



January 11, 2010

Honesto Gatchalian, Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Comments of Pacific Gas and Electric Company on Second Draft Resolution E-4250

Dear Mr. Gatchalian:

Pacific Gas and Electric Company (PG&E) respectfully provides its opening comments in response to the Energy Division's Second Draft Resolution E-4250, issued on December 22, 2009.

As an initial matter, PG&E appreciates the attention that the Commission paid to the utilities' First Amendment-related concerns regarding the First Draft Resolution E-4250, and believes this version of the Draft Resolution contains a number of improvements from the prior version. However, PG&E continues to have several concerns regarding the revised Second Draft Resolution, as outlined below.

I. The Proposed CCA Tariff Changes in Ordering Paragraph 1 Must Be Modified to Ensure Accuracy.

The Energy Division's proposed changes to PG&E's Electric Tariff Rule 23 B.22 must be modified to ensure that they are accurate. Specifically, the Energy Division's proposed changes to Subsection B.22¹ could be interpreted to limit customers to exercising their statutory right to opt out prior to Automatic Enrollment only during the 60-day Initial Notification Period, when in fact a customer continues to have the right under Public Utilities Code Section 366.2(c)(13)(A) to opt out any time after the Initial Notification Period begins (per Second Draft Resolution E-4250) and before the customer's actual Automatic Enrollment in the CCA program. In other words, the initial statutory 60-day notice period relates to the time period in which the CCA must provide at least two notices to customers prior to Automatic Enrollment; it does not limit the customer to opting out only during that 60-day period.

This is a small but important detail, since Automatic Enrollment does not occur immediately upon the conclusion of the Initial Notification Period (as the Draft Resolution appears to suggest) but instead occurs between 30 and 45 days after the end of the Initial Notification Period.² The Energy

¹ The Energy Division proposes to require the utilities to replace the words "at any time prior to the" with the bolded words "during a 60 day period prior to the" in the following sentence: "A customer may exercise its opt-out right **during a 60 day period prior to the** Automatic Enrollment of a customer's account in CCA Service and during an additional 60 day period subsequent to the Automatic Enrollment of a customer's account in CCA Service...."

² Rule 23.J provides: "PG&E shall provide a Mass Enrollment process whereby all eligible CCA customers that have

Division's proposal could be read to prohibit customers from exercising their right to opt out during this additional 30-45 day period, contrary to statutory intent.

For this reason, PG&E proposes the following alternative language in Subsection B.22:

A customer may exercise its opt-out right **during the Initial Notification Period, after the Initial Notification Period but prior to Automatic Enrollment, or** during an additional 60 day period subsequent to the Automatic Enrollment of a customer's account in CCA Service.

II. The Energy Division's Proposal to Restrict PG&E's Sales of Excess Electricity Exceeds the Commission's Jurisdiction and Is Unnecessary.

Ordering Paragraph 6 would prohibit electric utilities from "refus[ing] to make economic sales of excess electricity to a CCA, or refus[ing] in advance to deal with any CCA in selling electricity." This general prohibition appears to stem from the Energy Division's misunderstanding of a letter that PG&E sent to the Marin Energy Authority (MEA) in response to MEA's invitation to PG&E to respond to MEA's request for bidders willing to provide *full requirements electricity* to supply MEA's load under its CCA program. The Energy Division appears to have interpreted PG&E's decision as conflicting with the Commission's long-term procurement criteria under which utilities' procurement plans require each utility to dispatch its resources on a least-cost basis.³

In fact, PG&E's decision was fully consistent with its approved procurement plan and least-cost dispatching criteria, as MEA was *not* inviting PG&E to bid to sell *excess power*, but, rather, was inviting PG&E to bid to supply MEA on a *full requirements, 5-year basis*. Under these circumstances, bidding to supply wholesale power to a wholesale customer such as MEA on a full requirements basis under long-term contracts would not involve "excess" power; it would require PG&E to carefully evaluate whether such a multi-year, firm commitment would adversely affect PG&E's obligation to its existing retail customers, because its priority obligation is to serve the full requirements of those retail customers on a forecast basis.

In any event, if the intent of Ordering Paragraph 6 is to reaffirm PG&E's obligation to dispatch its electricity portfolio on a least-cost basis consistent with its CPUC-approved procurement plan, including dispatching excess power in wholesale markets consistent with maximizing benefits to bundled retail customers, PG&E agrees. However, Ordering Paragraph 6 as written is overbroad and

not opted out of CCA Service shall be automatically enrolled in CCA Service on the customers' regular scheduled meter read dates over a one (1) billing month period, subject to phasing."

Rule 23.J.3 provides: "The mass enrollment shall commence at a time not less than thirty (30) days and not more than forty-five (45) days after the conclusion of the Initial Notification Period, unless another date is mutually agreed to by the CCA and PG&E...." (Emphasis added.)

³ Second Draft Resolution E-4250, p. 14.

implies that utilities are under a general CPUC mandate to make economic sales of excess electricity to CCAs at any time. Such a general mandate to make wholesale sales of electricity or to deal with particular wholesale customers is within the exclusive jurisdiction of the Federal Energy Regulatory Commission under the Federal Power Act.

Therefore, PG&E recommends that Ordering Paragraph 6 be revised to read as follows:

Electric utilities are obligated to dispatch their excess electricity resources on a least-cost basis in compliance with their Commission-approved electricity procurement plans, including dispatching any excess electricity for the benefit of retail bundled customers to wholesale customers, including CCAs.

III. The Energy Division's Proposal to Impose Restrictions on a Utility's Use of Its Shareholder Funds Is Unnecessary and Unlawful.

Ordering Paragraph 5 would generally prohibit electric utilities from offering anything of value to a local government or electricity customers in exchange for the local government or customer not participating in a CCA program. The prohibition would apply not only to ratepayer funds, but also to utility shareholder funds.

PG&E agrees that the Commission has generally prohibited utilities from using ratepayer funds to compete with CCAs, and previously endorsed the Commission's reaffirmation of that prohibition in the context of PG&E's use of Customer Energy Efficiency (CEE) funds.⁴ Thus, Ordering Paragraph 5 appears duplicative of the Commission's already-existing restriction on use of ratepayer funds in the CEE area, and thus unnecessary.

Expanding the prohibition to cover utilities' use of their shareholder funds for non-utility-related activities that are not within the Commission's jurisdiction is likewise unnecessary and is beyond the Commission's authority. PG&E agrees with the public policy that retail electricity providers, including both public utilities and CCAs, should engage in fair and open competition in full compliance with all applicable laws. However, competitive activities that may be outside the jurisdiction of the Public Utilities Code, whether involving government funding used by CCAs or shareholder funding used by utilities, are governed by unfair competition, antitrust and other laws, not by the Public Utilities Code. Thus, it is unnecessary and beyond the Commission's authority to oversee the utilities' use of their shareholder funds for competitive activities, because existing federal and state anti-competitive statutes and rules already govern these activities.

⁴ See PG&E "Reply Comments on Draft Resolution E-4250," September 3, 2009, p. 5, referencing the fact that this issue already has been raised and addressed in the CPUC's 2009-2011 Energy Efficiency Programs proceeding, A.08-07-031. (See D. 09-09-047, Ordering Paragraph 39 at p. 272, finding no clear evidence in the record but requiring utilities not to use energy efficiency funds in any way that would discourage or interfere with a local government's efforts to consider or to become a Community Choice Aggregator.)

Therefore, PG&E requests that Ordering Paragraph 5 be revised to delete the prohibition on uses of shareholder funds. PG&E supports the continued prohibition on use of ratepayer funds for these purposes, absent express Commission approval of such expenditures.⁵

IV. PG&E Continues to Object to Any Implication in Ordering Paragraph 2 That Its Prior Early Opt Out Option Violated Existing CCA Tariffs.

As noted in the Energy Division's comments in the Second Draft Resolution,⁶ PG&E objected to language included in the First Draft Resolution which would have ordered PG&E to send a letter to customers who currently have opted out of CCA service, stating in part that "PG&E solicited your CCA opt out request in error."

PG&E appreciates that the Energy Division has removed this "in error" language from the Second Draft Resolution at Ordering Paragraph 2.D. However, Ordering Paragraph 2 continues to state in its introduction that: "PG&E...shall take the following actions to correct the misunderstanding that PG&E's early CCA opt-out option has created..." (Emphasis added.) A possible implication of the words "to correct" is that PG&E offered the early opt out option improperly and now must take steps "to correct" that situation.

Consistent with its prior comments on this issue, and with the Energy Division's response to those comments, PG&E respectfully requests that this language be modified to state simply that:

PG&E... shall take the following actions **to address any misunderstanding that customers may have about their ability to opt out of CCA prior to the Initial Notification Period.**

V. PG&E Does Not Object to Ordering Paragraph 2.B, As Modified Below.

The language that the Energy Division proposes in Ordering Paragraph 2.B to be included on PG&E's ratepayer-funded CCA website should be modified as outlined below to help ensure that a customer is able to make an informed decision regarding whether or not to opt out of CCA service:

...The terms and conditions provided to you during a CCA's formal notification period will inform you of any potential fees charged to – or service limitations placed on – your account by the CCA offering generation service to you, **including any potential limitations on your**

⁵ This is consistent with Ordering Paragraph 3, which would establish a notification and review process for the utilities' ratepayer-funded CCA websites regarding information contained on those websites relating to CCA programs, as well as with the draft resolution's rejection of requests by other parties that the utilities be generally prohibited from marketing at all, even with shareholder funds. See Second Draft Resolution, pp. 9-10.

⁶ Second Draft Resolution E-4250, p. 11.

ability to return to utility bundled service or fees a CCA may charge you to return to utility bundled service.⁷

Without this additional explanatory language, a customer may well interpret the proposed language “fees charged to... your account” and “service limitations placed on...your account” to mean something more ordinary or inconsequential than potentially significant “exit fees” and potentially lengthy time restrictions on the ability to return to utility bundled service.⁸ With the requested modifications, PG&E does not object to Ordering Paragraph 2.B.⁹

VI. PG&E Has Previously Agreed to and Implemented Ordering Paragraph 4.

Prior to the issuance of the First Draft Resolution, after consultations with the Energy Division, PG&E ceased providing the opportunity to its customers to opt out of a CCA program before the program’s Initial Notification Period.

VII. Conclusion.

PG&E appreciates the opportunity to submit these opening comments on the Energy Division’s Second Draft Resolution E-4250.

Respectfully Submitted,

CHRISTOPHER J. WARNER

Redacted

/s/

Redacted

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

⁷ PG&E proposes the same modification to the identical language proposed by the Energy Division at Ordering Paragraph 2.D.

⁸ See Comments of Pacific Gas and Electric Company on [First] Draft Resolution E-4250, August 27, 2009, pp. 4-5, for a discussion of a CCA customer’s potential “termination fee” and time commitment under the San Joaquin Valley Power Authority’s February 2009 Implementation Plan.

⁹ PG&E likewise does not object to Ordering Paragraph 3, which would establish a notification and review process for the utilities’ ratepayer-funded CCA websites.

CERTIFICATE OF SERVICE BY U.S. MAIL OR ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, California 94105.

On **January 11, 2010**, I caused to be served true copies of:

**COMMENTS OF PACIFIC GAS AND ELECTRIC ON
SECOND DRAFT RESOLUTION E-4250**

by electronic mail, or (for those parties without valid electronic mail addresses) by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to:

Honesto Gatchalian, Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
(original and two copies via hand delivery)

Carlos Velasquez, Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Amy C. Yip-Kikugawa, ALJ
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Frank Lindh, General Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Email: FRL@cpuc.ca.gov

All parties on the official service lists for **R.03-10-003** and **A.07-12-032** (See attached service lists.)

All CPUC Commissioners (See attached list.)

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **January 11, 2010**.

/s/
Redacted

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: December 31, 2009

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Total number of addressees: 173

CASE ADMINISTRATION
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST
SAN FRANCISCO CA 94105
Email: RegRelCpucCases@pge.com
Status: INFORMATION

REGULATORY FILE ROOM
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, B30A
SAN FRANCISCO CA 94105
Email: cpuccases@pge.com
Status: INFORMATION

ROGER GOLDSTEIN
PACIFIC GAS AND ELECTRIC COMPANY
ONE MARKET, SPEAR TOWER, STE 2400
SAN FRANCISCO CA 94105-1126
Email: rfg2@pge.com
Status: INFORMATION

KIMBERLY C. JONES
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MC B9A, RM 904
SAN FRANCISCO CA 94105
Email: Kcj5@pge.com
Status: INFORMATION

CHRISTOPHER J. WARNER
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST
SAN FRANCISCO CA 94105
FOR: PACIFIC GAS AND ELECTRIC COMPANY
Email: cjw5@pge.com
Status: PARTY

Truman L. Burns
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRANCH
505 VAN NESS AVE RM 4102
SAN FRANCISCO CA 94102-3214
Email: txb@cpuc.ca.gov
Status: STATE-SERVICE

Christopher Danforth
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4209
SAN FRANCISCO CA 94102-3214
Email: ctd@cpuc.ca.gov
Status: STATE-SERVICE

BRIAN K. CHERRY
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MAIL CODE B10C
PO BOX 770000
SAN FRANCISCO CA 94177
Email: bkc7@pge.com
Status: INFORMATION

CLIFFORD J. GLEICHER, ESQ. ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120
FOR: PACIFIC GAS AND ELECTRIC COMPANY
Email: CJGf@PGE.com
Status: INFORMATION

PAUL V. HOLTON
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO CA 94177-0001
FOR: PACIFIC GAS AND ELECTRIC COMPANY
Email: pvh1@pge.com
Status: INFORMATION

JONATHAN D. PENDLETON ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, B30A
SAN FRANCISCO CA 94105
FOR: Pacific Gas and Electric Company
Email: j1pc@pge.com
Status: PARTY

Amy C. Baker
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: ab1@cpuc.ca.gov
Status: STATE-SERVICE

Cheryl Cox
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4209
SAN FRANCISCO CA 94102-3214
Email: cxc@cpuc.ca.gov
Status: STATE-SERVICE

Paul Douglas
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: psd@cpuc.ca.gov
Status: STATE-SERVICE

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 173

Julie A. Fitch
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE RM 4004
SAN FRANCISCO CA 94102-3214
Email: jf2@cpuc.ca.gov
Status: STATE-SERVICE

Jean A. Lamming
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: jl2@cpuc.ca.gov
Status: STATE-SERVICE

Steve Roscow
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: scr@cpuc.ca.gov
Status: STATE-SERVICE

Joel Tolbert
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRANCH
505 VAN NESS AVE RM 4102
SAN FRANCISCO CA 94102-3214
Email: jjt@cpuc.ca.gov
Status: STATE-SERVICE

Amy C. Yip-Kikugawa
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
505 VAN NESS AVE RM 2106
SAN FRANCISCO CA 94102-3214
Email: ayk@cpuc.ca.gov
Status: STATE-SERVICE

DANIEL W. DOUGLASS ATTORNEY
DOUGLASS & LIDDELL
21700 OXNARD ST, STE 1030
WOODLAND HILLS CA 91367
FOR: Alliance for Retail Energy Markets
Email: douglass@energyattorney.com
Status: PARTY

GLORIA BRITTON GENERAL MANAGER
ANZA ELECTRIC CO-OPERATIVE, INC (909)
EMAIL ONLY
EMAIL ONLY CA 00000-0000
FOR: ANZA ELECTRIC COOPERATIVE, INC
Email: GloriaB@anzaelectric.org
Status: PARTY

Louis M. Irwin
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4209
SAN FRANCISCO CA 94102-3214
Email: lmi@cpuc.ca.gov
Status: STATE-SERVICE

Diana L. Lee
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVE RM 4107
SAN FRANCISCO CA 94102-3214
Email: dil@cpuc.ca.gov
Status: STATE-SERVICE

Anne E. Simon
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 5107
SAN FRANCISCO CA 94102-3214
Email: aes@cpuc.ca.gov
Status: STATE-SERVICE

Carlos A. Velasquez
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: los@cpuc.ca.gov
Status: STATE-SERVICE

Jonathan J. Reiger
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVE RM 5035
SAN FRANCISCO CA 94102-3214
FOR: ORA
Email: jzr@cpuc.ca.gov
Status: PARTY

GREGORY S.G. KLATT ATTORNEY
DOUGLASS & LIDDELL
411 E. HUNTINGTON DRIVE, STE 107-356
ARCADIA CA 91007
FOR: ALLIANCE FOR RETAIL ENERGY MARKETS /
WESTERN POWER TRADG FORUM
Email: klatt@energyattorney.com
Status: INFORMATION

GERALD LAHR
ASSOCIATION OF BAY AREA GOVERNMENTS
101 8TH ST, PO BOX 2050
OAKLAND CA 94607
FOR: Association of Bay Area Governments
Email: jerry@abag.ca.gov
Status: PARTY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: December 31, 2009

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Total number of addressees: 173

MATTHEW V. BRADY
BRADY & ASSOCIATES
2339 GOLD MEADOW WAY, STE 230
GOLD RIVER CA 95670
Email: matt@bradylawus.com
Status: INFORMATION

JUSTIN C. WYNNE ATTORNEY
BRAUN BLAISING MCLAUGHLIN, P.C.
915 L ST, STE 1270
SACRAMENTO CA 95814
Email: wynne@braunlegal.com
Status: INFORMATION

REED V. SCHMIDT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVE
BERKELEY CA 94703-2714
FOR: California City-County Street Light Association (CAL-SLA)
Email: rschmidt@bartlewells.com
Status: PARTY

COLIN M. LONG
A PROFESSIONAL CORPORATION
201 SOUTH LAKE AVE, STE 400
PASADENA CA 91101
FOR: California Clear Energy Resources Authority (Cal-CLERA)
Email: cmlong@earthlink.net
Status: PARTY

CRAIG MCDONALD
NAVIGANT CONSULTING
3100 ZINFANDEL DR., STE 600
RANCHO CORDOVA CA 95670-6078
FOR: California Department of Water Resources
Email: cmcdonald@navigantconsulting.com
Status: STATE-SERVICE

HASSAN MOHAMMED
CALIFORNIA ENERGY COMMISSION
1516 9TH ST, MS43
SACRAMENTO CA 95814
Email: hmohamme@energy.state.ca.us
Status: STATE-SERVICE

CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST., STE 303
SAN FRANCISCO CA 94117
FOR: CALIFORNIA ENERGY MARKETS
Email: cem@newsdata.com
Status: INFORMATION

BRUCE MCLAUGHLIN
BRAUN & BLAISING, P.C.
915 L ST, STE 1270
SACRAMENTO CA 95814
Email: mclaughlin@braunlegal.com
Status: INFORMATION

JIM BURKE
BURKE TECH SERVICES
PO BOX 15055
SAN FRANCISCO CA 94115-0055
FOR: BURKE TECH SERVICES
Email: jim@prudens.com
Status: INFORMATION

DAN ADLER DIRECTOR, TECH AND POLICY DEVELOPMENT
CALIFORNIA CLEAN ENERGY FUND
5 THIRD ST, STE 1125
SAN FRANCISCO CA 94103
FOR: CALIFORNIA CLEAN ENERGY FUND
Email: Dan.adler@calcef.org
Status: INFORMATION

JACQUELINE GEORGE CALIF. ENERGY RESOURCES SCHEDULING
CALIF. DEPT OF WATER RESOURCES
3310 EL CAMINO AVE, RM. 120
SACRAMENTO CA 95821
FOR: CALIFORNIA DEPARTMENT OF WATER RESOURCES
Email: jgeorge@water.ca.gov
Status: STATE-SERVICE

JOHN PACHECO
1416 9TH ST
SACRAMENTO CA 95814
FOR: CALIFORNIA DEPARTMENT OF WATER RESOURCES
Email: jpacheco@water.ca.gov
Status: STATE-SERVICE

LISA DECARLO STAFF COUNSEL
CALIFORNIA ENERGY COMMISSION
1516 9TH ST MS-14
SACRAMENTO CA 95814
FOR: CALIFORNIA ENERGY COMMISSION
Email: ldecarlo@energy.state.ca.us
Status: STATE-SERVICE

KEVIN SMITH
BRAUN & BLAISING, P.C.
915 L ST STE. 1270
SACRAMENTO CA 95814-3765
FOR: California Municipal Utilities Association
Email: smith@braunlegal.com
Status: PARTY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: December 31, 2009

CPUC DOCKET NO. R0310003-A0712032

Total number of addressees: 173

KAREN LINDH
CALIFORNIA ONSITE GENERATION
7909 WALERGA ROAD, NO. 112, PMB 119
ANTELOPE CA 95843
Email: karen@klindh.com
Status: INFORMATION

SUE KATELEY EXECUTIVE DIRECTOR
CALIFORNIA SOLAR ENERGY INDUSTRIES ASSN
PO BOX 782
RIO VISTA CA 94571
FOR: CALIFORNIA SOLAR ENERGY INDUSTRIES ASSN
Email: info@calseia.org
Status: INFORMATION

MATTHEW GORMAN
ALVAREZ-GLASMAN & COLVIN
100 N. BARRANCA AVE., STE 1050
WEST COVINA CA 91791
FOR: Cities in Southern California
Email: mgorman@agclawfirm.com
Status: PARTY

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO CA 95460
FOR: City & County of San Francisco
Email: brbarkovich@earthlink.net
Status: PARTY

DENNIS J. HERRERA CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO
CITY HALL, RM 234
SAN FRANCISCO CA 94102
FOR: CITY AND COUNTY OF SAN FRANCISCO
Status: INFORMATION

THOMAS J. LONG ATTORNEY
OFFICE OF THE CITY ATTORNEY
CITY HALL, RM 234
SAN FRANCISCO CA 94102
FOR: City and County of San Francisco
Email: thomas.long@sfgov.org
Status: PARTY

THERESA MUELLER DEPUTY CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO
CITY HALL, RM 234
SAN FRANCISCO CA 94102
Email: theresa.mueller@sfgov.org
Status: INFORMATION

NEAL DE SNOO ENERGY OFFICER
CITY OF BERKELEY
2180 MILVIA ST
BERKELEY CA 94704
FOR: CITY OF BERKELEY
Email: ndesnoo@ci.berkeley.ca.us
Status: PARTY

DAVID L. HUARD
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER, STE 2900
SAN FRANCISCO CA 94111-3736
FOR: City of Chula Vista
Email: dhuard@manatt.com
Status: PARTY

MICHAEL T. MEACHAM
CITY OF CHULA VISTA
276 FOURTH AVE
CHULA VISTA CA 91910
FOR: City of Chula Vista
Email: mmeacham@ci.chula-vista.ca.us
Status: PARTY

PETER DRAGOVICH ASSISTANT TO THE CITY
MANAGER
CITY OF CONCORD
1950 PARKSIDE DRIVE, MS 01/A
CONCORD CA 94519
FOR: CITY OF CONCORD
Status: INFORMATION

RANDALL W. KEEN ATTORNEY
MANATT PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES CA 90064
FOR: City of Corona
Email: rkeen@manatt.com
Status: PARTY

SUSIE BERLIN ATTORNEY
MC CARTHY & BERLIN, LLP
100 W SAN FERNANDO ST., STE 501
SAN JOSE CA 95113
FOR: City of Moreno Valley
Email: sberlin@mccarthyllaw.com
Status: PARTY

CAROL MISSELDINE MAYOR'S OFFICE
CITY OF OAKLAND
1 FRANK OGAWA PLAZA, 3/F
OAKLAND CA 94612
FOR: CITY OF OAKLAND
Status: INFORMATION

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 173

SCOTT WENTWORTH, P.E. ENERGY ENGINEER
CITY OF OAKLAND
7101 EDGEWATER DRIVE
OAKLAND CA 94621
FOR: CITY OF OAKLAND
Email: swentworth@oaklandnet.com
Status: PARTY

MATTHEW GORMAN CITY ATTORNEY'S OFFICE
CITY OF POMONA
500 S. GAREY AVE. BOX 660
POMONA CA 91769
FOR: City of Pomona
Email: matt_gorman@ci.pomona.ca.us
Status: PARTY

DAVID R. HAMMER COUTY COUNSEL
COUNTY OF TRINITY
PO BOX 1428
WEAVERVILLE CA 96093-1428
FOR: CITY OF TRINITY
Status: PARTY

CITY6 ADMINISTRATOR
CITY OF VERNON
4305 SANTA FE AVE
VERNON CA 90058
Status: INFORMATION

MARSHALL D. CLARK MANAGER
COGENERATION CONTRACT SERVICES
PO BOX 989052, MS-408; ORIM RM 1-435
WEST SACRAMENTO CA 95798-9052
Email: Marshall.Clark@dgs.ca.gov
Status: STATE-SERVICE

PETER W. HANSCHEN ATTORNEY
MORRISON & FOERSTER, LLP
101 YGNACIO VALLEY ROAD, STE 450
WALNUT CREEK CA 94596
FOR: Constellation Newenergy, Inc.
Email: phansch@mofo.com
Status: PARTY

ROGER BERLINER PRESIDENT
BERLINER LAW PLLC
700 12TH ST NW, STE 700
WASHINGTON DC 20006
FOR: County of Los Angeles
Email: roger@berlinerlawpllc.com
Status: PARTY

MICHAEL ROUSH CITY ATTORNEY
CITY OF PLEASANTON
123 MAIN ST
PLEASANTON CA 94566
FOR: CITY OF PLEASANTON
Email: mroush@ci.pleasanton.ca.us
Status: INFORMATION

SUSAN MUNVES ENERGY AND GREEN BLDG. PROG.
ADMIN.
CITY OF SANTA MONICA
1212 5TH ST, FIRST FLR
SANTA MONICA CA 90401
FOR: City of Santa Monica
Email: susan.munves@smgov.net
Status: PARTY

CITY ADMINISTRATOR
CITY OF VERNON
4305 SANTA FE AVE
VERNON CA 90058
Status: INFORMATION

GLORIA D. SMITH
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., STE 1000
SOUTH SAN FRANCISCO CA 94080
FOR: COALITION OF CALIFORNIA UTILITY
EMPLOYEES
Email: gsmith@adamsbroadwell.com
Status: INFORMATION

TAM HUNT
HUNT CONSULTING
124 W. ALAMAR AVE., NO. 3
SANTA BARBARA CA 93105
FOR: COMMUNITY ENVIRONMENTAL COUNCIL
Email: tam.hunt@gmail.com
Status: PARTY

CHRIS L. KIRIAKOU
CORNERSTONE CONSULTING, INC.
1565 E. TUOLUMNE RD.
TURLOCK CA 95382
Email: chris_k@cornerstoneconsulting.biz
Status: INFORMATION

DANA ARMANINO COMMUNITY DEVELOPMENT
AGENCY
COUNTY OF MARIN
3501 CIVIC CENTER DRIVE, RM 308
SAN RAFAEL CA 94903
FOR: COUNTY OF MARIN CDA
Email: darmanino@co.marin.ca.us
Status: INFORMATION

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Total number of addressees: 173

JANINE L. SCANCARELLI ATTORNEY
CROWELL & MORING LLP
275 BATTERY ST, 23RD FLR
SAN FRANCISCO CA 94111
Email: jscancarelli@crowell.com
Status: INFORMATION

HENRY NANJO ASSISTANT CHIEF COUNSEL, LEGAL SERVICES
DEPARTMENT OF GENERAL SERVICES
707 3RD ST, STE 7-330
WEST SACRAMENTO CA 95605
Email: Henry.Nanjo@dgs.ca.gov
Status: INFORMATION

DONALD C. LIDDELL P. C.
DOUGLASS & LIDDELL
2928 2ND AVE
SAN DIEGO CA 92103
Email: liddell@energyattorney.com
Status: INFORMATION

MARGARET L. TOBIAS ATTORNEY
TOBIAS LAW OFFICE
460 PENNSYLVANIA AVE
SAN FRANCISCO CA 94107
FOR: DWR
Email: info@tobiaslo.com
Status: STATE-SERVICE

SAJI THOMAS PIERCE
EAST BAY MUNICIPAL UTILITY DISTRICT
375 11TH ST
OAKLAND CA 94607-4240
FOR: EAST BAY MUNICIPAL UTILITY DISTRICT
Email: spierce@ebmud.com
Status: INFORMATION

ANNE FALCON
EES CONSULTING, INC.
570 KIRKLAND AVE
KIRKLAND WA 98033
FOR: EES CONSULTING, INC.
Email: rfp@eesconsulting.com
Status: INFORMATION

MICHAEL C. BURKE PRESIDENT
ENERGY CHOICE, INC.
8714 LINDANTE DRIVE
WHITTIER CA 90603
Email: Mburke50@msn.com
Status: INFORMATION

ANDREW B. BROWN ATTORNEY
ELLISON SCHNEIDER & HARRIS, LLP (1359)
2600 CAPITOL AVE, STE 400
SACRAMENTO CA 95816-5905
FOR: DEPARTMENT OF GENERAL SERVICES
Email: abb@eslawfirm.com
Status: PARTY

IRYNA KWASNY
DEPT. OF WATER RESOURCES-CERS DIVISION
3310 EL CAMINO AVE., STE.120
SACRAMENTO CA 95821
FOR: DEPT. OF WATER RESOURCES-CERS DIVISION
Email: iryna.kwasny@doj.ca.gov
Status: STATE-SERVICE

DAN L. CARROLL ATTORNEY
DOWNEY BRAND, LLP
621 CAPITOL MALL, 18TH FLR
SACRAMENTO CA 95814
Email: dcarroll@downeybrand.com
Status: INFORMATION

RAMONA GONZALEZ
EAST BAY MUNICIPAL UTILITY DISTRICT
375 ELEVENTH ST, M/S NO. 205
OAKLAND CA 94607
FOR: EAST BAY MUNICIPAL UTILITY DISTRICT
Email: ramonag@ebmud.com
Status: INFORMATION

LYNN HAUG ATTORNEY
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVE, STE 400
SACRAMENTO CA 95816-5905
FOR: East Bay Municipal Utility District (EBMUD)
Email: lmh@eslawfirm.com
Status: PARTY

MARC THEOBALD
EMCOR ENERGY SERVICES, INC.
505 SANSOME ST., 16/F
SAN FRANCISCO CA 94111
FOR: EMCOR ENERGY SERVICES, INC.
Email: marc_theobald@emcorgroup.com
Status: INFORMATION

MIKE BURKE
ENERGY CHOICE, INC.
8714 LINDANTE DRIVE
WHITTIER CA 90603
FOR: ENERGY CHOICE, INC.
Email: mburke50@msn.com
Status: PARTY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 173

MELANIE MCCUTCHAN RESEARCH ASSOCIATE
ENVIRONMENTAL HEALTH COALITION
401 MILE OF CARS WAY, STE 310
NATIONAL CITY CA 91950
FOR: ENVIRONMENTAL HEALTH COALITION
Email: melaniem@environmentalhealth.org
Status: INFORMATION

NORMAN J. FURUTA ATTORNEY
FEDERAL EXECUTIVE AGENCIES
1455 MARKET ST., STE 1744
SAN FRANCISCO CA 94103-1399
FOR: FEDERAL EXECUTIVE AGENCIES
Email: norman.furuta@navy.mil
Status: INFORMATION

MEG MEAL
120 JERSEY ST
SAN FRANCISCO CA 94114
Email: megmeal@aol.com
Status: INFORMATION

MICHAEL NELSON
1119 GLEN CT
WALNUT CREEK CA 94595-2318
Status: INFORMATION

JUNE M. SKILLMAN CONSULTANT
2010 GREENLEAF ST
SANTA ANA CA 92706
Email: jskillman@prodigy.net
Status: INFORMATION

STEVEN MOSS
SAN FRANCISCO COMMUNITY POWER
2325 THIRD ST, STE 344
SAN FRANCISCO CA 94107
FOR: Golden State Cooperative/SF Co-op
Email: steven@sfpower.org
Status: PARTY

CURTIS KEBLER
GOLDMAN, SACHS & CO.
2121 AVE OF THE STARS
LOS ANGELES CA 90067
FOR: GOLDMAN, SACHS & CO.
Email: curtis.kebler@gs.com
Status: INFORMATION

REBECCA PEARL POLICY ADVOCATE, CLEAN BAY
CAMPAIGN
ENVIRONMENTAL HEALTH COALITION
401 MILE OF CARS WAY, STE. 310
NATIONAL CITY CA 91950
FOR: ENVIRONMENTAL HEALTH COALITION
Email: rebeccap@environmentalhealth.org
Status: INFORMATION

ED CHANG
FLYNN RESOURCE CONSULTANTS INC.
5440 EDGEVIEW DRIVE
DISCOVERY BAY CA 94514
Email: edchang@flynnrci.com
Status: INFORMATION

IRENE K. MOOSEN ATTORNEY
53 SANTA YNEZ AVE
SAN FRANCISCO CA 94112
Email: irene@igc.org
Status: INFORMATION

DAVID ROOM
5807 FREMONT ST
OAKLAND CA 94608
Email: daveroom@gmail.com
Status: INFORMATION

MICHAEL KYES
7423 SHAUN CT.
SEBASTOPOL CA 95472
Email: michaelkyes@sbcglobal.net
Status: PARTY

RONALD MOORE -133
GOLDEN STATE WATER/BEAR VALLEY ELECTRIC
630 EAST FOOTHILL BLVD
SAN DIMAS CA 91773
FOR: GOLDEN STATE WATER/BEAR VALLEY
ELECTRIC
Email: rkmoore@gswater.com
Status: PARTY

SCOTT BLAISING ATTORNEY
BRAUN & BLAISING MCLAUGHLIN, P.C.
915 L ST, STE 1270
SACRAMENTO CA 95814
FOR: Inland Valley Dev/City of Victorville
Email: blaising@braunlegal.com
Status: PARTY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 173

KURT J. KAMMERER
K.J. KAMMERER & ASSOCIATES
PO BOX 60738
SAN DIEGO CA 92166-8738
Email: kjk@kjkammerer.com
Status: INFORMATION

DAVID ORTH GENERAL MANAGER
SAN JOAQUIN VALLEY POWER AUTHORITY
4886 EAST JENSEN AVE
FRESNO CA 93725
FOR: KINGS RIVER CONSERVATION DISTRICT, San
Joaquin Valley Power Authority
Email: dorth@krcd.org
Status: PARTY

JODY S. LONDON
JODY LONDON CONSULTING
PO BOX 3629
OAKLAND CA 94609
FOR: Local Government Sustainable Energy Coalition dba
Local Government Coalition
Email: jody_london_consulting@earthlink.net
Status: PARTY

PAUL FENN
LOCAL POWER
35 GROVE ST
SAN FRANCISCO CA 94102
FOR: Local Power
Email: paulfenn@local.org
Status: PARTY

RICHARD MCCANN
M.CUBED
2655 PORTAGE BAY ROAD, STE 3
DAVIS CA 95616
Email: rmccann@umich.edu
Status: INFORMATION

HOWARD V. GOLUB
NIXON PEABODY LLP
ONE EMBARCADERO CENTER, STE. 1800
SAN FRANCISCO CA 94111
FOR: Marin Energy Authority
Email: hgolub@nixonpeabody.com
Status: PARTY

MICHAEL R. WOODS ATTORNEY
MICHAEL R. WOODS P.C.
18880 CARRIGER ROAD
SONOMA CA 95476
Email: Mwoods@mrwlawcorp.com
Status: INFORMATION

EDWARD J. TIEDEMANN ATTORNEY
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
400 CAPITOL MALL, 27TH FLR
SACRAMENTO CA 95814-4416
FOR: Kings River Conservation District
Email: etiedemann@kmtg.com
Status: PARTY

DIANE I. FELLMAN
NEXTERA ENERGY RESOURCES, LLC.
234 VAN NESS AVE
SAN FRANCISCO CA 94102
FOR: LAW OFFICES OF DIANE FELLMAN
Email: Diane.Fellman@nexteraenergy.com
Status: INFORMATION

G. PATRICK STONER
LOCAL GOVERNMENT COMMISSION
1303 J ST, STE 250
SACRAMENTO CA 95816
FOR: LOCAL GOVERNMENT COMMISSION
Email: pstoner@lgc.org
Status: PARTY

JOHN W. LESLIE, ESQ. ATTORNEY
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
600 WEST BROADWAY, STE. 2600
SAN DIEGO CA 92101
Email: jleslie@luce.com
Status: INFORMATION

DAWN WEISZ PRINCIPAL PLANNER
MARIN COUNTY COMMUNITY DEVELOPMENT
3501 CIVIC CENTER DRIVE, RM 308
SAN RAFAEL CA 94903-4157
Email: dweisz@co.marin.ca.us
Status: INFORMATION

BARRY F. MCCARTHY ATTORNEY
MCCARTHY & BERLIN, LLP
100 W. SAN FERNANDO ST., STE 501
SAN JOSE CA 95113
Email: bmcc@mccarthylaw.com
Status: INFORMATION

THOMAS S KIMBALL
MODESTO IRRIGATION DISTRICT
1231 11TH ST
MODESTO CA 95352-4060
FOR: MODESTO IRRIGATION DISTRICT
Email: tomk@mid.org
Status: INFORMATION

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Total number of addressees: 173

WAYNE AMER PRESIDENT
MOUNTAIN UTILITIES (906)
PO BOX 205
KIRKWOOD CA 95646
FOR: MOUNTAIN UTILITIES
Email: wamer@kirkwood.com
Status: PARTY

AUDREY CHANG DIRECTOR-CALIFORNIA CLIMATE PROGRAM
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 94104
FOR: NATURAL RESOURCES DEFENSE COUNCIL
Email: achang@nrdc.org
Status: INFORMATION

NOAH LONG
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 94104
Email: nlong@nrdc.org
Status: INFORMATION

KRYSTY EMERY
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, STE 600
RANCHO CORDOVA CA 95670-6078
Email: kemery@navigantconsulting.com
Status: INFORMATION

ERIN RANSLOW
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, STE 600
RANCHO CORDOVA CA 95670-6078
Email: cpucrulings@navigantconsulting.com
Status: INFORMATION

CYNTHIA WOOTEN
NAVIGANT CONSULTING, INC.
1126 DELAWARE ST
BERKELEY CA 94702
Email: cwootencohen@earthlink.net
Status: PARTY

CLYDE MURLEY
CONSULTANT TO NRDC
1031 ORDWAY ST
ALBANY CA 94706
FOR: NRDC
Email: clyde.murley@comcast.net
Status: PARTY

MRW & ASSOCIATES, INC.
1814 FRANKLIN ST, STE 720
OAKLAND CA 94612
Email: mrw@mrwassoc.com
Status: INFORMATION

SHERYL CARTER
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 94104
FOR: NATURAL RESOURCES DEFENSE COUNCIL
Email: scarter@nrdc.org
Status: PARTY

KIRBY DUSEL
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, STE 600
RANCHO CORDOVA CA 95670
Email: kdusel@navigantconsulting.com
Status: INFORMATION

STEVE HASTIE
NAVIGANT CONSULTING, INC.
1717 ARCH ST
PHILADELPHIA PA 19103
Email: shastie@navigantconsulting.com
Status: INFORMATION

JOHN DALESSI
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, STE 600
RANCHO CORDOVA CA 95670-6078
Email: jdalessi@navigantconsulting.com
Status: PARTY

JAMES MCMAHON
CRA INTERNATIONAL
50 CHURCH ST.
CAMBRIDGE MA 2138
FOR: NAVIGANT CONSULTING
Email: jmcmahon@crai.com
Status: INFORMATION

STEPHEN A.S. MORRISON
CITY ATTORNEY'S OFFICE
CITY HALL, ROOM 234
1 DR. CARLTON B. GOODLETT PLACE
SAN FRANCISCO CA 94102
FOR: OFFICE OF CITY ATTY. DENNIS J HUERRERA
Status: PARTY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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THERESA L. MUELLER
OFFICE OF THE CITY ATTORNEY
CITY HALL ROOM 234
1 DR. CARLTON B. GOODLETT PLACE
SAN FRANCISCO CA 94102
Status: INFORMATION

JIM DOOLITTLE
ORADO MANAGEMENT GROUP
1116 ELM AVE
PLACERVILLE CA 95667-4712
Status: INFORMATION

MICHELLE MISHOE
PACIFICORP
825 NE MULTNOMAH ST, STE 1800
PORTLAND OR 97232
FOR: PacifiCorp
Email: michelle.mishoe@pacificorp.com
Status: PARTY

JAMES M. TOBIN
TOBIN LAW GROUP
1628 TIBURON BLVD
TIBURON CA 94920
FOR: Pac-West Telecomm, Inc.
Email: jim@tobinlaw.us
Status: PARTY

STEVEN A GREENBERG
REALENERGY
4100 ORCHARD CANYON LANE
VACAVILLE CA 95688
FOR: REALENERGY
Email: steveng@destrategies.com
Status: INFORMATION

STEVEN R. ORR
RICHARDS, WATSON & GERSHON
355 SOUTH GRAND AVE, 40TH FLR
LOS ANGELES CA 90071-3101
Email: sorr@rwglaw.com
Status: INFORMATION

CENTRAL FILES
SAN DIEGO GAS & ELECTRIC CO.
8330 CENTURY PARK COURT, CP31-E
SAN DIEGO CA 92123
FOR: SAN DIEGO GAS & ELECTRIC
Email: CentralFiles@semprautilities.com
Status: INFORMATION

CHERYL PONDS
OFFICE OF THE CITY ATTORNEY
276 FOURTH AVE
CHULA VISTA CA 91910
Email: cponds@ci.chula-vista.ca.us
Status: INFORMATION

DON WOOD
PACIFIC ENERGY POLICY CENTER
4539 LEE AVE
LA MESA CA 91941
FOR: PACIFIC ENERGY POLICY CENTER
Email: dwood8@cox.net
Status: INFORMATION

MARK TUCKER
PACIFICORP
825 NE MULTNOMAH, STE 2000
PORTLAND OR 97232
Email: californiadockets@pacificorp.com
Status: INFORMATION

JESSICA NELSON ENERGY SERVICES MANAGER
PLUMAS-SIERRA RURAL ELECTRIC CO-OP
73233 STATE ROUTE 70, STE A
PORTOLA CA 96122-7064
FOR: PLUMAS-SIERRA RURAL ELECTRIC CO-OP
Email: jnelson@psrec.coop
Status: PARTY

MARVIN FELDMAN ECONOMIST
RESOURCE DECISIONS
934 DIAMOND ST
SAN FRANCISCO CA 94114
FOR: RESOURCE DECISIONS
Email: mfeldman@resourcedecisions.net
Status: INFORMATION

RITA NORTON
RITA NORTON AND ASSOCIATES, LLC
18700 BLYTHSWOOD DRIVE,
LOS GATOS CA 95030
Email: rita@ritanortonconsulting.com
Status: INFORMATION

GINA M. DIXON
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, MS CP32D
SAN DIEGO CA 92123
FOR: SAN DIEGO GAS & ELECTRIC COMPANY
Email: gdixon@semprautilities.com
Status: INFORMATION

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KIM F. HASSAN ATTORNEY
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH ST, HQ-12
SAN DIEGO CA 92101
FOR: San Diego Gas & Electric Company
Email: khassan@sempra.com
Status: PARTY

PAUL SZYMANSKI ATTORNEY
SEMPRA ENERGY
101 ASH ST
SAN DIEGO CA 92101
FOR: San Diego Gas & Electric Company
Email: pszymanski@sempra.com
Status: INFORMATION

WENDY KEILANI REGULATORY CASE MANAGER
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP32B
SAN DIEGO CA 92123
Email: wkeilani@semprautilities.com
Status: INFORMATION

KARI KLOBERDANZ REGULATORY CASE MANAGER
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32D
SAN DIEGO CA 92123
Email: KKloberdanz@semprautilities.com
Status: INFORMATION

MICHAEL CAMPBELL
SAN FRANCISCO PUBLIC UTILITIES COMMISSION
1155 MARKET ST 4TH FLR
SAN FRANCISCO CA 94102
Email: mcampbell@sfgwater.org
Status: INFORMATION

SANDRA ROVETTI REGULATORY AFFAIRS MANAGER
SAN FRANCISCO PUC
1155 MARKET ST, 4TH FLR
SAN FRANCISCO CA 94103
Email: srovetti@sfgwater.org
Status: INFORMATION

JIM HENDRY
SAN FRANCISCO PUBLIC UTILITIES COMM.
1155 MARKET ST, 4TH FLR
SAN FRANCISCO CA 94103
FOR: SAN FRANCISCO PUBLIC UTILITIES COMM.
Email: jhendry@sfgwater.org
Status: PARTY

SCOTT BLAISING
BRAUN & BLAISING, P.C.
915 L ST, STE 1270
SACRAMENTO CA 95814
FOR: San Joaquin Valley Power Authority
Email: blaising@braunlegal.com
Status: PARTY

MICHAEL ROCHMAN MANAGING DIRECTOR
SCHOOL PROJECT UTILITY RATE REDUCTION
1430 WILLOW PASS ROAD, STE 240
CONCORD CA 94520
FOR: SCHOOL PROJECT FOR UTILITY RATE REDUCTION
Email: service@spurr.org
Status: INFORMATION

RICHARD ESTEVES
SESCO, INC.
77 YACHT CLUB DRIVE, STE 1000
LAKE HOPATCONG NJ 07849-1313
FOR: SESCO, INC.
Email: sesco@optonline.net
Status: PARTY

FRASER D. SMITH CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO PUBLIC UTILITIES COMM
1155 MARKET ST, 4TH FLR
SAN FRANCISCO CA 94103
FOR: SFPUC
Email: fsmith@sfgwater.org
Status: PARTY

ELENA MELLO
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO NV 89520
FOR: SIERRA PACIFIC POWER COMPANY
Email: emello@sppc.com
Status: PARTY

DAVID SAUL
PACIFIC SOLAR & POWER CORPORATION
2850 W. HORIZON RIDGE PKWY, STE 200
HENDERSON NV 89052
FOR: SOLEL, INC.
Email: dsaul@pacificsolar.net
Status: INFORMATION

GINA M. DIXON
SOUTHERN CALIFORNIA EDISON
MAIL STOP: GO-1C 162P
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
Email: gina.dixon@sce.com
Status: INFORMATION

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KARYN GANSECKI
SOUTHERN CALIFORNIA EDISON COMPANY
601 VAN NESS AVE, STE 2040
SAN FRANCISCO CA 94102-6310
Status: INFORMATION

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE, RM 370
ROSEMEAD CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY
Email: case.admin@sce.com
Status: INFORMATION

AKBAR JAZAYERI
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY
Email: AdviceTariffManager@sce.com
Status: INFORMATION

JANET S. COMBS
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: Southern California Edison Company
Email: janet.combs@sce.com
Status: PARTY

JIM STONE
CITY OF MANTECA DEPARTMENT OF PUBLIC WOR
1001 WEST CENTER ST
MANTECA CA 95337
FOR: The City of Manteca
Email: jstone@ci.manteca.ca.us
Status: PARTY

DAN GEIS
THE DOLPHIN GROUP
925 L ST, STE 800
SACRAMENTO CA 95814
Email: dgeis@dolphingroup.org
Status: INFORMATION

NINA SUETAKE ATTORNEY
THE UTILITY REFORM NETWORK
115 SANSOME ST, STE 900
SAN FRANCISCO CA 94104
Email: nsuetake@turn.org
Status: INFORMATION

AKBAR JAZAYEIRI
SOUTHERN CALIFORNIA EDISON COMPANY (338)
2241 WALNUT GROVE AVENUE
PO BOX 800
ROSEMEAD CA 91770
Email: akbar.jazayeri@sce.com
Status: INFORMATION

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE., RM 370
ROSEMEAD CA 91770
FOR: Southern California Edison Company
Email: case.admin@sce.com
Status: INFORMATION

JANET COMBS
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: Southern California Edison Company
Email: Janet.Combs@sce.com
Status: PARTY

JENNIFER TSAO SHIGEKAWA ATTORNEY
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: Southern California Edison Company
Email: Jennifer.Shigekawa@sce.com
Status: PARTY

TIM ROSENFELD
MARIN ENERGY MANAGEMENT TEAM
131 CAMINO ALTO, STE D
MILL VALLEY CA 94941
FOR: The County of Marin
Email: tim@marinemt.org
Status: PARTY

MICHEL PETER FLORIO ATTORNEY
THE UTILITY REFORM NETWORK
115 SANSOME ST, STE 900
SAN FRANCISCO CA 94104
Email: mflorio@turn.org
Status: INFORMATION

MICHAEL DIETRICK MARIN CLIMATE SHIFT-LEAP
CAMPAIGN
THE WATERPLANET ALLIANCE
573 SEAVER DRIVE
MILL VALLEY CA 94941
Email: zena12@earthlink.net
Status: INFORMATION

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MIKE FLORIO ATTORNEY
THE UTILITY REFORM NETWORK
115 SANSOME ST, STE 900
SAN FRANCISCO CA 94104
FOR: TURN
Email: mflorio@turn.org
Status: PARTY

JASON DE LA TOVA
WINDWARD ENERGY COMPANY
14609 FLINSTONE DRIVE
LAKE HUGHES CA 93532
FOR: WINDWARD ENERGY COMPANY
Email: jdelatova@windwardenergy.com
Status: INFORMATION

KEVIN WOODRUFF
WOODRUFF EXPERT SERVICES, INC.
1100 K ST, STE 204
SACRAMENTO CA 95814
Email: kdw@woodruff-expert-services.com
Status: INFORMATION

MICHAEL SHAMES
UTILITY CONSUMERS ACTION NETWORK
3100 FIFTH AVE, STE B
SAN DIEGO CA 92103
FOR: UTILITY CONSUMERS' ACTION NETWORK
Email: mshames@ucan.org
Status: INFORMATION

BARBARA GEORGE
WOMEN'S ENERGY MATTERS
PO BOX 548
FAIRFAX CA 94978-0548
FOR: WOMEN'S ENERGY MATTERS
Email: wem@igc.org
Status: INFORMATION

**THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
EMAIL SERVICE LIST**

CPUC DOCKET NO. R0310003 A0712032

ab1@cpuc.ca.gov;abb@eslawfirm.com;achang@nrdc.org;AdviceTariffManager@sce.com;aes@cpuc.ca.gov;akbar.jazayeri@sce.com;ayk@cpuc.ca.gov;bkc7@pge.com;blaising@braunlegal.com;bmcc@mccarthyllaw.com;brbarkovich@earthlink.net;californiadockets@pacificcorp.com;case.admin@sce.com;cem@newsdata.com;CentralFiles@semprautilities.com;chris_k@cornerstoneconsulting.biz;CJGf@PGE.com;cjw5@pge.com;clyde.murley@comcast.net;cmcdonald@navigantconsulting.com;cmlong@earthlink.net;cponds@ci.chulavista.ca.us;cpuccases@pge.com;cpucrulings@navigantconsulting.com;ctd@cpuc.ca.gov;curtis.k.ebler@gs.com;cwootencohen@earthlink.net;cxc@cpuc.ca.gov;Dan.adler@calcef.org;darmanino@co.marin.ca.us;daveroom@gmail.com;dcarrroll@downeybrand.com;dgeis@dolphingroup.org;dhuard@manatt.com;Diane.Fellman@nexteraenergy.com;dil@cpuc.ca.gov;dorth@krcc.org;douglas.s@energyattorney.com;dsaul@pacificsolar.net;dweisz@co.marin.ca.us;dwood8@cox.net;edchang@flynnrci.com;emello@sppc.com;etiedemann@kmtg.com;fsmith@sfwater.org;gdixon@semprautilities.com;gina.dixon@sce.com;GloriaB@anzaelectric.org;gsmith@adamsbroadwell.com;Henry.Nanjo@dgs.ca.gov;hgolub@nixonpeabody.com;hmohamme@energy.state.ca.us;info@calseia.org;info@tobiaslo.com;irene@igc.org;iryana.kwasny@doj.ca.gov;j1pc@pge.com;Janet.Combs@sce.com;janet.combs@sce.com;jdalessi@navigantconsulting.com;jdelatova@windwardenergy.com;Jennifer.Shigekawa@sce.com;jerry@abag.ca.gov;jf2@cpuc.ca.gov;jgeorge@water.ca.gov;jhendry@sfwater.org;jim@prudens.com;jim@tobinlaw.us;jjt@cpuc.ca.gov;jl2@cpuc.ca.gov;jleslie@luce.com;jmcmahon@crai.com;jnelson@psrec.coop;jody_london_consulting@earthlink.net;jpacheco@water.ca.gov;jscancarelli@crowell.com;jskillman@prodigy.net;jstone@ci.manteca.ca.us;jzr@cpuc.ca.gov;karen@klindh.com;Kcj5@pge.com;kdusel@navigantconsulting.com;kdw@woodruff-expert-services.com;kemery@navigantconsulting.com;khassan@sempra.com;kjk@kjkammerer.com;KKIoberdanz@semprautilities.com;klatt@energyattorney.com;ldecarlo@energy.state.ca.us;liddell@energyattorney.com;lmh@eslawfirm.com;lmi@cpuc.ca.gov;los@cpuc.ca.gov;marc_theobald@emcorgroup.com;Marshall.Clark@dgs.ca.gov;matt@bradylawus.com;matt_gorman@ci.pomona.ca.us;Mburke50@msn.com;mburke50@msn.com;mcampbell@sfwater.org;mclaughlin@braunlegal.com;megmeal@aol.com;melaniem@environmentalhealth.org;mfeldman@resourcedecisions.net;mflorio@turn.org;mflorio@turn.org;mgorman@agclawfirm.com;michaelkyles@sbcglobal.net;michelle.mishoe@pacificcorp.com;mmeacham@ci.chulavista.ca.us;mroush@ci.pleasanton.ca.us;mrw@mrwassoc.com;mshames@ucan.org;Mwoods@mrwlawcorp.com;ndesnoo@ci.berkeley.ca.us;nlong@nrdc.org;norman.furuta@navy.mil;nsuetake@turn.org;paulfenn@local.org;phanschen@mofo.com;psd@cpuc.ca.gov;pstoner@igc.org;pszyman@sempra.com;pvh1@pge.com;ramonag@ebmud.com;rebeccap@environmentalhealth.org;RegRelCpucCases@pge.com;rfg2@pge.com;rfp@eesconsulting.com;rita@ritanortonconsulting.com;rkeen@manatt.com;rkmooore@gswater.com;rmccann@umich.edu;roger@berlinerlawpllc.com;rschmidt@bartlewells.com;sberlin@mccarthyllaw.com;scarter@nrdc.org;scr@cpuc.ca.gov;service@spurr.org;sesco@optonline.net;shastie@navigantconsulting.com;smith@braunlegal.com;sorr@rwglaw.com;spierce@ebmud.com;srovetti@sfwater.org;steven@sfpower.org;steveng@destrategies.com;susan.munves@smgov.net;swentworth@oaklandnet.com;tam.hunt@gmail.com;theresa.mueller@sfgov.org;thomas.long@sfgov.org;tim@marinemt.org;tomk@mid.org;txb@cpuc.ca.gov;wamer@kirkwood.com;wem@igc.org;wkeilani@semprautilities.com;wynne@braunlegal.com;zena12@earthlink.net;