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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop Additional Methods to Implement the California Renewables Portfolio Standard Program	))))))	Rulemaking 06-02-012 (Filed February 16, 2006)

SACRAMENTO MUNICIPAL UTILITY DISTRICT'S COMMENTS ON THE DECEMBER 23, 2009 REVISED PROPOSED DECISION AUTHORIZING THE USE OF RENEWABLE ENERGY CREDITS FOR COMPLIANCE WITH THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD

SACRAMENTO MUNICIPAL
UTILITY DISTRICT
Office of General Counsel
ARLEN ORCHARD
WILLIAM W. WESTERFIELD, III
6201 "S" Street
Sacramento, CA 95817
Tel: (916) 732-7107
Fax: (916) 732-6581
Email: wwester@smud.org

JANE E. LUCKHARDT
NICHOLAS H. RABINOWITSH
Downey Brand LLP
555 Capitol Mall, Tenth Floor
Sacramento, CA 95814
Tel: (916) 444-1000
Fax: (916) 444-2100
Email: jluckhardt@downeybrand.com

Attorneys for the
Sacramento Municipal Utility District

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OF THE STATE OF CALIFORNIA

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The Sacramento Municipal Utility District ("SMUD") hereby files its comments on the Revised Proposed Decision Authorizing Use of Renewable Energy Credits for Compliance with the Renewables Portfolio Standard ("RPD") pursuant to California Public Utilities Commission ("CPUC") Rule 14.3(a). While the CPUC does not regulate publicly owned utilities such as SMUD, and therefore, the RPD would not set Renewable Portfolio Standard ("RPS") and tradable renewable emission credit ("TREC") requirements for SMUD, SMUD nevertheless voluntarily follows the California Energy Commission's ("CEC") Eligibility Guidelines, and has concerns about how the RPD improperly defines nearly all out-of-state RPS eligible generation as a REC-only transaction.

I. THE REVISED PROPOSED DECISION'S DISTINCTION BETWEEN "BUNDLED" AND "RENEWABLE ENERGY CREDIT-ONLY" PROCUREMENT IS DETRIMENTAL TO THE RENEWABLES PORTFOLIO STANDARD PROGRAM.

The purpose of requiring procurement of renewable energy is to further the goals of California's RPS program. The stated goals of the RPS program are as follows: increasing the diversity and reliability of California's energy mix, promoting stable electricity prices, reducing reliance on imported fuels, reducing in-state fossil fuel consumption, protecting public health and improving environmental quality, stimulating sustainable economic development, and creating new employment opportunities. (See subsections [a] through [c] of Pub. Util. Code § 399.11.)

The CPUC's authority to implement rules regarding tradable RECs must further the goals identified by the legislature. However, as currently drafted, the RPD distinguishes between "bundled" and "REC-only" procurement in a way that inhibits, rather than furthers, several of these goals.

A. The Revised Proposed Decision Would Chill Procurement of Out-of-State Renewable Generation, Which Is Important in Furthering the Purposes of the Renewables Portfolio Standard.

The RPD distinguishes between "bundled" and "renewable energy credit-only" ("REC-only") procurement in a way that excludes almost all out-of-state generation from qualifying as "bundled" procurement.[1] The RPD bases this distinction on the assumption that out-of-state generation "does not provide the benefits of physical delivery of renewable energy to California customers, but does provide the more general benefits of renewable generation that are characteristic of REC-only transactions." (RPD at 30.) The RPD claims that "bundled" (read: "in-state") procurement provides "more specific and sometimes more local benefits to the customers of the procuring LSE," including obviating the need for reliance on conventional resources in or near the utility's service territory, air quality and public health benefits, and reducing the amount of price volatility. (RPD at 28-29.)

The RPD does not offer adequate support for its contentions that out-of-state generation fails to confer the same benefits as in-state generation. With regard to the benefits described in the RPD, an out-of-state renewable generating resource that is contracted for with a fixed-price, firm delivery contract has equivalent local benefits to in-state renewable generation. There is no indication that in-state renewable generation is any more likely to reduce reliance on in-state conventional resources because additional, out-of-state generation would tend to back down in-state generation *so long as it is delivered to California*.

With regard to price volatility, the RPD does not provide evidence that this would be reduced by in-state renewable generation any more than it would be by out-of-state renewable generation when the in-state generation requires firming. The question of price volatility with

[1] The RPD concludes that for procurement to be considered "bundled" (that is, conveying both the REC and its associated energy), its first point of interconnection must be either (1) physically located within California or (2) within the CAISO or another California balancing authority area. Any other procurement will be considered REC-only. (RPD at 30.)

regard to renewable procurement is fundamentally a contract terms issue, not a resource location issue. A properly structured out-of-state contract can have little to no connection to a volatile market price, even if the contract is for shaped and firmed renewable energy. A renewable resource located out of state and contracted for by a load serving entity (LSE) under a fixed-price contract provides equivalent price volatility benefits to an similar in-state resource. Many in-state renewables are procured by LSEs to this day under contractual terms where the price varies by avoided cost, and these in-state resources provide less protection against price-volatility than out-of-state fixed price contracts. When contracts are properly structured, stable electric prices are *promoted* by lower cost renewable energy imported from out of state, not *hampered* by those contracts.

Further, in its most recent Integrated Energy Policy Report ("IEPR"), the California Energy Commission ("CEC") noted that 87% of California's natural gas supplies are imported from out-of-state, which "leaves California vulnerable to supply disruptions and price volatility." (See 2009 IEPR at 33.) Because the RPD's proposed treatment of out-of-state firmed contracts as "REC-only," it would encourage in-state firming using natural gas largely imported from other states, worsening California's reliance on imported natural gas. It is also incontrovertible that renewable generation anywhere in the WECC, regardless of contractual terms or delivery requirements, reduces the percentage of generation from conventional resources, and this reduction in demand for fossil fuels for generation has a market impact on the price volatility of fossil power that benefits all ratepayers – in-state as well as out-of-state. This market impact also reduces the prices, and price volatility, for natural gas end users in the state.

A review of the statutes implementing the California Renewables Portfolio Standard Program demonstrates that there are other significant benefits conferred by out-of-state generation which are left out of the RPD's discussion. These are:

Increase diversity and reliability of the energy mix. (Pub. Util. Code § 399.11[a].) Although California is blessed with many renewable energy opportunities, there are even greater renewable energy options when the resources available in other states are included. Because some renewables such as wind are intermittent and can have substantial variability from minute to minute as well as from year to year, more diversity of location and resources will increase reliability. By accessing RPS resources in different areas, California can reduce the volatility of the overall RPS resources mix for California. If California experiences a period of low wind generation in a key California wind resource location, a wind resource in another state may offset

this reduction with increased generation at that time. If one wind resource area has a low generation year, another may not experience the same shortfall in the same year. By diversifying the locations of RPS resources, the overall output of the portfolio of RPS resources becomes more reliable on a real time, seasonal and annual basis. By limiting out-of-state renewable acquisition for California the RPD decreases geographic diversity and thereby, decreases reliability.

Reduce reliance on imported fuels. (Pub. Util. Code § 399.11[b].) As discussed above, 87% of California's natural gas supplies are imported from out-of-state, which "leaves California vulnerable to supply disruptions and price volatility." (See 2009 IEPR at 33.) Requiring utilities to purchase renewable energy from in-state sources requires in-state firming of intermittent renewables. Since in-state firming is currently primarily supported by natural gas power plants, the state is still subject to price volatility and supply disruptions. Therefore, requiring in-state renewable purchases will achieve less of a decrease in reliance on imported natural gas than allowing utilities the flexibility they need to provide firmed renewable electricity as efficiently as possible.

Reduce in-state fossil fuel consumption. (Pub. Util. Code § 399.11[c].) Allowing California's utilities the full benefit of obtaining firmed renewable energy from out-of-state would reduce in-state fossil fuel consumption, since any necessary firming using fossil fuel generation could be done out-of-state. If the RPS energy is firmed out-of-state, the load serving entity (IOU or POU) can rely upon the energy and does not need to have in-state fossil generation running above and beyond reliability margins. This reduces the consumption of in-state fossil fuel, as well as its corresponding emissions. If the RPS energy is instead firmed by the CAISO, the CAISO must maintain a certain percentage (typically 1 to 1.5% of load) of fossil or large hydropower generation in reserve to firm the renewable generation in-state. (See California Independent System Operator [CAISO], "Integration of Renewable Resources" [2007] at 78.) If reserves are insufficient, CAISO must dispatch quick-start units to provide the needed energy. (California Independent System Operator, "Integration of Renewable Resources" [2007] at 117.)

Protecting public health and improving environmental quality. (Pub. Util. Code § 399.11[c].) As stated above, importing firmed RPS energy from out-of-state will back down in-state generation. Reducing in-state fossil generation directly reduces emissions of criteria pollutants thereby improving environmental quality and public health in more densely populated California. Thus, discounting the value of bundled and firmed out-of-state RPS generation by treating it as REC-only is inconsistent with the goals of the RPS program and may actually increase emissions of criteria pollutants in California.

The RPD concludes that its methodology for determining whether or not procurement is "bundled" is less complex and more transparent than evaluating the specifics of each contract. (RPD at 27, 29.) While it may be true that looking simply at the first point of interconnection is an easy way to distinguish where a resource is located, it has very little to do with different types of procurement, as this practice ignores the realities of the transmission system and the benefits presented by out-of-state renewable generation. Just under a third of California's electricity

comes from out-of-state imports. (2009 IEPR at 2.) As discussed above, out-of-state generation will likely continue to constitute a large fraction of California's energy supply. Absent this imported generation, California would have to supply all of its needs with in-state resources (including all firming and shaping), which would increase in-state fossil generation and emissions, and would leave the interstate transmission system asset lying useless. It is important to recognize the benefits presented by having out-of-state generation in California's energy portfolio and therefore, to avoid discouraging it by classifying nearly all renewable generation with a first point of interconnection outside of California as "REC-only".

B. The Revised Proposed Decision's Arbitrary Distinction Between "Bundled" and "REC-Only" Procurement Fails to Accomplish Its Stated Purpose.

The RPD develops its distinction between "bundled" and "REC-only" procurement at least in part to avoid situations involving the delivery of renewable output associated with the RECs to someplace other than the customers of the purchasing California load-serving entity. (RPD at 29.) However, the RPD's method for distinguishing between the two different types of procurement is arbitrary and fails to accomplish its stated purpose.

The RPD would arbitrarily consider most out-of-state renewable generation that *is* ultimately consumed by California consumers to be "REC-only" procurement – even most out-of-state resources are in reality bundled contracts. For example, SMUD has contracts for RPS-eligible out-of-state generation that is delivered to SMUD using firm transmission. This transaction is no different from (and is just as bundled as) the procurement of energy from an in-state RPS eligible generator. In fact, firm delivery of these out-of-state resources to SMUD is considerably more viable, given constraints in the in-state transmission system, than firm delivery of in-state renewable power from locations in the south part of the state (where significant in-state renewable potential exists). These types of out-of-state contracts provide all of the benefits of price hedging and reduced reliance on fossil generation. Nevertheless, under the RPD these transactions would be classified as RECs-only, which misstates the true nature of the transaction, and is an improper devaluation of these contracts.

Second, the RPD would still arbitrarily classify as "bundled" a transaction in which in-state generation is ultimately consumed by out-of-state users. For example, a utility could

procure electricity from an eligible renewable resource that has its first point of interconnection in California and within the CAISO network, then immediately sell the energy (while retaining the REC) back to the renewable resource, which could then export the renewable energy to another state.[2] The fact that the RPS statute deems in-state renewables to be delivered does not prevent the kind of contractual transactions that send this energy, in effect, to entities in other states.

While the RPD's methodology for distinguishing a "bundled" transaction from a "REC-only" transaction is quick and easy, it miscategorizes some important transaction types to the detriment of California's RPS goals. The CPUC should not allow a quick and easy decision to substitute for accurate and fair accounting of renewable energy procurement in California.

C. An Artificial Classification of RECs-Only Could Discriminate against Out-of-State Renewables by Attaching a GHG liability to Imports Not Imposed on In-State Procurement.

The RPD could create disparate treatment of renewable generation for greenhouse gas purposes depending upon the location of the renewable generation. Renewable generation located in California would be treated as a bundled transaction carrying both the RPS attributes and greenhouse gas attributes. On the other hand, all out-of-state RPS transactions by virtue of being treated as RECs-only transactions would carry only the renewable attributes of the energy. Also, the REC would not carry the greenhouse gas attributes of the renewable generation. Thus, a currently bundled out-of-state renewable energy contract based upon this RPD would become a greenhouse gas liability instead of a greenhouse gas asset, which would discourage the purchase of such energy because the complying entity would have to procure a second compliance instrument to deal with its greenhouse gas liability.

As a RECs-only transaction, an out-of-state wind contract would go from a zero carbon source to a liability of 1100 pounds CO_2 per megawatt hour. This greenhouse gas penalty would apply regardless of whether the contract provided for firming and regardless of the intermittency of the source of the energy, i.e., wind, solar, biomass or geothermal. This change of greenhouse

[2] A generator is particularly likely to export its energy out of state when over-generation conditions occur (that is, when generation exceeds load). (See California Energy Commission, "Framework for Evaluating Greenhouse Gas Implications of Natural Gas-Fired Power Plants in California [May 2009] at 45-46.) In this situation, the system operator is likely to limit imports and seek to maximize exports. (*Id.*)

gas characterization not only discriminates against out-of-state renewables but also directly impacts the benefits and liabilities of existing energy contracts. If the RPD is adopted as proposed it should only apply to energy contracts signed after the date of the final CPUC decision on this matter.

D. An Artificial Classification of RECs-Only Could Discriminate Against Out-of-State Renewables by Arbitrary Differential Treatment from In-State Renewables.

The RPD would treat nearly all out-of-state resources as "REC-only". A contract with a biomass facility located outside the state, needing little to no 'firming and shaping' and with a clear transmission path and firm transmission rights on that path for delivery, would be subject by the RPD to limits in procurement that would not fall on an identical biomass facility located in-state. The out-of-state facility would face a limited market – as LSEs would be less likely to contract with the facility if they were at or close to their 40% limit on TREC use for the RPS. The out-of-state facility would also face an arbitrary price constraint, with its contract terms to an LSE limited by its treatment as a REC-only transaction and the RPD's proposed limit on REC pricing. A similar biomass facility but located in-state would enjoy favorable treatment that could provide a competitive edge in the renewable market as well as allow a higher pricing point for the in-state facility.

E. An Artificial Classification of RECs-Only Could Discriminate Against Out-of-State Renewables by Arbitrarily altering Contractual Terms for Existing Out-of-State Resources.

The RPD indicates that even existing contracts for out-of-state renewable resources will be considered REC-only as of the date of the final decision. These contracts were negotiated and signed under the logical assumption that their use as eligible renewable procurement for California's RPS was laid out by the RPS statute, CEC eligibility and delivery certifications, and CPUC contract approval. Now, the RPD would unfairly and arbitrarily designate these properly contracted-for resources as second-class "REC-only" contracts. This practice could harm LSEs, who logically and rightly relied on the laws and protocols in place to contract with these resources to satisfy their RPS obligations, and now may find that some of these resources may no longer 'count', or may have the wrong 'price'. In addition, this arbitrary practice can harm the generating resources, as their product's RPS viability is now put in question after they were

assured of the standards for determining RPS viability that applied when the resource was contracted. Therefore, the RPD acts to unfairly devalue the resources contracted with by LSEs in full good faith with the assumption that the resources would count to meet their RPS obligations and were priced appropriately. This devaluation of existing out-of-state resources, along with the unfavorable and discriminatory treatment of such resources described in C and D above, raises the question as to whether the arbitrariness of the RPD's treatment of out-of-state contracts violates interstate commerce laws.

II. THE CALIFORNIA PUBLIC UTILITIES COMMISSION LACKS JURISDICTION TO DETERMINE WHETHER PROCUREMENT IS "BUNDLED" OR "REC-ONLY".

Although the CPUC purports to exercise jurisdiction over establishing whether procurement qualifies as "bundled" or "REC-only," the CPUC has still not offered a convincing explanation of the source of this jurisdiction. The legislature has charged the CEC with the following activities (Pub. Util. Code § 399.13):

- Certifying eligible renewable energy resources for RPS purposes;
- Certifying the eligibility of RECs associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility (under certain conditions);
- Designing and implementing the accounting system to verify compliance with RPS;
- Ensuring that electricity generated by an eligible renewable energy resource is counted only once for compliance with RPS;
- Verifying retail product claims both in-state and out-of-state.

The CPUC, on the other hand, has the following authority (Pub. Util. Code § 399.16):

- Authorizing the use of renewable energy credits to satisfy the requirements of the renewables portfolio standard established pursuant to this article;
- Limiting the quantity of renewable energy credits that may be procured unbundled from electricity generation by any retail seller;
- Any additional condition that the commission determines is reasonable.

The RPD concedes that the RPS statute gives the CEC the responsibility to determine

RPS eligibility, including establishing the criteria for delivery of RPS-eligible electricity. (RPD at 26.) While the CPUC has authority to decide how established RECs are used and limited in investor owned utility RPS transactions, and hence has full authority for example to impose a limit on the use of RECs, nothing in this statutory regime authorizes the CPUC to determine what *constitutes* a REC-only contract in the first instance. That determination is largely a definitional and eligibility determination that falls more clearly in the hands of the CEC than a contractual limit type of determination. While the CPUC is authorized by statute to impose 'any additional conditions that the Commission determines is reasonable", this blanket authority cannot be used to impose conditions contrary to existing law, nor contrary to the CEC's authority to define eligibility of a TREC transaction.

Indeed, the CEC's Renewables Portfolio Standard Eligibility Guidebook (January 2008) (the "Eligibility Guidebook") contains an entire section dedicated to the "Eligibility of Tradable Renewable Energy Certificates or Credits." In this guidebook, the CEC describes its process for determining the eligibility of TRECs, and it specifically notes that RECs associated with energy delivered to publicly owned utilities (POU) may be certified by the CEC as RPS-eligible if certain conditions described within the Eligibility Guidebook are met. (See Eligibility Guidebook pp. 26, 51-53 .) Here, it is clear that the law provides to the CEC the authority to determine the eligibility of TRECs that become available for the LSE market from POUs – it makes little sense for the CPUC to improperly assert authority to second-guess this statutory CEC responsibility.

In addition, the CPUC's arbitrary assertion of authority to determine that nearly all out-of-state contracts are in effect REC-only completely throws out the extensive work that the CEC has done to confirm deliverability of RPS resources. While the statute requires that both bundled and TREC procurement be accompanied by delivery of energy into California, the CPUC's arbitrary treatment of out-of-state resources ignores the extensive process that the CEC has laid out in its Eligibility Guidebook. The CEC developed the Eligibility Guidebook in consultation with the California Independent System Operator, and that process aims to identify what energy is delivered into California, what path that energy follows, and how that path is traced back to the eligible renewable resource that provides the generation. For the CPUC to assert that nearly all out-of-state renewable resources are 'unbundled' despite the disparate delivery paths and

documentation required by the CEC, is tantamount to revising the CEC's established and relied-upon deliverability rules.

Determining whether procurement is "bundled" or "REC-only" is, in practical effect, the same as determining whether procurement is eligible to contribute to RPS goals as RPS-compliant energy or as tradable credits only. Because this determination must be made by the CEC, the CPUC has exceeded its statutory authority in creating its own system of classifying procurement as "bundled" or "REC-only." However, once the CEC has determined eligibility, the statute gives the CPUC authority to restrict the amount of procurement that can be used by LSEs to meet their RPS obligations.

III. CONCLUSION

SMUD disagrees with the RPD's approach to distinguishing between "bundled" and "REC-only" procurement, and SMUD believes this distinction is properly made by the CEC rather than the CPUC. In addition, treating RPS generation in existing contracts or procurement as REC-only transactions reduces the value of the transaction to the purchasing entity by adding a carbon cost to energy that could currently be zero.

Dated: January 19, 2010

Respectfully submitted,

/s/ Jane E. Luckhardt

JANE E. LUCKHARDT
NICHOLAS H. RABINOWITSH
DOWNEY BRAND LLP

SACRAMENTO MUNICIPAL UTILITY DISTRICT
Office of General Counsel
ARLEN ORCHARD
WILLIAM W. WESTERFIELD, III

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the attached:

SACRAMENTO MUNICIPAL UTILITY DISTRICT'S COMMENTS ON THE DECEMBER 23, 2009 REVISED PROPOSED DECISION AUTHORIZING THE USE OF RENEWABLE ENERGY CREDITS FOR COMPLIANCE WITH THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD

on all known parties to R. 06-02-012 by transmitting an e-mail message with the document attached to each party named in the official service list. I served a copy of the document on those without e-mail addresses by mailing the document by first-class mail addressed as follows:

See attached service list

This service list was compiled from the service list appearing on the docket page for this proceeding on this date on the website of the California Public Utilities Commission.

Executed this 19th day of January 2010, at Sacramento, California.

__/s/ Lois Navarrot_____
Lois Navarrot

demorse@omsoft.com; dgulino@ridgewoodpower.com; ron.cerniglia@directenergy.com; rick_noger@praxair.com; keith.mccrea@sablaw.com; csmoots@perkinscoie.com; rresch@seia.org; garson_knapp@fpl.com; Cynthia.A.Fonner@constellation.com; ken.baker@wal-mart.com; ej_wright@oxy.com; jordan.white@pacificorp.com; rkeen@manatt.com; mmazur@3PhasesRenewables.com; susan.munves@smgov.net; klatt@energyattorney.com; douglass@energyattorney.com; pssed@adelphia.net; pssed@adelphia.net; cathy.karlstad@sce.com; Joni.Templeton@sce.com; william.v.walsh@sce.com; kswitzer@gswater.com; kswitzer@gswater.com; cponds@ci.chula-vista.ca.us; amsmith@sempra.com; fortlieb@sandiego.gov; GBass@SempraSolutions.com; khassan@sempra.com; email@semprasolutions.com; rwinthrop@pilotpowergroup.com; tdarton@pilotpowergroup.com; tdarton@pilotpowergroup.com; jleslie@luce.com; GloriaB@anzaelectric.org; wplaxico@axiopower.com; kerry.eden@ci.corona.ca.us; tam.hunt@gmail.com; Joe.Langenberg@gmail.com; dorth@krcd.org; ek@a-klaw.com; nes@a-klaw.com; pepper@cleanpowermarkets.com; dbp@cpuc.ca.gov; dsh@cpuc.ca.gov; nao@cpuc.ca.gov; theresa.mueller@sfgov.org; mhyams@sfwater.org; marcel@turn.org; mpa@a-klaw.com; wvm3@pge.com; b.barnes@cleantechamerica.com; bcragg@goodinmacbride.com; jsqueri@gmssr.com; jarmstrong@goodinmacbride.com; mday@goodinmacbride.com; nmurray@naturener.net; dhuard@manatt.com; derek@evomarkets.com; jkarp@winston.com; jeffgray@dwt.com; salleyoo@dwt.com; sho@ogrady.us; crmd@pge.com; ECL8@pge.com; ssmyers@att.net; gpetlin@3degreesinc.com; holly@ausra.com; ralf1241a@cs.com; Audra.Hartmann@Dynegy.com; kowalewskia@calpine.com; jeremy.weinstein@pacificorp.com; wbooth@booth-law.com; jody_london_consulting@earthlink.net; gmorris@emf.net; lwisland@ucsusa.org; ndesnoo@ci.berkeley.ca.us; jpross@sungevity.com; tomb@crossborderenergy.com; janreid@coastecon.com; johnrredding@earthlink.net; jweil@aglet.org; jsanders@caiso.com; dennis@ddecuir.com; jdalessi@navigantconsulting.com; cmkehrein@ems-ca.com; Carroll, Dan; jmcfarland@treasurer.ca.gov; Luckhardt, Jane; steven@iepa.com; abb@eslawfirm.com; dkk@eslawfirm.com; glw@eslawfirm.com; lmh@eslawfirm.com; kmills@cfbf.com; wwester@smud.org; dmdubson@stoel.com; kevin.lynch@iberdrolausa.com; Tom.Elgie@powerex.com; janice@strategenconsulting.com; kerry.hattevik@nexteraenergy.com; dan@energysmarthomes.net; r.raushenbush@comcast.net; mpr-ca@coolearthsolar.com; sfinnerty@cpv.com; dhecht@sempratrading.com; jansell@alternitywindpower.com; tmartin@alternitywindpower.com; steven.schleimer@barclayscapital.com; ACRoma@hhlaw.com; perlism@dicksteinshapiro.com; MASullivan@hhlaw.com; tszymanski@hunton.com; vsuravarapu@cera.com; tjaffe@energybusinessconsultants.com; mannm@dteenergy.com; cswoollums@midamerican.com; abiecunasjp@bv.com; judith.kim@walmartlegal.com; rmccoy@ercot.com; joe.paul@dynegy.com; bbaker@summitblue.com; kjsimonsen@ems-ca.com; dsaul@pacificsolar.net; dbrooks@nvenergy.com; chad_dickason@soleonenergy.com; freesa@thirdplanetwind.com; dykemaa@thirdplanetwind.com; chilen@NVEnergy.com; csilveira@nvenergy.com; emello@sppc.com; tdillard@sppc.com; jgreco@terra-genpower.com; ctorchia@chadbourne.com; harveyederpspc@hotmail.com; jackmack@suesec.com; case.admin@sce.com; gary.allen@sce.com; rkmoore@gswater.com; mary@solutionsforutilities.com; mtmcewan@gmail.com; daking@sempra.com;

tcorr@sempra.com; ygross@sempraglobal.com; liddell@energyattorney.com; mshames@ucan.org; marcie.milner@shell.com; CentralFiles@semprautilities.com; hrasool@semprautilities.com; jwright@semprautilities.com; dniehaus@semprautilities.com; bjnese@stoel.com; billm@enxco.com; mirwin@edisonmission.com; shess@edisonmission.com; csteen@bakerlaw.com; rblee@bakerlaw.com; michaelgilmore@inlandenergy.com; hal@rwitz.net; wes658@gmail.com; mdjoseph@adamsbroadwell.com; michael.mcdonald@ieee.org; wblattner@semprautilities.com; Diane.Fellman@nexteraenergy.com; paulfenn@local.org; Dan.adler@calcef.org; srovetti@sfwater.org; andre.devilbiss@recurrentenergy.com; achang@nrdc.org; dcover@esassoc.com; jim.howell@recurrentenergy.com; matthew@turn.org; mflorio@turn.org; nsuetake@turn.org; nlong@nrdc.org; bfinkelstein@turn.org; snuller@ethree.com; fred.wellington@navigantconsulting.com; gcooper@cpv.com; filings@a-klaw.com; cpuccases@pge.com; sls@a-klaw.com; spauker@wsgr.com; vjw3@pge.com; cmmw@pge.com; nxk2@pge.com; diarmuid@greenwoodenv.com; arno@recurrentenergy.com; cassandra.sweet@dowjones.com; elizabeth.blase@lw.com; jscancarelli@crowell.com; joshdavidson@dwt.com; mchediak@bloomberg.net; rhassan@fbr.com; sdhilton@stoel.com; stevegreenwald@dwt.com; tkaushik@manatt.com; joshdavidson@dwt.com; judypau@dwt.com; bobgex@dwt.com; cem@newsdata.com; lisa_weinzimer@platts.com; alho@pge.com; bari@pge.com; regrelcpuccases@pge.com; ELL5@pge.com; GXL2@pge.com; MMCL@pge.com; MRGG@pge.com; SEHC@pge.com; rwalther@pacbell.net; beth@beth411.com; andy.vanhorn@vhcenergy.com; sean.beatty@mirant.com; rick_noger@praxair.com; sbeserra@sbcglobal.net; jbarnes@summitblue.com; phanschen@mofo.com; tzentai@summitblue.com; pletkarj@bv.com; philha@astound.net; dietrichlaw2@earthlink.net; alex.kang@itron.com; nellie.tong@us.kema.com; ramonag@ebmud.com; ahaubenstock@brightsourceenergy.com; bepstein@fablaw.com; mrw@mrwassoc.com; cpucdockets@keyesandfox.com; kfox@keyesandfox.com; cwooten@lumenxconsulting.com; rschmidt@bartlewells.com; clyde.murley@comcast.net; nrader@calwea.org; rhwiser@lbl.gov; ed.smeloff@sunpowercorp.com; brad@mp2capital.com; michael@mp2capital.com; lynn@lmaconsulting.com; anders.glader@iberdrolausa.com; keithwhite@earthlink.net; eric.cherniss@gmail.com; shani@scvas.org; sberlin@mccarthylaw.com; jrobertpayne@gmail.com; davido@mid.org; tomk@mid.org; joyw@mid.org; brbarkovich@earthlink.net; dgrandy@caonsitegen.com; rmccann@umich.edu; tobinjmr@sbcglobal.net; bdicapo@caiso.com; grosenblum@caiso.com; saeed.farrokhpay@ferc.gov; e-recipient@caiso.com; david.oliver@navigantconsulting.com; kdusel@navigantconsulting.com; cpucrulings@navigantconsulting.com; lpark@navigantconsulting.com; pmaxwell@navigantconsulting.com; lwhouse@innercite.com; tpomales@arb.ca.gov; amber@iepa.com; mclaughlin@braunlegal.com; EGrizard@deweysquare.com; pstoner@lgc.org; bernardo@braunlegal.com; blaising@braunlegal.com; dseperas@calpine.com; bsb@eslawfirm.com; jjg@eslawfirm.com; jdh@eslawfirm.com; esison@smud.org; obartho@smud.org; rroth@smud.org; aorchar@smud.org; bbeebe@smud.org; mdeange@smud.org; vwood@smud.org; bpurewal@water.ca.gov; mniroula@water.ca.gov; artrivera@comcast.net; karen@klindh.com; atrowbridge@daycartermurphy.com; sas@a-klaw.com; deb@a-klaw.com; kyle.l.davis@pacificorp.com; californiadockets@pacificorp.com; cbreidenich@yahoo.com; jholmes@emi1.com; dws@r-c-s-inc.com; pblood@columbiaenergypartners.com; castille@landsenergy.com; pbrehm@infiniacorp.com; jmcmahon@crai.com; ab1@cpuc.ca.gov;

as2@cpuc.ca.gov; ams@cpuc.ca.gov; aes@cpuc.ca.gov; aeg@cpuc.ca.gov; bwm@cpuc.ca.gov; cjm@cpuc.ca.gov; cnl@cpuc.ca.gov; css@cpuc.ca.gov; dot@cpuc.ca.gov; eks@cpuc.ca.gov; gtd@cpuc.ca.gov; jm3@cpuc.ca.gov; jf2@cpuc.ca.gov; kpp@cpuc.ca.gov; lmi@cpuc.ca.gov; mpo@cpuc.ca.gov; mrl@cpuc.ca.gov; mjs@cpuc.ca.gov; mjh@cpuc.ca.gov; nlr@cpuc.ca.gov; psd@cpuc.ca.gov; rmm@cpuc.ca.gov; smk@cpuc.ca.gov; svn@cpuc.ca.gov; kenneth.swain@navigantconsulting.com; gcollord@arb.ca.gov; claufenb@energy.state.ca.us; gbarkalo@energy.state.ca.us; hraitt@energy.state.ca.us; kzocchet@energy.state.ca.us; lgonzale@energy.state.ca.us; rmiller@energy.state.ca.us; pbarthol@energy.state.ca.us; hcronin@water.ca.gov

By U.S. Mail

LARRY F. EISENSTAT
DICKSTEIN SHAPIRO LLP
CPV Renewable Energy Company, LLC
1825 EYE STREET, NW
WASHINGTON, DC 20006

RICHARD LEHFELDT
DICKSTEIN SHAPIRO LLP
CPV Renewable Energy Company, LLC
1825 EYE STREET, NW
WASHINGTON, DC 20006

3 PHASES RENEWABLES LLC
2100 SEPULVEDA BLVD, SUITE 37
MANHATTAN BEACH, CA 90266

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

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

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

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

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

DARIN LOWDER
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
601 13TH STREET, NW, STE. 1000S
WASHINGTON, DC 20005

CYNTHIA FONNER BRADY
SENIOR COUNSEL
CONSTELLATION NEW ENERGY, INC.
500 WEST WASHINGTON BLVD., STE 300
CHICAGO, IL 60661

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

DAVID TOWNLEY
18 BASSWOOD AVENUE
OAK PARK, CA 91377

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

TONY CHEN SR.
MANGER, BUSINESS DEVEL.
COOL EARTH SOLAR
4659 LAS POSITAS RD., STE. C
LIVERMORE, CA 94551

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

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

MICHAEL R. PEEVEY
ASSIGNED COMMISSIONER
CALIFORNIA PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

ANNE E. SIMON, ALJ
CALIFORNIA PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

BURTON MATTSON, ALJ
CALIFORNIA PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102