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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission's own Motion to Actively Guide Policy in California's Development of a Smart Grid System.

Rulemaking 08-12-009
(Filed December 18, 2008)

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING AMENDING SCOPE OF PROCEEDING TO SEEK COMMENTS AND TO SCHEDULE WORKSHOPS ON ENERGY DATA CENTER

1. Summary

This ruling amends the scope of this rulemaking to invite comments and schedule workshops pertaining to a Commission briefing paper, titled "Energy Data Center," which the Commission released in September, 2012.¹ Following the comments and workshops, the Commission will determine whether to open a new proceeding or to continue this proceeding to determine whether funding an Energy Data Center is in the public interest.

¹ "Energy Data Center," a Briefing Paper prepared by Audrey Lee, Ph.D., Energy Advisor to President Michael Peevey, and Marzia Zafar, Interim Director of the Commission's Policy and Planning Division, September 2012 (Briefing Paper), available at <http://www.cpuc.ca.gov/NR/rdonlyres/8B005D2C-9698-4F16-BB2B-D07E707DA676/0/EnergyDataCenterFinal.pdf>. This paper is included as Attachment A to this ruling.

The Briefing Paper noted that as the energy sector joins the information age, much data concerning energy usage is now available, but that access to that information is often difficult to obtain. The paper surmised: “Consolidating that information in one location, such as a data center, should help improve state energy policies and create new market opportunities to save energy.”²

This Scoping Memo solicits comments and schedules workshops pertaining to this Briefing Paper. This ruling adopts a procedural timetable for examining the issues identified in the Briefing Paper and to determine the next steps pertaining to the Energy Data Center, if any. Consistent with Pub. Util. Code § 1701.5, the deadline for the conclusion of this proceeding is 18 months from the date of this ruling.

2. Background

For some time, this proceeding has addressed issues pertaining to the privacy, security and use of the three terabyte’s of data that Smart Meters and the Smart Grid will soon produce and transmit daily. For this reason, this proceeding is the natural place to provide parties with an opportunity to respond to this Briefing Paper.

3. Highlights of Briefing Paper

The Briefing Paper provides an overview of the issues raised by the creation of an energy data center, as well as both the potential costs and benefits that would result from such a center.

² *Id.* at 1.

The Briefing Paper observes:

Aggregated data that does not contain personally-identifiable information, is not subject to the Commission's Privacy Rules, nor is a Non-Disclosure Agreement (NDA) required to obtain such information. This is noted in D.11-07-056 and affirmed in D.12.08-045.³

The Briefing Paper also contains an appendix that indicates the current methods that third parties, including researchers, use to obtain access to customer-specific data.⁴

The Briefing Paper identifies current challenges that organizations face when they seek to conduct research pertaining to the effectiveness of various State and Commission energy-related programs, such as energy efficiency and demand response. The Briefing Paper notes a central challenge:

In order to provide aggregated and anonymized data, the obvious question is how does one determine what is aggregated enough or anonymized enough.⁵

To make an energy data center possible, the Commission would need to decide what constitutes appropriately aggregated and anonymized data.

The Briefing Paper envisions three possible roles for the data center:

³ *Id.* at 1.

⁴ In addition, the Investor-owned Utilities (IOUs) file various reports related to their energy efficiency programs; however, these are not disaggregated to the extent envisioned for the data center. In addition these filings report on energy savings, rather than customer energy consumption patterns. *For Example* the CPUC's Energy Efficiency Groupware Application (EEGA) at <http://eega.cpuc.ca.gov/> is a public repository of IOU submitted reports and data on California energy efficiency programs and savings achievements.

⁵ *Id.* at 2.

1. A depository that contains aggregated and anonymized data and then makes it available to the public or qualified organizations.
2. An independent research center with access to customer-specific data that publishes results in an aggregated and anonymized form.
3. A service center for transferring data to governmental organizations that have a non-disclosure agreement with the Commission.

Each of these roles produces different benefits and imposes different costs and organizational challenges.⁶

The Briefing Paper also envisions two different ways that the energy data center could obtain the data. Under the first route, the energy data center would receive data from the Commission pursuant to the terms of a non-disclosure agreement with the Commission.⁷ Under the second route, the energy data center would receive data from the utilities pursuant to a non-disclosure agreement with the utility.

A goal of the research center would be to encourage “independent research and analysis of current state, Commission and utility programs using customer-specific data but publishing results of that data in an aggregated and anonymized form that protects customers’ privacy.”⁸

⁶ The role(s) of the data center may overlap, supplement, or complement current Commission oversight of the energy efficiency and demand response portfolios.

⁷ The Briefing Paper notes that the Government Code limits the entities with which the Commission can enter into a non-disclosure agreement to other governmental entities.

⁸ Briefing Paper at 3.

The Briefing Paper discusses the conceptual costs and benefits that would be associated with an energy data center. In addition, the Briefing Paper presents an overview of Pub. Util. Code § 394 and its core concern of protecting consumer privacy.

The Briefing Paper concludes that the Commission should open a rulemaking to consider the creation of an energy data center.

4. Scope of Proceeding

The Commission wishes to receive comments on the energy data center proposed in the Briefing Paper and to sponsor workshops to explore the many issues that such a proposal would raise.

The scope of the proceeding is to determine how the Commission should consider an energy data center. At this time, it is unclear whether the examination of an Energy Data Center is best conducted through another phase in this proceeding or through a separate proceeding.

To ensure that the Commission addresses this matter efficiently, the Commission will establish a new service list in this proceeding to facilitate the receipt of comments and replies on the Briefing Paper and to schedule workshops. We do not, however, determine at this time whether this proceeding is the best forum for considering an energy data center.

Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are named as respondents and are parties to this phase of the proceeding and shall be included in the initial service list in this proceeding.

All entities wishing to be included on the initial service list shall notify the process office by November 20, 2012. Entities other than respondents shall comply with Rules 1.4(a) and Rule 1.4(b) to become parties in this proceeding.

The Commission will establish an initial service list for this phase of the proceeding as soon as practicable thereafter.

Comments on the Briefing Paper are due on November 30, 2012 and should be filed and served on the service list established for this phase of the proceeding. Reply comments are due December 14, 2012.

Comments shall address any issue pertaining to the creation of an Energy Data Center, but should address the following questions, some of which were posed in the Briefing Paper.

- Is a rulemaking necessary under current practices to make aggregated and anonymized data available to the public? Should the Commission establish an energy data center?
- What is the value of an energy data center for utility customers and what could the cost be?
- How should the energy data center be set up? We have proposed one model but others may be possible within the confines of statutes, rules, and codes. What are the responsibilities of the energy data center beyond providing aggregated data to utility customers and the general public? Should additional research and evaluation of Commission programs be included? How would they differ from existing research and evaluation being conducted by the Commission?
- How could a data center be funded? Cap-and-trade auction revenue administrative funds, electric program investment charge funds, energy efficiency evaluation, measurement, and verification funds, a new source from utility customers? (Note, no decision on funding will be reached in this phase.)
- How can the Commission ensure the protection of customer-specific energy usage data at the energy data center and provide the necessary oversight? Are cyber security requirements necessary? Are further guidelines

for aggregation necessary for the data center? If so, what should those specific guidelines be?⁹

In addition, comments and replies should address how the Commission should proceed, whether through another phase of this proceeding or through another proceeding. Comments and replies should also propose a schedule that will lead to a decision concerning the energy research center by the end of 2013.

The Commission will schedule two days of workshops in January to address the structure of the research data center, the benefits and costs of such a center, and issues pertaining to its funding.

Following the workshops, the Commission will determine the next steps. The possible next steps could be either an order of the Commission changing the scope of this proceeding further or an order of the Commission initiating a new proceeding. In the case of a new proceeding, the record of this proceeding pertaining to the energy data center will be joined to the record of the new proceeding.

It is also possible that the information resulting from comments and replies will indicate that it is not advisable for the Commission to create an energy data center. In that case, the Commission will notify parties via a ruling.

5. Relationship to Other Commission Actions

On October 11-12, 2012, the Commission held workshops on tariffs under which customers can provide their data to third parties. These workshops aim to implement policies previously adopted in decisions (Decision (D.) 12-08-045,

⁹ *Id.* at 7-8.

D.12-08-047, and D.11-07-056) adopted in this proceeding. Advice letters are expected to be filed by November 21 (Ordering Paragraphs 14, D.12-08-045).

As part of the workshop discussions, participants also discussed the broader issues associated with data security and access to aggregated and anonymous data. Participants are asked to include their proposals in the comment cycle initiated in this ruling.

6. Proceeding Category, *Ex Parte* Rules, and Need for Hearing

This proceeding has previously been characterized as quasi-legislative and it has been anticipated that this proceeding would not require evidentiary hearings (EH). No party disputed either of these determinations.

As amended, this proceeding will not at this time affect rates. The proceeding will only lead to a decision to further pursue an Energy Data Center in this proceeding or in another proceeding.

Although an investigation into the costs and merits of a data center may lead to disputes of facts that would require EHs, the scope of this current proceeding will not adopt findings on costs or the merits of a data center – its sole scope at this time is to determine whether and how to examine this matter in this proceeding or in another proceeding. If a new proceeding is initiated, the Commission will join the record developed in this proceeding pertaining to an Energy Data Center to the new proceeding.

Pursuant to Rule 8.2(a), a quasi-legislative proceeding does not have any *ex parte* restrictions or reporting requirements.

7. Tentative Schedule

At this time, the tentative schedule is as follows:

Event	Date
Opening Comments on Briefing Paper and related issues	November 30, 2012
Reply Comments on Briefing Paper and related issues	December 14, 2012
Workshop	January 2013
Commission Decision(s) and/or Ruling further Amending Scope to Initiate an examination of the merits of an Energy Data Center	Late February 2013

8. Notice of Intent to Claim Compensation

Because of the amended scope set for this proceeding, it is reasonable to construe the Commission’s Rules as permitting the establishment of a new date for the timely receipt of a notice of intent to claim compensation by those who have not previously been found eligible for an award of compensation in this proceeding.

Consistent with Rule 17.1(a)(2) of the Commission’s Rules of Practice and Procedure, a notice of intent to claim compensation may be filed until 30 days after “the time for filing responsive pleadings (e.g., protests, responses, answers,

or comments).” In this instance, comments on the Briefing Paper are due November 30, 2012 and the deadline for filing a notice is December 31, 2012.

Consistent with Rule 17.2, parties that were found eligible for an award of compensation previously in this proceeding remain eligible for an award in this new phase of the proceeding without a new demonstration of eligibility.

9. Final Oral Argument

Since no EHs are scheduled, no final oral argument is anticipated.

10. Presiding Officer

Pursuant to Rule 13.2 (c), the presiding officer shall be the assigned Commissioner.

11. Deadline Extended

Pursuant to § 1701.5, this ruling amending the scope of the proceeding extends the deadline to permit the resolution of all issues set for this proceeding. The new deadline for resolution of all issues in this proceeding is May 13, 2014, which is within 18 months of the mailing of this ruling.

12. Service List/Filing and Service of Documents

The initial service will be established on the Commission’s website and will include respondents and all who notify the docket office by November 20, 2012. The parties shall notify the Commission’s Process Office of any address, telephone, or electronic mail (e-mail) change to the service list established.

Those wishing to become a party to this phase may do so by notifying the Commission before November 20, 2012, filing comments or replies, or by filing a motion for party status at any time pursuant Rules 1.4(a) and Rule 1.4(b) of the Commission’s Rules of Practice and Procedure. Parties shall file and serve all pleadings as set forth in Article 1 of the Rules. All documents shall be served

electronically, as set forth in Rule 1.10.

IT IS RULED that:

1. The scope of this phase of the proceeding is set forth above.
2. The categorization of this proceeding is quasi-legislative. Hearings are not required.
3. This phase of this proceeding is initiated to receive comments and replies addressing the issues identified in this Scoping Memo pertaining to “Energy Data Center,” a Commission Briefing Paper, which is included as Attachment A to this ruling.
4. Participants of the October 12, 2012 Commission-held workshop on data security and access to aggregated and anonymous data should include their proposals in the comment cycle initiated in this ruling.
5. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are respondents to this phase of the proceeding.
6. To become parties in this proceeding, entities other than respondents shall notify the Commission of their interest by November 20, 2012 or by filing opening or reply comments, by filing a motion for party status. Entities shall comply with Rules 1.4(a) and Rule 1.4(b) to become parties in this proceeding.
7. The Executive Director shall cause this Assigned Commissioner Ruling to be served on the Respondents, all load serving entities listed in the Commission’s official records, the California Energy Commission, the California Independent System Operator, and the service lists for Rulemaking (R.) 07-01- 041 (Demand Response), R.06-04-010 (Energy Efficiency), R.08-02-007 (Procurement Rulemaking), R.05-12-013 (Long Term Resource Adequacy Rulemaking),

R.08-04-012 (Planning Reserve Margin Rulemaking) and Application 08-07-021 et al. (Energy Efficiency Program Plans).

8. The temporary service list, which includes the entities referenced in ruling paragraph 7, is appended as Attachment B to this ACR and shall be used for service of all pleadings until a service list for this proceeding is established. A service list for this proceeding shall be created by the Commission's Process Office and posted on the Commission's Website (www.cpuc.ca.gov) as soon as it is practicable after November 20, 2012. Parties may also obtain the service list by contacting the Process Office at (415) 703-2021.

9. Parties serving documents in this phase of the proceeding shall comply with Rule 1.10 regarding electronic service. Any documents served on the assigned Commissioner and Administrative Law Judge (ALJ) shall be both by e-mail and by delivery or mailing a paper format copy of the document.

10. The assigned Commissioner or ALJ may adjust the schedule identified herein and refine the scope of this phase as needed until the completion of workshops.

11. This phase of the proceeding is classified as quasi-legislative, as that term is defined in Rule 1.3(d). Parties shall file responses addressing the questions identified in this ACR, and the scope, schedule, and other procedural issues by November 30, 2012. Parties shall file replies to the responses by December 14, 2012.

12. A party that expects to request intervenor compensation for its participation in this phase of the rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1(a)(2) of the Rules. In this case, the deadline for filing a Notice of Intent to Claim Compensation in this

proceeding is December 31, 2012 for those parties who have not done so in an earlier phase of this proceeding.

13. Since there are no planned evidentiary hearings at this time, there will be no oral argument.

14. *Ex parte* communications for this phase of the proceeding are governed by Rule 8.2(a) at this time.

15. A further revision of the scope of this proceeding to determine how to create an energy data center shall be done either by a Commission order in this proceeding or, alternatively, a Commission order will initiate a new proceeding on an energy data center.

Dated November 13, 2012, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

ATTACHMENT A



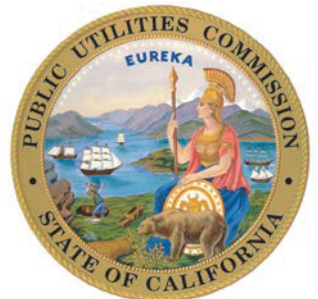
Energy Data Center

BRIEFING PAPER

Audrey Lee, Ph.D.
*Energy Advisor
to President
Michael Peevey*

Marzia Zafar
Interim Director
**POLICY AND
PLANNING
DIVISION**

September 2012



Summary

Aggregated customer energy usage information is available, but access to that information is often difficult. Consolidating that information in one location, such as a data center, should help improve state energy policies and create new market opportunities to save energy.

Introduction

The energy sector is moving and transforming itself to operate within the information age. The granularity of energy consumption information that is available now compared to ten years ago is enormous and can be immensely useful.

With the deployment of advanced meters, the customer is now able to get information about their usage the next day. Going forward that information will be made available to the customer instantaneously. Such information may help individual customers better manage their own usage and lower their bills, and enable third parties to offer additional services directly to customers.

More granular customer usage data can help policy makers adopt more effective policies. It can allow 1) a better understanding of how and when customers consume energy; 2) an evaluation of current programs; 3) the tailoring of energy efficiency and demand response programs; 4) improved planning and maintenance of utility and grid operations; and 5) a better understanding of new varieties of generation or demand response programs and their impacts on the distribution grid. The geographical and time granularity of data can give us a better understanding of consumption of different sectors and segments of California.

Third parties offering innovative programs and products directly to customers also have a clear interest in obtaining customer data in order to show benefits from the program or product to potential customers. With more granular data, companies could also invent new energy saving products for customers.

Customer-Specific Data versus Aggregated and Anonymous Data

In the Commission Privacy Rules governing energy usage data, there is a difference between customer-specific data that would reveal personally identifiable information and aggregated and anonymous data that would not violate customers' privacy. This whitepaper will mainly address the need for aggregated and anonymous data. **Aggregated data that does not contain personally-identifiable information, is not subject to the Commission's Privacy Rules, nor is a Non-Disclosure Agreement (NDA) required to obtain such information.** This is noted in D.11-07-056 and affirmed in D.12.08-045. The Appendix section "Current Methods for Obtaining Customer-Specific Data" addresses access to customer-specific data in more detail.

Current Challenges to Accessing Aggregated Data

Currently, many organizations request access to customer usage information to research customer usage patterns and to measure the effectiveness of various State and Commission energy-related programs, such as energy efficiency and demand response. Yet, such information is not readily available. When a utility does make it available, it is often out of scope, aggregated beyond what is necessary to protect customer privacy and not useful to the requestors, and outdated. An on-going concern is whether, and to what extent if any, the utilities act against the interests or wishes

of the customer and erect barriers to limit the opportunity for authorized third parties to obtain customer usage information. An additional concern is whether the utility acts as barrier against the sharing of aggregated data with governmental organizations that are seeking data for research or operational purposes.

Perhaps even more frustrating, each utility interprets state law and the Commission's rules differently, and has a different relation with representatives from state or local government. For example, PG&E has a uniform NDA in place, and, subject to certain conditions, generally will make customer-identifiable data available to government entities.¹ Other utilities take a far more reluctant stance on making customer-identifiable data available to governmental third parties.

In order to provide aggregated and anonymized data, the obvious question is how does one determine what is aggregated enough or anonymized enough. To date, this question has been negotiated between governmental entities, utility representatives, and Commission representatives.² At least one utility has proposed adoption of the 15/15 Rule as a methodology to determine what is sufficiently aggregated.³ As noted below, the Privacy Rules did not create a methodology or a definition of what is aggregated; rather, the Privacy Rules maintained a flexible approach that only requires that "the release of data does not disclose or reveal specific customer information because of the size of the group, rate classification, or nature of the information."⁴

By eliminating the utility as the gate-keeper for obtaining aggregated and anonymized data, it may allow for a more open process for governmental organizations and other researchers to obtain this type of data.

Currently, customer-specific data is available to governmental entities like state universities or local government through an NDA with the Commission. See Appendix section "Current Methods for Obtaining Customer-Specific Data".

Energy Data Center as a Possible Solution

The creation of an energy data center could provide greater availability, geographically and temporally, of aggregated and anonymized customer energy usage data in the long run, thereby lowering potential utility barriers to this data.⁵

There are three possible roles for the energy data center:

1. *Aggregate and anonymize customer-specific data such that it protects customers' privacy and make it available to the public in a timely manner.* This data needs to be aggregated to protect customer privacy, but disaggregated enough to be useful.

¹ More recently, PG&E insisted on a certain level of cyber-security assurance for any third party obtaining data pursuant to this NDA. In addition, for purposes of the NDA, the data is treated as a "trade secret" of PG&E; this is done to ensure that customer-identifiable data in the hands of a governmental entity is not subject to a Public Records Act request.

² Commission Staff will hold a workshop in mid-October to discuss how utilities define aggregated data and the necessary levels of aggregation.

³ See Southern California Edison Advice Letter 2644-E (filed October 27, 2011) and "Protest of the Local Government Sustainable Energy Coalition on Southern California Edison Advice Letter 2644-E" (filed November 16, 2011).

⁴ D.11-07-056, Attachment D at Section 6(g).

⁵ Nevertheless, the Commission currently maintains exclusive jurisdiction over the investor-owned utilities in the State and has the power to direct utilities to share data with third parties should the Commission so choose. See P.U. Code § 8380(e)(3) which provides the Commission with authority to direct the release of customer identifiable information without a customer's consent.

The temporal level of data could be monthly usage or more granular, depending on what is practical and most useful. Organizations seeking aggregated data not being provided by the energy data center could make special requests and compensate the center accordingly, inversely depending on the value of the requested aggregated data to utility customers.

2. *Provide independent research and analysis of current state, Commission, and utility programs using customer-specific data but publishing results of that analysis in an aggregated and anonymized form that protects customers' privacy.* This research could be done by the data center at the request of the Commission and/or on its own accord. With access to customer-specific information, the data center may have freer rein to do analysis of specific Commission and utility programs, and be able to release results in an aggregated and anonymized form. To the extent that a governmental entity would like to work with the data center and access customer usage information to perform joint research, that governmental entity would need to sign an NDA with the Commission to maintain the privacy and security of customer information, and would need to state the purpose for which it seeks customer data (see item 3).
3. *Facilitate the transfer of customer-specific data to a governmental organization, provided that governmental organization has an NDA with the Commission.* If a request for data information would release customer identifiable data, even though the data would be made available by the data center, an NDA would still need to be signed between the governmental organization and the Commission. The data center would not be allowed to enter into NDAs on its own with other governmental organizations. The Commission would still need to oversee and enter into those NDAs with other governmental organizations. Pursuant to the NDA, the Commission will ensure the protection and privacy of customer-specific data, and that governmental organization will be bound by the Commission's Privacy Rules.

There are two possibilities for the transfer of the customer-specific data from the utility to the energy data center:

1. The energy data center would have an NDA with the Commission. Under that NDA, the data center would need to ensure that unauthorized release of identifiable customer data does not occur. When operational, the utility would send customer-specific information to the Commission on an ongoing basis through a data request. The Commission would in turn send the data to the data center under the NDA, in a secure and protected manner on an ongoing basis.
2. Alternatively, the Commission could direct the utilities to give customer-specific data to the energy data center, pursuant to an NDA between the data center and the utility,

It is important to note that the Government Code limits the entities that the Commission can enter into NDAs with to other governmental entities. Therefore, the energy data center will have to be a governmental entity. For example, the data center could be part of a University of California campus.

Utility Customer Benefits of an Energy Data Center

There are many benefits of an energy data center that provides aggregated and anonymized data to the public. The utility customer benefits of the structure of an independent center are:

- address the need by other governmental organizations and the public to obtain aggregated and anonymized data
- overcome many deficiencies in our current practice (see section “Current Challenges to Accessing Aggregated Data”)
- reducing the time-frame for a governmental organization to obtain customer-identifiable data (where the governmental organization only has an NDA with the Commission),

The utility customer benefits of the aggregated and anonymized data itself are:

- an understanding of customer usage profiles and patterns;
- an ability to guide and modify existing and future Commission-directed and other state energy programs from energy efficiency to distributed generation to the smart grid;
- an evaluation on how well utility programs perform;
- identification of rate impacts across climate zones and rate impacts of certain types of customers within a climate zone (For example, currently there is little information about how each neighborhood within the county of San Francisco consumes energy; does Pacific Heights use more energy than the Tenderloin District.);
- the creation of new opportunities in the market for the development of energy saving products

Many other benefits are possible and should be contemplated.

Under current rules, it is possible for an energy data center to be set up without a Commission-initiated data center. A governmental entity like a University of California campus could establish an NDA with the Commission for customer-specific data across all the energy utilities under the Commission’s jurisdiction, and then make that data available to the public in an aggregated and anonymized form that does not violated customers’ privacy. (See Appendix section “Current Methods for Obtaining Customer-Specific Data”). Unfortunately, this process usually results in a long delay for governmental organizations to access customer-specific data due to staffing and resource constraints within the Commission. It is in this respect that creating a centralized depository to enable governmental organizations to access aggregated and anonymized customer data would be beneficial, with appropriate rules in place to protect the privacy of individual customers and the security of their data.

Obligation to Protect Customer Privacy in Setting up Energy Data Center

Clearly, ensuring that customer data is kept confidential, private and secure is an overriding goal of the state and the Commission. The Commission's rules, and state law, provides for the sharing of customer data for certain purposes without customer consent, but also allows for the customer to provide their own consent to other third parties. In the cases where there is no customer consent, the Commission must be careful in directing the release of customer information to a third party for a specific purpose, but also ensuring customer privacy of that data.⁶ On the other hand, aggregated data that does not contain personally-identifiable information, is not subject to the Commission's Privacy Rules, nor is an NDA required to obtain such information. Therefore, the Commission must ensure that the creation of an energy data center will not violate the Commission's Privacy Rules.

Privacy Rules

As early as 1997, before the installation of advanced meters, the Legislature recognized that customer usage information is confidential. In P.U. Code Sec. 394.4(a), the Legislature stated:

Customer information shall be confidential unless the customer consents in writing. This shall encompass confidentiality of customer specific billing, credit or usage information. This requirement shall not extend to disclosure of generic information regarding the usage, load shape, or other general characteristics of a group or rate classification, unless the release of that information would reveal customer specific information because of the size of the group, rate classification, or nature of the information.

SB 1476 provided additional details around the confidentiality of customer usage data generated by advanced meters. SB 1476 noted that "an electrical corporation or gas corporation shall not share, disclose, or otherwise make accessible to any third party a customer's electrical or gas consumption data, except as provided in subdivision (e) or upon the consent of the customer."⁷ Subdivision (e) provides for three exceptions:

- 1) Nothing in this section shall preclude an electrical corporation or gas corporation from using customer aggregate electrical or gas consumption data for analysis, reporting, or program management if all information has been removed regarding the individual identity of a customer;
- 2) Nothing in this section shall preclude an electrical corporation or gas corporation from disclosing a customer's electrical or gas consumption data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, or energy efficiency programs, provided that, for contracts entered into after January 1, 2011, the utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of data for

⁶ Indeed, in order to support the maxim of data minimization contained in the Commission's Privacy Rules and the Fair Information Practice Principles, a third party should only receive "as much covered information as is reasonably necessary" and should "maintain covered information only for as long as reasonably necessary." D.11-07-056, Attachment D at 5(a) and (b).

⁷ P.U. Code Sec. 8380(b)(1).

a secondary commercial purpose not related to the primary purpose of the contract without the customer's consent; and,

- 3) Nothing in this section shall preclude an electrical corporation or a gas corporation from disclosing electrical or gas consumption data as required or permitted under state or federal law or by an order of the commission.

In D.11-07-056, the Commission provided additional direction to the utilities regarding the availability of customer data and what is necessary to ensure that customer data is kept confidential, private and secure. In that decision, the Commission adopted a set of Privacy Rules,⁸ based on the Fair Information Practice Principles,⁹ which govern the utility treatment of customer usage information generated by advanced meters. It outlined under what circumstances customer usage information can be shared without customer consent, what requirements are imposed upon the utility and those that receive customer usage information to ensure data is kept confidential, private and secure, and what rights customers have to share data with other third parties. Notably, as it regards the availability of aggregated customer data, the Privacy Rules state:

Availability of Aggregated Usage Data. Covered entities shall permit the use of aggregated usage data that is removed of all personally-identifiable information to be used for analysis, reporting or program management provided that the release of that data does not disclose or reveal specific customer information because of the size of the group, rate classification, or nature of the information.¹⁰

In addition, the Privacy Rules outlined an additional principle of privacy practices: an entity should only collect, store, use and disclose only as much data as is necessary to accomplish the purpose for which it is required or authorized by the customer.¹¹

Rulemaking

The Commission should consider opening a rulemaking to consider the creation of an energy data center and the benefits it can offer. Should the Commission open a rulemaking to facilitate access to aggregated and anonymized customer usage data, it is imperative to stay within the confines of existing privacy statutes and Commission rules.

The rulemaking at a minimum will need to address the following questions:

- Is a rulemaking necessary under current practices to make aggregated and anonymized data available to the public? Should the Commission establish an energy data center?
- What is the value of an energy data center for utility customers and what is the cost?
- How should the energy data center be set up? We have proposed one model but others may be possible within the confines of statutes, rules, and codes. What are the responsibilities of the energy data center beyond providing aggregated data to utility

⁸ D.11-07-056 at Attachment D (Privacy Rules).

⁹ See "Fair Information Practice Principles," Federal Trade Commission (last updated June 25, 2007) (available at <http://www.ftc.gov/reports/privacy3/fairinfo.shtm>); "Privacy Policy Guidance Memorandum," Department of Homeland Security (December 29, 2008).

¹⁰ D.11-07-056, Attachment D at Section 6(g).

¹¹ D.11-07-056, Attachment D at Section 5.

customers and the general public? Should additional research and evaluation of Commission programs be included?

- How should it be funded? Cap-and-trade auction revenue administrative funds, electric program investment charge (EPIC) funds, energy efficiency evaluation, measurement, and verification (EM&V) funds, a new source from utility customers?
- How can the Commission ensure the protection of customer-specific energy usage data at the energy data center and provide the necessary oversight? Are cyber security requirements necessary? Are further guidelines for aggregation necessary?
- A following phase of the rulemaking would determine the data center selection method.

Appendix

Current Methods for Obtaining Customer-Specific Data

The current practice for obtaining customer-specific energy usage data depends upon the purpose for which a third party is collecting the data.

Through customer consent: One way of obtaining customer-specific usage information is through the Green Button DownloadMyData application, where customers can download and share their usage information. The Green Button DownloadMyData is available on customers' My Account webpage through their utility, and can be shared with any third party the customer chooses. Starting next year, the utilities are expected to implement the next iteration, Green Button ConnectMyData¹², which would allow an authorized third party to automatically obtain customer-specific usage data, when authorized by the customer, in a machine-to-machine transaction. The data that will be the hourly usage information currently collected by the advanced meters, for at least the prior 13 months. At this time, this capability will be limited to only residential customers; the availability of commercial and industrial customers' data is expected to be delayed due to software issues and other constraints.

In addition, third parties such as an Energy Services Provider (ESP), can also obtain customer usage information through a Customer Information Service Request (CISR) form.¹³ This form allows a customer to consent to the sharing of their usage information with a third party.

By contractors to a utility: Utility contractors implementing energy efficiency or demand response programs can sign an NDA with each utility.¹⁴ The NDA covers what data will be shared between the utility and the third party contractor, terms under which the data is being provided, and any responsibilities assigned to the utility and third party to ensure the privacy and security of customer identifiable data.

By Community Choice Aggregator: State statutes provide for a Community Choice Aggregator (CCA), to obtain customer identifiable usage data to support their operations. In order to obtain this information, the CCA must also sign an NDA with the utility to preserve customer privacy, much the same way as a utility contractor would.¹⁵

Through an order of the Commission: According to SB 1476 subdivision (e), "Nothing in this section shall preclude an electrical corporation or a gas corporation from disclosing electrical or gas consumption data as required or permitted under state or federal law or by an order of the commission."

¹² Currently, the Commission is considering an effort by SDG&E, SCE and PG&E to support the Green Button ConnectMyData application, which will develop a process to enable a customer-authorized third party to obtain the hourly, next day customer usage data in a standardized manner and obtain data directly from the utility. See A.12-03-002, *et al.*

¹³ An example of a utility CISR form can be found here: http://www.sce.com/NR/rdonlyres/FDF989BB-8BE5-4158-BAB5-2F9EC69E1DF5/0/BIP_CISR_Form.pdf. A CISR form can be used by any other third party seeking customer usage information. For example, solar providers can use a CISR form to obtain customer usage information to help site a solar installation, run billing estimates, and perform bill audits on behalf of prospective and current customers. The Commission recently issued a resolution directing utilities and these third parties to develop a more streamlined process for obtaining customer data. See Resolution E-4481 (____) at Ordering Paragraph 8 (directing parties to work in conjunction with utility Green Button efforts prescribed in D.11-07-056).

¹⁴ As directed by P.U. Code 8380(e)(2), customer consent is not required for this purpose.

¹⁵ In the alternative, a customer can sign a consent form to allow the utility to share their data with an ESP or CCA. In addition, the Commission recently issued Decision 12-08-045 which expanded the Privacy Rules to cover ESPs that serve residential and small commercial customers, and CCAs.

By governmental entities through an NDA with the Commission: There remain other parties who, for one reason or another, seek customer data to do general electricity sector research or to support Commission or state authorized programs. In limited circumstances, another method for providing customer identifiable data to an organization has been practiced by the Commission when the requests come from the state or local government or other governmental research organizations.¹⁶ When a representative from another governmental seeks customer identifiable information, and cannot come to an agreement on an NDA with the utility, the Commission may act as an intermediary to bridge the desires of the governmental or research organization and the concerns of the utility. There are several reasons for the Commission to be involved in this process, including utility concerns around providing data to a competitor, the requests themselves would result in the release of customer identifiable data without customer consent, or concerns related to NDAs and Public Records Act requests.¹⁷

Other States:

In other states, such as Vermont and Wisconsin, which have independent administrators of energy efficiency programs, that allows them to package access to customer data and programs together, those entities have reached separate agreements with the local utilities to provide those administrators with access to customer data. These independent energy efficiency administrators are responsible for managing the statewide energy efficiency portfolio, provide funding directly to energy efficiency providers, and provide research and results of its efforts on energy efficiency programs in the state.¹⁸ For example, in Vermont, the Public Service Board directed the Vermont utilities to share customer usage information with the administrator, but sharing of that data with other third parties is explicitly limited to only energy efficiency purposes.¹⁹ Further, Vermont allows for aggregation of customer data to be made available; Vermont defines an acceptable aggregated level to be no smaller than the “town level.”²⁰ In Wisconsin, on the other hand, the energy efficiency administrator enters into an agreement with the utilities that specifies how the administrator will handle the data, including a) that it will protect the confidentiality of customer information, b) specifies how long the administrator will retain the information, c) specifies when the administrator will destroy the information, and d) states that it will pay a monetary penalty for any unauthorized release of data.²¹

The Colorado Public Utility Commission has gone even further by adopting a “15/15 Rule”²² to govern the release of aggregated customer data. The 15/15 Rule adopted by the Colorado PUC is, essentially, the same rule adopted by the Commission in 1997 as part of the Direct Access proceeding and is applicable in that context only.²³ The 15/15 Rule states that an aggregation

¹⁶ The Commission can only enter into NDAs with other governmental organizations.

¹⁷ Customer-identifiable data that is obtained from the utility, even under an NDA, may not be sufficiently protected from Public Records Act requests from other governmental bodies, such as law enforcement. The Public Records Act generally prohibits the release of customer-identifiable usage information, with several exceptions, notably, upon the request of law enforcement or a Court-issued warrant or subpoena. As noted in fn. 16, *infra*, classifying customer-identifiable data as a utility trade secret provides additional protection, but may limit a third party’s full use of the data.

¹⁸ To some extent, having a third party administrator of energy efficiency programs would greatly enhance the viability of and improve the availability of both aggregated and anonymized customer data and identifiable customer data to third parties.

¹⁹ VEIC Order of Appointment Process & Administrative Document. Docket 7466. State of Vermont Public Service Board.

²⁰ *Id.*

²¹ Provision of Energy Utility Customer Information to Focus on Energy. Docket No. 9501- GF - 101 Wisconsin Public Service Commission.

²² 4 COLO. CODE REGS. 723-3 Part 3 §3031(b)(c).

²³ The “15/15 Rule” was adopted in D.97-10-031 and is included in Schedule CCA-INFO.

sample must have more than 15 customers and no single customer's data may comprise more than 15 percent of the total aggregated data. While this may be a useful standard methodology, it is not without its critics.

(END OF ATTACHMENT A)

ATTACHMENT B

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

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***** PARTIES *****

William H. Booth
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, STE. 1850
SAN FRANCISCO CA 94105
(415) 421-4143
whb@a-klaw.com
For: CLECA - Calif. Large Energy Consumers Association

Nora Sheriff
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
nes@a-klaw.com
For: Energy Producers & Users Coalition

Barbara R. Barkovich
BARKOVICH & YAP, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
(707) 937-6203
brbarkovich@earthlink.net
For: California Large Energy Consumers Association

James R. Mettling
BLUE POINT ENERGY LLC
20 INDUSTRIAL PARKWAY
CARSON CITY NV 89706
(775) 246-8111
rmettling@bluepointenergy.com
For: Blue Point Energy

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

Baldassaro Di Capo
Counsel
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
250 OUTCROPPING WAY
FOLSOM CA 95630
(916) 608-7157

Martin Homec
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(530) 867-1850
martinhomec@gmail.com
For: California for Renewable Energy, Inc.

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

Irene K. Moosen
Attorney At Law
CITY AND COUNTY OF SAN FRANCISCO
53 SANTA YNEZ AVE.
SAN FRANCISCO CA 94112
(415) 587-7343
irene@igc.org
For: City and County of San Francisco

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

Dan Delurey
DEMAND RESPONSE AND SMART GRID COALITION
1301 CONNECTICUT AVE., NW, STE. 350
WASHINGTON DC 20036
(202) 296-3636
dan.delurey@drsgcoalition.org
For: Demand Response and Smart Grid Coalition (DRSG)

Daniel W. Douglass
DOUGLASS & LIDDELL
EMAIL ONLY
EMAIL ONLY CA 00000
(818) 961-3001
douglass@energyattorney.com
For: Alliance for Retail Energy Markets/Western Power Trading
Forum

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

bdicapo@caiso.com
For: California Independent System Operator

Donald C. Liddell
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO CA 92103
(619) 993-9096
liddell@energyattorney.com
For: Wal-Mart Stores, Inc./Ice Energy/Kinder Morgan / Calif.
Energy Storage Alliance

Gregory S.G. Klatt
DOUGLASS & LIDDELL
EMAIL ONLY
EMAIL ONLY CA 00000
(818) 961-3002
klatt@energyattorney.com
For: Direct Access Customer Coalition

Mahlon Aldridge
Vp - Strategic Development
ECOLOGY ACTION
877 CEDAR STREET, STE. 240
SANTA CRUZ CA 95060-3938
(831) 515-1316
maldridge@ecoact.org
For: Ecology Action of Santa Cruz, Inc.

Jack Ellis
1425 ALPINE WAY / PO BOX 6600
LAKE TRAHOE CA 96145-6600
(530) 581-2134
jack@casaraquel.com
For: Energy Connect, Inc.

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

Lauren Navarro
Attorney
ENVIRONMENTAL DEFENSE FUND
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 492-7074
lnavarro@edf.org
For: Environmental Defense Fund

Marlo A. Go
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
mgo@goodinmacbride.com
For: North America Power Partners, LLC

Ken Skinner
Vice President, Coo
INTEGRAL ANALYTICS, INC
312 WALNUT STREET, SUITE 1600
CINCINNATI OH 45202
(513) 762-7621

Rich Quattrini
Vice President - Western Region
JOHNSON CONTROLS
901 CAMPISI AVE., SUITE 260
CAMPBELL CA 95008-2348
(408) 370-3311 X125
Rich.Quattrini@jci.com
For: Johnson Controls

Elizabeth Rasmussen
Reg. And Legal Counsel
MARIN ENERGY AUTHORITY
781 LINCOLN AVENUE, SUITE 320
SAN RAFAEL CA 94901
(415) 464-6022
ERasmussen@MarinEnergy.com
For: Marin Energy Authority

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

Richard H. Counihan
Sr. Director Corporate Development
ENERNOC, INC.
500 HOWARD ST., SUITE 400
SAN FRANCISCO CA 94105
(415) 343-9504
rcounihan@enernoc.com
For: EnerNoc, Inc.

Sara Steck Myers
Attorney At Law
122 28TH AVENUE
SAN FRANCISCO CA 94121
(415) 387-1904
ssmyers@att.net
For: Joint DR Parties. Enernoc, Inc.

Shirley Woo
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO CA 94105
(415) 973-2248
saw0@pge.com
For: Pacific Gas and Electric

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

Scott H. Debroff
RHOADS & SINON LLP
ONE SOUTH MARKET SQUARE, PO BOX 1146
HARRISBURG PA 17108-1146
(717) 233-5731
sdebroff@rhoads-sinon.com
For: Elster Integrated Solutions; Cellnet & Trilliant Networks,
Inc.; Consumer Powerline and Ancillary Services Coalition.

Lisa-Marie Salvacion
Legal Division
RM. 5029
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2069
lms@cpuc.ca.gov
For: Division of Ratepayers Advocates

Sue Mara
RTO ADVISORS, LLC.
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 902-4108
sue.mara@rtoadvisors.com
For: RTO Advisors, LLC

James Boothe
THE ENERGY COALITION
9 REBELO LANE
NOVATO CA 94947
(415) 320-0029
ja_boothe@yahoo.com
For: The Energy Coalition

Steven D. Patrick
Attorney
SD GAS AND ELECTRIC CO / SOCAL GAS CO
555 WEST FIFTH STREET, SUITE 1400
LOS ANGELES CA 90013-1011
(213) 244-2954
SDPatrick@SempraUtilities.com
For: San Diego Gas & Electric Company

Marcel Hawiger
Energy Atty
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94104
(415) 929-8876 X311
marcel@turn.org
For: TURN

Douglas A. Ames

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

Janet Combs
JENNIFER SHIGEKAWA, MICHAEL D. MONTOYA
Sr. Attorney
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-1524
janet.combs@sce.com
For: Southern California Edison Company

Eric C. Woychik
STRATEGY INTEGRATION LLC
9901 CALODEN LANE
OAKLAND CA 94605
(510) 387-5220
eric@strategyi.com
For: Comverge, Inc.

Attorney At Law
TRANSPHASE SYSTEMS, INC.
4971 LOS PATOS AVENUE
HUNTINGTON BEACH CA 92649
(714) 377-4225
ames_doug@yahoo.com
For: Transphase

Laura Manz
VIRIDITY ENERGY, INC.
16870 WEST BERNARDO DR., STE. 400
SAN DIEGO CA 92127
(858) 354-8333
lmanz@viridityenergy.com
For: Viridity Energy, Inc.

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

Robert Benjamin
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2494
bkb@cpuc.ca.gov

Clare Laufenber Gallardo
Strategic Transmission Investmnt Program
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 17
SACRAMENTO CA 95814
(916) 654-4859
claufenb@energy.state.ca.us

Jaclyn Marks
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2257
jaclyn.marks@cpuc.ca.gov

Joy Morgenstern
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-1900
JYM@cpuc.ca.gov

Radu Ciupagea
Division of Ratepayer Advocates
RM. 4104
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5235
rc5@cpuc.ca.gov

Joe Como
Division of Ratepayer Advocates
RM. 4101
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2381
joc@cpuc.ca.gov

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

Hazlyn Fortune
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2317
hcf@cpuc.ca.gov

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

Michaela Flagg
CALIFORNIA PUBLIC UTILITIES COMMISSION
DRA
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2256
michaela.flagg@cpuc.ca.gov

Donald J. Brooks
CPUC - ENERGY DIV.
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2626
DBR@cpuc.ca.gov

Jennifer Caron
Executive Division
AREA 2-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 355-5499
jc8@cpuc.ca.gov

Kelly A. Hymes
Administrative Law Judge Division
RM. 5111
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5132
khy@cpuc.ca.gov

Bruce Kaneshiro
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1187
bsk@cpuc.ca.gov

Valerie Kao
Division of Ratepayer Advocates
RM. 4104
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1341
vuk@cpuc.ca.gov

Dorris Chow

Damon A. Franz
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2165
df1@cpuc.ca.gov

Sudheer Gokhale
Division of Ratepayer Advocates
RM. 4102
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2247
skg@cpuc.ca.gov
For: DRA

Aloke Gupta
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5239
ag2@cpuc.ca.gov

Timothy J. Sullivan
Administrative Law Judge Division
RM. 5115
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2726
tjs@cpuc.ca.gov

Rebecca Tsai-Wei Lee
Division of Ratepayer Advocates
RM. 1250
770 L Street, Suite 1250
Sacramento CA 95814
(916) 327-1407
wtr@cpuc.ca.gov

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

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

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5284
dnl@cpuc.ca.gov

Scarlett Liang-Uejio
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1851
scl@cpuc.ca.gov

Pamela Nataloni
Legal Division
RM. 5124
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-4132
jpn@cpuc.ca.gov

Ke Hao Ouyang
Division of Ratepayer Advocates
RM. 4104
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1235
kho@cpuc.ca.gov

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

David M. Wylie, Pe
ASW ENGINEERING
2512 CHAMBERS ROAD, SUITE 103
TUSTIN CA 92780
(714) 731-8193
dwylie@aswengineering.com

Philippe Auclair
11 RUSSELL COURT
WALNUT CREEK CA 94598
(925) 588-9109

James Weil
Director
AGLET CONSUMER ALLIANCE
PO BOX 866
NOVATO CA 94948
(415) 895-5296
jweil@aglet.org

Ross Van Ness
ALCANTAR & KAHL LLP
1300 SW FIFTH AVE., SUITE 1750
PORTLAND OR 97201
(503) 402-8703
rvn@a-klaw.com

Karen Terranova
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
filings@a-klaw.com

Michael P. Alcantar
Attorney At Law
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
mpa@a-klaw.com

Scott Blaising
Attorney
BRAUN BLAISING MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 682-9702
blaising@braunlegal.com

Joel Gamoran
C3 ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000
(646) 478-8509
joel.gamoran@c3energy.com

David Hungerford
CALIFORNIA ENERGY COMMISSION
DEMAND ANALYSIS OFFICE

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

philha@astound.net

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

Peter Pearson
BEAR VALLEY ELECTRIC SERVICE
EMAIL ONLY
EMAIL ONLY CA 00000
(909) 866-4678 X186
Peter.Pearson@bvves.com

Erin Grizard
Senior Manager-Reg.& Gov'T. Affairs
BLOOMENERGY
EMAIL ONLY
EMAIL ONLY CA 00000-9162
(916) 201-7944
erin.grizard@bloomenergy.com

Barb Boice
4309 NORWOOD AVENUE, APT. 160
SACRAMENTO CA 95838
(415) 374-5477
bboice02@yahoo.com

Ryan Bernardo
BRAUN BLAISING MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 912-4432
bernardo@braunlegal.com

Cynthia Hinman
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7060
chinman@caiso.com

John Goodin
CALIFORNIA ISO
151 BLUE RAVINE RD.
FOLSOM CA 95630

1516 NINTH STREET, MS-22
SACRAMENTO CA 95814
(916) 654-4906
dhungerf@energy.state.ca.us

Margaret Sheridan
CALIFORNIA ENERGY COMMISSION
DEMAND ANALYSIS OFFICE
1516 NINTH STREET, MS-22
SACRAMENTO CA 95814
(916) 651-9077
msherida@energy.state.ca.us

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

John C. Anders
Sr. Counsel
CALIFORNIA INDEPENDENT SYSTEMS OPERATOR
250 OUTCROPPING WAY
FOLSOM CA 95630
(916) 351-4400
janders@caiso.com
For: California Independent System Operator Corp

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

Carlos Lamas-Babbini
Program Mgr.
COMVERGE, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 270-5963
clamasbabbini@comverge.com

Larry B. Barrett
CONSULTING ASSOCIATES, INC.
PO BOX 60429

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

(916) 608-7154
jgoodin@caiso.com

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

Mark J. Smith
CALPINE CORPORATION
4160 DUBLIN BLVD., SUITE 100
DUBLIN CA 94568
(925) 557-2231
smithmj@calpine.com

CERTICHRON, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
cpuc@certichron.com
For: Certichron, Inc.

Theresa Mueller
Deputy City Attorney
CITY AND COUNTY OF SAN FRANCISCO
CITY HALL, ROOM 234
SAN FRANCISCO CA 94102
(415) 554-4640
theresa.mueller@sfgov.org

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

Michelle Grant
DYNEGY, INC.
EMAIL ONLY
EMAIL ONLY TX 00000-0000

COLORADO SPRINGS CO 80960
(719) 634-4468
barrettlarry@comcast.net

Nicholas J. Planson
CONSUMER POWERLINE
100 CONSTELLATION WAY
BALTIMORE MD 21202-6302
(212) 769-7126
nplanson@consumerpowerline.com
For: CONSUMER POWERLINE

Jacqueline M. Derosa
Director Of Regulatory Affairs - Ca
CUSTOMIZED ENERGY SOLUTIONS
101 PARKSHORE DRIVE SUITE 100
FOLSOM CA 95762
(916) 932-7226
jderosa@ces-ltd.com

Robert Gex
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111
(415) 276-6500
robertgex@dwt.com

Douglas M. Grandy, P.E.
California Onsite Generation
DG TECHNOLOGIES
1220 MACAULAY CIRCLE
CARMICHAEL CA 95608
(916) 871-2432
dgrandy@caonsitegen.com

Cara Goldenberg
DIAN GRUENEICH CONSULTING, LLC
ONE CALIFORNIA STREET, SUITE 2450
SAN FRANCISCO CA 94111-5417
(415) 813-6247
cara.goldenberg@grueneich.com

Malcolm D. Ainspan
ENERGY CURTAILMENT SPECIALISTS
EMAIL ONLY
EMAIL ONLY NY 00000

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

(713) 767-0387
michelle.d.grant@dynegy.com

Gene Thomas
ECOLOGY ACTION
EMAIL ONLY
EMAIL ONLY CA 00000
(831) 515-4349
gthomas@ecoact.org

Gregg Fishman
ECOLOGY ACTION
EMAIL ONLY
EMAIL ONLY CA 00000
(831) 515-1349
gfishman@ecoact.org

Margaret Bruce
ECOLOGY ACTION
EMAIL ONLY
EMAIL ONLY CA 00000
(831) 515-1349
mbruce@ecoact.org

Andrew B. Brown
Attorney At Law
ELLISON SCHNEIDER & HARRIS, LLP
2600 CAPITAL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
abb@eslawfirm.com

Chris King
EMETER CORPORATION
2215 BRIDGEPOINTE PARKWAY, SUITE 300
SAN MATEO CA 94044
(650) 227-7770
chris@emeter.com

Snuller Price
ENERGY AND ENVIRONMENTAL ECONOMICS
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 391-5100
snuller@ethree.com

(716) 565-1327 X378
mainspan@ecsgrid.com

Glen E. Smith
President And Ceo
ENERGY CURTAILMENT SPECIALISTS, INC.
PO BOX 610
CHEEKTOWAGA NY 14225-0610
(716) 565-0459
gesmith@ecsny.com

Jennifer Holmes
ENERGY MARKET INNOVATIONS INC.
83 COLUMBIA STREET, SUITE 303
SEATTLE WA 98104
(206) 621-1160
jholmes@emi1.com

Ted Pope
President
ENERGY SOLUTIONS
1610 HARRISON STREET
OAKLAND CA 94612
(510) 482-4420 236
ted@energy-solution.com

Melanie Gillette
Dir - Western Reg. Affairs
ENERNOC, INC.
115 HAZELMERE DRIVE
FOLSOM CA 95630
(916) 501-9573
mgillette@enernoc.com

Mona Tierney-Lloyd
Senior Manager Western Reg. Affairs
ENERNOC, INC.
PO BOX 378
CAYUCOS CA 93430
(805) 995-1618
mtierney-lloyd@enernoc.com

Saeed Farrokhpay
FEDERAL ENERGY REGULATORY COMMISSION
1835 IRON POINT RD., STE. 160
FOLSOM CA 95630-8771
(916) 294-0322
Saeed.Farrokhpay@ferc.gov

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

Stephen D. Baker
FELLON-MCCORD AND ASSOC.
CONSTELLATION NEW ENERGY-GAS DIV.
EMAIL ONLY
EMAIL ONLY KY 00000-0000
(502) 214-6313
stephen.baker@constellation.com

Phillip W. Mcleod, Ph.D
Principal
FINANCE SCHOLARS GROUP
TWO THEATRE SQUARE, SUITE 218
ORINDA CA 94563
(925) 258-9600 X22
pmmcLeod@finsch.com

Daniel C. Engel
Senior Consultant
FREEMAN, SULLIVAN & CO.
101 MONTGOMERY STREET, 15TH FLOOR
SAN FRANCISCO CA 94104
(415) 777-0707
dcengel@fscgroup.com

Steve George
FSC GROUP
101 MONTGOMERY STREET, 15TH FLOOR
SAN FRANCISCO CA 94104
(415) 948-2328

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

Todd S. Glassey
EMAIL ONLY
EMAIL ONLY CA 00000
tglassey@certichron.com

Joe Prijyanonda
GLOBAL ENERGY PARTNERS, LLC
500 YGNACIO VALLEY RD., STE 450
WALNUT CREEK CA 94596-3853
(925) 284-3780
cpjoe@gepllc.com

Nguyen Quan
Mgr - Regulatory Affairs
GOLDEN STATE WATER CO. - ELECTRIC OP.
630 EAST FOOTHILL BOULEVARD
SAN DIMAS CA 91773
(909) 394-3600 X664
nquan@gswater.com
For: Golden State Water Company

Suzy Hong
Attorney At Law
GOODIN MACBRIDE SQUERI DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
shong@goodinmacbride.com

Brian T. Cragg
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
bcragg@goodinmacbride.com
For: North America Power Partners LLC

Grayson Heffner
15525 AMBIANCE DRIVE
N. POTOMAC MD 20878
(301) 330-0947

Alice Liddell
ICF INTERNATIONAL
620 FOLSOM STREET, STE, 200
SAN FRANCISCO CA 94107
(415) 677-7133
aliddell@icfi.com

Dave Hanna
ITRON INC
11236 EL CAMINO REAL
SAN DEIGO CA 92130-2650
(858) 724-2620
Dave.Hanna@itron.com

Alex Kang
ITRON, INC.
1111 BROADWAY, STE. 1800
OAKLAND CA 94607
(510) 844-2800

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

alex.kang@itron.com

Jeff Hirsch
JAMES J. HIRSCH & ASSOCIATES
12185 PRESILLA ROAD
SANTA ROSA VALLEY CA 93012-9243
(805) 553-9000
James.J.Hirsch@gmail.com

Gayatri Schilberg
JBS ENERGY
311 D STREET, SUITE A
WEST SACRAMENTO CA 95605
(916) 372-0534
gayatri@jbsenergy.com
For: TURN

Jeff Nahigian
JBS ENERGY, INC.
311 D STREET
WEST SACRAMENTO CA 95605
(916) 372-0534
jeff@jbsenergy.com

Jody S. London
JODY LONDON CONSULTING
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 459-0667
jody_london_consulting@earthlink.net

David Weidberg
JOHNSON CONTROLS
901 CAMPISI AVE.
CAMPBELL CA 95008
(408) 898-2713
David.Weidberg@jci.com

Docket Coordinator
KEYS AND FOX
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 597-1798
cpucdockets@keyesandfox.com

Shawn Cox
KINDER MORGAN ENERGY FORECASTER
1100 TOWN & COUNTRY ROAD, SUITE 700
ORANGE CA 92868
(714) 560-4099
shawn_cox@kindermorgan.com

Clark E. Pierce
LANDIS & GYR
246 WINDING WAY
STRATFORD NJ 08084
(856) 435-6024
clark.pierce@us.landisgyr.com

Edward Vine
LAWRENCE BERKELEY NATIONAL LABORATORY
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 486-6047
elvine@lbl.gov

Galen Barbose
LAWRENCE BERKELEY NATIONAL LABORATORY
1 CYCLOTRON RD., MS90R4000
BERKELEY CA 94720
(510) 495-2593
glbarbose@lbl.gov

Roger Levy
LEVY AND ASSOCIATES
2805 HUNTINGTON ROAD
SACRAMENTO CA 95864
(916) 487-0227
rogerl47@aol.com

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

Joy A. Warren
Regulatory Administrator

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

Joel M. Hvidsten
KINDER MORGAN ENERGY FORECASTER
1100 TOWN & COUNTRY ROAD, SUITE 700
ORANGE CA 92868
(714) 560-4904
hvidstenj@kindermorgan.com

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

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

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

Thomas S. Kimball
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354
(209) 557-1510
tomk@mid.org

Case Administration
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000; MC B9A
SAN FRANCISCO CA 94177
regrelcpuccases@pge.com

David E. Morse
EMAIL ONLY
EMAIL ONLY CA 00000
(530) 756-5033
davidmorse9@gmail.com

Charles R. Middlekauff
PACIFIC GAS AND ELECTRIC COMPANY
LAW DEPT.
77 BEALE STREET, B30A / PO BOX 7442
SAN FRANCISCO CA 94105
(415) 973-6971
CRMd@pge.com

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 834-1999
mrw@mrwassoc.com

Josephine Wu
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A, RM. 975
SAN FRANCISCO CA 94105
(415) 973-3414
jwwd@pge.com

David Nemtsov
NEMTZOW & ASSOCIATES
EMAIL ONLY
EMAIL ONLY CA 00000
(310) 622-2981
david@nemtsov.com

Lise H. Jordan, Esq.
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A. RM 3151
SAN FRANCISCO CA 94105
(415) 973-6965
lhj2@pge.com

Shelly-Ann Maye
NORTH AMERICA POWER PARTNERS
308 HARPER DRIVE, SUITE 320
MOORESTOWN NJ 08057

Lucy Fukui
PACIFIC GAS AND ELECTRIC COMPANY

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

(856) 439-0800
smaye@nappartners.com

Brian Theaker
NRG ENERGY
3161 KEN DEREK LANE
PLACERVILLE CA 95667
(530) 295-3305
brian.theaker@nrgenergy.com

Benjamin Schuman
PACIFIC CREST SECURITIES
111 SW 5TH AVE, 42ND FLR
PORTLAND OR 97204
(503) 727-0627
bschuman@pacific-crest.com

77 BEALE ST., ROOM 975
SAN FRANCISCO CA 94105
(415) 973-7101
lgk2@pge.com

Mark Huffman
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MC B30A
SAN FRANCISCO CA 94177
(415) 973-3842
mrh2@pge.com

Mark R. Huffman
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET / PO BOX 7442 (B30A)
SAN FRANCISCO CA 94105
(415) 973-3842
mrh2@pge.com

Ka-Wing Maggie Poon
GO1, QUAD 2B
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
(626) 302-1527
ka-wing.poon@sce.com

Mary A. Gandesbery
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, MC B30A-3005
SAN FRANCISCO CA 94120-7442
(415) 973-0675
MAGq@pge.com

Tyler Bergan
POWERIT SOLUTIONS
568 1ST AVE. S., STE. 450
SEATTLE WA 98104-2843
(206) 467-3030
tylerb@poweritsolutions.com

Regulatory File Room
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120
(415) 973-4295
CPUCcases@pge.com

Alicia R. Petersen
RHOADS & SINON LLP
ONE SOUTH MARKET SQUARE, PO BOX 1146
HARRISBURG PA 17108
(717) 233-5731
apetersen@rhoads-sinon.com

Steven R. Haertle
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94105
(415) 972-5603
SRH1@pge.com

Monica S. Iino
RHOADS & SINON LLP
M&T BUILDING
ONE SOUTH MARKET SQUARE, PO BOX 1146
HARRISBURG PA 17108
(717) 237-6774
miino@rhoads-sinon.com

Mary Wiencke

Thomas Roberts

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

PACIFICORP
825 N. E. MULTNOMAH, SUITE 1800
PORTLAND OR 97232
(503) 813-5058
mary.wiencke@pacificorp.com

Marie Pieniazek
1328 BOZENKILL ROAD
DELANSON NY 12053
(518) 895-5216
mpieniazek@drenergyconsulting.com

Elaine S. Kwei
PIPER JAFFRAY & CO
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 277-1511
elaine.s.kwei@pjc.com

Andra Pligavko
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 425-5154
andra.pligavko@gmail.com

Regulatory Affairs
SAN DIEGO GAS & ELECTRIC CO.
8330 CENTURY PARK COURT-CP31E
SAN DIEGO CA 92123-1530
(858) 654-1766
CentralFiles@SempraUtilities.com

Athena Besa
SAN DIEGO GAS & ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 202-9986
ABesa@SempraUtilities.com

David Barker
SAN DIEGO GAS & ELECTRIC COMPANY
8306 CENTURY PARK COURT
SAN DIEGO CA 92123
(858) 654-1865
DBarker@SempraUtilities.com

Steven C. Nelson
SAN DIEGO GAS & ELECTRIC COMPANY

Division of Ratepayer Advocates
RM. 4108
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5278
tcr@cpuc.ca.gov

Timothy N. Tutt
SACRAMENTO MUNICIPAL UTILITIES DISTRICT
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 732-5038
ttutt@smud.org

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

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

Annlyn M. Faustino
SDG&E/SCG
8330 CENTURY PARK COURT, CP31E
SAN DIEGO CA 92123
(858) 654-1148
afaustino@semprautilities.com

Steve Kromer
SKEE
3110 COLLEGE AVENUE, APT 12
BERKELEY CA 94705
(510) 655-1492
jskromer@gmail.com

Jan Mcfarland
& SONIC

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

101 ASH STREET, HQ12
SAN DIEGO CA 92101
(619) 699-5136
SNelson@sempra.com

EMAIL ONLY
EMAIL ONLY CA 00000
(916) 346-7578
janmcfar@sonic.net

Joy C. Yamagata
Regulatory Manager
SAN DIEGO GAS & ELECTRIC/SOCALGAS
8330 CENTURY PARK COURT, CP 32D
SAN DIEGO CA 92123-1533
(858) 654-1755
JYamagata@SempraUtilities.com

Jeff Shields
Utility Systems Director
SOUTH SAN JOAQUIN IRRIGATION DISTRICT
11011 E. HWY 120
MANTECA CA 95336
(209) 249-4645
jshields@ssjid.com

Kathryn Smith
SAN DIEGO GAS AND ELECTRIC COMPANY
8306 CENTURY PARK COURT
SAN DIEGO CA 92123
(858) 654-1792
KSmith2@SempraUtilities.com

Carl Silsbee
SOUTHERN CALIFORNIA EDISON
GO1, RP&A
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-1708
carl.silsbee@sce.com

Lisa Davidson
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32A
SAN DIEGO CA 92123
LDavidson@SempraUtilities.com

David Reed
SOUTHERN CALIFORNIA EDISON
6060 IRWINDALE AVE., STE. J
IRWINDALE CA 91702
(626) 637-3428
david.reed@sce.com

Steven Moss
SAN FRANCISCO COMMUNITY POWER
2325 THIRD ST., STE. 344
SAN FRANCISCO CA 94107
(415) 626-8723
steven@sfpower.org

Larry R. Cope
MIKE MONTOYA
Attorney At Law
SOUTHERN CALIFORNIA EDISON
PO BOX 800, 2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-2570
larry.cope@sce.com

Joyce Leung
SOUTHERN CALIFORNIA EDISON COMPANY
6060 J IRWINDALE AVE.
IRWINDALE CA 91702
(626) 633-4331
joyce.leung@sce.com

Marian Brown
SOUTHERN CALIFORNIA EDISON
6040A IRWINDALE AVE.
IRWINDALE CA 91702
(626) 812-7662
marian.brown@sce.com

Olivia Samad
Attorney
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-6509
olivia.samad@sce.com

Russ Garwacrd

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

Mark S. Martinez
SOUTHERN CALIFORNIA EDISON
6060 IRWINDALE AVE., SUITE J
IRWINDALE CA 91702
(626) 602-4223
mark.s.martinez@sce.com

Andrea Horwatt
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-1824
andrea.horwatt@sce.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. / PO BOX 800
ROSEMEAD CA 91770
(626) 302-3101
case.admin@sce.com

Fadia Khoury
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
(626) 302-4797
Fadia.Khoury@sce.com

Jennifer M. Tsao Shigekawa
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-6819
Jennifer.Shigekawa@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE
ROSEMEAD CA 91770
(626) 302-6673
garwacrd@sce.com

Michael Rochman
Managing Director
SPURR
1850 GATEWAY BLVD., SUITE 235
CONCORD CA 94520
(925) 743-1292
Service@spurr.org

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

Daniel M. Violette
SUMMIT BLUE CONSULTING
1375 WALNUT ST., STE. 200
BOULDER CO 80302-5242
(720) 564-1130
dan.violette@navigantconsulting.com

Stuart Schare
SUMMIT BLUE CONSULTING
EMAIL ONLY
EMAIL ONLY CO 00000-0000
(720) 564-1130
sschare@summitblue.com
For: SUMMIT BLUE CONSULTING

Kevin Cooney
Principal/Ceo
SUMMIT BLUE CORPORATION
1375 WALNUT ST., STE. 200
BOULDER CO 80302-5242
(720) 564-1130
kcooney@summitblue.com

Rafi Hassan

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

Drew Adams
VIRIDITY ENERGY

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

Last Updated on 06-NOV-2012 by: JVG
R0701041 LIST

SUSQUEHANNA FINANCIAL GROUP, LLLP
101 CALIFORNIA STREET, SUITE 3250
SAN FRANCISCO CA 94111
(415) 403-6531
rafi.hassan@sig.com

Erin Malone
SYNAPSE ENERGY ECONOMICS, INC.
485 MASSACHUSETTS AVE., SUITE 2
CAMBRIDGE MA 02139
(617) 453-7021
emalone@synapse-energy.com

Andrew Campbell
TENDRIL
2560 55TH ST.
BOULDER CO 80301
(720) 921-2214
policy@tendrillinc.com

Ahmad Faruqui
THE BRATTLE GROUP
201 MISSION ST., STE. 2800
SAN FRANCISCO CA 94105
(415) 217-1026
ahmad.faruqui@brattle.com

Geoff Ayres
THE ENERGY COALITION
15635 ALTON PARKWAY, SUITE 450
IRVINE CA 92618-7335
(949) 701-4646

Warren Mitchell
THE ENERGY COALITION
15635 ALTON PKWY., STE. 450
IRVINE CA 92618-7335
(949) 701-4646

Paul Karr
TRILLIANT NETWORKS, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
(650) 203-5050
Paul.Karr@TrilliantInc.com

EMAIL ONLY
EMAIL ONLY CA 00000
(920) 574-8303
dadams@viridityenergy.com

Jonna Anderson
VIRIDITY ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000
(619) 922-1313
janderson@viridityenergy.com

Jonna Naderson
VIRIDITY ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000
(619) 922-1313
janderson@viridityenergy.com

Kenneth Laughlin
VIRIDITY ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000
(484) 534-2190
klaughlin@viridityenergy.com

Allen Freifeld
VIRIDITY ENERGY, INC.
16870 WEST BERNARDO DRIVE, ST. 400
SAN DIEGO CA 92127
(848) 534-2191
afreifeld@viridityenergy.com

Robin J. Walther, Ph.D.
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(626) 818-7998
rwalther@pacbell.net

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

***** PARTIES *****

James Weil
Director
AGLET CONSUMER ALLIANCE
PO BOX 866
NOVATO CA 94948
(415) 895-5296
jweil@aglet.org
For: AGLET CONSUMER ALLIANCE

Michael P. Alcantar
Attorney At Law
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
mpa@a-klaw.com
For: Alcantar

Merrilee Harrigan
BRIAN CASTELLI
Vice President Of Education
ALLIANCE TO SAVE ENERGY
1850 M STREET NW, SUITE 600
WASHINGTON DC 20036
(202) 530-2215
mharrigan@ase.org
For: Alliance to Save Energy

Gerald Lahr
ASSOCIATION OF BAY AREA GOVERNMENTS
101 8TH STREET, PO BOX 2050
OAKLAND CA 94607
(510) 464-7908
jerry@abag.ca.gov
For: ABAG

ASSOCIATION OF CALIFORNIA WATER AGENCIES
910 K STREET, SUITE 100
SACRAMENTO CA 95814-3577
(916) 441-4545
For: Association of California Water Agencies

Dale A. Gustavson
President
BETTER BUILDINGS INCORPORATED
23798 LOS PINOS COURT
CORONA CA 92883

Thomas Eckhart
CAL - UCONS, INC.
10612 NE 46TH STREET
KIRKLAND WA 98033
(425) 576-5409
tom@ucons.com
For: CAL-UCONS, INC.

Robert L. Knight
CAL. BLDG. PERFORMANCE CONTRATORS ASSN.
1000 BROADWAY, SUITE 410
OAKLAND CA 94607
(510) 444-8707 X223
rknight@bki.com
For: BEVILACQUA-KNIGHT INC/ California building
Performance Contractor's Assn.

Michael E. Bachand
President
CALCERTS,, INC.
31 NATOMA STREET, SUITE 120
FOLSOM CA 95630
mike@calcerts.com
For: CALCERTS, INC.

Sachu Constantine
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000
(858) 244-1177
sachu.constantine@energycenter.org
For: California Center For Sustainable Energy

Sephra A. Ninow
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVE., STE. 100
SAN DIEGO CA 92123-1502
(858) 244-1186
sephra.ninow@energycenter.org

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

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

(951) 277-2180
dale@betterbuildings.com
For: BETTER BUILDINGS INCORPORATED

Rob Neenan
CALIFORNIA LEAGUE OF FOOD PROCESSORS
1755 CREEKSIDE OAKS DRIVE, SUITE 250
SACRAMENTO CA 95833
(916) 640-8150
rob@clfp.com
For: California League of Food Processors

Peter Canessa
CALIFORNIA STATE UNIVERSITY, FRESNO
1211 CHAPARRAL CIRCLE
SAN LUIS OBISPO CA 93401
(805) 547-1130
pcanessa@charter.net
For: CSUF

Chris Brown
Executive Director
CALIFORNIA URBAN WATER CONSERVATION
716 10TH STREET, STE. 200
SACRAMENTO CA 95814-1807
(916) 552-5885 X17
chris@cuwcc.org
For: California Urban Water Conservation

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

Dennis J. Herrera
THERESA L. MUELLER, JEANNE SOLE, STEPHEN MORR
CITY AND COUNTY OF SAN FRANCISCO
CITY HALL, ROOM 234
1 DR. CARLTON B. GOODLET PLACE
SAN FRANCISCO CA 94102
(415) 554-4637
For: CITY AND COUNTY OF SAN FRANCISCO

Scott Wentworth
CITY OF OAKLAND
7101 EDGEWATER DRIVE, NO. 2
OAKLAND CA 94621
(510) 615-5421
swentworth@oaklandnet.com
For: City of Oakland

Jon W. Slingerup
CLEAREEDGE POWER CORPORATION
7205 EVERGREEN PARKWAY
HILLSBORO OR 97124
(310) 405-5399
js@cleareedgepower.com
For: ClearEdge Power Corporation

Malcolm Lewis
President
CTG ENERGETICS, INC.
16 TECHNOLOGY DRIVE, SUITE 109
IRVINE CA 92618
(949) 790-0010
mlewis@ctg-net.com
For: CTG Energetics, Inc.

Edward W. O'Neill
Attorney At Law
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6587
edwardoneill@dwt.com
For: California Large Energy Consumers Association

Donald C. Liddell
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO CA 92103
(619) 993-9096
liddell@energyattorney.com
For: California Natural Gas Vehicle Coalition/ Ice Energy Inc.

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

Jeanne M. Sole
Deputy City Attorney
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM. 234
SAN FRANCISCO CA 94102-4682
(415) 554-4619
jeanne.sole@sfgov.org
For: City and County of San Francisco

Lynn Haug
GREGG WHEATLAND
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
lmh@eslawfirm.com
For: Dept. of General Services/Energy Policy Advisory
Committee

Cynthia K. Mitchell
ENERGY ECONOMICS, INC.
530 COLGATE COURT
RENO NV 89503
(775) 324-5300
Cynthiakmitchell@gmail.com
For: TURN

Bill Marcus
JBS ENERGY
311 D STREET, STE. A
WEST SACRAMENTO CA 95605
(916) 372-0534
bill@jbsenergy.com
For: The Utility Reform Network

John Kotowski
GLOBAL ENERGY PARTNERS, LLC
500 YGNACIO VALLEY RD, SUITE 450
WALNUT CREEK CA 94596
(925) 284-3780
jak@gepllc.com
For: Global Energy Partners, LLC

Jody London
JODY LONDON CONSULTING
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 459-0667
jody_london_consulting@earthlink.net
For: County of Los Angeles, Internal Services Department/The
Local Government Sustainable EnergyCoalition

James D. Squeri
Attorney At Law
GOODIN MACBRIDE SQUERI DAY & LAMPREYLLP
505 SANSOME STREET, STE 900
SAN FRANCISCO CA 94111
(415) 765-8443
jsqueri@goodinmacbride.com
For: CBIAA/CAA

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

Jeffrey Heller
Faia - President
HELLER MANUS ARCHITECTS
221 MAIN STREET, SUITE 940
SAN FRANCISCO CA 94044
(415) 247-1100 X-120
JeffreyH@hellermanus.com
For: Heller Manus Architects

Diana L. Lee
Legal Division
RM. 4107
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-4342
dil@cpuc.ca.gov
For: Division of Rate Payers Advocates

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

Greg Tropsa
President
ICE ENERGY, INC.
9351 EASTMAN PARK DRIVE, UNIT B
WINDSOR CO 80550
(970) 545-3630 X1910
gtropsa@ice-energy.com
For: Ice Energy Inc.

Robert E. Burt
INSULATION CONTRACTORS ASSN.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 568-1826
burt@macnexus.org
For: Insulation Contractors Assn.

Don Meek
Attorney At Law
10949 SW 4TH AVENUE
PORTLAND OR 97219
For: Women's Energy Matters

Lara Ettenson
NATURAL RESOURCES DEFENSE COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 875-6100
lettenson@nrdc.org
For: NRDC

Cathy Higgins
Program Director
NEW BUILDINGS INSTITUTE
PO BOX 2349
WHITE SALMON WA 98672
(509) 493-4468 X-11
higgins@newbuildings.org
For: New Buildings Institute

Mike Moore
NEWPORT VENTURES
22 JAY STREET

Tim Rosenfeld
MARIN ENERGY MANAGEMENT TEAM
131 CAMINO ALTO, SUITE D
MILL VALLEY CA 94941
(415) 389-1348
tim@marinemngt.org
For: Marin Energy Management Team

Thomas S. Crooks
Director
MCR PERFORMANCE SOLUTIONS
3161 CAMERON PARK DR STE 216
CAMERON PARK CA 95682-7979
(916) 932-0113
tcrooks@mcr-group.com
For: MCR Performance Solutions

Peter M. Schwartz
Attorney At Law
PETER SCHWARTZ & ASSOCIATES, LLC
381 CHAPMAN DRIVE
CORTE MADERA CA 94925
(415) 924-6675
pmschwartz@sbcglobal.net
For: Peter M. Schwartz

John Proctor
Chief Executive Officer
PROCTOR ENGINEERING GROUP
418 MISSION AVE
SAN RAFAEL CA 94901
(415) 451-2480
john@proctoreng.com
For: Proctor Engineering Group, Ltd.

Eileen Parker
QUEST
2001 ADDISON STREET, STE. 300
BERKELEY CA 94704
(510) 540-7200
For: Quantum Energy Services & Technologies, Inc.

James Ross

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

SCHENECTADY NY 12305
(303) 279-6769
mmoore@newportpartnersllc.com
For: NEWPORT VENTURES

Chonda J. Nwamu
PETER OUBORG, LISE H. JORDAN
Attorney
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO CA 94177
(415) 973-6650
CJN3@pge.com
For: Pacific Gas and Electric Company

Shirley A. Woo
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, MC B30A
SAN FRANCISCO CA 94120-7442
(415) 973-2248
saw0@pge.com
For: Pacific Gas and Electric Company

Lourdes Jimenez-Price
Office Of The General Counsel
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET, MS B406
SACRAMENTO CA 95817-1899
(916) 732-6441
ljimene@smud.org
For: SMUD

Steven D. Patrick
Attorney
SAN DIEGO GAS AND ELECTRIC COMPANY
555 WEST FIFTH STREET, SUITE 1400
LOS ANGELES CA 90013-1011
(213) 244-2954
SDPatrick@SempraUtilities.com
For: San Diego Gas & Electric Company and Southern California
Gas Company

Judi G. Schweitzer

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

J. Andrew Hoerner
REDEFINING PROGRESS
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 507-4820
hoerner@redefiningprogress.org
For: Redefining Progress

Jim Parks
SACRAMENTO MUNICIPAL UTILITY DIST.
6301 S STREET, A204
SACRAMENTO CA 95817-1899
(916) 732-5252
jparks@smud.org

Hank Ryan
Executive Dir.
SMALL BUSINESS CALIFORNIA (SB CALIF.)
750 - 47TH AVE., NO. 56
CAPITOLA CA 95010
(510) 459-9683
hankryan2003@yahoo.com
For: Small Business California

Paul Wuebben
SOUTH COAST AIR QUALITY MANAGEMENT DIST
21865 COPLEY DRIVE
DIAMOND BAR CA 91765-4178
(909) 396-3247
For: South Coast Air Quality Management District

Larry R. Cope
MIKE MONTOYA, JENNIFER SHIGEKAWA
Attorney At Law
SOUTHERN CALIFORNIA EDISON

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

SCHWEITZER AND ASSOCIATES, INC.
25422 TRABUCO ROAD, STE.105-P
LAKE FOREST CA 92630
(949) 859-2020
judi.schweitzer@post.harvard.edu
For: Judy G. Schweitzer

Chris Scruton
8690 CALVINE RD.
SACRAMENTO CA 95828
cscruton@energy.state.ca.us
For: Chris Scruton

Richard Esteves
SESCO, INC.
77 YACHT CLUB DRIVE
LAKE HOPATCONG NJ 07849
(973) 663-5125
sesco@optonline.net
For: SESCO

Frank Teng
Environment And Energy Associate
SILICON VALLEY LEADERSHIP GROUP
224 AIRPORT PARKWAY, SUITE 620
SAN JOSE CA 95110
(408) 501-7871
For: Silicon Valley Leadership Group.

Marcel Hawiger
Energy Atty
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94104
(415) 929-8876 X311
marcel@turn.org
For: TURN

Robert Finkelstein
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94104

PO BOX 800, 2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-2570
larry.cope@sce.com
For: Southern California Edison

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

Michael Boccadoro
THE DOLPHIN GROUP
925 L STREET, SUITE 800
SACRAMENTO CA 95814
(916) 441-4383
aecaonline@gmail.com
For: Inland Empire Utilities, Chino Basin Coalition, Santa Ana
Watershed Project Authority

Mark L. Parsons
Sr. Deputy Gen. Counsel
THE METROPOLITAN WATER DISTRICT OF SOUTH
PO BOX 54153
LOS ANGELES CA 90054-0153
(213) 217-6317
mparsons@mwdh2o.com
For: The Metropolitan Water District of Southern California

E.V. (Al) Garcia
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET. MS 42
SACRAMENTO CA 95814
(916) 654-4045
agarcia@energy.state.ca.us
For: California Energy Commission

Margaret Sheridan
CALIFORNIA ENERGY COMMISSION
DEMAND ANALYSIS OFFICE
1516 NINTH STREET, MS-22
SACRAMENTO CA 95814

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

(415) 929-8876 X-307
bfinkelstein@turn.org
For: The Utility Reform Network

Robert C. Wilkinson
Director, Water Policy Program
4426 BREN BUILDING
SANTA BARBARA CA 93106
wilkinson@es.ucsb.edu

Barbara George
WOMEN'S ENERGY MATTERS
PO BOX 548
FAIRFAX CA 94978
(415) 755-3147
wem@igc.org
For: Women's Energy Matters (WEM)

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

Jean A. Lamming
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2142
JL2@cpuc.ca.gov

Cynthia Rogers
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
SACRAMENTO CA 95814
(916) 651-9009
crogers@energy.state.ca.us

Fred L. Curry
Division of Water and Audits
RM. 3106
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1739
flc@cpuc.ca.gov

(916) 651-9077
msherida@energy.state.ca.us
For: California Energy Commission

Sylvia Bender
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS20
SACRAMENTO CA 95814
(916) 653-6841
sbender@energy.state.ca.us

Matthew Tisdale
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-5137
MWT@cpuc.ca.gov

Jeanne Clinton
Executive Division
RM. 5221
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1159
cln@cpuc.ca.gov

Cheryl Cox
Division of Ratepayer Advocates
RM. 4101
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2495
cxc@cpuc.ca.gov
For: DRA

Monisha Gangopadhyay
Division of Ratepayer Advocates
RM. 4104
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1417
mgb@cpuc.ca.gov

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

Tim G. Drew
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5618
zap@cpuc.ca.gov

Cathleen A. Fogel
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1809
cf1@cpuc.ca.gov

Hazlyn Fortune
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2317
hcf@cpuc.ca.gov

Damon A. Franz
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2165
df1@cpuc.ca.gov

Peter Franzese
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1926
pcf@cpuc.ca.gov

David M. Gamson
Administrative Law Judge Division
RM. 5019
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1232
dmg@cpuc.ca.gov

Katherine Hardy
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2322
keh@cpuc.ca.gov

Judith Ikle
Energy Division
RM. 4012
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1486
jci@cpuc.ca.gov

Peter Lai
Energy Division
RM. 500
320 West 4th Street Suite 500
Los Angeles CA 90013
(213) 576-7087
ppl@cpuc.ca.gov

Suman Mathews
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5360
srm@cpuc.ca.gov

Ayat E. Osman
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5953
aeo@cpuc.ca.gov

Lisa Paulo
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 355-5495
lp1@cpuc.ca.gov

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

Sazedur Rahman
Division of Ratepayer Advocates
RM. 4209
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2338
snr@cpuc.ca.gov

Thomas Roberts
Division of Ratepayer Advocates
RM. 4108
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5278
tcr@cpuc.ca.gov

Joyce Steingass
Consumer Protection and Safety Division
RM. 2106
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 355-5532
jws@cpuc.ca.gov

George S. Tagnipes
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2451
jst@cpuc.ca.gov

Zenaida G. Tapawan-Conway
Communications Division
AREA 3-D
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5221
ztc@cpuc.ca.gov

Ava N. Tran
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2887
atr@cpuc.ca.gov

Christopher R Villarreal
Policy & Planning Division
RM. 5119
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1566

Natalie Walsh
Energy Division
RM. 4003
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1622
nfw@cpuc.ca.gov

Karen Camille Watts-Zagha
Division of Ratepayer Advocates
RM. 4104
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2881
kwz@cpuc.ca.gov
For: DRA

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

Karen Terranova
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 403-5542
filings@a-klaw.com

Nora Sheriff
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
nes@a-klaw.com

William H. Booth
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, STE. 1850
SAN FRANCISCO CA 94105
(415) 421-4143
whb@a-klaw.com
For: California Large Enegy Consumers Association

Seema Srinivasan
ALCANTAR & KAHL LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
sls@a-klaw.com

Jo Tiffany
ALLIANCE TO SAVE ENERGY
1624 FRANKLIN ST. PH
OAKLAND CA 94612-2833
(510) 451-4056

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

crv@cpuc.ca.gov

jtiffany@ase.org

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

Peter C. Jacobs
BUILDING METRICS INC.
2540 FRONTIER AVE. SUITE 100
BOULDER CO 80301
(720) 284-4393
pjacobs@buildingmetrics.biz

Barbara R. Barkovich
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO CA 95460
(707) 937-6203
brbarkovich@earthlink.net
For: CONSULT. TO THE CAL.LARGE ENERGY CONSUMERS
ASSN.

Helen Arrick
BUSINESS ENERGY COALITION
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 973-5445
hxag@pge.com

Annette Beitel
1014 PONTIAC RD.
WILMETTE IL 60091-1351
annette.beitel@gmail.com

Steven R. Schiller
Chair, Board Of Dir.
CA ENERGY EFFICIENCY INDUSTRY COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 390-6413
steve@schiller.com

Bruce Mclaughlin
BRAUN & BLAISING, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 326-5314
mclaughlin@braunlegal.com

Chris Ann Dickerson
CAD CONSULTING
720B CANYON OAKS DRIVE
OAKLAND CA 94605
(510) 562-1034
cadickerson@cadconsulting.biz

Justin C. Wynne
Attorney At Law
BRAUN BLAISING MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 326-5813
wynne@braunlegal.com

Irene M. Stillings
Executive Director
CALIF. CTR. FOR SUSTAINABLE ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(858) 244-1177
irene.stillings@energycenter.org

Ryan Bernardo
BRAUN BLAISING MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 912-4432
bernardo@braunlegal.com

Bill Kelly
Correspondent
CALIFORNIA ENERGY CIRCUIT
PO BOX 1022
SOUTH PASADENA CA 91031
(626) 441-2112
southlandreports@earthlink.net

Misti Bruceri
1521 I STREET
NAPA CA 94559

Kae Lewis
CALIFORNIA ENERGY COMMISSION

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

(707) 252-8355
mistib@comcast.net

Bruce Mast
BUILD IT GREEN
160 FRANKLIN ST., STE. 310
OAKLAND CA 94607-3725
(510) 845-0472 X-111
Bruce@BuildItGreen.org

1516 9TH STREET, MS 22
SACRAMENTO CA 95814
(916) 654-4176
klewis@energy.state.ca.us

Richard Sapudar
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO CA 95814
(916) 653-4521
rsapudar@energy.state.ca.us

Nancy Kirshner-Rodriguez
Consulting Department Manager
CONSOL
7407 TAM O SHANTER DRIVE
STOCKTON CA 95210-3370
(209) 473-5000

CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST STE 303
SAN FRANCISCO CA 94117-2242
CEM@newsdata.com

Robert W. Hammon, Ph.D
Principal
CONSOL
7407 TAM OSHANTER DRIVE
STOCKTON CA 95210-3370
(209) 473-5073
Rob@ConSol.ws

CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC
933 ELOISE AVENUE
SOUTH LAKE TAHOE CA 96150
(530) 546-1720
cpuc@libertyutilities.com

Nora Hernandez
COUNTY OF LOS ANGELES-INTERNAL SERVICES
1100 N. EASTERN AVENUE
LOS ANGELES CA 90063
(323) 881-3949
nhernandez@isd.co.la.ca.us

John Celona
505 VISTA AVENUE
SAN CARLOS CA 94070
(650) 802-9201
jcelona@sbcglobal.net

Dana Armanino
Community Development Agency
COUNTY OF MARIN
3501 CIVIC CENTER DRIVE, ROOM 308
SAN RAFAEL CA 94903
(415) 449-3292
darmanino@co.marin.ca.us

CERTICHRON, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
cpuc@certichron.com

Clinton Cole
CURRENT GROUP, LLC
20420 CENTURY BOULEVARD
GERMANTOWN MD 20874
(301) 944-2718

Michael Cheng
2723 HARLAND COURT
WALNUT CREEK CA 94598
(925) 947-2188

Judy Pau
DAVIS WRIGHT TREMAINE LLP
EMAIL ONLY
EMAIL ONLY CA 00000-0000

Ann Kelly
Department Of The Environment
CITY AND COUNTY OF SAN FRANCISCO
11 GROVE STREET
SAN FRANCISCO CA 94102
(415) 355-3720

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

ann.kelly@sfgov.org

Thomas L. Trimberger
Chief Building Official
CITY OF RANCHO CORDOVA
2729 PROSPECT PARK DRIVE
RANCHO CORDOVA CA 95670

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

Gene Thomas
ECOLOGY ACTION
877 CEDAR ST., STE. 240
SANTA CRUZ CA 95060-3938
(831) 426-5925
gthomas@ecoact.org

Mahlon Aldridge
Vp - Strategic Development
ECOLOGY ACTION
877 CEDAR STREET, STE. 240
SANTA CRUZ CA 95060-3938
(831) 515-1316
maldridge@ecoact.org

Ted Flanigan
President
ECOMOTION - THE POWER OF THE INCREMENT
1537 BARRANCA PARKWAY, SUITE F-104
IRVINE CA 92618
(949) 450-7155
TFlanigan@EcoMotion.us

Crystal Needham
Senior Director, Counsel
EDISON MISSION ENERGY
3 MACARTHUR PLACE, STE. 100
SANTA ANA CA 92707
(949) 798-7977
cneedham@edisonmission.com

Walter Mcguire
EFFICIENCY PARTNERSHIP

(415) 276-6587
judypau@dwt.com

DAVIS WRIGHT TREMAINE, LLP
EMAIL ONLY
EMAIL ONLY CA 00000
dwtcpucdockets@dwt.com

Cassandra Sweet
DOW JONES NEWSWIRES
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 439-6468
cassandra.sweet@dowjones.com

Nick Fugate
ELECTRICITY ANALYSIS DIVISION
1516 NINTH STREET, MS - 22
SACRAMENTO CA 95814
Nfugate@energy.state.ca.us

Jedediah Gibson
Attorney At Law
ELLISON SCHNEIDER & HARRIS
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
jgg@eslawfirm.com
For: Sierra Pacific Power Company

Eric Cutter
ENERGY AND ENVIRONMENTAL ECONOMICS, INC.
101 MONTGOMERY STREET, SUITE 1600
SAN FRANCISCO CA 94104
(415) 391-5100
eric@ethree.com

Steven Kihm
ENERGY CENTER OF WISCONSIN
455 SCIENCE DRIVE, STE 200
MADISON WI 53711
(608) 238-8276 X131
skihm@ecw.org

Malcolm D. Ainspan
ENERGY CURTAILMENT SPECIALISTS
EMAIL ONLY

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

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R0604010 LIST

2962 FILLMORE STREET
SAN FRANCISCO CA 94123
(415) 775-7571
wmcguire@fypower.org

David Gordon
EFM SOLUTIONS
10310 CAMINITO AGADIR
SAN DIEGO CA 92131
(858) 566-4306
david.gordon@efm-solutions.com

Ellen Pettrill
Director, Public/Private Partnerships
ELECTRIC POWER RESEARCH INSTITUTE
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(650) 855-8939
epetrill@epri.com

Jennifer Holmes
ENERGY MARKET INNOVATIONS INC.
83 COLUMBIA STREET, SUITE 303
SEATTLE WA 98104
(206) 621-1160
jholmes@emi1.com

Carmen Baskette
Senior Mgr Market Development
ENERNOC, INC.
500 HOWARD STREET, SUITE 400
SAN FRANCISCO CA 94105-3040
(415) 235-5562
cbaskette@enernoc.com

Mona Tierney-Lloyd
Senior Manager Western Reg. Affairs
ENERNOC, INC.
PO BOX 378
CAYUCOS CA 93430
(805) 995-1618
mtierney-lloyd@enernoc.com

Amelia Gulkis
ENSAVE, INC.
65 MILLER STREET, SUITE 105

EMAIL ONLY NY 00000
(716) 565-1327 X378
mainspan@ecsgrid.com

Reuben Deumling
ENERGY ECONOMICS INC.
3309 SE MAIN STREET
PORTLAND OR 97214
(503) 231-5059
9watts@gmail.com

Jim Bazemore
ENERGY MARKET INNOVATIONS INC
83 COLUMBIA STREET, SUITE 303
SEATTLE WA 98104-1417
(206) 621-1160
jbazemore@emi1.com

Todd S. Glassey
EMAIL ONLY
EMAIL ONLY CA 00000
tglassey@certichron.com

Basu Mukherjee, P.E.
GLOBAL ENERGY SERVICES, INC.
404 S. PROSPECTORS RD. STE. B
DIAMOND BAR CA 91765
(909) 860-5300
gesusa@gmail.com

Steven Lehtonen
GREEN PLUMBERS USA
4153 NORTHGATE BLVD., STE. 1
SACRAMENTO CA 95834-1218
(916) 239-4577
steve@greenplumbersusa.com

Dr. Hugh (Gil) Peach
H GIL PEACH & ASSOCIATES LLC
16232 NW OAKHILLS DRIVE
BEAVERTON OR 97006
(503) 645-0716
hgilpeach@scanamerica.net

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

RICHMOND VT 05477
(802) 434-1826
ameliag@ensave.com

Erik Page
ERIK PAGE & ASSOCIATES
106 SPRUCE ROAD
FAIRFAX CA 94930-1517
(530) 908-7398
erik@erikpage.com
For: Erik Page & Associates

Norman J. Furuta
FEDERAL EXECUTIVE AGENCIES
1455 MARKET ST., SUITE 1744
SAN FRANCISCO CA 94103-1399
(415) 503-6994
norman.furuta@navy.mil

Thomas P. Conlon
President
GEOPRAXIS
PO BOX 5
SONOMA CA 95476-0005
(707) 280-1529
tconlon@geopraxis.com

Alice Liddell
ICF INTERNATIONAL
620 FOLSOM STREET, STE, 200
SAN FRANCISCO CA 94107
(415) 677-7133
aliddell@icfi.com

Chiara D'Amore
ICF INTERNATIONAL
14724 VENTURA BLVD.
SHERMAN OAKS CA 91403
(818) 325-3130
cdamore@icfi.com

Diana Pape
ICF INTERNATIONAL
14724 VENTURA BLVD.
SHERMAN OAKS CA 91403
(818) 325-3130

John M. Clarkson
HEAT PROJECT UK
ENACT ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000
john@enactenergy.com

Douglas E. Mahone
HESCHONG MAHONE GROUP
11211 GOLD COUNTRY BLVD., SUITE 103
GOLD RIVER CA 95670
(916) 962-7001
dmahone@h-m-g.com

Andrew W. Wood
Energy Efficiency Engineer
HONEYWELL UTILITY SOLUTIONS
353 A VINTAGE PARK DRIVE
FOSTER CITY CA 94404
(415) 725-0892
andrew.wood3@honeywell.com

Tam Hunt
HUNT CONSULTING
EMAIL ONLY
EMAIL ONLY CA 00000
(805) 705-1352
tam.hunt@gmail.com
For: Community Environmental Council

Jay Bhalla
Principal
INTERGY CORPORATION
11875 DUBLIN BLVD., SUITE A201
DUBLIN CA 94568
(925) 556-2600 X-22
jay.bhalla@intergycorp.com

Jennifer Fagan
Principal Energy Consultant
ITRON, INC
1111 BROADWAY, SUITE 1800
OAKLAND CA 94607
(608) 235-1314
jennifer.fagan@itron.com
For: ITRON, INC

Alex Kang

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

dpape@icfi.com

Steven Culbertson
ICF INTERNATIONAL
14724 VENTURA BLVD., SUITE 1001
SHERMAN OAKS CA 91403
(818) 325-3152
sculbertson@icfi.com

Ashish Goel
Founder And Co
INTERGY CORPORATION
11875 DUBLIN BOULEVARD, SUITE A201
DUBLIN CA 94568
(925) 556-2600 X-23
ashish.goel@intergycorp.com

Brad Bergman
Director
INTERGY CORPORATION
EMAIL ONLY
EMAIL ONLY CA 00000
(925) 785-3124
brad.bergman@intergycorp.com

Grant Cooke
Vice President
INTERGY CORPORATION
11875 DUBLIN BOULEVARD, SUITE A201
DUBLIN CA 94568
(925) 989-7117

Jim Flanagan
JAMES FLANAGAN ASSOCIATES
124 LOWER TERRACE
SAN FRANCISCO CA 94114
(415) 863-2525
jimflanagan4@mac.com

Jeff Hirsch
JAMES J. HIRSCH & ASSOCIATES
12185 PRESILLA ROAD
CAMARILLO CA 93012-9243
(805) 553-9000

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

Ann Peterson
ITRON, INC.
1111 BROADWAY, SUITE 1800
OAKLAND CA 94607
(510) 844-2811
Ann.Peterson@itron.com

John Cavalli
ITRON, INC.
1111 BROADWAY, STE. 1800
OAKLAND CA 94607
(510) 844-2876
john.cavalli@itron.com

Rachel Harcharik
ITRON, INC.
11236 EL CAMINO REAL
SAN DIEGO CA 92130
(858) 724-2638
rachel.harcharik@itron.com

Bob Ramirez
ITRON, INC. (CONSULTING & ANALYSIS DIV.)
EMAIL ONLY
EMAIL ONLY CA 00000
(858) 724-2650
bob.ramirez@itron.com

Edward Vine
LAWRENCE BERKELEY NATIONAL LABORATORY
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 486-6047
elvine@lbl.gov

Mary Ann Piette
LAWRENCE BERKELEY NATIONAL LABORATORY
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 486-6156

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

Jeff.Hirsch@DOE2.com

Kurt J. Kammerer
K. J. KAMMERER & ASSOCIATES
1220 ROSECRANS ST., PMB 324
SAN DIEGO CA 92106-2674
(619) 546-6175
kjk@kjkammerer.com

Kathleen Gaffney
KEMA
155 GRAND AVENUE, STE 500
OAKLAND CA 94512-3747
(510) 891-0446
kathleen.gaffney@kema.com
For: KEMA

Fred Coito
KEMA INC
155 GRAND AVENUE, STE. 500
OAKLAND CA 94612-3747
(510) 891-0446
fred.coito@kema.com

Docket Coordinator
KEYS AND FOX
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 597-1798
cpucdockets@keyesandfox.com

Clark Pierce
LANDIS+GYR
REGULATORY AFFAIRS
246 WINDING WAY
STRAFORD NJ 08084
(856) 435-6024
Clark.Pierce@us.landisgyr.com

MAPiette@lbl.gov

James J. Heckler
LEVIN CAPITAL STRATEGIES
595 MADISON AVENUE
NEW YORK NY 10022
(212) 259-0851
Jheckler@levincap.com

G. Patrick Stoner
LOCAL GOVERNMENT COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(916) 448-1198 X 309
pstoner@lgc.org

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

Bob Hondeville
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354
(209) 526-7373
bobho@mid.org

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

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 834-1999
mrw@mrwassoc.com

John M. Newcomb
NEWCOMB ANDERSON MCCORMICK
201 MISSION STREET, SUITE 2010
SAN FRANCISCO CA 94105
(415) 896-0300

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

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R0604010 LIST

Terry L. Murray
MURRAY & CRATTY
8627 THORS BAY ROAD
EL CERRITO CA 94530
(510) 215-2860
tlmurray@earthlink.net

Noah Long
NATURAL RESOURCES DEFENSE COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 875-6100
nlong@nrdc.org

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

Jennifer Barnes
NAVIGANT CONSULTING, INC.
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 399-2116
Jennifer.Barnes@Navigantconsulting.com

David Nemtsov
NEMTZOW & ASSOCIATES
EMAIL ONLY
EMAIL ONLY CA 00000
(310) 622-2981
david@nemtsov.com

Andrew Meiman
Senior Program Manager
NEWCOMB ANDERSON MCCORMICK
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 896-0300
andrew_meiman@newcomb.cc

Ann L. McCormick, P.E.
Principal
NEWCOMB ANDERSON MCCORMICK
201 MISSION STREET, SUITE 2010
SAN FRANCISCO CA 94105
(415) 896-0300
ann_mccormick@newcomb.cc

John_Newcomb@newcomb.cc

Matt Sullivan
NEWCOMB ANDERSON MCCORMICK
201 MISSION ST., SUITE 2010
SAN FRANCISCO CA 94105
(415) 898-0300
matt_sullivan@newcomb.cc

Terry M. Fry
NEXANT, INC.
101 SECOND STREET, 10TH FLOOR
SAN FRANCISCO CA 94105
(415) 369-1021
tmfry@nexant.com

David Reynolds
Member Services Manager
NORTHERN CALIFORNIA POWER AGENCY
651 COMMERCE DRIVE
ROSEVILLE CA 95678-6420
(916) 781-4293
david.reynolds@ncpa.com

Scott Tomashefsky
NORTHERN CALIFORNIA POWER AGENCY
651 COMMERCE DRIVE
ROSEVILLE CA 95678-6420
(916) 781-4291
scott.tomashefsky@ncpa.com

NRDC
111 SUTTER ST, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
smartinez@nrdc.org

Richard T. Sperberg
ONSITE ENERGY CORPORATION
2701 LOKER AVENUE WEST, SUITE 107
CARLSBAD CA 92010
(760) 931-2400 4140
rsperberg@onsitenergy.com

Sharyn Barata
OPINION DYNAMICS CORPORATION
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(949) 365-5730
sbarata@opiniondynamics.com

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

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R0604010 LIST

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

Jenny Gluzgold
PACIFIC GAS & ELECTRIC CO.
77 BEALE STREET, B9A
SAN FRANCISCO CA 94105
(415) 973-0347
yxg4@pge.com

Brian K. Cherry
PACIFIC GAS AND ELECTRIC COMPANY
77N BEALE ST., PO BOX 770000, MC B10C
SAN FRANCISCO CA 94177
(415) 973-4977
bkc7@pge.com

Case Coordination
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 973-4208
regrelcpucases@pge.com

Eileen Cotroneo
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94105
(415) 973-2751
efm2@pge.com

Jill Marver
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, N7K
SAN FRANCISCO CA 94177
(415) 973-0712
jkz1@pge.com

Lise H. Jordan, Esq.
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A. RM 3151
SAN FRANCISCO CA 94105
(415) 973-6965
lhj2@pge.com
For: PACIFIC GAS AND ELECTRIC COMPANY

Michael R. Klotz
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MS B30A, ROOM 3105B
SAN FRANCISCO CA 94120
(415) 973-7565
M1ke@pge.com

Rafael Friedmann
Expert Strategic Analyst
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 972-5799
rafi@pge.com

Robert Kasman
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 973-4094
rekl@pge.com

Sandy Lawrie
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94105
(415) 973-2494
slda@pge.com

Shilpa Ramaiya
PACIFIC GAS AND ELECTRIC COMPANY
PO B OX 7442
77 BEALE STREET, MAIL CODE N3A
SAN FRANCISCO CA 94120
(415) 973-3186
SRRd@pge.com

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

Anne Arquit Niederberger
POLICY SOLUTIONS
57 CLIFFORD TERRACE
SAN FRANCISCO CA 94117
(415) 829-2199
policy.solutions@comcast.net

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

Brian Hedman
Vice President
QUANTEC, LLC
720 SW WASHINGTON STREET, STE 400
PORTLAND OR 97205
(503) 228-2992

M. Sami Khawaja, Ph.D
QUANTEC, LLC
SUITE 400
720 SW WASHINGTON STREET
PORTLAND OR 97205
(503) 228-2992
Sami.Khawaja@cadmusgroup.com

Alison Watson
QUANTUM ENERGY SERVICES & TECHNOLOGIES
2001 ADDISON STREET, SUITE 300
BERKELEY CA 94704
(510) 540-7200
awatson@quest-world.com

Derrick Rebello, Ph.D
QUANTUM ENERGY SVCS & TECHNOLOGIES, INC.
2001 ADDISON ST., SUITE 300
BERKELEY CA 94704
(510) 540-7200
drebello@quest-world.com

Richard W. Raushenbush
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 518-7887
r.raushenbush@comcast.net

Jane S. Peters, Ph.D.
RESEARCH INTO ACTION, INC.
PO BOX 12312
PORTLAND OR 97212
(503) 287-9136
janep@researchintoaction.com

Alison Ten Cate
RESOURCE SOLUTIONS GROUP
60 STONE PINE ROAD, SUITE 100

Hector Huerta
RICHARD HEATH AND ASSOCIATES, INC.
590 W. LOCUST AVE., SUITE 103
FRESNO CA 93650
(559) 447-7000
hhuerta@rhainc.com

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

Robert Mowris, P.E.
ROBERT MOWRIS & ASSOCIATES
PO BOX 2141
OLYMPIC VALLEY CA 96145
(530) 583-1570
robert.mowris@rma-energy.com

Jennifer Castleberry
RUNYON SALTZMAN & EINHORN
ONE CAPITOL MALL, SUITE 400
SACRAMENTO CA 95814
(916) 446-9900

Alanna Sloan
RUNYON SALTZMAN & EINHORN, INC.
ONE CAPITOL MALL, SUITE 400
SACRAMENTO CA 95814
(916) 446-9900

Molly Harcos
RUNYON, SALTZMAN & EINHORN, INC.
1 CAPITOL MALL, SUITE 400
SACRAMENTO CA 95814
(916) 446-9900
mharcos@rs-e.com

Timothy N. Tutt
SACRAMENTO MUNICIPAL UTILITIES DISTRICT
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 732-5038

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

HALF MOON BAY CA 94019
(650) 726-2875
atencate@rsgrp.com

Lauren Casentini
RESOURCE SOLUTIONS GROUP, INC.
60 STONE PINE ROAD, SUITE 100
HALF MOON BAY CA 94019
(650) 726-5113
lcasentini@rsgrp.com

William W. Westerfield Iii
Sr. Attorney - Off. Of Gen. Counsel
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET, M.S. B402
SACRAMENTO CA 95817
(916) 732-6123
william.wester@smud.org
For: SACRAMENTO MUNICIPAL UTILITY DISTRICT

Athena Besa
SAN DIEGO GAS & ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 202-9986
ABesa@SempraUtilities.com

Billy Blattner
SAN DIEGO GAS & ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 202-9986
WBlattner@SempraUtilities.com
For: San Diego Gas & Electric and So. California Gas Company

Pedro Villegas
SAN DIEGO GAS & ELECTRIC/ SO. CAL. GAS
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 202-9986
PVillegas@SempraUtilities.com

Joy C. Yamagata
Regulatory Manager
SAN DIEGO GAS & ELECTRIC/SOCALGAS
8330 CENTURY PARK COURT, CP 32D
SAN DIEGO CA 92123-1533

ttutt@smud.org

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

Michael Baker
Vice President
SBW CONSULTING, INC.
2820 NORTHUP WAY, SUITE 230
BELLEVUE WA 98004
(425) 827-0330
mbaker@sbwconsulting.com

Nancy Privitt
SDG&E
8306 CENTURY PARK COURT, CP42K
SAN DIEGO CA 92123-1530
(858) 637-3748
NPrivitt@SempraUtilities.com
For: SDG&E

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

Samuel Sirkin
6908 SW 37TH AVENUE
PORTLAND OR 97219
(503) 804-1851
samsirkin@cs.com

Steve Kromer
SKEE
3110 COLLEGE AVENUE, APT 12
BERKELEY CA 94705
(510) 655-1492
jskromer@gmail.com
For: Steven Kromer

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

(858) 654-1755
JYamagata@SempraUtilities.com

Central Files
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP31-E
SAN DIEGO CA 92123
(858) 654-1240
CentralFiles@SempraUtilities.com

Steven Moss
SAN FRANCISCO COMMUNITY POWER
2325 THIRD ST., STE. 344
SAN FRANCISCO CA 94107
(415) 626-8723
steven@sfpower.org

Don Arambula
SOUTHERN CALIFORNIA EDISON
6042 N. IRWINDALE AVENUE, BLDG. A
IRWINDALE CA 91702
(626) 633-3129
don.arambula@sce.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. / PO BOX 800
ROSEMEAD CA 91770
(626) 302-3101
case.admin@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

Jennifer M. Tsao Shigekawa
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-6819
Jennifer.Shigekawa@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

Laura I. Genao
MIKE MONTOYA
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800, 2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-6842

Marilyn Lyon
South Bay Cities Council Of Governments
SOUTH BAY ENVIRONMENTAL SERVICES CTR.
20285 S. WESTERN AVE., STE. 100
TORRANCE CA 90501
(310) 543-3022
marilyn@sbsesc.com

Alyssa Cherry
SOUTHERN CALIFORNIA EDISON
6042A N. IRWINDALE AVENUE
IRWINDALE CA 91702
(626) 633-3129
Alyssa.Cherry@sce.com

Bobbi J. Sterrett
Snr. Specialist/State Regulatory Affairs
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89150-0002
(702) 364-3309
bobbi.sterrett@swgas.com

James R. Staples
STAPLES MARKETING COMMUNICATIONS
N28W23050 ROUNDY DRIVE
PEWAUKEE WI 53072
(262) 650-9900
staples@staplesmarketing.com
For: STAPLES MARKETING COMMUNICATIONS

Marianne King
STAPLES MARKETING COMMUNICATIONS
N28W23050 ROUNDY DRIVE
PEWAUKEE WI 53072
(262) 650-9900
mking@staplesmarketing.com
For: STAPLES MARKETING COMMUNICATIONS

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

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

Laura.Genao@sce.com

Tory S. Weber
SOUTHERN CALIFORNIA EDISON COMPANY
6042 N. IRWINDALE AVENUE, SUITE A
IRWINDALE CA 91702
(626) 633-3018
tory.weber@sce.com

Karen W. Wong
SOUTHERN CALIFORNIA GAS COMPANY
555 W. 5TH STREET, GT28A4
LOS ANGELES CA 90013
(213) 244-5812
KWong@SempraUtilities.com

Kevin Shore
SOUTHERN CALIFORNIA GAS COMPANY
555 W 5TH STREET, GT28A4
LOS ANGELES CA 90013-1011
(213) 244-5351
KShore@SempraUtilities.com

Kevin Cooney
Principal/Ceo
SUMMIT BLUE CORPORATION
1375 WALNUT ST., STE. 200
BOULDER CO 80302-5242
(720) 564-1130
kcooney@summitblue.com

Nick Hall
TECMARKET WORKS
165 WEST NETHERWOOD ROAD, 2/F, SUITE A
OREGON WI 53575
(608) 835-8855
nick@tecmarket.net

Michael Boccadoro
THE DOLPHIN GROUP
925 L STREET, SUITE 800
SACRAMENTO CA 95814
(916) 441-4383
aecaonline@gmail.com
For: Inland Empries Utilities Agency

sdhilton@stoel.com

Nikhil Gandhi
STRATEGIC ENERGY TECHNOLOGIES, INC.
17 WILLIS HOLDEN DRIVE
ACTON MA 01720
(978) 264-0511
gandhi.nikhil@verizon.net

Brent Barkett
SUMMIT BLUE CONSULTING
1375 WALNUT ST., STE. 200
BOULDER CO 80302-5242
(720) 564-1130
bbarkett@summitblue.com

Melissa Mcguire
SUMMIT BLUE CONSULTING LLC
1375 WALNUT ST., STE. 200
BOULDER CO 80302-5242
(720) 564-1130
mmcguire@summitblue.com

Julien Dumoulin-Smith
Director
UBS INVESTMENT RESEARCH
1285 AVENUE OF THE AMERICAS
NEW YORK NY 10019
(212) 713-9848
julien.dumoulin-smith@ubs.com

Benjamin Finkelor
Program Manager
UC DAVIS ENEGY EFFICIENCY CENTER
1 SHIELDS AVENUE
DAVIS CA 95616
(530) 752-7659
bmfinkelor@ucdavis.edu

Mariann Long
Assistant General Manager
UTILITIES JOINT SERVICES
201 S. ANAHEIM BLVD., NO. 101
ANAHEIM CA 92805
(714) 765-4251
mlong@anaheim.net

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

Last Updated on 06-NOV-2012 by: JVG
R0604010 LIST

Stephanie C. Chen
Sr. Legal Counsel
THE GREENLINING INSTITUTE
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 898-0506
StephanieC@greenlining.org

Grey Staples
THE MENDOTA GROUP, LLC
EMAIL ONLY
EMAIL ONLY MN 00000
(651) 204-0458
gstaples@mendotagroup.com

William P. McDonnell
THE METROPOLITAN WATER DISTRICT
700 N. ALAMEDA STREET
LOS ANGELES CA 90012
bmcdonnell@mwdh2o.com

Craig Tyler
TYLER & ASSOCIATES
2760 SHASTA ROAD
BERKELEY CA 94708
(510) 841-8038
craigtyler@comcast.net

Megan Myers
VASQUEZ ESTRADA & DUMONT LLP
1000 FOURTH STREET, SUITE 700
SAN RAFAEL CA 94901
(415) 453-0555
mmyers@vandelaw.com

Cheryl Collart
Executive Director
VENTURA COUNTY REGIONAL ENERGY ALLIANCE
1000 SOUTH HILL ROAD, STE. 230
VENTURA CA 93003
(805) 289-3335
cheryl.collart@ventura.org

Marshall B. Hunt
Programs Director, Uc Davis
WESTERN COOLING EFFICIENCY CENTER
633 PENA DRIVE
DAVIS CA 95618-6570
(530) 747-3976
mbhunt@ucdavis.edu
For: WESTERN COOLING EFFICIENCY CENTER

Carol Yin
YINSIGHT, INC
2275 HUNTINGTON DRIVE., 240
SAN MARINO CA 91108
(478) 227-6594
cyin@yinsight.net

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

***** PARTIES *****

3 PHASES RENEWABLES LLC
2100 SEPULVEDA BLVD, SUITE 37
MANHATTAN BEACH CA 90266
For: 3 Phases Renewables LLC

Michael Mazur
Principal
3 PHASES RENEWABLES LLC (1373)
2100 SEPULVEDA BLVD, SUITE 37
MANHATTAN BEACH CA 90266
(310) 798-5275
mmazur@3PhasesRenewables.com
For: 3Phases Energy Services

William H. Booth
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, STE. 1850
SAN FRANCISCO CA 94105
(415) 421-4143
whb@a-klaw.com
For: Law Office of William H. Booth

Nora Sheriff
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
nes@a-klaw.com
For: CAC/EPUC

Frank Annunziato
President
AMERICAN UTILITY NETWORK INC.
10705 DEER CANYON DR.
ALTA LOMA CA 91737-2483
(909) 989-4000
allwazeready@aol.com
For: American Utility Network

Gloria Britton
Regulatory Affairs Mgr.
ANZA ELECTRIC CO-OPERATIVE, INC (909)
PO BOX 39109 / 58470 HIGHWAY 371
ANZA CA 92539-1909
(909) 763-4333
GloriaB@anzaelectric.org
For: Anza Electric Co-operative Inc

Lili Shahriari
AOL UTILITY CORP
12752 BARRETT LANE
SANTA ANA CA 92705
For: AOL Utility Corp

Scott Blaising
BRAUN BLAISING MCLAUGHLIN P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 682-9702
blaising@braunlegal.com
For: California Municipal Utilities Association

Baldassaro Di Capo
Counsel
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
250 OUTCROPPING WAY
FOLSOM CA 95630
(916) 608-7157
bdicapo@caiso.com
For: California Independent System Operator

George Hanson
Department Of Water And Power
CITY OF CORONA
730 CORPORATION YARD WAY
CORONA CA 92880
For: City of Corona

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

Inger Goodman
COMMERCE ENERGY INC
1 CENTERPOINTE DRIVE, SUITE 350
LA PALMA CA 90623-2520
(714) 259-2508
igoodman@commerceenergy.com
For: Commerce Energy Inc

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

Christopher Clay
Legal Division
RM. 4300
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1123
cec@cpuc.ca.gov
For: DRA

Jeffrey P. Gray
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6581
jeffreygray@dwt.com
For: Calpine Corporation

Ann L. Trowbridge
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO CA 95864
(916) 570-2500 X-103
atrowbridge@daycartermurphy.com
For: Merced Irrigation District/Modesto Irrigation District

Daniel W. Douglass
DOUGLASS & LIDDELL
EMAIL ONLY
EMAIL ONLY CA 00000
(818) 961-3001
douglass@energyattorney.com
For: Western Power Trading Forum/Alliance for Retail Markets

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

Andrew B. Brown

Carolyn M. Kehrein
ENERGY USERS FORUM
2602 CELEBRATION WAY
WOODLAND CA 95776
(530) 668-5600
cmkehrein@ems-ca.com
For: Energy Management Services

Melanie Gillette
Western Regulatory Affairs
ENERNOC, INC.
115 HAZELMERE DRIVE
FOLSOM CA 95630
(916) 501-9573
mgillette@enernoc.com
For: Western Regulatory Affairs

Mona Tierney-Lloyd
Senior Manager Western Reg. Affairs
ENERNOC, INC.
PO BOX 378
CAYUCOS CA 93430
(805) 995-1618
mtierney-lloyd@enernoc.com
For: ENERNOC, INC.

Ronald Moore
Sr. Regulatory Analyst
GOLDEN STATE WATER CO / BEAR VALLEY ELEC
630 EAST FOOTHILL BLVD.
SAN DIMAS CA 91773-9016
(909) 394-3600 X682
rkmoore@gswater.com
For: Southern California Water Company

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

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

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

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

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

Robert Freehling
Local Power Research Director
LOCAL POWER
PO BOX 606
FAIR OAKS CA 94574
(916) 966-3410
rfreeh123@sbcglobal.net
For: Womens Energy Matters

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

Megan Saunders
NOBLE AMERICAS ENERGY SOLUTIONS LLC
101 ASH STREET, HQ09
SAN DIEGO CA 92101-3017
For: Sempra Energy Solutions

Tam Hunt
HUNT CONSULTING
16 PALM CT.
MENLO PARK CA 94025
(805) 705-1352
tam.hunt@gmail.com
For: Community Environmental Council

E.J. Wright
OCCIDENTAL POWER SERVICES, INC.
EMAIL ONLY
EMAIL ONLY TX 00000
(562) 624-3309
ej_wright@oxy.com
For: Occidental Power Services Inc

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

Noel Obiora
Legal Division
RM. 5121
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5987
nao@cpuc.ca.gov
For: DRA

Sepideh Khosrowjah
Executive Division
RM. 5202
505 Van Ness Avenue

Brian K. Cherry
PACIFIC GAS AND ELECTRIC COMPANY
77N BEALE ST., PO BOX 770000, MC B10C
SAN FRANCISCO CA 94177
(415) 973-4977

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

San Francisco CA 94102 3298
(415) 703-1190
skh@cpuc.ca.gov
For: DRA

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

bkc7@pge.com
For: Pacific Gas and Electric

Charles R. Middlekauff
WILLIAM V. MANHEIM
PACIFIC GAS AND ELECTRIC COMPANY
LAW DEPT.
77 BEALE STREET, B30A / PO BOX 7442
SAN FRANCISCO CA 94105
(415) 973-6971
CRMd@pge.com
For: Pacific Gas and Electric Company

Cory M. Mason
Attorney
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B30A
SAN FRANCISCO CA 94105-1814
(415) 973-2320
cmmw@pge.com
For: PG&E

Wendy Keilani
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP32D
SAN DIEGO CA 92123
(858) 654-1185
WKeilani@SempraUtilities.com
For: San Diego Gas & Electric

Mark Huffman
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120
(415) 973-3842
mrh2@pge.com
For: Pacific Gas & Electric Co

John A. Pacheco
Attorney
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, HQ12B
SAN DIEGO CA 92101-3017
(619) 699-5130
JPacheco@SempraUtilities.com
For: SDG&E

Thomas R. Darton
PILOT POWER GROUP, INC. (1365)
EMAIL ONLY
EMAIL ONLY CA 00000
(858) 678-0118
tdarton@pilotpowergroup.com
For: Pilot Power Group Inc

Donald P. Garber
SEMPRA ENERGY
101 ASH STREET
SAN DIEGO CA 92101
(619) 696-4539
DGarber@SempraUtilities.com
For: San Diego Gas & Electric Company

Jessica Nelson
PLUMAS-SIERRA RURAL ELECTRIC CO-OP
EMAIL ONLY
EMAIL ONLY CA 00000

Carol Schmid-Frazee
SOUTHERN CALIFORNIA EDISON CO.
2244 WALNUT GROVE AVE./PO BOX 800
ROSEMEAD CA 91770
(626) 302-1337

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

(530) 832-6004
jnelson@psrec.coop
For: Plumas Sierra Rural Electric Coop.

Rick C. Noger
PRAXAIR, INC. (1370)
2430 CAMINO RAMON DRIVE, STE. 300
SAN RAMON CA 94583
(925) 866-6809
rick_noger@praxair.com
For: Praxar Plainfield Inc

Sue Mara
RTO ADVISORS, LLC.
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 902-4108
sue.mara@rtoadvisors.com
For: Alliance for Retail Energy Markets

Laura Wisland
CLIFF CHEN
UNION OF CONCERNED SCIENTISTS
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(510) 809-1565
lwisland@ucsusa.org
For: Union of Concerned Scientists

Lisa A. Cottle
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO CA 94114
(415) 591-1579
lcottle@winston.com
For: Mirant California/Mirant Delta and Mirant Potrero

Barbara George
WOMEN'S ENERGY MATTERS
PO BOX 548
FAIRFAX CA 94978-0548
(415) 755-3147
wem@igc.org
For: Women's Energy Matters (WEM)

carol.schmidfrazee@sce.com
For: Southern California Edison Company

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

Keith R. Mccrea
Attorney At Law
SUTHERLAND ASHBILL & BRENNAN LLP
1275 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004-2415
(202) 383-0705
keith.mccrea@sutherland.com
For: California Manufacturer & Tech. Assn.

Constance Leni
CALIFORNIA ENERGY COMMISSION
MS-20
1516 NINTH STREET
SACRAMENTO CA 95814
(916) 654-4762
connie.leni@energy.ca.gov

David Vidaver
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS-20
SACRAMENTO CA 95814-5512
(916) 654-4656
dvidaver@energy.state.ca.us

Anne Gillette
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-5219
AEG@cpuc.ca.gov

Claire Eustace
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

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

Amy C. Baker
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1691
ab1@cpuc.ca.gov

Valerie Beck
Consumer Protection and Safety Division
RM. 2201
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2665
vjb@cpuc.ca.gov

Clare L. Gallardo
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 46
SACRAMENTO CA 95814
(916) 654-4859
claufenb@energy.state.ca.us

Sara Kamins
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-1388
SMK@cpuc.ca.gov

Bishu Chatterjee
Executive Division
RM. 5303
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1247
bbc@cpuc.ca.gov

Michael Colvin
Executive Division
RM. 5212
505 Van Ness Avenue

(415) 703-1889
CCE@cpuc.ca.gov

Jaclyn Marks
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2257
jaclyn.marks@cpuc.ca.gov

Matthew Crosby
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2692
MC4@cpuc.ca.gov

Matthew Tisdale
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-5137
MWT@cpuc.ca.gov

Jessica T. Hecht
Administrative Law Judge Division
RM. 5113
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2027
jhe@cpuc.ca.gov

Charlyn A. Hook
Legal Division
RM. 5131
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3050
chh@cpuc.ca.gov

Chloe Lukins
Division of Ratepayer Advocates
RM. 4101

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

San Francisco CA 94102 3298
(415) 355-5484
mc3@cpuc.ca.gov

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

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

Julie A. Fitch
Administrative Law Judge Division
RM. 5043
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3134
jf2@cpuc.ca.gov

Steven K. Haine
Consumer Protection and Safety Division
RM. 2106
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 355-5553
shi@cpuc.ca.gov

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

Peter Skala
Energy Division
AREA 4-A
505 Van Ness Avenue

505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1637
clu@cpuc.ca.gov

David Peck
Division of Ratepayer Advocates
RM. 4108
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1213
dbp@cpuc.ca.gov

Marcelo Poirier
Legal Division
RM. 5025
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2913
mpo@cpuc.ca.gov

Nika Rogers
Division of Ratepayer Advocates
RM. 4101
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1529
nlr@cpuc.ca.gov

Melissa K. Semcer
Administrative Law Judge Division
RM. 5102
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3386
unc@cpuc.ca.gov

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

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

Julie Gill
AES SOUTHLAND

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

San Francisco CA 94102 3298
(415) 703-5370
ska@cpuc.ca.gov

Nathaniel Skinner
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1393
nws@cpuc.ca.gov

Robert L. Strauss
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5289
rls@cpuc.ca.gov

Mary Jo Stueve
Division of Ratepayer Advocates
RM. 4101
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2673
mjs@cpuc.ca.gov

Lana Tran
Consumer Protection and Safety Division
AREA 2-D
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5327
ltt@cpuc.ca.gov

Keith D White
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 355-5473
kwh@cpuc.ca.gov

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

EMAIL ONLY
EMAIL ONLY CA 00000
(916) 484-0192
aes_ltp@aes.com

Seema Srinivasan
ALCANTAR & KAHL LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
sls@a-klaw.com

Evelyn Kahl
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94015
(415) 403-5542
ek@a-klaw.com

Karen Terranova
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
filings@a-klaw.com

Michael Alcantar
Attorney At Law
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(503) 402-9900
mpa@a-klaw.com

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

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

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

brbarkovich@earthlink.net

Vicki Ferguson
BRAUN & BLAISING, PC
915 L STREET, SUITE 1270
SACRAMENTO CA 95814
(916) 326-5812
ferguson@braunlegal.com

Ryan Bernardo
BRAUN BLAISING MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 912-4432
bernardo@braunlegal.com

Arthur L. Haubenstock
BRIGHTSOURCE ENERGY, INC.
1999 HARRISON STREET, SUITE 2150
OAKLAND CA 94612
(510) 250-8150
ahaubenstock@brightsourceenergy.com

Steven R. Schiller
Chair, Board Of Dir.
CA ENERGY EFFICIENCY INDUSTRY COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 390-6413
steve@schiller.com

Tom Pomales
CALIFORNIA AIR RESOURCES BOARD
1001 I STREET
SACRAMENTO CA 95812
(916) 322-2052
tpomales@arb.ca.gov

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

CALIFORNIA ENERGY MARKETS
425 DIVISADERO STREET, STE 303
SAN FRANCISCO CA 94117
(415) 963-4439
cem@newsdata.com

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

Wade Mccartney
Sr. Market Design & Policy Specialist
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7134
wmccartney@caiso.com

Judith Sanders
CALIFORNIA ISO
250 OUTCROPPING WAY
FOLSOM CA 95630
(916) 351-4400
jsanders@caiso.com

Gwenneth O'Hara
CALIFORNIA POWER LAW GROUP
1215 K STREET, 17TH FLOOR
SACRAMENTO CA 95814
(916) 503-2235
gohara@calplg.com

Meghan K. Cox
Attorney
CALIFORNIA POWER LAW GROUP
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 503-2235
mcox@calplg.com

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

Nancy Rader
Executive Director
CALIFORNIA WIND ENERGY ASSOCIATION
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(510) 845-5077
nrader@calwea.org

Michael E. Boyd
President
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
5439 SOQUEL DRIVE
SOQUEL CA 95073
(408) 891-9677
michaelboyd@sbcglobal.net

Aris Kowalewski
Vice Pres., Government & Regulatory
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON CA 94588
(925) 479-6640
kowalewskia@calpine.com

Matthew Barmack
Dir
CALPINE CORPORATION
4360 DUBLIN BLVD., SUITE 100
DUBLIN CA 94568
(925) 557-2267
barmackm@calpine.com

Danielle Osborn-Mills
Regulatory Affairs Coordinator
CEERT
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 340-2607
danielle@ceert.org

Jose Carmona
Director Of Advocacy
CEERT
1100 11TH STREET, STE 311
SACRAMENTO CA 95814
jose@ceert.org
For: Center for Energy Efficiency and Renewable Technologies
(CEERT)

CERTICHRON, INC.
EMAIL ONLY

Stephen A. S. Morrison
CITY & COUNTY OF SAN FRANCISCO
CITY HALL, SUITE 234
1 DR CARLTON B. GOODLET PLACE
SAN FRANCISCO CA 94102-4682
(415) 554-4637

Jeanne M. Sole
CITY AND COUNTY OF SAN FRANCISCO
CITY HALL, RM 234
1 DR. CARLTON B. GOODLET PLACE
SAN FRANCISCO CA 94102-4682
(415) 554-4700
jeanne.sole@sfgov.org

William Mitchell
COMPETITIVE POWER VENTURES, INC.
505 SANSOME STREET, STE. 475
SAN FRANCISCO CA 94111
(415) 293-1469
will.mitchell@cpv.com

Paul Ackerman
Senior Counsel
CONSTELLATION ENERGY RESOURCES, INC
111 MARKET PLACE
BALTIMORE MD 21202
paul.ackerman@constellation.com

Nicole Blake
CONSUMER FEDERATION OF CALIFORNIA
1107 9TH ST., STE. 625
SACRAMENTO CA 95814
(916) 498-9623
blake@consumercal.org

Peter O'Brien
Business Development Manager
COOL EARTH SOLAR, INC
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(925) 454-8506 X232
rps-ca@coolearthsolar.com

Robert Gex
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111
(415) 276-6500
robertgex@dwt.com

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

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R0802007 LIST

EMAIL ONLY CA 00000
cpuc@certichron.com

DAVIS WRIGHT TREMAINE, LLP
EMAIL ONLY
EMAIL ONLY CA 00000
dwtcpucdockets@dwt.com

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

Derek Denniston
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 786-3773
Derek@AltaPowerGroup.com

Dale E. Fredericks
DG POWER INTERNATIONAL LLC
PO BOX 4400
WALNUT CREEK CA 94596-0400
(925) 938-9098
dfredericks@dgpower.com

Douglas M. Grandy, P.E.
California Onsite Generation
DG TECHNOLOGIES
1220 MACAULAY CIRCLE
CARMICHAEL CA 95608
(916) 871-2432
dgrandy@caonsitegen.com

Bo Buchynsky
DIAMOND GENERATING CORPORATION
333 SOUTH GRAND AVE., SUITE 1570
LOS ANGELES CA 90071
(213) 473-0092
b.buchynsky@dgc-us.com

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

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

Kevin J. Simonsen
ENERGY MANAGEMENT SERVICES
1537 FLORIDA RD., STE. 108
DURANGO CO 81301-5792
(970) 259-1748
kjsimonsen@ems-ca.com

Julie L. Fieber
FOLGER LEVIN & KAHN LLP
275 BATTERY STREET, 23RD FLOOR
SAN FRANCISCO CA 94111
(415) 365-7823
jfieber@flk.com

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

Todd S. Glassey
EMAIL ONLY
EMAIL ONLY CA 00000
tglassey@certichron.com

John Kotowski
GLOBAL ENERGY PARTNERS, LLC
500 YGNACIO VALLEY RD, SUITE 450
WALNUT CREEK CA 94596
(925) 284-3780
jak@gepllc.com
For: GLOBAL ENERGY PARTNERS, LLC

Norman A. Pedersen, Esq.
HANNA & MORTON LLP

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

liddell@energyattorney.com

Brian S. Biering
CHRISTOPHER T. ELLISON
ELLISON SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
bsb@eslawfirm.com
For: Large-Scale Solar Association

444 S. FLOWER STREET, SUITE 1500
LOS ANGELES CA 90071-2916
(213) 430-2510
npedersen@hanmor.com

Amber Riesenhuber
Energy Analyst
INDEPENDENT ENERGY PRODUCERS ASSOC.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 448-9499
amber@iepa.com

Steven Kelly
INDEPENDENT ENERGY PRODUCERS ASSOCIATION
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 448-9499
steven@iepa.com

Docket Coordinator
KEYS AND FOX
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 597-1798
cpucdockets@keyesandfox.com

Joel M. Hvidsten
KINDER MORGAN ENERGY FORECASTER
1100 TOWN & COUNTRY ROAD, SUITE 700
ORANGE CA 92868
(714) 560-4904
hvidstenj@kindermorgan.com

Shawn Cox
KINDER MORGAN ENERGY FORECASTER
1100 TOWN & COUNTRY ROAD, SUITE 700
ORANGE CA 92868
(714) 560-4099
shawn_cox@kindermorgan.com

Francisco Tarin
Director - Regulatory Affairs

Alan H. Sanstad
LAWRENCE BERKELEY NATIONAL LABORATORY
90-4000, NO. 1 CYCLOTRON RD.
BERKELEY CA 94720
(510) 486-6433
ahsanstad@lbl.gov

Galen Barbose
LAWRENCE BERKELEY NATIONAL LABORATORY
1 CYCLOTRON RD., MS90R4000
BERKELEY CA 94720
(510) 495-2593
glbarbose@lbl.gov
For: LAWRENCE BERKELEY NATIONAL LAB

California Iso
LEGAL & REGULATORY DEPT.
151 BLUE RAVINE ROAD
FOLSOM CA 95630
e-recipient@caiso.com

Karen Lindh
LINDH & ASSOCIATES
7909 WALERGA ROAD, STE 112, PMB 119
ANTELOPE CA 95843
(916) 729-1562
karen@klindh.com

C. Susie Berlin
MCCARTHY & BERLIN LLP
100 W. SAN FERNANDO ST., SUITE 501
SAN JOSE CA 95113
(408) 288-2080
sberlin@mccarthylaw.com

Barry F. Mccarthy
Attorney

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

KINDER MORGAN-WEST REGION GAS PIPELINE
EMAIL ONLY
EMAIL ONLY CO 00000
(719) 520-4579
Francisco_Tarin@kindermorgan.com

Shannon Eddy
Executive Director
LARGE SCALE SOLAR ASSOCIATION
2501 PORTOLA WAY
SACRAMENTO CA 95818
(916) 731-8371
eddyconsulting@gmail.com

MCCARTHY & BERLIN, LLP
100 W. SAN FERNANDO ST., SUITE 501
SAN JOSE CA 95113
(408) 288-2080
bmcc@mccarthylaw.com

John W. Leslie, Esq.
Attorney
MCKENNA LONG & ALDRIDGE LLP
EMAIL ONLY
EMAIL ONLY CA 00000
(619) 699-2536
jleslie@McKennaLong.Com

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

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 834-1999
mrw@mrwassoc.com

Devra Wang
Staff Scientist
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 95104
(415) 875-6100
dwang@nrdc.org

Noah Long
NATURAL RESOURCES DEFENSE COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 875-6100
nlong@nrdc.org

Peter Miller
NATURAL RESOURCES DEFENSE COUNCIL

William Manheim
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE ST, B30A / PO BOX 7442
SAN FRANCISCO CA 94120
(415) 973-6628
wvm3@pge.com

Alice Gong
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST. MC B9A
SAN FRANCISCO CA 94105
AxL3@pge.com

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

George Zahariudakis
Integrated Generation Portfolio
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 973-2079
GxZ5@pge.com

Matthew Gonzales
Senior Case Manager
PACIFIC GAS AND ELECTRIC COMPANY

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
pmiller@nrdc.org

Sierra Martinez
Attorney
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
smartinez@nrdc.org

Kerry Hattevik
Director Of West Market Affairs
NEXT ERA ENERGY RESOURCES LLC
829 ARLINGTON BLVD.
EL CERRITO CA 94530
(510) 898-1847
kerry.hattevik@nee.com

Richard W. Raushenbush
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 518-7887
r.raushenbush@comcast.net

Jim Ross
RCS, INC.
500 CHESTERFIELD CENTER, SUITE 320
CHESTERFIELD MO 63017
(314) 530-9544
jimross@r-c-s-inc.com

Edward C. Remedios
33 TOLEDO WAY
SAN FRANCISCO CA 94123-2108
(415) 474-7253
ecrem@ix.netcom.com

Tobin Richardson
RICHARDSON GROUP
1416 VIGO COURT
DAVIS CA 95618
(916) 801-5810

77 BEALE STREET, ROOM 918
SAN FRANCISCO CA 94105
(415) 973-8466
mrgg@pge.com

Cathie Allen
PACIFICORP
825 NE MULTNOMAH STREET, STE 2000
PORTLAND OR 97232
(503) 813-5934
cathie.allen@pacificorp.com

Karen P. Paull
Division of Ratepayer Advocates
RM. 4300
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2630
kpp@cpuc.ca.gov

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

SEMPRA ENERGY UTILITIES
8330 CENTURY PARK COURT
SAN DIEGO CA 92123-1548
CentralFiles@SempraUtilities.com
For: SEMPra ENERGY UTILITIES

Tom Corr
SEMPRA GLOBAL
101 ASH STREET, 8TH FL.
SAN DIEGO CA 92101-3017
(619) 696-4246
TCorr@SempraUtilities.com

Marcie Milner
SHELL ENERGY NORTH AMERICA
4445 EASTGATE MALL, SUITE 100

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

tobinjmr@sbcglobal.net

Timothy N. Tutt
SACRAMENTO MUNICIPAL UTILITIES DISTRICT
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 732-5038
ttutt@smud.org

Kari Kloberdanz
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32D
SAN DIEGO CA 92122
(858) 637-7960
KKloberdanz@SempraUtilities.com

David Orth
SAN JOAQUIN VALLEY POWER AUTHORITY
ADMIN OFF @KINGS RIVER CONSERV DISTRICT
4886 EAST JENSEN AVENUE
FRESNO CA 93725
(559) 237-5567
dorth@krcd.org
For: San Joaquin Valley Power Authority

SAN DIEGO CA 92121
(858) 526-2106
marcie.milner@shell.com

Akbar Jazayeri
Dir. Revenue & Tariffs, Rm 390
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800, 2241 WALNUT GROVE AVE
ROSEMEAD CA 91770
(626) 302-3630
akbar.jazayeri@sce.com
For: Southern California Edison Company

Amber Dean Wyatt
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE., PO BOX 800
ROSEMEAD CA 91770
(626) 302-6961
amber.wyatt@sce.com

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

Melissa A. Hovsepian
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. / PO BOX 800
ROSEMEAD CA 91770
(626) 302-6054
Melissa.Hovsepian@sce.com

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

Michael D. Montoya
BERJ K. PARSEGHIAN
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, PO BOX 800
ROSEMEAD CA 91770
(626) 302-6944
mike.montoya@sce.com
For: Southern California Edison Company

Megan Myers
VASQUEZ ESTRADA & DUMONT LLP
1000 FOURTH STREET, SUITE 700
SAN RAFAEL CA 94901
(415) 453-0555
mmyers@vandelaw.com

Kevin Woodruff
WOODRUFF EXPERT SERVICES, INC.
1100 K STREET, SUITE 204

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

Last Updated on 06-NOV-2012 by: JVG
R0802007 LIST

Hugh Yao
SOUTHERN CALIFORNIA GAS COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(213) 244-3619
HYao@SempraUtilities.com
For: SOUTHERN CALIFORNIA GAS COMPANY

SACRAMENTO CA 95814
(916) 442-4877
kdw@woodruff-expert-services.com

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

Rafi Hassan
SUSQUEHANNA FINANCIAL GROUP, LLLP
101 CALIFORNIA STREET, SUITE 3250
SAN FRANCISCO CA 94111
(415) 403-6531
rafi.hassan@sig.com

Matthew Freedman
THE UTILITY REFORM NETWORK
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 929-8876 X304
matthew@turn.org

Julien Dumoulin-Smith
Director
UBS INVESTMENT RESEARCH
1285 AVENUE OF THE AMERICAS
NEW YORK NY 10019
(212) 713-9848
julien.dumoulin-smith@ubs.com

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

***** PARTIES *****

Michael Mazur
Principal
3 PHASES RENEWABLES, LLC
2100 SEPULVEDA BLVD, SUITE 38
MANHATTAN BEACH CA 90266
(310) 798-5275
mmazur@3PhasesRenewables.com
For: 3 PHASES RENEWABLES, LLC

Marc D. Joseph
PAUL F. FOLEY
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

Eric Pendergraft
AES SOUTHLAND LLC
690 NORTH STUDEBAKER ROAD
LONG BEACH CA 90803
(562) 493-7891
eric.pendergraft@aes.com
For: AES

James Weil
Director
AGLET CONSUMER ALLIANCE
PO BOX 866
NOVATO CA 94948
(415) 895-5296
jweil@aglet.org
For: Aglet Consumer Alliance

William H. Booth
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, STE. 1850
SAN FRANCISCO CA 94105
(415) 421-4143
whb@a-klaw.com
For: California Large Energy Consumers Assn.

Donald Brookhyser
Attorney At Law
ALCANTAR & KAHL LLP
1300 S.W. 5TH AVENUE, SUITE 1750
PORTLAND OR 97201
(503) 402-9900
deb@a-klaw.com
For: Cogeneration Association of California

Evelyn Kahl
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94015
(415) 403-5542
ek@a-klaw.com
For: Energy Producers and Users Coalition

Seema Srinivasan
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
sls@a-klaw.com
For: Cogeneration Association of California

Frank Annunziato
President
AMERICAN UTILITY NETWORK INC.
10705 DEER CANYON DR.
ALTA LOMA CA 91737-2483
(909) 989-4000
allwazeready@aol.com
For: AMERICAN UTILITY NETWORK INC.

Gloria Britton
Regulatory Affairs Mgr.
ANZA ELECTRIC CO-OPERATIVE, INC (909)
PO BOX 39109 / 58470 HIGHWAY 371
ANZA CA 92539-1909
(909) 763-4333
GloriaB@anzaelectric.org
For: ANZA ELECTRIC COOPERATIVE, INC

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

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

For: Silicon Valley Leadership Group

Ronald Moore
Sr Analyst, Regulatory Affairs
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

Randall Prescott
BP ENERGY COMPANY
501 WESTLAKE PARK BLVD, 4-242A
HOUSTON TX 77079-2604
For: BP ENERGY COMPANY

Bruce McLaughlin
Attorney At Law
BRAUN & BLAISING, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 326-5812
mclaughlin@braunlegal.com
For: California Municipal Utilities Association

C. Anthony Braun
BRAUN BLAISING MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 326-4449
braun@braunlegal.com
For: California Municipal Utilities Association

Catalin Micsa
CAISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-5704
cmicsa@caiso.com
For: CAISO

David A. Sandino
CALIFORNIA DEPARTMENT OF WATER RESOURCES

Lee Terry
CALIFORNIA DEPARTMENT OF WATER RESOURCES
2033 HOWE AVE., STE. 220
SACRAMENTO CA 95825-0181
(916) 574-0664
lterry@water.ca.gov
For: DWR/SWP

Michael Werner
CALIFORNIA DEPARTMENT OF WATER RESOURCES
2033 HOWE AVE., STE. 220
SACRAMENTO CA 95825-0181
(916) 574-0617
hcronin@water.ca.gov
For: CALIFORNIA DEPARTMENT OF WATER RESOURCES

Cynthia Hinman
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7060
chinman@caiso.com
For: CAISO

Jason Armenta
CALPINE POWERAMERICA-CA, LLC
717 TEXAS AVENUE, SUITE 1000
HOUSTON TX 77002
(713) 830-8362
cpacc@calpine.com
For: Calpine Corporation

Theresa L. Mueller
DENNIS J. HERRERA
Deputy City Attorney
CITY ATTORNEY'S OFFICE
CITY HALL, ROOM 234
SAN FRANCISCO CA 94102
(415) 554-4640
theresa.mueller@sfgov.org
For: City and County of San Francisco

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

1416 9TH STREET RM 1118
SACRAMENTO CA 95814
(916) 653-5129
dsandino@water.ca.gov
For: CALIFORNIA DEPARTMENT OF WATER RESOURCES

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

Carla Banks
Dir. Of Commerical Strategy
COMPLETE ENERGY
1331 LAMAR, SUITE 650
HOUSTON TX 77010
(713) 600-2042
cbanks@complete-energy.com
For: COMPLETE ENERGY

Donald C. Liddell
DOUGLASS & LIDDELL
EMAIL ONLY
EMAIL ONLY CA 00000
(619) 993-9096
liddell@energyattorney.com
For: KINDER MORGAN ENERGY PARTNERS, L.P./Ice Energy,
Inc.

Paul Ackerman
Senior Counsel
CONSTELLATION ENERGY RESOURCES, INC
111 MARKET PLACE
BALTIMORE MD 21202
paul.ackerman@constellation.com
For: Constellation Energy Commodities Group Inc, Constellation
NewEnergy Inc, and Constellation Generate LLC

Gregory S.G. Klatt
DOUGLASS & LIDDELL
EMAIL ONLY
EMAIL ONLY CA 00000
(818) 961-3002
klatt@energyattorney.com
For: Alliance for Retail Energy Markets/Direct Access Customer
Coalition

Edward W. O'Neill
Attorney At Law
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6587
edwardoneill@dwt.com
For: California Large Energy Consumers Association

Jane E. Luckhardt
Attorney At Law
DOWNEY BRAND LLP
621CAPITOL MALL, 18TH FLOOR
SACRAMENTO CA 95814
(916) 444-1000
jluckhardt@downeybrand.com
For: Sacramento Municipal Utility District

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

Crystal Needham
Senior Director, Counsel
EDISON MISSION ENERGY
3 MACARTHUR PLACE, STE. 100
SANTA ANA CA 92707
(949) 798-7977
cneedham@edisonmission.com
For: Edison Mission Energy

Andrea Morrison

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

Director - Gov'T. And Regulatory Affairs
DIRECT ENERGY SERVICES, LLC (1341)
415 DIXON STREET
ARROYO GRANDE CA 93420
(916) 759-7052
andrea.morrison@directenergy.com
For: Strategic Energy

Daniel W. Douglass
DOUGLASS & LIDDELL
EMAIL ONLY
EMAIL ONLY CA 00000
(818) 961-3001
douglass@energyattorney.com
For: Western Power Trading Forum/Kinder Morgan Energy
Partners, L.P./Alliance for Energy Retail Markets/California
Alliance For Choice In Energy Solutions/Wal-Mart Stores,
Inc./Oakley, Inc.

Jeffery D. Harris
ELLISON, SCHNEIDER & HARRIS LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
jdh@eslawfirm.com
For: LS Power

Carolyn Kehrein
Energy Management Services
ENERGY USERS FORUM
2602 CELEBRATION WAY
WOODLAND CA 95776
(530) 668-5600
cmkehrein@ems-ca.com
For: Energy Users Forum

Keith Switzer
Vp Regulatory Affairs
GOLDEN STATE WATER COMPANY
630 EAST FOOTHILL BLVD.
SAN DIMAS CA 91773-9016
(909) 394-3600 X 780
kswitzer@gswater.com
For: Bear Valley Electric Service

Steve Isser

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

Andrew B. Brown
Attorney At Law
ELLISON SCHNEIDER & HARRIS, LLP
2600 CAPITAL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
abb@eslawfirm.com
For: Constellation New Energy and Constellation Energy
Commodities Group/Sierra Pacific Power Company

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

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

Jeanne B. Armstrong
TRENT CARLSON
Counsel
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
jarmstrong@goodinmacbride.com
For: RRI Energy/California Forward Capacity Market
Advocates

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

Vp, General Counsel
GOOD COMPANY ASSOCIATES
515 CONGRESS AVE., STE. 1510
AUSTIN TX 78701-3515
(512) 279-0766
sisser@goodcompanyassociates.com
For: GOOD COMPANY ASSOCIATES

Michael B. Day
JOSEPH F. WIEDMAN
Attorney
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, STE 900
SAN FRANCISCO CA 94111-3133
(415) 392-7900
mday@goodinmacbride.com
For: PacifiCorp

Irene K. Moosen
THERESA MUELLER
Attorney At Law
LAW OFFICE OF IRENE K. MOOSEN
53 SANTA YNEZ AVENUE
SAN FRANCISCO CA 94112
(415) 587-7343
irene@igc.org
For: City and County of San Francisco

C. Susie Berlin
Attorney At Law
MC CARTHY & BERLIN, LLP
100 W SAN FERNANDO ST., STE 501
SAN JOSE CA 95113
(408) 288-2080
sberlin@mccarthylaw.com
For: City of Oxnard

Barry F. Mccarthy

Michael A. Yuffee
HOGAN LOVELLS
555 13TH ST., NW
WAHSINGTON DC 20004
(202) 637-5529
michael.yuffee@hoganlovells.com
For: Morgan Stanely Capital Group, Inc.

Charlyn A. Hook
Legal Division
RM. 5131
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3050
chh@cpuc.ca.gov
For: DRA

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

Kathryn Wig
NRG ENERGY, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
(609) 524-4926
Kathryn.Wig@nrgenergy.com
For: NRG ENERGY, INC.

Keith Richards
NRG ENERGY, INC.
5790 FLEET ST., STE. 200
CARLSBAD CA 92008-4703
Keith.richards@nrgenergy.com
For: NRG Energy, Inc.

E.J. Wright
OCCIDENTAL POWER SERVICES, INC.
EMAIL ONLY
EMAIL ONLY TX 00000
(562) 624-3309

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

Attorney At Law
MCCARTHY & BERLIN, LLP
100 W. SAN FERNANDO ST., SUITE 501
SAN JOSE CA 95113
(408) 288-2080
bmcc@mccarthyllaw.com
For: Bay Area Municipal Transmission Group (BAMx)

John W. Leslie, Esq.
Attorney
MCKENNA LONG & ELDRIDGE LLP
600 WEST BROADWAY, STE. 2600
SAN DIEGO CA 92101-3391
(619) 699-2536
jleslie@McKennaLong.com
For: Shell Energy North America (US), LP

James McMahon
29 DANBURY ROAD
NASHUA NH 03064
(603) 591-5898
jmcMahon@8760energy.com
For: CRA INTERNATIONAL

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

Thomas R. Darton
PILOT POWER GROUP, INC. (1365)
EMAIL ONLY
EMAIL ONLY CA 00000
(858) 678-0118
tdarton@pilotpowergroup.com
For: PILOT POWER GROUP, INC

Jessica Nelson
PLUMAS-SIERRA RURAL ELECTRIC CO-OP
EMAIL ONLY
EMAIL ONLY CA 00000
(530) 832-6004
jnelson@psrec.coop

ej_wright@oxy.com
For: OCCIDENTAL POWER SERVICES, INC.

Charles R. Middlekauff
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO CA 94120
(415) 973-6971
CRMd@pge.com
For: Pacific Gas & and Electric Company

Mark R. Huffman
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET / PO BOX 7442 (B30A)
SAN FRANCISCO CA 94105
(415) 973-3842
mrh2@pge.com
For: Pacific Gas & Electric Company

Mary Wiencke
PACIFICORP
825 N. E. MULTNOMAH, SUITE 1800
PORTLAND OR 97232
(503) 813-5058
mary.wiencke@pacificcorp.com
For: PacifiCorp

George Waidelich
Vp - Energy Operations
SAFEWAY INC.
5918 STONERIDGE MALL ROAD
PLEASANTON CA 94588-3229
(925) 467-2983
george.waidelich@safeway.com
For: Safeway Inc.

Despina Niehaus
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT-CP32H
SAN DIEGO CA 92123-1530
(858) 654-1714

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

For: PLUMAS-SIERRA RURAL ELECTRIC CO-OP

Jeff Lam
Manager, Market Access
POWEREX CORP
666 BURRARD STREET, SUITE 1400
VANCOUVER BC V6C 2X8
CANADA
(604) 891-6020
jeff.lam@powerex.com
For: Powerex Corp.

Rick C. Noger
PRAXAIR, INC. (1370)
2430 CAMINO RAMON DRIVE, STE. 300
SAN RAMON CA 94583
(925) 866-6809
rick_noger@praxair.com
For: PRAXAIR PLAINFIELD, INC.

Karen P. Paull
Division of Ratepayer Advocates
RM. 4300
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2630
kpp@cpuc.ca.gov
For: DRA. The Bilateral Trading Group

Mike Kasaba
QUIET ENERGY
3311 VAN ALLEN PLACE
TOPANGA CA 90290
For: QUIET ENERGY

Tom Bill
SEMPRA ENERGY CORPORATE CENTER
101 ASH STREET-HQ13A
SAN DIEGO CA 92101-3017
TBrill@SempraUtilities.com
For: SEMPRA ENERGY

DNiehaus@SempraUtilities.com
For: SAN DIEGO GAS AND ELECTRIC COMPANY

Jim Hendry
SAN FRANCISCO PUBLIC UTILITIES COMM.
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISCO CA 94103
jhendry@sfwater.org
For: SAN FRANCISCO PUBLIC UTILITIES COMM.

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

Donald P. Garber
SEMPRA ENERGY
101 ASH STREET
SAN DIEGO CA 92101
(619) 696-4539
DGarber@SempraUtilities.com
For: San Diego Gas & Electric Company

Stephen Keehn
SEMPRA ENERGY COPORATE CENTER
101 ASH STREET-HQ13A
SAN DIEGO CA 92101-3017
SKeehn@SempraUtilities.com
For: SEMPRA ENERGY

Akbar Jazayeri
Dir. Revenue & Tariffs, Rm 390
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800, 2241 WALNUT GROVE AVE
ROSEMEAD CA 91770
(626) 302-3630
akbar.jazayeri@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

Tom Brill
SEMPRA ENERGY CORPORATE CENTER
101 ASH STREET, HQ13A
SAN DIEGO CA 92101-3017
TBrill@SempraUtilities.com
For: SEMPRA ENERGY

Curtis Kebler
SEMPRA GENERATION
EMAIL ONLY
EMAIL ONLY CA 00000
(310) 407-5619
CKebler@SempraGeneration.com
For: GOLDMAN, SACHS & CO.

Daniel A. King
SEMPRA GENERATION
101 ASH STREET, HQ 14
SAN DIEGO CA 92101
(619) 696-4350
DAKing@SempraGeneration.com
For: Sempra Generation

Thomas Corr
SEMPRA GLOBAL
101 ASH STREET, HQ 08 C
SAN DIEGO CA 92101-3017
(619) 696-4246
TCorr@SempraGlobal.com
For: Sempra Global

Christopher A. Hilén
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO NV 89511
(775) 834-5696
chilen@sppc.com
For: SIERRA PACIFIC POWER COMPANY

Joni A. Templeton
Attorney At Law
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, PO BOX 800
ROSEMEAD CA 91770
(626) 302-6210
Joni.Templeton@sce.com
For: Southern California Edison Company

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

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

Marcel Hawiger
MATTHEW FREEDMAN
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94104
(415) 929-8876 X302
marcel@turn.org
For: THE UTILITY REFORM NETWORK (TURN)

Bonnie S. Blair
Attorney At Law
THOMPSON COBURN LLP
1909 K STREET, N.W., SUITE 600
WASHINGTON DC 20006
(202) 585-6905
bblair@thompsoncoburn.com
For: Cities of Anaheim, Azusa, Banning, Colton, Pasadena and
Riverside, CA

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

Margaret E. Mcnaul
Attorney At Law
THOMPSON COBURN LLP
1909 K STREET, N.W., SUITE 600
WASHINGTON DC 20006
(202) 585-6940
mmcnaul@thompsoncoburn.com
For: Cities of Anaheim, Azusa, Banning, Colton, Pasadena and
Riverside, CA

Lisa A. Cottle
Attorney At Law
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO CA 94111-5802
(415) 591-1579
lcottle@winston.com
For: Mirant California, LLC, Mirant Delta, LLC and Mirant
Potrero, LLC

Kevin Woodruff
WOODRUFF EXPERT SERVICES, INC.
1100 K STREET, SUITE 204
SACRAMENTO CA 95814
(916) 442-4877
kdw@woodruff-expert-services.com
For: The Utility Reform Network (TURN)

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

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

Simon Baker
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5649
seb@cpuc.ca.gov

Jacqueline George
Calif. Energy Resources Scheduling
CALIF. DEPT OF WATER RESOURCES
2033 HOWE AVE., STE. 220
SACRAMENTO CA 95825-0181

Charles Mee
Chief Transmission Market Section
CALIFORNIA DEPARTMENT OF WATER RESOURCES
2033 HOWE AVE., STE. 220
SACRAMENTO CA 95825-0181
(916) 574-0669
cmee@water.ca.gov
For: CALIFORNIA DEPARTMENT OF WATER RESOURCES

John Pacheco
CALIFORNIA DEPARTMENT OF WATER RESOURCES
2033 HOWE AVE., STE. 220
SACRAMENTO CA 95814
(619) 699-5130
jpacheco@water.ca.gov
For: California Department Of Water Resources

Constance Parr Leni
CALIFORNIA ENERGY COMMISSION
MS-20
1516 NINTH ST
SACRAMENTO CA 95814
Cleni@energy.state.ca.us
For: CALIFORNIA ENERGY COMMISSION

Jim Woodward
Electricity Supply Analysis Division
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 20
SACRAMENTO CA 95814-5512
(916) 654-5180
jwoodwar@energy.state.ca.us
For: CALIFORNIA ENERGY COMMISSION

Lana Wong
CALIFORNIA ENERGY COMMISSION
1516 NINTH ST., MS-20
SACRAMENTO CA 95814
(916) 654-4638
lwong@energy.state.ca.us
For: CALIFORNIA ENERGY COMMISSION

Lynn Marshall
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS-20
SACRAMENTO CA 95814-5512
(916) 654-4767
lmarshall@energy.state.ca.us
For: CALIFORNIA ENERGY COMMISSION

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

(916) 574-2212
jgeorge@water.ca.gov
For: CALIFORNIA DEPARTMENT OF WATER RESOURCES

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

Mike Jaske
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS-20
SACRAMENTO CA 95814
(916) 654-4777
mjaske@energy.state.ca.us
For: CALIFORNIA ENERGY COMMISSION

Nancy Tronaas
CALIFORNIA ENERGY COMMISSION
1516 9TH ST. MS-20
SACRAMENTO CA 95814-5512
(916) 654-3864
For: CALIFORNIA ENERGY COMMISSION

Traci Bone
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2048
TBO@cpuc.ca.gov

Donald J. Brooks
CPUC - ENERGY DIV.
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2626
DBR@cpuc.ca.gov

Bishu Chatterjee
Executive Division
RM. 5303
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1247
bbc@cpuc.ca.gov

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

Fred Mobasheri
Consultant
ELECTRIC POWER GROUP, LLC
201 SOUTH LAKE AVE., SUITE 400
PASADENA CA 91101
(626) 658-2015
fmobasheri@electricpowergroup.com
For: ELECTRIC POWER GROUP

Farzad Ghazzagh
Division of Ratepayer Advocates
RM. 4102
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1694
fxg@cpuc.ca.gov

Sudheer Gokhale
Division of Ratepayer Advocates
RM. 4102
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2247
skg@cpuc.ca.gov

Chloe Lukins
Division of Ratepayer Advocates
RM. 4101
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1637
clu@cpuc.ca.gov

Rahmon Momoh
Executive Division
RM. 5206
505 Van Ness Avenue
San Francisco CA 94102 3298

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

Joe Como
Division of Ratepayer Advocates
RM. 4101
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2381
joc@cpuc.ca.gov

(415) 703-1725
rmm@cpuc.ca.gov

David Peck
Division of Ratepayer Advocates
RM. 4108
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1213
dbp@cpuc.ca.gov

Karen Terranova
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
filings@a-klaw.com

Melissa K. Semcer
Administrative Law Judge Division
RM. 5102
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3386
unc@cpuc.ca.gov

Michael P. Alcantar
Attorney At Law
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
mpa@a-klaw.com

Aram Shumavon
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5228
sap@cpuc.ca.gov

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

Robert L. Strauss
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5289
rls@cpuc.ca.gov

Hsi Bang Tang
AZUSA LIGHT, POWER & WATER
729 N. AZUSA AVENUE
AZUSA CA 91702-9500
(626) 812-5214
btang@ci.azusa.ca.us
For: AZUSA LIGHT, POWER & WATER

Mark S. Wetzell
Administrative Law Judge Division
RM. 5003
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1491
msw@cpuc.ca.gov

Barbara R. Barkovich
BARKOVICH & YAP, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
(707) 937-6203
brbarkovich@earthlink.net

Reed V. Schmidt
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

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

Kenneth E. Abreu
853 OVERLOOK COURT
SAN MATEO CA 94403
(925) 989-7912
k.abreu@sbcglobal.net

David Marcus
ADAMS BROADWELL & JOSEPH
PO BOX 1287
BERKELEY CA 94701
(510) 528-0728
dmarcus2@sbcglobal.net

Tracey Drabant
Energy Resource Manager
BEAR VALLEY ELECTRIC SERVICE
PO BOX 1547
BIG BEAR LAKE CA 92315-1547
(909) 866-1666
traceydrabant@bves.com
For: BEAR VALLEY ELECTRIC SERVICE

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

Vicki E. Ferguson
BRAUN & BLAISING P.C.
915 L STREET, SUITE 1270
SACRAMENTO CA 95814
(916) 326-5812
ferguson@braunlegal.com

Scott Blaising
BRAUN BLAISING MCLAUGHLIN P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 682-9702
blaising@braunlegal.com

Justin C. Wynne
Attorney At Law

BERKELEY CA 94703-2714
(510) 653-3399 X111
rschmidt@bartlewells.com
For: California City-County Street Light Association

Peter T. Pearson
Energy Supply Specialist
BEAR VALLEY ELECTRIC SERVICE
42020 GARSTIN DRIVE, PO BOX 1547
BIG BEAR LAKE CA 92315-1547
(909) 866-4678 X186
peter.pearson@bves.com

Anthony J. Ivancovich
Assist General Counsel - Regulatory
CALIF. INDEP. SYSTEM OPERATOR CORP
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 351-4400
aivancovich@caiso.com
For: California Independent System Operator Corporation

Beth Vaughan
CALIFORNIA COGENERATION COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000
(925) 408-5142
beth@beth411.com
For: CALIFORNIA COGENERATION COUNCIL

Holly B. Cronin
State Water Project Operations Div
CALIFORNIA DEPARTMENT OF WATER RESOURCES
2033 HOWE AVE., STE. 220
SACRAMENTO CA 95825-0181
(916) 574-0708
For: CALIFORNIA DEPARTMENT OF WATER RESOURCES

CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST., STE 303
SAN FRANCISCO CA 94117
(415) 552-1764 X 17
cem@newsdata.com

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

BRAUN BLAISING MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 326-5813
wynne@braunlegal.com

Ryan Bernardo
BRAUN BLAISING MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 912-4432
bernardo@braunlegal.com

Mohan Niroula
CALIF DEPT OF WATER RESOURCES
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(916) 574-0712
mniroula@water.ca.gov

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

Legal & Regulatory Department
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7024
e-recipient@caiso.com
For: CALIFORNIA ISO

Anna Mckenna
Legal And Regulatory
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 351-4400
amckenna@caiso.com

For: CALIFORNIA ENERGY MARKETS

Keith Johnson
Senior Market&Product Developer
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7100
kjohnson@caiso.com
For: CALIFORNIA INDEPENDENT SYSTEM OPERATOR

Keoni Almeida
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE RD.
FOLSOM CA 95630
(916) 608-1121
kalmeida@caiso.com
For: CALIFORNIA INDEPENDENT SYSTEM OPERATOR

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

John Goodin
CALIFORNIA ISO
151 BLUE RAVINE RD.
FOLSOM CA 95630
(916) 608-7154
jgoodin@caiso.com
For: CALIFORNIA ISO

Lorenzo Kristov
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7129
Lkristov@caiso.com
For: CALIFORNIA ISO

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

For: CALIFORNIA ISO

Beth Ann Burns
Sr. Counsel - Legal & Regulatory Dept
CALIFORNIA ISO
250 OUTCROPPING WAY
FOLSOM CA 95630
(916) 608-7146
bburns@caiso.com
For: CALIFORNIA ISO/California Independent System
Operator Corporation

Bob Emmert
Sr. Loads & Resources Engineer
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 351-2253
remmert@caiso.com
For: CALIFORNIA ISO

Gary Deshazo
Regional Transmission Manager
CALIFORNIA ISO
PO BOX 639014
FOLSOM CA 95763-9014
(916) 608-5880
gdeshazo@caiso.com

Matt Barmack
CALPINE CORPORATION
4160 DUBLIN BLVD, SUITE 100
DUBLIN CA 94568
(925) 557-2267
barmackm@calpine.com

Craig Martin
CALPINE POWERAMERICA - CA, LLC
4160 DUBLIN BLVD., SUITE 100
DUBLIN CA 94568
(925) 557-2294
cmartin@calpine.com
For: Calpine Corporation

CERTICHRON, INC.
EMAIL ONLY
EMAIL ONLY CA 00000

David E. Morse
CALIFORNIA WATER SERVICE COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(530) 756-5033
davidmorse9@gmail.com

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

Mark J. Smith
CALPINE CORPORATION
4160 DUBLIN BLVD., SUITE 100
DUBLIN CA 94568
(925) 557-2280
smithmj@calpine.com

Ren Zhang
CITY OF PASADENA WATER AND POWER
150 S. LOS ROBLES AVENUE, SUITE 200
PASADENA CA 91101
(626) 744-7904
rzhang@cityofpasadena.net

Leeanne Uhler
CITY OF RIVERSIDE
2911 ADAMS STREET
RIVERSIDE CA 92504
(951) 351-6356
luhler@riversideca.gov
For: CITY OF RIVERSIDE

Abraham Alemu
Resource Planning & Dev. Manager
CITY OF VERNON

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

cpuc@certichron.com

Stephen J. Sciortino
CITY OF ANAHEIM
PUBLIC UTILITIES DEPARTMENT
201 SOUTH ANAHEIM BLVD., SUITE 802
ANAHEIM CA 92805
(714) 765-5177
ssciortino@anaheim.net
For: CITY OF ANAHEIM

Fred Mason
Power Resource & Revenue Administrator
CITY OF BANNING
176 EAST LINCOLN
BANNING CA 92220
(951) 922-3265
fmason@ci.banning.ca.us
For: CITY OF BANNING

Alan Holmberg
CITY OF OXNARD
300 WEST THIRD STREET, THIRD FLOOR
OXNARD CA 93030
(805) 385-7483
alan.holmberg@ci.oxnard.ca.us

Debra Lloyd
CITY OF PALO ALTO
250 HAMILTON AVE.
PALO ALTO CA 94301
(650) 329-2369
debra.lloyd@cityofpaloalto.org
For: CITY OF PALO ALTO

Robert Stoddard
CRA INTERNATIONAL
200 CLARENDON ST., T-32
BOSTON MA 02116
(617) 425-3195
RStoddard@crai.com
For: CRA INTERNATIONAL

Kathleen Esposito
CRESTED BUTTE CATALYSTS LLC
PO BOX 668

4305 SANTE FE AVENUE
VERNON CA 90058
(323) 583-8811 X-275
AAlemu@ci.vernon.ca.us

William Mitchell
COMPETITIVE POWER VENTURES, INC.
505 SANSOME STREET, STE. 475
SAN FRANCISCO CA 94111
(415) 293-1469
will.mitchell@cpv.com

Hugh Tarpley
Managing Director
COMPLETE ENERGY
1331 LAMAR SUITE 650
HOUSTON TX 77010
htarpley@complete-energy.com
For: COMPLETE ENERGY

Peter Tellegen
Chief Financial Officer
COMPLETE ENERGY
1331 LAMAR, SUITE 650
HOUSTON TX 77010
ptellegen@complete-energy.com
For: COMPLETE ENERGY

David X. Kolk
COMPLETE ENERGY SERVICES INC
41422 MAGNOLIA STREET
MURRIETA CA 92562
(512) 283-1097
dkolk@compenergy.com
For: COMPLETE ENERGY SERVICES INC

Denis De Cuir
DENNIS W. DE CUIR, A LAW CORPORATION
2999 DOUGLAS BOULEVARD, SUITE 325
ROSEVILLE CA 95661
(916) 788-1022
dennis@ddecuir.com

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

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

CRESTED BUTTE CO 81224
(970) 349-2082

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

Jacqueline M. Derosa
Director Of Regulatory Affairs - Ca
CUSTOMIZED ENERGY SOLUTIONS
101 PARKSHORE DRIVE SUITE 100
FOLSOM CA 95762
(916) 932-7226
jderosa@ces-ltd.com
For: CUSTOMIZED ENERGY SOLUTIONS

Judy Pau
DAVIS WRIGHT TREMAINE LLP
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 276-6587
judypau@dwt.com

Robert Gex
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111
(415) 276-6500
robertgex@dwt.com

DAVIS WRIGHT TREMAINE, LLP
EMAIL ONLY
EMAIL ONLY CA 00000
dwtcpudockets@dwt.com

perlism@dicksteinshapiro.com
For: Calpine Corp, Coral, et al.

Lawrence Kostrzewa
Regional Vp, Development
EDISON MISSION ENERGY
3 MACARTHUR PLACE, STE. 100
SANTA ANA CA 92707
(949) 798-7922
lkostrzewa@edisonmission.com
For: EDISON MISSION ENERGY

Philip Herrington
Regional Vp, Business Management
EDISON MISSION ENERGY
3 MACARTHUR PLACE, STE. 100
SANTA ANA CA 92707
(949) 798-7922
pherrington@edisonmission.com
For: EDISON MISSION ENERGY

Stephen Hess
Director, Market Policy & Reg. Affairs
EDISON MISSION MARKETING & TRADING INC.
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(949) 798-7833

Lynn M. Haug
Attorney At Law
ELLISON & SCHNEIDER
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
lmh@eslawfirm.com
For: City of Rancho Cucamonga

Kevin J. Simonsen
ENERGY MANAGEMENT SERVICES
1537 FLORIDA RD., STE. 108
DURANGO CO 81301-5792
(970) 259-1748

Saeed Farrokhpay
FEDERAL ENERGY REGULATORY COMMISSION
1835 IRON POINT RD., SUITE 160
FOLSOM CA 95630-8771
(916) 294-0322

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

kjsimonsen@ems-ca.com
For: ENERGY MANAGEMENT SERVICES

Carmen Baskette
Senior Mgr Market Development
ENERNOC, INC.
500 HOWARD STREET, SUITE 400
SAN FRANCISCO CA 94105-3040
(415) 235-5562
cbaskette@enernoc.com
For: ENERNOC, INC.

Melanie Gillette
Dir - Western Reg. Affairs
ENERNOC, INC.
115 HAZELMERE DRIVE
FOLSOM CA 95630
(916) 501-9573
mgillette@enernoc.com
For: ENERNOC, INC.

Mona Tierney-Lloyd
Senior Manager Western Reg. Affairs
ENERNOC, INC.
PO BOX 378
CAYUCOS CA 93430
(805) 995-1618
mtierney-lloyd@enernoc.com

Richard H. Counihan
Sr. Director Corporate Development
ENERNOC, INC.
500 HOWARD ST., SUITE 400
SAN FRANCISCO CA 94105
(415) 343-9504
rcounihan@enernoc.com
For: ENERNOC, INC.

Gary M. Izing
ENXCO DEVELOPMENT CORP.
4000 EXECUTIVE PARKWAY, STE. 100
SAN RAMON CA 94583-4381
(925) 242-0168 X20
garyi@enxco.com
For: ENXCO DEVELOPMENT CORP.

saeed.farrokhpay@ferc.gov
For: FEDERAL ENERGY REGULATORY COMMISSION

Barry R. Flynn
FLYNN RESOURCE CONSULTANTS, INC.
5440 EDGEVIEW DRIVE
DISCOVERY BAY CA 94514
(925) 634-7500
brflynn@flynnrci.com

Ed Chang
FLYNN RESOURCE CONSULTANTS, INC.
2165 MOONSTONE CIRCLE
EL DORADO HILLS CA 95762
(888) 634-0222
edchang@flynnrci.com

Bill Key
FPL ENERGY POWER MARKETING INC.
700 UNIVERSE BLVD.
JUNO BEACH FL 33408
bill.c.key@fpl.com

Tim Drennan
FPL ENERGY POWER MARKETING INC.
700 UNIVERSE BLVD.
JUNO BEACH FL 33408
tim.drennan@fpl.com

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

Eric Leuze
GENON ENERGY, INC.
4174 RIVA RIDGE DRIVE
FAIR OAKS CA 95628

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

Todd S. Glassey
EMAIL ONLY
EMAIL ONLY CA 00000
tglassey@certichron.com

Claudia Greif
3144 ALANHILL LANE
SAN MATEO CA 94403
(650) 288-8958
c.greif@comcast.net

Kimberly Kiener
IMPERIAL IRRIGATION DISTRICT
4475 TIVOLI ST
SAN DIEGO CA 92107-3829
(619) 990-6627
kмкиener@cox.net
For: IMPERIAL IRRIGATION DISTRICT

Steven Kelly
INDEPENDENT ENERGY PRODUCERS ASSOCIATION
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 448-9499
steven@iepa.com
For: INDEPENDENT ENERGY PRODUCERS ASSN

Katie Kaplan
INTEGRATED ENERGY SOLUTIONS LLC
2701 DEL PASO ROAD, SUITE 130-304
SACRAMENTO CA 95835
(916) 419-4600
katie@iesolutionsllc.net
For: INTEGRATED ENERGY SOLUTIONS LLC

Joel M. Hvidsten
KINDER MORGAN ENERGY FORECASTER
1100 TOWN & COUNTRY ROAD, SUITE 700
ORANGE CA 92868
(714) 560-4904
hvidstenj@kindermorgan.com

Shawn Cox
KINDER MORGAN ENERGY FORECASTER
1100 TOWN & COUNTRY ROAD, SUITE 700
ORANGE CA 92868
(714) 560-4099
shawn_cox@kindermorgan.com

Francisco Tarin
Director - Regulatory Affairs
KINDER MORGAN-W. REG. GAS PIPELINE
EMAIL ONLY
EMAIL ONLY CO 00000
(719) 520-4579
Francisco_Tarin@kindermorgan.com
For: RUBY PIPELINE, LLC

Michael J. Gergen
LATHAM & WATKINS LLP
SUITE 1000
555 ELEVENTH STREET, NW
WASHINGTON DC 20004-1304
(202) 637-2200
michael.gergen@lw.com

Karen A. Lindh
LINDH & ASSOCIATES
7909 WALERGA ROAD, NO. 112, PMB 119
ANTELOPE CA 95843
(916) 729-1562
karen@klindh.com
For: CALIFORNIA MANUFACTURERS & TECHNOLOGY
ASSN.

Elizabeth Parella
MERRILL LYNCH
4 WORLD FINANCIAL CENTER
NORTH TOWER, 19TH FLOOR
NEW YORK NY 10080
(212) 449-5996

Douglas McFarlan
Vp, Public Affairs
MIDWEST GENERATION E.M.E.
500 W. MADISON STREET, STE. 2640
CHICAGO IL 60661
(312) 583-6024
dmcfarlan@mwgen.com
For: MIDWEST GENERATION EME

James Mayhew
MIRANT CORPORATION
1155 PERIMETER CENTER WEST
ATLANTA GA 30338
(678) 579-3421
jim.mayhew@mirant.com
For: Mirant California, LLC, Mirant Delta, LLC, and Mirant

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

Potrero, LLC

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

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

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 834-1999
mrw@mrwassoc.com

Roger Van Hoy
MSR PUBLIC POWER AGENCY
1231 11TH STREET
MODESTO CA 95354
(209) 526-7464
rogerv@mid.org
For: MSR PUBLIC POWER AGENCY

Noah Long
NATURAL RESOURCES DEFENSE COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 875-6100
nlong@nrdc.org

Kenny Swain
NAVIGANT CONSULTING
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA CA 95670
(916) 631-3206

Kerry Hattevik
NEXTERA ENERGY
829 ARLINGTON BLVD.
EL CERRITO CA 94530
(510) 898-1847
kerry.hattevik@nexteraenergy.com

Greg Bass
NOBLE AMERICAS ENERGY SOLUTIONS LLC
401 WEST A STREET, SUITE 500
SAN DIEGO CA 92101-3017
(619) 684-8199
gbass@noblesolutions.com

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

Scott Tomashefsky
NORTHERN CALIFORNIA POWER AGENCY
651 COMMERCE DRIVE
ROSEVILLE CA 95678-6420
(916) 781-4291
scott.tomashefsky@ncpa.com
For: NORTHERN CALIFORNIA POWER AGENCY

Tony Zimmer
NORTHERN CALIFORNIA POWER AGENCY
180 CIRBY WAY
ROSEVILLE CA 95678-6420
(916) 781-3636
Tony.Zimmer@ncpa.com
For: Northern California Power Agency

Christopher C. O'Hara

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

kenneth.swain@navigantconsulting.com

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

Assistant General Counsel-Regulatory
NRG ENERGY
211 CARNEGIE CENTER DRIVE
PRINCETON NJ 08540
(609) 524-4601
chris.ohara@nrgenergy.com

David Lloyd
Director Of Community Relations
NRG ENERGY
5790 FLEET STREET, SUITE 200
CARLSBAD CA 92008-4703
(760) 710-2147
david.lloyd@nrgenergy.com
For: NRG Energy

Andrew L. Harris
Energy
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO CA 94177-0001
(415) 973-2786
ALHo@pge.com
For: PACIFIC GAS & ELECTRIC COMPANY

Mike C. Tierney
Regional General Counsel
NRG ENERGY, INC.
5790 FLEET ST., STE. 200
CARLSBAD CA 92008-4703
(760) 710-2187
mike.tierney@nrgenergy.com

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

Diane I. Fellman
Director, Regulatory & Gov'T Affairs
NRG WEST & SOLAR
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 601-2025
Diane.Fellman@nrgenergy.com
For: FPL ENERGY, LLC

Case Coordination
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 973-2776
RegRelCPUCCases@pge.com

Taryn Ciardella
Sr. Legal Secretary
NV ENERGY
EMAIL ONLY
EMAIL ONLY NV 00000
(775) 834-4347
tciardella@nvenergy.com

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
For: PACIFIC GAS & ELECTRIC

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

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R0512013 LIST

Jeannette Olko
Electric Utility Director
COLTON ELECTRIC DEPARTMENT
650 NORTH LA CADENA DRIVE
COLTON CA 92324
(909) 370-6196
jolko@ci.colton.ca.us

Valerie Winn
Project Manager
PACIFIC GAS & ELECTRIC
77 BEALE ST., MC B10C
SAN FRANCISCO CA 94105
(415) 973-3839
vjlw3@pge.com
For: PACIFIC GAS & ELECTRIC

Patricia Gideon
PACIFIC GAS AND ELECTRIC COMPANY
PG&E, MAIL CODE B9A
PO BOX 770000
SAN FRANCISCO CA 94177
(415) 973-5964
pcg8@pge.com
For: PACIFIC GAS AND ELECTRIC COMPANY

Shaun Halverson
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
SEHC@pge.com
For: PACIFIC GAS AND ELECTRIC COMPANY

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

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

Cathie Allen
PACIFICORP
825 NE MULTNOMAH STREET, STE 2000
PORTLAND OR 97232
(503) 813-5934
cathie.allen@pacificorp.com

Michael Ten Eyck
RANCHO CUCAMONGA MUNICIPAL UTILITY
10500 CIVIC CENTER DRIVE
RANCHO CUCAMONGA CA 91730
(909) 477-2740
fred.lyn@cityofrc.us
For: CITY OF RANCHO CUCAMONGA

Steven Endo
PASADENA DEPARTMENT OF WATER & POWER
150 S. LOS ROBLES, SUITE 200
PASADENA CA 91101
(626) 744-7599
sendo@cityofpasadena.net

Harry Singh
RBS SEMPRA COMMODITIES
600 WASHINGTON BLVD
STAMFORD CT 06901
(203) 355-5571

Gurcharan Bawa
PASADENA WATER AND POWER
150 S. LOS ROBLES, SUITE 200
PASADENA CA 91101
(626) 744-7598

Donald Schoenbeck
RCS, INC.
900 WASHINGTON STREET, SUITE 780
VANCOUVER WA 98660

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

gbawa@cityofpasadena.net
For: PASADENA WATER AND POWER

(360) 737-3877
dws@r-c-s-inc.com
For: RCS, INC.

Matthew Barmack
PIEDMONT ECONOMICS
2811 FOREST AVE.
BERKELEY CA 94705
(510) 708-4219
mbarmack@alum.mit.edu

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

Cindy L. Casselman
PILOT POWER GROUP, INC. (1365)
EMAIL ONLY
EMAIL ONLY CA 00000
(858) 678-0118
ccasselman@pilotpowergroup.com

Sue Mara
RTO ADVISORS, LLC.
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 902-4108
sue.mara@rtoadvisors.com

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

Timothy N. Tutt
SACRAMENTO MUNICIPAL UTILITIES DISTRICT
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 732-5038
ttutt@smud.org

William W. Westerfield Iii
Sr. Attorney - Off. Of Gen. Counsel
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET, M.S. B402
SACRAMENTO CA 95817
(916) 732-6123
william.wester@smud.org
For: SACRAMENTO MUNICIPAL UTILITY DISTRICT

Mike Evans
SHELL ENERGY NORTH AMERICA
4445 EASTGATE MALL, SUITE 100
SAN DIEGO CA 92121
(858) 526-2103
michael.evans@shell.com
For: Shell Energy North America (CORAL POWER, LLC)

Pamela J. Mills
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP32H
SAN DIEGO CA 92123
(858) 637-3746
PMills@SempraUtilities.com
For: SAN DIEGO GAS & ELECTRIC CO.

Elena Mello
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO NV 89520
(775) 834-5696
emello@sppc.com
For: Sierra Pacific Power Company

Randy Nicholson
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP32H

Mario Villar
SIERRA PACIFIC POWER COMPANY
6226 W SAHARA AVENUE MS26
LAS VEGAS NV 89146

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

SAN DIEGO CA 92123
(858) 654-3567
RNicholson@SempraUtilities.com
For: SAN DIEGO GAS & ELECTRIC

Central Files
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP31-E
SAN DIEGO CA 92123
(858) 654-1240
CentralFiles@SempraUtilities.com
For: SAN DIEGO GAS AND ELECTRIC COMPANY

Central Files
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT-CP31E
SAN DIEGO CA 92123-1530
CentralFiles@SempraUtilities.com
For: SAN DIEGO GAS AND ELECTRIC COMPANY

Marcie Milner
SHELL ENERGY NORTH AMERICA
4445 EASTGATE MALL, SUITE 100
SAN DIEGO CA 92121
(858) 526-2106
marcie.milner@shell.com
For: Shell Energy North America (CORAL ENERGY
RESOURCES, L P)

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. / PO BOX 800
ROSEMEAD CA 91770
(626) 302-3101
case.admin@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

Jennifer T. Shigekawa, Esq.
Sr. Attorney
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE / PO BOX 800
ROSEMEAD CA 91770-3714
(626) 302-6819

mvillar@nevpc.com
For: SIERRA PACIFIC POWER COMPANY

Trevor Dillard
Rate Regulatory Relations
SIERRA PACIFIC POWER COMPANY
6100 NEAL ROAD, MS S4A50 / PO BOX 10100
RENO NV 89520-0026
(775) 834-5894
tdillard@sppc.com
For: SIERRA PACIFIC POWER COMPANY

Ken Sims
Electric Division Manager
SILICON VALLEY POWER
1601 CIVIC CENTER DR. NO. 201
SANTA CLARA CA 95050
(408) 615-6678
ksims@siliconvalleypower.com
For: SILICON VALLEY POWER

Karen Lee
Attorney
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVE. PO BOX 800
ROSEMEAD CA 91770
(626) 302-6659
karen.lee@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

George Getgen
Office Of The President
UNIVERSITY OF CALIFORNIA
1111 FRANKLIN STREET, 6TH FLOOR
OAKLAND CA 94607
(510) 987-9392
george.getgen@ucop.edu
For: UNIVERSITY OF CALIFORNIA, Office of the President

John Rolle
Office Of The President
UNIVERSITY OF CALIFORNIA
1111 FRANKLIN STREET, 6TH FLOOR
OAKLAND CA 94607

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

Last Updated on 06-NOV-2012 by: JVG
R0512013 LIST

Jennifer.shigekawa@sce.com

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

Rafi Hassan
SUSQUEHANNA FINANCIAL GROUP, LLLP
101 CALIFORNIA STREET, SUITE 3250
SAN FRANCISCO CA 94111
(415) 403-6531

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

Dirk A. Van Ulden
Office Of The President
UNIVERSITY OF CALIFORNIA
1111 FRANKLIN STREET, ROOM 6207
OAKLAND CA 94607
(510) 987-9392
dirk.vanulden@ucop.edu
For: UNIVERSITY OF CALIFORNIA

(510) 987-9392
john.rolle@ucop.edu
For: UNIVERSITY OF CALIFORNIA, Office of the President

Matthew St Clair
Office Of The President
UNIVERSITY OF CALIFORNIA
1111 FRANKLIN STREET, 6TH FLOOR
OAKLAND CA 94607
(510) 987-9392
matthew.stclair@ucop.edu
For: UNIVERSITY OF CALIFORNIA, Office of the President

Shmuel S. Oren
Professor Of Industrial Engineering
UNIVERSITY OF CALIFORNIA AT BERKELEY
ETCHEVERRY HALL 4119
BERKELEY CA 94720-1777
(510) 642-1836 5484
oren@ieor.berkeley.edu
For: UNIVERSITY OF CALIFORNIA AT BERKELEY

Michael Shames
UTILITY CONSUMERS' ACTION NETWORK
3405 KENYON ST., STE. 401
SAN DIEGO CA 92110
(619) 696-6966
mshames@ucan.org
For: UTILITY CONSUMERS' ACTION NETWORK (UCAN)

Robin J. Walther, Ph.D.
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(626) 818-7998
rwalther@pacbell.net

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

Last Updated on 06-NOV-2012 by: JVG
R0804012 LIST

***** PARTIES *****

3 PHASES RENEWABLES LLC
2100 SEPULVEDA BLVD, SUITE 37
MANHATTAN BEACH CA 90266
For: 3 Phases Renewables

Michael Mazur
Principal
3 PHASES RENEWABLES LLC (1373)
2100 SEPULVEDA BLVD, SUITE 37
MANHATTAN BEACH CA 90266
(310) 798-5275
mmazur@3PhasesRenewables.com
For: 3 Phases Renewables

William H. Booth
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, STE. 1850
SAN FRANCISCO CA 94105
(415) 421-4143
whb@a-klaw.com
For: Law Office of William H. Booth

Frank Annunziato
President
AMERICAN UTILITY NETWORK INC.
10705 DEER CANYON DR.
ALTA LOMA CA 91737-2483
(909) 989-4000
allwazeready@aol.com
For: AMERICAN UTILITY NETWORK INC.

Gloria Britton
Regulatory Affairs Mgr.
ANZA ELECTRIC CO-OPERATIVE, INC (909)
PO BOX 39109 / 58470 HIGHWAY 371
ANZA CA 92539-1909
(909) 763-4333
GloriaB@anzaelectric.org
For: ANZA ELECTRIC CO-OPERATIVE, INC

Lili Shariari
AOL UTILITY CORP
12752 BARRETT LANE
SANTA ANA CA 92705
For: AOL Utility Corp.

Charles A. Braun
Attorney At Law
BRAUN, BLAISING, MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 326-4449
braun@braunlegal.com
For: California Municipal Utilities Assoc.

Stacie L. Ford, Esq.
CALIF. INDEPENDENT SYSTEM OPERATOR CORP
LEGAL & REGULATORY DEPARTMENT
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7131
sford@caiso.com
For: California Independent System Operator Corporation

Michael E. Boyd
President
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
5439 SOQUEL DRIVE
SOQUEL CA 95073
(408) 891-9677
michaelboyd@sbcglobal.net
For: Californians for Renewable Energy, Inc. (CARE)

Inger Goodman
COMMERCE ENERGY INC
1 CENTERPOINTE DRIVE, SUITE 350
LA PALMA CA 90623-2520
(714) 259-2508
igoodman@commerceenergy.com
For: COMMERCE ENERGY INC

Ann L. Trowbridge
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO CA 95864
(916) 570-2500 X 103
atrowbridge@daycartermurphy.com
For: Merced Irrigation District/Modesto Irrigation District

Ronald M. Cerniglia
Director- National Advocacy
DIRECT ENERGY SERVICES, LLC
7240 RYEHILL DR.
CARY NC 27519-1570
(518) 439-2195

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

Last Updated on 06-NOV-2012 by: JVG
R0804012 LIST

ron.cerniglia@directenergy.com
For: Direct Energy Services, LLC

Joseph M. Paul
Sr. Corporate Counsel
DYNEGY INC.
1000 LOUISIANA, STE. 5800
HOUSTON TX 77002
(713) 767-0064
joe.paul@dynegy.com
For: Dynegy Morro Bay LLC, Dynegy Moss Landing, LLC,
Dynegy South Bay, LLC and Dynegy Oakland, LLC

David Lloyd
Director Of Community Relations
NRG ENERGY
5790 FLEET STREET, SUITE 200
CARLSBAD CA 92008-4703
(760) 710-2147
david.lloyd@nrgenergy.com
For: NRG West

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

E. J. Wright
OCCIDENTAL POWER SERVICES, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
ej_wright@oxy.com
For: OCCIDENTAL POWER SERVICES, INC.

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

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

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

Cory M. Mason
Attorney
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

Charlyn A. Hook
Legal Division
RM. 5131
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3050
chh@cpuc.ca.gov
For: DRA

Mary Wiencke
PACIFICORP
825 N. E. MULTNOMAH, SUITE 1800
PORTLAND OR 97232
(503) 813-5058
mary.wiencke@pacificorp.com
For: PacifiCorp

LIBERTY POWER HOLDINGS LLC

Douglas Larson

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

Last Updated on 06-NOV-2012 by: JVG
R0804012 LIST

131-A STONEY CIRCLE, NO. 500
SANTA ROSA CA 95401
For: Liberty Power Holdings LLC / Corporate Creations
Network Inc

PACIFICORP (901)
ONE UTAH CENTER, 23RD FL
201 SOUTH MAIN
SALT LAKE CITY UT 84111
doug.lars@pacificorp.com
For: Pacificorp

Thomas R. Darton
PILOT POWER GROUP, INC. (1365)
EMAIL ONLY
EMAIL ONLY CA 00000
(858) 678-0118
tdarton@pilotpowergroup.com
For: PILOT POWER GROUP, INC.

John A. Pacheco
Attorney
SEMPRA ENERGY
101 ASH STREET, HQ-12B
SAN DIEGO CA 92101-3017
(619) 699-5130
JPacheco@SempraUtilities.com
For: San Diego Gas & Electric

Robert Marshall
General Manager
PLUMAS SIERRA RURAL ELECTRIC COOP. (908)
73233 STATE ROUTE 70 / PO BOX 2000
PORTOLA CA 96122-7069
(916) 832-4261
bmarshall@psrec.coop
For: Plumas Siserra Rural Electric Co-op

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

Jessica Nelson
PLUMAS-SIERRA RURAL ELECTRIC CO-OP
EMAIL ONLY
EMAIL ONLY CA 00000
(530) 832-6004
jnelson@psrec.coop
For: PLUMAS SIERRA RURAL ELECTRIC COOP.

Akbar Jazayeri
Dir. Revenue & Tariffs, Rm 390
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800, 2241 WALNUT GROVE AVE
ROSEMEAD CA 91770
(626) 302-3630
akbar.jazayeri@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

Rick C. Noger
PRAXAIR, INC.
2430 CAMINO RAMON DRIVE, STE. 300
SAN RAMON CA 94583
rick_noger@praxair.com
For: PRAXAIR PLAINFIELD INC.

Annette Gilliam
M. MONTOYA
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-4880
annette.gilliam@sce.com
For: Southern California Edison

Steve Rahon
Dir., Tariff & Regulatory Accts
SAN DIEGO GAS & ELECTRIC COMPANY (902)
8330 CENTURY PARK COURT, CP32C

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

Last Updated on 06-NOV-2012 by: JVG
R0804012 LIST

SAN DIEGO CA 92123-1548
(858) 654-1773
SRahon@SempraUtilities.com
For: SAN DIEGO GAS & ELECTRIC COMPANY

David Orth
SAN JOAQUIN VALLEY POWER AUTHORITY
ADMIN OFF @KINGS RIVER CONSERV DISTRICT
4886 EAST JENSEN AVENUE
FRESNO CA 93725
(559) 237-5567
dorth@krccd.org
For: SAN JOAQUIN VALLEY POWER AUTHORITY

Keith R. Mccrea
Attorney At Law
SUTHERLAND ASHBILL & BRENNAN LLP
1275 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004-2415
(202) 383-0705
keith.mccrea@sutherland.com
For: CA Manufacturers & Tech. Assn.

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

Simon Baker
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5649
seb@cpuc.ca.gov

Valerie Beck
Consumer Protection and Safety Division
RM. 2201
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2665
vjb@cpuc.ca.gov

Mohan Niroula
CALIF DEPT OF WATER RESOURCES
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(916) 574-0712

Ronald Moore
SOUTHERN CALIFORNIA WATER COMPANY
630 EAST FOOTHILL BLVD
SAN DIMAS CA 91773-9016
(909) 394-3600 X759
rkmoore@scwater.com
For: SOUTHERN CALIFORNIA WATER COMPANY

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

Donald J. Brooks
CPUC - ENERGY DIV.
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2626
DBR@cpuc.ca.gov

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

David M. Gamson
Administrative Law Judge Division
RM. 5019
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1232
dmg@cpuc.ca.gov

Farzad Ghazzagh
Division of Ratepayer Advocates
RM. 4102
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1694
fxg@cpuc.ca.gov

Chloe Lukins
Division of Ratepayer Advocates

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

Last Updated on 06-NOV-2012 by: JVG
R0804012 LIST

mniroula@water.ca.gov

Denny Brown
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS-20
SACRAMENTO CA 95814
(916) 654-4829
dbrown@energy.state.ca.us
For: CALIFORNIA ENERGY COMMISSION

Michael Jaske
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-20
SACRAMENTO CA 95814
(916) 654-4777
mike.jaske@energy.state.ca.us
For: California Energy Commission

Lana Tran
Consumer Protection and Safety Division
AREA 2-D
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5327
ltt@cpuc.ca.gov

Mark S. Wetzell
Administrative Law Judge Division
RM. 5003
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1491
msw@cpuc.ca.gov

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

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

RM. 4101
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1637
clu@cpuc.ca.gov

David Peck
Division of Ratepayer Advocates
RM. 4108
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1213
dbp@cpuc.ca.gov

Peter Skala
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5370
ska@cpuc.ca.gov

Ryan Bernardo
BRAUN BLAISING MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 912-4432
bernardo@braunlegal.com

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

CALIFORNIA ENERGY MARKETS
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 963-4439
hilary@newsdata.com

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

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

Last Updated on 06-NOV-2012 by: JVG
R0804012 LIST

Case Administration
2244 WALNUT GROVE AVE., PO BOX 800
ROSEMEAD CA 91770
(626) 302-3003
case.admin@sce.com

Karen Terranova
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 403-5542
filings@a-klaw.com

Michael P. Alcantar
Attorney At Law
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
mpa@a-klaw.com

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

Beth Ann Burns
Sr. Counsel - Legal & Regulatory Dept
CALIFORNIA ISO
250 OUTCROPPING WAY
FOLSOM CA 95630
(916) 608-7146
bburns@caiso.com

Judith Sanders
CALIFORNIA ISO
250 OUTCROPPING WAY
FOLSOM CA 95630
(916) 351-4400
jsanders@caiso.com

Avis Kowalewski
CALPINE CORPORATION
4160 DUBLIN BLVD, SUITE 100
DUBLIN CA 94568

David Le
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7302
dle@caiso.com

Songzhe Zhu
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE RD.
FOLSOM CA 95630
(916) 608-5854
szhu@caiso.com

Legal & Regulatory Department
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7024
e-recipient@caiso.com

Anthony J. Ivancovich
Asst. General Counsel - Regulatory
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
aivancovich@caiso.com
For: California Independent System Operator

Donald C. Liddell
DOUGLASS & LIDDELL
EMAIL ONLY
EMAIL ONLY CA 00000
(619) 993-9096
liddell@energyattorney.com

Fred Mobasher
Consultant
ELECTRIC POWER GROUP, LLC
201 SOUTH LAKE AVE., SUITE 400
PASADENA CA 91101
(626) 658-2015
fmobasher@electricpowergroup.com

Andrew B. Brown
ELLISON SCHNEIDER & HARRIS, L.L.P.
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905

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

Last Updated on 06-NOV-2012 by: JVG
R0804012 LIST

(925) 557-2284
kowalewskia@calpine.com

CERTICHRON, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
cpuc@certichron.com

David Kates
DAVID MARK & COMPANY
3510 UNOCAL PLACE, SUITE 200
SANTA ROSA CA 95403
(707) 570-1866

Robert Gex
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111
(415) 276-6500
robertgex@dwt.com

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

Daniel W. Douglass
DOUGLASS & LIDDELL
EMAIL ONLY
EMAIL ONLY CA 00000
(818) 961-3001
douglass@energyattorney.com
For: Alliance for Retail Energy Markets/Western Power Trading
Forum.

Glenn E. Haringa
GE ENERGY
ONE RIVER ROAD, BUILDING 2 RM. 637
SCHENECTADY NY 12345-6001
(518) 385-4199
glenn.haringa@ge.com
For: GE ENERGY

Sean P. Beatty
Sr. Mgr. External & Regulatory Affairs

(916) 447-2166
abb@eslawfirm.com
For: Constellation Commodities Grp & Constellation
NewEnergy, Inc.

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

Mona Tierney-Lloyd
Senior Manager Western Reg. Affairs
ENERNOC, INC.
PO BOX 378
CAYUCOS CA 93430
(805) 995-1618
mtierney-lloyd@enernoc.com

Ed Chang
FLYNN RESOURCE CONSULTANTS, INC.
2165 MOONSTONE CIRCLE
EL DORADO HILLS CA 95762
(888) 634-0222
edchang@flynnrci.com

Gary A. Jordan
GE ENERGY
BUILDING 2, ROOM 637
ONE RIVER ROAD
SCHENECTADY NY 12345-6001
(518) 358-2640
gary.jordan@ge.com

Kim Kiener
4475 TIVOLI ST
SAN DIEGO CA 92107-3829
(619) 990-6627
kмкиener@cox.net

Joel M. Hvidsten
KINDER MORGAN ENERGY FORECASTER
1100 TOWN & COUNTRY ROAD, SUITE 700
ORANGE CA 92868
(714) 560-4904

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

Last Updated on 06-NOV-2012 by: JVG
R0804012 LIST

GENON CALIFORNIA NORTH LLC
696 WEST 10TH ST., PO BOX 192
PITTSBURG CA 94565
(925) 427-3483
sean.beatty@mirant.com

Les Guliasi
Director, Regulatory Affairs
GENON ENERGY INC.
720 WILDCAT CANYON ROAD
BERKELEY CA 94708
(510) 559-7737

Eric Leuze
GENON ENERGY, INC
4174 RIVA RIDGE DRIVE
FAIR OAKS CA 95628
(916) 200-6187
eleuze@rrienergy.com

Todd S. Glassey
EMAIL ONLY
EMAIL ONLY CA 00000
tglassey@certichron.com

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

Steven Kelly
INDEPENDENT ENERGY PRODUCERS ASSOCIATION
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 448-9499
steven@iepa.com

Roger Van Hoy
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354

hvidstenj@kindermorgan.com

Shawn Cox
KINDER MORGAN ENERGY FORECASTER
1100 TOWN & COUNTRY ROAD, SUITE 700
ORANGE CA 92868
(714) 560-4099
shawn_cox@kindermorgan.com

Karen Lindh
LINDH & ASSOCIATES
7909 WALERGA ROAD, STE 112, PMB 119
ANTELOPE CA 95843
(916) 729-1562
karen@klindh.com

Barry F. Mccarthy
Attorney
MCCARTHY & BERLIN, LLP
100 W. SAN FERNANDO ST., SUITE 501
SAN JOSE CA 95113
(408) 288-2080
bmcc@mccarthylaw.com

John W. Leslie, Esq.
Attorney
MCKENNA LONG & ALDRIDGE LLP
EMAIL ONLY
EMAIL ONLY CA 00000
(619) 699-2536
jleslie@McKennaLong.Com

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

Alice Gong
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO CA 94177

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

Last Updated on 06-NOV-2012 by: JVG
R0804012 LIST

(209) 526-7464
rogerv@mid.org

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

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 834-1999
mrw@mrwassoc.com

Kerry Hattevik
Director Of West Market Affairs
NEXT ERA ENERGY RESOURCES LLC
829 ARLINGTON BLVD.
EL CERRITO CA 94530
(510) 898-1847
kerry.hattevik@nee.com

Diane I. Fellman
Director, Regulatory & Gov'T Affairs
NRG WEST & SOLAR
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 601-2025
Diane.Fellman@nrgenergy.com

Christopher A. Hilén
NV ENERGY
6100 NEIL ROAD, MS A35
RENO NV 89511
(775) 834-5696
chilen@NVEnergy.com

Taryn Ciardella
Sr. Legal Secretary
NV ENERGY
EMAIL ONLY
EMAIL ONLY NV 00000
(775) 834-4347
tciardella@nvenergy.com

Cathie Allen
Regulatory Mgr.
PACIFICORP
EMAIL ONLY

axl3@pge.com

Case Administration
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94177
RegRelCPUCCases@pge.com

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

Charles R. Middlekauff
PACIFIC GAS AND ELECTRIC COMPANY
LAW DEPT.
77 BEALE STREET, B30A / PO BOX 7442
SAN FRANCISCO CA 94105
(415) 973-6971
CRMd@pge.com
For: Pacific Gas and Electric Company

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

Mark R. Huffman
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO CA 94105
(415) 973-3842
mrh2@pge.com

Regulatory File Room
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A / PO BOX 7442
SAN FRANCISCO CA 94120
(415) 973-4295
cpuccases@pge.com

Curtis L. Kebler
SEMPRA GENERATION
EMAIL ONLY
EMAIL ONLY CA 00000

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

Last Updated on 06-NOV-2012 by: JVG
R0804012 LIST

EMAIL ONLY OR 00000
(503) 813-5934
CaliforniaDockets@pacificcorp.com

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

Sue Mara
RTO ADVISORS, LLC.
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 902-4108
sue.mara@rtoadvisors.com

Randy Nicholson
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP32H
SAN DIEGO CA 92123
(858) 654-3567
RNicholson@SempraUtilities.com

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

Theodore Roberts
SEMPRA BROADBAND
101 ASH STREET, HQ 13
SAN DIEGO CA 92101-3017
(619) 699-5111
TRoberts@SempraUtilities.com

Alvin S. Pak
Attorney At Law
SEMPRA ENERGY
101 ASH STREET, HQ12C
SAN DIEGO CA 92101-3017
(619) 696-2190
APak@SempraUtilities.com
For: San Diego Gas & Electric Company

(310) 407-5619
CKebler@SempraGeneration.com

Thomas Corr
SEMPRA GLOBAL
101 ASH STREET, HQ 08 C
SAN DIEGO CA 92101-3017
(619) 696-4246
TCorr@SempraGlobal.com

Paul Nelson
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
(626) 302-4814
paul.nelson@sce.com

Kevin Woodruff
WOODRUFF EXPERT SERVICES
1100 K STREET, SUITE 204
SACRAMENTO CA 95814
(916) 442-4877
kdw@woodruff-expert-services.com

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

***** PARTIES *****

Erik S. Emblem
3E INTERNATIONAL INCORPORATED
1809 S STREET, SUITE 101-207
SACRAMENTO CA 95811
(916) 273-7842
eemblem@3eintinc.net
For: Joint Committee On Energy And Environmental Policy

James Weil
Director
AGLET CONSUMER ALLIANCE
PO BOX 866
NOVATO CA 94948
(415) 895-5296
jweil@aglet.org
For: AGLET CONSUMER ALLIANCE

Adam Goldberg
AGP, LLC
3003 BARKLEY GATE
FAIRFAX VA 22031
(703) 539-5081
adam@agp-llc.com
For: Mitshubishi Digital Electronics America

William H. Booth
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, STE. 1850
SAN FRANCISCO CA 94105
(415) 421-4143
whb@a-klaw.com
For: California Large Energy Consumers Association

Merrilee Harrigan
BRIAN CASTELLI
Vice President Of Education
ALLIANCE TO SAVE ENERGY
1850 M STREET NW, SUITE 600
WASHINGTON DC 20036
(202) 530-2215
mharrigan@ase.org
For: Alliance to Save Energy

Gerald Lahr
ASSOCIATION OF BAY AREA GOVERNMENTS
101 8TH STREET, PO BOX 2050
OAKLAND CA 94607
(510) 464-7908
jerryl@abag.ca.gov
For: ABAG

Dale A. Gustavson
President
BETTER BUILDINGS INCORPORATED
23798 LOS PINOS COURT
CORONA CA 92883
(951) 277-2180
dale@betterbuildings.com
For: BETTER BUILDINGS INCORPORATED

Thomas Eckhart
CAL - UCONS, INC.
10612 NE 46TH STREET
KIRKLAND WA 98033
(425) 576-5409
tom@ucons.com
For: CAL-UCONS, INC.

Robert L. Knight
CAL. BLDG. PERFORMANCE CONTRATORS ASSN.
1000 BROADWAY, SUITE 410
OAKLAND CA 94607
(510) 444-8707 X223
rknight@bki.com
For: BEVILACQUA-KNIGHT INC/The California Building
Performance Contractor's Assn.

Robert Scott
Executive Director
CAL. HOME ENERGY EFFICIENCY RATING SVCS.
20422 BEACH FLVD., SUITE 235
HUNTINGTON BEACH CA 92648
(714) 500-4455
rscott@cheers.org
For: California Home Energy Efficiency Rating Services

Michael E. Bachand
President
CALCERTS,, INC.
31 NATOMA STREET, SUITE 120
FOLSOM CA 95630
mike@calcerts.com

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

For: CALCERTS, INC.

Sachu Constantine
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000
(858) 244-1177
sachu.constantine@energycenter.org
For: California Center For Sustainable Energy

Dennis J. Herrera
THERESA L. MUELLER, JEANNE SOLE, STEPHEN MORR
CITY AND COUNTY OF SAN FRANCISCO
CITY HALL, ROOM 234
1 DR. CARLTON B. GOODLET PLACE
SAN FRANCISCO CA 94102
(415) 554-4637
For: CITY AND COUNTY OF SAN FRANCISCO

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

Jeanne M. Sole
Deputy City Attorney
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM. 234
SAN FRANCISCO CA 94102-4682
(415) 554-4619
jeanne.sole@sfgov.org
For: City and County of San Francisco

Rob Neenan
CALIFORNIA LEAGUE OF FOOD PROCESSORS
1755 CREEKSIDE OAKS DRIVE, SUITE 250
SACRAMENTO CA 95833
(916) 640-8150
rob@clfp.com
For: California League of Food Processors

William K. Sanders
DENNIS HERRERA, THERESA MUELLER, JEANNE SOLE
Deputy City Attorney
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM. 234
SAN FRANCISCO CA 94102-4682
(415) 554-6771
william.sanders@sfgov.org
For: City and County of San Francisco

Peter Canessa
CALIFORNIA STATE UNIVERSITY, FRESNO
1211 CHAPARRAL CIRCLE
SAN LUIS OBISPO CA 93401
(805) 547-1130
pcanessa@charter.net
For: CSUF

Scott Wentworth
CITY OF OAKLAND
7101 EDGEWATER DRIVE, NO. 2
OAKLAND CA 94621
(510) 615-5421
swentworth@oaklandnet.com
For: City of Oakland

Chris Brown
Executive Director
CALIFORNIA URBAN WATER CONSERVATION
716 10TH STREET, STE. 200
SACRAMENTO CA 95814-1807
(916) 552-5885 X17
chris@cuwcc.org
For: California Urban Water Conservation

David S. Dayton
President
CLEAN ENERGY SOLUTIONS, IINC.
1385 CAMBRIDGE STREET
CAMBRIDGE MA 02139
(617) 491-0443

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

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

ddayton@cleanenergysol.com
For: Clean Energy Solutions, Inc.

Nicholas J. Karno
Attorney At Law
CLEAN ENERGY SOLUTIONS, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
(323) 578-6038
nkarno@yahoo.com
For: Clean Energy Solutions, Inc.

Rocky Bacchus
Consultant
EFFICIENCY POWER
6501 TARASCAS
EL PASO TX 79912
(915) 787-0227
rockybacchus@gmail.com
For: EP Investments

Jon W. Slingerup
CLEAREDGE POWER CORPORATION
7205 EVERGREEN PARKWAY
HILLSBORO OR 97124
(310) 405-5399
js@clearedgepower.com
For: ClearEdge Power Corporation

Bruce Matulich
Executive Director
ELECTRIC & GAS INDUSTRIES ASSOCIATION
3800 WATT AVE, SUITE 105
SACRAMENTO CA 95821
(916) 480-7314
bmatulich@egia.com
For: Electric & Gas Industries Association

Robert W. Hammon, Ph.D
Principal
CONSOL
7407 TAM OSHANTER DRIVE
STOCKTON CA 95210-3370
(209) 473-5073
Rob@ConSol.ws
For: Consol

Greggory L. Wheatland
ELLISON SCHNEIDER & HARRIS L.L.P.
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
glw@eslawfirm.com
For: Sierra Pacific Power Company

Malcolm Lewis
President
CTG ENERGETICS, INC.
16 TECHNOLOGY DRIVE, SUITE 109
IRVINE CA 92618
(949) 790-0010
mlewis@ctg-net.com
For: CTG Energetics, Inc.

David Manoguerra
ENALASYS
250 AVENIDA CAMPILLO
CALEXICO CA 92231
(760) 768-3228
dmano@enalsys.com
For: Enalsys

Eric Taylor

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

Edward O'Neill
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6500
edwardoneill@dwt.com
For: California Large Energy Consumers Association

Donald C. Liddell
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO CA 92103
(619) 993-9096
liddell@energyattorney.com
For: California Natural Gas Vehicle Coalition/ Ice Energy Inc. /
TRANE

Mona Tierney-Lloyd
Senior Manager Western Reg. Affairs
ENERNOC, INC.
PO BOX 378
CAYUCOS CA 93430
(805) 995-1618
mtierney-lloyd@enernoc.com
For: Enernoc, Inc.

John Kotowski
GLOBAL ENERGY PARTNERS, LLC
500 YGNACIO VALLEY RD, SUITE 450
WALNUT CREEK CA 94596
(925) 284-3780
jak@gepllc.com
For: Global Energy Partners, LLC

James D. Squeri
Attorney At Law
GOODIN MACBRIDE SQUERI DAY & LAMPREYLLP
505 SANSOME STREET, STE 900
SAN FRANCISCO CA 94111
(415) 765-8443
jsqueri@goodinmacbride.com
For: CBIA/CAA

Steven Lehtonen
GREEN PLUMBERS USA
4153 NORTHGATE BLVD., STE. 1

ENALASYS
250 AVENIDA CAMPILLO
CALEXICO CA 92231
(760) 768-3228
etaylor@enalasys.com
For: Enalasy

Cynthia K. Mitchell
ENERGY ECONOMICS, INC.
530 COLGATE COURT
RENO NV 89503
(775) 324-5300
Cynthiakmitchell@gmail.com
For: TURN

Tom White
HOME ENERGY MAGAZINE
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(510) 455-4377
TWhite@homeenergy.org
For: Home Energy Magazine

Greg Tropisa
President
ICE ENERGY, INC.
9351 EASTMAN PARK DRIVE, UNIT B
WINDSOR CO 80550
(970) 545-3630 X1910
gtropisa@ice-energy.com
For: Ice Energy Inc.

Robert E. Burt
INSULATION CONTRACTORS ASSN.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 568-1826
burt@macnexus.org
For: Insulation Contractors Assn.

Jim Flanagan
JAMES FLANAGAN ASSOCIATES
124 LOWER TERRACE
SAN FRANCISCO CA 94114

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

SACRAMENTO CA 95834-1218
(916) 239-4577
steve@greenplumbersusa.com
For: Green Plumbers USA

(415) 863-2525
jimflanagan4@mac.com
For: California Commissioning Collaborative

Michael Rogers
Senior Vp, Market Development
GREENHOMES AMERICA
152 TECHNOLOGY
IRVINE CA 92618
(802) 862-3250
mike.rogers@greenhomesamerica.com
For: GreenHomes America

Bill Marcus
JBS ENERGY
311 D STREET, STE. A
WEST SACRAMENTO CA 95605
(916) 372-0534
bill@jbsenergy.com
For: The Utility Reform Network

Jeffrey Heller
Faia - President
HELLER MANUS ARCHITECTS
221 MAIN STREET, SUITE 940
SAN FRANCISCO CA 94044
(415) 247-1100 X-120
JeffreyH@hellermanus.com
For: Heller Manus Architects

Jody London
JODY LONDON CONSULTING
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 459-0667
jody_london_consulting@earthlink.net
For: County of Los Angeles, Internal Services Department/The
Local Government Sustainable EnergyCoalition

Sara Steck Myers
Attorney At Law
LAW OFFICES OF SARA STECK MYERS
122 28TH AVENUE
SAN FRANCISCO CA 94121
(415) 387-1904
ssmyers@att.net
For: EnerNoc, Inc.

Donald Gilligan
NATIONAL ASSC. OF ENERGY SVC. COMPANIES
EMAIL ONLY
EMAIL ONLY DC 00000-0000
(202) 822-0950
dgilligan@naesco.org
For: National Association of Enegy Service Companies

Diana L. Lee
Legal Division
RM. 4107
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-4342
dil@cpuc.ca.gov
For: DRA

Noah Long
LARA ETENSON
NATURAL RESOURCES DEFENSE COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 875-6100
nlong@nrdc.org
For: Natural Resources Defense Council

Tim Rosenfeld
MARIN ENERGY MANAGEMENT TEAM
131 CAMINO ALTO, SUITE D
MILL VALLEY CA 94941
(415) 389-1348

Michael Sachse
OPOWER
1515 N. COURTHOUSE RD., SUITE 800
ARLINGTON VA 22201-2909
(646) 265-0556

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

tim@marinemngt.org
For: Marin Energy Management Team

Thomas S. Crooks
Director
MCR PERFORMANCE SOLUTIONS
3161 CAMERON PARK DR STE 216
CAMERON PARK CA 95682-7979
(916) 932-0113
tcrooks@mcr-group.com
For: MCR Performance Solutions

Don Meek
Attorney At Law
10949 SW 4TH AVENUE
PORTLAND OR 97219
For: Women's Energy Matters

Steven Moss
2325 THIRD STREET
SAN FRANCISCO CA 94107
(415) 643-9578
steven@moss.net
For: San Francisco Community Power

Rachel Fretz
QUEST
2001 ADDISON ST., STE. 300
BERKELEY CA 94704
rfretz@quest-world.com
For: QuEST

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

michael.sachse@opower.com
For: OPOWER

Shirley A. Woo
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, MC B30A
SAN FRANCISCO CA 94120-7442
(415) 973-2248
saw0@pge.com
For: Pacific Gas and Electric Company

Peter M. Schwartz
Attorney At Law
PETER SCHWARTZ & ASSOCIATES, LLC
381 CHAPMAN DRIVE
CORTE MADERA CA 94925
(415) 924-6675
pmschwartz@sbcglobal.net
For: Peter M. Schwartz

John Proctor
Chief Executive Officer
PROCTOR ENGINEERING GROUP
418 MISSION AVE
SAN RAFAEL CA 94901
(415) 451-2480
john@proctoreng.com
For: Proctor Engineering Group, Ltd.

Judi G. Schweitzer
SCHWEITZER AND ASSOCIATES, INC.
25422 TRABUCO ROAD, STE.105-P
LAKE FOREST CA 92630
(949) 859-2020
judi.schweitzer@post.harvard.edu
For: Judy G. Schweitzer

Chris Scruton
8690 CALVINE RD.
SACRAMENTO CA 95828
cscruton@energy.state.ca.us
For: Chris Scruton

Richard Esteves

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

J. Andrew Hoerner
REDEFINING PROGRESS
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 507-4820
hoerner@redefiningprogress.org
For: Redefining Progress

Jim Parks
SACRAMENTO MUNICIPAL UTILITY DIST.
6301 S STREET, A204
SACRAMENTO CA 95817-1899
(916) 732-5252
jparks@smud.org

Lourdes Jimenez-Price
Office Of The General Counsel
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET, MS B406
SACRAMENTO CA 95817-1899
(916) 732-6441
ljimene@smud.org
For: SMUD

Steven D. Patrick
Attorney
SAN DIEGO GAS AND ELECTRIC COMPANY
555 WEST FIFTH STREET, SUITE 1400
LOS ANGELES CA 90013-1011
(213) 244-2954
SDPatrick@SempraUtilities.com
For: San Diego Gas & Electric/Southern California Gas
Company

Monica Ghattas
Attorney
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. / PO BOX 800
ROSEMEAD CA 91770
(626) 302-2570
monica.ghattas@sce.com
For: Southern California Edison Company

SESCO, INC.
77 YACHT CLUB DRIVE
LAKE HOPATCONG NJ 07849
(973) 663-5125
sesco@optonline.net
For: SESCO

Hank Ryan
Executive Dir.
SMALL BUSINESS CALIFORNIA (SB CALIF.)
750 - 47TH AVE., NO. 56
CAPITOLA CA 95010
(510) 459-9683
hankryan2003@yahoo.com
For: Small Business California

Paul Wuebben
SOUTH COAST AIR QUALITY MANAGEMENT DIST
21865 COPLEY DRIVE
DIAMOND BAR CA 91765-4178
(909) 396-3247
For: South Coast Air Quality Management District

Larry R. Cope
JENNIFER SHIGEKAWA
Attorney At Law
SOUTHERN CALIFORNIA EDISON
PO BOX 800, 2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-2570
larry.cope@sce.com
For: Southern California Edison Company

Hayley Goodson
Staff Attorney
THE UTILITY REFORM NETWORK
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 929-8876
hayley@turn.org
For: THE UTILITY REFORM NETWORK

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

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

Marcel Hawiger
Energy Atty
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94104
(415) 929-8876 X311
marcel@turn.org
For: TURN

Michael Boccadoro
THE DOLPHIN GROUP
925 L STREET, SUITE 800
SACRAMENTO CA 95814
(916) 441-4383
aecaonline@gmail.com
For: Inland Empire Utilities, Chino Basin Coalition, Santa Ana
Watershed Project Authority

Marybelle C. Ang
Staff Attorney
THE UTILITY REFORM NETWORK
115 SANSOME STREET, STE. 900
SAN FRANCISCO CA 94104
(415) 929-8876
mang@turn.org
For: TURN

Samuel Kang
Managing Attorney
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE., 2ND FLOOR
BERKELEY CA 94704
(510) 926-4001
samuelk@greenlining.org
For: The Greenlining Institute

Robert C. Wilkinson
Director, Water Policy Program
4426 BREN BUILDING
SANTA BARBARA CA 93106
wilkinson@es.ucsb.edu

Barbara George
WOMEN'S ENERGY MATTERS
PO BOX 548
FAIRFAX CA 94978
(415) 755-3147
wem@igc.org
For: Women's Energy Matters (WEM)

Mark L. Parsons
Sr. Deputy Gen. Counsel
THE METROPOLITAN WATER DISTRICT OF SO.CA
PO BOX 54153
LOS ANGELES CA 90054-0153
(213) 217-6317
mparsons@mwdh2o.com
For: The Metropolitan Water District of Southern California

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

Bernard Ayanruoh
Division of Water and Audits
AREA 3-C
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1300
ben@cpuc.ca.gov

Bob Finklestein
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94104
(415) 929-8876
bfinkelstein@turn.org
For: TURN

Simon Baker
Energy Division
AREA 4-A

Jordana Cammarata
Energy Division
AREA 4-A

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5649
seb@cpuc.ca.gov

Jean A. Lamming
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2142
JL2@cpuc.ca.gov

Cynthia Rogers
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
SACRAMENTO CA 95814
(916) 651-9009
crogers@energy.state.ca.us

E.V. (Al) Garcia
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET. MS 42
SACRAMENTO CA 95814
(916) 654-4045
agarcia@energy.state.ca.us

Margaret Sheridan
CALIFORNIA ENERGY COMMISSION
DEMAND ANALYSIS OFFICE
1516 NINTH STREET, MS-22
SACRAMENTO CA 95814
(916) 651-9077
msherida@energy.state.ca.us
For: California Energy Commission

Sylvia Bender
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS20
SACRAMENTO CA 95814
(916) 653-6841
sbender@energy.state.ca.us

Carmen Best
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-1797
CBE@cpuc.ca.gov

505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1606
jnc@cpuc.ca.gov

Jeanne Clinton
Executive Division
RM. 5221
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1159
cln@cpuc.ca.gov

Cheryl Cox
Division of Ratepayer Advocates
RM. 4101
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2495
cxc@cpuc.ca.gov

Director
DIV OF WATER AND AUDITS
WATER AND SEWER ADVISORY BRANCH
505 VAN NESS AVE., ROOM 3106
SAN FRANCISCO CA 94102
(415) 703-1739

Tim G. Drew
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5618
zap@cpuc.ca.gov

Jennifer Finnigan
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2292
jf5@cpuc.ca.gov

Cathleen A. Fogel
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1809
cf1@cpuc.ca.gov

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

Hazlyn Fortune
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2317
hcf@cpuc.ca.gov

Peter Franzese
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1926
pcf@cpuc.ca.gov

David M. Gamson
Administrative Law Judge Division
RM. 5019
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1232
dmg@cpuc.ca.gov

Monisha Gangopadhyay
Division of Ratepayer Advocates
RM. 4104
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1417
mgb@cpuc.ca.gov

Katherine Hardy
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2322
keh@cpuc.ca.gov

Judith Ikle
Energy Division
RM. 4012
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1486
jci@cpuc.ca.gov

Peter Lai
Energy Division

Eileen Cotroneo
PACIFIC GAS & ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 973-2751
efm2@pge.com

Lisa Paulo
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 355-5495
lp1@cpuc.ca.gov

Thomas Roberts
Division of Ratepayer Advocates
RM. 4108
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5278
tcr@cpuc.ca.gov

Devla Singh
Policy & Planning Division
RM. 5119
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5581
dsc@cpuc.ca.gov

George S. Tagnipes
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2451
jst@cpuc.ca.gov

Zenaida G. Tapawan-Conway
Communications Division
AREA 3-D
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5221
ztc@cpuc.ca.gov

Ava N. Tran
Energy Division
AREA 4-A

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

RM. 500
320 West 4th Street Suite 500
Los Angeles CA 90013
(213) 576-7087
ppl@cpuc.ca.gov

505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2887
atr@cpuc.ca.gov

Chris Ungson
Division of Ratepayer Advocates
RM. 4104
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2574
cu2@cpuc.ca.gov

Michael P. Alcantar
Attorney At Law
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
mpa@a-klaw.com

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

Jo Tiffany
ALLIANCE TO SAVE ENERGY
1624 FRANKLIN ST. PH
OAKLAND CA 94612-2833
(510) 451-4056
jtiffany@ase.org

Joyce de Rossett
Division of Water and Audits
AREA 3-C
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5472
jdr@cpuc.ca.gov

Jane Wong
AUTOCELL ELECTRONICS, INC
7311 GREENHAVEN DRIVE, SUITE 266
SACRAMENTO CA 95831
jane@autocell.net

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

Karen Terranova
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 403-5542
filings@a-klaw.com

Richard L. Ng
AUTOCELL ELECTRONICS, INC
7311 GREENHAVEN DRIVE, SUITE 266
SACRAMENTO CA 95831
(916) 393-6668 X202
richard@autocell.net

Nora Sheriff
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
nes@a-klaw.com

Elizabeth T. Lowe
BARAKAT CONSULTING
696 SAN RAMON VALLEY BLVD., NO. 265
DANVILLE CA 94526
(925) 838-3887
elowe@barakatconsulting.com

Ross Van Ness
ALCANTAR & KAHL
1300 SW FIFTH AVE., STE. 1750

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

Annette Beitel

******* SERVICE LIST *******
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

PORTLAND OR 97209
(503) 402-9900
rvn@a-klaw.com

Seema Srinivasan
ALCANTAR & KAHL LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
sls@a-klaw.com

Bruce McLaughlin
BRAUN & BLAISING, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 326-5314
mclaughlin@braunlegal.com

Justin C. Wynne
Attorney At Law
BRAUN BLAISING MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 326-5813
wynne@braunlegal.com

Ryan Bernardo
BRAUN BLAISING MCLAUGHLIN, P.C.
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 912-4432
bernardo@braunlegal.com

Misti Bruceri
1521 I STREET
NAPA CA 94559
(707) 252-8355
mistib@comcast.net

Bruce Mast
BUILD IT GREEN
160 FRANKLIN ST., STE. 310
OAKLAND CA 94607-3725
(510) 845-0472 X-111
Bruce@BuildItGreen.org

Peter C. Jacobs

1014 PONTIAC RD.
WILMETTE IL 60091-1351
annette.beitel@gmail.com

William J. Parlapiano Iii
BP CONSULTING
141 OAK STREET
BALLSTON SPA NY 12020
(518) 309-3415
wjp4@bpconsulting.org

Steven R. Schiller
Chair, Board Of Dir.
CA ENERGY EFFICIENCY INDUSTRY COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 390-6413
steve@schiller.com

Chris Ann Dickerson
CAD CONSULTING
720B CANYON OAKS DRIVE
OAKLAND CA 94605
(510) 562-1034
cadickerson@cadconsulting.biz

Matthew O'Keefe
CAL. ENERGY EFFICIENCY INDUSTRY COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(916) 390-6413
mokeefe@efficiencycouncil.org

Irene M. Stillings
Executive Director
CALIF. CTR. FOR SUSTAINABLE ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(858) 244-1177
irene.stillings@energycenter.org

Jennifer Green
Policy Analyst
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(858) 244-1177

******* SERVICE LIST *******
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

BUILDING METRICS INC.
2540 FRONTIER AVE. SUITE 100
BOULDER CO 80301
(720) 284-4393
pjacobs@buildingmetrics.biz

Shandra (Tiger) Adolf
Dir - Western Region
BUILDING PERFORMANCE INSTITUTE
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 923-0273
tadolfo@bpi.org

jennifer.green@energycenter.org

Sephra A. Ninow
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVE., STE. 100
SAN DIEGO CA 92123-1502
(858) 244-1186
sephra.ninow@energycenter.org

Bill Kelly
Correspondent
CALIFORNIA ENERGY CIRCUIT
PO BOX 1022
SOUTH PASADENA CA 91031
(626) 441-2112
southlandreports@earthlink.net

Kae Lewis
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 22
SACRAMENTO CA 95814
(916) 654-4176
klewis@energy.state.ca.us

Richard Sapudar
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO CA 95814
(916) 653-4521
rsapudar@energy.state.ca.us

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

Anthony Wayne
CALIFORNIA RETROFIT, INC.
5195 JEFFDALE AVE.
WOODLAND HILLS CA 91364
(310) 230-5519
twayne@roadrunner.com

John Celona

Ann Kelly
Department Of The Environment
CITY AND COUNTY OF SAN FRANCISCO
11 GROVE STREET
SAN FRANCISCO CA 94102
(415) 355-3720
ann.kelly@sfgov.org

Thomas L. Trimberger
Chief Building Official
CITY OF RANCHO CORDOVA
2729 PROSPECT PARK DRIVE
RANCHO CORDOVA CA 95670

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@smsgov.net

Gregory Clayborn
3717 W. 59TH STREET
LOS ANGELES CA 90043
gclayborn@gmail.com

Curt Barry
Senior Writer

******* SERVICE LIST *******
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

505 VISTA AVENUE
SAN CARLOS CA 94070
(650) 802-9201
jcelona@sbcglobal.net

CENTRAL FILES SDG&E
8330 CENTURY PARK COURT - CP-31E
SAN DIEGO CA 92123
CentralFiles@SempraUtilities.com
For: Central Files SDG&E

CERTICHRON, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
cpuc@certichron.com

Michael Cheng
2723 HARLAND COURT
WALNUT CREEK CA 94598
(925) 947-2188

Nora Hernandez
COUNTY OF LOS ANGELES-INTERNAL SERVICES
1100 N. EASTERN AVENUE
LOS ANGELES CA 90063
(323) 881-3949
nhernandez@isd.co.la.ca.us

Dana Armanino
Community Development Agency
COUNTY OF MARIN
3501 CIVIC CENTER DRIVE, ROOM 308
SAN RAFAEL CA 94903
(415) 449-3292
darmanino@co.marin.ca.us

Clinton Cole
CURRENT GROUP, LLC
20420 CENTURY BOULEVARD
GERMANTOWN MD 20874
(301) 944-2718

Cassandra Sweet

CLEAN ENERGY REPORT
717 K STREET, SUITE 503
SACRAMENTO CA 95814
(916) 449-6171
cbarry@iwpnews.com

Carlos Lamas-Babbini
Program Mgr.
COMVERGE, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 270-5963
clamasbabbini@comverge.com

Nancy Kirshner-Rodriguez
Consulting Department Manager
CONSOL
7407 TAM O SHANTER DRIVE
STOCKTON CA 95210-3370
(209) 473-5000

Ted Flanigan
President
ECOMOTION - THE POWER OF THE INCREMENT
1537 BARRANCA PARKWAY, SUITE F-104
IRVINE CA 92618
(949) 450-7155
TFlanigan@EcoMotion.us

Richard Lauman
Vice President
ECOS
309 SW 6TH AVE., STE. 1000
PORTLAND OR 97204-1721
rilauman@ecosconsulting.com

Crystal Needham
Senior Director, Counsel
EDISON MISSION ENERGY
3 MACARTHUR PLACE, STE. 100
SANTA ANA CA 92707
(949) 798-7977
cneedham@edisonmission.com

***** SERVICE LIST *****
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A0807021 LIST
A0807022/A0807023/A0807031

DOW JONES NEWSWIRES
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 439-6468
cassandra.sweet@dowjones.com

Gene Thomas
ECOLOGY ACTION
877 CEDAR ST., STE. 240
SANTA CRUZ CA 95060-3938
(831) 426-5925
gthomas@ecoact.org

Josiah Adams
ECOLOGY ACTION
EMAIL ONLY
EMAIL ONLY CA 00000
(831) 426-5925 X-179
jadams@ecoact.org

Mahlon Aldridge
Vp - Strategic Development
ECOLOGY ACTION
877 CEDAR STREET, STE. 240
SANTA CRUZ CA 95060-3938
(831) 515-1316
maldridge@ecoact.org

Sharon Talbott
EMETER CORPORATION
2215 BRIDGEPOINTE PARKWAY, SUITE 300
SAN MATEO CA 94404
(650) 227-7770 X117

Luke Hermann
Evp, Sales & Marketing
ENALASYS CORPORATION
250 AVENIDA CAMPILLO
CALEXICO CA 92231
(760) 768-3228
LukeH@enalasys.com

Eric Cutter

Walter Mcguire
EFFICIENCY PARTNERSHIP
2962 FILLMORE STREET
SAN FRANCISCO CA 94123
(415) 775-7571
wmcguire@fypower.org

David Gordon
EFM SOLUTIONS
10310 CAMINITO AGADIR
SAN DIEGO CA 92131
(858) 566-4306
david.gordon@efm-solutions.com

Ellen Petrill
Director, Public/Private Partnerships
ELECTRIC POWER RESEARCH INSTITUTE
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(650) 855-8939
epetrill@epri.com

Lynn Haug
GREGG WHEATLAND
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
lmh@eslawfirm.com

Amelia Gulkis
ENSAVE, INC.
65 MILLER STREET, SUITE 105
RICHMOND VT 05477
(802) 434-1826
ameliag@ensave.com

Tami Rasmussen
EVERGREEN ECONOMICS
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 722-7678
Rasmussen@evergreenecon.com

Norman J. Furuta

***** SERVICE LIST *****
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A0807021 LIST
A0807022/A0807023/A0807031

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

Steven Kihm
ENERGY CENTER OF WISCONSIN
455 SCIENCE DRIVE, STE 200
MADISON WI 53711
(608) 238-8276 X131
skihm@ecw.org

Reuben Deumling
ENERGY ECONOMICS INC.
3309 SE MAIN STREET
PORTLAND OR 97214
(503) 231-5059
9watts@gmail.com

Jim Bazemore
ENERGY MARKET INNOVATIONS INC
83 COLUMBIA STREET, SUITE 303
SEATTLE WA 98104-1417
(206) 621-1160
jbazemore@emil.com

Jennifer Holmes
ENERGY MARKET INNOVATIONS INC.
83 COLUMBIA STREET, SUITE 303
SEATTLE WA 98104
(206) 621-1160
jholmes@emil.com

Melanie Gillette
Dir - Western Reg. Affairs
ENERNOC, INC.
115 HAZELMERE DRIVE
FOLSOM CA 95630
(916) 501-9573
mgillette@enernoc.com

John M. Clarkson
HEAT PROJECT UK
ENACT ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000
john@enactenergy.com

Douglas E. Mahone

FEDERAL EXECUTIVE AGENCIES
1455 MARKET ST., SUITE 1744
SAN FRANCISCO CA 94103-1399
(415) 503-6994
norman.furuta@navy.mil

Samara Rassi
FELLON-MCCORD & ASSOCIATES
10200 FOREST GREEN BLVD., STE. 601
LOUISVILLE KY 40223-5183
(504) 214-6303

Thomas P. Conlon
President
GEOPRAXIS
PO BOX 5
SONOMA CA 95476-0005
(707) 280-1529
tconlon@geopraxis.com

Todd S. Glassey
EMAIL ONLY
EMAIL ONLY CA 00000
tglassey@certichron.com

Marlo A. Go
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
mgo@goodinmacbride.com

Dr. Hugh (Gil) Peach
H GIL PEACH & ASSOCIATES LLC
16232 NW OAKHILLS DRIVE
BEAVERTON OR 97006
(503) 645-0716
hgilpeach@scanamerica.net

Brad Bergman
Director
INTERGY CORPORATION
EMAIL ONLY
EMAIL ONLY CA 00000
(925) 785-3124
brad.bergman@intergycorp.com

***** SERVICE LIST *****
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A0807021 LIST
A0807022/A0807023/A0807031

HESCHONG MAHONE GROUP
11211 GOLD COUNTRY BLVD., SUITE 103
GOLD RIVER CA 95670
(916) 962-7001
dmahone@h-m-g.com

Owen Howlett
HESCHONG MAHONE GROUP, INC.
11211 GOLD COUNTRY BLVD., NO. 103
GOLD RIVER CA 95670
(916) 962-7001
owen_howlett@h-m-g.com

Andrew W. Wood
Energy Efficiency Engineer
HONEYWELL UTILITY SOLUTIONS
353 A VINTAGE PARK DRIVE
FOSTER CITY CA 94404
(415) 725-0892
andrew.wood3@honeywell.com

Tam Hunt
HUNT CONSULTING
124 W. ALAMAR AVE., NO. 3
SANTA BARBARA CA 93105
(805) 705-1352
tam@communityrenewables.biz
For: Community Environmental Council

Alice Liddell
ICF INTERNATIONAL
620 FOLSOM STREET, STE, 200
SAN FRANCISCO CA 94107
(415) 677-7133
aliddell@icfi.com

Ashish Goel
Founder And Co
INTERGY CORPORATION
11875 DUBLIN BOULEVARD, SUITE A201
DUBLIN CA 94568
(925) 556-2600 X-23
ashish.goel@intergycorp.com

Grant Cooke
Vice President
INTERGY CORPORATION
11875 DUBLIN BOULEVARD, SUITE A201
DUBLIN CA 94568
(925) 989-7117

Jay Bhalla
Principal
INTERGY CORPORATION
11875 DUBLIN BLVD., SUITE A201
DUBLIN CA 94568
(925) 556-2600 X-22
jay.bhalla@intergycorp.com

Sharyn Barata
ITRON - CONSULTING AND ANALYSIS
11236 EL CAMINO REAL
SAN DIEGO CA 92130
(858) 724-2642
Sharyn.Barata@Itron.com

Jennifer Fagan
Principal Energy Consultant
ITRON, INC
1111 BROADWAY, SUITE 1800
OAKLAND CA 94607
(608) 235-1314
jennifer.fagan@itron.com

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

Ann Peterson
ITRON, INC.
1111 BROADWAY, SUITE 1800
OAKLAND CA 94607
(510) 844-2811
Ann.Peterson@itron.com

John Cavalli

Karin Corfee

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

ITRON, INC.
1111 BROADWAY, STE. 1800
OAKLAND CA 94607
(510) 844-2876
john.cavalli@itron.com

KEMA, INC
155 GRAND AVE., SUITE 500
OAKLAND CA 94612-3747
(510) 891-0446
Karin.Corfee@kema.com

Rachel Harcharik
ITRON, INC.
11236 EL CAMINO REAL
SAN DIEGO CA 92130
(858) 724-2638
rachel.harcharik@itron.com

Jennifer Canseco
KEMA, INC.
155 GRAND AVENUE, STE. 500
OAKLAND CA 94612-3747
(510) 891-0446
jenna.canseco@us.kema.com

Bob Ramirez
ITRON, INC. (CONSULTING & ANALYSIS DIV.)
EMAIL ONLY
EMAIL ONLY CA 00000
(858) 724-2650
bob.ramirez@itron.com

John L. Stoops
KEMA, INC.
155 GRAND AVE., STE. 500
OAKLAND CA 94612
(510) 891-0446 X4163
john.stoops@kema.com

Jeff Hirsch
JAMES J. HIRSCH & ASSOCIATES
12185 PRESILLA ROAD
CAMARILLO CA 93012-9243
(805) 553-9000
Jeff.Hirsch@DOE2.com

Valerie Richardson
KEMA, INC.
1550 GARND AVE., STE. 500
OAKLAND CA 94612-3747
(510) 891-0446
Valerie.Richardson@kema.com

Garrick Jones
JBS ENERGY
311 D STREET
WEST SACRAMENTO CA 95605
(916) 372-0534
garrick@jbsenergy.com

Clark Pierce
LANDIS+GYR
REGULATORY AFFAIRS
246 WINDING WAY
STRAFORD NJ 08084
(856) 435-6024
Clark.Pierce@us.landisgyr.com

Kurt J. Kammerer
K. J. KAMMERER & ASSOCIATES
1220 ROSECRANS ST., PMB 324
SAN DIEGO CA 92106-2674
(619) 546-6175
kjk@kjkammerer.com

Edward Vine
LAWRENCE BERKELEY NATIONAL LABORATORY
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 486-6047
elvine@lbl.gov

Kathleen Gaffney
KEMA
155 GRAND AVENUE, STE 500
OAKLAND CA 94512-3747
(510) 891-0446
kathleen.gaffney@kema.com

Mary Ann Piette
LAWRENCE BERKELEY NATIONAL LABORATORY
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 486-6156
MAPiette@lbl.gov

Fred Coito
KEMA INC
155 GRAND AVENUE, STE. 500
OAKLAND CA 94612-3747
(510) 891-0446
fred.coito@kema.com

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

G. Patrick Stoner
LOCAL GOVERNMENT COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(916) 448-1198 X 309
pstoner@lgc.org

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

David R. Pettijohn
Manager, Water Resources Development
LOS ANGELES DEPT.OF WATER & POWER
111 NORTH HOPE STREET, ROMM 1460
LOS ANGELES CA 90012
(213) 367-0899
David.Pettijohn@ladwp.com

Lara Ettenson
NATURAL RESOURCES DEFENSE COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 875-6100
lettenson@nrdc.org

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

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

Bob Hondeville
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354
(209) 526-7373
bobho@mid.org

Jennifer Barnes
NAVIGANT CONSULTING, INC.
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 399-2116
Jennifer.Barnes@Navigantconsulting.com

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

David Nemptzow
NEMTZOW & ASSOCIATES
EMAIL ONLY
EMAIL ONLY CA 00000
(310) 622-2981
david@nemptzow.com

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 834-1999
mrw@mrwassoc.com

Andrew Meiman
Senior Program Manager
NEWCOMB ANDERSON MCCORMICK
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 896-0300
andrew_meiman@newcomb.cc

Terry L. Murray
MURRAY & CRATTY
8627 THORS BAY ROAD
EL CERRITO CA 94530
(510) 215-2860

Ann L. McCormick, P.E.
Principal
NEWCOMB ANDERSON MCCORMICK
201 MISSION STREET, SUITE 2010
SAN FRANCISCO CA 94105

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

tlmurray@earthlink.net

(415) 896-0300
ann_mccormick@newcomb.cc

John M. Newcomb
NEWCOMB ANDERSON MCCORMICK
201 MISSION STREET, SUITE 2010
SAN FRANCISCO CA 94105
(415) 896-0300
John_Newcomb@newcomb.cc

Sean Harrington
OPOWER
1515 N. COURTHOUSE RD., STE.800
ARLINGTON VA 22201-7909
(650) 575-3566
sean.harrington@opower.com

Matt Sullivan
NEWCOMB ANDERSON MCCORMICK
201 MISSION ST., SUITE 2010
SAN FRANCISCO CA 94105
(415) 898-0300
matt_sullivan@newcomb.cc

Jack Rosenthal
P2S ENGINEERING, INC.
5000 EAST SPRING STREET, 8TH FLOOR
LONG BEACH CA 90815
(562) 497-2999

Terry M. Fry
NEXANT, INC.
101 SECOND STREET, 10TH FLOOR
SAN FRANCISCO CA 94105
(415) 369-1021
tmfry@nexant.com

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

David Reynolds
Member Services Manager
NORTHERN CALIFORNIA POWER AGENCY
651 COMMERCE DRIVE
ROSEVILLE CA 95678-6420
(916) 781-4293
david.reynolds@ncpa.com

Jenny Gluzgold
PACIFIC GAS & ELECTRIC CO.
77 BEALE STREET, B9A
SAN FRANCISCO CA 94105
(415) 973-0347
yvg4@pge.com

Scott Tomashefsky
NORTHERN CALIFORNIA POWER AGENCY
651 COMMERCE DRIVE
ROSEVILLE CA 95678-6420
(916) 781-4291
scott.tomashefsky@ncpa.com

Brian K. Cherry
PACIFIC GAS AND ELECTRIC COMPANY
77N BEALE ST., PO BOX 770000, MC B10C
SAN FRANCISCO CA 94177
(415) 973-4977
bkc7@pge.com

Richard T. Sperberg
ONSITE ENERGY CORPORATION
2701 LOKER AVENUE WEST, SUITE 107
CARLSBAD CA 92010
(760) 931-2400 4140

Case Coordination
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 973-4208
regrelcpucases@pge.com

***** SERVICE LIST *****
Last Updated on 06-NOV-2012 by: AMT
A0807021 LIST
A0807022/A0807023/A0807031

rsperberg@onsitenergy.com

Sharyn Barata
OPINION DYNAMICS CORPORATION
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(949) 365-5730
sbarata@opiniondynamics.com

Jill Marver
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, N7K
SAN FRANCISCO CA 94177
(415) 973-0712
jkz1@pge.com

Michael R. Klotz
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MS B30A, ROOM 3105B
SAN FRANCISCO CA 94120
(415) 973-7565
M1ke@pge.com

Rafael Friedmann
Expert Strategic Analyst
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 972-5799
rafi@pge.com

Anne Arquit Niederberger
POLICY SOLUTIONS
57 CLIFFORD TERRACE
SAN FRANCISCO CA 94117
(415) 829-2199
policy.solutions@comcast.net

Robert Kasman
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
(415) 973-4094
rekl@pge.com

Emily Hallet
POSITIVE ENERGY
1515 N. COURTHOUSE RD., STE. 610
ARLINGTON VA 22201-2909
(703) 778-4544
emily.hallet@positiveenergy.com

Sandy Lawrie
Energy Proceedings
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, MC B9A
SAN FRANCISCO CA 94120
(415) 973-2494
slda@pge.com

Elizabeth M. Souza
PREMIUM EFFICIENCY COOLING PROGRAM
6161 EL CAJON BLVD NO. 524
SAN DIEGO CA 92115
(888) 369-1608
Elizabeth.DeSouza@csgrp.com

Crispin Wong
PECI
EMAIL ONLY
EMAIL ONLY OR 00000
(503) 575-4180
cwong@peci.org

M. Sami Khawaja, Ph.D
QUANTEC, LLC
SUITE 400
720 SW WASHINGTON STREET
PORTLAND OR 97205
(503) 228-2992
Sami.Khawaja@cadmusgroup.com

Shea Dibble
PECI
EMAIL ONLY
EMAIL ONLY CA 00000

Alison Watson
QUANTUM ENERGY SERVICES & TECHNOLOGIES
2001 ADDISON STREET, SUITE 300
BERKELEY CA 94704
(510) 540-7200

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A0807021 LIST
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sdibble@peci.org

Michele Rodriguez
PLANNING SUSTAINABLE COMMUNITIES
220 MCALLISTER AVENUE
KENTFIELD CA 94904
(415) 845-9110
michele@boggis.com

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

Lauren Casentini
RESOURCE SOLUTIONS GROUP, INC.
60 STONE PINE ROAD, SUITE 100
HALF MOON BAY CA 94019
(650) 726-5113
lcasentini@rsgrp.com

Hector Huerta
RICHARD HEATH AND ASSOCIATES, INC.
590 W. LOCUST AVE., SUITE 103
FRESNO CA 93650
(559) 447-7000
hhuerta@rhainc.com

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

Robert Mowris, P.E.
ROBERT MOWRIS & ASSOCIATES
PO BOX 2141
OLYMPIC VALLEY CA 96145
(530) 583-1570
robert.mowris@rma-energy.com

awatson@quest-world.com

Jane S. Peters, Ph.D.
RESEARCH INTO ACTION, INC.
PO BOX 12312
PORTLAND OR 97212
(503) 287-9136
janep@researchintoaction.com

Alison Ten Cate
RESOURCE SOLUTIONS GROUP
60 STONE PINE ROAD, SUITE 100
HALF MOON BAY CA 94019
(650) 726-2875
atencate@rsgrp.com

William W. Westerfield Iii
Sr. Attorney - Off. Of Gen. Counsel
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET, M.S. B402
SACRAMENTO CA 95817
(916) 732-6123
william.wester@smud.org

Athena Besa
SAN DIEGO GAS & ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 202-9986
ABesa@SempraUtilities.com

Billy Blattner
SAN DIEGO GAS & ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 202-9986
WBlattner@SempraUtilities.com

Joy C. Yamagata
Regulatory Manager
SAN DIEGO GAS & ELECTRIC/SOCALGAS
8330 CENTURY PARK COURT, CP 32 D
SAN DIEGO CA 92123-1530

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Jennifer Castleberry
RUNYON SALTZMAN & EINHORN
ONE CAPITOL MALL, SUITE 400
SACRAMENTO CA 95814
(916) 446-9900

Alanna Sloan
RUNYON SALTZMAN & EINHORN, INC.
ONE CAPITOL MALL, SUITE 400
SACRAMENTO CA 95814
(916) 446-9900

Molly Harcos
RUNYON, SALTZMAN & EINHORN, INC.
1 CAPITOL MALL, SUITE 400
SACRAMENTO CA 95814
(916) 446-9900
mharcos@rs-e.com

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

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

Samuel Sirkin
6908 SW 37TH AVENUE
PORTLAND OR 97219
(503) 804-1851
samsirkin@cs.com

Steve Kromer
SKEE
3110 COLLEGE AVENUE, APT 12
BERKELEY CA 94705
(510) 655-1492
jskromer@gmail.com

(858) 654-1755
JYamagata@SempraUtilities.com

Central Files
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP31-E
SAN DIEGO CA 92123
(858) 654-1240
CentralFiles@SempraUtilities.com

Michael Baker
Vice President
SBW CONSULTING, INC.
2820 NORTHUP WAY, SUITE 230
BELLEVUE WA 98004
(425) 827-0330
mbaker@sbwconsulting.com

Rob Rubin
SDG&E / SCG
8335 CENTURY PARK COURT
SAN DIEGO CA 92123
(858) 654-1244
RRubin@SempraUtilities.com

Tory S. Weber
SOUTHERN CALIFORNIA EDISON COMPANY
6042 N. IRWINDALE AVENUE, SUITE A
IRWINDALE CA 91702
(626) 633-3018
tory.weber@sce.com

Hugh Yao
SOUTHERN CALIFORNIA GAS COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(213) 244-3619
HYao@SempraUtilities.com

Karen W. Wong
SOUTHERN CALIFORNIA GAS COMPANY
555 W. 5TH STREET, GT28A4
LOS ANGELES CA 90013
(213) 244-5812
KWong@SempraUtilities.com

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A0807022/A0807023/A0807031

Don Arambula
SOUTHERN CALIFORNIA EDISON
6042 N. IRWINDALE AVENUE, BLDG. A
IRWINDALE CA 91702
(626) 633-3129
don.arambula@sce.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. / PO BOX 800
ROSEMEAD CA 91770
(626) 302-3101
case.admin@sce.com
For: SOUTHERN CALIFORNIA EDISON COMPANY

Jennifer M. Tsao Shigekawa
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-6819
Jennifer.Shigekawa@sce.com

Laura I. Genao
MIKE MONTOYA
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800, 2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-6842
Laura.Genao@sce.com

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

Nikhil Gandhi
STRATEGIC ENERGY TECHNOLOGIES, INC.
17 WILLIS HOLDEN DRIVE
ACTON MA 01720
(978) 264-0511
gandhi.nikhil@verizon.net

Kevin Shore
SOUTHERN CALIFORNIA GAS COMPANY
555 W 5TH STREET, GT28A4
LOS ANGELES CA 90013-1011
(213) 244-5351
KShore@SempraUtilities.com

Bobbi J. Sterrett
Snr. Specialist/State Regulatory Affairs
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89150-0002
(702) 364-3309
bobbi.sterrett@swgas.com

James R. Staples
STAPLES MARKETING COMMUNICATIONS
N28W23050 ROUNDY DRIVE
PEWAUKEE WI 53072
(262) 650-9900
staples@staplesmarketing.com

Marianne King
STAPLES MARKETING COMMUNICATIONS
N28W23050 ROUNDY DRIVE
PEWAUKEE WI 53072
(262) 650-9900
mking@staplesmarketing.com

William P. McDonnell
THE METROPOLITAN WATER DISTRICT
700 N. ALAMEDA STREET
LOS ANGELES CA 90012
bmcdonnell@mw dh2o.com

Craig Tyler
TYLER & ASSOCIATES
2760 SHASTA ROAD
BERKELEY CA 94708
(510) 841-8038
craigtyler@comcast.net

***** SERVICE LIST *****
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A0807022/A0807023/A0807031

Brent Barkett
SUMMIT BLUE CONSULTING
1375 WALNUT ST., STE. 200
BOULDER CO 80302-5242
(720) 564-1130
bbarkett@summitblue.com

Suminderpal Singh
SUNTULIT
4088 NORRIS ROAD
FREMONT CA 94536
(510) 676-2127
singh70@gmail.com

Chris Hammer
SUSTAINABLE DESIGN + BEHAVIOR
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 928-7941
hammer_chris@hotmail.com

Nick Hall
TECMARKET WORKS
165 WEST NETHERWOOD ROAD, 2/F, SUITE A
OREGON WI 53575
(608) 835-8855
nick@tecmarket.net

Craig Perkins
THE ENERGY COALITION
15635 ALTON PKWY., STE. 450
IRVINE CA 92618-7335
(949) 701-4646
cperkins@energycoalition.org

Grey Staples
THE MENDOTA GROUP, LLC
EMAIL ONLY
EMAIL ONLY MN 00000
(651) 204-0458
gstaples@mendotagroup.com

Robin J. Walther
EMAIL ONLY
EMAIL ONLY CA 00000
(626) 818-7998
rwalther@pacbell.net

Leif Magnuson
U.S. EPA
WST-7 75 HAWTHORNE ST.
SAN FRANCISCO CA 94105
(415) 972-3286
magnuson.leif@epa.gov
For: U.S. EPA

Benjamin Finkelor
Program Manager
UC DAVIS ENERGY EFFICIENCY CENTER
1 SHIELDS AVENUE
DAVIS CA 95616
(530) 752-7659
bmfinkelor@ucdavis.edu

Mariann Long
Assistant General Manager
UTILITIES JOINT SERVICES
201 S. ANAHEIM BLVD., NO. 101
ANAHEIM CA 92805
(714) 765-4251
mlong@anaheim.net

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

Cheryl Collart
Executive Director
VENTURA COUNTY REGIONAL ENERGY ALLIANCE
1000 SOUTH HILL ROAD, STE. 230
VENTURA CA 93003
(805) 289-3335
cheryl.collart@ventura.org

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

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A0807021 LIST

A0807022/A0807023/A0807031

Marshall B. Hunt
Programs Director, Uc Davis
WESTERN COOLING EFFICIENCY CENTER
633 PENA DRIVE
DAVIS CA 95618-6570
(530) 747-3976
mbhunt@ucdavis.edu
For: WESTERN COOLING EFFICIENCY CENTER

Carol Yin
YINSIGHT, INC
2275 HUNTINGTON DRIVE., 240
SAN MARINO CA 91108
(478) 227-6594
cyin@yinsight.net