

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



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In the Matter of the Application of Southern California Edison Company (U338E) for Modification of Decision 05-09-018 to Extend EDR-Retention Rates.

Application 09-10-012  
(Filed October 13, 2009)

Application of Pacific Gas and Electric Company for Modification of Decision 05-09-018 to Extend the Economic Development Rate (U 39E).

Application 09-11-010  
(Filed November 13, 2009)  
(Amended January 27, 2010)

**PROTEST OF THE UTILITY REFORM NETWORK  
TO THE AMENDED APPLICATIONS OF  
SOUTHERN CALIFORNIA EDISON COMPANY AND  
PACIFIC GAS AND ELECTRIC COMPANY**

February 10, 2010

Robert Finkelstein  
Litigation Director

**The Utility Reform Network**  
115 Sansome Street, Suite 900  
San Francisco, CA 94104  
Phone: (415) 929-8876  
Fax: (415) 929-1132  
E-mail: [bfinkelstein@turn.org](mailto:bfinkelstein@turn.org)

**PROTEST OF THE UTILITY REFORM NETWORK TO THE AMENDED  
APPLICATIONS OF SOUTHERN CALIFORNIA EDISON COMPANY AND  
PACIFIC GAS AND ELECTRIC COMPANY**

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure and the schedule set forth in the Assigned Commissioner's Ruling and Scoping Memo of February 5, 2010, The Utility Reform Network (TURN) submits this protest to the amended applications of Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) seeking to extend and expand each utility's Economic Development Rate (EDR) program.

**I. Introduction and Summary**

TURN would stipulate that California's economy is suffering. However, this fact on its own is not a sufficient basis to approve the relief requested in the utilities' amended applications. The Amended Applications of PG&E and SCE are premised on a number of assertions that are inadequately supported or are contradicted within the application itself or by readily available information. Unless and until the utilities present testimony that more fully explains the basis for their requested relief, the Commission lacks a basis for granting such relief. Therefore TURN urges the Commission to direct the utilities to submit testimony and workpapers in support of their requested relief and addressing the issues identified herein.

The Commission should keep in mind that it has never assessed the performance of the utilities' EDR program since issuing D.05-09-018, and nothing in the utilities' amended applications would permit a meaningful assessment. In this way the utilities' requests present conditions similar to those the Commission cited as a basis for rejecting

SCE's previous request to extend and expand its "flexible pricing options" (predecessors to the current EDR tariffs). As the Commission stated in D.99-09-065:

At a minimum, we would have expected SCE to present an analysis of how the flexible pricing options have fared to date in terms of ratepayer and shareholder costs and benefits.... [¶] SCE presents no such analysis....<sup>1</sup>

One of the findings made in support of the Commission's decision to deny SCE's petition to modify this earlier program cited the utility's "fail[ure] to present information that would enable this Commission to determine how the benefits and costs associated with flexible pricing options have been allocated to date."<sup>2</sup>

There is nothing in the amended applications that would constitute an analysis of the performance of the EDR tariffs approved in D.05-09-018.<sup>3</sup> Instead, the utilities effectively ask the Commission to assume that their efforts to identify and direct customers to their EDR tariff have to date worked precisely as anticipated in that decision. Before the Commission considers increasing the MW cap for the tariff, or changing the calculation of the price floor to provide a larger discount, it needs to assess how the tariffs have operated so far.

In the SCE 2009 GRC decision issued earlier this year, the Commission reiterated that the applicant bears the burden of proof:

As the applicant, SCE must meet the burden of proving that it is entitled to the relief it is seeking in this proceeding. [cite omitted] SCE has the burden of affirmatively establishing the reasonableness of all aspects of its application. Other parties do not have the burden of proving

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<sup>1</sup> D.99-09-065 [1999 Cal. PUC LEXIS 665, \*12-13].

<sup>2</sup> *Id.*, Finding of Fact 3; *see also* Conclusion of Law 2 and Ordering Paragraph 1.

<sup>3</sup> As one obvious example, the Commission should assess whether the reliance on a "but-for" affidavit signed by customers seeking a discount of up to 25% has in fact deterred free ridership before creating even more opportunities for such affidavits to serve as the basis for further discounts.

the unreasonableness of SCE's showing. As the applicant in this rate case, SCE has the burden of proving that each of its proposals is reasonable.<sup>4</sup>

SCE and PG&E have each failed to meet their burden of proof in support of their amended applications here. The Commission should direct each utility to further supplement their direct showings by submitting prepared testimony that fully addresses each aspect of its application. Furthermore, in order to enable the Commission to assess how the EDR programs approved in D.05-09-018 have performed to date, the utilities should provide testimony describing in sufficient detail their experience with these programs and assessing the free ridership issue with customers served under the tariff since D.05-09-018 issued. Finally, the Commission should direct SCE to present testimony analyzing TAMCO's eligibility for service under its EDR tariff, including whether the utility believes TAMCO has demonstrated to SCE's satisfaction that relocation is a viable alternative or closure of its facilities is otherwise imminent and the basis for that belief.

## **II. Summary of the Amended Applications**

### **A. PG&E**

PG&E's original request was limited to an extension of the sunset date for its Economic Development (ED) rate from the end of 2009 to the end of 2012. The amended application also seeks to double the cap for this rate program, from 100 MW to 200 MW. The original application referred to recent requests the utility had received from California Business Investment Services (CalBIS) seeking the evaluation of

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<sup>4</sup> D.09-03-025 (issued in A.07-11-011), p. 8 [emphasis added].

customers for increasingly smaller benefits.<sup>5</sup> In the amended application, PG&E adds a description of how the utility and CalBIS had recently used the ED rate to attract “new green manufacturing and jobs to locate or remain in California” and cited that experience as a further basis for extending the program and increasing the cap.<sup>6</sup> However, the Amended Application provided no additional detail about this recent experience with the ED rate.

## **B. SCE**

Like PG&E, SCE originally sought to extend its EDR tariffs until the end of 2012. The utility noted it presently serves 15 customers representing 47.5 MW on these tariffs.<sup>7</sup> In April 2009, SCE identified another 46 customers representing 37 MW of load who were “at risk” and appeared eligible for service under the EDR tariff.<sup>8 9</sup>

SCE’s original application also sought to revise its method for setting the floor price. Under SCE’s proposal, retention customers served on a circuit that has sufficient capacity to serve the existing customers, including any forecast load growth, without upgrades during the latest Distribution Substation Planning cycle could be assigned a marginal distribution cost of zero, thus producing a lower floor price and an increased

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<sup>5</sup> PG&E Amended Application, p. 4 [“Particularly in a business retention setting, even the smaller incentives – which in ‘boom’ years may have been rebuffed as a token contribution to a customer’s decision -- are being increasingly perceived as a showing that California is sincere in its efforts to retain businesses.”]

<sup>6</sup> PG&E Amended Application, p. 4.

<sup>7</sup> SCE Amended Application, p. 3.

<sup>8</sup> *Id.* at 10.

<sup>9</sup> SCE Amended Application, p. 10.

discount.<sup>10</sup> An SCE internal review by its Engineering and Technical Services Division would make the determination of whether or not a circuit has sufficient capacity.

In its amended application, SCE seeks to increase the cap from 100 MW to 250 MW. It also includes references to CalBIS, describing that entity as the utility’s “third party reviewer” and citing it for the proposition that “small incentives are just as useful in favorably influencing a customer’s decision to remain in CA or keep their operations open.”<sup>11</sup> SCE also claims that its proposal to create the possibility of a marginal distribution cost of zero for purposes of setting the floor price “would align SCE’s practice with what PG&E currently does.”<sup>12</sup>

**III. The Amended Applications Raise Questions That Highlight The Need To Require Supplemental Material From The Utilities To Enable Carefully Evaluation of How The Program Has Worked To Date, And How The Proposed Modifications Would Effect The Program.**

**A. The Commission Should Both Reject SCE’s Proposed Modified Calculation of Its Floor Price And Carefully Review PG&E’s Current Calculation Method.**

SCE proposes to revise its method of setting its floor price such that the marginal distribution cost component of that floor price would be set at zero where the EDR-R applicant will not require distribution upgrades.<sup>13</sup> In its revised application, the utility claims that this revised approach “would align SCE’s practice with what PG&E currently does.”<sup>14</sup>

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<sup>10</sup> *Id.* at 11.

<sup>11</sup> SCE Amended Application, p. 6.

<sup>12</sup> *Id.* at 12.

<sup>13</sup> SCE Amended Application, p. 12.

<sup>14</sup> *Id.*

But according to PG&E's application, its floor price for any ED rate it might offer includes marginal costs most recently approved by the Commission.<sup>15</sup> TURN's understanding is that the Commission-adopted marginal distribution cost for PG&E's industrial and commercial customers has always been greater than zero. The PG&E amended application does not describe in any detail its current practice for calculating a customer-specific floor price for service under its schedule ED, including whether it ever uses a marginal distribution cost of zero for such purposes, and the specific sources of the marginal cost components the company uses to set the floor price.<sup>16</sup>

Thus it would seem that either SCE is incorrect in claiming that permitting it to use a marginal distribution cost of zero under some circumstances would align its practices with PG&E's existing practices, or PG&E is using a marginal distribution cost of zero for purposes of setting the floor price even though the Commission has (to TURN's knowledge, at least) never adopted a marginal distribution cost of zero for ED-eligible customers. Whatever the explanation, any calculation method that results in a marginal distribution cost of zero should be rejected.

In addition, the Commission should be concerned that the process by which SCE proposes to determine customer-specific marginal distribution costs appears to be something the utility is creating out of whole cloth solely for purposes of this tariff. The current calculation relies solely on Commission-adopted marginal costs and, as a result, is relatively straightforward and non-controversial; the numbers are in a public document that is the product of a public process. SCE's new approach would place the calculation entirely in the hands of SCE employees, at least for the marginal distribution cost.

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<sup>15</sup> PG&E Amended Application, p. 3, footnote 2.

<sup>16</sup> TURN has submitted a data request seeking such information from PG&E.

Nothing in the Amended Application details how the utility's Engineering and Technical Services Division will perform the analysis (such as factors it will consider and records it will review and whether the review will be purely subjective or include any exercise of judgment on the part of the utility's staff), or explains how the utility would ensure that its desire to offer deeper discounts to potential EDR candidates does not influence that analysis. The Amended Application is also silent on whether SCE intends to have the Commission monitor this new element of the utility's proposal and how such monitoring might occur.

In addition, the Amended Application fails to acknowledge or address the complications that would arise should SCE's staff's determination about the capacity of a particular circuit prove to be incorrect. With all due respect, the implicit assumption that SCE engineers and analysts are infallible is suspect, to say the least. It is conceivable that SCE's Engineering and Technical Services Division could determine that the circuit serving the EDR-R applicant has sufficient capacity (thus permitting a greater discount to that applicant), only to find later that the utility needs to add capacity during the period when the tariffed discount is in effect. And in that event a floor price would have been set too low, such that the EDR-R customer is paying a rate that does not provide a contribution to SCE's fixed costs. This undermines, if not eliminates, the ratepayer benefit from the EDR-Retention tariff (achieving a contribution to fixed cost recovery where otherwise there would be none). SCE's silence on this issue suggests that the utility intends for the risk of such an outcome to fall on its ratepayers. The Commission should require the utility to more squarely address this risk and explain why its proposed treatment of that risk is reasonable for ratemaking purposes.

**B. The Commission Should First Require The Utilities To Address The Experience To Date With Free Ridership Before Expanding The Program Or Increasing The Discount.**

The amended applications tout the benefits non-participating ratepayers will see in the form of billed revenues collected from EDR customers that, by extension, contribute to the utility's recovery of fixed costs.<sup>17</sup> Remarkably, the amended applications fail to directly address the question of free riders and the deleterious impact that free ridership can have on these purported benefits.<sup>18</sup> Rather than embracing the utilities' implicit assumption that the applications present no free ridership issues worth discussing, the Commission should direct each utility to make an affirmative showing on the experience of the EDR tariff program to date in this regard, and any increased free ridership risk inherent in their proposed revisions to those programs.

The Commission has previously recognized that load retention discounts present at least two distinct types of risk from free ridership: Ratepayers run the risk of paying too much because customers were not really planning to leave, or would have accepted less to stay on the system.<sup>19</sup> The utilities' amended applications acknowledge the former risk, but do not address it in any meaningful way. The applications make no mention of the risk of paying more than was necessary to retain a customer, even as the amendments included assertions that highlight the increased likelihood that the risk is present in today's economic conditions.

The risk that an EDR customer would have accepted less to stay on the system is increased in two ways under the amended applications. SCE's request to change the way

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<sup>17</sup> SCE Amended Application, p. 5; PG&E Amended Application p. 5.

<sup>18</sup> TURN did not find any reference to the terms "free rider" or "free ridership" in either application.

<sup>19</sup> D.96-08-025, fn. 2 [1996 Cal. PUC LEXIS 845,\*60].

it calculates the floor price in order to offer a more substantial discount brings with it an increased risk that the EDR customer would have accepted less to stay on the system. In addition, both utilities cite with favor the CalBIS observation that under current economic conditions “small incentives are just as useful in favorably influencing a customer’s decision to remain in CA or keep their operations open.”<sup>20</sup> Offering a larger incentive when a smaller incentive could be “just as useful” means an increased risk that the customer would have accepted less, and ratepayers are paying more than was necessary.

The Commission should invite SCE to provide testimony describing the experience of the customers for whom the utility analyzed their need for EDR discounts in April 2009 but that have not yet obtained any discount.<sup>21</sup> Nearly a year later, it would be informative to learn if these customers have indeed relocated outside of SCE’s service territory or are no longer taking service. If they continue to take service from SCE today, the Commission should seriously question the efficacy of the screening process approved in D.05-09-018 and proposed for continuation here.

If the Commission were merely being asked to extend the sunset dates for the EDR tariffs, it might have a basis for assuming that the free ridership risk going forward is no greater than the risk present when D.05-09-018 issued. But the amended applications seek to increase the MW cap, which inherently increases the risk that the discounts are going to customers who were not really planning to leave. The Commission should not consider any increase of the existing cap until it has assessed whether the provisions to prevent free ridership are working as intended at the current cap level. To this end, the Commission should require the utilities to make an affirmative

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<sup>20</sup> SCE Amended Application, p. 6; *see also* PG&E Amended Application, pp. 5-6.

<sup>21</sup> SCE Amended Application, p. 10.

showing on the free ridership question, including analyses addressing the specific questions raised herein.

#### **IV. TAMCO's Eligibility for SCE's EDR Tariff Is Questionable.**

A relatively recent development in this proceeding is the emergence of TAMCO as a potential candidate for an economic development rate. According to its motion to become a party, “[w]ithout the discounted rates, TAMCO may be forced to close operations.”<sup>22</sup> And if TAMCO is willing to sign an affidavit attesting to the fact that “but for” the discount it would not be able to retain the identified load within the State of California, and otherwise demonstrate to SCE’s satisfaction that relocation is a viable alternative or closure of its facilities is otherwise imminent,<sup>23</sup> the firm would appear to be eligible for SCE’s EDR retention discount.

At this juncture the Commission lacks sufficient record evidence to meaningfully assess TAMCO’s eligibility for service under SCE’s EDR tariff. Even though it appears the firm is prepared to sign an affidavit claiming that “but for” the discount it will shut down or move, TURN submits the Commission should harbor substantial doubts about the veracity of such a claim. If TAMCO were really in such a position, the Commission could reasonably expect its co-owner to have made similar representations in its financial statements filed at the Securities Exchange Commission (SEC). Instead, the SEC filings of Ameron International Corporation (Ameron), owner of a 50% share of TAMCO, describe an operation that intends to continue to operate in its current location. While Ameron reported that TAMCO halted production altogether for some period in early

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<sup>22</sup> Motion of TAMCO Requesting Party Status (January 22, 2010), p. 2.

<sup>23</sup> SCE Amended Application, p. 10, fn. 31.

2009 and has engaged in intermittent production since then, the SEC filing did not attribute this to high operating costs, but rather to the economic conditions in California, Nevada and Arizona and the impact those conditions have on the price and demand for TAMCO's product (steel rebar used in construction of buildings, freeways, bridges and other concrete structures<sup>24</sup>).

In Ameron's 10-K annual report filed January 29, 2010 for its fiscal year ended November 30, 2009, the company addressed TAMCO's situation as follows:

The decline in TAMCO's earnings was due to the collapse of infrastructure spending for steel rebar in California, Arizona and Nevada. TAMCO halted production in the first quarter of 2009 and had limited production during the remainder of 2009. **Given the low level of demand, TAMCO will continue to operate its plant intermittently as incoming orders and inventory levels warrant.** Demand for steel rebar in TAMCO's key markets in the western U.S. is not expected to recover in the short term.<sup>25</sup>

A recent Ameron 8-K report (also filed January 29, 2010) included a press release that reported "stronger-than-expected fourth quarter and 2009 results" for TAMCO's co-owner, and quoted Ameron's chief executive as predicting that the firm "remains well positioned in its key markets to benefit when the economy recovers."<sup>26</sup> The report also

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<sup>24</sup> Motion of TAMCO, p. 1.

<sup>25</sup> Ameron 10-K of January 29, 2010, p. 23 [emphasis added]. TURN obtained access to the Ameron SEC filings through the company's home page ([www.ameron.com](http://www.ameron.com)) and the link entitled "Ameron SEC Filing" appearing in the upper right-hand corner of that page. Entering "10-k" into the search engine of the SEC filing page produces a list that includes the January 29, 2010 filing. TURN would be glad to provide a pdf version of the report to any party that requests one.

<sup>26</sup> Ameron 8-K of January 29, 2010, Exhibit 99 (p. 7 of 24). See above note. Obviously, for this report one needs to enter "8-k" into the search engine.

addressed the TAMCO operations:

Demand for steel rebar in TAMCO's key markets in the western U.S. is not expected to recover in the short term. **Given the low level of demand, TAMCO will continue to control costs and operate its plant intermittently as incoming orders and inventory levels warrant.**<sup>27</sup>

The SEC filings do not suggest any imminent risk that the TAMCO plant is going to relocate or cease operation altogether. To the contrary, TAMCO's co-owner describes a clear intention to continue operation into the future, with the level of operation directly linked to the level of demand for its product, which depends heavily on economic conditions. In the face of these statements to the SEC, the Commission should have substantial concerns about the veracity of any claim TAMCO might make that "but for" its receipt of an EDR discount it will shut down its operations. And if SCE believes that TAMCO has demonstrated to the utility's satisfaction that relocation or shutdown is imminent,<sup>28</sup> SCE should present and explain the evidence it relied upon in reaching that determination.

The Commission needs to recognize that no matter how sympathetic it might be to the plant's current plight, temporarily operating at a loss is not enough to establish eligibility for the EDR tariff. TAMCO does not qualify for service on SCE's EDR tariff unless it meets the "but for" standard. In light of the evidence that TAMCO intends to continue operating at its current location, it would appear that TAMCO cannot meet that standard. Permitting TAMCO to take service under the EDR tariff even though it does

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<sup>27</sup> *Id.* at p. 8 of 24 [emphasis added].

<sup>28</sup> SCE Amended Application, p. 10, fn. 31.

not qualify for such service would thus add a 90 MW free rider to a program that presently serves 47.5 MW of load.<sup>29</sup>

**V. The Extension of the Existing EDR Program Has Obviated The Need For Expedited Action On These Applications.**

In determining how to proceed from this point forward, TURN submits that the Commission should be skeptical of any claimed need for expedited treatment or consideration. SCE's amended application describes how it identified 46 "at risk" customers that it believes would qualify for the EDR-R tariff in April 2009.<sup>30</sup> Yet the utility saw no need to seek an extension of the tariff's sunset date until six months later, when it filed a petition to modify D.05-09-018. These "at risk" customers represent 37 MW of load. If all of these customers enrolled immediately for the EDR-R tariff, SCE would still be beneath the existing 100 MW cap.<sup>31</sup> PG&E presently has 88.25 MW enrolled in its EDR program (including a new contract that was not yet fully executed at the time the utility provided its "response to inquiries"), and no pending requests to enroll.<sup>32</sup> On December 9, 2009, the Commission's Executive Director granted each utility authority to continue offering service to new customers under its current EDR tariff until a final decision issues in this proceeding. Thus under the *status quo* the utilities have the ability to continue to enroll eligible customers. Should either utility reach its 100 MW cap while the proceeding is underway, the parties can propose appropriate measures to take to reasonably address that circumstance.

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<sup>29</sup> SCE Amended Application, p. 3.

<sup>30</sup> SCE Amended Application, p. 10.

<sup>31</sup> For the reasons described in the preceding section, TURN submits that TAMCO is unlikely to be able to establish eligibility for service under SCE's EDR tariff and therefore its load should be excluded from this calculation.

<sup>32</sup> PG&E Response to Inquiries, p. 2.

As described in the preceding sections, the amended applications raise substantial issues but present sparse evidentiary support for the factual assertions underlying the utility requests. The Commission owes it to the ratepayers who will be underwriting the EDR discounts to first require the utilities to present fully-supported proposals, and then to permit TURN, DRA and other interested parties to analyze such proposals. The Commission also needs to take this opportunity to evaluate the performance of the EDR efforts since D.05-09-018 before giving its blessing to continue those efforts with the proposed modifications. Therefore the Commission will need to reconsider and substantially revise the alternative schedules set forth in the recent Scoping Memo.

## **VI. Conclusion**

The Commission should direct the utilities to prepare and submit direct testimony that addresses the issues identified in this protest. TURN understands that so directing the utilities will require substantial modifications to the alternative procedural schedules set forth in the recently issued Scoping Memo. Under normal circumstances we might be reluctant to urge steps requiring revisions to the schedule so shortly after the schedule was established. However, these are not normal circumstances. The amended applications were presented either a few days prior to the prehearing conference or shortly thereafter. Therefore it is reasonable to expect that further and closer review of the utilities' requests would identify issues and concerns in greater detail than the parties had in mind during the prehearing conference. That certainly was TURN's experience here.

Rather than continue to proceed with the review of applications that lack sufficient evidentiary support, the Commission should take reasonable steps to provide

the utilities an opportunity to further amend their direct showing to provide such support, even if it means revising the adopted procedural schedule.

Date: February 10, 2010

Respectfully submitted,

By: \_\_\_\_\_/S/\_\_\_\_\_  
Robert Finkelstein  
Litigation Director

**The Utility Reform Network**  
115 Sansome Street, Suite 900  
San Francisco, CA 94104  
Phone: (415) 929-8876  
Fax: (415) 929-1132  
Email: [bfinkelstein@turn.org](mailto:bfinkelstein@turn.org)

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On February 10, 2010 I served the attached:

**PROTEST OF THE UTILITY REFORM NETWORK  
TO THE AMENDED APPLICATIONS OF  
SOUTHERN CALIFORNIA EDISON COMPANY AND  
PACIFIC GAS AND ELECTRIC COMPANY**

on all eligible parties on the attached lists **A.09-10-012 and A.09-11-010** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this February 10, 2010, at San Francisco, California.

    /S/      
Larry Wong

**Service List for A.09-10-012 and A.09-11-010**

AGL9@pge.com  
bfinkelstein@turn.org  
bsl@cpuc.ca.gov  
case.admin@sce.com  
cem@newsdata.com  
cmkehrein@ems-ca.com  
dlf@cpuc.ca.gov  
fjs@cpuc.ca.gov  
jguzman@nossaman.com  
knsimonsen@ems-ca.com  
lhj2@pge.com  
lra@cpuc.ca.gov  
mrw@mrwassoc.com.  
olivia.samad@sce.com  
regrelcpuccases@pge.com  
samuelk@greenlining.org  
saw0@pge.com  
smw@cpuc.ca.gov  
WilkinsB@tamcosteel.com