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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

**ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING
POST-WORKSHOP COMMENTS ON IMPLEMENTATION OF SB 1036**

1. Request for Post-Workshop Comments

On May 29, 2008, Energy Division staff held a workshop where parties discussed implementation of Senate Bill (SB) 1036 (Perata), Stats. 2007, ch. 685. The Commission took some steps on SB 1036 implementation prior to the workshop, in Resolution E-4160 (April 10, 2008). Other steps were deferred pending the workshop and party comments.

This ruling requests post-workshop comments on the remaining issues in implementing SB 1036. Post-workshop comments may be filed and served in accordance with the instructions in this ruling. Comments must be no longer than 20 pages, with no more than 10 pages of germane attachments. Reply comments must be no longer than 15 pages, with no more than 10 pages of germane attachments. Models, spreadsheets, or complex calculations submitted with comments must be made available to the service list on a web site or a compact disk.¹ Comments must be filed and served on the service list for this

¹ If appropriate, a Notice of Availability should be used, in accordance with Rule 1.9 of the Commission's Rules of Practice and Procedure. Unless otherwise indicated, all

Footnote continued on next page

proceeding not later than July 2, 2008. Reply comments must be filed and served not later than July 11, 2008.

2. Guidance for Comments

Energy Division staff has provided suggestions for the structure and content of post-workshop comments. Commenters may address these subjects by presenting proposals for implementing SB 1036, or by answering the questions developed by staff, below, or a combination of these approaches. Commenters with similar views are encouraged to present joint proposals or comments.

Comments and proposals should be grounded in the statutory purposes of the MPR program, as set forth in Pub. Util. Code § 399.11, including:

- Increasing the diversity, reliability, public health and environmental benefits of the energy mix;
- Promoting stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels;
- Ameliorating air quality problems throughout the state and improving public health by reducing the burning of fossil fuels and the associated environmental impacts and by reducing in-state fossil fuel consumption.

subsequent citations to rules refer to the Commission's Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and all citations to sections refer to the Public Utilities Code.

Comments should also refer, as relevant, to documents related to the Commission's implementation of SB 1036, especially those related to the workshop.²

3. Subjects for Comments

I. SB 1036 Guiding Principles

1. What should be the overarching goals of implementing SB 1036?
For example:
 - Promote the goals of renewables portfolio standard (RPS) program.
 - Support viable least-cost best-fit renewable energy projects.
 - Develop transparent standards for allocating above-market funds (AMFs).
 - Simplify administration of allocating AMFs.
 - Please identify any additional or other goals; also any of the above that should not apply. Please explain your choices.
2. Please discuss your priorities for allocating and administering limited above-market funds and for developing a win-win solution for implementing SB 1036.
 - Are your priorities affected by the fact that once AMFs are exhausted, the investor-owned utilities (IOUs) are allowed to limit renewables procurement to resources priced at or below the market price referent (MPR)?
3. Should all contracts that are eligible for AMFs and approved by the Commission be *required* to be applied toward the AMFs cost

² These documents may be found at <http://www.cpuc.ca.gov/PUC/energy/electric/RenewableEnergy/SB1036Implementation.html> and are incorporated in this ruling by reference.

limitation? Please include a legal argument based on Pub. Util. Code § 399.15(d) and/or other relevant sources.

4. Based on the above guiding principles and goals, what is your preferred approach for allocating AMFs, and why? Please describe the implementation framework for applying your preferred approach.
 - Allocating AMFs to eligible and approved contracts on a first come, first served basis.
 - Allocating AMFs to eligible and approved contracts based on criteria (to be developed through these comments and Energy Division staff analysis) to identify projects most likely to promote RPS program goals (*e.g.*, develop new renewable infrastructure in California; aid in reaching the 2010 goal).
 - Other criteria or methods. Please explain and provide an example of how they would be applied.
- Would your preferred approach change based on the decision of whether or not all Commission-approved, AMFs-eligible contracts *must* be applied to the cost limitation?
- Should the Commission have discretion to award less than the requested amount of AMFs to any particular contract?

II. AMFs Eligibility Criteria

SB 1036 includes the following criteria for applying the costs of a contract to the AMFs cost limitation:

- The contract was selected through a competitive solicitation.
- The contract term is no less than 10 years.
- The project is a new or repowered facility online on or after January 1, 2005.
- Renewable energy credit purchases are not eligible for AMFs.
- The above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

1. How should the Commission quantify the indirect expenses identified in Criterion #5 and subtract them from the AMFs request? Please provide a methodology and example for how indirect costs included in a contract would be subtracted out to determine amount of AMFs needed for the contract.
2. Please discuss whether the Commission should implement additional AMFs eligibility criteria (*e.g.*, AMFs should be awarded only to in-state renewable generation facilities as defined in Pub. Res. Code § 25471). Please provide any necessary legal and policy justifications for your suggestion, including for a suggestion that no additional criteria are needed.

III. Reasonableness Review Standards

Please propose a methodology for the Commission's review of above-MPR contracts based on all of the questions below. Be sure to address all of the following categories of above-MPR contracts in your proposal:

- Long-term contracts from competitive solicitation that are eligible for AMFs.
 - Contracts from competitive solicitations that are not eligible for AMFs (*e.g.*, existing facilities, short-term contracts, etc.).
 - Bilateral contracts (which are not eligible for AMFs, but may have above-MPR costs).
 - Amended contracts whose price and/or AMF request has been changed.
1. To what extent should the Commission assess an above-MPR contract's project viability?
 - Should this assessment be different depending on whether a contract is eligible for AMFs, is not eligible for AMFs, or would be eligible for AMFs but AMFs have been exhausted?
 - What are the current at/below MPR project viability review standards? Should these standards be applied to above-MPR contracts? What alterations, if any, should be made to apply them to above-MPR contracts?

- What contract terms or conditions and project development milestones should be evaluated to assess a project's viability? For example:
 - Site control
 - Financing
 - Permitting
 - Resource studies
 - Transmission upgrade needs
 - Performance obligations
 - Other (please specify)
 - None
 - What weight should be given to each element you think is appropriate?
 - What documentation or analysis should the IOU include in the advice letter to provide the Commission with sufficient information to evaluate project's viability? For example:
 - A comprehensive project development timeline showing how the contractual online date will be achieved.
 - A permitting matrix, including: progress towards site control, status of submitted applications, and any risk(s) associated with obtaining a permit.
2. What standards should be used in evaluating the reasonableness of an above-MPR contract price?
- Should the same standards apply to AMF-eligible contracts for which AMFs are available, and contracts that would be eligible for AMFs but the IOU has exhausted its AMFs? What changes, if any, should be made? Please consider and comment on the following examples:
 - IOU's least-cost best-fit analysis
 - Bid supply curves from recent solicitations

- Technology-specific bid supply curves from recent solicitations
 - Technology cost curves developed as part of the Renewable Energy Transmission Initiative (RETI)
 - Review of a cash flow model
 - Rate impact
 - Other
3. Should additional documentation be required for all price reopeners (whether above or below the MPR) to evaluate the contract price and/or project viability (*e.g.*, a new independent evaluator report, comprehensive project development timeline, permitting matrix, list of project costs, financial models, documentation for price increases, etc.)?
 4. When may a project's cash flow model be appropriate to review the price reasonableness of a contract (*e.g.*, for all above-MPR contracts; bilaterals; price amendments; if they result in a material rate impact of X%; and/or other)?

IV. Calculating AMFs Requests

1. Choosing the appropriate MPR.

Please discuss whether AMFs should be given to contracts (that are otherwise AMFs eligible) in the following situations, and propose a methodology for determining the appropriate MPR to use to calculate the AMFs need. Also, answer the specific questions associated with each scenario.

- a) A contract is negotiated through a competitive solicitation, but is executed more than 18 months after the close of the solicitation. Should this contract:
 - Be required to be bid into the next solicitation.
 - Be compared against the most recent MPR; if so, should the TODs for that MPR also be used.

- Be considered a bilateral contract, thus not eligible for AMFs, and compared against the MPR for the year the contract is signed.
 - Other.
- b) A Commission-approved project has negotiated an amendment to the price or another term that affects the contract price or AMFs request amount.
- Identify the benefits and risks of using a newer MPR to evaluate this contract.
- c) The online date in the contract is not realistic (*e.g.*, permitting is delayed).
- Discuss whether and how the Commission should make a determination that the contractual online date is not realistic.
 - Propose a methodology for the Commission and IOU to follow if choosing a new online date and/or amending the contract are warranted in order to more accurately choose an MPR and calculate an AMF request.
2. Calculating a contract's levelized price.

Please discuss whether AMFs should be given to the following types of contracts (that are otherwise AMFs eligible). Propose methodologies and provide examples for calculating the levelized price used to calculate the AMFs needed for each:

- a) Contracts with contract prices indexed to a forward energy price.
- b) Contracts with contract prices indexed to the Consumer Price Index.
- c) Contracts with contract prices indexed to equipment costs (*e.g.*, wind turbines).
- d) Contracts that allow for a range of project capacities, capacity factors or prices depending on the final results of transmission or resources studies.

V. AMFs Limit and AMFs Requests Calculation

1. Attachment A contains the handout circulated at the workshop by Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) proposing a joint alternative methodology for the AMFs Calculator.³ Please discuss whether you support the Commission's original methodology, the joint proposal, or another methodology. If you include a different proposal you should include methodologies for:
 - a) Calculation of total cost limitation;
 - b) Calculation of a project-specific AMFs request; and
 - c) Calculation of IOU's AMFs balance.
 - Please include a modified AMF calculator and a completely worked-out example for any new proposal.

VI. Administration of AMFs

1. AMFs allocations for Commission-approved contracts.
 - Identify a process and timeline for calculating and adopting the precise AMFs allocations for above-MPR RPS projects that have already been approved and applied to an IOU's AMFs cost limitation.
2. "True-up" process.
 - Identify the situations in which an AMFs allocation may need to be amended.

³ The spreadsheet illustrating this proposal is available at the Commission's website for SB 1036 implementation:
<http://www.cpuc.ca.gov/PUC/energy/electric/RenewableEnergy/SB1036Implementation.html>.

- Propose a methodology for amending and recalculating a project's AMFs allocation. Include actions that must be taken by the IOU to notify the Commission that a contract term has changed, actions taken by the Commission to formally change the AMFs allocation and the timing for each step.
3. Revoking AMFs.
 - Identify situations when AMFs should be revoked.
 - Propose a methodology for revoking AMFs.
 4. RPS Procurement after AMFs are exhausted.
 - Propose a methodology for notifying an IOU and other parties when AMFs are exhausted.

VII. Bilateral Reasonableness Standards

1. Should a cost cap be established for bilateral contracts with above-MPR costs? If yes, please provide a proposal for what the cap should be (*e.g.*, total cost cap equal to AMFs, percent of AMFs, based on a cumulative rate impact analysis, etc.).
2. What is the relevant MPR to use when determining whether or not a bilateral contract price is reasonable?
3. Contracts from competitive solicitations are required to submit project-specific Independent Evaluator (IE) reports with advice letters requesting Commission approval. Should (a) all bilateral contracts or (b) bilateral contracts above the MPR be reviewed for project viability and price reasonableness by an IE prior to being submitted for Commission approval (regardless of whether bilateral contract is with an IOU affiliate)?

IT IS RULED that:

1. Post-workshop comments of not more than 20 pages (plus no more than 10 pages of germane attachments) and reply comments of not more than 10

pages (plus no more than 10 pages of germane attachments) may be filed and served in accordance with this ruling.

2. Comments must be filed and served not later than July 2, 2008 on the service list for this proceeding.

3. Reply comments must be filed and served not later than July 11, 2008.

4. Models, spreadsheets, or complex calculations submitted with comments or reply comments must be made available on a web site or a compact disk.

Dated June 20, 2008, at San Francisco, California.

/s/ ANNE E. SIMON

Anne E. Simon
Administrative Law Judge

ATTACHMENT A

Text of SB 1036

Public Resources Code Sec. 399.15(d)

The commission shall establish, for each electrical corporation, a limitation on the total costs expended above the market prices ...to achieve the annual procurement targets established under this article.

- (1) The cost limitation shall be equal to the amount of funds transferred to each electrical corporation by the Energy Commission pursuant to subdivision (b) of Section 25743 of the Public Resources Code and the 51.5 percent of the funds which would have been collected through January 1, 2012, from the customers of the electrical corporation based on the renewable energy public goods charge in effect as of January 1, 2007.

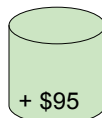
Spending Fixed \$InflowsOutflowsBalance

\$ 0

Illustrative Example

Discount Rate = 0%

- If SB1036 limits AMFs to a specific undiscounted nominal dollar amount, then a zero discount rate is warranted.

Spending Discounted \$InflowsOutflowsBalance

+\$15

Discount Rate = 5%

- If SB1036 does not limit AMFs to a specific undiscounted nominal dollar amount, then positive discount rates, presumptively the IOUs respective WACCs, are warranted.

- Discounting extends the life of the virtual fund because most of the outflows will occur later in time than the inflows.

(END OF ATTACHMENT A)

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 June 20, 2008, at San Francisco, California.

/s/ MICHAEL J. OLIVEROS

Michael J. Oliveros

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

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R0602012 LIST

***** PARTIES *****

3 PHASES ENERGY SERVICES
2100 SEPULVEDA BLVD., SUITE 37
MANHATTAN BEACH CA 90266

Michael Mazur
3 PHASES RENEWABLES, LLC
2100 SEPULVEDA BLVD. STE 37
MANHATTAN BEACH CA 90266
(310) 798-5275
mmazur@3phasesRenewables.com

Gabe Petlin
3DEGREES
PRESIDIO OF SAN FRANCISCO
6 FUNSTON AVENUE
SAN FRANCISCO CA 94129
(415) 595-1679
gpetlin@3degreesinc.com

James Weil
Director
AGLET CONSUMER ALLIANCE
PO BOX 37
COOL CA 95614
(530) 885-5252
jweil@aglet.org

Michael Alcantar
Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(503) 402-9900
mpa@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 and Users Coalition

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

Rod Aoki
Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
rsa@a-klaw.com
For: Occidental Power Services, Inc.

AMERICAN UTILITY NETWORK
10705 DEER CANYON DRIVE
ALTA LOMA CA 91737
pssed@adelphia.net

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

Gloria Britton
ANZA ELECTRIC COOPERATIVE, INC.
58470 HWY 371
PO BOX 391909
ANZA CA 92539
GloriaB@anzaelectric.org

AOL UTILITY CORP.
12752 BARRETT LANE
SANTA ANA CA 92705

Jenine Schenk
APS ENERGY SERVICES
400 E. VAN BUREN STREET, SUITE 750
PHOENIX AZ 85004
(602) 744-5002
jenine.schenk@apses.com

APS ENERGY SERVICES COMPANY, INC.
400 E. VAN BUREN STREET, SUITE 750
PHOENIX AZ 85004
stacy.aguayo@apses.com

John R. Redding
ARCTURUS ENERGY CONSULTING
44810 ROSEWOOD TERRACE
MENDOCINO CA 95460
(707) 937-0878
johnrredding@earthlink.net
For: Silicon Valley Manufacturers Group

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

Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST

Holly Gordon
Vp Legislative/Regulatory Affairs
AUSRA, INC.
2585 E. BAYSHORE ROAD
PALO ALTO CA 94303
(650) 353-9767
holly@ausra.com
For: Large-Scale Solar Associatin

Jan Mcfarland
CAEATFA
915 CAPITOL MALL, RM. 457
SACRAMENTO CA 95814
(916) 651-8157
jmcfarland@treasurer.ca.gov
For: Americans for Solar Power

Karen Mills
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833
(916) 561-5655
kmills@cbbf.com
For: California Farm Bureau Federation

Judith Sanders
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
jsanders@caiso.com

Linda Y. Sherif
Attorney At Law
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON CA 94588
(925) 479-6696
linda.sherif@calpine.com
For: CALPINE CORP.

Janice G. Hamrin
CENTER FOR RESOURCE SOLUTIONS
PRESIDIO BUILDING 97
PO BOX 29512
SAN FRANCISCO CA 94129
(415) 561-2100
jhamrin@resource-solutions.org
For: CENTER FOR RESOURCE SOLUTIONS

Joseph Langenberg
CENTRAL CALIFORNIA POWER
949 EAST ANNADALE AVE., A210
FRESNO CA 93706
(559) 917-5064
Joe.Langenberg@gmail.com
For: Central California Power

Stephen A. S. Morrison
CITY & COUNTY OF SAN FRANCISCO
CITY HALL, RM 234
1 DR CARLTON B. GOODLET PLACE
SAN FRANCISCO CA 94102-4682
(415) 554-4637
stephen.morrison@sfgov.org
For: City & County of San Francisco

Neal De Snoo
Energy Office
CITY OF BERKELEY
2180 MILVIA AVENUE
BERKELEY CA 94704
(510) 981-5434
ndesnoo@ci.berkeley.ca.us
For: East Bay Power Authority/City of Berkeley

Kerry Eden
Asst. General Mgr.
CITY OF CORONA DEPT. OF WATER & POWER
730 CORPORATION YARD WAY
CORONA CA 92880
(951) 817-5740
kerry.eden@ci.corona.ca.us

Frederick M. Ortlieb
Office Of City Attorney
CITY OF SAN DIEGO
1200 THIRD AVENUE, SUITE 1200
SAN DIEGO CA 92101
(619) 236-6318
fortlieb@sandiego.gov
For: CITY OF SAN DIEGO

Susan Munves
Energy And Green Bldg. Prog. Admin.
CITY OF SANTA MONICA
1212 5TH STREET, FIRST FLOOR
SANTA MONICA CA 90401
(310) 458-8229
susan.munves@smgov.net

Janis C. Pepper
CLEAN POWER MARKETS, INC.
PO BOX 3206
LOS ALTOS CA 94024
(650) 949-5719
pepper@cleanpowermarkets.com
For: CLEAN POWER MARKETS, INC.

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

**Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST**

Bill Barnes
CLEANTECH AMERICA, INC.
50 CALIFORNIA STREET, SUITE 1500
SAN FRANCISCO CA 94111
(415) 277-5455
b.barnes@cleantechamerica.com
For: Cleantech America, Inc.

L. Jan Reid
COAST ECONOMIC CONSULTING
3185 GROSS ROAD
SANTA CRUZ CA 95062
(831) 476-5700
janreid@coastecon.com
For: Aglet Consumer Alliance

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

Cynthia A. Fonner
Senior Counsel
CONSTELLATION ENERGY GROUP INC
500 WEST WASHINGTON ST, STE 300
CHICAGO IL 60661
(312) 704-8518
Cynthia.A.Fonner@constellation.com
For: Constellation Energy Group Inc

CONSTELLATION NEW ENERGY, INC.
TWO CALIFOORNIA PLAZA
350 SOUTH GRAND AVENUE, SUITE 3800
LOS ANGELES CA 90071
bill.chen@constellation.com

Sara O'Neill
CONSTELLATION NEWENERGY, INC.
ONE MARKET STREET, SPEAR TOWER, 36TH FR.
SAN FRANCISCO CA 94105
(415) 293-8003
sara.oneill@constellation.com
For: Constellation NewEnergy, Inc.

R. Thomas Beach
Principal Consultant
CROSSBORDER ENERGY

Jeffrey P. Gray
Attorney At Law
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6500
jeffgray@dwt.com
For: CalpinePowerAmerica-CA, LLC/Firends of Kirkwood
Association

Larry F. Eisenstat
DICKSTEIN SHAPIRO LLP
1825 EYE STREET, NW
WASHINGTON DC 20006
(202) 420-2200
For: CPV Renewable Energy Company, LLC

Richard Lehfeldt
DICKSTEIN SHAPIRO LLP
1825 EYE STREET, NW
WASHINGTON DC 20006
(202) 420-2200
For: CPV Renewable Energy Company, LLC

Ronald M. Cerniglia
Director- National Advocacy
DIRECT ENERGY SERVICES, LLC
40 COLUMBINE DRIVE
GLENMONT NY 12077-2966
(518) 439-2195
ron.cerniglia@directenergy.com
For: Direct Energy Services, LLC

Daniel W. Douglass
Attorney At Law
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS CA 91367
(818) 961-3001
douglass@energyattorney.com
For: Alliance For Retail Energy Markets, Energy America,
LLC, Commerce Energy, Inc.

Gregory S. G. Klatt
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS CA 91367-8102
(818) 961-3002
klatt@energyattorney.com
For: Alliance for Retail Energy Markets/ APS Energy
Services/Western Power Trading Forum

Dan L. Carroll
Attorney At Law
DOWNEY BRAND LLP

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

**Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST**

2560 NINTH STREET, SUITE 213A
BERKELEY CA 94710-2557
(510) 649-9790
tomb@crossborderenergy.com
For: California Wind Energy Assn/California Cogeneration
Council/Large-scale Solar Assn/Solar Alliance

Audra Hartmann
DYNEGY INC.
980 NINTH STREET, SUITE 2130
SACRAMENTO CA 95814
(916) 441-6242
Audra.Hartmann@Dynergy.com
For: Dynergy, Inc.

Gretchen T. Dumas
Legal Division
RM. 4300
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1210
gtd@cpuc.ca.gov
For: CPUC Legal

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

Andrew B. 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./Praxair Plainfield, Inc.

Greggory L. Wheatland
LYNN M. HAUG
ELLISON SCHNEIDER & HARRIS L.L.P.
2015 H STREET
SACRAMENTO CA 95811-3109
(916) 447-2166
glw@eslawfirm.com
For: the City of Corona

Douglas K. Kerner
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO CA 95814

555 CAPITOL MALL, 10TH FLOOR
SACRAMENTO CA 95814
(916) 444-1000
dcarroll@downeybrand.com
For: Mountain Utilities

Lynn M. Haug
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO CA 95811-3109
(916) 447-2166
lmh@eslawfirm.com
For: Sierra Pacific Power Company

Carolyn Kehrein
ENERGY MANAGEMENT SERVICES
2602 CELEBRATION WAY
WOODLAND CA 95776
(530) 668-5600
cmkehrein@ems-ca.com

Garson Knapp
FPL ENERGY, LLC
770 UNIVERSE BLVD.
JUNO BEACH FL 33408
(561) 304-5720
garson_knapp@fpl.com

Standish O'Grady
FRIENDS OF KIRKWOOD ASSOCIATION
31 PARKER AVENUE
SAN FRANCISCO CA 94118
(415) 591-7701
sho@ogrady.us

Keith Switzer
Vp Regulatory Affairs
GOLDEN STATE WATER COMPANY
630 EAST FOOTHILL BLVD.
SAN DIMAS CA 91773-9016
(909) 394-3600 X 759
kswitzer@gswater.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
For: Solar Alliance

Michael B. Day
JOE WIEDMAN

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

**Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST**

(916) 447-2166
dkk@eslawfirm.com
For: Independent Energy Producers Association

Attorney At Law
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 765-8408
mday@goodinmacbride.com
For: PV Now/Solar Alliance

Brian Cragg
JOSEPH F. WIEDMAN
Attorney At Law
GOODIN, MAC BRIDE, SQUERI, DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
bcragg@goodinmacbride.com
For: Independent Energy Producers Association (IEPA)

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

James D. Squeri
Attorney At Law
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
jsqueri@goodinmacbride.com
For: California Retailers Association/Powerex Corp.

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

Gregory Morris
GREEN POWER INSTITUTE
2039 SHATTUCK AVE., SUITE 402
BERKELEY CA 94704
(510) 644-2700
gmorris@emf.net
For: Green Power Institute

William H. Booth
Attorney At Law
LAW OFFICE OF WILLIAM H. BOOTH
67 CARR DRIVE
MORAGA CA 94596
(925) 296-2460
wbooth@booth-law.com
For: Ridgewood Renewable Power, LLC and Ridgewood Olinda, LLC

Craig Lewis
Vp Of Gov. Relations
GREENVOLTS
50 FIRST STREET, SUITE 507
SAN FRANCISCO CA 94105
(650) 796-2353
craig.lewis@greenvolts.com
For: GreenVolts

Jeremy D. Weinstein
Attorney At Law
LAW OFFICES OF JEREMY D. WEINSTEIN
1512 BONANZA STREET
WALNUT CREEK CA 94596
(925) 943-2708
jeremy.weinstein@pacificorp.com
For: PacifiCorp

Will Plaxico
HELIOS ENERGY, LLC
31897 DEL OBISPO ST. SUITE 220
SAN JUAN CAPISTRANO CA 92675
(310) 346-2870
wplaxico@heliosenergy.us

Sara Steck Myers
LAW OFFICES OF SARA STECK MYERS
122 28TH AVE.
SAN FRANCISCO CA 94121
(415) 387-1904
ssmyers@att.net
For: Center for Energy Efficiency and Renewable Technologies (CEERT)

Donald N. Furman
Senior Vice President
IBERDROLA RENEWABLES INC
1125 NW COUCH STREET, SUITE 700
PORTLAND OR 97209

Jane H. Turnbull
LEAGUE OF WOMEN VOTERS OF CALIFORNIA
64 LOS ALTOS SQUARE
LOS ALTOS CA 94022
(650) 559-1766

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

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R0602012 LIST

(503) 796-7723
For: Iberdrola Renewables Inc.

jaturnbu@ix.netcom.com

John W. Leslie
Attorney At Law
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO CA 92130-2592
(858) 720-6352
jleslie@luce.com
For: Coral Power L.L.C.

OCCIDENTAL POWER SERVICES, INC.
5 GREENWAY PLAZA, SUITE 110
HOUSTON TX 77046
ej_wright@oxy.com

Ann Moore
OFFICE OF THE CITY ATTORNEY
276 FOURTH AVENUE
CHULA VISTA CA 91910
(619) 691-5037
amoore@ci.chula-vista.ca.us
For: The City of Chula Vista

Randall W. Keen
Attorney At Law
MANATT PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES CA 90064
(310) 312-4361
rkeen@manatt.com
For: MANATT PHELPS & PHILLIPS, LLP

Noel Obiora
Legal Division
RM. 4107
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-5987
nao@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: MANATT, PHELPS & PHILLIPS, LLP

Evelyn C. Lee
WILLIAM MANHEIM
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120
(415) 973-2786
ECL8@pge.com
For: PACIFIC GAS AND ELECTRIC COMPANY

David Morse
1411 W, COVELL BLVD., SUITE 106-292
DAVIS CA 95616-5934
(530) 756-5033
demorse@omsoft.com
For: Bear Valley Electric Service

Arthur L. Haubenstock
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO CA 94105
(415) 973-4868

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

Charles Middlekauff
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120
(415) 973-6971
crmd@pge.com
For: Pacific Gas and Electric Company

John Dalessi
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA CA 95670-6078
(916) 631-3200
jdalessi@navigantconsulting.com
For: South San Joaquin Valley Power Authority/Kings River
Conservation District

Mathew A. Fogelson
WILLIAM V. MANHEIM
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, MC B30A-2487
SAN FRANCISCO CA 94120-7442
MAFv@pge.com

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

Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST

Ryan Flynn
Attorney
PACIFICORP
825 NE MULTNOMAH, SUITE 1800
PORTLAND OR 97232
(503) 813-5854
ryan.flynn@pacificorp.com

Carol A. Smoots
PERKINS COIE LLP
607 FOURTEENTH STREET, NW, SUITE 800
WASHINGTON DC 20005
(202) 628-6600
csmoots@perkinscoie.com

PILOT POWER GROUP, INC.
8910 UNIVERSITY CENTER LANE, STE 520
SAN DIEGO CA 92122
(858) 678-0118
tdarton@pilotpowergroup.com

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

Thomas Darton
PILOT POWER GROUP, INC.
8910 UNIVERSITY CENTER LANE, STE 520
SAN DIEGO CA 92122
(858) 627-9577
tdarton@pilotpowergroup.com
For: Pilot Power Group, Inc.

Thomas Elgie
POWEREX CORPORATION
1400, 666 BURRAND ST
VANCOUVER BC V6C 2X8
CANADA
(604) 891-5000
Tom.Elgie@powerex.com
For: Powerex Corporation

PRAXAIR PLAINFIELD, INC.
2711 CENTERVILLE ROAD, SUITE 400
WILMINGTON DE 19808
rick_noger@praxair.com

Daniel V. Gulino
RIDGEWOOD POWER MANAGEMENT, LLC
947 LINWOOD AVENUE
RIDGEWOOD NJ 07450
(201) 447-9000
dgulino@ridgewoodpower.com
For: RIDGEWOOD POWER MANAGEMENT, LLC

Kim F. Hassan
Attorney At Law
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, HQ-12
SAN DIEGO CA 92101
(619) 699-5006
khassan@sempra.com
For: San Diego Gas & Electric

Theresa L. Mueller
Chief Energy & Telecommunications Deputy
SAN FRANCISCO CITY ATTORNEY
CITY HALL, ROOM 234
SAN FRANCISCO CA 94102-4682
(415) 554-4640
theresa.mueller@sfgov.org
For: City and County of San Francisco

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

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

SEMPRA ENERGY SOLUTIONS
101 ASH STREET, HQ09
SAN DIEGO CA 92101-3017
email@semprasolutions.com

Theodore Roberts
Senior Counsel
SEMPRA GLOBAL
101 ASH STREET, HQ 12B
SAN DIEGO CA 92101-3017
(619) 699-5111
troberts@sempra.com

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

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R0602012 LIST

For: Sempra Global/Sempra Energy Solutions

SOCAL WATER/BEAR VALLEY ELECTRIC
630 EAST FOOTHILL BLVD.
SAN DIMAS CA 91773
kswitzer@gswater.com

Rhone Resch
SOLAR ENERGY INDUSTRIES ASSOCIATION
805 FIFTEENTH STREET, N.W., SUITE 510
WASHINGTON DC 20005
(202) 682-0556
rresch@seia.org

William V. Walsh
FRANK J. COOLEY, CATHY KARLSTAD
Attorney At Law
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
(626) 302-4531
william.v.walsh@sce.com
For: Southern California Edison Company

Cathy A. Karlstad
MICHAEL MONTOYA
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
(626) 302-1096
cathy.karlstad@sce.com

Rasha Prince
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH STREET, GT14D6
LOS ANGELES CA 90013
(213) 244-5141
rprince@semprautilities.com
For: San Diego Gas & Electric/SoCal Gas

Jennifer Chamberlin
Mgr. Of Reg. And Gov. Affairs
STRATEGIC ENERGY, LLC
2633 WELLINGTON CT.
CLYDE CA 94520
(925) 969-1031
jchamberlin@strategicenergy.com

STRATEGIC ENERGY, LTD.
7220 AVENIDA ENCINAS, SUITE 120
CARLSBAD CA 92009
customerrelations@sel.com

Jp Ross
Vp Strategoc Relationships
SUNGEVITY
1625 SHATTUCK AVE., STE 210
BERKELEY CA 94709
(510) 845-5660 X124
jpross@sungevity.com
For: THE VOTE SOLAR INITIATIVE

Keith Mccrea
Attorney At Law
SUTHERLAND, ASBILL & BRENNAN
1275 PENNSYLVANIA AVENUE, NW
WASHINGTON DC 20004-2415
(202) 383-0705
keith.mccrea@sablaw.com
For: CA Manufacturers & Technology Assn.

Marcel Hawiger
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876 X311
marcel@turn.org
For: The Utility Reform Network

Cliff Chen
UNION OF CONCERNED SCIENTISTS
2397 SHATTUCK AVENUE, STE 203
BERKELEY CA 94708
(510) 843-1872
cchen@ucsusa.org
For: Union of Concerned Scientists

Joseph M. Karp
Attorney At Law
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO CA 94111-5894
(415) 591-1000
jkarp@winston.com
For: California Wind Energy Association

Karen E. Bowen
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO CA 94111
(415) 591-1100
jkarp@winston.com
For: California Wind Energy Association

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

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R0602012 LIST

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

Gary Collord
Stationary Source Division
AIR RESOURCES BOARD
1001 I STREET, PO BOX 2815
SACRAMENTO CA 95812
(916) 324-5548
gcollord@arb.ca.gov

Amanda C. Baker
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1691
ab1@cpuc.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

Joseph Fleshman
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-45
SACRAMENTO CA 95814
(916) 654-4163
jfleshma@energy.state.ca.us
For: CALIFORNIA ENERGY COMMISSION

Bill Knox
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 28
SACRAMENTO CA 95814-5504
(916) 654-4417
bknox@energy.state.ca.us

Clare Laufenberg
Strategic Transmission Investmnt Program
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 46
SACRAMENTO CA 95814
(916) 654-4859
claufenb@energy.state.ca.us

Heather Louie
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-45
SACRAMENTO CA 95818
(916) 651-1232
hlouie@energy.state.ca.us
For: CALIFORNIA ENERGY COMMISSION

Dorothy Duda

Heather Raitt
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 45
SACRAMENTO CA 95814
(916) 654-4735
hraitt@energy.state.ca.us
For: CALIFORNIA ENERGY COMMISSION

Kate Zocchetti
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-45
SACRAMENTO CA 95814
kzocchet@energy.state.ca.us

Lorraine Gonzales
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET MS-45
SACRAMENTO CA 95814
(916) 654-5997
lgonzale@energy.state.ca.us
For: CALIFORNIA ENERGY COMMISSION

Manpreet Mattu
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-45
SACRAMENTO CA 95814
Mmattu@energy.state.ca.us
For: CALIFORNIA ENERGY COMMISSION

Ross Miller
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
SACRAMENTO CA 95814
(916) 654-4892
rmiller@energy.state.ca.us

James McMahon
CRA INTERNATIONAL
50 CHURCH ST.
CAMBRIDGE MA 02138
(603) 591-5898
jmcMahon@crai.com
For: California Department of Water Resources

Paul Douglas
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 355-5579
psd@cpuc.ca.gov

Jaclyn Marks

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

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R0602012 LIST**

Administrative Law Judge Division
RM. 5109
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2800
dot@cpuc.ca.gov

Julie A. Fitch
Policy & Planning Division
RM. 5119
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 355-5552
jf2@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

Louis M. Irwin
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1225
lmi@cpuc.ca.gov

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

Cheryl Lee
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2167
cnl@cpuc.ca.gov

Mark R. Loy
Division of Ratepayer Advocates
RM. 4205
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2268
mrl@cpuc.ca.gov

Anne E. Simon

Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2257
jm3@cpuc.ca.gov

Burton Mattson
Administrative Law Judge Division
RM. 5104
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2504
bwm@cpuc.ca.gov

Beth Moore
Division of Ratepayer Advocates
RM. 4103
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1784
blm@cpuc.ca.gov

Kenneth Swain
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DR., SUITE 600
RANCHO CORDOVA CA 95670
(916) 631-3206
kenneth.swain@navigantconsulting.com
For: NAVIGANT CONSULTING, INC.

David Peck
Division of Ratepayer Advocates
RM. 4103
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1213
dbp@cpuc.ca.gov

Brian D. Schumacher
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1226
bds@cpuc.ca.gov

Andrew Schwartz
Executive Division
RM. 5217
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1175
as2@cpuc.ca.gov

Karen Terranova

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

Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST

Administrative Law Judge Division
RM. 5107
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2014
aes@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
For: DRA

Elizabeth Stoltzfus
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-5586
eks@cpuc.ca.gov

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

Dennis W. De Cuir
Atty At Law
A LAW CORPORATION
2999 DOUGLAS BLVD., SUITE 325
ROSEVILLE CA 95661
(916) 788-1022
dennis@ddecuir.com
For: Bear Valley Electric Service, Div. of Golden State Water Co.

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: Coalition of California Utility Employees/California Unions
for Reliable Energy

ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, STE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
filings@a-klaw.com
For: Cogeneration Association of California

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

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

R. James Ansell
ALTERNITY WIND POWER
ONE CRAGWOOD ROAD
SOUTH PLAINFIELD NJ 07080
(908) 791-4871
jansell@alternitywindpower.com

Todd J. Martin
ALTERNITY WIND POWER, LLC
ONE CRAGWOOD ROAD
SOUTH PLAINFIELD NJ 07080
(908) 791-4825
tmartin@alternitywindpower.com

Stacy Aguayo
APS ENERGY SERVICES
400 E. VAN BUREN STREET, SUITE 750
PHOENIX AZ 85004
(602) 744-5364
stacy.aguayo@apses.com

Philippe Auclair
11 RUSSELL COURT
WALNUT CREEK CA 94598
(925) 588-9109
philha@astound.net

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

Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST

Carl Steen
BAKER & HOSTETLER LLP
600 ANTON BLVD., SUITE 900
COSTA MESA CA 92626
(714) 966-8803
csteen@bakerlaw.com
For: BAKER & HOSTETLER LLP

Roger Lee
BAKER & HOSTETLER LLP
600 ANTON BLVD., SUITE 900
COSTA MESA CA 92626
(714) 966-8811
rblee@bakerlaw.com
For: BAKER & HOSTETLER LLP

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

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

Reed V. Schmidt
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY CA 94703-2714
(510) 653-3399 X111
rschmidt@bartlewells.com

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

Ryan Pletka
Renewable Energy Project Manager
BLACK & VEATCH
2999 OAK ROAD, SUITE 490
WALNUT CREEK CA 94597
(925) 949-5929
pletkarj@bv.com
For: BLACK & VEATCH

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

Bruce McLaughlin
Attorney At Law
BRAUN & BLAISING, P.C.
915 L STREET SUITE 1420
SACRAMENTO CA 95814
(916) 326-5812
mclaughlin@braunlegal.com

Scott Blaising
Attorney At Law
BRAUN & BLAISING, P.C.
915 L STREET, SUITE 1420
SACRAMENTO CA 95814
(916) 682-9702
blaising@braunlegal.com

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

Brian C. Freckmann
C/O FOUNDATION PARTNERS
100 DRAKES LANDING ROAD NO. 125
GREENBRAE CA 94904
(415) 925-5291
brian@banyansec.com

Mohan Niroula
CALIF DEPT OF WATER RESOURCES
RESOURCE ADEQUACY SECTION
3310 EL CAMINO AVENUE, STE 256
SACRAMENTO CA 95821
(916) 574-0712
mniroula@water.ca.gov

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

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

Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST

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

CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST.
SAN FRANCISCO CA 94117
(415) 552-1764 X 17
cem@newsdata.com

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

Legal And Regulatory Department
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
e-recipient@caiso.com
For: CALIFORNIA ISO

Baldassaro Dicapo
CALIFORNIA ISO
LEGAL AND REGULATORY DEPARTMENT
151 BLUE RAVINE ROAD
FOLSOM CA 95630
bdicapo@caiso.com
For: California Independent System Operators

Grant A. Rosenblum
Staff Counsel
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7138
groosenblum@caiso.com
For: CALIFORNIA ISO

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

Nancy Rader
CALIFORNIA WIND ENERGY ASSOCIATION
2560 NINTH STREET, SUITE 213A
BERKELEY CA 94710
(510) 845-5077
nrader@calwea.org

Kevin Duggan
Attorney At Law
CALPINE COPROATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON CA 94588
(925) 479-6648
duggank@calpine.com

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

Danielle Matthews Seperas
CALPINE CORPORATION
1127 11TH STREET, SUITE 242
SACRAMENTO CA 95814
(916) 443-2500
dseperas@calpine.com

Venkat Suravarapu
Associates Director
CAMBRIDGE ENERGY RESEARCH ASSOCIATES
1150 CONNECTICUT AVENUE NW, STE. 201
WASHINGTON DC 20036
(202) 857-5177
vsuravarapu@cera.com
For: CAMBRIDGE ENERGY RESEARCH ASSOCIATES
Steven Siegel
Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
3421 PARK PLACE
EVANSTON IL 60201
(847) 491-1437
ssiegel@biologicaldiversity.org

Claire E. Torchia

Tony Chen

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

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CHADBOURNE & PARKE LLP
350 SOUTH GRAND AVE., STE 3300
LOS ANGELES CA 90071
(213) 892-2105
ctorchia@chadbourn.com

Bill Golove
CHEVRON ENERGY SOLUTIONS
345 CALIFORNIA STREET, 18TH FLOOR
SAN FRANCISCO CA 94104
whgolove@chevron.com

Courtney Weddington
Compliance Analyst
COMMERCE ENERGY INC
222 W. LAS COLINAS BLVD., STE. 950-E
IRVING TX 75039
(214) 296-5414
cweddington@commerceenergy.com
For: COMMERCE ENERGY INC

Ann Hendrickson
COMMERCE ENERGY, INC.
222 WEST LAS COLINAS BLVD., SUITE 950E
IRVING TX 75039
(714) 259-2500
ahendrickson@commerceenergy.com
For: COMMERCE ENERGY, INC.

Melanie Falls
COMPETITIVE POWER VENTURES, INC.
55 SECOND STREET, SUITE 525
SAN FRANCISCO CA 94105
(415) 293-1460

Sean J. Finnerty
Sr. Vice President
COMPETITIVE POWER VENTURES, INC.
35 BRAINTREE HILL OFFICE PARK, SUITE 400
BRAINTREE MA 02184
sfinnerty@cpv.com

Clyde Murley
CONSULTANT TO NRDC
1031 ORDWAY STREET
ALBANY CA 94706
(510) 528-8953
clyde.murley@comcast.net
For: The Union of Concerned Scientists

Mark L. Perlis
DICKSTEIN SHAPIRO LLP
1825 EYE STREET, NW
WASHINGTON DC 20006
(202) 420-4703
perlism@dicksteinshapiro.com

Sr. Manger, Business Devel.
COOL EARTH
7665 HAWTHORNE AVE
LIVERMORE CA 94550
(925) 454-8506
tchen@coolearthsolar.com
For: COOL EARTH SOLAR

Graig Cooper
55 2ND STREET, SUITE 525
SAN FRANCISCO CA 94105
(415) 293-1467
gcooper@cpv.com

Marcie Milner
CORAL ENERGY RESOURCES, L P
4445 EASTGATE MALL, SUITE 100
SAN DIEGO CA 92121
(858) 526-2106
marcie.milner@shell.com
For: CORAL POWER LLC

Doug Davie
DAVIE CONSULTING, LLC
3390 BEATTY DRIVE
EL DORADO HILLS CA 95762
(916) 939-7021
dougdpucmail@yahoo.com

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

Robert B. Gex
Attorney At Law,
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6500
bobbex@dwt.com
Balwant S. Purewal
DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., LL-90
SACRAMENTO CA 95821
(916) 574-0668
bpurewal@water.ca.gov
For: DEPARTMENT OF WATER RESOURCES

Jeffrey Harris
Attorney At Law
ELLISON & SCHNEIDER
2015 H STREET
SACRAMENTO CA 95811
(916) 447-2166

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

Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST

William F. Dietrich
Attorney At Law
DIETRICH CONSULTING
2977 YGNACIO VALLEY ROAD, NO. 613
WALNUT CREEK CA 94598-3535
(415) 297-2356
dietrichlaw2@earthlink.net

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

Joseph Paul
Senior Corporate Counsel
DYNEGY, INC.
4140 DUBLIN BLVD., STE. 100
DUBLIN CA 94568
(925) 829-1804 X-105
joe.paul@dynegy.com
For: Dynegy

Ramona Gonzalez
EAST BAY MUNICIPAL UTILITY DISTRICT
375 ELEVENTH STREET, M/S NO. 205
OAKLAND CA 94607
(510) 287-1619
ramonag@ebmud.com

Mark E. Irwin
EDISON MISSION ENERGY
18101 VON KARMAN AVE. STE 1700
IRVINE CA 92612
(949) 798-7980
mirwin@edisonmission.com
For: EDISON MISSION ENERGY

Roy D. McCoy
Manager, Regulatory Support & Reporting
ELECTRIC RELIABILITY COUNCIL OF TEXAS
2705 W. LAKE DRIVE
TAYLOR TX 76574
(512) 248-3131
rmccoy@ercot.com

Kevin Porter
EXETER ASSOCIATES, INC.
SUITE 310
5565 STERRETT PLACE
COLUMBIA MD 21044
(410) 992-7500
porter@exeterassociates.com

jdh@eslawfirm.com
For: Dynegy

Jedediah J. Gibson
Attorney At Law
ELLISON SCHNEIDER & HARRIS LLP
2015 H STREET
SACRAMENTO CA 95811
(916) 447-2166
jjg@eslawfirm.com
For: Sierra Pacific Power Company

Snuller Price
ENERGY AND ENVIRONMENTAL ECONOMICS
101 MONTGOMERY, SUITE 1600
SAN FRANCISCO CA 94104
(415) 391-5100
snuller@ethree.com
For: ENERGY AND ENVIRONMENTAL ECONOMICS

Steve Chadima
ENERGY INNOVATIONS, INC.
130 WEST UNION STREET
PASADENA CA 91103
(626) 535-2784
steve@energyinnovations.com

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

Douglas E. Cover
ENVIRONMENTAL SCIENCE ASSOCIATES
225 BUSH STREET, SUITE 1700
SAN FRANCISCO CA 94104
(415) 896-5900
dcover@esassoc.com

Bill Mason
Senior Asset Administrator
ENXCO, INC.
PO BOX 581043
N. PALM SPRINGS CA 92258
(760) 329-1437 X-108
billm@enxco.com

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

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

Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST

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

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

Barry H. Epstein
FITZGERALD, ABBOTT & BEARDSLEY, LLP
1221 BROADWAY, 21ST FLOOR
OAKLAND CA 94612
(510) 451-3300
bepstein@fablaw.com
For: FITZGERLAND, ABBOTT & BEARDSLEY, LLP

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

Diane I. Fellman
Attorney At Law
FPL ENERGY, LLC
234 VAN NESS AVENUE
SAN FRANCISCO CA 94102
(415) 703-6000
diane_fellman@fpl.com

Rich Lauckhart
GLOBAL ENERGY
SUITE 200
2379 GATEWAY OAKS DR.
SACRAMENTO CA 95833
(916) 569-0985
rlauckhart@globalenergy.com

Michael J. Gilmore
INLAND ENERGY
SOUTH TOWER SUITE 606
3501 JAMBOREE RD
NEWPORT BEACH CA 92660
(949) 856-2200
michaelgilmore@inlandenergy.com

Diarmuid McGarry
GREENWOOD ENVIRONMENTAL
330 TOWNSEND ST. SUITE 118
SAN FRANCISCO CA 94107
(415) 541-9653
diarmuid@greenwoodenv.com
For: GREENWOOD ENVIRONMENTAL

Mary Anne Sullivan
HAGAN & HARTSON, LLP
555 THIRTEENTH STREET, NW
WASHINGTON DC 20006
(202) 637-3695
MASullivan@hhlaw.com

Amy C. Roma
HOGAN & HARTSON, LLP
555 THIRTEENTH STREET, N.W.
WASHINGTON DC 20004
(202) 637-6831
ACRoma@hhlaw.com

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

Paul D. Hunt
4929 WEBSTER STREET
OAKLAND CA 94609-2116
(510) 282-0838
pdh9@columbia.edu

Peter Brehm
INFINIA CORPORATION
6811 OKANOGAN PLACE
KENNEWICK WA 99336
(509) 737-2199
pbrehm@infiniacorp.com

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

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

Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST

Alex Kang
ITRON, INC.
1111 BROADWAY, STE. 1800
OAKLAND CA 94607
(510) 844-2800
alex.kang@itron.com

Todd Jaffe
Energy Business Brokers And Consultants
3420 KEYSER ROAD
BALTIMORE MD 21208
(410) 602-2589
tjaffe@energybusinessconsultants.com

Nellie Tong
KEMA, INC.
492 NINTH STREET, SUITE 220
OAKLAND CA 94607
(510) 891-0446
nellie.tong@us.kema.com

Timothy Castille
LANDS ENERGY CONSULTING, INC.
18109 SE 42ND STREET
VANCOUVER WA 98683
(360) 885-4567
castille@landsenergy.com

Galen Lemei
PRESIDIO BUILDING 97
PO BOX 29512
SAN FRANCISCO CA 94129
(415) 561-8497
glemei@resource-solutions.org
For: Center For Resource Solutions

Lynn M. Alexander
LMA CONSULTING
129 REDWOOD AVENUE
CORTE MADERA CA 94925
(415) 945-9938
lynn@lmaconsulting.com

Lizbeth Mcdannel
2244 WALNUT GROVE AVE., QUAD 4D
ROSEMEAD CA 91770
(626) 302-1038
lizbeth.mcdannel@sce.com

Cathy S. Woollums
MIDAMERICAN ENERGY HOLDINGS COMPANY
106 EAST SECOND STREET
DAVENPORT IA 52801

Paul Fenn
LOCAL POWER
4281 PIEDMONT AVE.
OAKLAND CA 94611
(510) 451-1727
paulfenn@local.org

Elizabeth Douglass
Staff Writer
LOS ANGELES TIMES
202 WEST FIRST STREET
LOS ANGELES CA 90012
(213) 237-5799
elizabeth.douglass@latimes.com

Cynthia Wooten
LUMENX CONSULTING, INC.
1126 DELAWARE STREET
BERKELEY CA 94702
(510) 525-6309
cwooten@lumenxconsulting.com

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

Jack Mcnamara
Attorney At Law
MACK ENERGY COMPANY
PO BOX 1380
AGOURA HILLS CA 91376-1380
(818) 865-8515
jackmack@suesec.com

C. Susie Berlin
MCCARTHY & BERLIN LLP
100 PARK CENTER PLAZA, STE. 501
SAN JOSE CA 95113
(408) 288-2080
sberlin@mccarthylaw.com

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

Robert J. Reinhard
MORRISON AND FOERSTER

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

Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST

(563) 333-8009
cswoollums@midamerican.com

David Olivares
Electric Resource
MODESTO IRRIGATION DISTRICT
PO BOX 4060
MODESTO CA 95352
davido@mid.org
For: Electric Resource Planning and Development Modesto
Irrigation District

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

Thomas S Kimball
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95352-4060
(209) 557-1510
tomk@mid.org

Sean Hazlett
MORGAN STANLEY
555 CALIFORNIA ST., SUITE 2200, 21ST FL
SAN FRANCISCO CA 94104
(415) 576-2325
sean.hazlett@morganstanley.com

Nick Allen
MORGAN STANLEY RESEARCH
555 CALIFORNIA STREET STE 2200 21ST FLR
SAN FRANCISCO CA 94104
(415) 576-2615
Nick.Allen@morganstanley.com

Fred Wellington
NAVIGANT CONSULTING, INC.
1 MARKET ST., SPEAR ST. TOWER, STE 1200
SAN FRANCISCO CA 94105
(415) 356-7132
fred.wellington@navigantconsulting.com

Kirby Dusel
NAVIGANT CONSULTING, INC.

425 MARKET STREET
SAN FRANCISCO CA 94105-2482
(415) 268-7469
rreinhard@mofo.com

Whitney Bardwick
MP2 CAPITAL
1101 5TH AVENUE, SUITE 360
SAN RAFAEL CA 94901
(415) 457-5911

Brad Bauer
MP2CAPITAL
1101 FIFTH AVENUE, SUITE 360
SAN RAFAEL CA 94901
(415) 457-5911
brad@mp2capital.com

Michael Laine
MP2CAPITAL
1101 5TH AVENUE, STE. 360
SAN RAFAEL CA 94901
(415) 457-5911
michael@mp2capital.com

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

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

Erin Ranslow
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA CA 95670-6078
(916) 631-3200
cpucrulings@navigantconsulting.com

Valerie Winn
Project Manager
PACIFIC GAS & ELECTRIC
77 BEALE STREET, B9A
SAN FRANCISCO CA 94105
(415) 973-3839
vjw3@pge.com

Bianca Bowman

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

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R0602012 LIST

3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA CA 95670
(916) 834-0684
kdusel@navigantconsulting.com
For: San Joaquin Valley Power Authority

Laurie Park
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA CA 95670-6078
(916) 631-3200
lpark@navigantconsulting.com
For: NAVIGANT CONSULTING, INC.

Paul D. Maxwell
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA CA 95670-6078
(916) 631-2300
pmaxwell@navigantconsulting.com

James B. Woodruff
Vice President Regulatory And Govt Affai
NEXTLIGHT RENEWABLE POWER, LLC
101 CALIFORNIA STREET, STE 2450
SAN FRANCISCO CA 94111
(626) 404-6860
jwoodruff@nextlighttrp.com

Kerry Hattevik
Director Of Reg. And Market Affairs
NRG ENERGY
829 ARLINGTON BLVD.
EL CERRITO CA 94530
(510) 227-9188
kerry.hattevik@nrgenergy.com

Harold M. Romanowitz
OAK CREEK ENERGY SYSTEMS, INC.
14633 WILLOW SPRINGS ROAD
MOJAVE CA 93501
(661) 822-6853
hal@rwitz.net
For: OAK CREEK ENERGY SYSTEMS, INC.

Law Department File Room
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120-7442
cpuccases@pge.com

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

Case Coordinator
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MAIL CODE B9A
SAN FRANCISCO CA 94105
(415) 973-4124
brbc@pge.com

Case Coordination
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000; MC B9A
SAN FRANCISCO CA 94177
(415) 973-4744
regrelcpuccases@pge.com

Cory M. Mason
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B30A
SAN FRANCISCO CA 94105-1814
(415) 973-2320
cmmw@pge.com
For: Pacific Gas and Electric Company

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

Edward V. Kurz
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST., B30A
SAN FRANCISCO CA 94105
(415) 973-6669
evk1@pge.com
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

Kyle L. Davis
PACIFICORP
825 NE MULTNOMAH ST., 20TH FLOOR
PORTLAND OR 97232
(503) 813-6601
kyle.l.davis@pacificcorp.com

Maggie Chan
PG&E
MAILCODE B9A

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

Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST

(415) 973-7512
nxk2@pge.com

Shaun Halverson
PACIFIC GAS AND ELECTRIC COMPANY
PG&E MAIL CODE B9A
PO BOX 770000
SAN FRANCISCO CA 94177
SEHC@pge.com
For: PACIFIC GAS AND ELECTRIC COMPANY

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

William V. Manheim
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, ROOM 3025-B30A
SAN FRANCISCO CA 94105
(415) 973-6628
wvm3@pge.com
For: Pacific Gas and Electric Company

David Saul
PACIFIC SOLAR & POWER CORPORATION
2850 W. HORIZON RIDGE PKWY, SUITE 200
HENDERSON NV 89052
(702) 289-4361
dsaul@pacificsolar.net
For: Pacific Solar & Power Corporation

Cathie Allen
Ca State Mgr.
PACIFICORP
825 NE MULTNOMAH STREET, SUITE 2000
PORTLAND OR 97232
(503) 813-7157
californiadockets@pacificcorp.com

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

Arno Harris
RECURRENT ENERGY, INC.
1700 MONTGOMERY ST., SUITE 251
SAN FRANCISCO CA 94111

PO BOX 770000
SAN FRANCISCO CA 94177
MMCL@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

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

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

Tom Hamilton
Energy Program Manager
QUALITY BUILT
15330 AVENUE OF SCIENCE
SAN DIEGO CA 92128
(800) 547-5125
thamilton@qualitybuilt.com

Eric Larsen
Environmental Scientist
RCM INTERNATIONAL, L.L.C.
PO BOX 4716
BERKELEY CA 94704
(510) 834-4568
elarsen@rcmdigesters.com

Vikki Wood
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6301 S STREET, MS A204
SACRAMENTO CA 95817-1899
(916) 732-6278
vwood@smud.org

William W. Westerfield Iii
Sr. Attorney
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET
SACRAMENTO CA 95817

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

Last Updated on 19-JUN-2008 by: AMT
R0602012 LIST

(415) 298-7096
arno@recurrentenergy.com

Jason Abiecunas
Black & Beatch Global Renewable Energy
RENEWABLE ENERGY CONSULTANT
11401 LAMAR
OVERLAND PARK KS 66211
(913) 458-2114
abiecunasjp@bv.com
For: RENEWABLE ENERGY CONSULTANT

Lenny Hochschild
Evolution Markets, Llc
RENEWABLE ENERGY MARKETS
425 MARKET STREET, SUITE 2200
SAN FRANCISCO CA 94105
(415) 955-0561
lennyh@evomarkets.com
For: RENEWABLE ENERGY MARKETS

William P. Short
RIDGEWOOD POWER MANAGEMENT, LLC
947 LINWOOD AVENUE
RIDGEWOOD NJ 07450
(201) 447-9000
bshort@ridgewoodpower.com
For: RIDGEWOOD POWER MANAGEMENT, LLC

Michael Deangelis
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET
SACRAMENTO CA 95817-1899
(916) 732-6589
mdeange@smud.org
For: SACRAMENTO MUNICIPAL UTILITY DISTRICT
Rob Roth
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET MS 75
SACRAMENTO CA 95817
(916) 732-6131
rroth@smud.org
For: SACRAMENTO MUNICIPAL UTILITY DISTRICT

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

Daniel A. King
SEMPRA ENERGY
101 ASH STREET, HQ 12
SAN DIEGO CA 92101

(916) 732-7107
wwester@smud.org
For: SACRAMENTO MUNICIPAL UTILITY DISTRICT

Central Files
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP31E
SAN DIEGO CA 92123
(858) 654-1766
centralfiles@semprautilities.com
For: SAN DIEGO GAS & ELECTRIC

Jennifer Wright
California Regulatory Affairs
SAN DIEGO GAS & ELECTRIC CO.
8330 CENTURY PARK, CT
SAN DIEGO CA 92123
(858) 654-1891
jwright@semprautilities.com
For: SAN DIEGO GAS & ELECTRIC

Billy Blattner
Manager Regulatory Relations
SAN DIEGO GAS & ELECTRIC COMPANY
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO CA 94102
(415) 202-9986
wblattner@semprautilities.com
For: SDG&E/SoCal Gas

Despina Niehaus
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32H
SAN DIEGO CA 92123-1530
(858) 654-1714
dniehaus@semprautilities.com
Sandra Rovetti
Manager
SAN FRANCISCO PUC
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISCO CA 94103
(415) 554-3179
srovetti@sfwater.org

Elena Mello
SIERRA PACIFIC POWER COMPANY
6100 NEIL RD.
RENO NV 89511
emello@sppc.com

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

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(619) 696-4350
daking@sempra.com

Yvonne Gross
Regulatory Policy Manager
SEMPRA ENERGY
101 ASH STREET, HQ08C
SAN DIEGO CA 92101
(619) 696-2075
ygross@sempraglobal.com

Thomas P. Corr
SEMPRA ENERGY GLOBAL ENTERPRISES
101 ASH STREET, HQ16C
SAN DIEGO CA 92101
(619) 696-4246
tcorr@sempra.com

Linda Wrazen
SEMPRA ENERGY REGULATORY AFFAIRS
101 ASH STREET, HQ16C
SAN DIEGO CA 92101
(619) 696-4272
lwrazen@sempraglobal.com

Greg Bass
Director, Retail Commodity Operations
SEMPRA ENERGY SOLUTIONS
401 WEST A STREET, STE 500
SAN DIEGO CA 92101-3017
(619) 684-8199
gbass@semprasolutions.com

Daniel M. Hecht
Associate General Counsel
SEMPRA ENERGY TRADING CORP.
58 COMMERCE ROAD
STANFORD CT 06902
(203) 355-5417
dhecht@sempratradng.com

James B. Woodruff
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, SUITE 342, GO1
ROSEMEAD CA 91770
(626) 302-1924

Seth D. Hilton
STOEL RIVES
111 SUTTER ST., SUITE 700
SAN FRANCISCO CA 94104
(415) 617-8943
sdhilton@stoel.com

Janice Lin
Managing Partner
STRATEGEN CONSULTING LLC

Marco Lemes
SMUD
6201 S STREET MS B257
SACRAMENTO CA 95817-1899
(916) 732-5871
mlemes@smud.org

Kevin Davies
SOLAR DEVELOPMENT INC.
5420 DOUGLAS BLVD. STE F
GRANITE BAY CA 95746-6253
(916) 543-1060
kevin@solardevelop.com

Frank W. Harris
Regulatory Economist
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE
ROSEMEAD CA 91770
(626) 302-1718
frank.w.harris@sce.com
For: SOUTHERN CALIFORNIA EDISON

Gary L. Allen
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-9612
gary.allen@sce.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-4875
case.admin@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

Nina Suetake
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., STE. 350
SAN FRANCISCO CA 94102
(415) 929-8876 X308
nsuetake@turn.org

Robert Finkelstein
MATTHEW FREEDMAN
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876 X310
bfinkelstein@turn.org

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146 VICENTE ROAD
BERKELEY CA 94705
(510) 665-7811
janice@strategenconsulting.com

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

Ed Smeloff
Senior Manager
SUNPOWER CORPORATION
1414 HARBOUR WAY SOUTH
RICHMOND CA 94804
(510) 289-9082
ed.smeloff@sunpowercorp.com

Joe Greco
TERRA-GEN POWER LLC
9590 PROTOTYPE COURT, SUITE 200
RENO NV 89521
(775) 850-2245
jgreco@terra-genpower.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

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

Andrew J. Van Horn
VAN HORN CONSULTING
12 LIND COURT
ORINDA CA 94563

Michel P. Florio
Attorney At Law
THE UTILITY REFORM NETWORK (TURN)
711 VAN NESS AVENUE, SUITE.350
SAN FRANCISCO CA 94102
(415) 929-8876
mflorio@turn.org

Peter V. Allen
THELEN REID BROWN RAYSMAN & STEINER
101 SECOND STREET, SUITE 1800
SAN FRANCISCO CA 94105-3606
(415) 369-7561
pvallen@thelen.com

Ashlee M. Bonds
THELEN REID BROWN RAYSMAN&STEINER LLP
SUITE 1800
101 SECOND STREET
SAN FRANCISCO CA 94105
(415) 369-7788
abonds@thelen.com

David Townley
18 BASSWOOD AVENUE
OAK PARK CA 91377
(818) 416-4745
David.Townley@townleytech.com

Laura Wisland
UNION OF CONCERNED SCIENTISTS
2397 SHATTUCK AVE., SUITE 203
BERKELEY CA 94704
(510) 809-1567
lwisland@ucsusa.org

Dan Perkins
WWW.ENERGYSMARTHOMES.NET
983 PHILLIPS ST.
VISTA CA 92083
(760) 639-0945
dan@energysmarthomes.net

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

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(925) 254-3358
andy.vanhorn@vhcenergy.com

Christopher O'Brien
Sharp Solar
VP STRATEGY AND GOVERNMENT RELATIONS
3808 ALTON PLACE NW
WASHINGTON DC 20016
(202) 486-3427
obrienc@sharpsec.com
For: SHARP SOLAR SYSTEMS DIVISION

Robin J. Walther
1380 OAK CREEK DRIVE, NO. 316
PALO ALTO CA 94304-2016
(650) 793-7445
rwalther@pacbell.net

Keith White
312 KELLER ST
PETALUMA CA 94952
keithwhite@earthlink.net

Sheridan J. Pauker
WILSON SONSINI GOODRICH & ROSATI
SPEAR TOWER, SUITE 3300
ONE MARKET ST
SAN FRANCISCO CA 94105
(415) 947-2136
spauker@wsgr.com

(END OF SERVICE LIST)