

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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

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

**COMMENTS OF IBERDROLA RENEWABLES, INC. AND
HORIZON WIND ENERGY
ON THE PROPOSED DECISION OF ALJ SIMON
AUTHORIZING USE OF RENEWABLE ENERGY CREDITS FOR RPS COMPLIANCE**

April 15, 2009

KEVIN A. LYNCH
Iberdrola Renewables, Inc.
1125 NW Couch Street, Suite 700
Portland, OR 97209
Phone: (503) 796-7108
Fax: (503) 796-6907

kevin.lynch@iberdrolausa.com

ROBIN PARK
Horizon Wind Energy
1600 Shattuck Avenue, Suite 222
Berkeley, CA 94709
Phone: (510) 704-8152
Fax: (510) 704-8439

robin.park@horizonwind.com

TABLE OF CONTENTS

Page i

Table of Contents i
Table of Authorities ii

I. THE PROPOSED DECISION’S GENERAL APPROACH TO AUTHORIZING TRADABLE RECS FOR RPS COMPLIANCE IS APPROPRIATE, TIMELY, AND SHOULD BE ADOPTED BY THE COMMISSION BUT SHOULD INCLUDE A HIGHER CEILING FOR THE USE OF TRECS TO ENABLE COMPLIANCE WITH THE RPS.....1

II. THE PROPOSED DECISION PROPERLY CLASSIFIES CERTAIN OUT-OF-STATE ENERGY DELIVERIES AS BUNDLED TRANSACTIONS FOR PURPOSES OF RPS COMPLIANCE5

III. SHORT-TERM TREC TRANSACTIONS SHOULD NOT BE HAMPERED BY EXCESSIVE REGULATORY OVERSIGHT7

IV. CONCLUSION8

APPENDIX A (Proposed Modifications)

TABLE OF AUTHORITIES

Page ii

CPUC DECISIONS

Decision

CALIFORNIA PUBLIC UTILITIES CODE

Public Utilities Code Sections 399.11-20

CALIFORNIA PUBLIC RESOURCES CODE

Public Resources Code Division 15, Section 25741

CALIFORNIA ENERGY COMMISSION

RPS Eligibility Guidelines

BEFORE THE PUBLIC UTILITIES COMMISSION
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AUTHORIZING USE OF RENEWABLE ENERGY CREDITS FOR RPS COMPLIANCE**

Iberdrola Renewables, Inc. (“Iberdrola Renewables”) and Horizon Wind Energy (“Horizon”), collectively referred to as the “Companies”, respectfully submit these comments on the Proposed Decision of Administrative Law Judge (ALJ) Simon authorizing the use of tradable renewable energy credits (“TRECs”) for compliance with the California Renewables Portfolio Standard (RPS) (“Proposed Decision”). The Proposed Decision was mailed in this proceeding on March 26, 2009. These comments are filed and served pursuant to Article 14 of the California Public Utilities Commission’s Rules of Practice and Procedure and the instructions accompanying the Proposed Decision.

I.

**THE PROPOSED DECISION’S GENERAL APPROACH TO
AUTHORIZING TRADABLE RECS FOR RPS COMPLIANCE IS
APPROPRIATE, TIMELY, AND SHOULD BE ADOPTED BY THE COMMISSION BUT
SHOULD INCLUDE A HIGHER CEILING FOR THE USE OF TRECs TO ENABLE
COMPLIANCE WITH THE RPS.**

The Companies, which have jointly and individually provided comments and appeared at workshops throughout this lengthy and exhaustive proceeding, strongly support the decision to authorize the use of Tradable Renewable Energy Credits (“TRECs”) for compliance with California’s Renewable Portfolio Standards (“RPS”) statute. California has been a leader in

innovative public policies that promote the development and use of clean, renewable energy. Long-term and short-term bundled transactions are the primary means of compliance for California's Load-Serving Entities ("LSEs") to achieve compliance with the RPS. TRECs offer (i) LSEs an additional RPS-compliant procurement option and (ii) renewable energy developers flexibility in selling generation and RECs from renewable energy projects. Under a proper TREC framework, the TRECs will increase liquidity in the renewable energy market. Increased liquidity will help stimulate development of renewable energy projects, increasing RPS-eligible supply, incentivize development of renewables and reducing the cost to consumers of RPS compliance.

The Proposed Decision, in authorizing the use of TRECs for RPS compliance, takes an important step in helping LSEs comply with the RPS. The Companies strongly support the decision to authorize the use of TRECs for RPS compliance but respectfully recommend a few modifications to provide clarity and improve market liquidity. Specifically, the Companies submit the following comments contained herein to (i) affirm the approach of the Proposed Decision over which out-of-state transactions should be considered TREC transactions as well as (ii) propose a higher annual ceiling on the use of TRECs by LSEs and (iii) allow the Commission to review the use of the TRECs for RPS compliance more regularly than envisioned in the PD. While making important clarifications over what constitutes a TREC and authorizing the use of TRECs for RPS compliance, the Proposed Decision sets a cap on the use of TRECs for compliance. Specifically, the Proposed Decision sets a five percent (5%) annual cap on the use of TRECs by LSEs to meet the 20 percent (20%) standard.

Setting caps on specific activities in policy and commerce requires a balancing of art and science. In this case, the balancing attempts to reconcile the achievement of RPS requirements

against local economic interests; the creation of a TREC market large enough to be liquid but not so large that it substantially impedes development of new California renewable generation; cost-effective flexible but somewhat abstract compliance against more tangible, visible symbols to customers that California is growing its native renewable energy assets.

The Companies have not previously supported a cap arrangement and wade into this balancing act cautiously. The Companies assert that the 5 percent (5%) cap is too low to create market liquidity or stimulate significant renewable energy project development and a cap higher than the proposed five percent (5%) level, set on the short-term basis prescribed by the Proposed Decision, would help LSEs comply with the RPS. That goal should be paramount in the Commission's deliberations.

A higher TREC cap also would not diminish the economic-development attributes of California's RPS statute. If the concern over excessive use of TRECs is that their use would incent LSEs to purchase RECs only from out-of-state suppliers, an increase in the cap over the Proposed Decision should not heighten that concern.

Developers of renewable energy resources make capital-intensive investments that will recognize revenue through the sale of energy and RECs but not be profitable for many years. While the REC values that derive from RPS statutes create a financial incentive to build, the greater incentive – as with other forms of generation – remains the market for energy. RECs may mean the difference in the economic viability of a renewable project; as the value of energy without RECs may render many renewable investments uneconomic. However, no renewable generation investment with which the Companies are familiar with would stand on their own purely on REC values. The sale of energy is critical to project viability and ultimate development.

This point is important because it addresses the concern of some stakeholders that the expansive use of TRECs for RPS compliance would result in a rush to build renewable facilities out-of-state. These renewable facilities would, so the theory goes, export the REC values to California while liquidating the energy commodity elsewhere in the Western Electric Coordinating Council (“WECC”) region.

The problem with this theory is that, if one accepts the premise that energy values matter in determining whether to invest in renewable generation, liquidating the energy (especially intermittent energy) in WECC markets is easier assumed than accomplished. Many WECC sub-regions, particularly those with significant renewable resource potential, lack the infrastructure to transmit power to load centers. Energy values in these islanded locations would be depressed further by the addition of new resources. Until the WECC has more robust transmission infrastructure from areas of high renewable potential to load centers – a prospect that is at least several years off – there will be inadequate pricing for new renewable generation to merit significant investment.

In addition to the transmission constraints, the physical markets in the WECC actually pose some risk to the developer/marketer. Buyers can clearly take advantage of such marketers if buyers know marketers regularly need to liquidate intermittent as-generated energy. There is significant bid-ask risk above and beyond the problem of actually being able to move the energy to a liquid trading point.

In addition, the size- and time-limited nature of the Proposed Decision does not provide an appreciable signal to renewable energy developers to make investment decisions based on the existence of a robust, long-term California TREC market.

At the same time, as California LSEs face the requirement to comply with the RPS statute. Over the course of the next two to five years (the window for meeting the RPS under the “flexible compliance” regime), most of the RPS-eligible resources available to LSEs will be intermittent. The five-percent (5%) TREC cap may provide the LSEs with little more than a mechanism to “true up” their portfolios for compliance in lieu of making Alternative Compliance Payments.

Finally, the two major elements of the Proposed Decision commented on in this filing cannot be viewed in a vacuum. While the Companies support the distinctions drawn to identify bundled products from TRECs among certain types of out-of-state transactions, the distinction is a more restrictive one than the Commission has previously signaled through its Advice-Letter rulings on transactions.

With these considerations in mind, the Companies recommend a higher cap on the use of TRECs for compliance. The Companies suggest looking north to Oregon’s RPS policy, the Oregon Renewable Energy Act (Oregon Revised Statutes Chapter 469A), established in statute in 2007 with the support of most utilities, environmental interests, renewable developers, and some but not all customer advocates. Oregon RPS statute permits use of “unbundled” RECs to meet up to 20 percent (20%) of the annual compliance requirement of a utility.

II.

THE PROPOSED DECISION PROPERLY CLASSIFIES CERTAIN OUT-OF-STATE ENERGY DELIVERIES AS BUNDLED TRANSACTIONS FOR PURPOSES OF RPS COMPLIANCE.

The 20 percent (20%) objective to be met by the end of 2010 as set forth in California’s RPS statute make achievement of the RPS an ambitious task for the LSEs. Even with the flexible-compliance provisions that may stretch out the date for compliance by several years, the RPS targets are nationally recognized as leading-edge objectives.

The California Energy Commission (“the Energy Commission”) has established sensible rules for determining RPS eligibility of resources that have an initial point of interconnection to the WECC grid outside the State. These rules require that both energy and environmental attributes must be delivered to the State, though not necessarily at the same time. These rules are entirely consistent with the statute (Public Resources Code sec. 25741; Public Utilities Code sec. 399.12) and advance the objectives of efficient, flexible, cost-effective RPS procurement for California’s electric consumers. They also are consistent with a fundamental premise of the modern electric system; namely, that electrons may not be “color coded” and specifically transmitted from a generation source through the transmission grid and distribution system to a single end-point for consumption.

In their November 18, 2008 comments, the companies asked the Commission to distinguish transactions where the renewable generation is liquidated in the WECC market outside California and the RECs are attached to energy that would otherwise be delivered into California from transactions that provide incremental energy (including firm and shaped) energy into California to match the unbundled RECs, regardless of whether some or all of the original generation is liquidated and regardless of how many contracts comprise the transaction.

The Proposed Decision properly addresses the distinction between transactions involving incremental power deliveries from REC-only transactions by distinguishing the former as bundled energy and REC transactions and the latter as TREC transactions. Thus, the Proposed Decision recognizes that the western grid faces physical and organizational constraints on the instantaneous delivery of electricity from renewable sources to specific load centers. The companies support this distinction.

III.

SHORT-TERM TREC TRANSACTIONS SHOULD NOT BE HAMPERED BY EXCESSIVE REGULATORY OVERSIGHT

Further, the Proposed Decision maintains the required use of advice letters for approval of many RPS procurement decisions, including the procurement of short-term TRECs. In previous comments, the Companies proposed more expeditious handling of short-term TREC purchases in order to enable LSEs to move rapidly in the market. Since the Proposed Decision does not give the LSEs additional procurement flexibility, the development of a vibrant, liquid TREC market is likely to be dampened. Given that no approval procedures have been established for short-term bundled RPS contracts that short-term TREC transactions could mimic, this decision does not create a clear path for approval of transactions and will not result in any short-term TREC transactions. Until a simple, straightforward, easy-to-implement approval process is established for such transactions, the market for both TRECs and short-term bundled energy and RECs shall remain illiquid. In an effort to increase the liquidity of these markets, the Companies respectfully suggest that the approvals of these transactions should be treated similarly to such short-term non-RPS transactions.

IV.

CONCLUSION

For the reasons stated above, the Companies respectfully request that the Commission modify the Proposed Decision as recommended herein. Specifically, the Companies ask the Commission to adopt the changes proposed by the Companies to the Ordering Paragraphs in the Proposed Decision paragraphs, and Appendix B, as proposed and contained in Appendix A hereto.

Respectfully submitted,

April 15, 2009

/s/ KEVIN A. LYNCH
Kevin A. Lynch

Iberdrola Renewables, Inc.
1125 NW Couch Street, Suite 700
Portland, OR 97209
(503) 796-7108
(503) 796-6907 (fax)

kevin.lynch@iberdrolausa.com

APPENDIX A

PROPOSED REVISIONS TO ORDERING PARAGRAPHS

Iberdrola Renewables, Inc. and Horizon Wind Energy request the following changes be made in the Proposed Decision of ALJ Simon authorizing RECs for compliance with the California Renewables Portfolio Standard. A page citation to the Proposed Decision is provided for each paragraph for which changes are proposed. Added language is indicated by bold type; removed language is indicated by bold strike-through.

PROPOSED ORDERING PARAGRAPHS

15. (p. 71) Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) may use TRECs for no more than (overstrike)~~5~~ (insert)**20**% of their APT. Not less than 24 months after the imposition of this limit, any party may request that the Commission modify or eliminate the limit.

20. (p. 72) REC-only contracts of IOUs may be reviewed by the Director of Energy Division in the same manner and according to the same procedures as **bundled non-RPS** procurement contracts of analogous type and length.

CERTIFICATE OF SERVICE

I, Kevin A. Lynch am over the age of 18 years and employed in the City of Portland, County of Multnomah, State of Oregon. My business address is 1125 NW Couch Street, Suite 700; Portland, OR 97209.

On April 15, 2009, I served the within document **COMMENTS OF IBERDROLA RENEWABLES, INC. AND HORIZON WIND ENERGY ON AUTHORIZING USE OF RENEWABLE ENERGY CREDITS FOR RPS COMPLIANCE**, in R.06-02-012, with electronic service as prescribed by the Commission's Rules of Practice and Procedure on the service list in R.06-02-012, with separate electronic service and additional and separate delivery by U.S. Mail of hard copies on Assigned Commissioner Peevey and ALJ Simon, as required by Commission rules and the instructions accompanying the Proposed Decision, at San Francisco, California.

Executed on April 15, 2009, at Portland, Oregon.

/s/ KEVIN A. LYNCH

Kevin A. Lynch

CALIFORNIA PUBLIC UTILITIES COMMISSION;
Service Lists - Proceeding: R06-02-012; Last Updated: April 13, 2009

Parties

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

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

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

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

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

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

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

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

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

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

KEN BAKER
SR. MGR. SUSTAINABLE REGULATION
WAL-MART STORES, INC.
2001 SE 10TH STREET
BENTONVILLE, AR 72716-0550
FOR: WAL-MART STORES, INC.

JENNIFER CHAMBERLIN
MGR. OF REG. AND GOV. AFFAIRS
DIRECT ENERGY
12 GREENWAY PLAZA, SUITE 600
HOUSTON, TX 77046

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

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

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

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

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

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

GREGORY S. G. KLATT
DOUGLASS & LIDDELL
411 E. HUNTINGTON DRIVE, NO 107-356
ARCADIA, CA 91006-8102
FOR: ALLIANCE FOR RETAIL ENERGY
MARKETS/APS ENERGY SERVICES/WESTERN
POWER TRADING FORUM

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

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

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

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

JONI A. TEMPLETON
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, PO BOX 800
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

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

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

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

CHERYL PONDS
OFFICE OF THE CITY ATTORNEY
276 FOURTH AVENUE
CHULA VISTA, CA 91910
FOR: THE CITY OF CHULA VISTA

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

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

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

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

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

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

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

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

JOHN W. LESLIE
ATTORNEY AT LAW
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 92130-2592
FOR: CORAL POWER L.L.C./SHELL ENERGY
NO. AEMRICA.

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

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

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

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

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

JOSEPH LANGENBERG
CENTRAL CALIFORNIA POWER
5125 NORTH MARTY AVENUE, NO.324
FRESNO, CA 93711
FOR: CENTRAL CALIFORNIA POWER

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

EVELYN KAHL
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO, CA 94015
FOR: ENERGY PRODUCERS AND USERS
COALITION

NORA SHERIFF
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO, CA 94015
FOR: ENERGY PRODUCERS AND USERS
COALITION

ROD AOKI
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO, CA 94015
FOR: OCCIDENTAL POWER SERVICES, INC.

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

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

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

CHARLES MIDDLEKAUFF
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST., MC B30A
SAN FRANCISCO, CA 94103
FOR: PACIFIC GAS AND ELECTRIC COMPANY

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

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

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

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

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

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

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

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

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

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

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

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

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

JEANNE B. ARMSTRONG
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLC
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
FOR: GOODIN MACBRIDE SQUERI DAY &
LAMPREY, LLP

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

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

NANCY MURRAY
NATURENER USA, LLC.
394 PACIFIC AVENUE, SUITE 300
SAN FRANCISCO, CA 94111
FOR: NATURENER USA, LLC.

DAVID L. HUARD
ATTORNEY AT LAW
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER, STE 2900
SAN FRANCISCO, CA 94111-3736
FOR: MANATT, PHELPS & PHILLIPS, LLP

DEREK DENNISTON
DIRECTOR
RENEWABLE ENERGY MARKETS
101 CALIFORNIA STREET, STE 2750
SAN FRANCISCO, CA 94111-5802
FOR: EVOLUTION MARKETS, INC.

JOSEPH M. KARP
ATTORNEY AT LAW
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO, CA 94111-5894
FOR: CALIFORNIA WIND ENERGY
ASSOCIATION, LARGE-SCALE SOLAR
ASSOCIATION

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

SALLE E. YOO
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533
FOR: WAL-MART STORES, INC.

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

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

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

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

GALEN LEMEI
PRESIDIO BUILDING 97
PO BOX 29512
SAN FRANCISCO, CA 94129
FOR: CENTER FOR RESOURCE SOLUTIONS

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

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

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

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

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

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

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

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

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

NEAL DE SNOO
ENERGY OFFICE
CITY OF BERKELEY
2180 MILVIA AVENUE
BERKELEY, CA 94704
FOR: EAST BAY POWER AUTHORITY/CITY OF
BERKELEY

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

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

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

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

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

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

JAMES WEIL
DIRECTOR
AGLET CONSUMER ALLIANCE
PO BOX 1916
SEBASTOPOL, CA 95473
FOR: AGLET CONSUMER ALLIANCE

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

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

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

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

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

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

DAN L. CARROLL
ATTORNEY AT LAW
DOWNEY BRAND, LLP
621 CAPITOL MALL, 18TH FLOOR
SACRAMENTO, CA 95814
FOR: MOUNTAIN UTILITIES

JAN MCFARLAND
CAEATFA
915 CAPITOL MALL, RM. 468
SACRAMENTO, CA 95814
FOR: AMERICANS FOR SOLAR POWER

JANE E. LUCKHARDT
ATTORNEY AT LAW
DOWNEY BRAND LLP
621 CAPITOL MALL, 18TH FLOOR
SACRAMENTO, CA 95814
FOR: SACRAMENTO MUNICIPAL UTILITY
DISTRICT

STEVEN KELLY
POLICY DIRECTOR
INDEPENDENT ENERGY PRODUCERS
1215 K STREET, SUITE 900
SACRAMENTO, CA 95814
FOR: IEP

ANDREW B. BROWN
ATTORNEY AT LAW
ELLISON SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: CONSTELLATION NEW ENERGY,
INC./PRAXAIR PLAINFIELD, INC.

DOUGLAS K. KERNER
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: INDEPENDENT ENERGY PRODUCERS
ASSOCIATION

GREGGORY L. WHEATLAND
ATTORNEY AT LAW
ELLISON SCHNEIDER & HARRIS L.L.P.
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: THE CITY OF CORONA

LYNN M. HAUG
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: SIERRA PACIFIC POWER COMPANY

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

KAREN MILLS
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO, CA 95833
FOR: CALIFORNIA FARM BUREAU FEDERATION

DINA M. DUBSON
STOEL RIVES, LLP
900 SW FIFTH AVENUE, SUITE 2600
PORTLAND, OR 97204
FOR: WASATCH WIND, INC.

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

KEVIN A. LYNCH
IBERDROLA RENEWABLES INC
1125 NW COUCH ST., SUITE 700
PORTLAND, OR 97209
FOR: IBERDROLA RENEWABLES, INC.

JORDAN WHITE
SENIOR ATTORNEY
PACIFICORP
825 NE MULTNOMAH STREET, SUITE 1800
PORTLAND, OR 97232
FOR: PACIFICORP

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

Information Only

SEAN J. FINNERTY
SR. VICE PRESIDENT
COMPETITIVE POWER VENTURES, INC.
50 BRAINTREE HILL OFFICE PARK, STE. 300
BRAINTREE, MA 02184

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

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

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

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

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

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

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

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

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

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

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

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

MICHAEL MANN
DTE BIOMASS ENERGY
425 S. MAIN STREET
ANN ARBOR, MI 48104

CATHY S. WOOLLUMS
MIDAMERICAN ENERGY HOLDINGS COMPANY
106 EAST SECOND STREET
DAVENPORT, IA 52801

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

JUDITH KIM
WAL-MART STORES, INC.
2001 SE 10TH STREET
BENTONVILLE, AR 72716-0550

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

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

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

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

DOUGLAS BROOKS
NEVADA POWER COMPANY
SIERRA PACIFIC POWER COMPANY
6226 WEST SAHARA AVENUE
LAS VEGAS, NV 89151

CHAD DICKASON
PO BOX 4646
INCLINE VILLAGE, NV 89450

CONNIE SILVEIRA
NVENERGY
6100 NEIL RD
RENO, NV 89511

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

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

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

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

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

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

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

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

DAVID TOWNLEY
18 BASSWOOD AVENUE
OAK PARK, CA 91377

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

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

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

MARY C. HOFFMAN
SOLUTIONS FOR UTILITIES, INC.
1192 SUNSET DRIVE
VISTA, CA 92081

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

MARK MCEWAN
PRESIDENT
MCEWAN ENTERPRISES
PO BOX 910
VISTA, CA 92085
FOR: MCEWAN ENTERPRISES

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

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

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

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

MICHAEL SHAMES
UCAN
3100 FIFTH AVENUE, SUITE B
SAN DIEGO, CA 92103

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

CENTRAL FILES
SAN DIEGO GAS & ELECTRIC
CP31-E
8330 CENTURY PARK COURT
SAN DIEGO, CA 92123
FOR: SAN DIEGO GAS & ELECTRIC

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

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

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

BRIAN J. NESE
STOEL RIVES, LLP
12707 HIGH BLUFF DRIVE, SUITE 200
SAN DIEGO, CA 92130

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

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

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

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

MICHAEL J. GILMORE
INLAND ENERGY
SOUTH TOWER SUITE 606
3501 JAMBOREE RD
NEWPORT BEACH, CA 92660

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

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

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

DIANE I. FELLMAN
NEXTERA ENERGY RESOURCES, LLC.
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

MATTHEW FREEDMAN
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102

MICHEL P. FLORIO
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK (TURN)
711 VAN NESS AVENUE, SUITE.350
SAN FRANCISCO, CA 94102

NINA SUETAKE
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., STE. 350
SAN FRANCISCO, CA 94102

PAUL FENN
LOCAL POWER
35 GROVE STREET
SAN FRANCISCO, CA 94102

ROBERT FINKELSTEIN
LEGAL DIRECTOR
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., SUITE 350
SAN FRANCISCO, CA 94102

DAN ADLER
DIRECTOR, TECH AND POLICY DEVELOPMENT
CALIFORNIA CLEAN ENERGY FUND
5 THIRD STREET, SUITE 1125
SAN FRANCISCO, CA 94103

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

AUDREY CHANG
DIRECTOR-CALIFORNIA CLIMATE PROGRAM
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA 94104

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

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

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

NOAH LONG
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA 94104

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

LAW DEPARTMENT FILE ROOM
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105

SEEMA SRINIVASAN
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO, CA 94105

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

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

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

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

RAFI HASSAN
SENIOR RESEARCH ASSOCIATE
FBR CAPITAL MARKETS
1950 EMBARACADERO FOUR
SAN FRANCISCO, CA 94111

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

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

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

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

CORY M. MASON
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B30A
SAN FRANCISCO, CA 94105-1814
FOR: PACIFIC GAS AND ELECTRIC COMPANY
DIARMUID MCGARRY
GREENWOOD ENVIRONMENTAL
330 TOWNSEND ST. SUITE 118
SAN FRANCISCO, CA 94107
FOR: GREENWOOD ENVIRONMENTAL

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

JOSH DAVIDSON
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111
FOR: DAVIS WRIGHT TREMAINE LLP

SETH D. HILTON
STOEL RIVES, LLP
555 MONTGOMERY ST., SUITE 1288
SAN FRANCISCO, CA 94111

STEVEN GREENWALD
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111

TARA S. KAUSHIK
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER, 30TH FLOOR
SAN FRANCISCO, CA 94111

KARLEEN O'CONNOR
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO, CA 94111-5894
FOR: CALIFORNIA WIND ENERGY
ASSOCIATION, LARGE SCALE SOLAR
ASSOCIATION,

JOSH DAVIDSON
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY ST, STE 800
SAN FRANCISCO, CA 94111-6533

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

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

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

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

LEIGH FAVRET
3DEGREES
6 FUNSTON AVENUE
SAN FRANCISCO, CA 94129

ANDREW L. HARRIS
PACIFIC GAS & ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO, CA 94177

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

ED LUCHA
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO, CA 94177

GRACE LIVINGSTON-NUNLEY
ASSISTANT PROJECT MANAGER
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO, CA 94177

MAGGIE CHAN
PG&E
MAILCODE B9A
PO BOX 770000
SAN FRANCISCO, CA 94177

MATT GONZALES
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO, CA 94177

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

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

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

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

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

COOL EARTH SOLAR
4659 LAS POSITAS RD., SUITE C
LIVERMORE, CA 94551
FOR: COOL EARTH SOLAR

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

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

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

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

JENNIFER BARNES
SUMMIT BLUE CONSULTING, LLC
2920 CAMINO DIABLO, SUITE 210
WALNUT CREEK, CA 94597

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

TIMEA ZENTAI
SUMMIT BLUE CONSULTING, LLC
2920 CAMINO DIABLO, SUITE 210
WALNUT CREEK, CA 94597

PHILIPPE AUCLAIR
11 RUSSELL COURT
WALNUT CREEK, CA 94598

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

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

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

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

ARTHUR L. HAUBENSTOCK
BRIGHTSOURCE ENERGY, INC.
1999 HARRISON STREET, SUITE 2150
OAKLAND, CA 94612

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

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

DOCKET COORDINATOR
5727 KEITH ST.
OAKLAND, CA 94618

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

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

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

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

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

SEAN P. BEATTY
SR. MGR. EXTERNAL & REGULATORY AFFAIRS
MIRANT CALIFORNIA, LLC
PO BOX 192
PITTSBURG, CA 94707

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

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

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

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

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

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

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

LYNN M. ALEXANDER
LMA CONSULTING
129 REDWOOD AVENUE
CORTE MADERA, CA 94925

ANDERS GLADER
IBERDROLA RENEWABLES
114 MORNING SUN AVENUE
MILL VALLEY, CA 94941

KEITH WHITE
312 KELLER ST
PETALUMA, CA 94952

ERIC CHERNISS
SOLARGEN ENERGY
20400 STEVENS CREEK BLVD, SUITE 700
CUPERTINO, CA 95014

AVIS KOWALEWSKI
CALPINE CORPORATION
50 WEST SAN FERNANDO STREET, SUITE 500
SAN JOSE, CA 95113

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

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

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

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

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

DOUGLAS M. GRANDY, P.E.
DG TECHNOLOGIES
1220 MACAULAY CIRCLE
CARMICHAEL, CA 95608
FOR: CALIFORNIA ONSITE GENERATION

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

TOBIN RICHARDSON
RICHARDSON GROUP
1416 VIGO COURT
DAVIS, CA 95618

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

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

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

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

DAVID OLIVER
NAVIGANT CONSULTING
3100 ZINFANDEL DRIVE, SUITE 600
RANCO CORDOVA, CA 95670

KIRBY DUSEL
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670
FOR: SAN JOAQUIN VALLEY POWER AUTHORITY

ERIN RANSLOW
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078

LAURIE PARK
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078
FOR: NAVIGANT CONSULTING, INC.

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

LON W. HOUSE, PH.D
WEC
4901 FLYING C RD.
CAMERON PARK, CA 95682

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

TOM POMALES
CALIFORNIA AIR RESOURCES BOARD
1001 I STREET
SACRAMENTO, CA 95812

AMBER RIESENHUBER
ENERGY ANALYST
INDEPENDENT ENERGY PRODUCERS ASSOC.
1215 K STREET, SUITE 900
SACRAMENTO, CA 95814

BRUCE MCLAUGHLIN
ATTORNEY AT LAW
BRAUN & BLAISING, P.C.
915 L STREET SUITE 1270
SACRAMENTO, CA 95814

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

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

SCOTT BLAISING
ATTORNEY AT LAW
BRAUN & BLAISING MCLAUGHLIN, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814

DANIELLE MATTHEWS SEPERAS
CALPINE CORPORATION
1215 K STREET, SUITE 2210
SACRAMENTO, CA 95814-3978

BRIAN S. BIERING
ELLISON SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905

JEDEDIAH J. GIBSON
ATTORNEY AT LAW
ELLISON SCHNEIDER & HARRIS LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: SIERRA PACIFIC POWER COMPANY

JEFFREY HARRIS
ATTORNEY AT LAW
ELLISON & SCHNEIDER
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: DYNEGY

ELAINE SISON-LEBRILLA
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET
SACRAMENTO, CA 95817

OBADIAH BARTHOLOMY
MECHANICAL ENGINEER
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S. STREET, M.S. B257
SACRAMENTO, CA 95817

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

ARLEN ORCHARD
ATTORNEY AT LAW
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET, M.S. B406
SACRAMENTO, CA 95817-1899

BUD BEEBE
REGULATORY AFFAIRS COORDINATOR
SACRAMENTO MUNICIPAL UTILITY DIST
6201 S STREET, MS B257
SACRAMENTO, CA 95817-1899
FOR: ADVANCED, RENEWABLE, & DISTRIBUTED
GENERATION TECHNOLOGY

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

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

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

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

ART RIVERA
RENEWABLE TECHCOM
10243 ELLENWOOD AVE
SACRAMENTO, CA 95827

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

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

ANNIE STANGE
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND, OR 97201

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

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

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

JENNIFER HOLMES
ENERGY MARKET INNOVATIONS INC.
83 COLUMBIA STREET, SUITE 303
SEATTLE, WA 98104

CLARE BREIDENICH
224 1/2 24TH AVE. EAST
SEATTLE, WA 98112

DONALD SCHOENBECK
RCS, INC.
900 WASHINGTON STREET, SUITE 780
VANCOUVER, WA 98660
FOR: CAC

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

PETER BREHM
INFINIA CORPORATION
6811 OKANOGAN PLACE
KENNEWICK, WA 99336

State Service

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

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

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

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

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

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

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

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

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

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

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

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

GRETCHEN T. DUMAS
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JULIE A. FITCH
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
ROOM 4004
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KAREN P. PAULL
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LOUIS M. IRWIN
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS BRA
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

MARY JO STUEVE
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4101
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

NIKA ROGERS
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4101
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

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

SARA M. KAMINS
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

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

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

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

GINA BARKALOW
CALIFORNIA ENERGY COMMISSION (CEC)
1516 NINTH STREET MS-45
SACRAMENTO, CA 95814

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

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

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

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

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

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

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