

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

Order Instituting Rulemaking to Continue  
Implementation and Administration of  
California Renewables Portfolio Standard  
Program.

Rulemaking 08-08-009  
(Filed August 21, 2008)

**APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)  
FOR REHEARING OF DECISION 10-12-048**

CHARLES R. MIDDLEKAUFF  
CORY M. MASON  
M. GRADY MATHAI-JACKSON

Pacific Gas and Electric Company  
P.O. Box 7442  
San Francisco, CA 94120  
Telephone: (415) 973-2320  
Facsimile: (415) 972-5952  
Email: CMMw@pge.com

Attorneys for  
PACIFIC GAS AND ELECTRIC COMPANY

January 18, 2011

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Pursuant to California Public Utilities Code Section 1731(b) and Rule 16.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Pacific Gas and Electric Company ("PG&E") submits this Application for Rehearing of Decision 10-12-048 (the "Decision"), entitled "Decision Adopting The Renewable Auction Mechanism," issued on December 17, 2010.

**I. INTRODUCTION**

The Decision adopts the Renewable Auction Mechanism ("RAM") program for the procurement of smaller renewable energy resources that are eligible for California's Renewables Portfolio Standard ("RPS") program. PG&E seeks rehearing of the Decision because it violates state law in three ways. First, PG&E's RAM procurement obligation is not limited to procuring only those resources whose prices are at or below the Commission-determined market price referent ("MPR"), which violates the RPS statute's cost limitation provisions. Second, the Decision does not permit the investor-owned utilities ("IOUs") to suspend their RAM programs if they achieve the 20 percent RPS target, which violates the RPS statute's clear directive that the IOUs cannot be required to procure greater than 20 percent renewables. Third, the Decision applies the RAM program to only the IOUs, and not to electric service providers ("ESPs") and

community choice aggregators (“CCAs”), which violates several California laws requiring that ESPs and CCAs be subject to the same RPS program requirements as the IOUs. For these reasons, the Commission should grant PG&E’s Application for Rehearing and modify the Decision to be consistent with state law.

## **II. DISCUSSION**

The Decision adopts an interim procurement obligation of 1000 megawatts (“MW”) for the RAM program, allocated across the three IOUs.<sup>1/</sup> It requires the IOUs to hold two auctions per year for at least two years, with each auction seeking a minimum of one-quarter of the total allocated capacity for each IOU.<sup>2/</sup> If there is unsubscribed capacity in an auction (or subscribed capacity that later drops out), the IOU must carry forward that additional capacity to the next auction, and thus may ultimately solicit greater than one-quarter of the total allocated capacity in a particular auction and take longer than two years to reach full subscription.<sup>3/</sup> The Decision does not impose these requirements on other Commission-jurisdictional load-serving entities, including ESPs and CCAs.<sup>4/</sup>

As discussed below, because the above-described RAM procurement obligations are not limited to offers priced at or below the MPR, the IOUs are not permitted to suspend their RAM programs if they reach their RPS targets, and the Decision applies the RAM program to only the IOUs, the Decision violates California law and rehearing should be granted.

### **A. The Decision Violates The RPS Statute’s Cost Limitation Provisions.**

Public Utilities Code Section 399.15(d) established a limitation for each electrical

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<sup>1/</sup> Decision at 27, 29-30. The RAM allocations for each of the three IOUs is as follows: PG&E, 420.9 MW; Southern California Edison Company (“SCE”), 498.4 MW; San Diego Gas & Electric Company (“SDG&E”), 80.7 MW.

<sup>2/</sup> *Id.* at 31. PG&E must seek a minimum of 105.2 MW per auction, SCE must seek a minimum of 124.6 MW per auction, and SDG&E must seek a minimum of 20.2 MW per auction.

<sup>3/</sup> *Ibid.*

<sup>4/</sup> *Id.* at 23-24.

corporation on the “total costs” expended above the MPR for “the procurement of eligible renewable energy resources to achieve the annual procurement targets established” under the RPS program. Resolution E-4199 implemented this statutory provision and adopted an above-market funds (“AMFs”) cost limitation for PG&E, which PG&E exhausted in 2009.<sup>5/</sup> Public Utilities Code Section 399.15(d)(3) provides that once an electrical corporation’s cost limitation is exhausted, the Commission “shall allow the electrical corporation to limit its procurement to the quantity of eligible renewable energy resources that can be procured at or below” the MPR.

Under the Decision, PG&E’s obligation to procure renewable resources under the RAM program is not limited to accepting only those offers priced at or below the MPR. By failing to expressly state that PG&E has no obligation to procure any resources under the RAM program whose prices exceed the MPR, the Decision violates Section 399.15(d)’s prohibition on requiring an electrical corporation to procure above-MPR resources after it has exhausted its AMFs cost cap.

While the Decision does provide PG&E with the discretion to reject offers if they are not competitive with other renewable opportunities,<sup>6/</sup> this does not remedy the Decision’s legal error, because the Commission could not have intended “competitive” to mean priced at or below the MPR. The Commission has routinely approved above-MPR priced RPS contracts as reasonable,<sup>7/</sup> thus indicating that a competitively-priced RPS contract is not limited to one priced at or below the MPR. The Commission has also clearly defined the MPR as representative of the cost of a non-renewable energy source, not the cost of a renewable energy source,<sup>8/</sup> thus

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<sup>5/</sup> PG&E was notified via letter from the Director of Energy Division on May 28, 2009 that it had exhausted its AMFs cost limitation.

<sup>6/</sup> Decision at 36.

<sup>7/</sup> See e.g., Res. E-4375; Res. E-4369; Res. E-4366; Res. E-4356.

<sup>8/</sup> D.04-06-015 at 7, n. 10 (“[W]e will clarify also what the MPR is not: it does not represent the cost, capacity or output profile of a specific type of renewable generation technology.... [T]he MPR is to

indicating that the MPR is not representative of the competitive price for renewable energy. The Commission must therefore have intended that “competitive” RAM offers, which PG&E is required to procure, would include at least some offers priced above the MPR. As a result, the Decision requires PG&E to procure above-market renewable offers despite having reached its cost limitation, in violation of the RPS statute. The Decision must be modified to correct this legal error.

The Decision claims that Section 399.15(d)’s limitation on the procurement of energy at prices above the MPR applies only to contracts selected through the IOUs’ annual RPS solicitations, and that the RAM does not, therefore, violate state law.<sup>9/</sup> This interpretation is not only inconsistent with the plain language of the statute, but is also contrary to the legislature’s explicit intent in enacting the RPS cost limitation provisions. Section 399.15(d)(3) states that if an electrical corporation’s cost limitation is insufficient to cover the total above-market costs of contracts eligible to count against the cost limitation, the Commission “shall allow the electrical corporation to limit its procurement to the quantity of eligible renewable energy resources that can be procured at or below” the MPR. This language does not limit the type of above-MPR procurement that may be suspended by the electrical corporation to only those contracts selected through the annual RPS solicitation. Further, the Decision’s interpretation of Section 399.15(d) is contrary to the legislature’s explicit intent in enacting the cost limitation provisions, which was to “continue meaningful ratepayer protections through limits on the *total costs of meeting the renewable energy goals* established pursuant to [California’s RPS program].”<sup>10/</sup> The intent was

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represent the presumptive cost of electricity from a non-renewable energy source.”); *see also* D.05-12-042 at 6-7 (quoting D.04-06-015).

<sup>9/</sup> Decision at 21, n. 38.

<sup>10/</sup> Sen. Bill No. 1036 (2007-2008 Reg. Sess.) § 1 (emphasis added). The Decision’s interpretation is also inconsistent with the manner in which the Commission has previously viewed the RPS cost limitation provisions. In Resolution E-4199, which implemented such provisions, the Commission referenced the “statutory ‘waiver’ that allows an IOU to limit RPS procurement to contracts that are at or below the MPR,

to limit the *total* costs of achieving RPS goals, not to limit some subset of those costs attributable to procurement resulting from the annual RPS solicitations. The Decision therefore provides no valid basis for concluding that the RAM program does not violate the RPS statute’s cost limitation provisions.

**B. The Decision Violates The RPS Statute’s Explicit Direction That A Retail Seller Cannot Be Required To Procure Greater Than 20 Percent Renewables.**

Public Utilities Code Section 399.15(b)(1) explicitly states that “[a] retail seller with 20 percent of retail sales procured from eligible renewable energy resources in any year *shall not be required* to increase its procurement of renewable energy resources in the following year.”<sup>11/</sup> The Decision does not, however, limit an IOU’s obligation to procure its allocated capacity under the RAM program by its achievement of the 20 percent RPS goal.<sup>12/</sup> In other words, under the Decision, an IOU would have a continuing procurement obligation under the RAM even if it reached its 20 percent RPS target.<sup>13/</sup> The Decision’s failure to allow an IOU to suspend its RAM program upon reaching its RPS goals violates Public Utilities Code Section 399.15(b)(1), which clearly states that the Commission cannot require an IOU to continue to procure after it has achieved 20 percent renewables. The Decision’s claim that “RPS program targets are minimums, not maximums”<sup>14/</sup> is inconsistent with this statutory language, and its argument that subjecting the 1000 MW cap to further reductions based on achievement of RPS targets “would add unnecessary confusion and complexity”<sup>15/</sup> provides no basis for disregarding a clear statutory mandate. The Commission should grant rehearing and modify the Decision to be

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after the IOU has exhausted its AMFs.” Res. E-4199 at 18-19. It did not state that IOUs can limit RPS procurement to contracts *resulting from annual RPS solicitations* priced at or below the MPR, which appears to be the position advanced in the Decision.

<sup>11/</sup> Pub. Util. Code § 399.15(b)(1) (emphasis added).

<sup>12/</sup> Decision at 28.

<sup>13/</sup> See Decision at 28 (rejecting SDG&E’s argument that an IOU should be able to suspend its RAM when its RPS program target is reached).

<sup>14/</sup> Decision at 28.

<sup>15/</sup> *Ibid.*

consistent with the law.

**C. The Decision Violates California Law That Requires That ESPs And CCAs Be Subject To The Same RPS Program Requirements As The IOUs.**

The Decision applies the RAM program only to the IOUs and not to other Commission-jurisdictional load-serving entities including CCAs and ESPs.<sup>16/</sup> This is contrary to California law, which requires that ESPs and CCAs be subject to the same requirements under the RPS program as the IOUs.

Section 399.12(g) of the Public Utilities Code requires that both ESPs and CCAs be subject to the same terms and conditions applicable to electrical corporations under the RPS statute. It provides, in relevant part, as follows:

(2) . . . The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard program subject to the same terms and conditions applicable to an electrical corporation.

(3) . . . The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article.

Public Utilities Code Section 380(e) similarly requires equal treatment for ESPs, CCAs and IOUs:

Each load-serving entity shall be subject to the same requirements for resource adequacy and the renewables portfolio standard program that are applicable to electrical corporations pursuant to this section, or otherwise required by law, or by order or decision of the commission.

Finally, Public Utilities Code Section 365.1 requires that ESPs must be subject to the same requirements as the IOUs under the RPS program. Section 365.1(c)(1) requires that the Commission, after authorizing the limited direct transactions provided by the bill:

[e]nsure that [ESPs] are subject to the same requirements that are applicable to the state's three largest electrical corporations under any programs or rules adopted by the commission to implement . . . the renewables portfolio standard provisions

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<sup>16/</sup> Decision at 23-24.

of Article 16 (commencing with Section 399.11).

This mandate “applies notwithstanding any prior decision of the commission to the contrary.”<sup>17/</sup>

The Decision is clear that the Commission adopted the RAM to “contribute to RPS goals in the near term.”<sup>18/</sup> As a program implemented pursuant to and in furtherance of the RPS program, the RAM program must be applied to ESPs and CCAs under the express statutory requirements described above. The Decision violates these requirements by applying the RAM program to only the IOUs, and must be modified to correct this legal error.

The Decision states that the Commission is considering expansion of RPS requirements to ESPs pursuant to Public Utilities Code Section 365.1.<sup>19/</sup> The Commission issued decision 11-01-026 on January 14, 2011 to implement Section 365.1, however, and that decision does not address the applicability of RAM program requirements to ESPs. The Decision must therefore be modified without further delay to comply with the clear statutory directives contained in Section 365.1 and the other statutes described above. The Decision declines to apply the RAM to CCAs because CCAs are exempt from Section 365.1’s provisions.<sup>20/</sup> This ignores the statutory mandates set forth in Section 399.12 and Section 380, which were unchanged by the passage of Section 365.1. The Decision’s additional purported reason for failure to apply the RAM to CCAs – that they have not had the opportunity to comment because no CCA was in operation at the time the record was open for comment<sup>21/</sup> – is equally unavailing. No comment period is needed for the Commission to follow California law requiring CCAs to be subject to the same requirements under the RPS program as the IOUs.

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<sup>17/</sup> Pub. Util. Code § 365.1(c)(1).

<sup>18/</sup> Decision at 2.

<sup>19/</sup> Decision at 23-24.

<sup>20/</sup> *Id.* at 24.

<sup>21/</sup> *Ibid.*



**VERIFICATION**

I am an employee of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, and am authorized to make this verification on its behalf. I have read the foregoing "Application of Pacific Gas and Electric Company (U 39 E) for Rehearing of Decision 10-12-048" dated January 18, 2011. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18th day of January, 2011 at San Francisco, California.

/s/

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Valerie Winn  
Manager  
Pacific Gas and Electric Company

**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 18th day of January, 2011, I caused to be served a true copy of:

**APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)  
FOR REHEARING OF DECISION 10-12-048**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for R.08-08-009 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 service list for R.08-08-009 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 18th day of January, 2011 at San Francisco, California.

\_\_\_\_\_  
/s/  
DONNA LEE

# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: January 14, 2011

## CPUC DOCKET NO. R0808009

Total number of addressees: 430

SUNCHETH BHAT  
**PACIFIC GAS AND ELECTRIC COMPANY**  
PO BOX 770000  
SAN FRANCISCO CA 94177  
FOR: Pacific Gas and Electric Company  
Email: S2B9@pge.com  
Status: INFORMATION

CASE COORDINATION  
**PACIFIC GAS AND ELECTRIC COMPANY**  
77 BEALE ST., PO BOX 770000 MC B9A  
SAN FRANCISCO CA 94105  
FOR: Pacific Gas and Electric Company  
Email: RegRelCPUCcases@pge.com  
Status: INFORMATION

SHAUN HALVERSON  
**PACIFIC GAS AND ELECTRIC COMPANY**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
FOR: Pacific Gas and Electric Company  
Email: SEHC@pge.com  
Status: INFORMATION

ALYSSA T. KOO ATTORNEY  
**PACIFIC GAS AND ELECTRIC COMPANY**  
77 BEALE ST, B30A / PO BOX 7442  
SAN FRANCISCO CA 94120  
FOR: Pacific Gas and Electric Company  
Email: atk4@pge.com  
Status: INFORMATION

ED LUCHA CASE COORDINATOR  
**PACIFIC GAS AND ELECTRIC COMPANY**  
77 BEALE ST, MC B9A, RM 991  
SAN FRANCISCO CA 94105  
FOR: Pacific Gas and Electric Company  
Email: ELL5@pge.com  
Status: INFORMATION

GRADY MATHAI-JACKSON  
**PACIFIC GAS AND ELECTRIC COMPANY**  
77 BEALE ST, B30A  
SAN FRANCISCO CA 94105  
FOR: Pacific Gas and Electric Company  
Email: MGML@pge.com  
Status: INFORMATION

LAUREN ROHDE  
**PACIFIC GAS AND ELECTRIC COMPANY**  
77 BEALE ST, B9A  
SAN FRANCISCO CA 94105  
FOR: Pacific Gas and Electric Company  
Email: ldri@pge.com  
Status: INFORMATION

MAGGIE CHAN  
**PACIFIC GAS AND ELECTRIC COMPANY**  
77 BEALE ST, B9A / PO BOX 770000  
SAN FRANCISCO CA 94105  
FOR: Pacific Gas and Electric Company  
Email: MMCL@pge.com  
Status: INFORMATION

REGULATORY FILE ROOM  
**PACIFIC GAS AND ELECTRIC COMPANY**  
PO BOX 7442  
SAN FRANCISCO CA 94120  
FOR: Pacific Gas and Electric Company  
Email: CPUCcases@pge.com  
Status: INFORMATION

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

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

CORY M. MASON  
**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

JOHN PAPPAS UTILITY ELECTRIC PORTFOLIO  
MANAGEMENT  
**PACIFIC GAS AND ELECTRIC COMPANY**  
245 MARKET ST, MC N12G  
SAN FRANCISCO CA 94105  
FOR: Pacific Gas and Electric Company  
Email: jsp5@pge.com  
Status: INFORMATION

BETH SCHOSHINSKI  
**PACIFIC GAS AND ELECTRIC COMPANY**  
PO BOX 770000  
SAN FRANCISCO CA 94177  
FOR: Pacific Gas and Electric Company  
Email: BXSZ@pge.com  
Status: INFORMATION

# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: January 14, 2011

## CPUC DOCKET NO. R0808009

Total number of addressees: 430

VALERIE J. WINN  
**PACIFIC GAS AND ELECTRIC COMPANY**  
245 MARKET ST, MC N12G  
SAN FRANCISCO CA 94105  
FOR: Pacific Gas and Electric Company  
Email: vjw3@pge.com  
Status: INFORMATION

MARK HUFFMAN ATTORNEY  
**PACIFIC GAS AND ELECTRIC COMPANY**  
MC B30A PO BOX 770000  
SAN FRANCISCO CA 94177  
FOR: Pacific Gas and Electric Company  
Email: mrh2@pge.com  
Status: PARTY

CHARLES R. MIDDLEKAUFF  
**PACIFIC GAS AND ELECTRIC COMPANY**  
PO BOX 7442  
SAN FRANCISCO CA 94120  
FOR: Pacific Gas and Electric Company  
Email: CRMd@pge.com  
Status: PARTY

Joseph A. Abhulimen  
**CALIF PUBLIC UTILITIES COMMISSION**  
ELECTRICITY PLANNING & POLICY BRANCH  
505 VAN NESS AVE RM 4209  
SAN FRANCISCO CA 94102-3214  
Email: jaa@cpuc.ca.gov  
Status: STATE-SERVICE

Amy 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

Laurence Chaset  
**CALIF PUBLIC UTILITIES COMMISSION**  
LEGAL DIVISION  
505 VAN NESS AVE RM 5131  
SAN FRANCISCO CA 94102-3214  
Email: lau@cpuc.ca.gov  
Status: STATE-SERVICE

Michael Colvin  
**CALIF PUBLIC UTILITIES COMMISSION**  
POLICY & PLANNING DIVISION  
505 VAN NESS AVE RM 5119  
SAN FRANCISCO CA 94102-3214  
Email: mc3@cpuc.ca.gov  
Status: STATE-SERVICE

JASON YAN  
**PACIFIC GAS AND ELECTRIC COMPANY**  
77 BEALE ST, MAIL CODE B13L  
SAN FRANCISCO CA 94105  
FOR: Pacific Gas and Electric Company  
Email: jay2@pge.com  
Status: INFORMATION

EVELYN C. LEE ATTORNEY  
**PACIFIC GAS AND ELECTRIC COMPANY**  
77 BEALE ST, MC B30A  
SAN FRANCISCO CA 94105  
FOR: Pacific Gas and Electric Company  
Email: ECL8@pge.com  
Status: PARTY

AMY BAKER  
**CALIFORNIA PUBLIC UTILITIES COMMISSION**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: renewablegroup@cpuc.ca.gov  
Status: INFORMATION

Nilgun Atamturk  
**CALIF PUBLIC UTILITIES COMMISSION**  
POLICY & PLANNING DIVISION  
505 VAN NESS AVE RM 5119  
SAN FRANCISCO CA 94102-3214  
Email: nil@cpuc.ca.gov  
Status: STATE-SERVICE

Traci Bone  
**CALIF PUBLIC UTILITIES COMMISSION**  
LEGAL DIVISION  
505 VAN NESS AVE RM 5027  
SAN FRANCISCO CA 94102-3214  
Email: tbo@cpuc.ca.gov  
Status: STATE-SERVICE

Susannah Churchill  
**CALIF PUBLIC UTILITIES COMMISSION**  
ENERGY DIVISION  
505 VAN NESS AVE AREA 4-A  
SAN FRANCISCO CA 94102-3214  
Email: sc1@cpuc.ca.gov  
Status: STATE-SERVICE

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

# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: January 14, 2011

## CPUC DOCKET NO. R0808009

Total number of addressees: 430

Matthew Deal  
**CALIF PUBLIC UTILITIES COMMISSION**  
POLICY & PLANNING DIVISION  
505 VAN NESS AVE RM 5119  
SAN FRANCISCO CA 94102-3214  
Email: mjd@cpuc.ca.gov  
Status: STATE-SERVICE

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

Julie A. Fitch  
**CALIF PUBLIC UTILITIES COMMISSION**  
ENERGY DIVISION  
505 VAN NESS AVE RM 4004  
SAN FRANCISCO CA 94102-3214  
Email: jf2@cpuc.ca.gov  
Status: STATE-SERVICE

Julie Halligan  
**CALIF PUBLIC UTILITIES COMMISSION**  
CONSUMER PROTECTION AND SAFETY DIVISION  
505 VAN NESS AVE RM 2203  
SAN FRANCISCO CA 94102-3214  
Email: jmh@cpuc.ca.gov  
Status: STATE-SERVICE

TED HOWARD  
**CALIFORNIA PUBLIC UTILITIES COMMISSION**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: TRH@cpuc.ca.gov  
Status: STATE-SERVICE

CHERYL LEE  
**CALIFORNIA PUBLIC UTILITIES COMMISSION**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: CNL@cpuc.ca.gov  
Status: STATE-SERVICE

Chloe Lukins  
**CALIF PUBLIC UTILITIES COMMISSION**  
ELECTRICITY PLANNING & POLICY BRANCH  
505 VAN NESS AVE RM 4101  
SAN FRANCISCO CA 94102-3214  
Email: clu@cpuc.ca.gov  
Status: STATE-SERVICE

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

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

ANNE GILLETTE  
**CALIFORNIA PUBLIC UTILITIES COMMISSION**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: AEG@cpuc.ca.gov  
Status: STATE-SERVICE

Karin M. Hieta  
**CALIF PUBLIC UTILITIES COMMISSION**  
ENERGY PRICING AND CUSTOMER PROGRAMS  
BRANCH  
505 VAN NESS AVE RM 4102  
SAN FRANCISCO CA 94102-3214  
Email: kar@cpuc.ca.gov  
Status: STATE-SERVICE

SARA KAMINS  
**CALIFORNIA PUBLIC UTILITIES COMMISSION**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: SMK@cpuc.ca.gov  
Status: STATE-SERVICE

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

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

# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: January 14, 2011

## CPUC DOCKET NO. R0808009

Total number of addressees: 430

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

Candace Morey  
**CALIF PUBLIC UTILITIES COMMISSION**  
LEGAL DIVISION  
505 VAN NESS AVE RM 5119  
SAN FRANCISCO CA 94102-3214  
Email: cjm@cpuc.ca.gov  
Status: STATE-SERVICE

Ke Hao Ouyang  
**CALIF PUBLIC UTILITIES COMMISSION**  
ENERGY PRICING AND CUSTOMER PROGRAMS  
BRANCH  
505 VAN NESS AVE RM 4104  
SAN FRANCISCO CA 94102-3214  
Email: kho@cpuc.ca.gov  
Status: STATE-SERVICE

DAVID PECK  
**CALIFORNIA PUBLIC UTILITIES COMMISSION**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: DBP@cpuc.ca.gov  
Status: STATE-SERVICE

Jonathan J. Reiger  
**CALIF PUBLIC UTILITIES COMMISSION**  
EXECUTIVE DIVISION  
505 VAN NESS AVE RM 5035  
SAN FRANCISCO CA 94102-3214  
Email: jzr@cpuc.ca.gov  
Status: STATE-SERVICE

Aniana M. Schwankl  
**CALIF PUBLIC UTILITIES COMMISSION**  
ELECTRICITY PLANNING & POLICY BRANCH  
505 VAN NESS AVE RM 4209  
SAN FRANCISCO CA 94102-3214  
Email: ams@cpuc.ca.gov  
Status: STATE-SERVICE

Mitchell Shapson  
**CALIF PUBLIC UTILITIES COMMISSION**  
LEGAL DIVISION  
505 VAN NESS AVE RM 4107  
SAN FRANCISCO CA 94102-3214  
Email: sha@cpuc.ca.gov  
Status: STATE-SERVICE

Rahmon Momoh  
**CALIF PUBLIC UTILITIES COMMISSION**  
ELECTRICITY PLANNING & POLICY BRANCH  
505 VAN NESS AVE RM 4102  
SAN FRANCISCO CA 94102-3214  
Email: rmm@cpuc.ca.gov  
Status: STATE-SERVICE

Raj Naidu  
**CALIF PUBLIC UTILITIES COMMISSION**  
DIVISION OF WATER AND AUDITS  
505 VAN NESS AVE AREA 3-B  
SAN FRANCISCO CA 94102-3214  
Email: rkn@cpuc.ca.gov  
Status: STATE-SERVICE

Jordan Parrillo  
**CALIF PUBLIC UTILITIES COMMISSION**  
ELECTRICITY PLANNING & POLICY BRANCH  
505 VAN NESS AVE RM 4104  
SAN FRANCISCO CA 94102-3214  
Email: jp6@cpuc.ca.gov  
Status: STATE-SERVICE

Marcelo Poirier  
**CALIF PUBLIC UTILITIES COMMISSION**  
LEGAL DIVISION  
505 VAN NESS AVE RM 5025  
SAN FRANCISCO CA 94102-3214  
Email: mpo@cpuc.ca.gov  
Status: STATE-SERVICE

Nika Rogers  
**CALIF PUBLIC UTILITIES COMMISSION**  
ELECTRICITY PLANNING & POLICY BRANCH  
505 VAN NESS AVE RM 4101  
SAN FRANCISCO CA 94102-3214  
Email: nlr@cpuc.ca.gov  
Status: STATE-SERVICE

Andrew Schwartz  
**CALIF PUBLIC UTILITIES COMMISSION**  
EXECUTIVE DIVISION  
505 VAN NESS AVE RM 5215  
SAN FRANCISCO CA 94102-3214  
Email: as2@cpuc.ca.gov  
Status: STATE-SERVICE

Yuliya Shmidt  
**CALIF PUBLIC UTILITIES COMMISSION**  
ENERGY PRICING AND CUSTOMER PROGRAMS  
BRANCH  
505 VAN NESS AVE RM 4104  
SAN FRANCISCO CA 94102-3214  
Email: ys2@cpuc.ca.gov  
Status: STATE-SERVICE

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Total number of addressees: 430

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

Mary Jo Stueve  
**CALIF PUBLIC UTILITIES COMMISSION**  
ELECTRICITY PLANNING & POLICY BRANCH  
505 VAN NESS AVE RM 4101  
SAN FRANCISCO CA 94102-3214  
Email: mjs@cpuc.ca.gov  
Status: STATE-SERVICE

Cynthia Walker  
**CALIF PUBLIC UTILITIES COMMISSION**  
DRA - ADMINISTRATIVE BRANCH  
505 VAN NESS AVE RM 4102  
SAN FRANCISCO CA 94102-3214  
Email: ciw@cpuc.ca.gov  
Status: STATE-SERVICE

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

IAN MCGOWAN UTILITY PARTNERSHIP MANAGER  
**3DEGREES**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: imcgowan@3degreesinc.com  
Status: INFORMATION

OLGA BEZNOSOVA  
**BC TRANSMISSION CORPORATON**  
1100-1055 DUNSMUIR ST  
VANCOUVER BC V7X 1V5 CANADA  
Email: olga.beznosova@bctc.com  
Status: INFORMATION

MARK THOMPSON  
**POWEREX CORP**  
1400 - 666 BURRARD ST  
VANCOUVER BC V6C 2X8 CANADA  
Email: mark.thompson@powerex.com  
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

MATTHEW TISDALE  
**CALIFORNIA PUBLIC UTILITIES COMMISSION**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: MWT@cpuc.ca.gov  
Status: STATE-SERVICE

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

**3 PHASES RENEWABLES LLC**  
2100 SEPULVEDA BLVD, STE 37  
MANHATTAN BEACH CA 90266  
Status: PARTY

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

JOHN DUNN  
**TRANSCANADA CORPORATION**  
450 1ST ST. S.W.  
CALGARY AB T2P 5H1 CANADA  
FOR: Chinook Power Transmission, LLC/Zephyr Power  
Transmission, LLC  
Email: john\_dunn@transcanada.com  
Status: INFORMATION

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

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MEREDITH LAMEY  
**TRANSCANADA CORPORATION**  
450 1ST ST S.W.  
CALGARY AB T2P 5H1 CANADA  
Email: meredith\_lamey@transcanada.com  
Status: INFORMATION

JAMES WEIL DIRECTOR  
**AGLET CONSUMER ALLIANCE**  
PO BOX 1916  
SEBASTOPOLE CA 95473  
FOR: Aglet Consumer Alliance  
Email: jweil@aglet.org  
Status: PARTY

MICHAEL ALCANTAR ATTORNEY  
**ALCANTAR & KAHL LLP**  
1300 SW 5TH AVE., STE 1750  
PORTLAND OR 97201  
Email: mpa@a-klaw.com  
Status: INFORMATION

ANNIE STANGE  
**ALCANTAR & KAHL LLP**  
1300 SW FIFTH AVE, STE 1750  
PORTLAND OR 97201  
Email: sas@a-klaw.com  
Status: INFORMATION

DANIEL W. DOUGLASS  
**DOUGLASS & LIDDELL**  
EMAIL ONLY  
EMAIL ONLY CA 0  
FOR: Alliance for Retail Energy Markets/Direct  
Access/Western Power Trading Forum/Direct  
Access Customer Coalition/EnXco, Inc.  
Email: dougllass@energyattorney.com  
Status: PARTY

JAN MCFARLAND  
**CAEATFA**  
915 CAPITOL MALL, RM. 468  
SACRAMENTO CA 95814  
FOR: Americans for Solar Power  
Email: jmcfarland@treasurer.ca.gov  
Status: PARTY

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

MARC D. JOSEPH ATTORNEY  
**ADAMS, BROADWELL, JOSEPH & CARDOZO**  
601 GATEWAY BLVD., STE. 1000  
SOUTH SAN FRANCISCO CA 94080  
FOR: ADAMS BROADWELL JOSEPH & CARDOZO  
Email: mdjoseph@adamsbroadwell.com  
Status: INFORMATION

BRAD WETSTONE  
**ALAMEDA MUNICIPAL POWER**  
2000 GRAND ST, PO BOX H  
ALAMEDA CA 94501-0263  
FOR: ALAMEDA POWER AND TELECOM  
Email: wetstone@alamedamp.com  
Status: INFORMATION

TIM LINDL  
**ALCANTAR & KAHL**  
33 NEW MONTGOMERY ST., STE. 1850  
SAN FRANCISCO CA 94105  
Email: tjil@a-klaw.com  
Status: INFORMATION

GREGORY S.G. KLATT  
**DOUGLASS & LIDDELL**  
EMAIL ONLY  
EMAIL ONLY CA 0  
FOR: Alliance for Retail Energy Markets  
Email: klatt@energyattorney.com  
Status: PARTY

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

GLORIA BRITTON  
**ANZA ELECTRIC COOPERATIVE, INC. (909)**  
PO BOX 391909 / 58470 HWY 371  
ANZA CA 92539  
FOR: Anza Electric Cooperative  
Email: GloriaB@anzaelectric.org  
Status: PARTY

WILL PLAXICO PROJECT DEVELOPMENT MGR  
**AXIO POWER, INC.**  
EMAIL ONLY  
EMAIL ONLY CA 0  
FOR: Axio Power, Inc.  
Email: wplaxico@axiopower.com  
Status: PARTY

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

CHAD CHAHBAZI  
**BAP POWER CORPORATION D/B/A CENERGY**  
2784 GATEWAY ROAD, STE 102  
CARLSBAD CA 92009  
Email: chad@cenergypower.com  
Status: INFORMATION

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

RYAN PLETKA RENEWABLE ENERGY PROJECT  
MANAGER  
**BLACK & VEATCH**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
FOR: BLACK & VEATCH  
Email: pletkarj@bv.com  
Status: INFORMATION

MARK CHEDIAK  
**BLOOMBERG NEWS**  
3 PIER 101  
SAN FRANCISCO CA 94111  
Email: mchediak@bloomberg.net  
Status: INFORMATION

RICHARD F. CHANDLER  
**BP SOLAR**  
EMAIL ONLY  
EMAIL ONLY MA 00000-0000  
Email: richard.chandler@bp.com  
Status: INFORMATION

BRUCE MCLAUGHLIN ATTORNEY  
**BRAUN & BLAISING P.C.**  
915 L ST, STE 1270  
SACRAMENTO CA 95814  
FOR: BRAUN & BLAISING P.C.  
Email: mclaughlin@braunlegal.com  
Status: INFORMATION

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

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

PETER T. PEARSON ENERGY SUPPLY SPECIALIST  
**BEAR VALLEY ELECTRIC SERVICE**  
42020 GARSTIN DRIVE, PO BOX 1547  
BIG BEAR LAKE CA 92315-1547  
Email: peter.pearson@bves.com  
Status: INFORMATION

TIM MASON  
**BLACK & VEATCH CORP.**  
2999 OAK ROAD, STE 490  
WALNUT CREEK CA 94597  
Email: masont@bv.com  
Status: INFORMATION

J. COURTNEY OLIVE ATTORNEY-ADVISOR  
**BONNEVILLE POWE ADMINISTRATION**  
905 NE 11TH AVE  
PORTLAND OR 97217  
FOR: Bonneville Power Administration (BPA)  
Email: jcolive@bpa.gov  
Status: PARTY

LAURIE MAZER  
**BP WIND ENERGY NORTH AMERICA, INC.**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
FOR: BP Wind Energy North America, Inc.  
Email: Laurie.Mazer@bp.com  
Status: PARTY

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

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KEITH MCCREA ATTORNEY  
**SUTHERLAND, ASBILL & BRENNAN**  
1275 PENNSYLVANIA AVE, NW  
WASHINGTON DC 20004-2415  
FOR: CA Manufacturers & Technology Assn./LS Power  
Associates, L.P.  
Email: keith.mccrea@sablaw.com  
Status: PARTY

MOHAN NIROULA  
**CALIF DEPT OF WATER RESOURCES**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: mniroula@water.ca.gov  
Status: INFORMATION

ROSS BUCKENHAM  
**CALIFORNIA BIOENERGY LLC**  
2828 ROUTH ST, STE 500  
DALLAS TX 75201  
Email: nblack@calbioenergy.com  
Status: INFORMATION

BETH VAUGHAN  
**CALIFORNIA COGENERATION COUNCIL**  
4391 NORTH MARSH ELDER CT.  
CONCORD CA 94521  
Email: beth@beth411.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

JAMES MCMAHON  
29 DANBURY ROAD  
NASHUA NH 3064  
FOR: California Department of Water Resources  
Email: jmcmahon@8760energy.com  
Status: STATE-SERVICE

PANAMA BARTHOLOMY ADVISOR TO COMMISSIONER  
DOUGLAS  
**CALIFORNIA ENERGY COMMISSION**  
1516 NINTH ST, MS-33  
SACRAMENTO CA 95814-5512  
Email: pbarthol@energy.state.ca.us  
Status: STATE-SERVICE

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

TOM POMALES  
**CALIFORNIA AIR RESOURCES BOARD**  
1001 I ST  
SACRAMENTO CA 95812  
Email: tpomales@arb.ca.gov  
Status: INFORMATION

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

LEE TERRY  
**CALIFORNIA DEPARTMENT OF WATER RESOURCES**  
3310 EL CAMINO AVE  
SACRAMENTO CA 95821  
Email: lterry@water.ca.gov  
Status: INFORMATION

WILLIAM N. BRIEGER DEPARTMENT OF JUSTICE  
**CALIFORNIA ATTORNEY GENERAL'S OFFICE**  
1300 I ST., STE. 125/ PO BOX 944255  
SACRAMENTO CA 94244-2550  
FOR: California Department Of Justice  
Email: Will.Brieger@doj.ca.gov  
Status: STATE-SERVICE

CAROL J. HURLOCK  
**CALIFORNIA DEPT. OF WATER RESOURCES**  
JOINT OPERATIONS CENTER  
3310 EL CAMINO AVE. RM 300  
SACRAMENTO CA 95821  
Email: hurlock@water.ca.gov  
Status: INFORMATION

PAMELA DOUGHMAN  
**CALIFORNIA ENERGY COMMISSION**  
TECHNOLOGY SYSTEMS DIVISION  
1516 9TH ST, MS 45  
SACRAMENTO CA 95814  
Email: pdoughma@energy.state.ca.us  
Status: STATE-SERVICE

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CLARE LAUFENBER GALLARDO  
**CALIFORNIA ENERGY COMMISSION**  
1516 NINTH ST, MS-46  
SACRAMENTO CA 95814  
Email: claufenb@energy.state.ca.us  
Status: STATE-SERVICE

CONSTANCE LENI  
**CALIFORNIA ENERGY COMMISSION**  
MS-20  
1516 NINTH ST  
SACRAMENTO CA 95814  
Email: clenl@energy.state.ca.us  
Status: STATE-SERVICE

MARC PRYOR  
**CALIFORNIA ENERGY COMMISSION**  
1516 9TH ST, MS 20  
SACRAMENTO CA 95814  
Email: mpryor@energy.state.ca.us  
Status: STATE-SERVICE

JIM WOODWARD ELECTRICITY SUPPLY ANALYSIS  
DIVISION  
**CALIFORNIA ENERGY COMMISSION**  
1516 NINTH ST, MS 20  
SACRAMENTO CA 95814-5512  
Email: jwoodwar@energy.state.ca.us  
Status: STATE-SERVICE

LORRAINE GONZALES  
**CALIFORNIA ENERGY COMMISSION**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
FOR: CALIFORNIA ENERGY COMMISSION  
Email: lgonzale@energy.state.ca.us  
Status: STATE-SERVICE

HILARY CORRIGAN  
**CALIFORNIA ENERGY MARKETS**  
425 DIVISADERO ST. STE 303  
SAN FRANCISCO CA 94117-2242  
FOR: CALIFORNIA ENERGY MARKETS  
Email: cem@newsdata.com  
Status: INFORMATION

KAREN NORENE MILLS ATTORNEY  
**CALIFORNIA FARM BUREAU FEDERATION**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: kmills@cfbf.com  
Status: INFORMATION

CONNIE LENI  
**CALIFORNIA ENERGY COMMISSION**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: clenl@energy.state.ca.us  
Status: STATE-SERVICE

ROSS A. MILLER ELECTRICITY ANALYSIS OFFICE  
**CALIFORNIA ENERGY COMMISSION**  
1516 9TH ST MS 20  
SACRAMENTO CA 96814-5512  
Email: rmiller@energy.state.ca.us  
Status: STATE-SERVICE

DAVID VIDAVER  
**CALIFORNIA ENERGY COMMISSION**  
1516 NINTH ST, MS-20  
SACRAMENTO CA 95814-5512  
Email: dvidaver@energy.state.ca.us  
Status: STATE-SERVICE

KATE ZOCCHETTI  
**CALIFORNIA ENERGY COMMISSION**  
1516 9TH ST, MS-45  
SACRAMENTO CA 95814  
Email: kzocchet@energy.state.ca.us  
Status: STATE-SERVICE

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

DONALD C. LIDDELL  
**DOUGLASS & LIDDELL**  
EMAIL ONLY  
EMAIL ONLY CA 0  
FOR: California Energy Storage Alliance/Walmart Stores,  
Inc. and Sam's West, Inc. (MFPS 10/11/10-MFPS not  
yet granted)  
Email: liddell@energyattorney.com  
Status: PARTY

KAREN NORENE MILLS ATTORNEY  
**CALIFORNIA FARM BUREAU FEDERATION**  
2300 RIVER PLAZA DRIVE  
SACRAMENTO CA 95833  
Email: kmills@cfbf.com  
Status: PARTY

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STEVE BRINK  
**CALIFORNIA FORESTRY ASSOCIATION**  
1215 K ST, STE 1830  
SACRAMENTO CA 95814  
FOR: California Forestry Association  
Email: steveb@cwo.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

EDWARD W. O'NEILL ATTORNEY  
**DAVIS WRIGHT TREMAINE LLP**  
505 MONTGOMERY ST, STE 800  
SAN FRANCISCO CA 94111-6533  
FOR: California Large Energy Consumers Association  
Email: edwardoneill@dwt.com  
Status: PARTY

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

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

SUE KATELEY EXECUTIVE DIRECTOR  
**CALIF. SOLAR ENERGY INDUSTRIES ASSN.**  
PO BOX 782  
RIO VISTA CA 94571  
FOR: California Solar Energy Industries Association  
Email: info@calseia.org  
Status: PARTY

JOSEPH M. KARP ATTORNEY  
**WINSTON & STRAWN LLP**  
101 CALIFORNIA ST, 39TH FLR  
SAN FRANCISCO CA 94111-5894  
FOR: California Wind Energy Assn./Abengoa Solar  
Inc./Ausra Inc and BrightSource Energy Inc.  
Email: jkarp@winston.com  
Status: PARTY

DAVID A. BISCHER PRESIDENT  
**CALIFORNIA FORESTRY ASSOCIATION**  
1215 K ST, STE 1830  
SACRAMENTO CA 95814  
FOR: California Forestry Association  
Email: davidb@cwo.com  
Status: PARTY

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

TIFFANY K. ROBERTS  
**CALIFORNIA LEGISLATURE**  
LEGISLATIVE ANALYST'S OFFICE  
925 L ST, STE 1000  
SACRAMENTO CA 95814  
Email: Tiffany.Roberts@lao.ca.gov  
Status: INFORMATION

DOUGLAS M. GRANDY, P.E. CALIFORNIA ONSITE  
GENERATION  
**DG TECHNOLOGIES**  
1220 MACAULAY CIRCLE  
CARMICHAEL CA 95608  
FOR: California Onsite Generation  
Email: dgrandy@caonsitegen.com  
Status: INFORMATION

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

ANTHONY BRUNELLO  
**CALIFORNIA STRATEGIES LLC**  
980 NINTH ST, STE 2000  
SACRAMENTO CA 95814  
Email: tbrunello@calstrat.com  
Status: INFORMATION

NANCY RADER EXECUTIVE DIRECTOR  
**CALIFORNIA WIND ENERGY ASSOCIATION**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
FOR: California Wind Energy Association  
Email: nrader@calwea.org  
Status: PARTY

# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 430

JULIETTE ANTHONY  
**CALIFORNIANS FOR RENEWABLE ENERGY**  
678 BLACKBERRY LANE  
SAN RAFAEL CA 94903  
Email: juliettea7@aol.com  
Status: INFORMATION

MARTIN HOMECE  
**REDWOOD RENEWABLES/CARE**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
FOR: CAIifornians for Renewable Energy/Redwood  
Renewables  
Email: martinhomece@gmail.com  
Status: PARTY

DANIELLE MATTHEWS SEPERAS  
**CALPINE CORPORATION**  
1215 K ST, STE 2210  
SACRAMENTO CA 95814-3978  
Email: dseperas@calpine.com  
Status: INFORMATION

JEFFREY P. GRAY ATTORNEY  
**DAVIS WRIGHT TREMAINE, LLP**  
505 MONTGOMERY ST, STE 800  
SAN FRANCISCO CA 94111-6533  
FOR: Calpine Power America-CA, llc  
Email: jeffgray@dwt.com  
Status: PARTY

VENKAT SURAVARAPU ASSOCIATES DIRECTOR  
**CAMBRIDGE ENERGY RESEARCH ASSOCIATES**  
1150 CONNECTICUT AVE., NW STE 400  
WASHINGTON DC 20036-4133  
FOR: CAMBRIDGE ENERGY RESEARCH ASSOCIATES  
Email: vsuravarapu@cera.com  
Status: INFORMATION

CHRISTIAN MENTZEL  
**CEM LLC**  
619 KUPULAU DR  
KIHEI HI 96753  
Email: c.mentzel@cleanenergymaui.com  
Status: INFORMATION

JANICE G. HAMRIN  
**CENTER FOR RESOURCE SOLUTIONS**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
FOR: CENTER FOR RESOURCE SOLUTIONS  
Email: jhamrin@resource-solutions.org  
Status: PARTY

MICHAEL E. BOYD PRESIDENT  
**CALIFORNIANS FOR RENEWABLE ENERGY, INC.**  
5439 SOQUEL DRIVE  
SOQUEL CA 95073  
FOR: CAIifornians for Renewable Energy, Inc.  
Email: michaelboyd@sbcglobal.net  
Status: PARTY

MATTHEW BARMACK  
**CALPINE CORPORATION**  
4160 DUBLIN BLVD., STE. 100  
DUBLIN CA 94568  
Email: barmackm@calpine.com  
Status: INFORMATION

MARJORIE OXSEN  
**CALPINE CORPORATION**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: moxsen@calpine.com  
Status: INFORMATION

AVIS KOWALEWSKI  
**CALPINE CORPORATION**  
4160 DUBLIN BLVD., STE 100  
DUBLIN CA 94568  
FOR: CalpinePowerAmerica-CA,LLC  
Email: kowalewskia@calpine.com  
Status: PARTY

DANIELLE OSBORN-MILLS REGULATORY AFFAIRS  
COORDINATOR  
**CEERT**  
1100 11TH ST, STE 311  
SACRAMENTO CA 95814  
Email: danielle@ceert.org  
Status: INFORMATION

SARA STECK MYERS ATTORNEY  
122 28TH AVE.  
SAN FRANCISCO CA 94121  
FOR: Center for Energy Efficiency and Renewable  
Technologies  
Email: ssmyers@att.net  
Status: PARTY

JOSEPH LANGENBERG  
**CENTRAL CALIFORNIA POWER**  
5125 NORTH MARTY AVE, NO.324  
FRESNO CA 93711  
Email: Joe.Langenberg@gmail.com  
Status: PARTY

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

JEANNE M. SOLE DEPUTY CITY ATTORNEY  
**CITY AND COUNTY OF SAN FRANCISCO**  
1 DR. CARLTON B. GOODLETT PLACE, RM. 375  
SAN FRANCISCO CA 94102-4682  
FOR: City and County of San Francisco  
Email: jeanne.sole@sfgov.org  
Status: PARTY

MICHAEL MEACHAM ENVIRONMENTAL RESOURCE  
MANAGER  
**CITY OF CHULA VISTA**  
276 FOURTH AVE  
CHULA VISTA CA 91910  
Status: PARTY

JIM STACK, PH.D. RESOURCE PLANNER  
**CITY OF PALO ALTO UTILITIES**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: James.Stack@CityofPaloAlto.org  
Status: INFORMATION

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

NICHOLE FABRI ZANDOLI PRESIDENT  
**CLEAR ENERGY BROKERAGE & CONSULTING LLC**  
403 PARKSIDE AVE  
BROOKLYN NY 11226  
FOR: Clear Energy Brokerage & Consulting LLC  
Email: nicole.fabri@clearenergybrokerage.com  
Status: INFORMATION

KAREN TERRANOVA  
**ALCANTAR & KAHL, LLP**  
33 NEW MONTGOMERY ST, STE 1850  
SAN FRANCISCO CA 94105  
FOR: Cogeneration Association of California  
Email: filings@a-klaw.com  
Status: INFORMATION

JAMES P. WHITE  
**TRANSCANADA CORPORATION**  
4547 RINCON PLACE  
MONTCLAIR VA 22025  
FOR: Chinook Power Transmission, LLC/Zephyr Power  
Transmission, LLC  
Email: jim\_p\_white@transcanada.com  
Status: PARTY

SCOTT BLAISING  
**BRAUN BLAISING MCLAUGHLIN, P.C.**  
915 L ST, STE 1270  
SACRAMENTO CA 95814  
FOR: City of Cerritos  
Email: blaising@braunlegal.com  
Status: PARTY

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

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

**CLEAN POWER MARKETS, INC.**  
PO BOX 3206  
LOS ALTOS CA 94024  
FOR: CLEAN POWER MARKETS, INC.  
Status: PARTY

EDWARD A. MAINLAND CO-CHAIR, ENERGY-CLIMATE  
COMMITTEE  
**CNRCC SIERRA CLUB CALIFORNIA**  
1017 BEL MARIN KEYS BLVD.  
NOVATO CA 94949  
Email: ed.mainland@sierraclub.org  
Status: INFORMATION

PETER BLOOD  
**COLUMBIA ENERGY PARTNERS, LLC**  
EMAIL ONLY  
EMAIL ONLY WA 00000-0000  
Email: pblood@columbiaenergypartners.com  
Status: INFORMATION

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INGER GOODMAN  
**COMMERCE ENERGY INC**  
1 CENTERPOINTE DRIVE, STE 350  
LA PALMA CA 90623-2520  
Email: igoodman@commerceenergy.com  
Status: INFORMATION

CYNTHIA A. BRADY SENIOR COUNSEL  
**CONSTELLATION ENERGY GROUP INC**  
EMAIL ONLY  
EMAIL ONLY IL 00000-0000  
Email: cynthia.brady@constellation.com  
Status: INFORMATION

**COOL EARTH SOLAR**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
FOR: Cool Earth Solar  
Email: mpr-ca@coolearthsolar.com  
Status: INFORMATION

JANINE L. SCANCARELLI ATTORNEY  
**CROWELL & MORING LLP**  
275 BATTERY ST, 23RD FLR  
SAN FRANCISCO CA 94111  
Email: jscancarelli@crowell.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

DIANA SANCHEZ  
**DAY CARTER & MURPHY LLP**  
3620 AMERICAN RIVER DRIVE, STE. 205  
SACRAMENTO CA 95864  
Email: dsanchez@daycartermurphy.com  
Status: INFORMATION

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

**COMMERCE ENERGY, INC.**  
5251 WESTHEIMER RD., STE. 1000  
HOUSTON TX 77056-5414  
Status: PARTY

CYNTHIA FONNER BRADY SENIOR COUNSEL  
**CONSTELLATION NEW ENERGY, INC.**  
EMAIL ONLY  
EMAIL ONLY IL 00000-0000  
Email: cynthia.brady@constellation.com  
Status: INFORMATION

TONY CHEN SR. MANGER, BUSINESS DEVEL.  
**COOL EARTH SOLAR**  
4659 LAS POSITAS RD., STE. 94551  
LIVERMORE CA 94551  
FOR: Cool Earth Solar  
Status: INFORMATION

VIDHYA PRABHAKARAN  
**DAVIS WRIGHT & TREMAINE LLP**  
505 MONTGOMERY ST, STE 800  
SAN FRANCISCO CA 94111  
Email: vidhyaprabhakaran@dwt.com  
Status: INFORMATION

JUDY PAU  
**DAVIS WRIGHT TREMAINE LLP**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: judypau@dwt.com  
Status: INFORMATION

ANN L. TROWBRIDGE  
**DAY CARTER & MURPHY LLP**  
3620 AMERICAN RIVER DRIVE, STE 205  
SACRAMENTO CA 95864  
Email: atrowbridge@daycartermurphy.com  
Status: INFORMATION

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: INFORMATION

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JANE E. LUCKHARDT ATTORNEY  
**DOWNEY BRAND LLP**  
621CAPITOL MALL, 18TH FLR  
SACRAMENTO CA 95814  
Email: jluckhardt@downeybrand.com  
Status: INFORMATION

Christopher Clay  
**CALIF PUBLIC UTILITIES COMMISSION**  
LEGAL DIVISION  
505 VAN NESS AVE RM 4300  
SAN FRANCISCO CA 94102-3214  
FOR: DRA  
Email: cec@cpuc.ca.gov  
Status: PARTY

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

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

NEAL DE SNOO  
**CITY OF BERKELEY**  
2180 MILVIA ST, 2ND FLR  
BERKELEY CA 94704  
FOR: East Bay Power Authority/City of Berkeley  
Email: ndesnoo@ci.berkeley.ca.us  
Status: PARTY

ERIK STUEBE  
**ECOPLEXUS LLC**  
1733 20TH ST  
SAN FRANCISCO CA 94107  
Email: Eriks@ecoplexus.com  
Status: INFORMATION

STEPHEN HESS DIRECTOR, MARKET POLICY & REG.  
AFFAIRS  
**EDISON MISSION MARKETING & TRADING INC.**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: shess@edisonmission.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

ED CHIANG  
**ELEMENT MARKETS, LLC**  
3555 TIMMONS LANE, STE. 900  
HOUSTON TX 77027-6453  
Email: echiang@elementmarkets.com  
Status: INFORMATION

ANDERS GLADER SVP, ORIGINATION  
**IBERDROLA RENEWABLES**  
114 MORNING SUN AVE  
MILL VALLEY CA 94941  
FOR: Element Power  
Email: anders.glader@elpower.com  
Status: PARTY

CHRISTOPHER T. ELLISON ATTORNEY  
**ELLISON, SCHNEIDER & HARRIS, LLP**  
2600 CAPITOL AVE, STE 400  
SACRAMENTO CA 95816-5905  
Email: cte@eslawfirm.com  
Status: INFORMATION

KELLIE M. HANIGAN  
**ENCO UTILITY SERVICES**  
8141 E. KAISER BLVD., STE. 212  
ANAHEIM CA 92808  
Email: hanigan@encous.com  
Status: INFORMATION

RYAN HEIDARI  
**ENDIMENSIONS LLC**  
1670 SOUTH AMPHLETT BLVD., STE 105  
SAN MATEO CA 94402  
Email: ryan.heidari@endimensions.com  
Status: INFORMATION

KEVIN BOUDREAUX  
**ENERCAL USA LLC**  
EMAIL ONLY  
EMAIL ONLY TX 77063  
FOR: Enercal USA, LLC  
Email: kb@enercalusa.com  
Status: PARTY

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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

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

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

SAMARA M. RASSI REGULATORY AFFAIRS ANALYST  
**FELLON-MCCORD & ASSOCIATES**  
9960 CORPORATE CAMPUS DR., STE 2500  
LOUISVILLE KY 40223  
Status: INFORMATION

ANUPAMA VEGE  
**FIRST WIND**  
2 SHAW ALLEY, STE 500  
SAN FRANCISCO CA 94105  
Email: avege@firstwind.com  
Status: INFORMATION

TED KO ASSOCIATE EXECUTIVE DIRECTOR  
**FIT COALITION**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
FOR: Fit Coalition  
Email: ted@fitcoalition.com  
Status: PARTY

KENNETH SAHM WHITE  
**FIT COALITION**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: sahm@fitcoalition.com  
Status: INFORMATION

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

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

NORMAN J. FURUTA  
**FEDERAL EXECUTIVE AGENCIES**  
1455 MARKET ST., STE 1744  
SAN FRANCISCO CA 94103-1399  
Email: norman.furuta@navy.mil  
Status: INFORMATION

NORA SHERIFF  
**ALCANTAR & KAHL**  
33 NEW MONTGOMERY ST, STE 1850  
SAN FRANCISCO CA 94105  
FOR: First Solar, Energy Producers and Users Coalition.  
Email: nes@a-klaw.com  
Status: PARTY

WILLIAM S. KAMMERER  
**FIT COALITION**  
2092 MOHAWK DRIVE  
PLEASANT HILL CA 94523  
FOR: Fit Coalition  
Email: bill@fitcoalition.com  
Status: PARTY

TAM HUNT  
**HUNT CONSULTING**  
EMAIL ONLY  
EMAIL ONLY CA 0  
FOR: FIT Coalition/Community Environmental Council  
Email: tam.hunt@gmail.com  
Status: INFORMATION

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

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SAMANTHA G. POTTENGER  
**ELLISON, SCHNEIDER AND HARRIS L.L.P.**  
2600 CAPITOL AVE, STE 400  
SACRAMENTO CA 95816  
FOR: Fortistar Methane Group  
Email: sgp@eslawfirm.com  
Status: PARTY

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

JAMES L. BYARD PH.D.  
11693 PHELPS HILL ROAD  
NEVADA CITY CA 95959-9150  
Email: DocToxics@aol.com  
Status: INFORMATION

DEREK DENNISTON  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: Derek@AltaPowerGroup.com  
Status: INFORMATION

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

PETER MORITZBURKE  
3 ECHO AVE  
CORTE MADERA CA 92925  
Email: pfmoritzburke@gmail.com  
Status: INFORMATION

JASON PAYNE  
5450 MAYME AVE 23  
SAN JOSE CA 95129  
Email: jrobertpayne@gmail.com  
Status: INFORMATION

DOUGLAS K. KERNER ATTORNEY  
**ELLISON, SCHNEIDER & HARRIS, LLP**  
2600 CAPITOL AVE, STE 400  
SACRAMENTO CA 95816-5905  
FOR: Fortistar Methane Group/Sierra Pacific Industries  
Email: dkk@eslawfirm.com  
Status: PARTY

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

DOCKET COORDINATOR  
5727 KEITH ST.  
OAKLAND CA 94618  
Email: cpucdockets@keyesandfox.com  
Status: INFORMATION

TERRY FARRELLY  
269 G AVE  
CORONADO CA 92118  
Email: farrellytc@earthlink.net  
Status: INFORMATION

DOUGLAS MCPHERSON  
130 W. UNION ST  
PASADENA CA 91103  
Email: Douglas@ldealab.com  
Status: INFORMATION

DAVID E. MORSE  
217 F ST, NO. 53  
DAVIS CA 95616  
Email: davidmorse9@gmail.com  
Status: INFORMATION

JOHN PITTS  
3112 WINDSOR RD, A318  
AUSTIN TX 78703  
Email: jpittsjr@pcgconsultants.com  
Status: INFORMATION

# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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RICHARD W. RAUSHENBUSH  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: r.raushenbush@comcast.net  
Status: INFORMATION

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

LYNN M. HAUG  
**ELLISON, SCHNEIDER & HARRIS, L.L.P.**  
2600 CAPITOL AVE, STE 400  
SACRAMENTO CA 95816-5931  
FOR: FuelCell Energy, Inc./Sierra Pacific Power  
Email: lmh@eslawfirm.com  
Status: PARTY

FRED G. YANNEY  
**FULBRIGHT & JAWORSKI L.L.P.**  
555 SOUTH FLOWER ST, 41ST FLR  
LOS ANGELES CA 90071-2571  
Email: fyanney@fulbright.com  
Status: INFORMATION

CHRIS LEVERIZA  
**GLACIAL ENERGY**  
EMAIL ONLY  
EMAIL ONLY CA 0  
FOR: Glacial Energy  
Email: chris.leveriza@glacialenergy.vi  
Status: PARTY

RENEE H. GUILD CEO  
**GLOBAL ENERGY MARKETS**  
15400 WINCHESTER BLVD., NO. 32  
LOS GATOS CA 95030  
Email: renee@gem-corp.com  
Status: INFORMATION

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

MELISSA SCHARY  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: Melissa.Schary@sce.com  
Status: INFORMATION

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

JEFF COX  
**FUELCELL ENERGY INC.**  
1557 MANDEVILLE PLACE  
ESCONDIDO CA 92029  
Email: Jcox@fce.com  
Status: INFORMATION

THOMAS HOBSON  
**GE ENERGY**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: thomase.hobson@ge.com  
Status: INFORMATION

ANDREW LUCSCZ  
**GLACIAL ENERGY**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: Andrew.Lusczy@glacialenergy.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: INFORMATION

DENNIS W. DE CUIR ATTY AT LAW  
**A LAW CORPORATION**  
2999 DOUGLAS BLVD., STE 325  
ROSEVILLE CA 95661  
FOR: Golden State Water Company  
Email: dennis@ddecuir.com  
Status: INFORMATION

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

LILY M. MITCHELL  
**HANNA AND MORTON LLP**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: lmitchell@hanmor.com  
Status: INFORMATION

GEOREG GISEL  
**INDEPENDENT ENERGY SOLUTIONS, INC.**  
1090 JOSHUA WAY  
VISTA CA 92081  
Email: ggisel@indenergysolutions.com  
Status: INFORMATION

STEVEN KELLY  
**INDEPENDENT ENERGY PRODUCERS ASSOCIATION**  
1215 K ST, STE 900  
SACRAMENTO CA 95814  
FOR: INDEPENDENT ENERGY PRODUCERS ASSN  
Email: steven@iepa.com  
Status: INFORMATION

DAVID TOWNLEY US SALES & MARKETING  
**INFINIA CORPORATION**  
EMAIL ONLY  
EMAIL ONLY WA 0  
Email: dtownley@infiniacorp.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

JEFF HIRSCH  
**JAMES J. HIRSCH & ASSOCIATES**  
12185 PRESILLA ROAD  
CAMARILLO CA 93012-9243  
Email: Jeff.Hirsch@DOE2.com  
Status: INFORMATION

EMILIO E. VARANINI, III  
**GREENBERG TRAUIG, LLP**  
1201 K ST, STE 1100  
SACRAMENTO CA 95814  
Status: INFORMATION

CARRIE A. DOWNEY  
**LAW OFFICES OF CARRIE ANNE DOWNEY**  
1313 YNEZ PLACE  
CORONADO CA 92118  
FOR: Imperial Irrigation District  
Email: cadowney@cadowneylaw.com  
Status: PARTY

AMBER RIESENHUBER ENERGY ANALYST  
**INDEPENDENT ENERGY PRODUCERS ASSOC.**  
1215 K ST, STE 900  
SACRAMENTO CA 95814  
Email: amber@iepa.com  
Status: INFORMATION

BRIAN T. CRAGG  
**GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY**  
505 SANSOME ST, STE 900  
SAN FRANCISCO CA 94111  
FOR: Independent Energy Producers Association  
(IEPA)/Caithness Corporation  
Email: bcragg@goodinmacbride.com  
Status: PARTY

DAN GEIS  
**THE DOLPHIN GROUP**  
925 L ST, STE 800  
SACRAMENTO CA 95814  
FOR: Inland Empire Utilities Agency  
Email: dgeis@dolphingroup.org  
Status: PARTY

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

NELLIE TONG SENIOR ANALYST  
**KEMA, INC.**  
155 GRAND AVE., STE. 500  
OAKLAND CA 94612-3747  
Email: nellie.tong@us.kema.com  
Status: INFORMATION

# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: January 14, 2011

## CPUC DOCKET NO. R0808009

Total number of addressees: 430

L. JAN REID  
**COAST ECONOMIC CONSULTING**  
3185 GROSS ROAD  
SANTA CRUZ CA 95062  
FOR: L. Jan Reid  
Email: janreid@coastecon.com  
Status: PARTY

BRIAN S. BIERING  
**ELLISON SCHNEIDER & HARRIS, LLP**  
2600 CAPITOL AVE, STE 400  
SACRAMENTO CA 95816-5905  
FOR: Large-Scale Solar Association  
Email: bsb@eslawfirm.com  
Status: INFORMATION

KRISTIN BURFORD  
**LARGE-SCALE SOLAR ASSOCIATION**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: kristin@consciousventuresgroup.com  
Status: INFORMATION

EDWARD VINE  
**LAWRENCE BERKELEY NATIONAL LABORATORY**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: elvine@lbl.gov  
Status: INFORMATION

ROBERT J. GILLESKIE  
**LIGHTPOINT CONSULTING SERVICES**  
2570 PINWOOD ST  
DEL MAR CA 92014  
Email: rjgilleskie@san.rr.com  
Status: INFORMATION

G. PATRICK STONER PROGRAM DIRECTOR  
**LOCAL GOVERNMENT COMMISSION**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: pstoner@lgc.org  
Status: INFORMATION

KELLY CAUVEL  
**BUILD-LACCD**  
915 WILSHIRE BLVD  
LOS ANGELES CA 90017  
FOR: Los Angeles Community College District  
Email: kelly.cauvel@build-laccd.org  
Status: PARTY

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

CHRISTINE HENNING  
**LARGE SCALE SOLAR ASSOCIATION**  
3572 HUNTSMAN DRIVE  
SACRAMENTO CA 95826  
FOR: Large-Scale Solar Association  
Email: Christine@consciousventuresgroup.com  
Status: PARTY

JOHN M. SPILMAN  
**LAW OFFICE OF JOHN M. SPILMAN**  
22 FAIRWAY DRIVE  
MILL VALLEY CA 94941-1309  
Email: johnspilman@netzero.net  
Status: INFORMATION

GERALD T. ROBINSON  
**LAWRENCE BERKLEY NATIONAL LABS**  
ONE CYCLOTRON ROAD  
BERKLEY CA 94720  
Email: gtrobinson@lbl.gov  
Status: INFORMATION

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

PAUL FENN  
**LOCAL POWER**  
35 GROVE ST  
SAN FRANCISCO CA 94102  
Email: paulfenn@local.org  
Status: INFORMATION

LARRY EISENBERG EXEC. DIR.-FACILITIES PLANNING  
**LOS ANGELES COMMUNITY COLLEGE DISTRICT**  
770 WILSHIRE BLVD  
LOS ANGELES CA 90017  
FOR: Los Angeles Community College District  
Email: eisenblh@email.laccd.edu  
Status: PARTY

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CAMILLE A. GOULET GENERAL COUNSEL  
**LOS ANGELES COMMUNITY COLLEGE DISTRICT**  
770 WILSHIRE BLVD  
LOS ANGELES CA 90017  
FOR: Los Angeles Community College District  
Email: GouletCA@email.laccd.edu  
Status: PARTY

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

RICHARD MCCANN  
**M.CUBED**  
2655 PORTAGE BAY ROAD, STE 3  
DAVIS CA 95616  
Email: rmccann@umich.edu  
Status: INFORMATION

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

ELIZABETH RASMUSSEN PROJECT MGR.  
**MARIN ENERGY AUTHORITY**  
781 LINCOLN AVE, STE 320  
SAN RAFAEL CA 94901  
FOR: Marin Energy Authority  
Email: erasmussen@marinenergyauthority.org  
Status: INFORMATION

TIM ROSENFELD  
**MARIN ENERGY MANAGEMENT TEAM**  
131 CAMINO ALTO, STE D  
MILL VALLEY CA 94941  
Email: tim@marinemt.org  
Status: INFORMATION

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

JENNIFER CHAMBERLIN  
**LS POWER DEVELOPMENT, LLC**  
5000 HOPYARD ROAD, STE 480  
PLEASANTON CA 94588  
Email: JChamberlin@LSPower.com  
Status: INFORMATION

LEONARD LEICHNITZ  
**LUMOS POWER LP**  
1280 BISON B9-37  
NEWPORT BEACH CA 92660  
Email: leichnitz@lumospower.com  
Status: INFORMATION

JACK MCNAMARA ATTORNEY  
**MACK ENERGY COMPANY**  
PO BOX 1380  
AGOURA HILLS CA 91376-1380  
Email: jackmack@suesec.com  
Status: INFORMATION

DAVID L. HUARD  
**MANATT, PHELPS & PHILLIPS, LLP**  
ONE EMBARCADERO CENTER, STE 2900  
SAN FRANCISCO CA 94111-3736  
FOR: MANATT, PHELPS & PHILLIPS, LLP  
Email: dhuard@manatt.com  
Status: PARTY

DAWN WEISZ INTERIM DIR.  
**MARIN ENERGY AUTHORITY**  
781 LINCOLN AVE, STE 320  
SAN RAFAEL CA 94901  
FOR: Marin Energy Authority  
Email: dweisz@marinenergyauthority.org  
Status: PARTY

MARK STOUT  
**MERIDIAN ENERGY USA, INC**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: m.stout@meridianenergyusa.com  
Status: INFORMATION

SEAN P. BEATTY SR. MGR. EXTERNAL & REGULATORY AFFAIRS  
**MIRANT CALIFORNIA, LLC**  
696 WEST 10TH ST., PO BOX 192  
PITTSBURG CA 94565  
Email: sean.beatty@mirant.com  
Status: INFORMATION

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

KAREN KOCHONIES  
**MORGAN STANLEY**  
2000 WESTCHESTER AVE., 1ST FLR  
PURCHASE NY 10577  
Email: Karen.Kochonies@MorganStanley.com  
Status: INFORMATION

**MOUNTAIN UTILITIES**  
PO BOX 1  
KIRKWOOD CA 95646  
Status: PARTY

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

JENNIFER BARNES  
**NAVIGANT CONSULTING, INC.**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: Jennifer.Barnes@Navigantconsulting.com  
Status: INFORMATION

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

KENNY SWAIN  
**NAVIGANT CONSULTING**  
3100 ZINFANDEL DRIVE, STE 600  
RANCHO CORDOVA CA 95670  
Email: kenneth.swain@navigantconsulting.com  
Status: INFORMATION

MORGAN HANSEN  
**MORGAN STANLEY - COMMODITIES**  
2000 WESTCHESTER AVE., 1ST FLR  
PURCHASE NY 10577  
Email: Morgan.Hansen@MorganStanley.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

DAN L. CARROLL ATTORNEY  
**DOWNEY BRAND, LLP**  
621 CAPITOL MALL, 18TH FLR  
SACRAMENTO CA 95814  
FOR: Mountain Utilities  
Email: dcarroll@downeybrand.com  
Status: PARTY

**MRW & ASSOCIATES, LLC**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: mrw@mrwassoc.com  
Status: INFORMATION

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

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

TIMEA ZENTAI  
**NAVIGANT CONSULTING**  
1990 NORTH CALIFORNIA AVE., STE 700  
WALNUT CREEK CA 94596  
Email: timea.Zentai@navigantconsulting.com  
Status: INFORMATION

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KIRBY DUSEL  
**NAVIGANT CONSULTING, INC.**  
3100 ZINFANDEL DRIVE, STE 600  
RANCHO CORDOVA CA 95670  
Email: kdusel@navigantconsulting.com  
Status: PARTY

STEVEN F. GREENWALD ATTORNEY  
**DAVIS WRIGHT TREMAINE LLP**  
505 MONTGOMERY ST, STE 800  
SAN FRANCISCO CA 94111  
FOR: Newberry Geothermal LLC  
Email: stevegreenwald@dwt.com  
Status: PARTY

FRANK DE ROSA  
**NEXTLIGHT RENEWABLE POWER, LLC**  
353 SACRAMENTO ST, 21ST FL.  
SAN FRANCISCO CA 94111  
Email: fderosa@nextlight.com  
Status: INFORMATION

JAMES B. WOODRUFF ATTORNEY  
**NEXTLIGHT RENEWABLE POWER, LLC**  
353 SACRAMENTO ST, 21ST FL.  
SAN FRANCISCO CA 94111  
Email: jwoodruff@nextlight.com  
Status: INFORMATION

DIANE I. FELLMAN DIRECTOR, REGULATORY & MARKET  
AFFAIRS  
**NRG WEST & SOLAR**  
73 DOWNEY ST  
SAN FRANCISCO CA 94117  
Email: Diane.Fellman@nrgenergy.com  
Status: INFORMATION

ELIZABETH WRIGHT  
**OCCIDENTAL POWER SERVICES, INC.**  
111 WEST OCEAN BLVD  
LONG BEACH CA 90802  
Email: ej\_wright@oxy.com  
Status: PARTY

KEN ALEX  
**OFFICE OF THE ATTORNEY GENERAL**  
PO BOX 70550  
OAKLAND CA 94612-0550  
Email: ken.alex@doj.ca.gov  
Status: INFORMATION

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

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

ALEX MARTIN  
**NEXTLIGHT RENEWABLE POWER, LLC**  
353 SACRAMENTO ST. STE 2100  
SAN FRANCISCO CA 94111  
Email: amartin@nextlight.com  
Status: INFORMATION

**NOBLE AMERICAS ENERGY SOLUTIONS LLC**  
101 ASH ST, HQ09  
SAN DIEGO CA 92101-3017  
Email: CentralFiles@SempraUtilities.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

EVELYN KAHL ATTORNEY  
**ALCANTAR & KAHL, LLP**  
33 NEW MONTGOMERY ST, STE 1850  
SAN FRANCISCO CA 94015  
FOR: Occidental Power Services, Inc./First Solar, Inc.,  
Energy Producers and Users Coalition.  
Email: ek@a-klaw.com  
Status: PARTY

MICHAEL P. GINSBURG ATTORNEY  
**ORRICK, HERRINGTON & SUTCLIFFE LLP**  
405 HOWARD ST  
SAN FRANCISCO CA 94105  
Email: mginsburg@orrick.com  
Status: INFORMATION

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Total number of addressees: 430

LESLIE E. SHERMAN  
**ORRICK, HERRINGTON & SUTCLIFFE LLP**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: lsherman@orrick.com  
Status: INFORMATION

JORDAN A. WHITE SR. ATTORNEY  
**PACIFICORP**  
1407 W. NORTH TEMPLE, STE 320  
SALT LAKE CITY UT 84116  
FOR: PacifiCorp  
Email: jordan.white@pacificorp.com  
Status: PARTY

TASHIANA WANGLER  
**PACIFICORP**  
825 NE MULTNOMAH SREET, STE 2000  
PORTLAND OR 97232  
Email: Tashiana.Wangler@PacifiCorp.com  
Status: INFORMATION

CINDY L. CASSELMAN  
**PILOT POWER GROUP, INC. (1365)**  
EMAIL ONLY  
EMAIL ONLY CA 0  
FOR: Pilot Power Group, Inc.  
Email: ccasselman@pilotpowergroup.com  
Status: PARTY

RICK C. NOGER  
**PRAXAIR, INC. (1370)**  
2430 CAMINO RAMON DRIVE, STE. 300  
SAN RAMON CA 94583  
Email: rick\_noger@praxair.com  
Status: PARTY

RANDALL W. HARDY  
**HARDY ENERGY CONSULTING**  
EMAIL ONLY  
EMAIL ONLY WA 00000-0000  
FOR: Randall W. Hardy  
Email: rhardy@hardyenergy.com  
Status: PARTY

GEOFF TEIGEN  
**RCM INTERNATIONAL, LLC**  
PO BOX 4716  
BERKELEY CA 94704  
Email: gteigen@rcmdigesters.com  
Status: INFORMATION

JONATHAN JACOBS  
**PA CONSULTING GROUP**  
1700 LINCOLN ST STE 4600  
DENVER CO 80203-4509  
Email: jon.jacobs@paconsulting.com  
Status: INFORMATION

CATHIE ALLEN DIR., REGULATORY AFFAIRS  
**PACIFICORP**  
825 NE MULTNOMAH ST, STE 2000  
PORTLAND OR 97232  
Email: californiadockets@pacificorp.com  
Status: INFORMATION

THOMAS R. DARTON  
**PILOT POWER GROUP, INC. (1365)**  
EMAIL ONLY  
EMAIL ONLY CA 0  
FOR: Pilot Power Group, Inc.  
Email: tdarton@pilotpowergroup.com  
Status: INFORMATION

JESSICA NELSON  
**PLUMAS-SIERRA RURAL ELECTRIC CO-OP**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: jnelson@psrec.coop  
Status: PARTY

ARI CITRIN  
**PROSOLIA SOLAR, CFO NORTH AMERICA**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: acitrin@prosoliana.com  
Status: INFORMATION

HARRY SINGH  
**RBS SEMPRA COMMODITIES**  
600 WASHINGTON BLVD  
STAMFORD CT 6901  
Email: Harry.Singh@RBSSempra.com  
Status: INFORMATION

ANDRE DEVILBISS ASSOCIATE, DEVELOPMENT  
**RECURRENT ENERGY**  
300 CALIFORNIA ST, 8TH FLR  
SAN FRANCISCO CA 94104  
Email: andre.devilbiss@recurrentenergy.com  
Status: INFORMATION

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LUKE DUNNINGTON ASSOCIATE, DEVELOPMENT

**RECURRENT ENERGY**

300 CALIFORNIA ST, 8TH FL  
SAN FRANCISCO CA 94104

Email: luke.dunnington@recurrentenergy.com

Status: INFORMATION

JIM HOWELL

**RECURRENT ENERGY**

300 CALIFORNIA ST., 8TH FLR  
SAN FRANCISCO CA 94104

Email: jim.howell@recurrentenergy.com

Status: INFORMATION

TODD JOHANSEN DEVELOPMENT ANALYST

**RECURRENT ENERGY**

EMAIL ONLY

EMAIL ONLY CA 0

Email: todd.johansen@recurrentenergy.com

Status: INFORMATION

SAM MASLIN

**RECURRENT ENERGY**

300 CALIFORNIA ST, 8TH FL.  
SAN FRANCISCO CA 94104

Email: sam.maslin@recurrentenergy.com

Status: INFORMATION

MATT MILLER DEVELOPMENT ANALYST

**RECURRENT ENERGY**

EMAIL ONLY

EMAIL ONLY CA 0

Email: matt.miller@recurrentenergy.com

Status: INFORMATION

ARNO HARRIS

**RECURRENT ENERGY, INC.**

300 CALIFORNIA ST., 8TH FL.  
SAN FRANCISCO CA 94104-1416

Email: arno@recurrentenergy.com

Status: PARTY

JOHN NIMMONS

**JOHN NIMMONS & ASSOCIATES, INC.**

EMAIL ONLY

EMAIL ONLY CA 00000-0000

FOR: Recurrent Energy

Email: jna@speakeasy.org

Status: PARTY

TOM FAUST

**REDWOOD RENEWABLES LLC**

6 ENDEAVOR DRIVE  
CORTE MADERA CA 94925

Email: tfaust@redwoodrenewables.com

Status: INFORMATION

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

ART RIVERA

**RENEWABLE TECHCOM**

EMAIL ONLY

EMAIL ONLY CA 00000-0000

Email: artrivera@comcast.net

Status: INFORMATION

TOBIN RICHARDSON

**RICHARDSON GROUP**

1416 VIGO COURT

DAVIS CA 95618

Email: tobinjmr@sbcglobal.net

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

WILLIAM H. BOOTH ATTORNEY

**LAW OFFICES OF WILLIAM H. BOOTH**

67 CARR DRIVE

MORAGA CA 94556

FOR: Ridgewood Renewable Power, LLC and Ridgewood  
Olinda, LLC

Email: wbooth@booth-law.com

Status: PARTY

TRENT A. CARLSON

**RRI ENERGY, INC.**

1000 MAIN ST

HOUSTON TX 77001

Email: tcarlson@rrienergy.com

Status: INFORMATION

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Total number of addressees: 430

SUE MARA  
**RTO ADVISORS, LLC**  
164 SPRINGDALE WAY  
REDWOOD CITY CA 94062  
Email: sue.mara@rtoadvisors.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

TIMOTHY N. TUTT  
**SACRAMENTO MUNICIPAL UTILITIES DISTRICT**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: ttutt@smud.org  
Status: INFORMATION

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

HANNON RASOOL  
**SAN DIEGO GAS & ELECTRIC COMPANY**  
8330 CENTURY PARK CT.  
SAN DIEGO CA 92123  
Email: HRasool@SempraUtilities.com  
Status: INFORMATION

AIMEE M. SMITH  
**SEMPRA ENERGY**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
FOR: San Diego Gas and Electric Co.  
Email: AMSmith@SempraUtilities.com  
Status: PARTY

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

WILLIAM W. WESTERFIELD III SR. ATTORNEY - OFF. OF  
GEN. COUNSEL  
**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
6201 S ST, M.S. B402  
SACRAMENTO CA 95817  
FOR: SACRAMENTO MUNICIPAL UTILITY DISTRICT  
Email: wwester@smud.org  
Status: PARTY

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

CENTRAL FILES  
**SDG&E AND SOCALGAS**  
8330 CENTURY PARK COURT, CP31-E  
SAN DIEGO CA 92123-1550  
FOR: SAN DIEGO GAS & ELECTRIC  
Email: CentralFiles@SempraUtilities.com  
Status: INFORMATION

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

MANUEL RAMIREZ  
**SAN FRANCISCO PUC - POWER ENTERPRISE**  
1155 MARKET ST, 4TH FLR  
SAN FRANCISCO CA 94103  
Email: mramirez@sflower.org  
Status: INFORMATION

THERESA BURKE  
**SAN FRANCISCO PUC**  
1155 MARKET ST, 4TH FLR  
SAN FRANCISCO CA 94103  
FOR: San Francisco Public Utilities Commission  
Email: tburke@sflower.org  
Status: INFORMATION

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## CPUC DOCKET NO. R0808009

Total number of addressees: 430

DAVID ORTH  
**SAN JOAQUIN VALLEY POWER AUTHORITY**  
ADMIN OFF @KINGS RIVER CONSERV DISTRICT  
4886 EAST JENSEN AVE  
FRESNO CA 93725  
FOR: SAN JOAQUIN VALLEY POWER  
AUTHORITY/KING'S RIVER CONSERVATION  
DISTRICT  
Email: dorth@krcd.org  
Status: PARTY

SHANI KLEINHAUS  
**SANTA CLARA VALLEY AUDUBON SOCIETY**  
22221 MCLELLAN ROAD  
CUPERTINO CA 95014  
Email: shani@scvas.org  
Status: INFORMATION

THEODORE E. ROBERTS  
**SEMPRA GENERATION / SEMPra BROADBAND**  
101 ASH ST, HQ 12B  
SAN DIEGO CA 92101-3017  
FOR: Sempra Energy  
Email: TRoberts@SempraUtilities.com  
Status: PARTY

GREG BASS  
**SEMPRA ENERGY SOLUTIONS LLC**  
401 WEST A ST, STE 500  
SAN DIEGO CA 92101-3017  
FOR: Sempra Energy Solutions LLC  
Email: GBass@SempraSolutions.com  
Status: PARTY

CURTIS KEBLER  
**SEMPRA GENERATION**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: CKebler@SempraGeneration.com  
Status: INFORMATION

MICHAEL CHESTONE  
**SHARP ELECTRONICS CORPORATION**  
5901 BOLSA AVE  
HUNTINGTON BEACH CA 92647  
Email: chestonem@sharpsec.com  
Status: INFORMATION

JOHN W. LESLIE, ESQ.  
**LUCE, FORWARD, HAMILTON & SCRIPPS, LLP**  
EMAIL ONLY  
EMAIL ONLY CA 0  
FOR: Shell Energy North America (US), L.P.  
Email: jleslie@luce.com  
Status: PARTY

THOMAS J. VICTORINE  
**SAN JOSE WATER COMPANY**  
1221 S. BASCOM AVE  
SAN JOSE CA 95128  
Email: tom\_victorine@sjwater.com  
Status: INFORMATION

BILLY BLATTNER  
**SAN DIEGO GAS & ELECTRIC COMPANY**  
EMAIL ONLY  
EMAIL ONLY CA 0  
FOR: SDG&E/SoCal Gas  
Email: WBlattner@SempraUtilities.com  
Status: INFORMATION

THOMAS P. CORR  
**SEMPRA ENERGY GLOBAL ENTERPRISES**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: TCorr@SempraGlobal.com  
Status: INFORMATION

STEVEN C. NELSON ATTORNEY  
**SEMPRA ENERGY**  
101 ASH ST HQ-12B  
SAN DIEGO CA 92101-3017  
Email: SNelson@Sempra.com  
Status: INFORMATION

DANIEL A. KING  
**SEMPRA GENERATION**  
101 ASH ST, HQ 14  
SAN DIEGO CA 92101  
FOR: Sempra Generation  
Email: DAKing@SempraGeneration.com  
Status: PARTY

MARCIE MILNER  
**SHELL ENERGY NORTH AMERICA**  
4445 EASTGATE MALL, STE 100  
SAN DIEGO CA 92121  
Email: marcie.milner@shell.com  
Status: PARTY

JIM METROPULOS SR. ADVOCATE  
**SIERRA CLUB CALIFORNIA**  
801 K ST, STE 2700  
SACRAMENTO CA 95814  
FOR: Sierra Club California  
Email: jim.metropulos@sierraclub.org  
Status: PARTY

# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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## CPUC DOCKET NO. R0808009

Total number of addressees: 430

RICK A. LIND  
**SIERRA ECOSYSTEM ASSOCIATES**  
PO BOX 2260  
PLACERVILLE CA 95667  
Email: rick@sierraecos.com  
Status: INFORMATION

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

JEDEDIAH J. GIBSON ATTORNEY  
**ELLISON SCHNEIDER & HARRIS LLP**  
2600 CAPITOL AVE, STE 400  
SACRAMENTO CA 95816-5905  
FOR: Sierra Pacific Power Company  
Email: jjg@eslawfirm.com  
Status: INFORMATION

MICHAEL E. CARBOY  
**SIGNAL HILL CAPITAL LLC**  
343 SANSOME ST, STE 425  
SAN FRANCISCO CA 94104-5619  
Email: mcarboy@signalhill.com  
Status: INFORMATION

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

**SILVERADO POWER LLC**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: regulatory@silveradopower.com  
Status: INFORMATION

HANS ISERN VP - ENGINEERING  
**SILVERADO POWER LLC**  
44 MONTGOMERY ST, STE 3065  
SAN FRANCISCO CA 94104  
Email: reg@silveradopower.com  
Status: INFORMATION

DAVID R. BRANCHCOMB  
**SIERRA PACIFIC INDUSTRIES**  
PO BOX 496028  
REDDING CA 96049  
Email: dbranchcomb@spi-ind.com  
Status: INFORMATION

ELENA MELLO  
**SIERRA PACIFIC POWER COMPANY**  
6100 NEIL ROAD  
RENO NV 89520  
Email: emello@sppc.com  
Status: INFORMATION

ANDREW B. BROWN ATTORNEY  
**ELLISON SCHNEIDER & HARRIS, LLP (1359)**  
2600 CAPITAL AVE, STE 400  
SACRAMENTO CA 95816-5905  
FOR: Sierra Pacific Power Company/Constellation  
NewEnergy, Inc.  
Email: abb@eslawfirm.com  
Status: PARTY

JAN PEPPER ELECTRIC DIV., MGR.  
**SILICON VALLEY POWER**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: jpepper@svpower.com  
Status: INFORMATION

KEVIN T. FOX  
**KEYES & FOX LLP**  
436 14TH ST, STE 1305  
OAKLAND CA 94612  
FOR: Silverado Power, LLC  
Email: kfox@keyesandfox.com  
Status: PARTY

**SILVERADO POWER LLC**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: legal@silveradopower.com  
Status: INFORMATION

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

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JEANNE B. ARMSTRONG  
**GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP**  
505 SANSOME ST, STE 900  
SAN FRANCISCO CA 94111  
FOR: Solar Alliance  
Email: jarmstrong@goodinmacbride.com  
Status: PARTY

FREEMAN S. HALL  
**SOLAR ELECTRIC SOLUTIONS, LLC**  
5353 TOPANGA CANYON BLVD, STE 300  
WOODLAND HILLS CA 91364  
FOR: Solar Electric Solutions, LLC  
Email: fhall@solarelectricsolutions.com  
Status: INFORMATION

RACHEL MCMAHON DIRECTOR, GOV. AFFAIRS-  
PROJECT DEV.  
**SOLAR MILLENNIUM, LLC**  
1625 SHATTUCK AVE, STE 270  
BERKELEY CA 94709-1161  
Email: mcmahon@solarmillennium.com  
Status: INFORMATION

ERIC CHERNISS  
**SOLARGEN ENERGY**  
20400 STEVENS CREEK BLVD, STE 700  
CUPERTINO CA 95014  
Email: eric.cherniss@gmail.com  
Status: INFORMATION

DAVID SAUL  
**PACIFIC SOLAR & POWER CORPORATION**  
2850 W. HORIZON RIDGE PKWY, STE 200  
HENDERSON NV 89052  
FOR: SOLEL, INC.  
Email: dsaul@pacificsolar.net  
Status: PARTY

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

GEORGE WILTSEE  
**SOUTHERN CALIFORNIA EDISON COMPANY**  
2244 WALNUT GROVE AVE  
ROSEMEAD CA 91770  
Email: george.wiltsee@sce.com  
Status: INFORMATION

SARA BIRMINGHAM DIRECTOR, WESTERN POLICY  
**SOLAR ALLIANCE**  
11 LYNN COURT  
SAN RAFAEL CA 94901  
Email: sara@solaralliance.org  
Status: INFORMATION

RHONE RESCH  
**SOLAR ENERGY INDUSTRIES ASSOCIATION**  
575 7TH ST., NW, STE. 400  
WASHINGTON DC 20004-1612  
Email: rresch@seia.org  
Status: PARTY

WILLIAM  
**SOLAR SEMICONDUCTOR INC.**  
1292 KIFER ROAD, STE 808  
SUNNYVALE CA 94086  
Status: INFORMATION

JANET M. GAGNON  
**SOLARWORLD CALIFORNIA**  
4650 ADOHR LANE  
CAMARILLO CA 93012  
Email: janet.gagnon@solarworldusa.com  
Status: INFORMATION

MARY C. HOFFMAN PRESIDENT  
**SOLUTIONS FOR UTILITIES, INC.**  
1192 SUNSET DRIVE  
VISTA CA 92081  
FOR: Solutions for Utilities, Inc.  
Email: mary@solutionsforutilities.com  
Status: PARTY

LAURA I. GENAO  
**SOUTHERN CALIFORNIA EDISON COMPANY**  
PO BOX 800, 2244 WALNUT GROVE AVE  
ROSEMEAD CA 91770  
Email: Laura.Genao@sce.com  
Status: INFORMATION

HUGH YAO  
**SOUTHERN CALIFORNIA GAS COMPANY**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: HYao@SempraUtilities.com  
Status: INFORMATION

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BRUCE FOSTER  
**SOUTHERN CALIFORNIA EDISON COMPANY**  
601 VAN NESS AVE, STE. 2040  
SAN FRANCISCO CA 94102  
Email: bruce.foster@sce.com  
Status: PARTY

JONI A. TEMPLETON ATTORNEY  
**SOUTHERN CALIFORNIA EDISON COMPANY**  
2244 WALNUT GROVE AVE, PO BOX 800  
ROSEMEAD CA 91770  
FOR: Southern California Edison Company  
Email: Joni.Templeton@sce.com  
Status: INFORMATION

MICHAEL D. MONTOYA  
**SOUTHERN CALIFORNIA EDISON COMPANY**  
2244 WALNUT GROVE AVE, PO BOX 800  
ROSEMEAD CA 91770  
FOR: Southern California Edison Company  
Email: mike.montoya@sce.com  
Status: PARTY

MELISSA P. MARTIN  
**STATESIDE ASSOCIATES**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: mpf@stateside.com  
Status: INFORMATION

SEAN GALLAGHER VP, MARKET STRATEGY & REG.  
AFFAIRS  
**STIRLING ENERGY SYSTEMS**  
2600 10TH ST, STE 635  
BERKELEY CA 94710  
Email: sgallagher@stirlingenergy.com  
Status: INFORMATION

JANICE LIN MANAGING PARTNER  
**STRATEGEN CONSULTING LLC**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: janice@strategenconsulting.com  
Status: INFORMATION

POLLY SHAW  
**SUNTECH AMERICA, INC.**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
FOR: Suntech America, Inc.  
Email: pshaw@suntechamerica.com  
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

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

NORMAN A. PEDERSEN  
**HANNA AND MORTON LLP**  
444 S FLOWER ST., STE 1500  
LOS ANGELES CA 90071-2916  
FOR: Southern California Generation Coalition  
Email: npedersen@hanmor.com  
Status: PARTY

TODD EDMISTER ATTORNEY  
**BINGHAM MCCUTCHEN**  
THREE EMBARCADERO CENTER  
SAN FRANCISCO CA 94111  
FOR: Stirling Energy Systems, Inc. (SES)  
Email: todd.edmister@bingham.com  
Status: PARTY

SETH D. HILTON  
**STOEL RIVES, LLP**  
555 MONTGOMERY ST., STE 1288  
SAN FRANCISCO CA 94111  
Email: sdhilton@stoel.com  
Status: INFORMATION

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

RAFI HASSAN  
**SUSQUEHANNA FINANCIAL GROUP, LLLP**  
101 CALIFORNIA ST, STE 3250  
SAN FRANCISCO CA 94111  
Email: rafi.hassan@sig.com  
Status: INFORMATION

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JODY LONDON  
**JODY LONDON CONSULTING**  
PO BOX 3629  
OAKLAND CA 94609  
FOR: Sustainable Conservation and RCM International  
Email: jody\_london\_consulting@earthlink.net  
Status: PARTY

SUZY HONG ATTORNEY  
**GOODIN MACBRIDE SQUERI DAY & LAMPREY**  
505 SANSOME ST, STE 900  
SAN FRANCISCO CA 94111  
FOR: Terra-Gen Power, LLC  
Email: shong@goodinmacbride.com  
Status: PARTY

R. THOMAS BEACH PRINCIPAL CONSULTANT  
**CROSSBORDER ENERGY**  
2560 NINTH ST, STE 213A  
BERKELEY CA 94710-2557  
FOR: THE CALIFORNIA COGENERATION  
COUNCIL/Solar Alliance  
Email: tomb@crossborderenergy.com  
Status: PARTY

CLYDE MURLEY  
**CONSULTANT TO NRDC**  
1031 ORDWAY ST  
ALBANY CA 94706  
FOR: The Community College league of California  
Email: clyde.murley@comcast.net  
Status: PARTY

ERIN GRIZARD  
**THE DEWEY SQUARE GROUP**  
EMAIL ONLY  
EMAIL ONLY CA 00000-0000  
Email: EGrizard@deweysquare.com  
Status: INFORMATION

NINA SUETAKE  
**THE UTILITY REFORM NETWORK**  
115 SANSOME ST, STE 900  
SAN FRANCISCO CA 94104  
Email: nsuetake@turn.org  
Status: INFORMATION

MARCEL HAWIGER ENERGY ATTY  
**THE UTILITY REFORM NETWORK**  
115 SANSOME ST, STE 900  
SAN FRANCISCO CA 94104  
FOR: The Utility Reform Network  
Email: marcel@turn.org  
Status: PARTY

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

PHILLIP REESE  
**C/O REESE-CHAMBERS SYSTEMS CONSULTANTS,**  
PO BOX 8  
3379 SOMIS ROAD  
SOMIS CA 93066  
FOR: The California Biomass Energy Alliance  
Email: phil@reesechambers.com  
Status: PARTY

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

JOHN DEWEY  
**THE DEWEY GROUP**  
3700 CAMPUS DRIVE, STE 207  
NEWPORT BEACH CA 92660  
Email: john@deweygroup.com  
Status: INFORMATION

STEPHANIE C. CHEN  
**THE GREENLINING INSTITUTE**  
EMAIL ONLY  
EMAIL ONLY CA 0  
Email: stephaniec@greenlining.org  
Status: INFORMATION

MATTHEW FREEDMAN  
**THE UTILITY REFORM NETWORK**  
115 SANSOME ST, STE 900  
SAN FRANCISCO CA 94104  
FOR: The Utility Reform Network  
Email: matthew@turn.org  
Status: PARTY

ADAM BROWNING  
**THE VOTE SOLAR INITIATIVE**  
300 BRANNAN ST, STE 609  
SAN FRANCISCO CA 94107  
FOR: The Vote Solar Initiative  
Email: abrowning@votesolar.org  
Status: PARTY

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JP ROSS VP STRATEGOC RELATIONSHIPS

**SUNGEVITY**

66 FRANKLIN ST., STE 310

OAKLAND CA 94607-3734

FOR: THE VOTE SOLAR INITIATIVE

Email: jpross@sungevity.com

Status: PARTY

AMY FREES

**THIRD PLANET WINDPOWER, LLC**

EMAIL ONLY

EMAIL ONLY CA 0

Email: freesa@thirdplanetwind.com

Status: INFORMATION

LAURA WISLAND

**UNION OF CONCERNED SCIENTISTS**

EMAIL ONLY

EMAIL ONLY CA 00000-0000

FOR: Union of Concerned Scientists

Email: lwisland@ucsusa.org

Status: PARTY

RUDY REYES

**VERIZON**

711 VAN NESS AVE, STE 300

SAN FRANCISCO CA 94102

FOR: Verizon

Email: rudy.reyes@verizon.com

Status: INFORMATION

THOMAS W. SOLOMON ATTORNEY

**WINSTON & STRAWN LLP**

101 CALIFORNIA ST, 39TH FLR

SAN FRANCISCO CA 94111-5894

Email: tsolomon@winston.com

Status: INFORMATION

MICHAEL DAY

**GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP**

505 SANSOME ST, STE. 900

SAN FRANCISCO CA 94111

FOR: The Vote Solar Initiative/Recurrent Energy, Inc.

Email: mday@goodinmacbride.com

Status: PARTY

JEFF NEWMAN

**TRANSPORTATION AND HOUSING AGENCY**

7080 HOLLYWOOD BLVD., STE 900

LOS ANGELES CA 90028

Email: Jeff.Newman@bth.ca.gov

Status: INFORMATION

ANDREW J. VAN HORN

**VAN HORN CONSULTING**

12 LIND COURT

ORINDA CA 94563

Email: andy.vanhorn@vhcenergy.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

BARBARA GEORGE

**WOMEN'S ENERGY MATTERS**

PO BOX 548

FAIRFAX CA 94978-0548

FOR: Women's Energy Matters

Email: wem@igc.org

Status: INFORMATION