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11-18-09
02:08 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking Regarding Whether, or Subject to
What Conditions, the Suspension of Direct
Access May Be Lifted Consistent with Assembly
Bill 1X and Decision 01-09-060.

Rulemaking 07-05-025
(Filed May 24, 2007)

**ASSIGNED COMMISSIONER'S RULING
ON PROCEDURES TO ADDRESS SENATE BILL 695 ISSUES
RELATING TO DIRECT ACCESS TRANSACTIONS**

This ruling modifies the scoping memo previously issued in this proceeding¹ to create a new sub-phase to address provisions of Senate Bill (SB) 695 (Stats. 2009, Ch. 337) that relate to direct access. Among other issues, SB 695 changes the terms of the previously effective suspension of direct access, and requires the Commission to authorize increases in the maximum kilowatt-hour (kWh) limit on direct access transactions. This rulemaking is an appropriate vehicle to address and implement the direct access provisions of SB 695. In this ruling, I identify the pertinent provisions of SB 695 that will be addressed in this proceeding, and establish a preliminary schedule to meet the SB 695 timing requirements.

¹ The scope and schedule of the proceeding were previously updated by ruling dated March 2, 2009.

Requirements of Senate Bill 695 Relating to Direct Access Transactions

SB 695 adds Section 365.1 (b) to the Public Utilities Code,² which states:

“The commission shall allow individual retail nonresidential end-use customers to acquire electric service from other providers in each electrical corporation’s distribution service territory, up to a maximum allowable total kilowatthours annual limit. The maximum allowable annual limit shall be established by the commission for each electrical corporation at the **maximum total kilowatthours supplied by all other providers to distribution customers of that electrical corporation** during any sequential 12-month period between April 1, 1998, and the effective date of this section . . . ” (emphasis added).

Except for this express authorization for increased direct access transactions under SB 695, the previously enacted suspension of direct access transactions remains in effect until repealed by legislation, or until additional direct access transactions are otherwise authorized. (See § 365.1 (a).)

Within six months from the effective date of SB 695 or July 1, 2010, whichever is sooner, the Commission must adopt and implement a schedule to begin to phase in authorized increases in the allowable amount of kWh over a period of at least three years, but not more than five years. The allowable limit of kWh supplied by other providers in each electric utility's distribution service territory will be increased to the maximum allowable annual limit for that utility's distribution service territory as of the effective date of SB 695. The Commission may, if appropriate, modify its currently effective rules governing direct access transactions, but such review shall not delay the phase-in schedule.

² All statutory references are to the California Public Utilities Code.

Pursuant to § 365.1 (c) (1), once the Commission has authorized additional direct access transactions, it is required to ensure that other providers are subject to the same requirements that apply to the three largest California electric utilities under:

- (1) Commission-adopted programs to implement the resource adequacy provisions of Pub. Util. Code § 380,
- (2) Renewable portfolio standards of the Public Utilities Code, Article 16, (commencing with § 399.1) and
- (3) Electricity sector requirements adopted by the California Air Resources Board pursuant to the California Global Warming Solutions Act of 2006.

In the event that the Commission authorizes an electric utility to obtain generation resources to meet system or local area reliability needs for the benefit of all customers in the utility's distribution service territory, the Commission must ensure that the net capacity costs of those generation resources are allocated among bundled, direct access, and community choice aggregation customers on a fully non-bypassable basis, consistent with departing load provisions as determined by the Commission. The resource adequacy benefits of generation resources acquired for this purpose are to be allocated to all customers that pay their net capacity costs. It is the intent of the legislation that customers to whom the net costs and benefits of capacity are allocated not be required to pay for the costs of electricity that they do not consume.

If the Commission approves a centralized resource adequacy mechanism pursuant to § 380, the above-referenced resource adequacy requirements are to be suspended. If the Commission later orders electric utilities to cease procuring capacity through a centralized resource adequacy mechanism, the above-referenced resource adequacy provisions will again apply.

Scope of Issues Relating to Direct Access Phase-in Implementation

As the starting point for addressing the issues in this sub-phase, the applicable amount of the increase in maximum allowable direct access load for each of the major electric utilities under § 365.1 must be identified. Accordingly, each of the major electric utilities shall file and serve by December 3, 2009, the relevant information identifying the applicable maximum cap in direct access load in accordance with the criteria set forth in § 365.1. Each utility shall specify the relevant data sources utilized to support the claimed direct access cap amount. In addition, each utility shall indicate the number of direct access (DA) eligible customers currently on bundled service in its distribution territory, and quantify the associated loads in annual kilowatt-hours for customers whose three-year commitment period pursuant to Decision (D.) 03-05-043:

- (a) has already expired or will expire by April 2010;
- (b) will expire between April 2010 and April 2011;
- (c) will expire between April 2011 and April 2012; and
- (d) will expire between April 2012 and April 2013.

A preliminary list of the substantive issues concerning the SB 695 direct access phase-in implementation is set forth below. The scope of this sub-phase is to be limited only to those issues that must be decided by April 2010. As discussed below, a subsequent scoping memo may modify the list of issues designated for this sub-phase based upon review of parties' initial procedural comments. The preliminary list of issues to be addressed in this sub-phase are:

1. Determining Direct Access Cap and Baseline Amounts Subject to SB 695.
2. Establishing the Phase-in Schedule:
 - a. What should be the length of the phase-in period, within the three-to-five year range permitted under SB 695?

- b. What percentage of the total load cap should be allocated to each year of the phase-in period?
 3. Monitoring and administration issues to be addressed include:
 - a. Should unused cap in one year roll into the next year?
 - b. Should monitoring continue beyond the initial phase-in to keep up with DA load changes?
 - c. Should DA eligible-load receive preference in returning for the intermediate years as long as overall cap is not exceeded?
 - d. Should a set-aside be applied for DA eligible customers if load is approaching overall maximum in phase-in years?
 - e. How frequently should utilities post updates, so that parties know here DA load is in relation to the cap?
 - f. What allocation process should be used when more Direct Access Service Requests are submitted than can be accommodated under the cap, consistent with orderly enrollments, clarity, transparency, and up-to-date data?
 - g. What applicable non-bypassable charges are involved?
 4. Process for Utility Customer Notification of new Direct Access Provisions.
 5. Effects on Direct Access Switching Rules (*see* D.03-05-034; D.03-06-035):
 - a. Should the three-year minimum stay requirement (per Sec. III C of D.03-05-034) be waived for customers currently in their three-year minimum stay? Could they otherwise be precluded from going to DA due to the cap? Is the minimum stay requirement necessary in a capped market where the utilities will have more certainty as to the amount of DA load?
 - b. Six-month notice requirements were developed to govern the switching of customers who were returning to bundled service or returning to DA after serving out their three-year minimum stay. Notice was to give the utility sufficient advance notice of its impending returns and departures so that appropriate adjustments can be made in prospective procurement of power to serve bundled customers, and to minimize stranded costs. (D.03-05-034 at 39.) Should the notice rules be waived for bundled customers who are DA

eligible and subject to the six month notice since the utilities will have knowledge as to maximum DA load to guide their procurement planning under SB 695 rules?

Schedule for this Sub-phase

The preliminary schedule set forth below is hereby established to address and implement this new sub-phase of the proceeding. Since SB 695 was signed into law on October 11, 2009, the Commission must adopt and implement a reopening schedule by April 11, 2010, to phase in authorized increases in the allowable direct access transactions over a period of not less than three years, and not more than five years. The scope for this initial sub-phase is limited only to those issues that must be decided within the initial six-month time limit mandated by SB 695. As noted in the schedule below, procedural comments shall be due on December 7, 2009, as to the appropriate scope of issues for this sub-phase. Parties should comment on whether the preliminary list of issues identified above should be modified, either with additions or deletions of issues, for purposes of completing this sub-phase by April 11, 2010. If parties believe evidentiary hearings are required, they shall identify the specific issues for which hearings would cover. Depending on the procedural comments filed on December 7, 2009, the scope of issues to be addressed in this initial sub-phase, as identified above, may be amended by a subsequent ruling to be issued by December 14, 2009.

Once substantive opening comments are filed on December 29, 2009, a workshop shall be convened to provide a forum for parties to seek consensus, or to narrow areas of dispute. Once the Commission adopts the new limits on direct access transactions, the utilities will be required to promptly notify customers by bill insert of their options under the new rules. The Commission staff will confer with each utility to develop the appropriate language to include

in a bill insert. To the extent that there are additional SB 695 implementation issues that can be decided after April 11, 2010, those issues will be deferred to a subsequent phase of the proceeding. As stated above, this initial sub-phase of the proceeding will be resolved by April 2010. In any event, all issues relating to SB 695 implementation should be resolved within 18 months of the date of this ruling pursuant to § 1701.5. Except as amended by this ruling, the categorization of the proceeding (as ratesetting), the designation of principal hearing officer (i.e., ALJ Thomas Pulsifer), and all other procedural matters set forth in prior scoping memos remain the same. The adopted schedule follows:

Event	Due Date
Utilities each file and serve data identifying the increase in Direct Access load cap pursuant to SB 695.	December 3, 2009
Parties file procedural comments as to additions, deletions, or revisions in scope of issues that must be resolved by April 11, 2010 to comply with SB 695.	December 7, 2009
Ruling modifying Scope of Issues, as applicable.	December 14, 2009
Parties file substantive opening comments on issues for this sub-phase.	December 29, 2009
Workshop for consensus on substantive issues.	January 13, 2010
Parties file substantive reply comments.	February 1, 2010
ALJ Proposed Decision on Phase-in Implementation.	Mid-February 2010
Decision on Commission Agenda.	Mid-March 2010
Implementation of Phase-in Begins.	April 2010

Suspension of Working Group Report Schedule

In D.08-11-056, the Commission adopted measures to expedite the phase-out of the California Department of Water Resources (DWR) from its role of supplying electric power to retail customers, based on a target date of January 1, 2010 for completing the phase-out. In order to facilitate those efforts, a Working

Group was formed to develop protocols and strategies for negotiating replacement power contracts to substitute DWR with the Investor-Owned Utilities. Periodic progress reports have subsequently been issued by the Energy Division to provide information on the status of contract novation and negotiation.

In view of the revised priorities pursuant to SB 695, I hereby stay the schedule for further Working Group Progress Reports effective immediately. The utilities should, however, each independently continue their best efforts to implement novation or renegotiation of DWR contracts where it is cost-effective to do so. Energy Division will likewise not be required to prepare additional Working Group progress reports pending further instructions by separate ruling or other order.

IT IS RULED that:

1. A new sub-phase is hereby instituted to address and implement the provisions of Senate Bill (SB) 695 which relate to reinstating direct access transactions.
2. The preliminary scope and schedule, as set forth above, is hereby adopted for this new sub-phase which is to cover only those issues that must be resolved by April 11, 2010.
3. The scope for this initial sub-phase is limited only to those issues that must be decided within the initial six-month time limit mandated by SB 695. Depending on the procedural comments filed on December 7, 2009, the scope of issues to be addressed in this initial sub-phase may be amended by subsequent ruling by December 14, 2009.
4. The schedule for Working Group progress Reports pursuant to D.08-11-056 is hereby stayed. The utilities should independently continue their best efforts to

implement the novation or renegotiation of Department of Water Resources contracts where it is cost-effective. The Energy Division will not be required to prepare Working Group progress reports pending further instructions by separate ruling or other order.

Dated November 18, 2009, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated November 18, 2009, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

***** PARTIES *****

Marc D. Joseph
Attorney At Law
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
mdjoseph@adamsbroadwell.com
For: CUE

Michael Lamond
ALPINE NATURAL GAS OPERATING COMPANY
PO BOX 550
15 ST. ANDREWS ROAD, SUITE 7
VALLEY SPRINGS CA 95252
(209) 772-3006
mike@alpinenaturalgas.com
For: ALPINE NATURAL GAS OPERATING COMPANY

Donald R. Schoonover
Attorney At Law
AT&T SERVICES, INC.
2600 CAMINO RAMON, 2W805
SAN RAMON CA 94583
(925) 823-8389
ds1957@att.com
For: AT&T SERVICES, INC.

Ronald Liebert
Attorney At Law
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833
(916) 561-5657
rliebert@cfbf.com
For: California Farm Bureau Federation

Martin Homec
Attorney At Law
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
PO BOX 4471
DAVIS CA 95617
(530) 867-1850
martinhomec@gmail.com
For: Californians for Renewable Energy, Inc. (CARE)

Michael E. Boyd
President, Care
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
5439 SOQUEL DRIVE
SOQUEL CA 95073
(408) 465-9809
michaelboyd@sbcglobal.net
For: CALIFORNIANS FOR RENEWABLE ENERGY, INC

Jeff Malone
CALPEAK POWER LLC
7365 MISSION GORGE ROAD, SUITE C
SAN DIEGO CA 92120-1274
(619) 229-3770 X367
jeff.malone@calpeak.com
For: Cal Peak Power

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
(415) 554-4619
jeanne.sole@sfgov.org
For: City and County of San Francisco

Mary Lynch
Vp - Regulatory And Legislative Affairs
CONSTELLATION ENERGY COMMODITIES GRP
5074 NAWAL DRIVE
EL DORADO HILLS CA 95762
(916) 526-2860
mary.lynch@constellation.com
For: CONSTELLATION ENERGY COMMODITIES GROUP

Alexis Wodtke
CONSUMER FEDERATION OF CALIFORNIA
520 S. EL CAMINO REAL, SUITE 340
SAN MATEO CA 94402
(650) 373-7847
lex@consumercal.org
For: Consumer Federation of California

Lisa Zycherman
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY ST. STE 800
SAN FRANCISCO CA 94111
(202) 973-4280
lisazycherman@dwt.com
For: The Alliance for Retail Energy

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

Steven F. Greenwald
EDWARD W. O'NEILL
Attorney At Law
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6500
stevegreenwald@dwt.com
For: The Alliance for Retail Energy

Dan Douglass
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS CA 91367-8102
(818) 961-3001
douglass@energyattorney.com
For: California Alliance for Choice in Energy Solutions/Alliance for
Retail Energy Markets

Donald C. Liddell
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO CA 92103
(619) 993-9096
liddell@energyattorney.com
For: CalPeak Power, LLC

Andrew B. Brown
Attorney At Law
ELLISON SCHNEIDER & HARRIS, LLP (1359)
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
abb@eslawfirm.com
For: Constellation NewEnergy, Inc. and Constellation Energy
Commodities Group, Inc.

Norman J. Furuta
Attorney At Law
FEDERAL EXECUTIVE AGENCIES
1455 MARKET ST., SUITE 1744
SAN FRANCISCO CA 94103-1399
(415) 503-6994
norman.furuta@navy.mil
For: Federal Executive Agencies

Ronald Moore
(133)
GOLDEN STATE WATER/BEAR VALLEY ELECTRIC
630 EAST FOOTHILL BOULEVARD
SAN DIMAS CA 91773
(909) 394-3600 X 682
rkmoore@gswater.com
For: GOLDEN STATE WATER/BEAR VALLEY ELECTRIC

Michael B. Day
Attorney At Law
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
mday@goodinmacbride.com
For: RRI Energy, Inc.

Gregg Morris
Director
GREEN POWER INSTITUTE
2039 SHATTUCK AVENUE, STE 402
BERKELEY CA 94704
(510) 644-2700
gmmorris@emf.net
For: GREEN POWER INSTITUTE

Edwin W. Duncan
Attorney At Law
GREENBERG & BASS
674 COUNTY SQUARE DRIVE, SUITE 302-A
VENTURA CA 93003
(805) 654-7066
ewdlaw@sbcglobal.net
For: Direct Access Residential Energy

Mark Byron
Vice President
GWF ENERGY, LLC
4300 RAILROAD AVENUE
PITTSBURG CA 94565-6006
(925) 431-1419
mbyron@gwfpower.com
For: GWF ENERGY, LLC

Martin Homec
PO BOX 4471
DAVIS CA 95617
(530) 867-1850
martinhomec@gmail.com
For: Californians for Renewable Energy (CARE)

Charlyn A. Hook
Legal Division
RM. 4107
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-3050
chh@cpuc.ca.gov
For: DRA

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

William H. Booth
Attorney At Law
LAW OFFICE OF WILLIAM H. BOOTH
67 CARR DRIVE
MORAGA CA 94556
(925) 376-7370
wbooth@booth-law.com
For: Law Office of William H. Booth

Brian K. Cherry
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MAIL CODE B10C
PO BOX 770000
SAN FRANCISCO CA 94177
(415) 973-4977
bkc7@pge.com
For: PACIFIC GAS AND ELECTRIC COMPANY

S. Nancy Whang
Attorney At Law
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES CA 90064
(310) 312-4377
nwhang@manatt.com
For: Indicated Commercial Parties/Lowe's Home Improvement/Del
Taco

Mark R. Huffman
CHRISTOPHER J. WARNER, WILLIAM V. MANHEIM
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET
SAN FRANCISCO CA 94105
(415) 973-3842
mrh2@pge.com
For: Pacific Gas and Electric Company

Peter W. Hanschen
Attorney At Law
MORRISON & FOERSTER, LLP
101 YGNACIO VALLEY ROAD, SUITE 450
WALNUT CREEK CA 94596
(925) 295-3450
phanschen@mofocom
For: Constellation Energy Commodities Group, Inc./Constellation
Generation Group, Inc.

Michael S. Hindus
PILLSBURY WINTHROP SHAW PITTMAN LLP
50 FREMONT STREET
SAN FRANCISCO CA 94105-7880
(415) 983-1000
michael.hindus@pillsburylaw.com
For: AT&T Services

Wayne Amer
President
MOUNTAIN UTILITIES (906)
PO BOX 205
KIRKWOOD CA 95646
(209) 258-7444
wamer@kirkwood.com
For: MOUNTAIN UTILITIES

Reid A. Winthrop
Corporate Counsel
PILOT POWER GROUP, INC.
8910 UNIVERSITY CENTER LANE, SUITE 520
SAN DIEGO CA 92122
(858) 678-0118
rwinthrop@pilotpowergroup.com
For: Pilot Power Group Inc.

Sheryl Carter
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
scarter@nrdc.org
For: NATURAL RESOURCES DEFENSE COUNCIL

Gina M. Dixon
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, MS CP32D
SAN DIEGO CA 92123
(858) 654-1782
gdixon@semprautilities.com
For: SAN DIEGO GAS & ELECTRIC COMPANY

Charles R. Middlekauff
CHRISTOPHER J. WARNER
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO CA 94120
(415) 973-2713
crmd@pge.com
For: Pacific Gas and Electric Company

Kelly M. Foley
Attorney At Law
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, HQ12
SAN DIEGO CA 92101-3017
(619) 696-4287
kfoley@sempra.com
For: San Diego Gas & Electric Company

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

J. Steve Rahon
SAN DIEGO GAS AND ELECTRIC
8330 CENTURY PARK COURT CP32C
SAN DIEGO CA 92123-1548
srahon@semprautilities.com
For: SAN DIEGO GAS AND ELECTRIC

Kim Hassan
KEITH W. MELVILLE
Attorney At Law
SEMPRA ENERGY
101 ASH STREET, HQ12
SAN DIEGO CA 92101
(619) 699-5006
khassan@sempra.com
For: San Diego Gas and Electric

Christopher A. Hilen
Assistant General Counsel
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO NV 89511
(775) 834-5696
chilen@sppc.com
For: Sierra Pacific Power Company

Trevor Dillard
SIERRA PACIFIC POWER COMPANY
PO BOX 10100
6100 NEIL ROAD, MS S4A50
RENO NV 89520-0024
(775) 834-5823
tdillard@sppc.com
For: SIERRA PACIFIC POWER COMPANY

Akbar Jazayeri
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-3630
AdviceTariffManager@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

Michael D. Montoya
ANN P. COHN, DEANA M. WHITE; AMBER DEAN
Attorney At Law
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, PO BOX 800
ROSEMEAD CA 91770
(626) 302-6944
mike.montoya@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

Debra S. Gallo
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89150
(702) 876-7163
debra.gallo@swgas.com
For: SOUTHWEST GAS CORPORATION

Keith R. Mccrea
Attorney At Law
SUTHERLAND, ASBILL & BRENNAN, LLP
1275 PENNSYLVANIA AVE., N.W.
WASHINGTON DC 20004-2415
(202) 383-0705
keith.mccrea@sablaw.com
For: California Manufacturers & Technology Association

Michel Peter Florio
Attorney At Law
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94104
(415) 929-8876 X302
mflorio@turn.org
For: THE UTILITY REFORM NETWORK (TURN)

Tom Wertz
TYR ENERGY
7500 COLLEGE BOULEVARD, SUITE 650
OVERLAND PARK KS 66210
(913) 754-5744
twertz@tyrenergy.com
For: CalPeak Power, LLC

Doug Davie
WELLHEAD ELECTRIC COMPANY
650 BERCUT DRIVE, SUITE C
SACRAMENTO CA 95814
(916) 447-5171
ddavie@wellhead.com
For: Wellhead Electric Company

Ray Czahar
WEST COAST GAS COMPANY
9203 BEATTY DRIVE
SACRAMENTO CA 95436
(916) 364-4100
westgas@aol.com

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

***** STATE EMPLOYEE *****

Kathryn Auriemma
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2072
kdw@cpuc.ca.gov

Donald J. Brooks
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2626
dbr@cpuc.ca.gov

Iryna Kwasny
DEPT. OF WATER RESOURCES-CERS DIVISION
3310 EL CAMINO AVE., STE.120
SACRAMENTO CA 95821
(916) 574-2226
iryna.kwasny@doj.ca.gov

Matthew Deal
Executive Division
RM. 5215
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2576
mjd@cpuc.ca.gov

Elizabeth Dorman
Legal Division
RM. 4300
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1415
edd@cpuc.ca.gov

Brewster Fong
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2187
bfs@cpuc.ca.gov

Risa Hernandez
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2132
rhh@cpuc.ca.gov

Andrew Kotch
Executive Division
RM. 5301
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1072
ako@cpuc.ca.gov

April Mulqueen
Consumer Protection & Safety Division
AREA 2-C
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2347
am4@cpuc.ca.gov

John Pacheco
1416 9TH STREET
SACRAMENTO CA 95814
(619) 699-5130
jpacheco@water.ca.gov

Sophia Park
Legal Division
RM. 5130
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2116
sjp@cpuc.ca.gov

Karen P. Paull
Legal Division
RM. 4300
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2630
kpp@cpuc.ca.gov

Thomas R. Pulsifer
Administrative Law Judge Division
RM. 5016
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2386
trp@cpuc.ca.gov

Steve Roscow
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1189
scr@cpuc.ca.gov

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

Kellie Smith
SENATE ENERGY/UTILITIES & COMMUNICATION
STATE CAPITOL, ROOM 2195
SACRAMENTO CA 95814
(916) 651-4107
kellie.smith@sen.ca.gov

Lee-Whei Tan
Division of Ratepayer Advocates
RM. 4102
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2901
lwt@cpuc.ca.gov

Rebecca Tsai-Wei Lee
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2140
wtr@cpuc.ca.gov

Carlos A. Velasquez
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1124
los@cpuc.ca.gov

Christopher R Villarreal
Policy & Planning Division
RM. 5119
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1566
crv@cpuc.ca.gov

Jake Wise
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1677
jw2@cpuc.ca.gov

Amy C. Yip-Kikugawa
Administrative Law Judge Division
RM. 2106
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-5256
ayk@cpuc.ca.gov

***** INFORMATION ONLY *****

Malcolm Reinhardt
ACCENT ENERGY
1299 FOURTH STREET, SUITE 302
SAN RAFAEL CA 94901
(415) 453-3341

Annie Stange
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND OR 97201
(503) 402-8703
sas@a-klaw.com

Philippe Auclair
11 RUSSELL COURT
WALNUT CREEK CA 94598
(925) 588-9109
phil@auclairconsulting.com

Barbara R. Barkovich
BARKOVICH & YAP, INC.
PO BOX 11031
OAKLAND CA 94611
(510) 450-1270
brbarkovich@earthlink.net

Steve Liu
BEAR ENERGY LP
700 LOUISIANA STREET, STE 1000, 10TH FL
HOUSTON TX 77002
(713) 236-5040
sliu@bear.com

Deborah Berger
Attorney At Law
3750 VALLEY VISTA FORK
BONITA CA 91902
debeberger@cox.net

Todd Edmister
Attorney At Law
BINGHAM MCCUTCHEN
THREE EMBARCADERO CENTER
SAN FRANCISCO CA 94111
(415) 393-2520
todd.edmister@bingham.com

Jon M. Casadont
Senior Vice President & General Counsel
BLUE STAR ENERGY SERVICES INC
363 WEST ERIE STREET, SUITE 700
CHICAGO IL 60610
(312) 628-8666
jcasadont@bluestarenergy.com

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

Scott Blaising
Attorney At Law
BRAUN BLAISING MCLAUGHLIN P.C.
915 L STREET, STE. 1270
SACRAMENTO CA 95814
(916) 682-9702
blaising@braunlegal.com

Ryan Bernardo
BRAUN BLAISING MCLAUGHLIN, P.C.
915 L STREET, SUITE 1270
SACRAMENTO CA 95814
(916) 912-4432
bernardo@braunlegal.com

CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST., SUITE 303
SAN FRANCISCO CA 94117
(415) 963-4439
cem@newsdata.com
For: CALIFORNIA ENERGY MARKETS

Hilary Corrigan
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. SUITE 303
SAN FRANCISCO CA 94117-2242
(415) 963-4439
cem@newsdata.com

Karen Lindh
CALIFORNIA ONSITE GENERATION
7909 WALERGA ROAD, NO. 112, PMB 119
ANTELOPE CA 95843
(916) 729-1562
karen@klindh.com

Sarah Beserra
CALIFORNIA REPORTS.COM
39 CASTLE HILL COURT
VALLEJO CA 94591
(707) 645-7361
sbeserra@sbcglobal.net

Avis Kowalewski
CALPINE CORPORATION
4160 DUBLIN BLVD, SUITE 100
DUBLIN CA 94568
(925) 557-2284
kowalewskia@calpine.com

Edward Toppi
CUSTOMIZED ENERGY SOLUTIONS, LTD
EMAIL ONLY
EMAIL ONLY CA 00000
(215) 875-9440
etoppi@ces-ltd.com

Pacific Gas And Electric Company
CASES ADMINISTRATION TEAM
77 BEALE STREET
SAN FRANCISCO CA 94105
RegRelCpucCases@pge.com

Mary Tucker
CITY OF SAN JOSE, ENVIRONMENTAL SRVC DEP
200 EAST SANTA CLARA ST., 10TH FLR.
SAN JOSE CA 95113-1905
(408) 975-2581
mary.tucker@sanjoseca.gov

Joe Donovan
CONSTELLATION ENERGY RESOURCES, LLC
100 CONSTELLATION WAY
BALTIMORE MD 21202
joseph.donovan@constellation.com

E. Garth Black
Attorney At Law
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO CA 94111
(415) 433-1900
gblack@cwclaw.com
For: COOPER, WHITE & COOPER, LLP

Marcie A. Milner
General Mgr., Regulatory Affairs
CORAL POWER, LLC
4445 EASTGATE MALL, SUITE 100
SAN DIEGO CA 92121
(858) 526-2106
marcie.milner@shell.com

Colin Cushnie
601 VAN NESS AVE, SUITE 2040
SAN FRANCISCO CA 94102
colin.cushnie@sce.com

Jacqueline Derosa
Director Of Regulatory Affairs - Ca
CUSTOMIZED ENERGY SOLUTIONS
101 PARKSHORE DRIVE SUITE 100
FOLSOM CA 95630
(916) 932-7226
jderosa@ces-ltd.com

Mary U. Akens
California Energy Resources Scheduling
DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO, SUITE 120
SACRAMENTO CA 95821
makens@water.ca.gov

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

Dhaval Dagli
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770

Joshua Davidson
Attorney At Law
DAVIS WRIGHT TREMAINE
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111
(415) 276-6501
joshdavidson@dwt.com

Judy Pau
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6587
judypau@dwt.com

Ann L. Trowbridge
Attorney At Law
DAY CARTER & MURPHY, LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO CA 95864
(916) 570-2500
atrowbridge@daycartermurphy.com
For: Sacramento Municipal Utility District, Merced Irrigation District

Ralph E. Dennis
DENNIS CONSULTING
2805 BITTERSWEET LANE
LA GRANGE KY 40031
(502) 241-5686
ralphdennis@insightbb.com

Jim Spence
California Energy Resources Scheduling
DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO, SUITE 120
SACRAMENTO CA 95821
jspence@water.ca.gov

Diane I. Fellman
Director, Regulatory Affairs-West Region
FPL ENERGY PROJECT MANAGEMENT, INC.
234 VAN NESS AVENUE
SAN FRANCISCO CA 94102
(415) 703-6000
Diane_Fellman@fpl.com

Jennifer Chamberlin
Mgr. Of Reg. And Gov. Affairs
DIRECT ENERGY
2633 WELLINGTON CT
CLYDE CA 94520
(925) 969-1031
jennifer.chamberlin@directenergy.com

Nat Treadway
DISTRIBUTED ENERGY FINANCIAL GROUP, LLC
5731 S. BRAESWOOD BLVD.
HOUSTON TX 77096
(713) 729-6244
ntreadway@defgllc.com

Gregory S.G. Klatt
DOUGLASS & LIDDELL
411 E. HUNTINGTON DRIVE NO.107-356
ARCADIA CA 91006
(818) 961-3002
klatt@energyattorney.com
For: Alliance for Retail Energy Markets

Cassandra Sweet
DOW JONES NEWSWIRES
201 CALIFORNIA ST., 13TH FLOOR
SAN FRANCISCO CA 94111
(415) 439-6468
cassandra.sweet@dowjones.com

Jedediah J. Gibson
Attorney At Law
ELLISON SCHNEIDER & HARRIS LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
jjg@eslawfirm.com
For: GWF Energy, LLC

Janine L. Scancarelli
Attorney At Law
FOLGER, LEVIN & KAHN, LLP
275 BATTERY STREET, 23RD FLOOR
SAN FRANCISCO CA 94111
(415) 986-2800
jscancarelli@flk.com

Steven Kelly
Policy Director
INDEPENDENT ENERGY PRODUCERS ASSOCIATION
1215 K STREET, SUITE 900
SACRAMENTO CA 95814
(916) 448-9499
steven@iepa.com
For: Independent Energy Producers

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

Jeanne B. Armstrong
Attorney At Law
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
jarmstrong@goodinmacbride.com
For: RRI Energy, Inc.

Brian T. Cragg
Attorney At Law
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
bcragg@goodinmacbride.com
For: Goodin, MacBride, Squeri, Day & Lamprey

John Holtz
GREEN MOUNTAIN ENERGY COMPANY
300 WEST 6TH STREET
AUSTIN TX 78701
(609) 953-1647
john.holtz@greenmountain.com

David Dickey
HIGH DESERT POWER PROJECT, LLC
1044 NORTH 115TH STREET, SUITE 400
OMAHA NE 68154
(402) 691-9738
ddickey@tenaska.com

Tam Hunt
HUNT CONSULTING
4344 MODOC ROAD, 15
SANTA BARBARA CA 93110
(805) 963-0583 X 122
tam.hunt@gmail.com

Ignacio Ibarguren
7500 COLLEGE BLVD, SUITE 650
OVERLAND PARK KS 66210
iibarguren@tyrenergy.com

Michael A. Yuffee
MCDERMOTT WILL & EMERY LLP
600 THIRTEENTH STREET, N.W.
WASHINGTON DC 20005-3096
(202) 756-8066
myuffee@mwe.com

Michael McDonald
1103 TIMBERPINE COURT
SUNNYVALE CA 94086
(408) 712-5689
michael.mcdonald@ieee.org

John Leslie
Attorney At Law
LUCE, FORWARD, HAMILTON & SCRIPPS
600 WEST BROADWAY, SUITE 2600
SAN DIEGO CA 92101
(619) 699-2536
jleslie@luce.com

John W. Leslie, Esq.
Attorney At Law
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
600 WEST BROADWAY, STE. 2600
SAN DIEGO CA 92101
(619) 699-2536
jleslie@luce.com

Shannon Maloney
2519 KLONDIKE COURT
MISSOULA MT 59808
shannonmaloney@msn.com

David L. Huard
MANATT PHELPS & PHILLIPS LLP
1 EMBARCADERO CTR, STE 2900
SAN FRANCISCO CA 94111-3736
(415) 291-7430
dhuard@manatt.com
For: Indicated Commercial Parties/County of Los Angeles/Los Angeles
Unified School Dist.

Randall W. Keen
MANATT PHELPS AND PHILLIPS LLP
11355 W. OLYMPIC BLVD.
LOS ANGELES CA 90064
(310) 312-4361
pucservice@manatt.com
For: Indicated Commercial Parties/Los Angeles Unified School
District/Los Angeles County

Mike Mcclenahan
101 ASH ST
SAN DIEGO CA 92101-3017
mmcclenahan@semprautilities.com

Steven Huhman
MORGAN STANLEY CAPITAL GROUP INC.
2000 WESTCHESTER AVENUE
PURCHASE NY 10577
(914) 225-1592
steven.huhman@morganstanley.com

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

Rusty Mills
1416 9TH STREET
SACRAMENTO CA 95814
millsr@water.ca.gov

Sean P. Beatty
Sr. Mgr. External & Regulatory Affairs
MIRANT CALIFORNIA, LLC
696 WEST 10TH ST., PO BOX 192
PITTSBURG CA 94565
(925) 427-3483
sean.beatty@mirant.com

Blair Jackson
MODESTO IRRIGATION DISTRICT
1231 ELEVENTH STREET
MODESTO CA 95354
(209) 526-7505
blairj@mid.org

Joy A. Warren
Regulatory Administrator
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354
(209) 526-7389
joyw@mid.org

Roger Van Hoy
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354
(209) 526-7464
rogerv@mid.org

Frank J. Perdue
MONTAGUE DEROSE AND ASSOCIATES
3100 OAK ROAD, SUITE 210
WALNUT CREEK CA 94597
(925) 256-9797
perdue@montaguederose.com
For: California Dept. of Water Resources

Kenny Swain
NAVIGANT CONSULTING
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA CA 95670
(916) 631-3206
kenneth.swain@navigantconsulting.com

John Dutcher
Vice President - Regulatory Affairs
MOUNTAIN UTILITIES
3210 CORTE VALENCIA
FAIRFIELD CA 94534-7875
(707) 426-4003
ralf1241a@cs.com
For: MOUNTAIN UTILITIES

MRW & ASSOCIATES, INC.
1814 FRANKLIN STREET, SUITE 720
OAKLAND CA 94612
(510) 834-1999
mrw@mrwassoc.com

Harry Kingerski
Sr. Director Regulatory Affairs
MX ENERGY
711 LOUISIANA STREET, SUITE 1000
HOUSTON TX 77210-4402
(713) 357-2629
HKingerski@mxenergy.com
For: MX Energy

Stacey Rantala
NATIONAL ENERGY MARKETERS ASSOCIATION
3333 K STREET, N.W., SUITE 110
WASHINGTON DC 20007
(202) 333-3288
srantala@energymarketers.com

Audrey Chang
Director-California Climate Program
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
achang@nrdc.org

David Oliver
NAVIGANT CONSULTING
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA CA 95670
(916) 631-3209
david.oliver@navigantconsulting.com

Mark Tucker
PACIFICORP
825 NE MULTNOMAH, SUITE 2000
PORTLAND OR 97232
(503) 813-5269
californiadockets@pacificorp.com

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

Howard V. Golub
NIXON PEABODY LLP
1 EMBARCADERO CENTER, STE. 1800
SAN FRANCISCO CA 94111
(415) 984-8200
hgolub@nixonpeabody.com

Julie L. Martin
NORTH AMERICA GAS AND POWER
BP ENERGY COMPANY
501 WESTLAKE PARK BLVD.
HOUSTON TX 77079
(281) 366-8840
julie.martin@bp.com

Thomas R. Del Monte
NU LEAF ENERGY, LLC
4678 MORRELL STREET
SAN DIEGO CA 92109
(619) 402-0957
thomas.r.del.monte@qmail.com

Roger Goldstein
PACIFIC GAS AND ELECTRIC COMPANY
ONE MARKET, SPEAR TOWER, SUITE 2400
SAN FRANCISCO CA 94105-1126
(415) 973-2328
rfg2@pge.com

Kimberly C. Jones
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A, ROOM 904
SAN FRANCISCO CA 94105
(415) 973-8844
Kcj5@pge.com

Paul Holton
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B9A
SAN FRANCISCO CA 94105
(415) 972-5708
pvh1@pge.com

Trent Carlson
Vp, Regulatory Affairs
RRI ENERGY, INC
1000 MAIN STREET
HOUSTON TX 77002
(731) 497-4386
tcarlson@rrienergy.com

Michelle Mishoe
PACIFICORP
825 NE MULTNOMAH STREET, SUITE 1800
PORTLAND OR 97232
(503) 813-5977
michelle.mishoe@pacificorp.com

Gurcharan Bawa
Director - Power Supply
PASADENA WATER AND POWER
150 S. LOS ROBLES, SUITE 200
PASADENA CA 91101
(626) 744-7598
gbawa@cityofpasadena.net

Lisa Weinzimer
Associate Editor
PLATTS MCGRAW-HILL
695 NINTH AVENUE, NO. 2
SAN FRANCISCO CA 94118
(415) 387-1025
lisa_weinzimer@platts.com

Gifford Jung
POWEREX CORPORATION
666 BURRARD STREET, SUITE 1400
VANCOUVER BC V5R 4Y2
CANADA
(604) 891-6040
gifford.jung@powerex.com

Gurdip Rehal
1416 9TH STREET
SACRAMENTO CA 95814
grehal@water.ca.gov

Terrance Robertson
ONE MARKET, SPEAR TOWER, SUITE 2400
SAN FRANCISCO CA 94105-1126
tmr4@pge.com

Les Guliasi
Director, Regulatory Affairs
RRI ENERGY, INC
720 WILDCAT CANYON ROAD
BERKELEY CA 94708
(510) 559-7737
lguliasi@rrienergy.com

Kari Kloberdanz
Regulatory Case Manager
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32D
SAN DIEGO CA 92123
(858) 637-7960
KKloberdanz@semprautilities.com

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

Clint Sandidge
Manager, Policy & Regulation
RRI ENERGY, INC.
1000 MAIN STREET
HOUSTON TX 77002
(713) 497-8976
csandidge@rrienergy.com

Deborah K. Currie
Director, Policy And Regulation
RRI ENERGY, INC.
1000 MAIN ST.
HOUSTON TX 77002
(713) 497-5526
dcurrie@rrienergy.com
For: RRI Energy, Inc.

Patricia E. Look
RRI ENERGY, INC.
1000 MAIN ST
HOUSTON TX 77002
(713) 497-5469
plook@rrienergy.com

Robert Rynearson
2132 BELLOC COURT
SAN DIEGO CA 92109
(585) 220-6995
rob@teamryno.com

George Waidelich
SAFEWAY INC.
5918 STONERIDGE MALL ROAD
PLEASANTON CA 94596
(925) 467-2983
george.waidelich@safeway.com

Wendy Keilani
Regulatory Case Manager
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP32B
SAN DIEGO CA 92123
(858) 654-1185
wkeilani@semprautilities.com

Steven C. Nelson
SEMPRA ENERGY
101 ASH STREET HQ-12
SAN DIEGO CA 92101-3017
(619) 699-5136
snelson@sempra.com

Manuel Ramirez
SAN FRANCISCO PUC
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISCO CA 94103
(415) 554-1538
mramirez@sfwater.org
For: San Francisco Public Utilities Commission

Theresa Burke
Regulatory Affairs Analyst
SAN FRANCISCO PUC
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISCO CA 94103
(415) 554-1567
tburke@sfwater.org

David Orth
General Manager
SAN JOAQUIN VALLEY POWER AUTHORITY
4886 EAST JENSEN AVENUE
FRESNO CA 93725
(559) 237-5567
dorth@krcd.org

Phillip Muller
SCD ENERGY SOLUTIONS
436 NOVA ALBION WAY
SAN RAFAEL CA 94903
(415) 479-1710
philm@scdenergy.com
For: SCD ENERGY SOLUTIONS

Carlos Pena
SEMPRA ENERGY
101 ASH STREET
SAN DIEGO CA 92101-3017
(619) 696-4320
CFPena@semprautilities.com

Dave Smith
SEMPRA ENERGY
101 ASH STREET, HQ-18
SAN DIEGO CA 92101
(619) 699-5013
wdsmith@sempra.com

Michael Rochman
Managing Director
SPURR
1430 WILLOW PASS ROAD, SUITE 240
CONCORD CA 94520
(925) 743-1292
Service@spurr.org
For: School Project for Utility Rate Reduction

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

Theodore E. Roberts
Senior Regulatory Counsel
SEMPRA GENERATION / SEMPRA BROADBAND
101 ASH STREET, HQ 12B
SAN DIEGO CA 92101-3017
(619) 699-5111
troberts@sempra.com
For: Sempra Global

Tom Corr
Manager, Regulatory Policy
SEMPRA GLOBAL
101 ASH STREET, 8TH FL.
SAN DIEGO CA 92101-3017
(619) 696-4246
tcorr@sempraglobal.com

Randy Shilling
4886 EAST JENSEN AVENUE
FRESNO CA 93725
rshilling@krccd.org

Daniel Silva
1305 ALEXANDRIA DRIVE
SAN DIEGO CA 92107
(619) 222-1515
Des4837@yahoo.com

Amber E. Wyatt
SOUTHERN CALIFORNIA EDISON COMPANY
LAW DEPARTMENT
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-6961
amber.wyatt@sce.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
(626) 302-3101
case.admin@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

Kristin Juedes
UTILITY RESOURCE MGMT. GRP. INC
18301 VON KARMAN AVE, STE 250
IRVINE CA 92612
kjuedes@urmgroup.com
For: UTILITY RESOURCE MANAGEMENT GROUP, INC.

Ourania M. Vlahos
Legal Division
RM. 5127
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2387
omv@cpuc.ca.gov

Stephen Zaminski
STARWOOD ENERGY GROUP
591 WEST PUTNAM AVENUE
GREENWICH CT 06830
szaminski@starwood.com

Seth D. Hilton
STOEL RIVES, LLP
555 MONTGOMERY ST., SUITE 1288
SAN FRANCISCO CA 94111
(415) 617-8943
sdhilton@stoel.com

Gwenn O'Hara
STRADLING, YOCCA, CARLSON & RAUTH
980 NINTH STREET, SUITE 1480
SACRAMENTO CA 95814
go'hara@sycr.com

Jackson Isaacs
Law Student
UNIVERSITY OF SAN DIEGO SCHOOL OF LAW
5771 LA JOLLA BLVD. APT C
LA JOLLA CA 92037
(858) 204-5892
jackson.isaacs@gmail.com

Michael Shames
UTILITY CONSUMERS ACTION NETWORK
3100 FIFTH AVENUE, SUITE B
SAN DIEGO CA 92103
(619) 696-6966
mshames@ucan.org

Paul Kerkorian
UTILITY COST MANAGEMENT LLC
6475 N. PALM AVENUE, SUITE 105
FRESNO CA 93704
(559) 261-9230
pk@utilitycostmanagement.com

***** SERVICE LIST *****

Last Updated on 17-NOV-2009 by: RC4
R0705025 LIST

Lon W. House, Ph.D
WEC
4901 FLYING C RD.
CAMERON PARK CA 95682
(530) 676-8956
lwhouse@innercite.com

Joseph M. Karp
Attorney At Law
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FL
SAN FRANCISCO CA 94111-5894
(415) 591-1529
jkarp@winston.com

Thomas W. Solomon
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO CA 94111-5894
(415) 591-1000
tsolomon@winston.com