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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

ADMINISTRATIVE LAW JUDGES' RULING REQUESTING THAT PARTIES ADDRESS AN ADDITIONAL LEGAL ISSUE IN THEIR REPLY BRIEFS, DUE AUGUST 15, 2007

1. Summary

In our ruling of July 19, 2007, we requested comments and legal briefs on the Market Advisory Committee Report and designated August 15, 2007 as the due date for reply briefs. That ruling also provided notice of an en banc hearing to be held on August 21, 2007 on potential designs for a regulatory program to address greenhouse gas emissions in the electricity sector, in particular, the Market Advisory Committee's "first-seller" approach to the point of regulation. Today's ruling requests that parties address an additional issue in their reply briefs.

2. Discussion and Additional Question

In order to further develop parties' positions prior to the en banc hearing scheduled for August 21, 2007, we hereby request that parties address in their reply briefs the following Federal Power Act issue, in addition to any other matters appropriate for reply briefs.

Federal Power Act

54. To what degree if any, does the following line of cases suggest that a deliverer/first seller approach is more likely than a load-based approach to be subject to preemption under the Federal Power Act? *Northern Natural Gas Co. v. Kansas*, 372 U.S. 84 (1963); *Transcontinental Gas Pipe Line Corp. v. Mississippi,* 474 U.S. 409 (1986); *Northwest Central Pipeline Corp. v. Kansas*, 489 U.S. 493 (1989). Please consider these cases in light of *Calif. ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 842 n8 (2004) (finding that the Federal Power Act and the Natural Gas Act are similar statutory schemes and therefore case law for the two Acts is often interchangeable). Please provide a detailed analysis.

Therefore, **IT IS RULED** that, as directed in this ruling, parties should address the additional question for legal briefing in their reply comments due no later than August 15, 2007.

Dated August 8, 2007, at San Francisco, California.

/s/ JONATHAN LAKRITZ/CFT	/s/ CHARLOTTE F. TERKEURST
Jonathan Lakritz Administrative Law Judge	Charlotte F. TerKeurst Administrative Law Judge

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Dated August 8, 2007, at San Francisco, California.

/s/ ROSCELLA GONZALEZ
Roscella Gonzalez

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

********** **APPEARANCES** **********

Michael Mazur
Chief Technical Officer
3 PHASES RENEWABLES, LLC
2100 SEPULVEDA BLVD., SUITE 38
MANHATTAN BEACH CA 90266
(310) 798-5275
mmazur@3phasesrenewables.com
For: 3 Phases Energy Services

Robert R. Taylor
AGRICULTURAL IMPROVEMENT AND POWER DIST.
1600 NORTH PRIEST DRIVE, PAB221
TEMPE AZ 85281
(602) 236-3487
rrtaylor@srpnet.com

Donald Brookhyser
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND OR 97210
(503) 402-8702
deb@a-klaw.com
For: Cogeneration Association of California

Evelyn Kahl
Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
ek@a-klaw.com
For: Energy Producers & Users Coalition

Michael P. Alcantar
Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
mpa@a-klaw.com
For: Cogeneration Association of California

Seema Srinivasan
Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
sls@a-klaw.com

Mike Lamond
ALPINE NATURAL GAS OPERATING CO. #1 LLC
PO BOX 550
VALLEY SPRINGS CA 95252
(209) 772-3006
anginc@goldrush.com

Paul Delaney
AMERICAN UTILITY NETWORK (A.U.N.)
10705 DEER CANYON DRIVE
ALTA LOMA CA 91737
(805) 390-5632
pssed@adelphia.net
For: American Utility Network

Edward G Poole
ANDERSON DONOVAN & POOLE
601 CALIFORNIA STREET SUITE 1300
SAN FRANCISCO CA 94108
(415) 956-6413
epoole@adplaw.com
For: San Francisco Community Power

Gloria Britton
ANZA ELECTRIC COOPERATIVE, INC.
58470 HWY 371
PO BOX 391909
ANZA CA 92539
GloriaB@anzaelectric.org
For: Anza Electric Cooperative Inc.

Jenine Schenk
APS ENERGY SERVICES
400 E. VAN BUREN STREET, SUITE 750
PHOENIX AZ 85004
(602) 744-5140
jenine.schenk@apses.com
For: APS Energy Services Company

Tara Knox
AVISTA CORPORATION
PO BOX 3727
SPOKANE WA 99220

Steven S. Schleimer
Director,Compliance & Regulatory Affairs
BARCLAYS BANK, PLC
200 PARK AVENUE, FIFTH FLOOR
NEW YORK NY 10166
steven.schleimer@barclayscapital.com
For: Barclays Capital

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

For: Energy Producers & Users Coalition

Bruce Mclaughlin
C.ANTHONY BRAUN
BRAUN & BLAISING, P.C.
915 L STREET, SUITE 1270
SACRAMENTO CA 95814
(916) 326-5812
mclaughlin@braunlegal.com
For: California Municipal Utilities Association

Janill Richards
Deputy Attorney General
CALIFORNIA ATTORNEY GENERAL'S OFFICE
1515 CLAY STREET, 20TH FLOOR
OAKLAND CA 94702
(510) 622-2130
janill.richards@doj.ca.gov
For: People of the State of California

Beth Vaughan
CALIFORNIA COGENERATION COUNCIL
4391 N. MARSH ELDER COURT
CONCORD CA 94521
(925) 408-5142
beth@beth411.com

Maureen Lennon
CALIFORNIA COGENERATION COUNCIL
595 EAST COLORADO BLVD., SUITE 623
PASADENA CA 91101
(818) 802-1004
maureen@lennonassociates.com
For: California Cogeneration Council

Avis Kowalewski
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON CA 94588
(925) 479-6640
kowalewskia@calpine.com

Kevin Boudreaux
CALPINE POWER AMERICA-CA, LLC
717 TEXAS AVENUE, SUITE 1000
HOUSTON TX 77002
kevin.boudreaux@calpine.com
For: Calpine Power America

Tiffany Rau
Policy And Communications Manager

Lars Kvale
CENTER FOR RESOURCE SOLUTIONS
PRESIDIO BUILDIING 97
PO BOX 39512
SAN FRANCISCO CA 94129
(415) 561-2110
lars@resource-solutions.org
For: Center for Resource Solution

Jeanne M. Sole
Deputy City Attorney
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM. 234
SAN FRANCISCO CA 94102
(415) 554-4619
jeanne.sole@sfgov.org
For: City and County of San Francisco

Leonard Devanna
Executive Vice President
CLEAN ENERGY SYSTEMS, INC.
11330 SUNCO DRIVE, SUITE A
RANCHO CORDOVA CA 95742
(916) 379-9143
lrdevanna-rf@cleanenergysystems.com
For: Clean Energy Systems, Inc.

Lynelle Lund
COMMERCE ENERGY, INC.
600 ANTON BLVD., SUITE 2000
COSTA MESA CA 92626
(714) 259-2536
llund@commerceenergy.com
For: Commerce Energy, Inc.

Tamlyn M. Hunt
Energy Program Director
COMMUNITY ENVIRONMENTAL COUNCIL
26 W. ANAPAMU ST., 2/F
SANTA BARBARA CA 93101
(805) 963-0583 122
thunt@cecmail.org
For: Community Environmental Council

Mary Lynch
Vp - Regulatory And Legislative Affairs
CONSTELLATION ENERGY COMMODITIES GROUP
2377 GOLD MEDAL WAY, SUITE 100
GOLD RIVER CA 95670

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

CARSON HYDROGEN POWER PROJECT LLC
ONE WORLD TRADE CENTER, SUITE 1600
LONG BEACH CA 90831-1600
(562) 276-1510
tiffany.rau@bp.com
For: Carson Hydrogen Power Project LLC

Lisa M. Decker
CONSTELLATION ENERGY GROUP, INC.
111 MARKET PLACE, SUITE 500
BALTIMORE MD 21202
(410) 468-3792
lisa.decker@constellation.com
For: Constellation New Energy, Inc.

Gregory Koiser
CONSTELLATION NEW ENERGY, INC.
350 SOUTH GRAND AVENUE, SUITE 3800
LOS ANGELES CA 90071
gregory.koiser@constellation.com
For: Constellation New Energy

William H. Chen
CONSTELLATION NEW ENERGY, INC.
SPEAR TOWER, 36TH FLOOR
ONE MARKET STREET
SAN FRANCISCO CA 94105
(925) 287-4703
bill.chen@constellation.com

Sean P. Beatty
Attorney At Law
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA ST., 17TH FLOOR
SAN FRANCISCO CA 94111
(415) 765-0302
sbeatty@cwclaw.com

Cindy Adams
COVANTA ENERGY CORPORATION
40 LANE ROAD
FAIRFIELD NJ 07004
(973) 882-4144
cadams@covantaenergy.com
For: Covanta Energy Corporation

R. Thomas Beach
CROSSBORDER ENERGY
2560 NINTH STREET, SUITE 213A
BERKELEY CA 94710-2557
(510) 549-6922
(916) 526-2860
mary.lynch@constellation.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: California Clean DG Coalition/Northwest Natural Gas

Baldassaro Di Capo
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 351-4400
For: California Independent System Operator

Daniel W. Douglass
Attorney At Law
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS CA 91367
(818) 961-3001
douglass@energyattorney.com
For: Western Power Trading Forum

Donald C. Liddell, P.C.
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO CA 92103
(619) 993-9096
liddell@energyattorney.com
For: California Natural Gas Vehicle Association

Gregory Klatt
Attorney At Law
DOUGLASS & LIDDELL
411 E. HUNTINGTON DRIVE, STE. 107-356
ARCADIA CA 91006
(818) 961-3002
klatt@energyattorney.com
For: Alliance for Retail Energy Markets

Jane E. Luckhardt
Attorney At Law
DOWNEY BRAND LLP

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

tomb@crossborderenergy.com
For: the California Cogeneration Council

Jeffrey P. Gray
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6500
jeffgray@dwt.com
For: Calpine Corporation

Stephen G. Koerner, Esq.
EL PASO CORPORATION
WESTERN PIPELINES
2 NORTH NEVADA AVENUE
COLORADO SPRINGS CO 80903
(719) 520-4443
steve.koerner@elpaso.com
For: El Paso Natural Gas Company/Mojave Pipeline Company

William W. Westerfield, 111
Attorney At Law
ELLISON, SCHNEIDER & HARRIS L.L.P.
2015 H STREET
SACRAMENTO CA 95814
(916) 447-2166
www@eslawfirm.com
For: Sierra Pacific Power Company

Jeffery D. Harris
Attorney At Law
ELLISON, SCHNEIDER & HARRIS LLP
2015 H STREET
SACRAMENTO CA 95814
(916) 447-2166
jdh@eslawfirm.com
For: LS Power Generation, LLC

Andrew Brown
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO CA 95811
(916) 447-2166
abb@eslawfirm.com
For: Constellation New Energy, Inc.,Constellation Energy Commodities Group, Inc.Constellation Genrat

Greggory L. Wheatland
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
555 CAPITOL MALL, 10TH FLOOR
SACRAMENTO CA 95814
(916) 444-1000
jluckhardt@downeybrand.com
For: Sacramento Municipal Utility District

Ronald Moore
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

James D. Squeri
Attorney At Law
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP
505 SANSOME STREET, STE 900
SAN FRANCISCO CA 94111
(415) 392-7900
jsqueri@gmssr.com
For: Powerex Corp.

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@gmssr.com
For: Wild Goose Storage, LLC

Brian T. Cragg
Attorney At Law
GOODIN, MACBRIDE, SQUERI, RITCHIE & DAY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
bcragg@goodinmacbride.com
For: Independent Energy Producers Association

Vidhya Prabhakaran
GOODIN,MACBRIDE,SQUERI,DAY,LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

2015 H STREET
SACRAMENTO CA 95814
(916) 447-2166
glw@eslawfirm.com
For: LS Power, Inc.

Virgil Welch
Climate Campaign Coordinator
ENVIRONMENTAL DEFENSE
1107 9TH STREET, SUITE 540
SACRAMENTO CA 95814
(916) 492-7078
vwelch@environmentaldefense.org

Norman A. Pedersen
Attorney At Law
HANNA AND MORTON, LLP
444 SOUTH FLOWER STREET, NO. 1500
LOS ANGELES CA 90071
(213) 430-2510
npedersen@hanmor.com
For: Southern California Generation Coalition/Southern California Public Power Authority

Ian Carter
Policy Coordinator-North America
INTERNATIONAL EMISSIONS TRADING ASSN.
350 SPARKS STREET, STE. 809
OTTAWA ON K1R 7S8
CANADA
(613) 594-3912
carter@ieta.org
For: International Emissions Trading Association

Curtis L. Kebler
J. ARON & COMPANY
SUITE 2600
2121 AVENUE OF THE STARS
LOS ANGELES CA 90067
(310) 407-5619
curtis.kebler@gs.com
For: J. Aron

Downey Brand
JANE E. LUCKHARDT
555 CAPITOL MALL, 10TH FLOOR
SACRAMENTO CA 95814-4686
(916) 444-1000
For: Sacramento Municipal

vprabhakaran@goodinmacbride.com
For: Independent Energy Producers Association

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

Thomas Dill
President
LODI GAS STORAGE, L.L.C.
1021 MAIN ST STE 1500
HOUSTON TX 77002-6509
(281) 679-3599
trdill@westernhubs.com

Ronald F. Deaton
LOS ANGELES DEPARTMENT OF WATER & POWER
111 NORTH HOPE STREET, ROOM 1550
LOS ANGELES CA 90012
(213) 367-1320
ron.deaton@ladwp.com
For: Los Angeles Department of Water and Power

Diana L. Lee
Legal Division
RM. 4300
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-4342
dil@cpuc.ca.gov

David L. Huard
Attorney At Law
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES CA 90064
(310) 312-4247
dhuard@manatt.com
For: Los Angeles County/Trans Canada Pipelines

C. Susie Berlin
BARRY F. MCCARTHY
Attorney At Law

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

Dennis M.P. Ehling
Attorney At Law
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM
10100 SANTA MONICA BLVD., 7TH FLOOR
LOS ANGELES CA 90067
(310) 552-5000
dehling@klng.com
For: City of Vernon

William H. Booth
Attorney At Law
LAW OFFICES OF WILLIAM H. BOOTH
1500 NEWELL AVENUE, 5TH FLOOR
WALNUT CREEK CA 94596
(925) 296-2460
wbooth@booth-law.com
For: California Large Energy Consumers Association

Adam J. Katz
MCDERMOTT WILL & EMERY LLP
600 13TH STREET, NW.
WASHINGTON DC 20005
(202) 756-8088
ajkatz@mwe.com
For: Morgan Stanley Capital Group, Inc.

Catherine M. Krupka
MCDERMOTT WILL AND EMERY LLP
600 THIRTEEN STREEET, NW
WASHINGTON DC 20005
(202) 775-6800
ckrupka@mwe.com
For: Morgan Stanley Capital Group, Inc.

Ann G. Grimaldi
MCKENNA LONG & ALDRIDGE LLP
101 CALIFORNIA STREET, 41ST FLOOR
SAN FRANCISCO CA 94111
(415) 267-4000
agrimaldi@mckennalong.com
For: Center for Energy and Economic Development

Paul M. Seby
MCKENNA LONG & ALDRIDGE LLP
1875 LAWRENCE STREET, SUITE 200
DENVER CO 80202
(303) 634-4000
pseby@mckennalong.com
For: Center for Energy and Economic Development

Timothy R. Odil
MC CARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, SUITE 501
SAN JOSE CA 95113
(408) 288-2080
sberlin@mccarthylaw.com
For: Northern California Power Agency

Barry F. Mccarthy
Attorney At Law
MCCARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, SUITE 501
SAN JOSE CA 95113
(408) 288-2080
bmcc@mccarthylaw.com
For: Northern California Generation Coalition

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

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

John Jensen
JOHN DUTCHER
President
MOUNTAIN UTILITIES
PO BOX 205
KIRKWOOD CA 95646
(209) 258-7444
jjensen@kirkwood.com
For: Mountain Utilities

Sara Steck Myers
Attorney At Law
122 28TH AVENUE
SAN FRANCISCO CA 94121
(415) 387-1904
ssmyers@att.net
For: Center for Energy Efficiency and Renewable Technologies

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

MCKENNA LONG & ALDRIDGE LLP
1875 LAWRENCE STREET, SUITE 200
DENVER CO 80202
(303) 634-4000
todil@mckennalong.com
For: Center for Energy and Economic Development

Cathy S. Woollums
MIDAMERICAN ENERGY HOLDINGS COMPANY
106 EAST SECOND STREET
DAVENPORT IA 52801
(563) 333-8009
cswoollums@midamerican.com
For: Kern River Gas Transmission

Kerry Hattevik
MIRANT CORPORATION
696 WEST 10TH STREET
PITTSBURG CA 94565
(925) 427-3483
kerry.hattevik@mirant.com
For: Mirant Corporation

Brian K. Cherry
Director Regulatory Relations
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B10C
SAN FRANCISCO CA 94106
(415) 973-7226
bkc7@pge.com
For: Pacific Gas and Electric Company

Christopher J. Warner
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, PO BOX 7442
SAN FRANCISCO CA 94120-7442
(415) 973-6695
cjw5@pge.com
For: Pacific Gas and Electric

Cynthia Schultz
Regulatory Filing Coordinator
PACIFIC POWER AND LIGHT COMPANY
825 N.E. MULTNOMAH
PORTLAND OR 97232
(503) 813-5000
cynthia.schultz@pacificorp.com

Kyle L. Davis
PACIFICORP

Audrey Chang
KRISTIN GRENFELL
Staff Scientist
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
achang@nrdc.org

E.J. Wright
OCCIDENTAL POWER SERVICES, INC.
5 GREENWAY PLAZA, SUITE 110
HOUSTON TX 77046
(562) 624-3309
ej_wright@oxy.com

Don Wood
PACIFIC ENERGY POLICY CENTER
4539 LEE AVENUE
LA MESA CA 91941
(619) 463-9035
dwood8@cox.net

Jessica Nelson
PLUMAS-SIERRA RURAL ELECTRIC CO-OP
73233 STATE ROUTE 70, STE A
PORTOLA CA 96122-7064
notice@psrec.coop
For: Plumas-Sierra Rural Electric Coop

Rick C. Noger
PRAXAIR PLAINFIELD, INC.
2711 CENTERVILLE ROAD, SUITE 400
WILMINGTON DE 19808
(925) 866-6809
rick_noger@praxair.com
For: Praxair Plainfield, Inc.

J. Andrew Hoerner
REDEFINING PROGRESS
1904 FRANKLIN STREET
OAKLAND CA 94612
(510) 507-4820
hoerner@redefiningprogress.org

Steven M. Cohn
Assistant General Counsel
SACRAMENTO MUNICIPAL UTILITY DISTRICT
PO BOX 15830
SACRAMENTO CA 95852-1830

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

825 NE MULTNOMAH,
PORTLAND OR 97232
(503) 813-6601
kyle.l.davis@pacificorp.com
For: PacifiCorp

Ryan Flynn
PACIFICORP
825 NE MULTNOMAH STREET, 18TH FLOOR
PORTLAND OR 97232
(503) 813-5854
ryan.flynn@pacificorp.com

Reid A. Winthrop
PILOT POWER GROUP, INC.
8910 UNIVERSITY CENTER LANE, SUITE 520
SAN DIEGO CA 92122
(858) 678-0118
rwinthrop@pilotpowergroup.com

Thomas Darton
PILOT POWER GROUP, INC.
9320 CHESAPEAKE DRIVE, SUITE 112
SAN DIEGO CA 92123
(858) 627-9577
tdarton@pilotpowergroup.com
For: Pilot Power Group

Allen K. Trial
SDGE&SCG
HQ-13
101 ASH STREET
SAN DIEGO CA 92101
(619) 699-5162
atrial@sempra.com

Aimee M. Smith
Attorney At Law
SEMPRA ENERGY
101 ASH STREET HQ13
SAN DIEGO CA 92101
(619) 699-5042
amsmith@sempra.com
For: San Diego Gas & Electric Company and Southern California

(916) 732-6121
scohn@smud.org
For: Sacramento Municipal Utility District

John B. Weldon, Jr.
SALMON, LEWIS & WELDON, P.L.C.
2850 EAST CAMELBACK ROAD, SUITE 200
PHOENIX AZ 85016
(602) 801-9060
jbw@slwplc.com
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
(602) 236-5262
kelly.barr@srpnet.com
For: Salt River Project Agricultural Improvement and Power District

Steve Rahon
LEE SCHAVRIEN
Director, Tariff & Regulatory Accounts
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32C
SAN DIEGO CA 92123-1548
lschavrien@semprautilities.com
For: San Diego Gas & Electric Company

Marcie Milner
Director - Regulatory Affairs
SHELL TRADING GAS & POWER COMPANY
4445 EASTGATE MALL, SUITE 100
SAN DIEGO CA 92121
(858) 526-2106
marcie.milner@shell.com

Laura I. Genao
MICHAEL D. MONTOYA
Attorney
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-6842
Laura.Genao@sce.com

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

Gas Company

Dan Hecht
SEMPRA ENERGY
101 ASH STREET
SAN DIEGO CA 92101
(203) 355-5417
dhecht@sempratrading.com

Daniel A. King
SEMPRA ENERGY
101 ASH STREET, HQ 12
SAN DIEGO CA 92101
(619) 696-4350
daking@sempra.com

Symone Vongdeuane
SEMPRA ENERGY SOLUTIONS
101 ASH STREET, HQ09
SAN DIEGO CA 92101-3017
(619) 696-4996
svongdeuane@semprasolutions.com
For: Sempra Energy Solutions

Theodore Roberts
Attorney At Law
SEMPRA GLOBAL
101 ASH STREET, HQ 13D
SAN DIEGO CA 92101-3017
(619) 699-5111
troberts@sempra.com
For: Sempra Global/Sempra Energy Solutions

Alvin Pak
SEMPRA GLOBAL ENTERPRISES
101 ASH STREET
SAN DIEGO CA 92101
(619) 696-4022
apak@sempraglobal
For: Sempra Global Enterprises

Lad Lorenz
V.P. Regulatory Affairs
SOUTHERN CALIFORNIA GAS COMPANY
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO CA 94102
(415) 202-9986
llorenz@semprautilities.com

Akbar Jazayeiri
Director Of Revenue & Tarriffs
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. ROOM 390
ROSEMEAD CA 91770
akbar.jazayeri@sce.com
For: Southern California Edison Company

Annette Gilliam
FRANK J. COOLEY
Attorney At Law
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-4880
annette.gilliam@sce.com
For: Southern California Edison

Cathy A. Karlstad
FRANK J. COOLEY
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
(626) 302-1096
cathy.karlstad@sce.com
For: Southern California Edison Company

John P. Hughes
Manager, Regulatory Affairs
SOUTHERN CALIFORNIA EDISON COMPANY
601 VAN NESS AVENUE, STE. 2040
SAN FRANCISCO CA 94102
(415) 775-1856
john.hughes@sce.com

Keith R. Mccrea
Attorney At Law
SUTHERLAND, ASBILL & BRENNAN, LLP
1275 PENNSYLVANIA AVE., N.W.
WASHINGTON DC 20004-2415
(202) 383-0100
keith.mccrea@sablaw.com
For: California Manufacturers & Technology Assn.

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

Sid Newsome
Tariff Manager
SOUTHERN CALIFORNIA GAS COMPANY
GT 14 D6
555 WEST 5TH STREET
LOS ANGELES CA 90051
(213) 244-2846
snewsom@semprautilities.com

Richard Helgeson
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORI
225 S. LAKE AVE., SUITE 1250
PASADENA CA 91101
(626) 793-9364
rhelgeson@scppa.org
For: Southern California Public Power Authority

Roger C. Montgomery
Vice President, Pricing
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS NV 89193-8510
(702) 867-7321
roger.montgomery@swgas.com

Andrea Weller
STRATEGIC ENERGY
3130 D BALFOUR RD., SUITE 290
BRENTWOOD CA 94513
(916) 759-7052
aweller@sel.com
For: Strategic Energy

Jennifer Chamberlin
STRATEGIC ENERGY, LLC
2633 WELLINGTON CT.
CLYDE CA 94520
(925) 969-1031
jchamberlin@strategicenergy.com
For: Strategic Energy, LLC

Dan Silveria
SURPRISE VALLEY ELECTRIC CORPORATION
PO BOX 691
ALTURAS CA 96101
(916) 233-3511
dansvec@hdo.net
For: Surprise Valley Electric Cooperative

F. Jackson Stoddard
Legal Division
RM. 5125
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-5888
fjs@cpuc.ca.gov

Marcel Hawiger
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
marcel@turn.org

Nina Suetake
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., STE 350
SAN FRANCISCO CA 94102
(415) 929-8876
nsuetake@turn.org

Cliff Chen
UNION OF CONCERNED SCIENTIST
2397 SHATTUCK AVENUE, STE 203
BERKELEY CA 94704
(510) 843-1872
cchen@ucsusa.org
For: Union of Concerned Scientists

Raymond J. Czahar, C.P.A.
Chief Financial Officer
WEST COAST GAS COMPANY
9203 BEATTY DRIVE
SACRAMENTO CA 95826
(916) 364-4100
westgas@aol.com

Steven S. Michel
WESTERN RESOURCE ADVOCATES
2025 SENDA DE ANDRES
SANTA FE NM 87501
(505) 995-9951
smichel@westernresources.org
For: Western Resource Advocates

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

Jason Dubchak
Associate General Counsel
WILD GOOSE STORAGE, LLC
1200 855 2ND STREET, S.W.
CALGARY AB T2P 4Z5
CANADA
(403) 513-8647
jason.dubchak@niskags.com
For: Wild Goose Storage, LLC

Joseph M. Karp
Attorney At Law
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO CA 94111-5802
(415) 591-1529
jkarp@winston.com
For: California Cogeneration Council

Karen Bowen
Attorney At Law
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO CA 94111
(415) 544-6305
kbowen@winston.com
For: Mirant California, LLCMirant Delta,LLC, and Mirant Potrero, LLC

Lisa A. Cottle
Attorney At Law
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO CA 94111
(415) 544-1105
lcottle@winston.com
For: Mirant California, LLC,Mirant Delta, LLC, and Mirant Potrero, LLC

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

Pam Burmich
AIR RESOURCES BOAD
1001 I STREET, BOX 2815
SACRAMENTO CA 95812
(916) 323-8475
pburmich@arb.ca.gov

Michelle Garcia
AIR RESOURCES BOARD

Ken Alex
PO BOX 944255
1300 I STREET, SUITE 125
SACRAMENTO CA 94244-2550
(916) 327-7851
ken.alex@doj.ca.gov
For: People of the State of California

Jeff Brown
Energy Division
505 VAN NESS AVE
San Francisco CA 94102 3298
jb1@cpuc.ca.gov

Clarence Binninger
Deputy Attorney General
CALIFORNIA ATTORNEY GENERAL'S OFFICE
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANICSCO CA 94102
(415) 703-5528
clarence.binninger@doj.ca.gov

Michael Scheible
Deputy Executive Officer
CALIFORNIA AIR RESOURCES BOARD
1001 I STREET
SACRAMENTO CA 95677
(916) 324-6021
mscheibl@arb.ca.gov
For: California Air Resources Board

David Zonana
Deputy Attorney General
CALIFORNIA ATTORNEY GENERAL'S OFFICE
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO CA 94102
(415) 703-5524
david.zonana@doj.ca.gov

Holly B. Cronin
State Water Project Operations Div
CALIFORNIA DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., LL-90
SACRAMENTO CA 95821
(916) 574-0708
hcronin@water.ca.gov

Carol J. Hurlock
CALIFORNIA DEPT. OF WATER RESOURCES

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

1001 I STREET
SACRAMENTO CA 95814
(916) 322-8387
mgarcia@arb.ca.gov

JOINT OPERATIONS CENTER
3310 EL CAMINO AVE. RM 300
SACRAMENTO CA 95821
(916) 574-1367
hurlock@water.ca.gov

B. B. Blevins
Executive Director
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-39
SACRAMENTO CA 95814
bblevins@energy.state.ca.us
For: California Energy Commission

Daryl Metz
CALIFORNIA ENERGY COMMISSION
1516 9TH ST., MS-20
SACRAMENTO CA 95814
(916) 654-4731
dmetz@energy.state.ca.us

Karen Griffin
Executive Office
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 39
SACRAMENTO CA 95814
(916) 654-4833
kgriffin@energy.state.ca.us

Lisa Decarlo
Staff Counsel
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET MS-14
SACRAMENTO CA 95814
(916) 654-5195
ldecarlo@energy.state.ca.us

Marc Pryor
CALIFORNIA ENERGY COMMISSION
1516 9TH ST., MS-20
SACRAMENTO CA 95814
(916) 653-0159
mpryor@energy.state.ca.us

Pierre H. Duvair
CALIFORNIA ENERGY COMMISSION

Julie Gill
External Affairs Manager
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 361-2221
jgill@caiso.com
For: CAISO

Mary Mcdonald
Director Of State Affairs
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 802-3576
For: CAISO

Philip D. Pettingill
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7241
ppettingill@caiso.com
For: CAISO

Baldassaro Dicapo
CALIFORNIA ISO
LEGAL AND REGULATORY DEPARTMENT
151 BLUE RAVINE ROAD
FOLSOM CA 95630
bdicapo@caiso.com

Eugene Cadenasso
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1214
cpe@cpuc.ca.gov

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

1516 NINTH STREET, MS-41
SACRAMENTO CA 95814
(916) 653-8685
pduvair@energy.state.ca.us

Judith B. Sanders
Attorney At Law
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7143
jsanders@caiso.com
For: CAISO

Matthew Deal
Executive Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-5649
mjd@cpuc.ca.gov

Julie A. Fitch
Division of Strategic Planning
RM. 5119
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 355-5552
jf2@cpuc.ca.gov

Cathleen A. Fogel
Energy Division
505 VAN NESS AVE
San Francisco CA 94102 3298
cf1@cpuc.ca.gov

Jamie Fordyce
Division of Strategic Planning
AREA 5-B
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2778
jbf@cpuc.ca.gov

Andrew Campbell
Executive Division
RM. 5203
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2501
agc@cpuc.ca.gov

Theresa Cho
Executive Division
RM. 5207
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2682
tcx@cpuc.ca.gov

Jacqueline Greig
Division of Ratepayer Advocates
RM. 4102
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1079
jnm@cpuc.ca.gov

Judith Ikle
Energy Division
RM. 4012
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1486
jci@cpuc.ca.gov
For: Energy Resources Branch

Sara M. Kamins
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1388
smk@cpuc.ca.gov

Jonathan Lakritz
Administrative Law Judge Division
RM. 5020
505 VAN NESS AVE
San Francisco CA 94102 3298

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

Meg Gottstein
Administrative Law Judge
PO BOX 210/21496 NATIONAL STREET
VOLCANO CA 95689
(209) 296-4979
gottstein@volcano.net

(415) 703-5235
jol@cpuc.ca.gov

James Loewen
Energy Division
320 WEST 4TH STREET SUITE 500
Los Angeles CA 90013
(213) 620-6341
loe@cpuc.ca.gov

Anne Gillette
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-5219
aeg@cpuc.ca.gov

Jaclyn Marks
Executive Division
RM. 5306
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2727
jm3@cpuc.ca.gov

Meg Gottstein
Administrative Law Judge Division
RM. 2106
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-4802
meg@cpuc.ca.gov

Wade McCartney
Division of Strategic Planning
770 L STREET, SUITE 1050
Sacramento CA 95814
(916) 324-9010
wsm@cpuc.ca.gov

Ed Moldavsky
Legal Division
RM. 5130
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-5134
edm@cpuc.ca.gov

Deborah Slon
Deputy Attorney General, Environment
OFFICE OF THE ATTORNEY GENERAL
1300 I STREET, 15TH FLOOR
SACRAMENTO CA 95814
(916) 327-7851
deborah.slon@doj.ca.gov

Rahmon Momoh
Division of Ratepayer Advocates
RM. 4205
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1725
rmm@cpuc.ca.gov

Joel T. Perlstein
Legal Division
RM. 5133
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1082
jtp@cpuc.ca.gov

Beth Moore
Division of Ratepayer Advocates
RM. 4103
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-5250

Paul S. Phillips
Division of Ratepayer Advocates
RM. 4101
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2039

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

blm@cpuc.ca.gov

Harvey Y. Morris
Legal Division
RM. 5036
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1086
hym@cpuc.ca.gov

Lainie Motamedi
Division of Strategic Planning
RM. 5119
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1764
lrm@cpuc.ca.gov

Scott Murtishaw
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-5863
sgm@cpuc.ca.gov

Richard A. Myers
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1228
ram@cpuc.ca.gov

Pearlie Sabino
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1883
pzs@cpuc.ca.gov

Jason R. Salmi Klotz
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-3421
jk1@cpuc.ca.gov

Don Schultz
psp@cpuc.ca.gov

Kristin Ralff Douglas
Division of Strategic Planning
RM. 5119
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2826
krd@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

Nancy Ryan
Executive Division
RM. 5217
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1823
ner@cpuc.ca.gov

Bill Lockyer
State Attorney General
STATE OF CALIFORNIA, DEPT OF JUSTICE
PO BOX 944255
SACRAMENTO CA 94244-2550
(916) 445-9555
ken.alex@doj.ca.gov

Christine S. Tam
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 355-5556
tam@cpuc.ca.gov

Charlotte TerKeurst
Administrative Law Judge Division
RM. 5117
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-3124
cft@cpuc.ca.gov

Pamela Wellner

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

Division of Ratepayer Advocates
RM. SCTO
770 L STREET, SUITE 1050
Sacramento CA 95814
(916) 327-2409
dks@cpuc.ca.gov

Sean A. Simon
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-3791
svn@cpuc.ca.gov

Donald R. Smith
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1562
dsh@cpuc.ca.gov

Henry Stern
Administrative Law Judge Division
RM. 2106
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1232
hs1@cpuc.ca.gov

Jeorge S. Tagnipes
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2451
jst@cpuc.ca.gov

Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-5906
pw1@cpuc.ca.gov

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

Gerald L. Lahr
ABAG POWER
101 EIGHTH STREET
OAKLAND CA 94607
(510) 464-7908
JerryL@abag.ca.gov
For: Association of Bay Area Governments

Marc D. Joseph
ADAMS BRADWELL JOSEPH & CARDOZO
601 GATEWAY BLVD. STE 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
mdjoseph@adamsbroadwell.com
For: California Unions for Reliable Energy&Coalition of California Utility Employees

Gloria D. Smith
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., SUITE 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
gsmith@adamsbroadwell.com

Dean R. Tibbs
President
ADVANCED ENERGY STRATEGIES, INC.
1390 WILLOW PASS ROAD, SUITE 610
CONCORD CA 94520
(925) 521-0203
dtibbs@aes4u.com

Vitaly Lee
AES ALAMITOS, LLC
690 N. STUDEBAKER ROAD
LONG BEACH CA 90803
(562) 493-7307
vitaly.lee@aes.com

John Laun
APOGEE INTERACTIVE, INC.
1220 ROSECRANS ST., SUITE 308
SAN DIEGO CA 92106
(619) 840-4804
jlaun@apogee.net

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

Michael Waugh
AIR RESOURCES BOARD
1001 10TH STREET
SACRAMENTO CA 95814
(916) 445-6018
mwaugh@arb.ca.gov

Webster Tasat
AIR RESOURCES BOARD
1001 I STREET
SACRAMENTO CA 95814
(916) 323-4950
wtasat@arb.ca.gov

Karen Terranova
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, STE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
filings@a-klaw.com

Annie Stange
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND OR 97201
(503) 402-9900
sas@a-klaw.com

Elizabeth Westby
ALCANTAR & KAHL, LLP
1300 SW FIFTH AVENUE, SUITE 1700
PORTLAND OR 97201
(503) 402-8855
egw@a-klaw.com

Nora Sheriff
Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
nes@a-klaw.com

Carmen E. Baskette
Corporate Development Principal
594 HOWARD ST., SUITE 400
SAN FRANCISCO CA 94105
(415) 235-5562
cbaskette@enernoc.com

Sakis Asteriadis
APX INC
1270 FIFTH AVE., SUITE 15R
NEW YORK NY 10029
(212) 737-1708
sasteriadis@apx.com

John R. Redding
ARCTURUS ENERGY CONSULTING
44810 ROSEWOOD TERRACE
MENDOCINO CA 95460
(707) 937-0878
johnrredding@earthlink.net

George Hopley
BARCLAYS CAPITAL
200 PARK AVENUE
NEW YORK NY 10166
(212) 412-2079
george.hopley@barcap.com

Barbara R. Barkovich
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO CA 95460
(707) 937-6203
brbarkovich@earthlink.net

Curt Barry
717 K STREET, SUITE 503
SACRAMENTO CA 95814
(916) 449-6171
curt.barry@iwpnews.com

Reed V. Schmidt
Vice President
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY CA 94703
(510) 653-3399
rschmidt@bartlewells.com
For: California City-County Street Light Association

Annabelle Malins
Consul-Science And Technology
BRITISH CONSULATE-GENERAL
ONE SANSOME STREET, SUITE 850
SAN FRANCISCO CA 94104
(415) 617-1384

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

For: EnerNoc, Inc.

Ryan Wiser
BERKELEY LAB
MS-90-4000
ONE CYCLOTRON ROAD
BERKELEY CA 94720
(510) 486-5474
rhwiser@lbl.gov

Monica A. Schwebs, Esq.
BINGHAM MCCUTCHEN LLP
SUITE 210
1333 N. CALIFORNIA BLVD.
WALNUT CREEK CA 94596
(925) 937-8000
monica.schwebs@bingham.com

Greg Blue
140 MOUNTAIN PKWY.
CLAYTON CA 94517
(925) 323-3612
greg.blue@sbcglobal.net

James W. Keating
BP AMERICA, INC.
MAIL CODE 603-1E
150 W. WARRENVILLE RD.
NAPERVILLE IL 60563
james.keating@bp.com

David Branchcomb
BRANCHCOMB ASSOCIATES, LLC
9360 OAKTREE LANE
ORANGEVILLE CA 95662
(916) 988-5676
david@branchcomb.com

Clare Breidenich
224 1/2 24TH AVENUE EAST
SEATTLE WA 98112
(206) 829-9193
cbreidenich@yahoo.com

Sephra A. Ninow
Policy Analyst
annabelle.malins@fco.gov.uk

Bruno Jeider
BURBANK WATER & POWER
164 WEST MAGNOLIA BLVD.
BURBANK CA 91502
(818) 238-3700
bjeider@ci.burbank.ca.us

Dallas Burtraw
1616 P STREET, NW
WASHINGTON DC 20036
(202) 328-5087
burtraw@rff.org

Douglas Macmulllen
Chief, Power Planning Section
CA DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., ROOM 356
SACRAMENTO CA 95821
(916) 574-1363
dmacmll@water.ca.gov

Andrew Mcallister
Director Of Operations
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVE., SUITE 100
SAN DIEGO CA 92123
(858) 244-7282
andrew.mcallister@energycenter.org

Jack Burke
Legislative Affairs Manager
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVE., SUITE 100
SAN DIEGO CA 92123
(858) 244-7295
jack.burke@energycenter.org

Jennifer Porter
Policy Analyst
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO CA 92123
(858) 244-1180
jennifer.porter@energycenter.org

Grant Rosenblum, Esq.
CALIFORNIA ISO

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO CA 92123
(858) 244-1186
sephra.ninow@energycenter.org

Dan Adler
Director, Tech And Policy Development
CALIFORNIA CLEAN ENERGY FUND
5 THIRD STREET, SUITE 1125
SAN FRANCISCO CA 94103
(415) 957-0167
Dan.adler@calcef.org

Derek Markolf
CALIFORNIA CLIMATE ACTION REGISTRY
515 S. FLOWER STREET, SUITE 1640
LOS ANGELES CA 90071
(213) 891-1444
derek@climateregistry.org

David L. Modisette
Executive Director
CALIFORNIA ELECTRIC TRANSP. COALITION
1015 K STREET, SUITE 200
SACRAMENTO CA 95814
(916) 441-0702
dave@ppallc.com

CALIFORNIA ENERGY MARKETS
517-B POTRERO AVENUE
SAN FRANCISCO CA 94110
(415) 552-1764 X 17
cem@newsdata.com

Karen Norene Mills
Attorney At Law
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833
(916) 561-5655
kmills@cfbf.com

CALIFORNIA ISO
LEGAL AND REGULATORY DEPARTMENT
151 BLUE RAVINE ROAD
FOLSOM CA 95630
e-recipient@caiso.com

LEGAL AND REGULATORY DEPARTMENT
151 BLUE RAVINE ROAD
FOLSOM CA 95630
grosenblum@caiso.com

Robin Smutny-Jones
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 802-5298
rsmutny-jones@caiso.com

Sue Kateley
Executive Director
CALIFORNIA SOLAR ENERGY INDUSTRIES ASSN
PO BOX 782
RIO VISTA CA 94571
(916) 747-6987
info@calseia.org

Olof Bystrom
Director, Western Energy
CAMBRIDGE ENERGY RESEARCH ASSOCIATES
555 CALIFORNIA STREET, 3RD FLOOR
SAN FRANCISCO CA 94104
(415) 568-2214
obystrom@cera.com

Rachel Mcmahon
CEERT
1100 11TH STREET, SUITE 311
SACRAMENTO CA 95814
(916) 442-7785
rachel@ceert.org

Jen Mcgraw
CENTER FOR NEIGHBORHOOD TECHNOLOGY
PO BOX 14322
SAN FRANCISCO CA 94114
(415) 644-0877
jen@cnt.org

Steven G. Lins
CITY OF GLENDALE
OFFICE OF THE CITY ATTORNEY
613 EAST BROADWAY, SUITE 220
GLENDALE CA 91206-4394
(818) 548-3397
slins@ci.glendale.ca.us

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

Karla Dailey
CITY OF PALO ALTO
UTILITIES DEPARTMENT
BOX 10250
PALO ALTO CA 94303
(650) 329-2523
karla.dailey@cityofpaloalto.org

Elizabeth W. Hadley
CITY OF REDDING
777 CYPRESS AVENUE
REDDING CA 96001
(530) 722-7518
ehadley@reupower.com

James W. Tarnaghan
DUANE MORRIS LLP
SUITE 2000
ONE MARKET, SPEAR TOWER
SAN FRANCISCO CA 94105
(415) 957-3088
jwmctarnaghan@duanemorris.com
For: Lodi Gas Storage

Joseph M. Paul
Senior Corporate Counsel
DYNEGY, INC.
2420 CAMINO RAMON, SUITE 215
SAN RAMON CA 94583
(925) 866-4909
Joe.paul@dynegy.com

Jan Pepper
CLEAN POWER MARKETS, INC.
PO BOX 3206
418 BENVENUE AVENUE
LOS ALTOS CA 94024
(650) 949-5719
pepper@cleanpowermarkets.com

Jeffrey L. Hahn
COVANTA ENERGY CORPORATION
876 MT. VIEW DRIVE
LAFAYETTE CA 94549
(925) 284-2006
jhahn@covantaenergy.com

Steve Endo
DEPARTMENT OF WATER & POWER
150 S LOS ROBLES AVE., STE. 200
PASADENA CA 91101
(626) 744-6246
sendo@ci.pasadena.ca.us

Balwant S. Purewal
DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., LL-90
SACRAMENTO CA 95821
(916) 574-0668
bpurewal@water.ca.gov

William F. Dietrich
Attorney At Law
DIETRICH LAW

Mahlon Aldridge
ECOLOGY ACTION
PO BOX 1188
SANTA CRUZ CA 95060
(831) 426-5925 116
emahlon@ecoact.org

Aimee Barnes
Manager Regulatory Affairs
ECOSECURITIES
HARVARD SQUARE
206 W. BONITA AVENUE
CLAREMONT CA 91711
(909) 621-1358
aimee.branes@ecosecurities.com

Kyle Silon
ECOSECURITIES CONSULTING LIMITED
529 SE GRAND AVENUE
PORTLAND OR 97214
kyle.silon@ecosecurities.com

Karen Edson
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 351-4435

Fiji George
EL PASO CORPORATION
EL PASO BUILDING
PO BOX 2511
HOUSTON TX 77252

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

2977 YGNACIO VALLEY ROAD, 613
WALNUT CREEK CA 94598-3535
(415) 297-2356
dietrichlaw2@earthlink.net

Wayne Tomlinson
EL PASO CORPORATION
WESTERN PIPELINES
2 NORTH NEVADA AVENUE
COLORADO SPRINGS CO 80903
(719) 520-4579
william.tomlinson@elpaso.com

Ed Chiang
ELEMENT MARKETS, LLC
ONE SUGAR CREEK CENTER BLVD., SUITE 250
SUGAR LAND TX 77478
(281) 207-7227
echiang@elementmarkets.com

Lynn Haug
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO CA 95816
(916) 447-2166
lmh@eslawfirm.com

Shaun Ellis
2183 UNION STREET
SAN FRANCISCO CA 94123
(415) 771-7571 317
sellis@fypower.org

Amber Mahone
ENERGY & ENVIRONMENTAL ECONOMICS, INC.
101 MONTGOMERY STREET, SUITE 1600
SAN FRANCISCO CA 94104
(415) 391-5100
amber@ethree.com

Tom Hamilton
Managing Partner
ENERGY CONCIERGE SERVICES
321 MESA LILA RD
GLENDALE CA 91208
(818) 306-5099
THAMILTON5@CHARTER.NET

Cynthia Mitchell
ENERGY ECONOMICS, INC.
530 COLGATE COURT
(713) 420-7913
fiji.george@elpaso.com

Nadav Enbar
ENERGY INSIGHTS
1750 14TH STREET, SUITE 200
BOULDER CO 80302
(303) 385-0327
nenbar@energy-insights.com

Nicholas Lenssen
ENERGY INSIGHTS
1750 14TH STREET, SUITE 200
BOULDER CO 80302
nlenssen@energy-insights.com

Carolyn M. Kehrein
ENERGY MANAGEMENT SERVICES
1505 DUNLAP COURT
DIXON CA 95620-4208
(707) 678-9506
cmkehrein@ems-ca.com

Kevin J. Simonsen
ENERGY MANAGEMENT SERVICES
646 EAST THIRD AVENUE
DURANGO CO 81301
(970) 259-1748
kjsimonsen@ems-ca.com

Saeed Farrokhpay
FEDERAL ENERGY REGULATORY COMMISSION
110 BLUE RAVINE RD., SUITE 107
FOLSOM CA 95630
(916) 294-0322
saeed.farrokhpay@ferc.gov

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

Andrew Bradford
Senior Market Research Associate

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

RENO NV 89503
(775) 324-5300
ckmitchell1@sbcglobal.net

Ralph E. Dennis
Director, Regulatory Affairs
FELLON-MCCORD & ASSOCIATES
CONSTELLATION NEWENERGY-GAS DIVISION
9960 CORPORATE CAMPUS DRIVE, STE 2000
LOUISVILLE KY 40223
(502) 214-6378
ralph.dennis@constellation.com

Samara Mindel
Regulatory Affairs Analyst
FELLON-MCCORD & ASSOCIATES
9960 CORPORATE CAMPUS DRIVE, SUITE 2000
LOUISVILLE KY 40223
(502) 214-6303
smindel@knowledgeinenergy.com

Gary Barch
FELLON-MCCORD & ASSOCIATES, INC.
SUITE 2000
9960 CORPORATE CAMPUS DRIVE
LOUISVILLE KY 40223
(502) 515-6668
gbarch@knowledgeinenergy.com

Michel Florio
Attorneys At Law
711 VAN NESS AVE., STE. 350
SAN FRANCISCO CA 94102
(415) 929-8876
mflorio@turn.org

Brian Potts
FOLEY & LARDNER
PO BOX 1497
150 EAST GILMAN STREET
MADISON WI 53701-1497
(608) 258-4772
bpotts@foley.com

Janine L. Scancarelli
Attorney At Law
FOLGER, LEVIN & KAHN, LLP
275 BATTERY STREET, 23RD FLOOR

FELLON-MCCORD & ASSOCIATES
SUITE 2000
9960 CORPORATE CAMPUS DRIVE
LOUISVILLE KY 40223
(502) 214-6327
andrew.bradford@constellation.com

Joseph F. Wiedman
Attorney At Law
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
jwiedman@goodinmacbride.com

Audra Hartmann
980 NINTH STREET, SUITE 2130
SACRAMENTO CA 95814
(916) 441-6242
Audra.Hartmann@Dynegy.com

Joseph Henri
31 MIRAMONTE ROAD
WALNUT CREEK CA 94597
(925) 708-9125
josephhenri@hotmail.com

Denise Hill
Director
4004 KRUSE WAY PLACE, SUITE 150
LAKE OSWEGO OR 97035
(503) 675-3816
Denise_Hill@transalta.com
For: Market Access & Trade Policy Transalta Energy Marketing (US) Inc.

Brenda Lemay
Director Of Project Development
HORIZON WIND ENERGY
1600 SHATTUCK, SUITE 222
BERKELEY CA 94709
(510) 704-8152
brenda.lemay@horizonwind.com

Orlando B. Foote, Iii
Attorney At Law
HORTON, KNOX, CARTER & FOOTE
895 BROADWAY, SUITE 101
EL CENTRO CA 92243
(760) 352-2821
ofoote@hkcf-law.com

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

SAN FRANCISCO CA 94111
(415) 986-2800
jscancarelli@flk.com

Kyle D. Boudreaux
FPL GROUP
700 UNIVERSE BLVD., JES/JB
JUNO BEACH FL 33408
(561) 691-7358
kyle_boudreaux@fpl.com

Steven Kelly
INDEPENDENT ENERGY PRODUCERS ASSN
1215 K STREET, SUITE 900
SACRAMENTO CA 95814-3947
(916) 448-9499
steven@iepa.com

Jody S. London
JODY LONDON CONSULTING
PO BOX 3629
OAKLAND CA 94609
(510) 459-0667
jody_london_consulting@earthlink.net

Betty Seto
Policy Analyst
KEMA, INC.
492 NINTH STREET, SUITE 220
OAKLAND CA 94607
(510) 891-0446
Betty.Seto@kema.com

Kim Kiener
504 CATALINA BLVD.
SAN DIEGO CA 92106
kmkiener@fox.net

Edward J. Tiedemann
Attorney At Law
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
400 CAPITOL MALL, 27TH FLOOR
SACRAMENTO CA 95814-4416
(916) 321-4500
etiedemann@kmtg.com
For: Placer County Water Agency & Kings River Conservation District

Lorraine Paskett
Director, Legislative And Reg. Affairs
LA DEPT. OF WATER & POWER

Elston K. Grubaugh
IMPERIAL IRRIGATION DISTRICT
333 EAST BARIONI BLVD.
IMPERIAL CA 92251
(760) 339-9224
ekgrubaugh@iid.com

Edward Vine
LAWRENCE BERKELEY NATIONAL LABORATORY
BUILDING 90-4000
BERKELEY CA 94720
(510) 486-6047
elvine@lbl.gov

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

Patrick Stoner
Program Director
LOCAL GOVERNMENT COMMISSION
1303 J STREET, SUITE 250
SACRAMENTO CA 95814
(916) 448-1198 X 309
pstoner@lgc.org

Robert L. Pettinato
LOS ANGELES DEPARTMENT OF WATER & POWER
111 NORTH HOPE STREET, SUITE 1150
LOS ANGELES CA 90012
(213) 367-1735
robert.pettinato@ladwp.com

Leilani Johnson Kowal
LOS ANGELES DEPT. OF WATER AND POWER
111 N. HOPE STREET, ROOM 1050
LOS ANGELES CA 90012
(213) 367-3023
leilani.johnson@ladwp.com

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

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

PO BOX 51111
111 N. HOWARD ST., ROOM 1536
LOS ANGELES CA 90012
(213) 367-8698
Lorraine.Paskett@ladwp.com

Diane I. Fellman
Attorney At Law
LAW OFFICES OF DIANE I. FELLMAN
234 VAN NESS AVENUE
SAN FRANCISCO CA 94102
(415) 703-6000
diane_fellman@fpl.com

Richard Mccann, Ph.D
M. CUBED
2655 PORTAGE BAY, SUITE 3
DAVIS CA 95616
(530) 757-6363
rmccann@umich.edu

Brian M. Jones
M. J. BRADLEY & ASSOCIATES, INC.
47 JUNCTION SQUARE DRIVE
CONCORD MA 01742
bjones@mjbradley.com

Randall W. Keen
Attorney At Law
MANATT PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES CA 90064
(310) 312-4000
rkeen@manatt.com
For: Los Angeles County

S. Nancy Whang
Attorney At Law
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES CA 90064
(310) 312-4000
nwhang@manatt.com

Chris Marnay
BERKELEY LAB
1 CYCLOTRON RD MS 90R4000
BERKELEY CA 94720-8136

(213) 367-0381
randy.howard@ladwp.com

Barry Lovell
15708 POMERADO RD., SUITE 203
POWAY CA 92064
bjl@bry.com

John W. Leslie
Attorney At Law
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO CA 92130
(858) 720-6352
jleslie@luce.com

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

Peter W. Hanschen
Attorney At Law
MORRISON & FOERSTER, LLP
101 YGNACIO VALLEY ROAD, SUITE 450
WALNUT CREEK CA 94596
(925) 295-3450
phanschen@mofo.com

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

Clyde Murley
1031 ORDWAY STREET
ALBANY CA 94706
(510) 528-8953
clyde.murley@comcast.net

Devra Wang
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
dwang@nrdc.org

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

(510) 486-7028
C_Marnay@1b1.gov

Christopher J. Mayer
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354
(209) 526-7430
chrism@mid.org

Richard Smith
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95352-4060
(209) 526-7463
richards@mid.org

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

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

Gordon Pickering
Principal
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA CA 95670-6078
(916) 631-3249
gpickering@navigantconsulting.com

Kirby Dusel
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA CA 95670
(916) 834-0684
kdusel@navigantconsulting.com

Laurie Park
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA CA 95670-6078
(916) 631-3200

Eric Wanless
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
ewanless@nrdc.org

Kristin Grenfell
Project Attorney, Calif. Energy Program
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
kgrenfell@nrdc.org

Howard V. Golub
NIXON PEABODY LLP
2 EMBARCADERO CENTER, STE. 2700
SAN FRANCISCO CA 94111
(415) 984-8200
hgolub@nixonpeabody.com

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

David Reynolds
Member Services Manager
NORTHERN CALIFORNIA POWER AGENCY
180 CIRBY WAY
ROSEVILLE CA 95678-6420
(916) 781-4293
davidreynolds@ncpa.com

Scott Tomashefsky
NORTHERN CALIFORNIA POWER AGENCY
180 CIRBY WAY
ROSEVILLE CA 95678-6420
(916) 781-4291
scott.tomashefsky@ncpa.com

Martin A. Mattes
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
50 CALIFORNIA STREET, 34TH FLOOR

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

lpark@navigantconsulting.com

David Nemtzow
1254 9TH STREET, NO. 6
SANTA MONICA CA 90401
(310) 622-2981
david@nemtzow.com

Frank Luchetti
NEVADA DIV. OF ENVIRONMENTAL PROTECTION
901 S. STEWART ST., SUITE 4001
CARSON CITY NV 89701
(775) 687-9345
fluchetti@ndep.nv.gov

Sandra Ely
NEW MEXICO ENVIRONMENT DEPARTMENT
1190 ST FRANCIS DRIVE
SANTA FE NM 87501
(505) 827-0351
Sandra.ely@state.nm.us

SAN FRANCISCO CA 94111
(415) 398-3600
mmattes@nossaman.com

Jesus Arredondo
NRG ENERGY INC.
4600 CARLSBAD BLVD.
CARLSBAD CA 99208
(916) 275-7493
jesus.arredondo@nrgenergy.com

Kathryn Wig
Paralegal
NRG ENERGY, INC.
211 CARNEGIE CENTER
PRINCETON NY 08540
(609) 524-4926
Kathryn.Wig@nrgenergy.com

Tim Hemig
NRG ENERGY, INC.
1819 ASTON AVENUE, SUITE 105
CARLSBAD CA 92008
(760) 710-2144
tim.hemig@nrgenergy.com

Farrokh Albuyeh
Vice President
OPEN ACCESS TECHNOLOGY INTERNATIONAL INC
SUITE 910
1875 SOUTH GRANT STREET
SAN MATEO CA 94402
(612) 360-1657
farrokh.albuyeh@oati.net

Phil Carver
OREGON DEPARTMENT OF ENERGY
625 MARION ST., NE
SALEM OR 97301-3737
(503) 378-6874
Philip.H.Carver@state.or.us

Sam Sadler
OREGON DEPARTMENT OF ENERGY

Grace Livingston-Nunley
Assistant Project Manager
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO CA 94177
(415) 973-4304
gxl2@pge.com

Sebastien Csapo
Project Manager
PACIFIC GAS AND ELECTRIC COMPANY
MAIL CODE B9A
PO BOX 770000
SAN FRANCISCO CA 94177
sscb@pge.com

Soumya Sastry
PACIFIC GAS AND ELECTRIC COMPANY
MAIL CODE B9A
PO BOX 770000
SAN FRANCISCO CA 94177
(415) 973-3295
svs6@pge.com

Stephanie La Shawn

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

625 NE MARION STREET
SALEM OR 97301-3737
(503) 373-1034
samuel.r.sadler@state.or.us

Lisa Schwartz
Senior Analyst
ORGEON PUBLIC UTILITY COMMISSION
PO BOX 2148
SALEM OR 97308-2148
(503) 378-8718
lisa.c.schwartz@state.or.us

Aldyn Hoekstra
PACE GLOBAL ENERGY SERVICES
420 WEST BROADWAY, 4TH FLOOR
SAN DIEGO CA 92101
(619) 847-6791
aldyn.hoekstra@paceglobal.com

Ed Lucha
Project Coordinator
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO CA 94177
(415) 973-3872
ELL5@pge.com

Jasmin Ansar
PG&E
MAIL CODE B24A
PO BOX 770000
SAN FRANCISCO CA 94177
jxa2@pge.com

Jonathan Forrester
PG&E
MAIL CODE N13C
PO BOX 770000
SAN FRANCISCO CA 94177
JDF1@PGE.COM

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

PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO CA 94177
(415) 973-8063
S1L7@pge.com

Valerie J. Winn
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, B9A
SAN FRANCISCO CA 94177-0001
(415) 973-3839
vjw3@pge.com

Cathie Allen
Ca State Mgr.
PACIFICORP
825 NE MULTNOMAH STREET, SUITE 2000
PORTLAND OR 97232
(503) 813-5934
californiadockets@pacificorp.com

Joshua Bushinsky
Western Policy Coordinator
PEW CENTER ON GLOBAL CLIMATE CHANGE
2101 WILSON BLVD., SUITE 550
ARLINGTON VA 95816
(650) 906-6289
bushinskyj@pewclimate.org

Barry Rabe
1427 ROSS STREET
PLYMOUTH MI 48170
(734) 615-9596
brabe@umich.edu

Donald Schoenbeck
RCS, INC.
900 WASHINGTON STREET, SUITE 780
VANCOUVER WA 98660
(360) 737-3877
dws@r-c-s-inc.com

James Ross
RCS, INC.
500 CHESTERFIELD CENTER, SUITE 320
CHESTERFIELD MO 63017
(636) 530-9544
jimross@r-c-s-inc.com

Arno Harris
RECURRENT ENERGY, INC.

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

Veronique Bugnion
POINT CARBON
205 SEVERN RIVER RD
SEVERNA PARK MD 21146
(443) 822-1301
vb@pointcarbon.com

Carl Pechman
POWER ECONOMICS
901 CENTER STREET
SANTA CRUZ CA 95060
cpechman@powereconomics.com

Karen Mcdonald
POWEREX CORPORATION
1400,
666 BURRAND STREET
VANCOUVER BC V6C 2X8
CANADA
(604) 895-7030
karen.mcdonald@powerex.com

Harvey Eder
PUBLIC SOLAR POWER COALITION
1218 12TH ST., 25
SANTA MONICA CA 90401
(310) 393-2589
harveyederpspc.org@hotmail.com

Ellen Wolfe
RESERO CONSULTING
9289 SHADOW BROOK PL.
GRANITE BAY CA 95746
(916) 781-4533
ewolfe@resero.com

Rita Norton
RITA NORTON AND ASSOCIATES, LLC
18700 BLYTHSWOOD DRIVE,
LOS GATOS CA 95030
(408) 354-5220
rita@ritanortonconsulting.com

Clark Bernier
RLW ANALYTICS
1055 BROADWAY, SUITE G
220 HALLECK ST., SUITE 220
SAN FRANCISCSO CA 94129
(415) 298-7096
arno@recurrentenergy.com

Richard Cowart
REGULATORY ASSISTANCE PROJECT
50 STATE STREET, SUITE 3
MONTPELIER VT 05602
(802) 223-8199
rapcowart@aol.com

Brian Mcquown
RELIANT ENERGY
7251 AMIGO ST., SUITE 120
LAS VEGAS NV 89119
(702) 407-4861
bmcquown@reliant.com

Trent A. Carlson
RELIANT ENERGY
1000 MAIN STREET
HOUSTON TX 77001
(713) 497-4386
tcarlson@reliant.com

Gary Hinners
RELIANT ENERGY, INC.
PO BOX 148
HOUSTON TX 77001-0148
(713) 497-4321
ghinners@reliant.com

Michael A. Hyams
Power Enterprise-Regulatory Affairs
SAN FRANCISCO PUBLIC UTILITIES COMM
1155 MARKET ST., 4TH FLOOR
SAN FRANCISCO CA 94103
(415) 554-1513
mhyams@sfwater.org

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

Colin Petheram
Director-Regulatory

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

SONOMA CA 95476
(707) 939-8823 X 19
clark.bernier@rlw.com

Bud Beebe
SACRAMENTO MUNICIPAL UTIL DIST
MS B257
6201 S STREET
SACRAMENTO CA 95817-1899
(916) 732-5254
bbeebe@smud.org

Obadiah Bartholomy
Mechanical Engineer
SACRAMENTO MUNICIPAL UTILITY DISTRICT
M.S. B257
6201 S. STREET
SACRAMENTO CA 95817
(916) 732-6835
obarto@smud.org

Joseph R. Kloberdanz
SAN DIEGO GAS & ELECTRIC
PO BOX 1831
SAN DIEGO CA 92112
(619) 696-4420
jkloberdanz@semprautilities.com

Steven Moss
SAN FRANCISCO COMMUNITY POWER COOP
2325 3RD STREET, SUITE 344
SAN FRANCISCO CA 94120
(415) 643-9578
steven@moss.net

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

Douglas Brooks
Nevada Power Company
SIERRA PACIFIC POWER COMPANY
6226 WEST SAHARA AVENUE
LAS VEGAS NV 89151
dbrooks@nevp.com

SBC CALIFORNIA
140 NEW MONTGOMERY ST., SUITE 1325
SAN FRANCISCO CA 94105
(415) 778-1255
colin.petheram@att.com

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

Steven Schiller
SCHILLER CONSULTING, INC.
111 HILLSIDE AVENUE
PIEDMONT CA 94611
(510) 655-8668
steve@schiller.com

Yvonne Gross
Regulatory Policy Manager
SEMPRA ENERGY
HQ08C
101 ASH STREET
SAN DIEGO CA 92103
(619) 696-2075
ygross@sempraglobal.com

Kellie Smith
SENATE ENERGY/UTILITIES & COMMUNICATION
STATE CAPITOL, ROOM 4038
SACRAMENTO CA 95814
(916) 651-4107
kellie.smith@sen.ca.gov

Rasha Prince
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH STREET, GT14D6
LOS ANGELES CA 90013
(213) 244-5141
rprince@semprautilities.com

Anita Hart
Senior Specialist/State Regulatoryaffair
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89193
(702) 364-3312
anita.hart@swgas.com

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Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

Elena Mello
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO NV 89520
(775) 834-5696
emello@sppc.com

Trevor Dillard
SIERRA PACIFIC POWER COMPANY
PO BOX 10100
6100 NEIL ROAD, MS S4A50
RENO NV 89520
(775) 834-4011
tdillard@sierrapacific.com

Darrell Soyars
Manager-Resource Permitting&Strategic
SIERRA PACIFIC RESOURCES
6100 NEIL ROAD
RENO NV 89520-0024
(775) 834-4744
dsoyars@sppc.com
For: Sierra Pacific Resources

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE., RM. 370
ROSEMEAD CA 91770
(626) 302-4875
case.admin@sce.com

Hugh Yao
SOUTHERN CALIFORNIA GAS COMPANY
555 W. 5TH ST, GT22G2
LOS ANGELES CA 90013
(213) 233-3619
hyao@semprautilities.com

Peter Jazayeri
STROOCK & STROOCK & LAVAN LLP
2029 CENTURY PARK EAST, SUITE 1800
LOS ANGELES CA 90067
(310) 556-5927
pjazayeri@stroock.com

Elizabeth Baker
SUMMIT BLUE CONSULTING
1722 14TH STREET, SUITE 230
BOULDER CO 80304

Jj Prucnal
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS NV 89193-8510
(702) 876-7382
jj.prucnal@swgas.com

Meridith J. Strand
Senior Counsel
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS NV 89193-8510
(702) 876-7075
meridith.strand@swgas.com

Randy Sable
SOUTHWEST GAS CORPORATION
MAILSTOP: LVB-105
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89193
(702) 364-3079
randy.sable@swgas.com

Bill Schrand
SOUTHWEST GAS CORPORATON
PO BOX 98510
LAS VEGAS NV 89193-8510
(702) 364-3187
bill.schrand@swgas.com

Seth Hilton
Attorney At Law
STOEL RIVES
111 SUTTER ST., SUITE 700
SAN FRANCISCO CA 94104
(415) 617-8943
sdhilton@stoel.com
For: El Paso Natural Gas

Khurshid Khoja
Associate
THELEN REID BROWN RAYSMAN & STEINER
101 SECOND STREET, SUITE 1800
SAN FRANCISCO CA 94105
(415) 369-7643
kkhoja@thelenreid.com

Ashlee M. Bonds
THELEN REID BROWN RAYSMAN&STEINER LLP
SUITE 1800

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

(720) 244-4184
bbaker@summitblue.com

Patricia Thompson
SUMMIT BLUE CONSULTING
2920 CAMINO DIABLO, SUITE 210
WALNUT CREEK CA 94597
(925) 935-0270
pthompson@summitblue.com

Kenneth A. Colburn
SYMBILTIC STRATEGIES, LLC
26 WINTON ROAD
MEREDITH NH 03253
kcolburn@symbioticstrategies.com

Alexia C. Kelly
THE CLIMATE TRUST
65 SW YAMHILL STREET, SUITE 400
PORTLAND OR 97204
(503) 238-1915
akelly@climatetrust.org

Adam Briones
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVENUE, 2ND FLOOR
BERKELEY CA 94704
(510) 926-4013
adamb@greenlining.org

Hayley Goodson
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
hayley@turn.org

Matthew Freedman
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
freedman@turn.org

101 SECOND STREET
SAN FRANCISCO CA 94105
(415) 369-7788
abonds@thelen.com

Wes Monier
Strategic Issues And Planning Manager
TURLOCK IRRIGATION DISTRICT
333 EAST CANAL DRIVE, PO BOX 949
TURLOCK CA 95381-0949
(209) 883-8321
fwmonier@tid.org

Carla Peterman
UCEI
2547 CHANNING WAY
BERKELEY CA 94720
(917) 538-6667
carla.peterman@gmail.com

Scott J. Anders
Research/Administrative Director
UNIVERSITY OF SAN DIEGO SCHOOL OF LAW
5998 ALCALA PARK
SAN DIEGO CA 92110
(619) 260-4589
scottanders@sandiego.edu

Andrew J. Van Horn
VAN HORN CONSULTING
12 LIND COURT
ORINDA CA 94563
(925) 254-3358
andy.vanhorn@vhcenergy.com

Alan Comnes
WEST COAST POWER
3934 SE ASH STREET
PORTLAND OR 97214
(503) 239-6913
alan.comnes@nrgenergy.com

********** SERVICE LIST **********
Last Update on 08-AUG-2007 by: JVG
R0604009 LIST

Philip D. Lusk
WESTERN ELECTRICITY COORDINATING COUNCIL
615 ARAPEEN DRIVE,SUITE 210
SALT LAKE CITY UT 84108-1262
(801) 883-6855
plusk@wecc.biz

Roger Pelote
WILLIAMS POWER COMPANY
12736 CALIFA STREET
VALLEY VILLAGE CA 91607
(818) 761-5954
roger.pelote@williams.com

Kevin Fox
WILSON SONSINI GOODRICH & ROSATI
ONE MARKET STREET, SPEAR TOWER, 3300
SAN FRANCISCO CA 94105
(415) 947-2042
kfox@wsgr.com

Elizabeth Zelljadt
1725 I STREET, N.W. SUITE 300
WASHINGTON DC 20006
(202) 349-1123
ez@pointcarbon.com