

consistent with other new world generation.”² In other words, consistent with Decision (“D.”) 08-09-012, departing load customers would not be subject to stranded costs associated with the fuel cells because departing load customers are exempt under D.08-09-012 from stranded costs for all new generation.

At the other end of the spectrum, SCE informally seeks to modify D.08-09-012 based on the fact that SCE views the fuel cells as a unique brand of new generation.³ SCE states that, “[a]lthough the energy produced by the fuel cells will be consumed by bundled service customers and paid for by those customers at prevailing market price, it is overly simplistic to characterize SCE’s Fuel Cell Program as a ‘new generation’ project when SCE is not proposing the project with the objective of serving load.”⁴ This obviously presents a problem; two utilities in the same proceeding are proposing completely different cost-recovery proposals.

According to SCE, PG&E is *overly simplistic* in following the directive in D.08-09-012 and characterizing the fuel cells as new generation. If, by stating that PG&E is overly simplistic, SCE means that PG&E is literally following D.08-09-012, CMUA agrees. The problem, however, is not that PG&E is being overly simplistic, but rather that SCE is being overly presumptuous. D.08-09-012 simplistically addresses the fact that the fuel cells are new generation (see discussion below regarding the Energy Producers and Users’ (“EPUC”) analysis of the fuel cells under D.08-09-012). If SCE wants to change the simplistic application of D.08-09-012 to fuel cells, it should do the right thing: file a petition for modification of D.08-09-012

² PG&E Opening Brief at 2.

³ As CMUA stated in its opening brief, SCE should *formally* seek to modify D.08-09-012 in Rulemaking (“R.”) 06-02-013 instead of seeking to indirectly modify D.08-09-012 in unrelated, individual proceedings.

⁴ SCE Opening Brief at 19.

in R.06-02-013 so that all affected parties and the Commission may properly analyze and address SCE's proposal.

2. EPUC Properly Concludes That The Fuel Cells Are New Generation Under D.08-09-012

EPUC agrees with SCE in one respect: the Commission's *definition* of new generation in D.08-09-012 is *simplistic*. EPUC states that "[t]he Commission's simple yet comprehensive definition for "New Generation" procurement has three components...."⁵ EPUC then proceeds to analyze the fuel cells under the three-part definition, concluding that the fuel cells are indeed new generation.⁶

CMUA fully supports and agrees with EPUC's analysis of the fuel cells under D.08-09-012's definition of new generation. CMUA also appreciates EPUC's fitting analogy: If "the demonstration of space-based solar power generation, with facilities with a geosynchronous orbit location, is covered by the definition of new generation"⁷ then certainly the fuel cells are covered by the definition of new generation.

Again, if SCE thinks differently, the proper procedure is not to subtly introduce its proposal in individual applications. Rather, SCE should openly present its proposal to the Commission and all affected parties through a petition to modify D.08-09-012 in R.06-02-013.

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⁵ EPUC Opening Brief at 6.

⁶ EPUC Opening Brief at 6-7.

⁷ EPUC Opening Brief at 7.

CMUA appreciates the opportunity to file this reply brief.

Dated: January 13, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Blaising". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott Blaising
Braun Blaising McLaughlin, P.C.
915 L. Street, Suite 1270
Sacramento, CA 95814
(916) 682-9702
(916) 682-1005 (facsimile)
blaising@braunlegal.com

Attorneys for the
California Municipal Utilities Association

CERTIFICATE OF SERVICE

I certify that the following is true and correct:

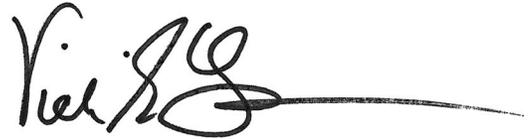
On January 13, 2010, I caused to be served an electronic copy of the attached:

**REPLY BRIEF
OF THE
CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION**

on all persons on the service lists for A.09-02-013 and A.09-04-018 for whom an e-mail address has been provided.

See attached service lists

Executed this 13th day of January, 2010, at Sacramento, California.

A handwritten signature in black ink, appearing to read "Vicki Ferguson", with a long horizontal flourish extending to the right.

Vicki Ferguson

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists

PROCEEDING: A0902013 - PG&E - FOR APPROVAL
FILER: PACIFIC GAS AND ELECTRIC COMPANY
LIST NAME: LIST
LAST CHANGED: JANUARY 6, 2010

Parties

STEVEN D. PATRICK
ATTORNEY AT LAW
SEMPRA ENERGY
555 WEST FIFTH STREET, STE 1400
LOS ANGELES, CA 90013-1011
FOR: SDG&E; SOCAL GAS COMPANY

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367
FOR: WESTERN POWER TRADING FORUM;
ALLIANCE FOR ENERGY MARKETS;DIRECT
ACCESS CUSTOMER COALITION

CONNOR J. FLANIGAN
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON CO.

GLORIA ING
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
FOR: SOUTHER CALIFORNIA EDISON COMPANY

MITCHELL SHAPSON
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

MARCEL HAWIGER
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94104
FOR: THE UTILITY REFORM NETWORK

RANDALL J. LITTENEKER
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, B30A
SAN FRANCISCO, CA 94120
FOR: PACIFIC GAS AND ELECTRIC COMPANY

SCOTT BLAISING
ATTORNEY AT LAW
BRAUN & BLAISING MCLAUGHLIN, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814
FOR: CALIFORNIA MUNICIPAL UTILITIES
ASSOCIATION

LYNN HAUG
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: FUELCELL ENERGY, INC.

ANN L. TROWBRIDGE
ATTORNEY AT LAW
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO, CA 95864
FOR: MERCED IRRIGATION DISTRICT;
MODESTO IRRIGATION DISTRICT; CALIFORNIA
CLEAN DG COALITION

Information Only

RICHARD SHAW
DIRECTOR - BUSINESS DEVELOPMENT
FUELCELL ENERGY, INC.
3 GREAT PASTURE ROAD
DANBURY, CT 06813

JORDAN WHITE
SENIOR ATTORNEY
PACIFICORP
1407 W. NORTH TEMPLE, SUITE 320
SALT LAKE CITY, UT 84116

HUGH YAO
SOUTHERN CALIFORNIA GAS COMPANY
555 W. 5TH ST, GT22G2
LOS ANGELES, CA 90013

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, PO BOX 800
ROSEMEAD, CA 91770

DOUGLAS K PORTER
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

DON LIDDELL
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103

CENTRAL FILES
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP-32DI
SAN DIEGO, CA 92123

DEAN A. KINPORTS
REGULATORY AFFAIRS
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT CP32D
SAN DIEGO, CA 92123

ANTHEA LEE
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO, CA 94105

BROOKE A. REILLY
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE STREET, ROOM 970
SAN FRANCISCO, CA 94105

SUNCHETH BHAT

CASSANDRA SWEET

PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MC B9A
SAN FRANCISCO, CA 94105

DOW JONES NEWSWIRES
201 CALIFORNIA ST., 13TH FLOOR
SAN FRANCISCO, CA 94111

HILARY CORRIGAN
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. SUITE 303
SAN FRANCISCO, CA 94117-2242

BILL MANHEIM
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B30A
SAN FRANCISCO, CA 94177

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

JOSEPHINE WU
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO, CA 94177

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

RICHARD A. BROMLEY
39 TAM OSHANTER
ALAMO, CA 94507

JOSEPH R. HEINZMANN
REGIONAL DIRECTOR OF BUSINESS DEVELOPMNT
FUELCELL ENERGY, INC.
1580 WHITMAN ROAD
CONCORD, CA 94518
FOR: FUELCELL ENERGY, INC.

SEAN P. BEATTY
SR. MGR. EXTERNAL & REGULATORY AFFAIRS
MIRANT CALIFORNIA, LLC
696 WEST 10TH ST., PO BOX 192
PITTSBURG, CA 94565

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

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

ERIN GRIZARD
THE DEWEY SQUARE GROUP
921 11TH STREET, 10TH FLOOR
SACRAMENTO, CA 95814

RALPH R. NEVIS
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DR., SUITE 205
SACRAMENTO, CA 95864
FOR: CALIFORNIA CLEAN DG COALITION,
MERCED IRRIGATION DISTRICT, MODESTO
IRRIGATION DISTRICT

MARK TUCKER
PACIFICORP
825 NE MULTNOMAH, SUITE 2000
PORTLAND, OR 97232

State Service

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

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

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

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

KEVIN R. DUDNEY
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

MICHAEL COLVIN
CALIF PUBLIC UTILITIES COMMISSION
POLICY & PLANNING DIVISION
ROOM 5119
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

RAHMOM MOMOH
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4102
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LINDA KELLY
ELECTRICITY ANALYSIS OFFICE
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 20
SACRAMENTO, CA 95814

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists

PROCEEDING: A0904018 - EDISON - FOR AUTHORI
FILE: SOUTHERN CALIFORNIA EDISON COMPANY
LIST NAME: LIST
LAST CHANGED: JANUARY 6, 2010

Parties

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367
FOR: WESTERN POWER TRADING FORUM,
ALLIANCE FOR RETAIL ENERGY MARKETS

WALKER MATTHEWS
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

DON LIDDELL
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103
FOR: CALIFORNIA ENERGY STORAGE
ALLIANCE/DEBENHAM ENERGY, LLC

MITCHELL SHAPSON
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

MARCEL HAWIGER
ENERGY ATTORNEY
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94104
FOR: THE UTILITY REFORM NETWORK

SCOTT BLAISING
ATTORNEY AT LAW
BRAUN & BLAISING MCLAUGHLIN, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814
FOR: CALIFORNIA MUNICIPAL UTILITIES
ASSOCIATION

Information Only

JORDAN WHITE
SENIOR ATTORNEY
PACIFICORP
1407 W. NORTH TEMPLE, SUITE 320
SALT LAKE CITY, UT 84116

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, PO BOX 800
ROSEMEAD, CA 91770

CONNOR J. FLANIGAN
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON CO.

DOUGLAS K PORTER
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

GLORIA M. ING
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

EVELYN C. LEE
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B30A
SAN FRANCISCO, CA 94105

CASSANDRA SWEET
DOW JONES NEWSWIRES
201 CALIFORNIA ST., 13TH FLOOR
SAN FRANCISCO, CA 94111

HILARY CORRIGAN
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. SUITE 303
SAN FRANCISCO, CA 94117-2242

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

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

ERIN GRIZARD
THE DEWEY SQUARE GROUP
921 11TH STREET, 10TH FLOOR
SACRAMENTO, CA 95814

LYNN HAUG
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905

ANN L. TROWBRIDGE
ATTORNEY AT LAW
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO, CA 95864
FOR: CALIFORNIA CLEAN DG COALITION

MARK TUCKER
PACIFICORP
825 NE MULTNOMAH, SUITE 2000
PORTLAND, OR 97232

State Service

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

MICHAEL COLVIN
CALIF PUBLIC UTILITIES COMMISSION
POLICY & PLANNING DIVISION
ROOM 5119
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

PROCEEDING: A0904018 - EDISON - FOR AUTHORI
FILER: SOUTHERN CALIFORNIA EDISON COMPANY
LIST NAME: LIST
LAST CHANGED: JANUARY 6, 2010

Parties

STEVEN D. PATRICK
ATTORNEY AT LAW
SEMPRA ENERGY
555 WEST FIFTH STREET, STE 1400
LOS ANGELES, CA 90013-1011
FOR: SDG&E; SOCAL GAS COMPANY

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367
FOR: WESTERN POWER TRADING FORUM;
ALLIANCE FOR ENERGY MARKETS;DIRECT
ACCESS CUSTOMER COALITION

CONNOR J. FLANIGAN
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON CO.

GLORIA ING
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
FOR: SOUTHER CALIFORNIA EDISON COMPANY

MITCHELL SHAPSON
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

MARCEL HAWIGER
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94104
FOR: THE UTILITY REFORM NETWORK

RANDALL J. LITTENEKER
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, B30A
SAN FRANCISCO, CA 94120
FOR: PACIFIC GAS AND ELECTRIC COMPANY

SCOTT BLAISING
ATTORNEY AT LAW
BRAUN & BLAISING MCLAUGHLIN, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814
FOR: CALIFORNIA MUNICIPAL UTILITIES
ASSOCIATION

LYNN HAUG
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: FUELCELL ENERGY, INC.

ANN L. TROWBRIDGE
ATTORNEY AT LAW
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO, CA 95864
FOR: MERCED IRRIGATION DISTRICT;
MODESTO IRRIGATION DISTRICT; CALIFORNIA
CLEAN DG COALITION

Information Only

RICHARD SHAW
DIRECTOR - BUSINESS DEVELOPMENT
FUELCELL ENERGY, INC.
3 GREAT PASTURE ROAD
DANBURY, CT 06813

JORDAN WHITE
SENIOR ATTORNEY
PACIFICORP
1407 W. NORTH TEMPLE, SUITE 320
SALT LAKE CITY, UT 84116

HUGH YAO
SOUTHERN CALIFORNIA GAS COMPANY
555 W. 5TH ST, GT22G2
LOS ANGELES, CA 90013

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, PO BOX 800
ROSEMEAD, CA 91770

DOUGLAS K PORTER
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

DON LIDDELL
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103

CENTRAL FILES
SAN DIEGO GAS AND ELECTRIC COMPANY

DEAN A. KINPORTS
REGULATORY AFFAIRS

8330 CENTURY PARK COURT, CP-32DI
SAN DIEGO, CA 92123

SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT CP32D
SAN DIEGO, CA 92123

ANTHEA LEE
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO, CA 94105

BROOKE A. REILLY
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE STREET, ROOM 970
SAN FRANCISCO, CA 94105

SUNCHETH BHAT
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MC B9A
SAN FRANCISCO, CA 94105

CASSANDRA SWEET
DOW JONES NEWSWIRES
201 CALIFORNIA ST., 13TH FLOOR
SAN FRANCISCO, CA 94111

HILARY CORRIGAN
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. SUITE 303
SAN FRANCISCO, CA 94117-2242

BILL MANHEIM
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B30A
SAN FRANCISCO, CA 94177

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

JOSEPHINE WU
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO, CA 94177

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

RICHARD A. BROMLEY
39 TAM OSHANTER
ALAMO, CA 94507

JOSEPH R. HEINZMANN
REGIONAL DIRECTOR OF BUSINESS DEVELOPMNT
FUELCELL ENERGY, INC.
1580 WHITMAN ROAD
CONCORD, CA 94518
FOR: FUELCELL ENERGY, INC.

SEAN P. BEATTY
SR. MGR. EXTERNAL & REGULATORY AFFAIRS
MIRANT CALIFORNIA, LLC
696 WEST 10TH ST., PO BOX 192
PITTSBURG, CA 94565

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

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

ERIN GRIZARD
THE DEWEY SQUARE GROUP
921 11TH STREET, 10TH FLOOR
SACRAMENTO, CA 95814

RALPH R. NEVIS
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DR., SUITE 205
SACRAMENTO, CA 95864
FOR: CALIFORNIA CLEAN DG COALITION,
MERCED IRRIGATION DISTRICT, MODESTO
IRRIGATION DISTRICT

MARK TUCKER
PACIFICORP
825 NE MULTNOMAH, SUITE 2000
PORTLAND, OR 97232

State Service

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

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

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

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

KEVIN R. DUDNEY
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

MICHAEL COLVIN
CALIF PUBLIC UTILITIES COMMISSION

NEAL REARDON
CALIF PUBLIC UTILITIES COMMISSION

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

ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

RAHMOM MOMOH
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4102
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

LINDA KELLY
ELECTRICITY ANALYSIS OFFICE
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 20
SACRAMENTO, CA 95814