST, STE 2000
PORTLAND OR 97232
Email: californiadockets@pacificorp.com
Status: INFORMATION

GARY L. ALLEN
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
Email: gary.allen@sce.com
Status: INFORMATION

NICK ALLEN
MORGAN STANLEY RESEARCH
555 CALIFORNIA ST STE 2200 21ST FLR
SAN FRANCISCO CA 94104
Email: Nick.Allen@morganstanley.com
Status: INFORMATION

PETER V. ALLEN
THELEN REID BROWN RAYSMAN & STEINER
101 SECOND ST, STE 1800
SAN FRANCISCO CA 94105-3606
Email: pvalen@thelen.com
Status: INFORMATION

R. JAMES ANSELL
ALTERNITY WIND POWER
ONE CRAGWOOD ROAD
SOUTH PLAINFIELD NJ 7080
Email: jansell@alternitywindpower.com
Status: INFORMATION

ROD AOKI ATTORNEY
ALCANTAR & KAHL, LLP
120 MONTGOMERY ST, STE 2200
SAN FRANCISCO CA 94104
FOR: Occidental Power Services, Inc.
Email: rsa@a-klaw.com
Status: PARTY

PHILIPPE AUCLAIR
11 RUSSELL COURT
WALNUT CREEK CA 94598
Email: philha@astound.net
Status: INFORMATION

Amanda C. Baker
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: ab1@cpuc.ca.gov
Status: STATE-SERVICE

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Total number of addressees: 324

ELIZABETH BAKER
SUMMIT BLUE CONSULTING
1722 14TH ST, STE 230
BOULDER CO 80304
Email: bbaker@summitblue.com
Status: INFORMATION

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO CA 95460
Email: brbarkovich@earthlink.net
Status: INFORMATION

BILL BARNES
CLEANTECH AMERICA, INC.
50 CALIFORNIA ST, STE 1500
SAN FRANCISCO CA 94111
FOR: Cleantech America, Inc.
Email: b.barnes@cleantechamerica.com
Status: PARTY

BRAD BAUER
MP2CAPITAL
1101 FIFTH AVE, STE 360
SAN RAFAEL CA 94901
Email: brad@mp2capital.com
Status: INFORMATION

C. SUSIE BERLIN
MCCARTHY & BERLIN LLP
100 W. SAN FERNANDO ST., STE 501
SAN JOSE CA 95113
Email: sberlin@mccarthylaw.com
Status: INFORMATION

SARAH BESERRA
CALIFORNIA REPORTS.COM
39 CASTLE HILL COURT
VALLEJO CA 94591
Email: sbeserra@sbcglobal.net
Status: INFORMATION

BILLY BLATTNER MANAGER REGULATORY RELATIONS
SAN DIEGO GAS & ELECTRIC COMPANY
601 VAN NESS AVE, STE 2060
SAN FRANCISCO CA 94102
FOR: SDG&E/SoCal Gas
Email: wblattner@semprautilities.com
Status: INFORMATION

WHITNEY BARDWICK
MP2 CAPITAL
1101 5TH AVE, STE 360
SAN RAFAEL CA 94901
Status: INFORMATION

AIMEE BARNES MANAGER REGULATORY AFFAIRS
ECOSECURITIES
206 W. BONITA AVE, HARVARD SQUARE
CLAREMONT CA 91711
FOR: EcoSecurities
Email: aimee.barnes@ecosecurities.com
Status: PARTY

GREG BASS DIRECTOR, RETAIL COMMODITY OPERATIONS
SEMPRA ENERGY SOLUTIONS
400 WEST A ST, STE 500
SAN DIEGO CA 92101-3017
Email: gbass@semprasolutions.com
Status: INFORMATION

R. THOMAS BEACH PRINCIPAL CONSULTANT
CROSSBORDER ENERGY
2560 NINTH ST, STE 213A
BERKELEY CA 94710-2557
FOR: California Wind Energy Assn/California Cogeneration Council/Large-scale Solar Assn/Solar Alliance
Email: tomb@crossborderenergy.com
Status: PARTY

RYAN BERNARDO
BRAUN BLAISING MCLAUGHLIN, P.C.
915 L ST, STE 1270
SACRAMENTO CA 95814
Email: bernardo@braunlegal.com
Status: INFORMATION

SCOTT BLAISING ATTORNEY
BRAUN & BLAISING, P.C.
915 L ST, STE 1420
SACRAMENTO CA 95814
Email: blaising@braunlegal.com
Status: INFORMATION

ASHLEE M. BONDS
THELEN REID BROWN RAYSMAN&STEINER LLP
SUITE 1800
101 SECOND ST
SAN FRANCISCO CA 94105
Email: abonds@thelen.com
Status: INFORMATION

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ALJ Assigned: Burton Mattson on November 15, 2006

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Total number of addressees: 324

WILLIAM H. BOOTH ATTORNEY
LAW OFFICE OF WILLIAM H. BOOTH
67 CARR DRIVE
MORAGA CA 94596
FOR: Ridgewood Renewable Power, LLC and Ridgewood
Olinda, LLC
Email: wbooth@booth-law.com
Status: PARTY

BIANCA BOWMAN CASE COORDINATOR
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MAIL CODE B9A
SAN FRANCISCO CA 94105
Email: brbc@pge.com
Status: INFORMATION

CLARE BREIDENICH
224 1/2 24TH AVE. EAST
SEATTLE WA 98112
Email: cbreidenich@yahoo.com
Status: INFORMATION

DONALD BROOKHYSER
ALCANTAR & KAHL
1300 SW FIFTH AVE., STE 1750
PORTLAND OR 97210
FOR: Cogeneration Association of California
Email: deb@a-klaw.com
Status: INFORMATION

DAN L. CARROLL ATTORNEY
DOWNEY BRAND LLP
555 CAPITOL MALL, 10TH FLR
SACRAMENTO CA 95814
FOR: Mountain Utilities
Email: dcarroll@downeybrand.com
Status: PARTY

RONALD M. CERNIGLIA DIRECTOR- NATIONAL
ADVOCACY
DIRECT ENERGY SERVICES, LLC
40 COLUMBINE DRIVE
GLENMONT NY 12077-2966
FOR: Direct Energy Services, LLC
Email: ron.cerniglia@directenergy.com
Status: PARTY

JENNIFER CHAMBERLIN MGR. OF REG. AND GOV.
AFFAIRS
STRATEGIC ENERGY, LLC
2633 WELLINGTON CT.
CLYDE CA 94520
Email: jchamberlin@strategicenergy.com
Status: PARTY

KAREN E. BOWEN
WINSTON & STRAWN LLP
101 CALIFORNIA ST, 39TH FLR
SAN FRANCISCO CA 94111
FOR: California Wind Energy Association
Email: jkarp@winston.com
Status: PARTY

PETER BREHM
INFINIA CORPORATION
6811 OKANOGAN PLACE
KENNEWICK WA 99336
Email: pbrehm@infiniacorp.com
Status: INFORMATION

GLORIA BRITTON
ANZA ELECTRIC COOPERATIVE, INC.
58470 HWY 371
PO BOX 391909
ANZA CA 92539
Email: GloriaB@anzaelectric.org
Status: PARTY

ANDREW B. BROWN ATTORNEY
ELLISON SCHNEIDER & HARRIS, LLP
2015 H ST
SACRAMENTO CA 95811
FOR: Constellation New Energy, Inc./Praxair Plainfield, Inc.
Email: abb@eslawfirm.com
Status: PARTY

TIMOTHY CASTILLE
LANDS ENERGY CONSULTING, INC.
18109 SE 42ND ST
VANCOUVER WA 98683
Email: castille@landsenergy.com
Status: INFORMATION

STEVE CHADIMA
ENERGY INNOVATIONS, INC.
130 WEST UNION ST
PASADENA CA 91103
Email: steve@energyinnovations.com
Status: INFORMATION

MAGGIE CHAN
PG&E
MAILCODE B9A
PO BOX 770000
SAN FRANCISCO CA 94177
Email: MMCL@pge.com
Status: INFORMATION

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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CLIFF CHEN
UNION OF CONCERNED SCIENTISTS
2397 SHATTUCK AVE, STE 203
BERKELEY CA 94708
FOR: Union of Concerned Scientists
Email: cchen@ucsusa.org
Status: PARTY

GARY COLLORD STATIONARY SOURCE DIVISION
AIR RESOURCES BOARD
1001 I ST, PO BOX 2815
SACRAMENTO CA 95812
Email: gcollord@arb.ca.gov
Status: STATE-SERVICE

CASE COORDINATION
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000; MC B9A
SAN FRANCISCO CA 94177
Email: regrelcpuccases@pge.com
Status: INFORMATION

DOUGLAS E. COVER
ENVIRONMENTAL SCIENCE ASSOCIATES
225 BUSH ST, STE 1700
SAN FRANCISCO CA 94104
Email: dcover@esassoc.com
Status: INFORMATION

HOLLY B. CRONIN STATE WATER PROJECT
OPERATIONS DIV
CALIFORNIA DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., LL-90
SACRAMENTO CA 95821
Email: hcronin@water.ca.gov
Status: STATE-SERVICE

THOMAS DARTON
PILOT POWER GROUP, INC.
8910 UNIVERSITY CENTER LANE, STE 520
SAN DIEGO CA 92122
FOR: Pilot Power Group, Inc.
Email: tdarton@pilotpowergroup.com
Status: PARTY

KEVIN DAVIES
SOLAR DEVELOPMENT INC.
5420 DOUGLAS BLVD. STE F
GRANITE BAY CA 95746-6253
Email: kevin@solardevelop.com
Status: INFORMATION

TONY CHEN SR. MANGER, BUSINESS DEVEL.
COOL EARTH
7665 HAWTHORNE AVE
LIVERMORE CA 94550
FOR: COOL EARTH SOLAR
Email: tchen@coolearthsolar.com
Status: INFORMATION

GRAIG COOPER
55 2ND ST, STE 525
SAN FRANCISCO CA 94105
Email: gcooper@cpv.com
Status: INFORMATION

THOMAS P. CORR
SEMPRA ENERGY GLOBAL ENTERPRISES
101 ASH ST, HQ16C
SAN DIEGO CA 92101
Email: tcorr@sempra.com
Status: INFORMATION

BRIAN CRAGG ATTORNEY
GOODIN, MAC BRIDE, SQUERI, DAY & LAMPREY
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
FOR: Independent Energy Producers Association (IEPA)
Email: bcragg@goodinmacbride.com
Status: PARTY

JOHN DALESSI
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, STE 600
RANCHO CORDOVA CA 95670-6078
FOR: South San Joaquin Valley Power Authority/Kings
River Conservation District
Email: jdalessi@navigantconsulting.com
Status: PARTY

DOUG DAVIE
DAVIE CONSULTING, LLC
3390 BEATTY DRIVE
EL DORADO HILLS CA 95762
Email: dougdpucmail@yahoo.com
Status: INFORMATION

KYLE L. DAVIS
PACIFICORP
825 NE MULTNOMAH ST., 20TH FLR
PORTLAND OR 97232
Email: kyle.l.davis@pacificorp.com
Status: INFORMATION

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MICHAEL B. DAY ATTORNEY
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
FOR: PV Now/Solar Alliance
Email: mday@goodinmacbride.com
Status: PARTY

NEAL DE SNOO ENERGY OFFICE
CITY OF BERKELEY
2180 MILVIA AVE
BERKELEY CA 94704
FOR: East Bay Power Authority/City of Berkeley
Email: ndesnoo@ci.berkeley.ca.us
Status: PARTY

PAUL DELANEY
AMERICAN UTILITY NETWORK (A.U.N.)
10705 DEER CANYON DRIVE
ALTA LOMA CA 91737
Email: pssed@adelphia.net
Status: PARTY

WILLIAM F. DIETRICH ATTORNEY
DIETRICH LAW
2977 YGNACIO VALLEY ROAD, NO. 613
WALNUT CREEK CA 94598-3535
Email: dietrichlaw2@earthlink.net
Status: INFORMATION

Paul Douglas
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: psd@cpuc.ca.gov
Status: STATE-SERVICE

ELIZABETH DOUGLASS STAFF WRITER
LOS ANGELES TIMES
202 WEST FIRST ST
LOS ANGELES CA 90012
Email: elizabeth.douglass@latimes.com
Status: INFORMATION

KEVIN DUGGAN ATTORNEY
CALPINE COPORATION
3845 HOPYARD ROAD, STE 345
PLEASANTON CA 94588
Email: duggank@calpine.com
Status: INFORMATION

DENNIS W. DE CUIR ATTY AT LAW
A LAW CORPORATION
2999 DOUGLAS BLVD., STE 325
ROSEVILLE CA 95661
FOR: Bear Valley Electric Service, Div. of Golden State
Water Co.
Email: dennis@ddecuir.com
Status: INFORMATION

MICHAEL DEANGELIS
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S ST
SACRAMENTO CA 95817-1899
FOR: SACRAMENTO MUNICIPAL UTILITY DISTRICT
Email: mdeange@smud.org
Status: INFORMATION

BALDASSARO DICAPO
CALIFORNIA ISO
LEGAL AND REGULATORY DEPARTMENT
151 BLUE RAVINE ROAD
FOLSOM CA 95630
FOR: California Independent System Operators
Email: bdicapo@caiso.com
Status: INFORMATION

TREVOR DILLARD
SIERRA PACIFIC POWER COMPANY
PO BOX 10100
6100 NEIL ROAD, MS S4A50
RENO NV 89520-0024
Email: tdillard@sppc.com
Status: INFORMATION

DANIEL W. DOUGLASS ATTORNEY
DOUGLASS & LIDDELL
21700 OXNARD ST, STE 1030
WOODLAND HILLS CA 91367
FOR: Alliance For Retail Energy Markets,Energy America,
LLC,Commerce Energy, Inc.
Email: douglass@energyattorney.com
Status: PARTY

Dorothy Duda
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 5109
SAN FRANCISCO CA 94102-3214
Email: dot@cpuc.ca.gov
Status: STATE-SERVICE

Gretchen T. Dumas
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVE RM 4300
SAN FRANCISCO CA 94102-3214
FOR: CPUC Legal
Email: gtd@cpuc.ca.gov
Status: PARTY

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KIRBY DUSEL
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, STE 600
RANCHO CORDOVA CA 95670
FOR: San Joaquin Valley Power Authority
Email: kdusel@navigantconsulting.com
Status: INFORMATION

KERRY EDEN ASST. GENERAL MGR.
CITY OF CORONA DEPT. OF WATER & POWER
730 CORPORATION YARD WAY
CORONA CA 92880
Email: kerry.eden@ci.corona.ca.us
Status: PARTY

LARRY F. EISENSTAT
DICKSTEIN SHAPIRO LLP
1825 EYE ST, NW
WASHINGTON DC 20006
FOR: CPV Renewable Energy Company, LLC
Status: PARTY

BARRY H. EPSTEIN
FITZGERALD, ABBOTT & BEARDSLEY, LLP
1221 BROADWAY, 21ST FLR
OAKLAND CA 94612
FOR: FITZGERALD, ABBOTT & BEARDSLEY, LLP
Email: bepstein@fablaw.com
Status: INFORMATION

SAEED FARROKHPAY
FEDERAL ENERGY REGULATORY COMMISSION
110 BLUE RAVINE RD., STE 107
FOLSOM CA 95630
Email: saeed.farrokhpay@ferc.gov
Status: INFORMATION

PAUL FENN
LOCAL POWER
4281 PIEDMONT AVE.
OAKLAND CA 94611
Email: paulfenn@local.org
Status: INFORMATION

CENTRAL FILES
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP31E
SAN DIEGO CA 92123
FOR: SAN DIEGO GAS & ELECTRIC
Email: centralfiles@semprautilities.com
Status: INFORMATION

JOHN DUTCHER VICE PRESIDENT - REGULATORY
AFFAIRS
MOUNTAIN UTILITIES
3210 CORTE VALENCIA
FAIRFIELD CA 94534-7875
Email: ralf1241a@cs.com
Status: PARTY

HARVEY EDER
PUBLIC SOLAR POWER COALITION
1218 12TH ST., 25
SANTA MONICA CA 90401
Email: harveyederpspc@hotmail.com
Status: INFORMATION

THOMAS ELGIE
POWEREX CORPORATION
1400, 666 BURRAND ST
VANCOUVER BC V6C 2X8 CANADA
FOR: Powerex Corporation
Email: Tom.Elgie@powerex.com
Status: PARTY

MELANIE FALLS
COMPETITIVE POWER VENTURES, INC.
55 SECOND ST, STE 525
SAN FRANCISCO CA 94105
Status: INFORMATION

DIANE I. FELLMAN ATTORNEY
FPL ENERGY, LLC
234 VAN NESS AVE
SAN FRANCISCO CA 94102
Email: diane_fellman@fpl.com
Status: INFORMATION

LAW DEPARTMENT FILE ROOM
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120-7442
Email: cpucases@pge.com
Status: INFORMATION

ROBERT FINKELSTEIN ATTORNEY
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., STE 350
SAN FRANCISCO CA 94102
Email: bfinkelstein@turn.org
Status: INFORMATION

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SEAN J. FINNERTY SR. VICE PRESIDENT
COMPETITIVE POWER VENTURES, INC.
35 BRAINTREE HILL OFFICE PARK, STE 400
BRAINTREE MA 2184
Email: sfinnerty@cpv.com
Status: INFORMATION

JOSEPH FLESHMAN
CALIFORNIA ENERGY COMMISSION
1516 9TH ST, MS-45
SACRAMENTO CA 95814
FOR: CALIFORNIA ENERGY COMMISSION
Email: jfleshma@energy.state.ca.us
Status: STATE-SERVICE

RYAN FLYNN ATTORNEY
PACIFICORP
825 NE MULTNOMAH, STE 1800
PORTLAND OR 97232
Email: ryan.flynn@pacificorp.com
Status: PARTY

CYNTHIA A. FONNER SENIOR COUNSEL
CONSTELLATION ENERGY GROUP INC
500 WEST WASHINGTON ST, STE 300
CHICAGO IL 60661
FOR: Constellation Energy Group Inc
Email: Cynthia.A.Fonner@constellation.com
Status: PARTY

BRIAN C. FRECKMANN
C/O FOUNDATION PARTNERS
100 DRAKES LANDING ROAD NO. 125
GREENBRAE CA 94904
Email: brian@banyansec.com
Status: INFORMATION

ROBERT B. GEX ATTORNEY,
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY ST, STE 800
SAN FRANCISCO CA 94111-6533
Email: bobgex@dwt.com
Status: INFORMATION

Anne Gillette
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: aeg@cpuc.ca.gov
Status: STATE-SERVICE

Julie A. Fitch
CALIF PUBLIC UTILITIES COMMISSION
POLICY & PLANNING DIVISION
505 VAN NESS AVE RM 5119
SAN FRANCISCO CA 94102-3214
Email: jf2@cpuc.ca.gov
Status: STATE-SERVICE

MICHEL P. FLORIO ATTORNEY
THE UTILITY REFORM NETWORK (TURN)
711 VAN NESS AVE, STE.350
SAN FRANCISCO CA 94102
Email: mflorio@turn.org
Status: INFORMATION

MATHEW A. FOGELSON
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, MC B30A-2487
SAN FRANCISCO CA 94120-7442
Email: MAFv@pge.com
Status: PARTY

KEVIN FOX
KEYES & FOX LLP
5727 KEITH AVE
OAKLAND CA 94618
Email: kfoxx@keyesandfox.com
Status: INFORMATION

DONALD N. FURMAN SENIOR VICE PRESIDENT
IBERDROLA RENEWABLES INC
1125 NW COUCH ST, STE 700
PORTLAND OR 97209
FOR: Iberdrola Renewables Inc.
Status: PARTY

JEDEDIAH J. GIBSON ATTORNEY
ELLISON SCHNEIDER & HARRIS LLP
2015 H ST
SACRAMENTO CA 95811
FOR: Sierra Pacific Power Company
Email: jjg@eslawfirm.com
Status: INFORMATION

MICHAEL J. GILMORE
INLAND ENERGY
SOUTH TOWER SUITE 606
3501 JAMBOREE RD
NEWPORT BEACH CA 92660
Email: michaelgilmore@inlandenergy.com
Status: INFORMATION

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BILL GOLOVE
CHEVRON ENERGY SOLUTIONS
345 CALIFORNIA ST, 18TH FLR
SAN FRANCISCO CA 94104
Email: whgolove@chevron.com
Status: INFORMATION

RAMONA GONZALEZ
EAST BAY MUNICIPAL UTILITY DISTRICT
375 ELEVENTH ST, M/S NO. 205
OAKLAND CA 94607
Email: ramonag@ebmud.com
Status: INFORMATION

JEFFREY P. GRAY ATTORNEY
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY ST, STE 800
SAN FRANCISCO CA 94111-6533
FOR: CalpinePowerAmerica-CA, LLC/Firends of Kirkwood
Association
Email: jeffgray@dwt.com
Status: PARTY

YVONNE GROSS REGULATORY POLICY MANAGER
SEMPRA ENERGY
101 ASH ST, HQ08C
SAN DIEGO CA 92101
Email: ygross@sempraglobal.com
Status: INFORMATION

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
Email: SEHC@pge.com
Status: INFORMATION

JANICE G. HAMRIN
CENTER FOR RESOURCE SOLUTIONS
PRESIDIO BUILDING 97
PO BOX 29512
SAN FRANCISCO CA 94129
FOR: CENTER FOR RESOURCE SOLUTIONS
Email: jhamrin@resource-solutions.org
Status: PARTY

ARNO HARRIS
RECURRENT ENERGY, INC.
1700 MONTGOMERY ST., STE 251
SAN FRANCISCO CA 94111
Email: arno@recurrentenergy.com
Status: INFORMATION

LORRAINE GONZALES
CALIFORNIA ENERGY COMMISSION
1516 9TH ST MS-45
SACRAMENTO CA 95814
FOR: CALIFORNIA ENERGY COMMISSION
Email: lgonzale@energy.state.ca.us
Status: STATE-SERVICE

HOLLY GORDON VP LEGISLATIVE/REGULATORY
AFFAIRS
AUSRA, INC.
2585 E. BAYSHORE ROAD
PALO ALTO CA 94303
FOR: Large-Scale Solar Associatin
Email: holly@ausra.com
Status: PARTY

JOE GRECO
TERRA-GEN POWER LLC
9590 PROTOTYPE COURT, STE 200
RENO NV 89521
Email: jgreco@terra-genpower.com
Status: INFORMATION

DANIEL V. GULINO
RIDGEWOOD POWER MANAGEMENT, LLC
947 LINWOOD AVE
RIDGEWOOD NJ 7450
FOR: RIDGEWOOD POWER MANAGEMENT, LLC
Email: dgulino@ridgewoodpower.com
Status: PARTY

TOM HAMILTON ENERGY PROGRAM MANAGER
QUALITY BUILT
15330 AVE OF SCIENCE
SAN DIEGO CA 92128
Email: thamilton@qualitybuilt.com
Status: INFORMATION

PETER W. HANSCHEN ATTORNEY
MORRISON & FOERSTER, LLP
101 YGNACIO VALLEY ROAD, STE 450
WALNUT CREEK CA 94596
Email: phansch@mofo.com
Status: INFORMATION

FRANK W. HARRIS REGULATORY ECONOMIST
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE
ROSEMEAD CA 91770
FOR: SOUTHERN CALIFORNIA EDISON
Email: frank.w.harris@sce.com
Status: INFORMATION

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JEFFREY HARRIS ATTORNEY
ELLISON & SCHNEIDER
2015 H ST
SACRAMENTO CA 95811
FOR: Dynegy
Email: jdh@eslawfirm.com
Status: INFORMATION

KIM F. HASSAN ATTORNEY
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH ST, HQ-12
SAN DIEGO CA 92101
FOR: San Diego Gas & Electric
Email: khassan@sempra.com
Status: PARTY

ARTHUR L. HAUBENSTOCK
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, B30A
SAN FRANCISCO CA 94105
Status: PARTY

MARCEL HAWIGER ATTORNEY
THE UTILITY REFORM NETWORK
711 VAN NESS AVE, STE 350
SAN FRANCISCO CA 94102
FOR: The Utility Reform Network
Email: marcel@turn.org
Status: PARTY

DANIEL M. HECHT ASSOCIATE GENERAL COUNSEL
SEMPPRA ENERGY TRADING CORP.
58 COMMERCE ROAD
STANFORD CT 6902
Email: dhecht@sempratrading.com
Status: INFORMATION

SETH D. HILTON
STOEL RIVES
111 SUTTER ST., STE 700
SAN FRANCISCO CA 94104
Email: sdhilton@stoel.com
Status: INFORMATION

DAVID L. HUARD ATTORNEY
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD
LOS ANGELES CA 90064
FOR: MANATT, PHELPS & PHILLIPS, LLP
Email: dhuard@manatt.com
Status: PARTY

AUDRA HARTMANN
DYNEGY INC.
980 NINTH ST, STE 2130
SACRAMENTO CA 95814
FOR: Dynegy, Inc.
Email: Audra.Hartmann@Dynergy.com
Status: PARTY

KERRY HATTEVIK DIRECTOR OF REG. AND MARKET
AFFAIRS
NRG ENERGY
829 ARLINGTON BLVD.
EL CERRITO CA 94530
Email: kerry.hattevik@nrgenergy.com
Status: INFORMATION

LYNN M. HAUG ATTORNEY
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H ST
SACRAMENTO CA 95811-3109
FOR: Sierra Pacific Power Company
Email: lmh@eslawfirm.com
Status: PARTY

SEAN HAZLETT
MORGAN STANLEY
555 CALIFORNIA ST., STE 2200, 21ST FL
SAN FRANCISCO CA 94104
Email: sean.hazlett@morganstanley.com
Status: INFORMATION

ANN HENDRICKSON
COMMERCE ENERGY, INC.
222 WEST LAS COLINAS BLVD., STE 950E
IRVING TX 75039
FOR: COMMERCE ENERGY, INC.
Email: ahendrickson@commerceenergy.com
Status: INFORMATION

LENNY HOCHSCHILD EVOLUTION MARKETS, LLC
RENEWABLE ENERGY MARKETS
425 MARKET ST, STE 2200
SAN FRANCISCO CA 94105
FOR: RENEWABLE ENERGY MARKETS
Email: lennyh@evomarkets.com
Status: INFORMATION

PAUL D. HUNT
4929 WEBSTER ST
OAKLAND CA 94609-2116
Email: pdh9@columbia.edu
Status: INFORMATION

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TAMLYN M. HUNT ENERGY PROGRAM DIRECTOR
COMMUNITY ENVIRONMENTAL COUNCIL
26 W. ANAPAMU ST., 2ND FLR
SANTA BARBARA CA 93101
FOR: COMMUNITY ENVIRONMENTAL COUNCIL
Email: thunt@cecmail.org
Status: PARTY

Louis M. Irwin
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4209
SAN FRANCISCO CA 94102-3214
Email: lmi@cpuc.ca.gov
Status: STATE-SERVICE

TODD JAFFE ENERGY BUSINESS BROKERS AND
CONSULTANTS
3420 KEYSER ROAD
BALTIMORE MD 21208
Email: tjaffe@energybusinessconsultants.com
Status: INFORMATION

EVELYN KAHL ATTORNEY
ALCANTAR & KAHL, LLP
120 MONTGOMERY ST, STE 2200
SAN FRANCISCO CA 94104
FOR: Energy Producers and Users Coalition
Email: ek@a-klaw.com
Status: PARTY

ALEX KANG
ITRON, INC.
1111 BROADWAY, STE. 1800
OAKLAND CA 94607
Email: alex.kang@itron.com
Status: INFORMATION

JOSEPH M. KARP ATTORNEY
WINSTON & STRAWN LLP
101 CALIFORNIA ST, 39TH FLR
SAN FRANCISCO CA 94111-5894
FOR: California Wind Energy Association
Email: jkarp@winston.com
Status: PARTY

CAROLYN KEHREIN
ENERGY MANAGEMENT SERVICES
2602 CELEBRATION WAY
WOODLAND CA 95776
Email: cmkehrein@ems-ca.com
Status: PARTY

MICHAEL A. HYAMS POWER ENTERPRISE-
REGULATORY AFFAIRS
SAN FRANCISCO PUBLIC UTILITIES COMM
1155 MARKET ST., 4TH FLR
SAN FRANCISCO CA 94103
Email: mhyams@sflower.org
Status: PARTY

MARK E. IRWIN
EDISON MISSION ENERGY
18101 VON KARMAN AVE. STE 1700
IRVINE CA 92612
FOR: EDISON MISSION ENERGY
Email: mirwin@edisonmission.com
Status: INFORMATION

MARC D. JOSEPH ATTORNEY
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
Email: mdjoseph@adamsbroadwell.com
Status: INFORMATION

Sara M. Kamins
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: smk@cpuc.ca.gov
Status: STATE-SERVICE

CATHY A. KARLSTAD
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
Email: cathy.karlstad@sce.com
Status: PARTY

RANDALL W. KEEN ATTORNEY
MANATT PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES CA 90064
FOR: MANATT PHELPS & PHILLIPS, LLP
Email: rkeen@manatt.com
Status: PARTY

STEVEN KELLY POLICY DIRECTOR
INDEPENDENT ENERGY PRODUCERS
1215 K ST, STE 900
SACRAMENTO CA 95814
FOR: IEP
Email: steven@iepa.com
Status: PARTY

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DOUGLAS K. KERNER ATTORNEY
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H ST
SACRAMENTO CA 95814
FOR: Independent Energy Producers Association
Email: dkk@eslawfirm.com
Status: PARTY

DANIEL A. KING
SEMPRA ENERGY
101 ASH ST, HQ 12
SAN DIEGO CA 92101
Email: daking@sempra.com
Status: INFORMATION

GREGORY S. G. KLATT
DOUGLASS & LIDDELL
21700 OXNARD ST, STE 1030
WOODLAND HILLS CA 91367-8102
FOR: Alliance for Retail Energy Markets/APS Energy
Services/Western Power Trading Forum
Email: klatt@energyattorney.com
Status: PARTY

BILL KNOX
CALIFORNIA ENERGY COMMISSION
1516 NINTH ST, MS 28
SACRAMENTO CA 95814-5504
Email: bknox@energy.state.ca.us
Status: STATE-SERVICE

EDWARD V. KURZ ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST., B30A
SAN FRANCISCO CA 94105
Email: evk1@pge.com
Status: INFORMATION

MICHAEL LAINE
MP2CAPITAL
1101 5TH AVE, STE. 360
SAN RAFAEL CA 94901
Email: michael@mp2capital.com
Status: INFORMATION

ERIC LARSEN ENVIRONMENTAL SCIENTIST
RCM INTERNATIONAL, L.L.C.
PO BOX 4716
BERKELEY CA 94704
Email: elarsen@rcmdigesters.com
Status: INFORMATION

THOMAS S KIMBALL
MODESTO IRRIGATION DISTRICT
1231 11TH ST
MODESTO CA 95352-4060
Email: tomk@mid.org
Status: INFORMATION

NIELS KJELLUND
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MAIL CODE B9A
SAN FRANCISCO CA 94105-1814
Email: nxk2@pge.com
Status: INFORMATION

GARSON KNAPP
FPL ENERGY, LLC
770 UNIVERSE BLVD.
JUNO BEACH FL 33408
Email: garson_knapp@fpl.com
Status: PARTY

AVIS KOWALEWSKI
CALPINE CORPORATION
3875 HOPYARD ROAD, STE 345
PLEASANTON CA 94588
Email: kowalewskia@calpine.com
Status: INFORMATION

STEPHANIE LA SHAWN
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO CA 94177
Email: S1L7@pge.com
Status: INFORMATION

JOSEPH LANGENBERG
CENTRAL CALIFORNIA POWER
949 EAST ANNADALE AVE., A210
FRESNO CA 93706
FOR: Central California Power
Email: Joe.Langenberg@gmail.com
Status: PARTY

RICH LAUCKHART
GLOBAL ENERGY
SUITE 200
2379 GATEWAY OAKS DR.
SACRAMENTO CA 95833
Email: rlauckhart@globalenergy.com
Status: INFORMATION

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 324

CLARE LAUFENBERG STRATEGIC TRANSMISSION
INVESTMENT PROGRAM
CALIFORNIA ENERGY COMMISSION
1516 NINTH ST, MS 46
SACRAMENTO CA 95814
Email: claufenb@energy.state.ca.us
Status: STATE-SERVICE

EVELYN C. LEE
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120
FOR: PACIFIC GAS AND ELECTRIC COMPANY
Email: ECL8@pge.com
Status: PARTY

RICHARD LEHFELDT
DICKSTEIN SHAPIRO LLP
1825 EYE ST, NW
WASHINGTON DC 20006
FOR: CPV Renewable Energy Company, LLC
Status: PARTY

GALEN LEMEI
PRESIDIO BUILDING 97
PO BOX 29512
SAN FRANCISCO CA 94129
FOR: Center For Resource Solutions
Email: glemei@resource-solutions.org
Status: INFORMATION

JOHN W. LESLIE ATTORNEY
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, STE 200
SAN DIEGO CA 92130-2592
FOR: Coral Power L.L.C.
Email: jleslie@luce.com
Status: PARTY

DONALD C. LIDDELL
DOUGLASS & LIDDELL
2928 2ND AVE
SAN DIEGO CA 92103
Email: liddell@energyattorney.com
Status: INFORMATION

KAREN LINDH
CALIFORNIA ONSITE GENERATION
7909 WALERGA ROAD, NO. 112, PMB 119
ANTELOPE CA 95843
Email: karen@klindh.com
Status: INFORMATION

Cheryl Lee
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: cnl@cpuc.ca.gov
Status: STATE-SERVICE

ROGER LEE
BAKER & HOSTETLER LLP
600 ANTON BLVD., STE 900
COSTA MESA CA 92626
FOR: BAKER & HOSTETLER LLP
Email: rblee@bakerlaw.com
Status: INFORMATION

BRENDA LEMAY DIRECTOR OF PROJECT
DEVELOPMENT
HORIZON WIND ENERGY
1600 SHATTUCK, STE 222
BERKELEY CA 94709
Email: brenda.lemay@horizonwind.com
Status: INFORMATION

MARCO LEMES
SMUD
6201 S ST MS B257
SACRAMENTO CA 95817-1899
Email: mlemes@smud.org
Status: INFORMATION

CRAIG LEWIS VP OF GOV. RELATIONS
GREENVOLTS
50 FIRST ST, STE 507
SAN FRANCISCO CA 94105
FOR: GreenVolts
Email: craig.lewis@greenvolts.com
Status: PARTY

JANICE LIN MANAGING PARTNER
STRATEGEN CONSULTING LLC
146 VICENTE ROAD
BERKELEY CA 94705
Email: janice@strategenconsulting.com
Status: INFORMATION

GRACE LIVINGSTON-NUNLEY ASSISTANT PROJECT
MANAGER
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO CA 94177
Email: GXL2@pge.com
Status: INFORMATION

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Total number of addressees: 324

JODY S. LONDON
JODY LONDON CONSULTING
PO BOX 3629
OAKLAND CA 94609
FOR: FOR Sustainable Conservation
Email: jody_london_consulting@earthlink.net
Status: PARTY

Mark R. Loy
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRANCH
505 VAN NESS AVE RM 4205
SAN FRANCISCO CA 94102-3214
Email: mrl@cpuc.ca.gov
Status: STATE-SERVICE

WILLIAM V. MANHEIM ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, RM 3025-B30A
SAN FRANCISCO CA 94105
FOR: Pacific Gas and Electric Company
Email: wwm3@pge.com
Status: INFORMATION

TODD J. MARTIN
ALTERNITY WIND POWER, LLC
ONE CRAGWOOD ROAD
SOUTH PLAINFIELD NJ 7080
Email: tmartin@alternitywindpower.com
Status: INFORMATION

CORY M. MASON ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MC B30A
SAN FRANCISCO CA 94105-1814
FOR: Pacific Gas and Electric Company
Email: cmmw@pge.com
Status: INFORMATION

Burton Mattson
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 5104
SAN FRANCISCO CA 94102-3214
Email: bwm@cpuc.ca.gov
Status: STATE-SERVICE

PAUL D. MAXWELL
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, STE 600
RANCHO CORDOVA CA 95670-6078
Email: pmaxwell@navigantconsulting.com
Status: INFORMATION

HEATHER LOUIE
CALIFORNIA ENERGY COMMISSION
1516 9TH ST, MS-45
SACRAMENTO CA 95818
FOR: CALIFORNIA ENERGY COMMISSION
Email: hlouie@energy.state.ca.us
Status: STATE-SERVICE

1/08 EMAIL LUCHA
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO CA 94177
Email: ELL5@pge.com
Status: INFORMATION

Jaclyn Marks
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: jm3@cpuc.ca.gov
Status: STATE-SERVICE

BILL MASON SENIOR ASSET ADMINISTRATOR
ENXCO, INC.
PO BOX 581043
N. PALM SPRINGS CA 92258
Email: billm@enxco.com
Status: INFORMATION

DANIELLE MATTHEWS SEPERAS
CALPINE CORPORATION
1127 11TH ST, STE 242
SACRAMENTO CA 95814
Email: dseperas@calpine.com
Status: INFORMATION

MANPREET MATTU
CALIFORNIA ENERGY COMMISSION
1516 9TH ST, MS-45
SACRAMENTO CA 95814
FOR: CALIFORNIA ENERGY COMMISSION
Email: Mmattu@energy.state.ca.us
Status: STATE-SERVICE

MICHAEL MAZUR
3 PHASES RENEWABLES, LLC
2100 SEPULVEDA BLVD., STE 37
MANHATTAN BEACH CA 90266
Email: mmazur@3phasesRenewables.com
Status: PARTY

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RICHARD MCCANN

M.CUBED

2655 PORTAGE BAY ROAD, STE 3
DAVIS CA 95616

Email: rmccann@umich.edu
Status: INFORMATION

ROY D. MCCOY MANAGER, REGULATORY SUPPORT &
REPORTING

ELECTRIC RELIABILITY COUNCIL OF TEXAS

2705 W. LAKE DRIVE
TAYLOR TX 76574

Email: rmccoy@ercot.com
Status: INFORMATION

KEITH MCCREA ATTORNEY

SUTHERLAND, ASBILL & BRENNAN

1275 PENNSYLVANIA AVE, NW
WASHINGTON DC 20004-2415

FOR: CA Manufacturers & Technology Assn.
Email: keith.mccrea@sablaw.com
Status: PARTY

LIZBETH MCDANNEL

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

Email: lizbeth.mcdannel@sce.com
Status: INFORMATION

JAN MCFARLAND

CAEATFA

915 CAPITOL MALL, RM. 457
SACRAMENTO CA 95814

FOR: Americans for Solar Power
Email: jmcfarland@treasurer.ca.gov
Status: PARTY

DIARMUID MCGARRY

GREENWOOD ENVIRONMENTAL

330 TOWNSEND ST. STE 118
SAN FRANCISCO CA 94107

FOR: GREENWOOD ENVIRONMENTAL
Email: diarmuid@greenwoodenv.com
Status: INFORMATION

BRUCE MCLAUGHLIN ATTORNEY

BRAUN & BLAISING, P.C.

915 L ST STE 1420
SACRAMENTO CA 95814

Email: mclaughlin@braunlegal.com
Status: INFORMATION

JAMES MCMAHON

CRA INTERNATIONAL

50 CHURCH ST.
CAMBRIDGE MA 2138

FOR: California Department of Water Resources
Email: jmcMahon@crai.com
Status: STATE-SERVICE

JACK MCNAMARA ATTORNEY

MACK ENERGY COMPANY

PO BOX 1380
AGOURA HILLS CA 91376-1380

Email: jackmack@suesec.com
Status: INFORMATION

ELENA MELLO

SIERRA PACIFIC POWER COMPANY

6100 NEIL RD.
RENO NV 89511

Email: emello@sppc.com
Status: INFORMATION

CHARLES MIDDLEKAUFF ATTORNEY

PACIFIC GAS AND ELECTRIC COMPANY

PO BOX 7442
SAN FRANCISCO CA 94120

FOR: Pacific Gas and Electric Company
Email: crmd@pge.com
Status: PARTY

ROSS MILLER

CALIFORNIA ENERGY COMMISSION

1516 9TH ST
SACRAMENTO CA 95814

Email: rmiller@energy.state.ca.us
Status: STATE-SERVICE

KAREN MILLS

CALIFORNIA FARM BUREAU FEDERATION

2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833

FOR: California Farm Bureau Federation
Email: kmills@cfbf.com
Status: PARTY

MARCIE MILNER

CORAL ENERGY RESOURCES, L P

4445 EASTGATE MALL, STE 100
SAN DIEGO CA 92121

FOR: CORAL POWER LLC
Email: marcie.milner@shell.com
Status: INFORMATION

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Total number of addressees: 324

SAMARA MINDEL REGULATORY AFFAIRS ANALYST
FELLON-MCCORD & ASSOCIATES
9960 CORPORATE CAMPUS DRIVE, STE 2000
LOUISVILLE KY 40223
Email: smindel@knowledgeinenergy.com
Status: INFORMATION

Beth Moore
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
505 VAN NESS AVE RM 4103
SAN FRANCISCO CA 94102-3214
Email: blm@cpuc.ca.gov
Status: STATE-SERVICE

GREGORY MORRIS
GREEN POWER INSTITUTE
2039 SHATTUCK AVE., STE 402
BERKELEY CA 94704
FOR: Green Power Institute
Email: gmorris@emf.net
Status: PARTY

DAVID MORSE
1411 W, COVELL BLVD., STE 106-292
DAVIS CA 95616-5934
FOR: Bear Valley Electric Service
Email: demorse@omsoft.com
Status: PARTY

SUSAN MUNVES ENERGY AND GREEN BLDG. PROG.
ADMIN.
CITY OF SANTA MONICA
1212 5TH ST, FIRST FLR
SANTA MONICA CA 90401
Email: susan.munves@smgov.net
Status: PARTY

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)
Email: ssmyers@att.net
Status: PARTY

MOHAN NIROULA
CALIF DEPT OF WATER RESOURCES
RESOURCE ADEQUACY SECTION
3310 EL CAMINO AVE, STE 256
SACRAMENTO CA 95821
Email: mniroula@water.ca.gov
Status: INFORMATION

ANN MOORE
OFFICE OF THE CITY ATTORNEY
276 FOURTH AVE
CHULA VISTA CA 91910
FOR: The City of Chula Vista
Email: amoore@ci.chula-vista.ca.us
Status: PARTY

RONALD MOORE
GOLDEN STATE WATER/BEAR VALLEY ELECTRIC
630 EAST FOOTHILL BLVD
SAN DIMAS CA 91773
Email: rkmoore@gswater.com
Status: INFORMATION

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
Email: stephen.morrison@sfgov.org
Status: PARTY

THERESA L. MUELLER CHIEF ENERGY &
TELECOMMUNICATIONS DEPUTY
SAN FRANCISCO CITY ATTORNEY
CITY HALL, RM 234
SAN FRANCISCO CA 94102-4682
FOR: City and County of San Francisco
Email: theresa.mueller@sfgov.org
Status: PARTY

CLYDE MURLEY
CONSULTANT TO NRDC
1031 ORDWAY ST
ALBANY CA 94706
FOR: The Union of Concerned Scientists
Email: clyde.murley@comcast.net
Status: INFORMATION

DESPINA NIEHAUS
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32H
SAN DIEGO CA 92123-1530
Email: dnierhaus@semprautilities.com
Status: INFORMATION

RICK C. NOGER
PRAXAIR PLAINFIELD, INC.
2711 CENTERVILLE ROAD, STE 400
WILMINGTON DE 19808
Email: rick_noger@praxair.com
Status: INFORMATION

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Noel Obiora
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVE RM 4107
SAN FRANCISCO CA 94102-3214
Email: nao@cpuc.ca.gov
Status: PARTY

STANDISH O'GRADY
FRIENDS OF KIRKWOOD ASSOCIATION
31 PARKER AVE
SAN FRANCISCO CA 94118
Email: sho@ogrady.us
Status: PARTY

DAVID OLIVER
NAVIGANT CONSULTING
3100 ZINFANDEL DRIVE, STE 600
RANCO CORDOVA CA 95670
Email: david.oliver@navigantconsulting.com
Status: INFORMATION

DAVID ORTH GENERAL MANAGER
SAN JOAQUIN VALLEY POWER AUTHORITY
4886 EAST JENSEN AVE
FRESNO CA 93725
FOR: Kings River Conservation District
Email: dorth@krcd.org
Status: PARTY

LAURIE PARK
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, STE 600
RANCHO CORDOVA CA 95670-6078
FOR: NAVIGANT CONSULTING, INC.
Email: lpark@navigantconsulting.com
Status: INFORMATION

SHERIDAN J. PAUKER
WILSON SONSINI GOODRICH & ROSATI
SPEAR TOWER, SUITE 3300
ONE MARKET ST
SAN FRANCISCO CA 94105
Email: spauker@wsgr.com
Status: INFORMATION

David Peck
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
505 VAN NESS AVE RM 4103
SAN FRANCISCO CA 94102-3214
Email: dbp@cpuc.ca.gov
Status: STATE-SERVICE

CHRISTOPHER O'BRIEN SHARP SOLAR
VP STRATEGY AND GOVERNMENT RELATIONS
3808 ALTON PLACE NW
WASHINGTON DC 20016
FOR: SHARP SOLAR SYSTEMS DIVISION
Email: obrienc@sharpsec.com
Status: INFORMATION

DAVID OLIVARES ELECTRIC RESOURCE
MODESTO IRRIGATION DISTRICT
PO BOX 4060
MODESTO CA 95352
FOR: Electric Resource Planning and Development
Modesto Irrigation District
Email: davido@mid.org
Status: INFORMATION

SARA O'NEILL
CONSTELLATION NEWENERGY, INC.
ONE MARKET ST., SPEAR TOWER 36TH FLR
SAN FRANCISCO CA 94105
FOR: Constellation NewEnergy, Inc.
Email: sara.oneill@constellation.com
Status: PARTY

FREDERICK M. ORTLIEB OFFICE OF CITY ATTORNEY
CITY OF SAN DIEGO
1200 THIRD AVE, STE 1200
SAN DIEGO CA 92101
FOR: CITY OF SAN DIEGO
Email: fortlieb@sandiego.gov
Status: PARTY

JUDY PAU
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY ST, STE 800
SAN FRANCISCO CA 94111-6533
Email: judypau@dwt.com
Status: INFORMATION

JOSEPH PAUL SENIOR CORPORATE COUNSEL
DYNEGY, INC.
4140 DUBLIN BLVD., STE. 100
DUBLIN CA 94568
FOR: Dynegy
Email: joe.paul@dynegy.com
Status: INFORMATION

JANIS C. PEPPER
CLEAN POWER MARKETS, INC.
PO BOX 3206
LOS ALTOS CA 94024
FOR: CLEAN POWER MARKETS, INC.
Email: pepper@cleanpowermarkets.com
Status: PARTY

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DAN PERKINS
WWW.ENERGYSMARTHOMES.NET
983 PHILLIPS ST.
VISTA CA 92083
Email: dan@energysmarthomes.net
Status: INFORMATION

GABE PETLIN
3DEGREES
PRESIDIO OF SAN FRANCISCO
6 FUNSTON AVE
SAN FRANCISCO CA 94129
Email: gpetlin@3degreesinc.com
Status: PARTY

RYAN PLETKA RENEWABLE ENERGY PROJECT
MANAGER
BLACK & VEATCH
2999 OAK ROAD, STE 490
WALNUT CREEK CA 94597
FOR: BLACK & VEATCH
Email: pletkarj@bv.com
Status: INFORMATION

SNULLER PRICE
ENERGY AND ENVIRONMENTAL ECONOMICS
101 MONTGOMERY, STE 1600
SAN FRANCISCO CA 94104
FOR: ENERGY AND ENVIRONMENTAL ECONOMICS
Email: snuller@ethree.com
Status: INFORMATION

BALWANT S. PUREWAL
DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., LL-90
SACRAMENTO CA 95821
FOR: DEPARTMENT OF WATER RESOURCES
Email: bpurewal@water.ca.gov
Status: INFORMATION

HEATHER RAITT
CALIFORNIA ENERGY COMMISSION
1516 9TH ST, MS 45
SACRAMENTO CA 95814
FOR: CALIFORNIA ENERGY COMMISSION
Email: hrait@energy.state.ca.us
Status: STATE-SERVICE

JOHN R. REDDING
ARCTURUS ENERGY CONSULTING
44810 ROSEWOOD TERRACE
MENDOCINO CA 95460
FOR: Silicon Valley Manufacturers Group
Email: johnredding@earthlink.net
Status: PARTY

MARK L. PERLIS
DICKSTEIN SHAPIRO LLP
1825 EYE ST, NW
WASHINGTON DC 20006
Email: perlism@dicksteinshapiro.com
Status: INFORMATION

WILL PLAXICO
HELIOS ENERGY, LLC
31897 DEL OBISPO ST. STE 220
SAN JUAN CAPISTRANO CA 92675
Email: wplaxico@heliosenergy.us
Status: PARTY

KEVIN PORTER SENIOR ANALYST
EXETER ASSOCIATES, INC.
5565 STERRETT PLACE, STE 310
COLUMBIA MD 21044
Email: porter@exeterassociates.com
Status: INFORMATION

RASHA PRINCE
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH ST, GT14D6
LOS ANGELES CA 90013
FOR: San Diego Gas & Electric/SoCal Gas
Email: rprince@semprautilities.com
Status: PARTY

NANCY RADER
CALIFORNIA WIND ENERGY ASSOCIATION
2560 NINTH ST, STE 213A
BERKELEY CA 94710
Email: nrader@calwea.org
Status: INFORMATION

ERIN RANSLOW
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, STE 600
RANCHO CORDOVA CA 95670-6078
Email: cpucrulings@navigantconsulting.com
Status: INFORMATION

L. JAN REID
COAST ECONOMIC CONSULTING
3185 GROSS ROAD
SANTA CRUZ CA 95062
FOR: Aglet Consumer Alliance
Email: janreid@coastecon.com
Status: PARTY

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ALJ Assigned: Burton Mattson on November 15, 2006

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ROBERT J. REINHARD
MORRISON AND FOERSTER
425 MARKET ST
SAN FRANCISCO CA 94105-2482
Email: rreinhard@mofo.com
Status: INFORMATION

TOBIN RICHARDSON
RICHARDSON GROUP
1416 VIGO COURT
DAVIS CA 95618
Email: tobinjmr@sbcglobal.net
Status: INFORMATION

AMY C. ROMA
HOGAN & HARTSON, LLP
555 THIRTEENTH ST, NW
WASHINGTON DC 20004
Email: ACRoma@hhlaw.com
Status: INFORMATION

GRANT A. ROSENBLUM STAFF COUNSEL
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
FOR: CALIFORNIA ISO
Email: grosenblum@caiso.com
Status: INFORMATION

ROB ROTH
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S ST MS 75
SACRAMENTO CA 95817
FOR: SACRAMENTO MUNICIPAL UTILITY DISTRICT
Email: rroth@smud.org
Status: INFORMATION

JUDITH SANDERS
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
Email: jsanders@caiso.com
Status: PARTY

JANINE L. SCANCARELLI ATTORNEY
FOLGER, LEVIN & KAHN, LLP
275 BATTERY ST, 23RD FLR
SAN FRANCISCO CA 94111
Email: jscancarelli@flk.com
Status: INFORMATION

RHONE RESCH
SOLAR ENERGY INDUSTRIES ASSOCIATION
805 FIFTEENTH ST, NW, STE 510
WASHINGTON DC 20005
Email: rresch@seia.org
Status: PARTY

THEODORE ROBERTS SENIOR COUNSEL
SEMPRA GLOBAL
101 ASH ST, HQ 12B
SAN DIEGO CA 92101-3017
FOR: Sempra Global/Sempra Energy Solutions
Email: troberts@sempra.com
Status: PARTY

HAROLD M. ROMANOWITZ
OAK CREEK ENERGY SYSTEMS, INC.
14633 WILLOW SPRINGS ROAD
MOJAVE CA 93501
FOR: OAK CREEK ENERGY SYSTEMS, INC.
Email: hal@rwitz.net
Status: INFORMATION

JP ROSS VP STRATEGOC RELATIONSHIPS
SUNGEVITY
1625 SHATTUCK AVE., STE 210
BERKELEY CA 94709
FOR: THE VOTE SOLAR INITIATIVE
Email: jpross@sungevity.com
Status: PARTY

SANDRA ROVETTI MANAGER
SAN FRANCISCO PUC
1155 MARKET ST, 4TH FLR
SAN FRANCISCO CA 94103
Email: srovetti@sflower.org
Status: INFORMATION

DAVID SAUL
PACIFIC SOLAR & POWER CORPORATION
2850 W. HORIZON RIDGE PKWY, STE 200
HENDERSON NV 89052
FOR: Pacific Solar & Power Corporation
Email: dsaul@pacificsolar.net
Status: INFORMATION

JENINE SCHENK
APS ENERGY SERVICES
400 E. VAN BUREN ST, STE 750
PHOENIX AZ 85004
Email: jenine.schenk@apses.com
Status: PARTY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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STEVEN S. SCHLEIMER DIRECTOR, COMPLIANCE &
REGULATORY AFFAIRS
BARCLAYS BANK, PLC
200 PARK AVE, FIFTH FLR
NEW YORK NY 10166
Email: steven.schleimer@barclayscapital.com
Status: INFORMATION

DONALD SCHOENBECK
RCS, INC.
900 WASHINGTON ST, STE 780
VANCOUVER WA 98660
FOR: CAC
Email: dws@r-c-s-inc.com
Status: INFORMATION

Andrew Schwartz
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
505 VAN NESS AVE RM 5217
SAN FRANCISCO CA 94102-3214
Email: as2@cpuc.ca.gov
Status: STATE-SERVICE

LINDA Y. SHERIF ATTORNEY
CALPINE CORPORATION
3875 HOPYARD ROAD, STE 345
PLEASANTON CA 94588
FOR: CALPINE CORP.
Email: linda.sherif@calpine.com
Status: PARTY

WILLIAM P. SHORT
RIDGEWOOD POWER MANAGEMENT, LLC
947 LINWOOD AVE
RIDGEWOOD NJ 7450
FOR: RIDGEWOOD POWER MANAGEMENT, LLC
Email: bshort@ridgewoodpower.com
Status: INFORMATION

Anne E. Simon
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 5107
SAN FRANCISCO CA 94102-3214
Email: aes@cpuc.ca.gov
Status: STATE-SERVICE

KEVIN J. SIMONSEN
ENERGY MANAGEMENT SERVICES
646 EAST THIRD AVE
DURANGO CO 81301
Email: kjsimonsen@ems-ca.com
Status: INFORMATION

REED V. SCHMIDT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVE
BERKELEY CA 94703-2714
Email: rschmidt@bartlewells.com
Status: INFORMATION

Brian D. Schumacher
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: bds@cpuc.ca.gov
Status: STATE-SERVICE

MICHAEL SHAMES ATTORNEY
UTILITY CONSUMERS' ACTION NETWORK
3100 FIFTH AVE, STE B
SAN DIEGO CA 92103
Email: mshames@ucan.org
Status: INFORMATION

NORA SHERIFF ATTORNEY
ALCANTAR & KAHL, LLP
120 MONTGOMERY ST, STE 2200
SAN FRANCISCO CA 94104
FOR: Energy Producers and Users Coalition
Email: nes@a-klaw.com
Status: PARTY

STEVEN SIEGEL STAFF ATTORNEY
CENTER FOR BIOLOGICAL DIVERSITY
3421 PARK PLACE
EVANSTON IL 60201
Email: ssiegel@biologicaldiversity.org
Status: INFORMATION

Sean A. Simon
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: svn@cpuc.ca.gov
Status: STATE-SERVICE

ED SMELOFF SENIOR MANAGER
SUNPOWER CORPORATION
1414 HARBOUR WAY SOUTH
RICHMOND CA 94804
Email: ed.smeloff@sunpowercorp.com
Status: INFORMATION

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AIMEE M. SMITH ATTORNEY
SEMPRA ENERGY
101 ASH ST HQ13
SAN DIEGO CA 92101
FOR: San Diego Gas & Electric Company
Email: amsmith@sempra.com
Status: INFORMATION

CAROL A. SMOOTS
PERKINS COIE LLP
607 FOURTEENTH ST, NW, STE 800
WASHINGTON DC 20005
Email: csmoots@perkinscoie.com
Status: PARTY

SEEMA SRINIVASAN ATTORNEY
ALCANTAR & KAHL, LLP
120 MONTGOMERY ST, STE 2200
SAN FRANCISCO CA 94104
Email: sls@a-klaw.com
Status: INFORMATION

Elizabeth Stoltzfus
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: eks@cpuc.ca.gov
Status: STATE-SERVICE

NINA SUETAKE ATTORNEY
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., STE. 350
SAN FRANCISCO CA 94102
Email: nsuetake@turn.org
Status: INFORMATION

VENKAT SURAVARAPU ASSOCIATES DIRECTOR
CAMBRIDGE ENERGY RESEARCH ASSOCIATES
1150 CONNECTICUT AVE NW, STE. 201
WASHINGTON DC 20036
FOR: CAMBRIDGE ENERGY RESEARCH ASSOCIATES
Email: vsuravarapu@cera.com
Status: INFORMATION

KEITH SWITZER VP REGULATORY AFFAIRS
GOLDEN STATE WATER COMPANY
630 EAST FOOTHILL BLVD.
SAN DIMAS CA 91773-9016
Email: kswitzer@gswater.com
Status: PARTY

Donald R. Smith
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
505 VAN NESS AVE RM 4209
SAN FRANCISCO CA 94102-3214
FOR: DRA
Email: dsh@cpuc.ca.gov
Status: STATE-SERVICE

JAMES D. SQUERI ATTORNEY
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
FOR: California Retailers Association/Powerex Corp.
Email: jsqueri@goodinmacbride.com
Status: PARTY

CARL STEEN
BAKER & HOSTETLER LLP
600 ANTON BLVD., STE 900
COSTA MESA CA 92626
FOR: BAKER & HOSTETLER LLP
Email: csteen@bakerlaw.com
Status: INFORMATION

PATRICK STONER PROGRAM DIRECTOR
LOCAL GOVERNMENT COMMISSION
1303 J ST, STE 250
SACRAMENTO CA 95814
Email: pstoner@lgc.org
Status: INFORMATION

MARY ANNE SULLIVAN
HAGAN & HARTSON, LLP
555 THIRTEENTH ST, NW
WASHINGTON DC 20006
Email: MASullivan@hhlaw.com
Status: INFORMATION

KENNETH SWAIN
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DR., STE 600
RANCHO CORDOVA CA 95670
FOR: NAVIGANT CONSULTING, INC.
Email: kenneth.swain@navigantconsulting.com
Status: STATE-SERVICE

KAREN TERRANOVA
ALCANTAR & KAHL, LLP
120 MONTGOMERY ST, STE 2200
SAN FRANCISCO CA 94104
FOR: Cogeneration Association of California
Email: filings@a-klaw.com
Status: INFORMATION

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PATRICIA THOMPSON
SUMMIT BLUE CONSULTING
2920 CAMINO DIABLO, STE 210
WALNUT CREEK CA 94597
Email: pthompson@summitblue.com
Status: INFORMATION

CLAIRE E. TORCHIA
CHADBOURNE & PARKE LLP
350 SOUTH GRAND AVE., STE 3300
LOS ANGELES CA 90071
Email: ctorchia@chadbourne.com
Status: INFORMATION

JANE H. TURNBULL
LEAGUE OF WOMEN VOTERS OF CALIFORNIA
64 LOS ALTOS SQUARE
LOS ALTOS CA 94022
Email: jaturnbu@ix.netcom.com
Status: PARTY

BETH VAUGHAN
CALIFORNIA COGENERATION COUNCIL
4391 N. MARSH ELDER COURT
CONCORD CA 94521
Email: beth@beth411.com
Status: INFORMATION

ROBIN J. WALTHER
1380 OAK CREEK DRIVE, NO. 316
PALO ALTO CA 94304-2016
Email: rwalther@pacbell.net
Status: INFORMATION

COURTNEY WEDDINGTON COMPLIANCE ANALYST
COMMERCE ENERGY INC
222 W. LAS COLINAS BLVD., STE. 950-E
IRVING TX 75039
FOR: COMMERCE ENERGY INC
Email: cweddington@commerceenergy.com
Status: INFORMATION

JEREMY D. WEINSTEIN ATTORNEY
LAW OFFICES OF JEREMY D. WEINSTEIN
1512 BONANZA ST
WALNUT CREEK CA 94596
FOR: PacifiCorp
Email: jeremy.weinstein@pacificorp.com
Status: PARTY

NELLIE TONG
KEMA, INC.
492 NINTH ST, STE 220
OAKLAND CA 94607
Email: nellie.tong@us.kema.com
Status: INFORMATION

DAVID TOWNLEY
18 BASSWOOD AVE
OAK PARK CA 91377
Email: David.Townley@townleytech.com
Status: INFORMATION

ANDREW J. VAN HORN
VAN HORN CONSULTING
12 LIND COURT
ORINDA CA 94563
Email: andy.vanhorn@vhcenergy.com
Status: INFORMATION

WILLIAM V. WALSH ATTORNEY
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
FOR: Southern California Edison Company
Email: william.v.walsh@sce.com
Status: PARTY

JOY A. WARREN REGULATORY ADMINISTRATOR
MODESTO IRRIGATION DISTRICT
1231 11TH ST
MODESTO CA 95354
Email: joyw@mid.org
Status: INFORMATION

JAMES WEIL DIRECTOR
AGLET CONSUMER ALLIANCE
PO BOX 37
COOL CA 95614
Email: jweil@aglet.org
Status: PARTY

LISA WEINZIMER ASSOCIATE EDITOR
PLATTS MCGRAW-HILL
695 NINTH AVE, NO. 2
SAN FRANCISCO CA 94118
Email: lisa_weinzimer@platts.com
Status: INFORMATION

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FRED WELLINGTON
NAVIGANT CONSULTING, INC.
1 MARKET ST., SPEAR ST. TOWER, STE 1200
SAN FRANCISCO CA 94105
Email: fred.wellington@navigantconsulting.com
Status: INFORMATION

WILLIAM W. WESTERFIELD III SR. ATTORNEY
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S ST
SACRAMENTO CA 95817
FOR: SACRAMENTO MUNICIPAL UTILITY DISTRICT
Email: wwester@smud.org
Status: INFORMATION

GREGGORY L. WHEATLAND
ELLISON SCHNEIDER & HARRIS L.L.P.
2015 H ST
SACRAMENTO CA 95811-3109
FOR: the City of Corona
Email: glw@eslawfirm.com
Status: PARTY

KEITH WHITE
312 KELLER ST
PETALUMA CA 94952
Email: keithwhite@earthlink.net
Status: INFORMATION

JOSEPH F. WIEDMAN ATTORNEY
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
FOR: Solar Alliance
Email: jwiedman@goodinmacbride.com
Status: PARTY

VALERIE WINN PROJECT MANAGER
PACIFIC GAS & ELECTRIC
77 BEALE ST, B9A
SAN FRANCISCO CA 94105
Email: vjw3@pge.com
Status: INFORMATION

REID A. WINTHROP CORPORATE COUNSEL
PILOT POWER GROUP, INC.
8910 UNIVERSITY CENTER LANE, STE 520
SAN DIEGO CA 92122
Email: rwinthrop@pilotpowergroup.com
Status: PARTY

RYAN WISER
BERKELEY LAB
1 CYCLOTRON ROAD, MS-90-4000
BERKELEY CA 94720
FOR: BERKELEY LAB
Email: rhwiser@lbl.gov
Status: INFORMATION

LAURA WISLAND
UNION OF CONCERNED SCIENTISTS
2397 SHATTUCK AVE., STE 203
BERKELEY CA 94704
Email: lwisland@ucsusa.org
Status: INFORMATION

VIKKI WOOD
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6301 S ST, MS A204
SACRAMENTO CA 95817-1899
Email: vwood@smud.org
Status: INFORMATION

JAMES B. WOODRUFF VICE PRESIDENT REGULATORY
AND GOVT AFFAI
NEXTLIGHT RENEWABLE POWER, LLC
101 CALIFORNIA ST, STE 2450
SAN FRANCISCO CA 94111
Email: jwoodruff@nextlightrp.com
Status: INFORMATION

JAMES B. WOODRUFF
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE, STE 342, GO1
ROSEMEAD CA 91770
Status: INFORMATION

CATHY S. WOOLLUMS
MIDAMERICAN ENERGY HOLDINGS COMPANY
106 EAST SECOND ST
DAVENPORT IA 52801
Email: cswollums@midamerican.com
Status: INFORMATION

CYNTHIA WOOTEN
LUMENX CONSULTING, INC.
1126 DELAWARE ST
BERKELEY CA 94702
Email: cwooten@lumenxconsulting.com
Status: INFORMATION

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JENNIFER WRIGHT CALIFORNIA REGULATORY
AFFAIRS

SAN DIEGO GAS & ELECTRIC CO.

8330 CENTURY PARK, CT

SAN DIEGO CA 92123

FOR: SAN DIEGO GAS & ELECTRIC

Email: jwright@semprautilities.com

Status: INFORMATION

KATE ZOCCHETTI

CALIFORNIA ENERGY COMMISSION

1516 9TH ST, MS-45

SACRAMENTO CA 95814

Email: kzocchet@energy.state.ca.us

Status: STATE-SERVICE