



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Order Instituting Rulemaking to Implement the)
Commission's Procurement Incentive Framework)
and to Examine the Integration of Greenhouse)
Gas Emissions Standards into Procurement)
Policies.)
_____)

Rulemaking 06-04-009
(Filed April 13, 2006)

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO THE
NOVEMBER 30, 2009 PETITION FOR MODIFICATION OF DECISION 07-01-039**

MICHAEL D. MONTOYA
CATHY A. KARLSTAD
ANGELICA M. MORALES

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6160
Facsimile: (626) 302-6962
E-mail: Angelica.Morales@sce.com

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**SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E) RESPONSE TO THE
NOVEMBER 30, 3009 PETITION FOR MODIFICATION OF DECISION 07-01-039**

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Pursuant to Rule 16.4(f) of the California Public Utilities Commission’s (Commission) Rules of Practice Procedure,¹ Southern California Edison Company (SCE) hereby submits its Response to the Petition for Modification of Decision (“D.”) 07-01-039 (Petition for Modification or Petition) filed by the Natural Resources Defense Council (NRDC), the Environmental Defense Fund (EDF), Green Power Institute (GPI), Union of Concerned Scientists (UCS), and The Utility Reform Network (TURN) (collectively Petitioners) on November 30, 2009. For the reasons stated below, SCE requests that the Commission deny the Petition.

I.

INTRODUCTION

Petitioners’ arguments for inclusion of this proposed language lack merit and do not warrant modification of D.07-01-039. In particular, the Commission should deny the Petition for Modification because Petitioners have not met their burden under Rule 16.4(d) to justify submission of the Petition for Modification more than one year after the effective date of D.07-

¹ The Administrative Law Judge extended the time for Responses to the Petition until January 15, 2010.

01-039. Further, the recommended modifications are unnecessary, given the current regulatory framework.

II.

BACKGROUND AND SUMMARY OF PETITION

In D.07-01-039,² the Commission adopted an “interim greenhouse gas (GHG) emissions performance standard [(EPS)] for new long-term financial commitments to baseload generation undertaken by all load-serving entities (LSEs), consistent with the requirements and definitions of Senate Bill (SB) 1368 (Stats. 2006, ch. 598).”³ “SB 1368 establishes a minimum threshold of performance for any baseload generation facility that represents a new long-term financial commitment entered into by entities providing power to California ratepayers.”⁴ The “adopted [EPS] is intended to serve as a near-term bridge until an enforceable GHG emissions limit applicable to LSEs is established and in operation.”⁵ Because CO₂ is “the most widely reported and verified of the GHGs at this time,” the emission standards adopted in D.07-01-039 are limited to CO₂ emissions.⁶ The Commission confirmed that it will “continue, modify or replace [the EPS] *through a rulemaking proceeding*, and in consultation with the California Energy Commission (CEC) and the California Air Resources Board (CARB).”⁷

Petitioners note that “[o]ne way to meet the EPS when using coal or petroleum coke (both of which are highly carbon-intensive) as feedstocks for baseload generation is through the use of carbon capture and geologic sequestration (CCS) technology.”⁸ CCS technology involves the use of industrial processes to inject CO₂ in geologic formations. This CO₂ mitigation measure is intended to assist in reducing GHG emissions and meeting GHG-reduction targets set

² D.07-01-039 was issued in the captioned-proceeding, Rulemaking (R.) 06-04-009.

³ *Id.*, “Introduction and Summary,” p. 2.

⁴ D.07-01-039, “Context and Policy Objectives,” p. 33.

⁵ *Id.*, “Introduction and Summary,” p. 3.

⁶ *Id.*, “Context and Policy Objectives,” p. 37.

⁷ *Id.*, “Introduction and Summary,” p. 3 (emphasis added).

⁸ Petition for Modification, p. 2.

by state policies. SB 1368 provides that the Commission should “not count CO₂ injected into geological formations (so as to prevent releases into the atmosphere) in the calculation of net emissions . . . [and should] determine EPS compliance for such covered procurements based on reasonably projected net emissions over the life of the facility.”⁹

In consideration of the SB 1368 GHG reduction goals, along with the Legislature’s direction that CO₂ sequestered in geological formations not be calculated in the EPS, D.07-01-39 states the following:

Because of the unique nature of CO₂ geological injection sequestration projects, an LSE entering into an EPS covered procurement utilizing such projects should request Commission pre-approval by application. In order to ensure that the purposes of SB 1368 are served, the LSE should be required to (1) provide *documentation* that the project has a reasonable and economically and technically feasible *plan* that will result in the *permanent sequestration* of CO₂ once the injection project is operational and (2) present *projections* (and documentation of those projections) of *net emissions* over the life of the powerplant, and (3) provide *documentation* that the CO₂ injection project *complies with applicable laws and regulations*.¹⁰

Notwithstanding the Commission’s requirement that LSEs document a plan demonstrating the CO₂ capture capabilities of an injection project, Petitioners ask the Commission to include the following additional language in various portions of D.07-01-039:

The plan must include sufficient ongoing monitoring and reporting activities, which are enforceable under Federal and/or State law, to determine the subsurface extent and behavior of the injected CO₂, verify the permanence of sequestration, and account for any releases from the subsurface.¹¹

⁹ D.07-01-039, “Introduction and Summary,” p. 23, fn. 22.

¹⁰ *Id.*, “Conclusions of Law,” paragraph 47, pp. 272-273 (emphasis added).

¹¹ Petition for Modification, pp. 6-7 (emphasis added).

III.

PETITIONERS HAVE NOT MET THEIR BURDEN UNDER RULE 16.4(D) TO JUSTIFY SUBMISSION OF THEIR PETITION FOR MODIFICATION MORE THAN ONE YEAR AFTER THE EFFECTIVE DATE OF D.07-01-039

Petitioners filed the Petition for Modification nearly *three* years after the effective date of D.07-01-039. Rule 16.4(d) provides that:

[A] petition for modification must be filed and served *within one year* of the effective date of the decision proposed to be modified. *If more than one year has elapsed*, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.¹²

Petitioners cite two justifications for their self-admitted “late submission:”¹³ 1) that there is a gap in the “evolving” regulatory framework for geologic sequestration;¹⁴ and 2) that Commission oversight becomes “increasingly important” because project proposals using CCS technology are in the planning or permitting phase.¹⁵ Neither justification warrants the untimely Petition, and Commission consideration of the proposed modifications to D.07-01-039.

A. Petitioners’ Modifications Are Not Justified Precisely *Because the Regulatory Framework for Geologic Sequestration Is Still Evolving*

Petitioners propose the modifications to D.07-01-039 on the premise that no agency measures are in place to regulate geologic sequestration in hydrocarbon reservoirs or to prevent atmospheric emissions. As Petitioners note, however, the regulatory framework for CCS technology is still evolving. Whether the Commission will be needed to fill any regulatory gaps or how to specifically target those gaps is as of yet unknown. Rather than acting now, while the

¹² Rule 16.4(d) (emphasis added).

¹³ Petition for Modification, p. 3.

¹⁴ *Id.*, pp. 3-5.

¹⁵ *Id.*, p. 6.

CCS regulatory framework is evolving, the Commission should allow this framework to develop further.

1. Other Regulatory Bodies Are Better Positioned to Address the Issues Raised by Petitioners

As Petitioners point out, the underground injection of CO₂ is regulated under the United States Environmental Protection Agency's (EPA).¹⁶ Petitioners contend that the EPA's *July 2008 Proposed Rule* for geologic sequestration, estimated to be promulgated in late 2010 to early 2011, does not regulate geologic sequestration in hydrocarbon (oil and gas) reservoirs and does not address airside emissions concerns.¹⁷ Petitioners present no compelling justification for why it is imperative – three years following D.07-01-039, nearly a year-and-a-half following introduction of the EPA's *proposed rule*, and potentially over one year before the adoption of a final rule – that the Commission adopt their proposed modifications.

In December 2009, the EPA declared that CO₂ and five other greenhouse gases threaten the public health and welfare of current and future generations.¹⁸ Therefore, the stage is now set for regulation of CO₂ air emissions by the EPA through the Clean Air Act. Further, Congressional interest in climate mitigation measures is likely to generate near-term legislation concerning air emissions. Indeed, future regulation and legislation in the area of atmospheric emissions is a certainty. Therefore, to the extent that the Commission should “fill” any regulatory holes, it should suspend action until a more complete CCS regulatory framework is in place.¹⁹

¹⁶ Petition for Modification, p. 3.

¹⁷ *Id.*, p. 4.

¹⁸ See http://epa.gov/climatechange/endangerment/downloads/Federal_Register-EPA-HQ-OAR-2009-0171-Dec.15-09.pdf (40 CFR Chapter I Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act). The regulation notes that it will become effective on January 14, 2010. The regulation was proposed in April 17, 2009. See <http://epa.gov/climatechange/endangerment.html>.

¹⁹ The same argument holds true with respect to regulation of hydrocarbon (oil and gas) reservoirs. The California Department of Conservation's Division of Oil, Gas, and Geothermal Resources (DOGGR) “oversees the drilling, operation, maintenance, and plugging and abandonment of oil, natural gas, and geothermal wells.” See <http://www.conservation.ca.gov/dog/Pages/Index.aspx>.

2. The Commission is Providing Sufficient Oversight of CO₂ Emissions in Geologic Sequestration Projects

The Commission already requires LSEs to have a plan in place for CO₂ injected in geologic sequestration projects. Specifically, D.07-01-039 requires that LSEs seeking to procure sequestration projects file an application requesting pre-approval of such projects.²⁰ As part of the application process and “[i]n order to ensure that the purposes of SB 1368 are served,” an LSE is required to:²¹

(1) provide documentation that the project has a reasonable and economically and technically feasible *plan* that will result in the *permanent sequestration of CO₂* once the injection project is operational and (2) *present projections* (and documentation of those projections) *of net emissions* over the life of the powerplant, and (3) provide *documentation* that the CO₂ injection project *complies with applicable laws and regulations.*²²

Thus, because the Commission currently requires CCS projects under D.07-01-039 to demonstrate permanent sequestration, present projections of net emissions, and document compliance “with applicable laws and regulations,” Petitioners’ modifications are unnecessary. The applicable laws and regulations continue to be developed, including targets for subsurface emissions and parameters for management of CO₂ in CCS projects. Further requirements imposed by the Commission, if any, should be informed by the most concrete statutory and regulatory environment possible. It is premature to include Petitioners’ proposed modifications in light of the current CCS regulatory framework, where wide-ranging agency action or federal and/or state legislation has the potential to alter, conflict with, or override Commission actions. Indeed, the current regulatory framework *cautions against* Commission action on the issue of geologic sequestration at this time.

²⁰ D.07-01-039, “Conclusions of Law,” paragraph 47, p. 272.

²¹ *Id.*, “Conclusions of Law,” paragraph 47, p. 272.

²² *Id.*, “Conclusions of Law,” paragraph 47, p. 273 (emphasis added).

B. Nothing Has Changed That Requires Commission Action At This Time

Petitioners also contend that they are justified in filing their Petition for Modification more than one year after the decision’s effective date because “project proposals relying on [CCS] technology are proceeding faster than had been anticipated, with a number of projects in the planning or permitting phase in California and outside the state. . . .”²³ The urgency alluded to by Petitioners is not justified. The Commission can test the sufficiency of any emissions plan provided by an LSE in compliance with the requirements of D.07-01-039 at the time of a CCS project application. There is no need to make a determination about what specific monitoring parameters should be included in any filing at this time when, as discussed above, the regulatory framework is slated to develop significantly over the next few years. At the time an LSE application for a CCS project comes to fruition, intervening parties will be better positioned to weigh in on the sufficiency of planned oversight for CO₂ emissions through a geologic sequestration project’s life cycle because the governing statutes and regulations will have necessarily advanced.

²³ Petition for Modification, p. 6.

IV.

CONCLUSION

For all of the reasons stated above, SCE respectfully requests that the Commission deny the instant Petition for Modification.

Respectfully submitted,

MICHAEL D. MONTOYA
CATHY A. KARLSTAD
ANGELICA M. MORALES

/s/ Angelica Morales

By: [Angelica M. Morales](#)

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6160
Facsimile: (626) 302-6962
E-mail: Angelica.Morales@sce.com

Dated: January 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO THE NOVEMBER 30, 2009 PETITION FOR MODIFICATION OF DECISION 07-01-039 on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

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

/s/ Raquel Ippoliti

Raquel Ippoliti

Project Analyst

SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue

Post Office Box 800

Rosemead, California 91770



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Parties

KERRY HATTEVIK
DIRECTOR OF REG. AND MARKET AFFAIRS
NEXTERA ENERGY
EMAIL ONLY
EMAIL ONLY, CA 00000
FOR: MIRANT CORPORATION

DAN HECHT
SEMPRA ENERGY
58 COMMERCE ROAD
STANFORD, CT 06902

CINDY ADAMS
COVANTA ENERGY CORPORATION
40 LANE ROAD
FAIRFIELD, NJ 07004
FOR: COVANTA ENERGY CORPORATION

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

STEVEN HUHMANN
MORGAN STANLEY CAPITAL GROUP INC.
2000 WESTCHESTER AVENUE
PURCHASE, NY 10577

KEITH R. MCCREA
ATTORNEY AT LAW
SUTHERLAND, ASBILL & BRENNAN, LLP
1275 PENNSYLVANIA AVE., N.W.
WASHINGTON, DC 20004-2415
FOR: CALIFORNIA MANUFACTURERS &
TECHNOLOGY ASSN.

KYLE D. BOUDREAU
FPL GROUP
700 UNIVERSE BLVD., JES/JB
JUNO BEACH, FL 33408
FOR: FPL ENERGY PROJECT MANAGEMENT

CATHY S. WOOLLUMS
MIDAMERICAN ENERGY HOLDINGS COMPANY
106 EAST SECOND STREET
DAVENPORT, IA 52801
FOR: KERN RIVER GAS TRANSMISSION

CYNTHIA A. FONNER
SENIOR COUNSEL
CONSTELLATION ENERGY GROUP INC
50 EAST WASHINGTON ST., STE. 300
CHICAGO, IL 60661

KEVIN BOUDREAU
CALPINE POWER AMERICA-CA, LLC
717 TEXAS AVENUE, SUITE 1000
HOUSTON, TX 77002
FOR: CALPINE POWER AMERICA

FOR: CONSTELLATION ENERGY GROUP INC

THOMAS DILL
PRESIDENT
LODI GAS STORAGE, L.L.C.
I GREENWAY PLAZA, STE. 800
HOUSTON, TX 77046-0121

TIMOTHY R. ODIL
MCKENNA LONG & ALDRIDGE LLP
1400 WEWATTA ST., STE. 700
DENVER, CO 80202
FOR: CENTER FOR ENERGY AND ECONOMIC
DEVELOPMENT

FRANCESCA E. CILIBERTI
COUNSEL
EL PASO CORPORATION - WESTERN PIPELINES
2 N. NEVADA AVEUE
COLORADO SPRINGS, CO 80903
FOR: EL PASO CORPORATION - WESTERN
PIPELINES

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

JOHN B. WELDON, JR.
SALMON, LEWIS & WELDON, P.L.C.
2850 EAST CAMELBACK ROAD, SUITE 200
PHOENIX, AZ 85016
FOR: SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

KELLY BARR
MANAGER, REGULATORY AFFAIRS & CONTRACTS
SALT RIVER PROJECT
PO BOX 52025, PAB 221
PHOENIX, AZ 85072-2025
FOR: SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

ROBERT R. TAYLOR
AGRICULTURAL IMPROVEMENT AND POWER DIST.
1600 NORTH PRIEST DRIVE, PAB221
TEMPE, AZ 85281

STEVEN S. MICHEL
WESTERN RESOURCE ADVOCATES
2025 SENDA DE ANDRES
SANTA FE, NM 87501
FOR: WESTERN RESOURCE ADVOCATES

ROGER C. MONTGOMERY
VICE PRESIDENT, PRICING
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS, NV 89193-8510

JOSEPH GRECO
TERRA-GEN POWER LLC
9590 PROTOTYPE COURT, SUITE 200
RENO, NV 89521
FOR: TERRA-GEN POWER LLC

LEILANI JOHNSON KOWAL
LOS ANGELES DEPT. OF WATER AND POWER
111 N. HOPE STREET, ROOM 1541
LOS ANGELES, CA 90012
FOR: LOS ANGELES DEPT. OF WATER AND
POWER

SID NEWSOM
TARIFF MANAGER
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH STREET GT 14 D6
LOS ANGELES, CA 90051

DENNIS M.P. EHLING
ATTORNEY AT LAW
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM
10100 SANTA MONICA BLVD., 7TH FLOOR
LOS ANGELES, CA 90067
FOR: CITY OF VERNON

NORMAN A. PEDERSEN
ATTORNEY AT LAW
HANNA AND MORTON, LLP
444 SOUTH FLOWER STREET, NO. 1500
LOS ANGELES, CA 90071
FOR: SOUTHERN CALIFORNIA GENERATION
COALITION/SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

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

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

E.J. WRIGHT
OCCIDENTAL POWER SERVICES, INC.
111 WEST OCEAN BOULEVARD
LONG BEACH, TX 90802

VITALY LEE
AES ALAMITOS, LLC
690 N. STUDEBAKER ROAD
LONG BEACH, CA 90803
FOR: AES SOUTHLAND LLC

GREGORY KLATT
ATTORNEY AT LAW

RICHARD HELGESON
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORI

DOUGLASS & LIDDELL
411 E. HUNTINGTON DRIVE, STE. 107-356
ARCADIA, CA 91006
FOR: ALLIANCE FOR RETAIL ENERGY MARKETS

225 S. LAKE AVE., SUITE 1250
PASADENA, CA 91101
FOR: SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY

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

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

BARRY R. WALLERSTEIN
EXECUTIVE OFFICER
SOUTH COAST AQMD
21865 COPLEY DRIVE
DIAMOND BAR, CA 91765-4182
FOR: SOUTH COAST AIR QUALITY MANAGEMENT
DISTRICT

AKBAR JAZAYEIRI
DIR. REVENUE & TARIFFS, RM 390
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800, 2241WALNUT GROVE AVE
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

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

MICHAEL D. MONTOYA
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, PO BOX 800
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

NANCY ALLRED
ATTORNEY
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

RONALD MOORE
(133)
GOLDEN STATE WATER/BEAR VALLEY ELECTRIC
630 EAST FOOTHILL BOULEVARD
SAN DIMAS, CA 91773
FOR: GOLDEN STATE WATER/BEAR VALLEY
ELECTRIC

DON WOOD
PACIFIC ENERGY POLICY CENTER
4539 LEE AVENUE
LA MESA, CA 91941

ALLEN K. TRIAL
ATTORNEY AT LAW
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, HQ-12B
SAN DIEGO, CA 92101

ALVIN PAK
SEMPRA GLOBAL ENTERPRISES
101 ASH STREET
SAN DIEGO, CA 92101
FOR: SEMPRA GLOBAL ENTERPRISES

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

DONALD C. LIDDELL
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103
FOR: CALIFORNIA NATURAL GAS VEHICLE
ASSOCIATION/ CLEAN ENERGY FUELS
CORPORATION

MARCIE MILNER
DIRECTOR - REGULATORY AFFAIRS
SHELL TRADING GAS & POWER COMPANY
4445 EASTGATE MALL, SUITE 100
SAN DIEGO, CA 92121

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

ANDREW MCALLISTER
DIRECTOR OF PROGRAMS
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO, CA 92123
FOR: CALIFORNIA CENTER FOR SUSTAINABLE
ENERGY

STEVE RAHON
DIRECTOR, TARIFF & REGULATORY ACCOUNTS
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32C
SAN DIEGO, CA 92123-1548
FOR: SAN DIEGO GAS & ELECTRIC COMPANY

GLORIA BRITTON
 ANZA ELECTRIC COOPERATIVE, INC. (909)
 PO BOX 391909 / 58470 HWY 371
 ANZA, CA 92539
 FOR: ANZA ELECTRIC COOPERATIVE INC.

TAM HUNT
 HUNT CONSULTING
 124 W. ALAMAR AVE., NO. 3
 SANTA BARBARA, CA 93105
 FOR: COMMUNITY ENVIRONMENTAL COUNCIL

DONALD BROOKHYSER
 ATTORNEY AT LAW
 ALCANTAR & KAHL
 33 NEW MONTGOMERY STREET, SUITE 1850
 SAN FRANCISCO, CA 94015
 FOR: COGENERATION ASSOCIATION OF
 CALIFORNIA/ENERGY PRODUCERS AND USERS
 COALITION

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

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

DIANA L. LEE
 CALIF PUBLIC UTILITIES COMMISSION
 LEGAL DIVISION
 ROOM 4107
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214
 FOR: DRA

F. JACKSON STODDARD
 CALIF PUBLIC UTILITIES COMMISSION
 EXECUTIVE DIVISION
 ROOM 5125
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

JEANNE M. SOLE
 DEPUTY CITY ATTORNEY
 CITY AND COUNTY OF SAN FRANCISCO
 1 DR. CARLTON B. GOODLETT PLACE, RM. 375
 SAN FRANCISCO, CA 94102-4682
 FOR: CITY AND COUNTY OF SAN FRANCISCO

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

KRISTIN GRENFELL
 PROJECT ATTORNEY, CALIF. ENERGY PROGRAM
 NATURAL RESOURCES DEFENSE COUNCIL
 111 SUTTER STREET, 20TH FLOOR
 SAN FRANCISCO, CA 94104

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

NINA SUETAKE
 ATTORNEY AT LAW
 THE UTILITY REFORM NETWORK
 115 SANSOME STREET, SUITE 900
 SAN FRANCISCO, CA 94104

MICHAEL P. ALCANTAR
 ATTORNEY AT LAW
 ALCANTAR & KAHL, LLP
 33 NEW MONTGOMERY STREET, SUITE 1850
 SAN FRANCISCO, CA 94105
 FOR: COGENERATION ASSOCIATION OF
 CALIFORNIA/ENERGY PRODUCERS AND USERS
 COALITION

SEEMA SRINIVASAN
 ALCANTAR & KAHL, LLP
 33 NEW MONTGOMERY STREET, SUITE 1850
 SAN FRANCISCO, CA 94105
 FOR: ENERGY PRODUCERS & USERS COALITION

EDWARD G POOLE
 ANDERSON DONOVAN & POOLE
 601 CALIFORNIA STREET SUITE 1300
 SAN FRANCISCO, CA 94108
 FOR: SAN FRANCISCO COMMUNITY POWER

ANN G. GRIMALDI
 MCKENNA LONG & ALDRIDGE LLP
 101 CALIFORNIA STREET, 41ST FLOOR
 SAN FRANCISCO, CA 94111
 FOR: CENTER FOR ENERGY AND ECONOMIC
 DEVELOPMENT

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

JAMES D. SQUERI
 ATTORNEY AT LAW
 GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP
 505 SANSOME STREET, STE 900
 SAN FRANCISCO, CA 94111
 FOR: POWEREX CORP.

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

LISA A. COTTLE
ATTORNEY AT LAW
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO, CA 94111
FOR: MIRANT CALIFORNIA, LLC, MIRANT
DELTA, LLC, AND MIRANT POTRERO, LLC

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

PATRICK M. ROSVALL
ATTORNEY AT LAW
COOPER WHITE & COOPER, LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO, CA 94111
FOR: COOPER WHITE & COOPER. LLP

JOSEPH M. KARP
ATTORNEY AT LAW
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO, CA 94111-5894
FOR: CALIFORNIA COGENERATION COUNCIL

JEFFREY P. GRAY
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533
FOR: CALPINE CORPORATION

CHRISTOPHER J. WARNER
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94120-7442
FOR: PACIFIC GAS AND ELECTRIC

SARA STECK MYERS
ATTORNEY AT LAW
122 28TH AVENUE
SAN FRANCISCO, CA 94121
FOR: CENTER FOR ENERGY EFFICIENCY AND
RENEWABLE TECHNOLOGIES

BRIAN K. CHERRY
PACIFIC GAS AND ELECTRIC COMPANY (39)
PO BOX 770000, MAIL CODE: B10C
SAN FRANCISCO, CA 94177
FOR: PACIFIC GAS AND ELECTRIC COMPANY

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

WILLIAM H. BOOTH
ATTORNEY AT LAW
LAW OFFICES OF WILLIAM H. BOOTH
67 CARR DRIVE
MORAGA, CA 94556
FOR: LAW OFFICE OF WILLIAM H. BOOTH

AVIS KOWALEWSKI
CALPINE CORPORATION
4160 DUBLIN BLVD., SUITE 100
DUBLIN, CA 94568

RICK C. NOGER
PRAXAIR, INC. (1370)
2430 CAMINO RAMON DRIVE, STE. 300
SAN RAMON, CA 94583
FOR: PRAXAIR PLAINFIELD, INC.

J. ANDREW HOERNER
REDEFINING PROGRESS
1904 FRANKLIN STREET
OAKLAND, CA 94612

JANILL RICHARDS
DEPUTY ATTORNEY GENERAL
CALIFORNIA ATTORNEY GENERAL'S OFFICE
1515 CLAY STREET, 20TH FLOOR
OAKLAND, CA 94702
FOR: PEOPLE OF THE STATE OF CALIFORNIA

GREGG MORRIS
DIRECTOR
GREEN POWER INSTITUTE
2039 SHATTUCK AVENUE, STE 402
BERKELEY, CA 94704
FOR: GREEN POWER INSTITUTE

R. THOMAS BEACH
CROSSBORDER ENERGY
2560 NINTH STREET, SUITE 213A
BERKELEY, CA 94710-2557
FOR: THE CALIFORNIA COGENERATION COUNCIL

KENNETH C. JOHNSON
KENNETH CARLISLE JOHNSON
2502 ROBERTSON RD
SANTA CLARA, CA 95051
FOR: KENNETH CARLISLE JOHNSON

BARRY F. MCCARTHY
ATTORNEY AT LAW
MCCARTHY & BERLIN, LLP
100 W. SAN FERNANDO ST., SUITE 501
SAN JOSE, CA 95113
FOR: NORTHERN CALIFORNIA GENERATION
COALITION

SUSIE BERLIN
ATTORNEY AT LAW
MC CARTHY & BERLIN, LLP
100 W SAN FERNANDO ST., STE 501
SAN JOSE, CA 95113
FOR: NORTHERN CALIFORNIA POWER AGENCY

MIKE LAMOND
ALPINE NATURAL GAS OPERATING CO. #1 LLC
PO BOX 550
VALLEY SPRINGS, CA 95252

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
FOR: INDICATED CEMENT COMPANIES

BALDASSARO DI CAPO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
FOR: CALIFORNIA INDEPENDENT SYSTEM
OPERATOR

UDI HELMAN
CALIFORNIA INDEPENDENT SYS. OPER. CORP
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
FOR: CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION

WAYNE AMER
PRESIDENT
MOUNTAIN UTILITIES (906)
PO BOX 205
KIRKWOOD, CA 95646
FOR: MOUNTAIN UTILITIES

STEPHEN E. DOYLE
EXECUTIVE VICE PRESIDENT
CLEAN ENERGY SYSTEMS, INC.
3035 PROSPECT PARK DRIVE, STE 150
RANCHO CORDOVA, CA 95670-6071
FOR: CLEAN ENERGY SYSTEMS, INC.

MARY LYNCH
VP - REGULATORY AND LEGISLATIVE AFFAIRS
CONSTELLATION ENERGY COMMODITIES GRP
5074 NAWAL DRIVE
EL DORADO HILLS, CA 95762

BILL DOMBROWSKI
PRESIDENT AND CEO
CALIFORNIA RETAILERS ASSOCIATION
980 9TH STREET, SUITE 2100
SACRAMENTO, CA 95814
FOR: CALIFORNIA RETAILERS ASSOCIATION

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

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

TIMOTHY O'CONNOR
ATTORNEY
ENVIRONMENTAL DEFENSE FUND
1107 9TH STREET, SUITE 540
SACRAMENTO, CA 95814
FOR: ENVIRONMENTAL DEFENSE FUND

DOWNEY BRAND
621 CAPITOL MALL, 18TH FLOOR
SACRAMENTO, CA 95814-4686
FOR: SACRAMENTO MUNICIPAL

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

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

GREGGORY L. WHEATLAND
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: LS POWER, INC.

JEFFERY D. HARRIS
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: DYNegy

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

RAYMOND J. CZAHAR, C.P.A.
CHIEF FINANCIAL OFFICER

STEVEN M. COHN
ASSISTANT GENERAL COUNSEL

WEST COAST GAS COMPANY
9203 BEATTY DRIVE
SACRAMENTO, CA 95826

SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S ST., M.S. B406; PO BOX 15830
SACRAMENTO, CA 95852-1830
FOR: SACRAMENTO MUNICIPAL UTILITY
DISTRICT

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

ELIZABETH W. HADLEY
RESOURCE PLANNER
REDDING ELECTRIC UTILITY
777 CYPRESS AVENUE
REDDING, CA 96001
FOR: REDDING ELEFCTRIC UTILITY

DAN SILVERIA
SURPRISE VALLEY ELECTRIC CORPORATION
PO BOX 691
ALTURAS, CA 96101
FOR: SURPRISE VALLEY ELECTRIC
COOPERATIVE

JESSICA NELSON
ENERGY SERVICES MANAGER
PLUMAS-SIERRA RURAL ELECTRIC CO-OP
73233 STATE ROUTE 70, STE A
PORTOLA, CA 96122-7064
FOR: PLUMAS-SIERRA RURAL ELECTRIC COOP

CYNTHIA SCHULTZ
REGULATORY FILING COORDINATOR
PACIFIC POWER AND LIGHT COMPANY
825 N.E. MULTNOMAH
PORTLAND, OR 97232

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

JASON A. DUBCHAK
WILD GOOSE STORAGE LLC
SUITE 400
607 8TH AVENUE S.W.
CALGARY, AB T2P OA7
CANADA
FOR: WILD GOOSE STORAGE LLC

Information Only

EDWARD VINE
LAWRENCE BERKELEY NATIONAL LABORATORY
EMAIL ONLY
EMAIL ONLY, CA 00000

RICHARD W. RAUSHENBUSH
EMAIL ONLY
EMAIL ONLY, CA 00000-0000

BRIAN M. JONES
M. J. BRADLEY & ASSOCIATES, INC.
47 JUNCTION SQUARE DRIVE
CONCORD, MA 01742

KENNETH A. COLBURN
SYMBILITIC STRATEGIES, LLC
26 WINTON ROAD
MEREDITH, NH 03253

RICHARD COWART
REGULATORY ASSISTANCE PROJECT
50 STATE STREET, SUITE 3
MONTPELIER, VT 05602

HARRY SINGH
RBS SEMPRA COMMODITIES
58 COMMERCE ROAD
STAMFORD, CT 06902

KATHRYN WIG
PARALEGAL
NRG ENERGY, INC.
211 CARNEGIE CENTER
PRINCETON, NY 08540

SAKIS ASTERIADIS
APX INC
1270 FIFTH AVE., SUITE 15R
NEW YORK, NY 10029

GEORGE HOPLEY
BARCLAYS CAPITAL
200 PARK AVENUE
NEW YORK, NY 10166

MELISSA DORN
MCDERMOTT, WILL & EMERY LLP
600 13TH ST. NW
WASHINGTON, DC 20005

MICHAEL A. YUFFEE

JONATHAN EDWARDS

MCDERMOTT WILL & EMERY LLP
600 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20005-3096

SMARTPOWER
1120 CONNECTICUT AVENUE, NW, STE 1040
WASHINGTON, DC 20036
FOR: SMARTPOWER

VERONIQUE BUGNION
POINT CARBON
205 SEVERN RIVER RD
SEVERNA PARK, MD 21146

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

SAMARA MINDEL
REGULATORY AFFAIRS ANALYST
FELLON-MCCORD & ASSOCIATES
9960 CORPORATE CAMPUS DR., SUITE 2500
LOUISVILLE, KY 40223

GARY BARCH
FELLON-MCCORD & ASSOCIATES, INC.
SUITE 2500
9960 CORPORATE CAMPUS DR., STE. 2500
LOUISVILLE, KY 40223-4055

BARRY RABE
1427 ROSS STREET
PLYMOUTH, MI 48170

BRIAN POTTS
FOLEY & LARDNER
PO BOX 1497
150 EAST GILMAN STREET
MADISON, WI 53701-1497

JAMES W. KEATING
BP AMERICA, INC.
MAIL CODE 603-1E
150 W. WARRENVILLE RD.
NAPERVILLE, IL 60563

JAMES ROSS
RCS, INC.
500 CHESTERFIELD CENTER, SUITE 320
CHESTERFIELD, MO 63017

ANNE HENDRICKSON
DIRECTOR, REGULATORY AFFAIRS
COMMERCE ENERGY INC
222 W. LAS COLINAS BLVD., STE. 950-E
IRVING, TX 75039
FOR: COMMERCE ENERGY INC

TRENT A. CARLSON
RRI ENERGY, INC.
1000 MAIN STREET
HOUSTON, TX 77001

GARY HINNERS
RRI ENERGY, INC.
PO BOX 148
HOUSTON, TX 77001-0148

JOSEPH PAUL
SENIOR CORPORATE COUNSEL
DYNEGY-WEST GENERATION
1000LOUISIANA STREET, STE. 5800
HOUSTON, TX 77002

ED CHIANG
ELEMENT MARKETS, LLC
3555 TIMMONS LANE, STE. 900
HOUSTON, TX 77027-6453

JEANNE ZAIONTZ
BP ENERGY COMPANY
501 WESTLAKE PARK BLVD, RM. 4328
HOUSTON, TX 77079

JULIE L. MARTIN
NORTH AMERICA GAS AND POWER
BP ENERGY COMPANY
501 WESTLAKE PARK BLVD.
HOUSTON, TX 77079

FIJI GEORGE
EL PASO CORPORATION
EL PASO BUILDING
PO BOX 2511
HOUSTON, TX 77252

FRANK STERN
SUMMIT BLUE CONSULTING
1722 14TH STREET, SUITE 230
BOULDER, CO 80302
FOR: SUMMIT BLUE CONSULTING

NADAV ENBAR
ENERGY INSIGHTS
1750 14TH STREET, SUITE 200
BOULDER, CO 80302

NICHOLAS LENSSEN
ENERGY INSIGHTS
1750 14TH STREET, SUITE 200
BOULDER, CO 80302

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

W. WAYNE TOMLINSON
EL PASO CORPORATION- WESTERN PIPELINES
2 NORTH NEVADA AVENUE

JAMES A. HOLTKAMP
HOLLAND & HART, LLP
60 EAST SOUTH TEMPLE, STE. 2000

COLORADO SPRINGS, CO 80903

SALT LAKE CITY, UT 84111

PATRICIA M. SCHMIDT
VP & ASSISTANT GENERAL COUNSEL
KERN RIVER GAS TRANSMISSION COMPANY
2755 EAST COTTONWOOD PARKWAY, SUITE 300
SALT LAKE CITY, UT 84121

SANDRA ELY
NEW MEXICO ENVIRONMENT DEPARTMENT
1190 ST FRANCIS DRIVE
SANTA FE, NM 87501

BRIAN MCQUOWN
RELIANT ENERGY
7251 AMIGO ST., SUITE 120
LAS VEGAS, NV 89119

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

ANITA HART
SENIOR SPECIALIST/STATE REGULATORYAFFAIR
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89193

RANDY SABLE
SOUTHWEST GAS CORPORATION
MAILSTOP: LVB-105
5241 SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89193

BILL SCHRAND
SOUTHWEST GAS CORPORATON
PO BOX 98510
LAS VEGAS, NV 89193-8510

JJ PRUCNAL
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS, NV 89193-8510

KEITH LAYTON
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS, NV 89193-8510

CYNTHIA MITCHELL
ENERGY ECONOMICS, INC.
530 COLGATE COURT
RENO, NV 89503

CHRISTOPHER A. HILEN
NV ENERGY
6100 NEIL ROAD, MS A35
RENO, NV 89511

ELENA MELLO
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO, NV 89520

DARRELL SOYARS
MANAGER-RESOURCE PERMITTING&STRATEGIC
SIERRA PACIFIC RESOURCES
6100 NEIL ROAD
RENO, NV 89520-0024
FOR: SIERRA PACIFIC RESOURCES

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

H. DAVID NAHAI
CHIEF EXECUTIVE OFFICER & GEN. MGR.
LA DEPARTMENT OF WATER AND POWER
111 NO. HOPE STREET, RM 1550
LOS ANGELES, CA 90012

JAMES CALDWELL JR.
POWER
LOS ANGELES DEPARTMENT OF WATER AND
111 N. HOPE STREET, ROOM 1021
LOS ANGELES, CA 90012
FOR: LOS ANGELES DEPARTMENT OF WATER
AND POWER

RANDY S. HOWARD
LOS ANGELES DEPT. OF WATER AND POWER
111 NORTH HOPE STREET, ROOM 921
LOS ANGELES, CA 90012

ROBERT L. PETTINATO
LOS ANGELES DEPARTMENT OF WATER & POWER
111 NORTH HOPE STREET, SUITE 1151
LOS ANGELES, CA 90012

STANTON J. SNYDER, ESQ.
DEPUTY CITY ATTORNEY, LEGAL DIV.
DEPARTMENT OF WATER & POWER
111 N. HOPE STREET, ROOM 340
LOS ANGELES, CA 90012-2694

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

RASHA PRINCE
REGULATORY MANAGER
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH STREET, GT14D6
LOS ANGELES, CA 90013

JOHNNY PONG
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST FIFTH ST., GT14E7
LOS ANGELES, CA 90013-1011

LEE WALLACH
SOLEL, INC
3424 MOTOR AVE., STE. 100
LOS ANGELES, CA 90034

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

S. NANCY WHANG
ATTORNEY AT LAW
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES, CA 90064

DAVID NEMTZOW
NEMTZOW & ASSOCIATES
1254 9TH STREET, NO. 6
SANTA MONICA, CA 90401

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

STEVEN G. LINS
GENERAL COUNSEL
GLENDALE WATER AND POWER
141 N. GLENDALE AVENUE, LEVEL 4
GLENDALE, CA 91206-4394

JUSTIN RATHKE
CAPSTONE TURBINE CORPORATION
21211 NORDHOFF STREET
CHATSWORTH, CA 91311

STEPHEN GILLETTE
NE TURBINE CORPORATION
21211 NORDHOFF STREET
CHATSWORTH, CA 91311

BRUNO JEIDER
BURBANK WATER & POWER
164 WEST MAGNOLIA BLVD.
BURBANK, CA 91502

RICHARD J. MORILLO
ASSISTANT CITY ATTORNEY
CITY OF BURBANK
215 E. OLIVE AVENUE
BURBANK, CA 91502

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770

JAIRAM GOPAL
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE, G01-C
ROSEMEAD, CA 91770

MICHAEL A. BACKSTROM
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

TIM HEMIG
NRG ENERGY, INC.
1817 ASTON AVENUE, SUITE 104
CARLSBAD, CA 92008

BARRY LOVELL
15708 POMERADO RD., SUITE 203
POWAY, CA 92064

CARLOS F. PENA
SDG & E/SOCALGAS
101 ASH STREET, HQ12
SAN DIEGO, CA 92101

GREG BASS
SEMPRA ENERGY SOLUTIONS LLC
401 WEST A STREET, SUITE 500
SAN DIEGO, CA 92101

KEITH W. MELVILLE
ATTORNEY
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, PO BOX 1831
SAN DIEGO, CA 92101

SHARON FIROOZ
CA BUS. DEVELOPMENT AND REG. AFFAIRS
110 WEST A STREET, SUITE 675
SAN DIEGO, CA 92101

YVONNE GROSS
SEMPRA GLOBAL
101 ASH STREET, HQ08C
SAN DIEGO, CA 92101

TOM CORR
MANAGER, REGULATORY POLICY
SEMPRA GLOBAL
101 ASH STREET, 8TH FL.
SAN DIEGO, CA 92101-3017

JOHN LAUN
APOGEE INTERACTIVE, INC.
1220 ROSECRANS ST., SUITE 308
SAN DIEGO, CA 92106

DOUG WHITE

JENNIFER PORTER

CALIF. CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO, CA 92123

POLICY ANALYST
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO, CA 92123

SEPHRA A. NINOW
POLICY ANALYST
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO, CA 92123

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

JOHN W. LESLIE
ATTORNEY AT LAW
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 92130

ELSTON K. GRUBAUGH
IMPERIAL IRRIGATION DISTRICT
333 EAST BARIONI BLVD.
IMPERIAL, CA 92251

THOMAS MCCABE
EDISON MISSION ENERGY
18101 VON KARMAN AVE., SUITE 1700
IRVINE, CA 92612

MONA TIERNEY-LLOYD
SENIOR MANAGER WESTERN REG. AFFAIRS
ENERNOC, INC.
PO BOX 378
CAYUCOS, CA 93430
FOR: LANDSITE, INC

NORA SHERIFF
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO, CA 94015

JAN PEPPER
CLEAN POWER MARKETS, INC.
PO BOX 3206
418 BENVENUE AVENUE
LOS ALTOS, CA 94024

GLORIA D. SMITH
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., SUITE 1000
SOUTH SAN FRANCISCO, CA 94080

LOULENA A. MILES
ADAMS BROADWELL JOSEPH & CARDOZO
601 GATEWAY BLVD., SUITE 1000
SOUTH SAN FRANCISCO, CA 94080

DIANE I. FELLMAN
DIRECTOR, REGULATORY AFFAIRS-WEST REGION
FPL ENERGY PROJECT MANAGEMENT, INC.
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102
FOR: FPL ENERGY PROJECT MANAGEMENT INC

MICHEL FLORIO
ATTORNEYS AT LAW
711 VAN NESS AVE., STE. 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

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

THERESA BURKE
REGULATORY AFFAIRS ANALYST
SAN FRANCISCO PUC
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISCO, CA 94103

NORMAN J. FURUTA
ATTORNEY AT LAW
FEDERAL EXECUTIVE AGENCIES
1455 MARKET ST., SUITE 1744
SAN FRANCISCO, CA 94103-1399

AMBER MAHONE
ENERGY & ENVIRONMENTAL ECONOMICS, INC.
101 MONTGOMERY STREET, SUITE 1600
SAN FRANCISCO, CA 94104

ANNABELLE MALINS
CONSUL-SCIENCE AND TECHNOLOGY
BRITISH CONSULATE-GENERAL
ONE SANSOME STREET, SUITE 850
SAN FRANCISCO, CA 94104

HAYLEY GOODSON
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94104

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

OLOF BYSTROM
 DIRECTOR, WESTERN ENERGY
 CAMBRIDGE ENERGY RESEARCH ASSOCIATES
 444 CASTRO STREET, STE. 800
 MOUNTAIN VIEW, CA 94104

PETER MILLER
 NATURAL RESOURCES DEFENSE COUNCIL
 111 SUTTER STREET, 20TH FLOOR
 SAN FRANCISCO, CA 94104

SHERYL CARTER
 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

JAMES W. TARNAGHAN
 DUANE MORRIS LLP
 SUITE 2000
 ONE MARKET, SPEAR TOWER
 SAN FRANCISCO, CA 94105
 FOR: LODI GAS STORAGE

KAREN TERRANOVA
 ALCANTAR & KAHL, LLP
 33 NEW MONTGOMERY STREET, SUITE 1850
 SAN FRANCISCO, CA 94105

RAY WELCH
 ASSOCIATE DIRECTOR
 NAVIGANT CONSULTING, INC.
 ONE MARKET PLAZA, SUITE 1200
 SAN FRANCISCO, CA 94105

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

JAMES W. MCTARNAGHAN
 ATTORNEY AT LAW
 DUANE MORRIS LLP
 ONE MARKET, SPEAR TOWER 2000
 SAN FRANCISCO, CA 94105-1104

CARMEN E. BASKETTE
 SENIOR MGR MARKET DEVELOPMENT
 ENERNOC
 500 HOWARD ST., 4TH FLR.
 SAN FRANCISCO, CA 94105-9040
 FOR: ENERNOC, INC.

STEVEN MOSS
 SAN FRANCISCO COMMUNITY POWER
 2325 THIRD STREET, STE 344
 SAN FRANCISCO, CA 94107

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

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

HOWARD V. GOLUB
 NIXON PEABODY LLP
 1 EMBARCADERO CENTER, STE. 1800
 SAN FRANCISCO, CA 94111

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

MARTIN A. MATTES
 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
 50 CALIFORNIA STREET, SUITE 3400
 SAN FRANCISCO, CA 94111

ROBERT GEX
 DAVIS WRIGHT TREMAINE LLP
 505 MONTGOMERY STREET, SUITE 800
 SAN FRANCISCO, CA 94111

SETH HILTON
 ATTORNEY AT LAW
 STOEL RIVES
 555 MONTGOMERY STREET, SUITE 1288
 SAN FRANCISCO, CA 94111
 FOR: EL PASO NATURAL GAS

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

DAVID L. HUARD
 MANATT, PHELPS & PHILLIPS, LLP
 ONE EMBARCADERO CENTER, STE 2900
 SAN FRANCISCO, CA 94111-3736
 FOR: LOS ANGELES COUNTY/TRANS CANADA
 PIPELINES

JEN MCGRAW
 CENTER FOR NEIGHBORHOOD TECHNOLOGY
 PO BOX 14322
 SAN FRANCISCO, CA 94114

CALIFORNIA ENERGY MARKETS
 425 DIVISADERO ST., STE 303
 SAN FRANCISCO, CA 94117

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

CASE COORDINATION
 PACIFIC GAS AND ELECTRIC COMPANY
 PO BOX 770000 MC B9A
 77 BEALE STREET
 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

JONATHAN FORRESTER
 PG&E
 MAIL CODE N13C
 PO BOX 770000
 SAN FRANCISCO, CA 94177

SEBASTIEN CSAPO
 PG&E PROJECT MGR.
 MAIL CODE B9A
 PO BOX 770000
 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

KARLA DAILEY
 CITY OF PALO ALTO
 UTILITIES DEPARTMENT
 BOX 10250
 PALO ALTO, CA 94303

BRAD WETSTONE
 ALAMEDA POWER AND TELECOM
 2000 GRANT STREET, PO BOX H
 ALAMEDA, CA 94501-0263
 FOR: ALAMEDA POWER AND TELECOM

BRAD WETSTONE
 1514 FOUNTAIN STRETT
 ALAMEDA, CA 94501-3132

DEAN R. TIBBS
 PRESIDENT
 ADVANCED ENERGY STRATEGIES, INC.
 1390 WILLOW PASS ROAD, SUITE 610
 CONCORD, CA 94520

JOHN DUTCHER
 MOUNTAIN UTILITIES
 3210 CORTE VALENCIA
 FAIRFIELD, CA 94534-7875
 FOR: MOUNTAIN UTILITIES

JEFFREY L. HAHN
 COVANTA ENERGY CORPORATION
 876 MT. VIEW DRIVE
 LAFAYETTE, CA 94549

TOM DELFINO
 GEOMATRIX CONSULTANTS, INC.
 359 BIRCHWOOD DRIVE
 MORAGA, CA 94556-2304

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

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

AUDRA HARTMANN
 DYNEGY INC.
 4140 DUBLIN BLVD., STE. 100
 DUBLIN, CA 94568

SUE KATELEY
 EXECUTIVE DIRECTOR
 CALIFORNIA SOLAR ENERGY INDUSTRIES ASSN
 PO BOX 782
 RIO VISTA, CA 94571

GREG BLUE
 ENXCO DEVELOPMENT CORP
 5000 EXECUTIVE PARKWAY, STE.140
 SAN RAMON, CA 94583

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

JENNIFER BARNES
 SUMMIT BLUE CONSULTING, LLC
 1990 NORTH CALIFORNIA BLVD., SUITE 700
 WALNUT CREEK, CA 94596

MONICA A. SCHWEBS, ESQ.
 BINGHAM MCCUTCHEN LLP
 PO BOX V
 1333 N. CALIFORNIA BLVD., SUITE 210
 WALNUT CREEK, CA 94596

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

TIMEA ZENTAI
SUMMIT BLUE CONSULTING, LLC
1990 NORTH CALIFORNIA AVE., SUITE 700
WALNUT CREEK, CA 94596

JOSEPH HENRI
31 MIRAMONTE ROAD
WALNUT CREEK, CA 94597

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

BETTY SETO
POLICY ANALYST
KEMA, INC.
492 NINTH STREET, SUITE 220
OAKLAND, CA 94607

GERALD L. LAHR
ABAG POWER
101 EIGHTH STREET
OAKLAND, CA 94607
FOR: ASSOCIATION OF BAY AREA GOVERNMENTS

JODY S. LONDON
JODY LONDON CONSULTING
PO BOX 3629
OAKLAND, CA 94609

STEVEN SCHILLER
SCHILLER CONSULTING, INC.
111 HILLSIDE AVENUE
PIEDMONT, CA 94611

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

STEPHAN C. VOLKER
LAW OFFICE OF STEPHAN C. VOLKER
436 14TH STREET, SUITE 1300
OAKLAND, CA 94612
FOR: CALIFORNIANS FOR RENEWABLE ENERGY

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

DOCKET COORDINATOR
5727 KEITH ST.
OAKLAND, CA 94618

REED V. SCHMIDT
VICE PRESIDENT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY, CA 94703
FOR: CALIFORNIA CITY-COUNTY STREET
LIGHT ASSOCIATION

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

STEVE KROMER
3110 COLLEGE AVENUE, APT 12
BERKELEY, CA 94705
FOR: STEVE KROMER

CLYDE MURLEY
CONSULTANT TO NRDC
1031 ORDWAY STREET
ALBANY, CA 94706

RACHEL MCMAHON
DIRECTOR, GOV. AFFAIRS-PROJECT DEV.
SOLAR MILLENNIUM, LLC
1625 SHATTUCK AVE, SUITE 270
BERKELEY, CA 94709-1161

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

CARLA PETERMAN
UCEI
2547 CHANNING WAY
BERKELEY, CA 94720

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

CHRIS MARNAY
BERKELEY LAB
1 CYCLOTRON RD MS 90R4000
BERKELEY, CA 94720-8136

EMMA POELSTERL

KARI SMITH

SUNPOWER
1414 HARBOUR WAY SOUTH
RICHMOND, CA 94804

SUNPOWER
1414 HARBOUR WAY SOUTH
RICHMOND, CA 94804

PHILLIP J. MULLER
SCD ENERGY SOLUTIONS
436 NOVA ALBION WAY
SAN RAFAEL, CA 94903

RITA NORTON
RITA NORTON AND ASSOCIATES, LLC
18700 BLYTHSWOOD DRIVE,
LOS GATOS, CA 95030

RICHARD SMITH
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95352-4060

ROGER VAN HOY
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95354

THOMAS S. KIMBALL
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95354

WES MONIER
STRATEGIC ISSUES AND PLANNING MANAGER
TURLOCK IRRIGATION DISTRICT
333 EAST CANAL DRIVE, PO BOX 949
TURLOCK, CA 95381-0949

JOHN R. REDDING
ARCTURUS ENERGY CONSULTING
44810 ROSEWOOD TERRACE
MENDOCINO, CA 95460

CLARK BERNIER
RLW ANALYTICS
1055 BROADWAY, SUITE G
SONOMA, CA 95476

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

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

GRANT ROSENBLUM, ESQ.
CALIFORNIA ISO
LEGAL AND REGULATORY DEPARTMENT
151 BLUE RAVINE ROAD
FOLSOM, CA 95630

MELANIE GILLETTE
SR MGR WESTERN REG. AFFAIRS
ENERNOC, INC.
115 HAZELMERE DRIVE
FOLSOM, CA 95630

ROBIN SMUTNY-JONES
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630

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

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

DENNIS DE CUIR
DENNIS W. DE CUIR, A LAW CORPORATION
2999 DOUGLAS BOULEVARD, SUITE 325
ROSEVILLE, CA 95661

DAVID BRANCHCOMB
BRANCHCOMB ASSOCIATES, LLC
9360 OAKTREE LANE
ORANGEVILLE, CA 95662

KENNY SWAIN
NAVIGANT CONSULTING
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670

KIRBY DUSEL
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670

GORDON PICKERING
PRINCIPAL
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

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

DAVID REYNOLDS
MEMBER SERVICES MANAGER

SCOTT TOMASHEFSKY
NORTHERN CALIFORNIA POWER AGENCY

NORTHERN CALIFORNIA POWER AGENCY
651 COMMERCE DRIVE
ROSEVILLE, CA 95678-6420

651 COMMERCE DRIVE
ROSEVILLE, CA 95678-6420

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

ELLEN WOLFE
RESERO CONSULTING
9289 SHADOW BROOK PL.
GRANITE BAY, CA 95746

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

BOB LUCAS
LUCAS ADVOCATES
1414 K STREET, SUITE 220
SACRAMENTO, CA 95814

CURT BARRY
717 K STREET, SUITE 503
SACRAMENTO, CA 95814

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

DAVID L. MODISETTE
EXECUTIVE DIRECTOR
CALIFORNIA ELECTRIC TRANSP. COALITION
1015 K STREET, SUITE 200
SACRAMENTO, CA 95814

DEREK WALKER
ENVIRONMENTAL DEFENSE FUND
1107 9TH STREET, STE 540
SACRAMENTO, CA 95814

DIANA SCHWYZER
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 31
SACRAMENTO, CA 95814

JOSE CARMONA
DIRECTOR OF ADVOCACY
CEERT
1100 11TH STREET, STE 311
SACRAMENTO, CA 95814
FOR: CENTER FOR ENERGY EFFICIENCY AND
RENEWABLE TECHNOLOGIES (CEERT)

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

KELLIE SMITH
SENATE ENERGY/UTILITIES & COMMUNICATION
STATE CAPITOL, ROOM 2195
SACRAMENTO, CA 95814

KEVIN WOODRUFF
WOODRUFF EXPERT SERVICES
1100 K STREET, SUITE 204
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

STEVEN A. LIPMAN
STEVEN LIPMAN CONSULTING
500 N. STREET 1108
SACRAMENTO, CA 95814
FOR: LIPMAN CONSULTING

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

WEBSTER TASAT
AIR RESOURCES BOARD
1001 I STREET
SACRAMENTO, CA 95814

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

KASSANDRA GOUGH
CALPINE CORPORATION
1215 K STREET, SUITE 2210
SACRAMENTO, CA 95814-3978
FOR: CALPINE CORPORATION

EDWARD J. TIEDEMANN
ATTORNEY AT LAW

LAURIE TEN HOPE
ADVISOR TO COMMISSIONER BYRON

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
 400 CAPITOL MALL, 27TH FLOOR
 SACRAMENTO, CA 95814-4416
 FOR: PLACER COUNTY WATER AGENCY & KINGS
 RIVER CONSERVATION DISTRICT

CALIFORNIA ENERGY COMMISSION
 1516 9TH STREET, MS-32
 SACRAMENTO, CA 95814-5512

PANAMA BARTHOLOMY
 ADVISOR TO COMMISSIONER DOUGLAS
 CALIFORNIA ENERGY COMMISSION
 1516 NINTH STREET, MS-33
 SACRAMENTO, CA 95814-5512

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

DERIC WITTENBORN
 ELLISON SCHNEIDER & HARRIS L.L.P.
 2600 CAPITOL AVENUE, SUITE 400
 SACRAMENTO, CA 95816-5905

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

BUD BEEBE
 REGULATORY AFFAIRS COORDINATOR
 SACRAMENTO MUNICIPAL UTILITY DIST
 6201 S STREET, MS B257
 SACRAMENTO, CA 95817-1899

TIMOTHY N. TUTT
 SACRAMENTO MUNICIPAL UTILITIES DISTRICT
 6201 S. STREET, M.S. B404
 SACRAMENTO, CA 95817-1899

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

DOUGLAS MACMULLEN
 CHIEF, POWER PLANNING SECTION
 CA DEPARTMENT OF WATER RESOURCES
 3310 EL CAMINO AVE., ROOM 356
 SACRAMENTO, CA 95821

KAREN NORENE MILLS
 ATTORNEY AT LAW
 CALIFORNIA FARM BUREAU FEDERATION
 2300 RIVER PLAZA DRIVE
 SACRAMENTO, CA 95833

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

WILLIAM W. WESTERFIELD III
 SR. ATTORNEY
 SACRAMENTO MUNICIPAL UTILITY DISTRICT
 6201 S STREET, M.S. B406, PO BOX 15830
 SACRAMENTO, CA 95852-1830
 FOR: SACRAMENTO MUNICIPAL UTILITY
 DISTRICT

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

ELIZABETH WESTBY
 ALCANTAR & KAHL, LLP
 1300 SW FIFTH AVENUE, SUITE 1750
 PORTLAND, OR 97201

MIKE CADE
 ALCANTAR & KAHL, LLP
 1300 SW 5TH AVE, SUITE 1750
 PORTLAND, OR 97201
 FOR: ALCANTAR & KAHL, LLP

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

PHIL CARVER
 OREGON DEPARTMENT OF ENERGY
 625 MARION ST., NE
 SALEM, OR 97301-3737

SAM SADLER
 OREGON DEPARTMENT OF ENERGY
 625 NE MARION STREET
 SALEM, OR 97301-3737

LISA SCHWARTZ
 SENIOR ANALYST
 OREGON PUBLIC UTILITY COMMISSION
 PO BOX 2148
 SALEM, OR 97308-2148

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

JESUS ARREDONDO
 NRG ENERGY INC.
 4600 CARLSBAD BLVD.
 CARLSBAD, CA 92008

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

State Service

CLARENCE BINNINGER
 DEPUTY ATTORNEY GENERAL
 DEPARTMENT OF JUSTICE
 455 GOLDEN GATE AVENUE, SUITE 11000
 SAN FRANCISCO, CA 94102

DAVID ZONANA
 DEPUTY ATTORNEY GENERAL
 CALIFORNIA ATTORNEY GENERAL'S OFFICE
 455 GOLDEN GATE AVENUE, SUITE 11000
 SAN FRANCISCO, CA 94102

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

ANDREW CAMPBELL
 CALIF PUBLIC UTILITIES COMMISSION
 EXECUTIVE DIVISION
 ROOM 5203
 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

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

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

CHARLOTTE TERKEURST
 CALIF PUBLIC UTILITIES COMMISSION
 DIVISION OF ADMINISTRATIVE LAW JUDGES
 ROOM 5117
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

CLAIRE EUSTACE
 CALIF PUBLIC UTILITIES COMMISSION
 ELECTRICITY PLANNING & POLICY BRANCH
 ROOM 4104
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

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

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

ED MOLDAVSKY
 CALIF PUBLIC UTILITIES COMMISSION
 LEGAL DIVISION
 ROOM 5037
 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

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

HARVEY Y. MORRIS
 CALIF PUBLIC UTILITIES COMMISSION
 LEGAL DIVISION
 ROOM 5036
 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

JACQUELINE GREIG
 CALIF PUBLIC UTILITIES COMMISSION

JAMIE FORDYCE
 CALIF PUBLIC UTILITIES COMMISSION

ENERGY COST OF SERVICE & NATURAL GAS BRA
ROOM 4102
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

EXECUTIVE DIVISION
ROOM 5303
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JEAN VIETH
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5010
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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

JOEL T. PERLSTEIN
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5133
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JONATHAN J. REIGER
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5035
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JUDITH IKLE
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
ROOM 4012
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: ENERGY RESOURCES BRANCH

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

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

LANA TRAN
CALIF PUBLIC UTILITIES COMMISSION
ELECTRIC GENERATION PERFORMANCE BRANCH
AREA 2-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MATTHEW DEAL
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5215
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

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

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

PAUL S. PHILLIPS
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5306
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

PEARLIE SABINO
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRA
ROOM 4209
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

RICHARD A. MYERS
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
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

SCOTT MURTISHAW
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

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

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

THERESA CHO
 CALIF PUBLIC UTILITIES COMMISSION
 EXECUTIVE DIVISION
 ROOM 5207
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

ZACH CHURCH
 CALIF PUBLIC UTILITIES COMMISSION
 EXECUTIVE DIVISION
 ROOM 5303
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

BILL LOCKYER
 STATE ATTORNEY GENERAL
 STATE OF CALIFORNIA, DEPT OF JUSTICE
 PO BOX 944255
 SACRAMENTO, CA 94244-2550

KEN ALEX
 PO BOX 944255
 1300 I STREET, SUITE 125
 SACRAMENTO, CA 94244-2550
 FOR: PEOPLE OF THE STATE OF CALIFORNIA

JUDITH B. SANDERS
 ATTORNEY AT LAW
 CALIFORNIA INDEPENDENT SYSTEM OPERATOR
 151 BLUE RAVINE ROAD
 FOLSOM, CA 95630
 FOR: CAISO

PHILIP D. PETTINGILL
 LEGAL & REG. DEPT.
 CALIFORNIA INDEPENDENT SYSTEM OPERATOR
 151 BLUE RAVINE ROAD
 FOLSOM, CA 95630
 FOR: CAISO

MICHAEL SCHEIBLE
 DEPUTY EXECUTIVE OFFICER
 CALIFORNIA AIR RESOURCES BOARD
 1001 I STREET
 SACRAMENTO, CA 95677
 FOR: CALIFORNIA AIR RESOURCES BOARD

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

JEFFREY DOLL
 CALIFORNIA AIR RESOURCES BOARD
 PO BOX 2815 1001 I STREET
 SACRAMENTO, CA 95812

PAM BURMICH
 AIR RESOURCES BOARD
 1001 I STREET, BOX 2815
 SACRAMENTO, CA 95812

VIRGIL WELCH
 SPECIAL ASST. TO THE CHAIR
 CALIFORNIA AIR RESOURCES BOARD
 1001 I STREET
 SACRAMENTO, CA 95812
 FOR: CALIFORNIA AIR RESOURCES BOARD

DARYL METZ
 CALIFORNIA ENERGY COMMISSION
 1516 9TH ST., MS-23
 SACRAMENTO, CA 95814

DEBORAH SLON
 DEPUTY ATTORNEY GENERAL, ENVIRONMENT
 OFFICE OF THE ATTORNEY GENERAL
 1300 I STREET, 15TH FLOOR
 SACRAMENTO, CA 95814

KAREN GRIFFIN
 EXECUTIVE OFFICE
 CALIFORNIA ENERGY COMMISSION
 1516 9TH STREET, MS 39
 SACRAMENTO, CA 95814

LISA DECARLO
 STAFF COUNSEL
 CALIFORNIA ENERGY COMMISSION
 1516 9TH STREET MS-14
 SACRAMENTO, CA 95814

MARC PRYOR
 CALIFORNIA ENERGY COMMISSION
 1516 9TH ST., MS-20
 SACRAMENTO, CA 95814

MELISSA JONES
 EXECUTIVE DIRECTOR
 CALIFORNIA ENERGY COMMISSION
 1516 9TH STREET, MS-39
 SACRAMENTO, CA 95814
 FOR: CALIFORNIA ENERGY COMMISSION

PAT PEREZ
ASST. DIRECTOR
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 39
SACRAMENTO, CA 95814
FOR: CALIFORNIA ENERGY COMMISSION

PIERRE H. DUVAIR
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS-41
SACRAMENTO, CA 95814

NANCY TRONAAS
CALIFORNIA ENERGY COMMISSION
1516 9TH ST. MS-20
SACRAMENTO, CA 95814-5512

CAROL J. HURLOCK
CALIFORNIA DEPT. OF WATER RESOURCES
JOINT OPERATIONS CENTER
3310 EL CAMINO AVE. RM 300
SACRAMENTO, CA 95821

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

ROSS A. MILLER
ELECTRICITY ANALYSIS OFFICE
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET MS 20
SACRAMENTO, CA 96814-5512
FOR: CALIFORNIA ENERGY COMMISSION

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