

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company
(U338E) for Approval of its 2009-2011 Energy
Efficiency Program Plans and Associated Public
Goods Charge (PGC) and Procurement Funding
Requests

Application 08-07-021
(Filed July 21, 2008)

And Related Matters.

Application 08-07-022
Application 08-07-023
Application 08-07-031
(Filed July 21, 2008)

**MOTION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 M)
FOR LEAVE TO FILE CORRECTION TO COMMENTS ON
PROPOSED DECISION OF ALJ GAMSON**

ANN H. KIM
MICHAEL R. KLOTZ
Law Department
Pacific Gas and Electric Company
P.O. Box 7442 (B30A)
San Francisco, CA 94110
Telephone: (415) 973-7565
Facsimile: (415) 973-0516
E-Mail: m1ke@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

March 23, 2011

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Pursuant to California Public Utilities Commission (CPUC or Commission) Rule of Practice and Procedure 11.1 and 1.12, Pacific Gas and Electric Company (PG&E) hereby requests leave to file the attached corrections to its Comments, filed on March 14, 2011, on the Proposed *Decision Addressing Petition for Modification Of Decision 09-09-047*, issued by Administrative Law Judge (ALJ) David M. Gamson on February 21, 2011.

Specifically, on page 5 of PG&E's Comments, PG&E referred to the confidentiality requirements of Public Utilities Code Section 394.4(a). In fact, that statutory section is not applicable to PG&E. Instead, the correct reference should be to Public Utilities Code Section 8380. PG&E has made the appropriate corrections in the attached redline of its Comments.

While PG&E's erroneous citation does not affect the substantive arguments made in its Comments, PG&E believes the correction is not merely typographical in nature and that the erroneous citation could create confusion if included in the final decision in this matter.

PG&E appreciates the Commission's consideration of this requested correction.

Respectfully submitted,

ANN H. KIM
MICHAEL R. KLOTZ

By: _____ /s/
MICHAEL R. KLOTZ

Law Department
Pacific Gas and Electric Company
P.O. Box 7442 (B30A)
San Francisco, CA 94110
Telephone: (415) 973-7565
Facsimile: (415) 973-0516
E-Mail: Mlke@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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CERTIFICATE OF SERVICE BY 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 77 Beale Street, San Francisco, California 94105.

On March 23, 2011, I served a true copy of:

**MOTION OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39 M) FOR
LEAVE TO FILE CORRECTION TO COMMENTS ON
PROPOSED DECISION OF ALJ GAMSON–A. 08-07-021, ET AL.**

- [XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for A. 08-07-021, A. 08-07-022, A. 08-07-023 and A. 08-07-031 with an e-mail address.
- [XX] By U.S. Mail – by placing the enclosed 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 those parties listed on the official service lists for A. 08-07-021, A. 08-07-022, A. 08-07-023 and A. 08-07-031 without an e-mail address.

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 this 23rd day of March, 2011, at San Francisco, California.

/s/
PAMELA J. DAWSON-SMITH

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(AS CORRECTED ON MARCH 23, 2011)

ANN H. KIM
MICHAEL R. KLOTZ
Law Department
Pacific Gas and Electric Company
P.O. Box 7442 (B30A)
San Francisco, CA 94110
Telephone: (415) 973-7565
Facsimile: (415) 973-0516
E-Mail: m1ke@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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(U 39 M) ON PROPOSED DECISION OF ALJ GAMSON**

Pursuant to California Public Utilities Commission (CPUC or Commission) Rule of Practice and Procedure 14.3, Pacific Gas and Electric Company (PG&E) hereby submits opening comments on the proposed *Decision Addressing Petition for Modification Of Decision 09-09-047*, issued by Administrative Law Judge (ALJ) David M. Gamson on February 21, 2011 (Proposed Decision or PD).

I. EXECUTIVE SUMMARY

In these Comments, PG&E addresses the benchmarking provisions in the PD. Specifically, the PD declines to modify previous direction to the Investor-Owned Utilities (IOUs) in Decision (D.) 09-09-047 that the IOUs must benchmark all commercial buildings, that numerical benchmarking targets shall remain in place, and that the IOUs should utilize multiple benchmarking tools. In concluding that benchmarking requirements in D.09-09-047 are adequate, the PD is factually or legally inaccurate for the following reasons:

- **Exclusive Use of the ENERGY STAR Portfolio Manager (ESPM) Tool** - In rejecting the Joint IOUs’^{1/} request that they be permitted to use the ESPM tool exclusively in order to align with the efforts of AB 1103, the PD concludes that the ESPM tool is not capable of benchmarking all buildings. This is incorrect. The PD also incorrectly concludes that other tools such as Building Energy Asset Rating System (BEARS) and the California rating system are currently available and can substitute for ESPM.
- **Numerical Targets** - The PD fails to acknowledge the practical effect of the IOUs’ inability to require all customers to participate in benchmarking. Nor does a proxy effectively address the following issues:
 1. **Benchmarking is Customer-Driven** -Benchmarking is a customer-driven process and customers can decline to participate. The PD’s conclusion that the IOUs can simply develop a proxy benchmarking system to bypass voluntary customer participation is erroneous as it assumes that the IOUs have access to all necessary information absent customer involvement, which is incorrect.
 2. **Customer Confidentiality** - The PD dismisses issues regarding compliance with statutory and Commission-imposed customer confidentiality requirements and states that those requirements are limited to the ESPM tool. That characterization of the scope of customer confidentiality requirements is legally incorrect. The PD also fails to acknowledge that customer confidentiality obligations would apply to the public release of data from a proxy as well. It is appropriate to resolve these issues in the context of AB 1103, where the CEC is currently examining them—not through ad hoc development of a proxy system that fails to address the core issue and which would detract from efforts to create a uniform benchmarking standard.

For these reasons, the Commission should correct the PD in accordance with Appendix A of these comments and should grant the relief sought in the PTM^{2/} including (1) authorizing the IOUs to exclusively use the ESPM tool for benchmarking; and (2) removing the requirement to benchmark “all” commercial buildings and other numerical benchmarking targets or otherwise reducing them to align with the Energy Efficiency Strategic Plan.

^{1/} The “Joint IOUs” refers to *Southern California Edison Company, Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company.*

^{2/} *Southern California Edison Company (U 338-E), Pacific Gas and Electric Company (U 39-M), Southern California Gas Company (U 904-G) and San Diego Gas & Electric Company’s (U 902-M) Petition For Modification Of Decision 09-09-047, filed September 17, 2010 (PTM).*

B. The PD’s Rationale for Rejecting the IOUs’ Proposed Modification for Exclusive Use of the ESPM Benchmarking Tool is Factually Incorrect.

In declining the Joint IOUs’ request that the Commission authorize exclusive use the ESPM tool in order to align with the efforts of AB 1103, the PD references the Joint IOUs’ purported assertion that, if they were to use the tool exclusively, they could not benchmark all buildings.^{3/} This is factually incorrect. The Joint IOUs did not state that the ESPM tool contained some deficiency such that it could not be used to benchmark all buildings. The Joint IOUs merely pointed out that the process of benchmarking, in general, is driven by the customer, not by the IOU.^{4/} In other words, IOUs cannot require customers to benchmark their buildings.

The PD continues on to conclude that, “ESPM is a benchmarking tool which is widely available, but it is not a universally-applicable tool.”^{5/} This is also incorrect. ESPM is a universally-applicable benchmarking tool. Although not every building can receive a 1-100 percentile score, ESPM provides meaningful benchmarking metrics for all buildings, including weather-normalized source energy use intensity and greenhouse gas emissions data.^{6/}

Finally, the PD concludes that other tools such as BEARS and the California rating system are currently available and can substitute for ESPM.^{7/} This is also factually incorrect. Both the California rating tool and BEARS are in development by the CEC. Neither is currently complete or available. Further, the California rating system is meant to be used to supplement the ESPM, not in lieu of it.

^{3/} PD, p. 7.

^{4/} See Transcript of October 22, 2010 Prehearing Conference, pp. 335-336 (clarifying that the reasons why 100% benchmarking may not be able to be attained are not due to a deficiency in the ESPM tool, but rather, to the fact that benchmarking is a customer-driven process).

^{5/} PD, FoF 2.

^{6/} New construction buildings would be benchmarked when 12 months of operating data is available.

^{7/} PD, FoF 3.

The goal of benchmarking all buildings is consistent with the intent and ultimate result of AB 1103, which mandates ESPM as the only benchmarking tool for compliance. Supporting AB 1103 by promoting ESPM as the exclusive benchmarking tool is the best way for IOUs to achieve the goal of benchmarking: a standard or reference by which others can be measured or judged. To benchmark across multiple differing tools, or to create different standards through ad hoc proxies as suggested in the PD, defeats the very purpose of developing a uniform benchmark. For these reasons and because ESPM is currently the most widely used and developed tool, the Commission should authorize exclusive use of the ESPM tool to establish a credible and universally applicable benchmark.

C. The PD’s Conclusion that it is Feasible to Benchmark All Commercial Buildings Within the 2010-2012 Program Cycle is Factually Incorrect.

The PD states that “it is feasible to benchmark all commercial buildings in the 2010-2012 timeframe either through working with customers or by using customer data to develop benchmarking proxies.”^{8/} This is incorrect. In reaching this conclusion, the PD dismisses two legitimate issues raised by the Joint IOUs in their PFM: (1) recognition that the benchmarking process is customer-driven (i.e., IOUs cannot force customers to benchmark); and (2) customer confidentiality obligations pose obstacles to benchmarking some buildings.

1. The Benchmarking Process is Driven by the Customer.

Benchmarking is a customer-driven process, and customers can decline to participate. Therefore, if the Commission orders the IOUs to benchmark “all” commercial buildings that participate in EE programs, the Commission is essentially ordering the IOUs to do something that is beyond their control. The Commission has recognized this reality.^{9/} The Commission

^{8/} PD, FoF 4.

^{9/} PD, pp. 9-10 (“We do understand the concern of the IOUs that some customers, such as buildings with multiple tenants, may not consent to benchmark and release their energy usage data. By setting targets for benchmarking buildings in D.09-09-047, we have implicitly recognized that release of customer information cannot be forced upon customers.”).

also declined to require such customer participation as a prerequisite to energy efficiency program eligibility.^{10/}

That said, the PD dismisses the practical effect of the issue by concluding that the IOUs can simply develop a proxy to substitute for customers' voluntary participation. Inherent in the PD's proposal is the assumption that the IOUs have access to necessary data absent active customer participation. This is not always the case. Customers often hold necessary data that the IOUs do not have access to, such as square footage data and identification of distinct building characteristics.

2. Customer Confidentiality Obligations Interfere with the Mandate to Benchmark All Buildings.

State law and CPUC decisions mandate that ~~c~~^ecustomer information shall be confidential unless the customer consents in writing. This shall encompass confidentiality of customer ~~specific billing, credit, or usage information~~ including financial information, name, account number, or residence of the customer.^{11/} ~~Thus the confidentiality directive protects~~ customer information and ~~only~~ permits disclosure of generic or aggregated information regarding usage.^{12/}

The PD relies on two erroneous factual assertions and incorrectly dismisses the practical effect of these customer confidentiality requirements. First, the PD proposes that the IOUs develop a proxy to benchmark buildings in which customers decline to participate. However, the

^{10/} *Id.* at p. 9 (“DRA suggested that as a condition for getting incentives, the customer would be required to release information for benchmarking purposes. We do not agree with DRA’s suggestion; while the need for the utility to benchmark is important, customers’ willingness to release customer information should not preclude customer participation in all energy efficiency programs.”).

^{11/} Public Utilities Code § ~~394.4(a)~~; 8380; *see also* Pacific Gas and Electric Company Electric Rule 9.M; Pacific Gas and Electric Company Gas Rule 9.M.

^{12/} *See Id.*

PD fails to address the fact that the proxy data would also be subject to customer confidentiality protections and in most cases could not be released publicly absent customer consent.^{13/} Second, the PD erroneously claims that customer confidentiality protections apply only to use of the ESPM tool. This is also incorrect. Meaningful benchmarking requires analysis of customers' confidential data regardless of the tool used in the process. Therefore, regardless of whether a proxy is used (when customers decline to participate) and regardless of what tool is used to derive the benchmarking score, disclosure of such data is subject to confidentiality protections and presents the same issues with respect to tenant data privacy as raised in the PTM.

3. The PD Should Not Order the IOUs to Benchmark All Buildings.

PG&E supports the PD's intent that all commercial buildings should be benchmarked. However, mandating benchmarking of "all buildings" by the end of 2012, or otherwise setting a 50,000-building target for the end of 2012, fails to acknowledge the customer-driven nature of the process and the legitimate confidentiality issues discussed in the PTM and in these comments. In addition, the numeric targets set in D.09-09-047 are distinctly misaligned from the California Long Term Energy Efficiency Strategic Plan, which calls for a campaign to have 500 million square feet of commercial space pledged to be benchmarked by 2015.^{14/} That equates to the four IOUs combined benchmarking roughly 10,000 large buildings across the state by 2015.

^{13/} *See Id.*; *see also* PD at p. 10 (The Commission suggests that the IOUs should rely on customer-specific information such as energy usage data, building type, address, and square footage information to create such a proxy.).

^{14/} CA Long Term Energy Efficiency Strategic Plan January 2011 Update, p. 36, stating that the goals for 2009-2011 are as follows:

- Ensure all state-owned and leased buildings are benchmarked and retro-commissioned by 2012
- Conduct campaign to have 100 local governments commit to the same target
- Conduct campaign to have 500 million sq. ft of commercial space where owners/tenants pledge to reach the same target by 2015.

In declining to modify D.09-09-047 to include the proposed modification—that the IOUs are “encouraged” to meet benchmarking targets, or that such targets are “aspirational”—the PD relies on its stated conclusion that such language “implies a level of difficulty in meeting Commission goals which has not been proven.”^{15/} This conclusion is incorrect. In the PTM, the Joint IOUs clearly demonstrated that, while substantial benchmarking activity can be supported and achieved, there are very real issues that need to be addressed that currently prevent compliance with a mandate to benchmark all commercial buildings. Nor does the PD effectively resolve these issues. Therefore, the IOUs should not be ordered to do something by the Commission that is unattainable.

II. CONCLUSION

For the aforementioned reasons, the Commission should correct the Proposed Decision as set forth in Appendix A hereto and should grant the relief sought in the Petition for Modification, including: (1) authorizing the Joint IOUs to exclusively use the ESPM tool in benchmarking commercial buildings; (2) removing the requirement to benchmark “all” commercial buildings and other numerical benchmarking targets or otherwise reducing those targets to align with the California Long Term Energy Efficiency Strategic Plan.

^{15/} PD at p. 10.

Respectfully submitted,

ANN H. KIM
MICHAEL R. KLOTZ

By: _____ /s/
MICHAEL R. KLOTZ

Law Department
Pacific Gas and Electric Company
P.O. Box 7442 (B30A)
San Francisco, CA 94110
Telephone: (415) 973-7565
Facsimile: (415) 973-0516
E-Mail: Mlke@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

March 14, 2011

APPENDIX A

#	Citation	Current Decision Language	Proposed Modification
1	OP #24g – D. 09-09-047	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall benchmark buildings in all Savings By Design projects in the program cycle 2010-2012. Utilities should use data collected from the calendar year 2010 to report new and existing benchmarking data to the Energy Division and the service list by July 1, 2011;	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall <u>actively promote benchmarking to buildings in all Savings By Design customers projects</u> in the program cycle 2010-2012, <u>as described in Attachment 4.</u> ^{16/} Utilities should use data collected from the calendar year 2010 to report new and existing benchmarking data to the Energy Division and the service list by July 1, 2011;
2	OP#30a – D. 09-09-047 as modified by OP#1 of PD.	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall benchmark all facilities that enter any of the Commercial Energy Efficiency Program sub-programs for services. Benchmarking may be phased in so that established benchmarking tools are used to target larger facilities first, consistent with California Energy Commission guidelines for phasing in benchmarking of buildings to apply to all existing commercial programs. The budget for Southern California Edison Company for benchmarking is set at \$4.8 million.	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall <u>actively promote benchmarking for all facilities that enter any of the Commercial Energy Efficiency Program sub-programs for services, as described in Attachment 4.</u> Benchmarking may be phased in so that established benchmarking tools are used to target larger facilities first, consistent with California Energy Commission guidelines for phasing in benchmarking of buildings to apply to all existing commercial programs. The budget for Southern California Edison Company for benchmarking is set at \$4.8 million.
3	OP#30c – D. 09-09-047	All utility-run local commercial energy efficiency programs shall adopt the benchmarking recommendation,	The IOUs shall <u>actively promote benchmarking through all utility-run local commercial energy efficiency programs, shall adopt the</u>

^{16/} In *Southern California Edison Company (U 338-E)*, *Pacific Gas And Electric Company (U 39-M)*, *Southern California Gas Company (U 904-G)* And *San Diego Gas And Electric Company's (U 902-M) Petition For Modification Of Decision 09-09-047*, filed September 17, 2010 (PTM) the Joint IOUs requested that D.09-09-047 be modified to include "Exhibit B" of the PTM (Benchmarking Compliance Proposal) as "Attachment 4" to D.09-09-047. All references to "Attachment 4" in this Appendix refer to said Benchmarking Compliance Proposal.

		consistent with the commercial statewide program.	benchmarking recommendation, consistent with the commercial statewide program.
4	OP#39a – D. 09-09-047	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall benchmark all government buildings and facilities impacted by a utility program in a substantial way;	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall <u>actively promote benchmarking to all</u> government buildings and facilities impacted by a utility program in a substantial way;
5	p.152 – D. 09-09-047	We require the IOUs to benchmark all facilities that enter any of the CEEP subprograms for services, similar to the directive in the local government partnerships section of this decision. In particular, the nonresidential audit subprogram shall incorporate benchmarking, which is a complementary action for a building that is already in the process of accounting for its energy usage and remaining efficiency opportunities.	We require the IOUs to <u>actively promote benchmarking to all</u> facilities that enter any of the CEEP subprograms for services, <u>as described in Attachment 4,</u> similar to the directive in the local government partnerships section of this decision. In particular, the nonresidential audit subprogram shall incorporate benchmarking <u>for large commercial customers,</u> which is a complementary action for a building that is already in the process of accounting for its energy usage and remaining efficiency opportunities.
6	p.153 – D. 09-09-047	We applaud PG&E for making progress on benchmarking and encourage both PG&E and SCE to set a benchmark goal of 50,000 commercial and institutional buildings for the next program cycle. SCE is directed to model PG&E’s cost-effective approach on benchmarking and to benchmark 50,000 buildings at a per unit cost that approaches that of PG&E during the 2010-2012 program cycle. SDG&E is directed to benchmark 20,000 commercial buildings in the 2010-2012 program period.	We applaud PG&E for making progress on benchmarking and encourage both PG&E and SCE to set <u>an aspirational “stretch”</u> benchmark goal of 50,000 commercial and institutional buildings for the next program cycle. SCE is directed to model PG&E’s cost-effective approach on benchmarking and to benchmark 50,000 buildings at a per unit cost that approaches that of PG&E during the 2010-2012 program cycle. SDG&E is directed to <u>set an aspirational “stretch”</u> benchmarking goal of 20,000 commercial buildings in the 2010-2012 program period.
7	p. 155, footnote 81 – D. 09-09-047	As with the statewide CEEP program, this implies that any building provided with services via a utility local program should be benchmarked. Services include: audits, retrofits, direct install and retrocommissioning.	As with the statewide CEEP program, this implies that any buildings provided with services via a utility local program should be <u>targeted by the IOUs to actively promote benchmarking</u> .

			Services include: audits, retrofits, direct install and retrocommissioning, as described in Attachment 4.
8	p. 172 – D. 09-09-047	We direct the utilities to benchmark all new SBD programs and to use the updated benchmarking guidelines as developed by the California Energy Commission under their activities to implement AB 1103.	We direct the utilities to <u>actively promote benchmarking to all new SBD programs</u> and to use the updated benchmarking guidelines as developed by the California Energy Commission under their activities to implement AB 1103.
9	p.249 – D. 09-09-047	Utilities shall benchmark all government buildings and facilities impacted by a utility program in a substantial way;	Utilities shall <u>actively promote and support benchmarking to all government buildings and facilities impacted by a utility program in a substantial way;</u>
10	p.252 – D. 09-09-047	We therefore direct the utilities to benchmark all government buildings and facilities impacted by a utility program in a substantial way. We direct the utilities to benchmark a broad range of government facilities.	We therefore direct the utilities to <u>actively promote and support benchmarking to all government buildings and facilities impacted by a utility program in a substantial way.</u> We direct the utilities to benchmark a broad range of government facilities.
11	FOF #48 – D. 09-09-047	The utilities should benchmark their buildings in all Savings By Design projects in this program cycle.	The utilities should <u>actively promote benchmarking their buildings</u> in all Savings By Design projects in this program cycle.
12	COL#54 – D. 09-09-047	The utilities should benchmark all facilities that enter any of the statewide or commercial energy efficiency subprograms for services.	The utilities should <u>actively promote benchmarking for all facilities</u> that enter any of the statewide or commercial energy efficiency subprograms for services, <u>as described in Attachment 4.</u>
13	COL #71 – D. 09-09-047	Utilities should benchmark a broad range of government facilities and, with local governments, should explore using a single, standardized approach to benchmarking that mirrors the efforts of the commercial sector programs.	Utilities should <u>actively promote and support benchmarking of a broad range of government facilities and, with local governments, should explore using a single, standardized approach to benchmarking that mirrors the efforts of the commercial sector programs.</u>
14	2-22-2011 PTM to D. 09-09-047 FOF #2	ESPM is a benchmarking tool which is widely available, but it is not a universally-applicable tool.	ESPM is a benchmarking tool which is widely available, but it is not a <u>universally-applicable tool and was selected to be the compliance tool for AB 1103 as the best available tool to benchmark commercial buildings.</u>
15	2-22-2011 PTM to D. 09-09-047 FOF #3	There are available alternative benchmarking tools, including the California rating tool and the asset rating tool known as BEARS available	There are available alternative benchmarking tools, including the California rating tool and the asset rating tool known as BEARS available

		from the CEC.	from the CEC. <u>There are currently no alternative benchmarking tools of sufficient quality outside of ESPM. The California rating tool is intended to compliment, not replace, use of the ESPM tool. Both the California rating tool and BEARS are in development by the CEC and are currently incomplete.</u>
16	2-22-2011 PTM to D. 09-09-047 FOF #4	It is feasible to benchmark all commercial buildings in the 2010-2012 timeframe either through working with customers or by using customer data to develop benchmarking proxies.	<u>As stated in the California Energy Efficiency Strategic Plan., among the four Investor-Owned Utilities combined, it is feasible to benchmark approximately 500 million square feet of all commercial buildings and all state-owned and leased buildings in the 2010-2012 timeframe by 2015. either through working with customers or by using customer data to develop benchmarking proxies.</u>
17	2-22-2011 PTM to D. 09-09-047 COL #1	To address the non-ubiquity of the ESPM benchmarking tool, the utilities should also pilot the best available alternative tools, including the California rating tool and the asset rating tool known as BEARS available from the CEC	<u>To address the non-ubiquity of the ESPM benchmarking tool, the utilities should also pilot the best available alternative tools, including the California rating tool and the asset rating tool known as BEARS available from the CEC should exclusively use the ESPM tool to benchmark commercial buildings in California.</u>

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

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9watts@gmail.com; ABesa@SempraUtilities.com; achang@efficiencycouncil.org; adam@agp-llc.com; aeacaonline@gmail.com; aeo@cpuc.ca.gov; agarcia@energy.state.ca.us; alex.kang@itron.com; aliddell@icfi.com; ameliag@ensave.com; andrew.mcallister@energycenter.org; andrew.wood3@honeywell.com; andrew_meiman@newcomb.cc; ann.kelly@sfgov.org; Ann.Peterson@itron.com; ann_mccormick@newcomb.cc; annette.beitel@gmail.com; ashish.goel@intergycorp.com; ashley.watkins@energycenter.org; asloan@rs-e.com; atencate@rsgrp.com; atr@cpuc.ca.gov; awatson@quest-world.com; bbarkett@summitblue.com; bernardo@braunlegal.com; bfinkelstein@turn.org; bhines@svlg.net; bill@jbsenergy.com; bkc7@pge.com; bking@quest-world.com; bmatulich@egia.com; bmcdonnell@mwdh2o.com; bmfinkelor@ucdavis.edu; bob.ramirez@itron.com; bobbi.sterrett@swgas.com; bobho@mid.org; brad.bergman@intergycorp.com; brbarkovich@earthlink.net; brian.hedman@cadmusgroup.com; bruce.foster@sce.com; Bruce@BuildItGreen.org; burtt@macnexus.org; cadickerson@cadconsulting.biz; case.admin@sce.com; cassandra.sweet@dowjones.com; CBE@cpuc.ca.gov; CCole@currentgroup.com; cem@newsdata.com; CentralFiles@SempraUtilities.com; CentralFiles@SempraUtilities.com; cf1@cpuc.ca.gov; cheryl.collart@ventura.org; chris@cuwcc.org; clamababbini@comverge.com; Clark.Pierce@us.landisgyr.com; cln@cpuc.ca.gov; cneedham@edisonmission.com; cperkins@energycoalition.org; cpuc@certichron.com; craigtyler@comcast.net; crogers@energy.state.ca.us; crv@cpuc.ca.gov; cscruton@energy.state.ca.us; cu2@cpuc.ca.gov; cwong@peci.org; cxc@cpuc.ca.gov; cyin@yinsight.net; Cynthiakmitchell@gmail.com; dale@betterbuildings.com; darmanino@co.marin.ca.us; david.gordon@efm-solutions.com; David.Pettijohn@ladwp.com; david.reynolds@ncpa.com; david@nemtzow.com; Dbjornskov@peci.org; ddayton@cleanenergysol.com; dgeis@dolphingroup.org; dgilligan@naesco.org; dil@cpuc.ca.gov; dmahone@h-m-g.com; dmano@enasys.com; dmatson@co.santa-barbara.ca.us; dmg@cpuc.ca.gov; don.arambula@sce.com; dwood8@cox.net; edwardoneill@dwt.com; eemblem@3eintinc.net; efm2@pge.com; elee@davisenergy.com; Elizabeth.DeSouza@csggrp.com; elowe@barakatconsulting.com; elvine@lbl.gov; emahlon@ecoact.org; emello@sppc.com; emily.hallet@positiveenergy.com; epetrill@epri.com; eric@ethree.com; etaylor@enasys.com; filings@a-klaw.com; fred.coito@kema.com; gandhi.nikhil@verizon.net; garrick@jbsenergy.com; gclayborn@gmail.com; ghamilton@gepllc.com; glw@eslawfirm.com; grant.cooke@intergycorp.com; gstaples@mendotagroup.net; gthomas@ecoact.org; gtropsa@ice-energy.com; hankryan2003@yahoo.com; hayley@turn.org; hcf@cpuc.ca.gov; hgilpeach@scanamerica.net; hhuerta@rhainc.com; hoerner@redefiningprogress.org; HYao@SempraUtilities.com; irene.stillings@energycenter.org; jack.rosenthal@p2seng.com; jak@gepllc.com; jane@autocell.net; janep@researchintoaction.com; jared@efficiencyfirst.org; jay.bhalla@intergycorp.com; jbazemore@emi1.com; jcastleberry@rs-e.com; jcelona@sbcglobal.net; jchou@nrdr.org; jci@cpuc.ca.gov; jcluboff@lmi.net; jdr@cpuc.ca.gov; jeanne.sole@sfgov.org; Jeff.Hirsch@DOE2.com; JeffreyH@hellermanus.com; jenna.canseco@us.kema.com; Jennifer.Barnes@Navigantconsulting.com; jennifer.fagan@itron.com; jennifer.porter@energycenter.org; Jennifer.Shigekawa@sce.com; jerry@abag.ca.gov; jholmes@emi1.com; jimflanagan4@mac.com; jimross@r-c-s-inc.com; jkz1@pge.com; JL2@cpuc.ca.gov; jnc@cpuc.ca.gov; jody_london_consulting@earthlink.net; john.cavalli@itron.com; john@enactenergy.com; john@proctoreng.com; John_Newcomb@newcomb.cc; joyw@mid.org; jparks@smud.org; js@clearedgepower.com; jskromer@gmail.com; jsqueri@goodinmacbride.com; jst@cpuc.ca.gov; jtiffany@ase.org; judi.schweitzer@post.harvard.edu; jweil@aglet.org; JYamagata@SempraUtilities.com; Karin.Coffee@kema.com; kathleen.gaffney@kema.com; kdusel@navigantconsulting.com; keh@cpuc.ca.gov; keith.mccrea@sutherland.com; kenneth.swain@navigantconsulting.com; kgrenfell@nrdr.org; kjk@kjkammerer.com; klewis@energy.state.ca.us; kmills@cfbf.com; ks3@cpuc.ca.gov; KShore@SempraUtilities.com; KWong@SempraUtilities.com;

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

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larry.cope@sce.com; Laura.Genao@sce.com; lcasentini@rsgroup.com; lettenson@nrdc.org;
lhj2@pge.com; liddell@energyattorney.com; lisa_weinzimer@platts.com; ljimene@smud.org;
lmh@eslawfirm.com; lp1@cpuc.ca.gov; lpark@navigantconsulting.com; LukeH@enalsys.com;
M1ke@pge.com; magnuson.leif@epa.gov; mang@turn.org; marcel@turn.org;
mary.tucker@sanjoseca.gov; matt@sustainablespaces.com; matt_sullivan@newcomb.cc;
mbaker@sbwconsulting.com; mbhunt@ucdavis.edu; mclaughlin@braunlegal.com;
mgb@cpuc.ca.gov; mgillette@enernoc.com; mgo@goodinmacbride.com; mharcos@rs-e.com;
mharrigan@ase.org; michael.cheng@paconsulting.com; michael@opower.com;
michele@boggis.com; mike.rogers@greenhomesamerica.com; mike@calcerts.com;
mistib@comcast.net; mkh@cpuc.ca.gov; mking@staplesmarketing.com; mlewis@ctg-net.com;
mlong@anaheim.net; mmw@cpuc.ca.gov; mokeefe@efficiencycouncil.org;
monica.ghattas@sce.com; mpa@a-klaw.com; mparsons@mw2o.com; mrw@mrwassoc.com;
msherida@energy.state.ca.us; mtierney-lloyd@enernoc.com; mwbeck@lbl.gov;
NancyKRod@conSol.ws; nes@a-klaw.com; nhernandez@isd.co.la.ca.us; nkarno@yahoo.com;
nlong@nrdc.org; norman.furuta@navy.mil; nphall@tecmarket.net; owen_howlett@h-m-g.com;
paul.notti@honeywell.com; pbarthol@energy.state.ca.us; pcanessa@charter.net;
pcf@cpuc.ca.gov; pjacobs@buildingmetrics.biz; pk@utilitycostmanagement.com;
pmschwartz@sbcglobal.net; policy.solutions@comcast.net; ppl@cpuc.ca.gov; pstoner@lgc.org;
puja@opower.com; PVillegas@SempraUtilities.com; pwuebben@aqmd.gov;
rachel.harcharik@itron.com; rafi@pge.com; Rasmussen@evergreenecon.com;
regrelcpuccases@pge.com; rekl@pge.com; RemiT@hellermanus.com; rfox@intergycorp.com;
richard@autocell.net; rita@ritanortonconsulting.com; rknight@bki.com;
rlauman@ecosconsulting.com; rmccann@umich.edu; rmowris@earthlink.net;
rnichols@navigantconsulting.com; rob@clfp.com; Rob@ConSol.ws; robertg@greenlining.org;
rockybacchus@gmail.com; rsapudar@energy.state.ca.us; rscott@cheers.org;
rsperberg@onsitenergy.com; Sami.Khawaja@cadmusgroup.com; samk@greenlining.org;
samsirkin@cs.com; saw0@pge.com; sbarata@opiniondynamics.com;
sbender@energy.state.ca.us; scott.bowman@csgroup.com; scott.tomashefsky@ncpa.com;
sdhilton@stoel.com; SDPatrick@SempraUtilities.com; sean.harrington@opower.com;
seb@cpuc.ca.gov; sephra.ninow@energycenter.org; sesco@optonline.net; sharon@emeter.com;
singh70@gmail.com; skihm@ecw.org; slda@pge.com; sls@a-klaw.com; snr@cpuc.ca.gov;
southlandreports@earthlink.net; srm@cpuc.ca.gov; SRRd@pge.com;
sschiller@efficiencycouncil.org; ssmyers@att.net; staples@staplesmarketing.com;
steve@greenplumbersusa.com; steven@moss.net; sthompson@ci.irvine.ca.us;
susan.munves@smgov.net; swentworth@oaklandnet.com; tam.hunt@gmail.com;
tconlon@geopraxis.com; tcr@cpuc.ca.gov; tcrooks@mcr-group.com; tcx@cpuc.ca.gov;
TFlanigan@EcoMotion.us; tglassey@certichron.com; thamilton@icfi.com; tim@marinemt.org;
tlmurray@earthlink.net; tmfry@nexant.com; tom@ucons.com; tory.weber@sce.com;
TRH@cpuc.ca.gov; twayne@roadrunner.com; TWhite@homeenergy.org; vwood@smud.org;
WBlattner@SempraUtilities.com; wbooth@booth-law.com; wem@lgc.org;
wilkinson@es.ucsb.edu; william.sanders@sfgov.org; wjp4@bpconsulting.org;
wmcguire@fypower.org; wwester@smud.org; wynne@braunlegal.com; yxg4@pge.com;
zap@cpuc.ca.gov; ztc@cpuc.ca.gov;

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Total number of addressees: 327

BILLY BLATTNER
SAN DIEGO GAS & ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 0
FOR: San Diego Gas & Electric and So. California Gas
Company
Email: WBlattner@SempraUtilities.com
Status: INFORMATION

BRIAN K. CHERRY DIRECTOR, REGULATORY
RELATIONS
PACIFIC GAS AND ELECTRIC COMPANY (39)
77N BEALE ST., PO BOX 770000, MC B10C
SAN FRANCISCO CA 94177
Email: bkc7@pge.com
Status: INFORMATION

CASE COORDINATION
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MC B9A
SAN FRANCISCO CA 94177
Email: regrelcpuccases@pge.com
Status: INFORMATION

EILEEN COTRONEO
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MC B9A
SAN FRANCISCO CA 94105
Email: efm2@pge.com
Status: INFORMATION

RAFAEL FRIEDMANN SUPERVISOR CUSTOMER
ENERGY EFFICIENCY
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000
SAN FRANCISCO CA 94177-0001
Email: rafi@pge.com
Status: INFORMATION

JENNY GLUZGOLD
PACIFIC GAS & ELECTRIC CO.
77 BEALE ST, B9A
SAN FRANCISCO CA 94105
Email: yxg4@pge.com
Status: INFORMATION

LISE H. JORDAN, ESQ.
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, B30A. RM 3151
SAN FRANCISCO CA 94105
FOR: PACIFIC GAS AND ELECTRIC COMPANY
Email: lhj2@pge.com
Status: INFORMATION

ROBERT KASMAN
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
Email: rekl@pge.com
Status: INFORMATION

MICHAEL R. KLOTZ
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MS B30A, RM 3105B
SAN FRANCISCO CA 94120
Email: M1ke@pge.com
Status: INFORMATION

SANDY LAWRIE ENERGY PROCEEDINGS
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, MC B9A
SAN FRANCISCO CA 94120
Email: slda@pge.com
Status: INFORMATION

JILL MARVER
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, N7K
SAN FRANCISCO CA 94177
Email: jkz1@pge.com
Status: INFORMATION

SHILPA RAMAIYA
PACIFIC GAS AND ELECTRIC COMPANY
PO B OX 7442
77 BEALE ST, MAIL CODE N3A
SAN FRANCISCO CA 94120
Email: SRRd@pge.com
Status: INFORMATION

SHIRLEY A. WOO ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, MC B30A
SAN FRANCISCO CA 94120-7442
FOR: Pacific Gas and Electric Company
Email: saw0@pge.com
Status: PARTY

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

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CARMEN BEST
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 0
Email: CBE@cpuc.ca.gov
Status: STATE-SERVICE

Theresa Cho
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
505 VAN NESS AVE RM 5207
SAN FRANCISCO CA 94102-3214
Email: tcx@cpuc.ca.gov
Status: STATE-SERVICE

Joyce de Rossett
CALIF PUBLIC UTILITIES COMMISSION
UTILITY AUDIT, FINANCE & COMPLIANCE BRANCH
505 VAN NESS AVE AREA 3-C
SAN FRANCISCO CA 94102-3214
Email: jdr@cpuc.ca.gov
Status: STATE-SERVICE

Cathleen A. Fogel
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: cf1@cpuc.ca.gov
Status: STATE-SERVICE

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

Monisha Gangopadhyay
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4104
SAN FRANCISCO CA 94102-3214
Email: mgb@cpuc.ca.gov
Status: STATE-SERVICE

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

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

Jeanne Clinton
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE RM 4008
SAN FRANCISCO CA 94102-3214
Email: cln@cpuc.ca.gov
Status: STATE-SERVICE

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

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

David M. Gamson
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 5019
SAN FRANCISCO CA 94102-3214
Email: dmG@cpuc.ca.gov
Status: STATE-SERVICE

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

TED HOWARD
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 0
Email: TRH@cpuc.ca.gov
Status: STATE-SERVICE

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Judith Ikle
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE RM 4012
SAN FRANCISCO CA 94102-3214
Email: jci@cpuc.ca.gov
Status: STATE-SERVICE

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

Sazedur Rahman
CALIF PUBLIC UTILITIES COMMISSION
COMMUNICATIONS POLICY BRANCH
505 VAN NESS AVE RM 4209
SAN FRANCISCO CA 94102-3214
Email: snr@cpuc.ca.gov
Status: STATE-SERVICE

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

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

Christopher R Villarreal
CALIF PUBLIC UTILITIES COMMISSION
POLICY & PLANNING DIVISION
505 VAN NESS AVE RM 5119
SAN FRANCISCO CA 94102-3214
Email: crv@cpuc.ca.gov
Status: STATE-SERVICE

GERALD LAHR
ASSOCIATION OF BAY AREA GOVERNMENTS
101 8TH ST, PO BOX 2050
OAKLAND CA 94607
FOR: ABAG
Email: jerryl@abag.ca.gov
Status: PARTY

Peter Lai
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
320 West 4th St Ste 500
Los Angeles CA 90013
Email: ppl@cpuc.ca.gov
Status: STATE-SERVICE

Lisa Paulo
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: lp1@cpuc.ca.gov
Status: STATE-SERVICE

Kristina Skierka
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: ks3@cpuc.ca.gov
Status: STATE-SERVICE

Zenaida G. Tapawan-Conway
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: ztc@cpuc.ca.gov
Status: STATE-SERVICE

Chris Ungson
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4104
SAN FRANCISCO CA 94102-3214
Email: cu2@cpuc.ca.gov
Status: STATE-SERVICE

Michael Wheeler
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
505 VAN NESS AVE RM 5206
SAN FRANCISCO CA 94102-3214
Email: mmw@cpuc.ca.gov
Status: STATE-SERVICE

JAMES WEIL DIRECTOR
AGLET CONSUMER ALLIANCE
PO BOX 1916
SEBASTOPOL CA 95473
FOR: AGLET CONSUMER ALLIANCE
Email: jweil@aglet.org
Status: PARTY

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Total number of addressees: 327

MICHAEL P. ALCANTAR ATTORNEY
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY ST, STE 1850
SAN FRANCISCO CA 94105
Email: mpa@a-klaw.com
Status: INFORMATION

NORA SHERIFF
ALCANTAR & KAHL
33 NEW MONTGOMERY ST, STE 1850
SAN FRANCISCO CA 94105
Email: nes@a-klaw.com
Status: INFORMATION

SEEMA SRINIVASAN
ALCANTAR & KAHL LLP
33 NEW MONTGOMERY ST, STE 1850
SAN FRANCISCO CA 94105
Email: sls@a-klaw.com
Status: INFORMATION

KAREN TERRANOVA
ALCANTAR & KAHL
33 NEW MONTGOMERY ST, STE 1850
SAN FRANCISCO CA 94105
Email: filings@a-klaw.com
Status: INFORMATION

MERRILEE HARRIGAN VICE PRESIDENT OF EDUCATION
ALLIANCE TO SAVE ENERGY
1850 M ST NW, STE 600
WASHINGTON DC 20036
FOR: Alliance to Save Energy
Email: mharrigan@ase.org
Status: PARTY

JO TIFFANY
ALLIANCE TO SAVE ENERGY
1624 FRANKLIN ST. PH
OAKLAND CA 94612-2833
Email: jtiffany@ase.org
Status: INFORMATION

RICHARD L. NG
AUTOCELL ELECTRONICS, INC
7311 GREENHAVEN DRIVE, STE 266
SACRAMENTO CA 95831
Email: richard@autocell.net
Status: INFORMATION

JANE WONG
AUTOCELL ELECTRONICS, INC
7311 GREENHAVEN DRIVE, STE 266
SACRAMENTO CA 95831
Email: jane@autocell.net
Status: INFORMATION

ELIZABETH T. LOWE
BARAKAT CONSULTING
696 SAN RAMON VALLEY BLVD., NO. 265
DANVILLE CA 94526
Email: elowe@barakatconsulting.com
Status: INFORMATION

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
PO BOX 11031
OAKLAND CA 94611
Email: brbarkovich@earthlink.net
Status: INFORMATION

DALE A. GUSTAVSON PRESIDENT
BETTER BUILDINGS INCORPORATED
23798 LOS PINOS COURT
CORONA CA 92883
FOR: BETTER BUILDINGS INCORPORATED
Email: dale@betterbuildings.com
Status: PARTY

ROBERT L. KNIGHT
CAL. BLDG. PERFORMANCE CONTRATORS ASSN.
1000 BROADWAY, STE 410
OAKLAND CA 94607
FOR: BEVILACQUA-KNIGHT INC/The California Building
Performance Contractor's Assn.
Email: rknight@bki.com
Status: PARTY

WILLIAM J. PARLAPIANO III
BP CONSULTING
141 OAK ST
BALLSTON SPA NY 12020
Email: wjp4@bpconsulting.org
Status: INFORMATION

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

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RYAN BERNARDO
BRAUN BLAISING MCLAUGHLIN, P.C.
915 L ST, STE 1270
SACRAMENTO CA 95814
Email: bernardo@braunlegal.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

BRUCE MAST
BUILD IT GREEN
1434 UNIVERSITY AVE
BERKELEY CA 94702
Email: Bruce@BuildItGreen.org
Status: INFORMATION

PETER C. JACOBS
BUILDING METRICS INC.
2540 FRONTIER AVE. STE 100
BOULDER CO 80301
Email: pjacobs@buildingmetrics.biz
Status: INFORMATION

AUDREY CHANG
CA ENERGY EFFICIENCY INDUSTRY COUNCIL
EMAIL ONLY
EMAIL ONLY CA 0
Email: achang@efficiencycouncil.org
Status: INFORMATION

STEVEN R. SCHILLER
CA ENERGY EFFICIENCY INDUSTRY COUNCIL
EMAIL ONLY
EMAIL ONLY CA 0
Email: sschiller@efficiencycouncil.org
Status: INFORMATION

CHRIS ANN DICKERSON
CAD CONSULTING
720B CANYON OAKS DRIVE
OAKLAND CA 94605
Email: cadickerson@cadconsulting.biz
Status: INFORMATION

MICHAEL O'KEEFE
CAL. ENERGY EFFICIENCY INDUSTRY COUNCIL
EMAIL ONLY
EMAIL ONLY CA 00000-0000
Email: mokeefe@efficiencycouncil.org
Status: INFORMATION

MICHAEL E. BACHAND PRESIDENT
CALCERTS,, INC.
31 NATOMA ST, STE 120
FOLSOM CA 95630
FOR: CALCERTS, INC.
Email: mike@calcerts.com
Status: PARTY

IRENE M. STILLINGS EXECUTIVE DIRECTOR
CALIF. CTR. FOR SUSTAINABLE ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
Email: irene.stillings@energycenter.org
Status: INFORMATION

JEAN A. LAMMING
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 0
Email: JL2@cpuc.ca.gov
Status: STATE-SERVICE

JENNIFER PORTER POLICY ANALYST
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
FOR: California Center for Sustainable Energy
Email: jennifer.porter@energycenter.org
Status: INFORMATION

ASHLEY WATKINS
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
FOR: CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
Email: ashley.watkins@energycenter.org
Status: INFORMATION

ANDREW MCALLISTER
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
FOR: California Center for Sustainable Energy
Email: andrew.mcallister@energycenter.org
Status: PARTY

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SEPHRA A. NINOW
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
EMAIL ONLY
EMAIL ONLY CA 00000-0000
Email: sephra.ninow@energycenter.org
Status: INFORMATION

JIM FLANAGAN
JAMES FLANAGAN ASSOCIATES
124 LOWER TERRACE
SAN FRANCISCO CA 94114
FOR: California Commissioning Collaborative
Email: jimflanagan4@mac.com
Status: PARTY

HILARY CORRIGAN
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST., STE 303
SAN FRANCISCO CA 94117-2242
Email: cem@newsdata.com
Status: INFORMATION

BILL KELLY CORRESPONDENT
CALIFORNIA ENERGY CIRCUIT
PO BOX 1022
SOUTH PASADENA CA 91031
Email: southlandreports@earthlink.net
Status: INFORMATION

KAE LEWIS
CALIFORNIA ENERGY COMMISSION
1516 9TH ST, MS 22
SACRAMENTO CA 95814
Email: klewis@energy.state.ca.us
Status: INFORMATION

RICHARD SAPUDAR
CALIFORNIA ENERGY COMMISSION
1516 NINTH ST
SACRAMENTO CA 95814
Email: rsapudar@energy.state.ca.us
Status: INFORMATION

PANAMA BARTHOLOMY ADVISOR TO COMMISSIONER
DOUGLAS
CALIFORNIA ENERGY COMMISSION
1516 NINTH ST, MS-33
SACRAMENTO CA 95814-5512
Email: pbarthol@energy.state.ca.us
Status: STATE-SERVICE

SYLVIA BENDER
CALIFORNIA ENERGY COMMISSION
1516 9TH ST, MS20
SACRAMENTO CA 95814
Email: sbender@energy.state.ca.us
Status: STATE-SERVICE

CYNTHIA ROGERS
CALIFORNIA ENERGY COMMISSION
1516 9TH ST
SACRAMENTO CA 95814
Email: crogers@energy.state.ca.us
Status: STATE-SERVICE

E.V. (AL) GARCIA
CALIFORNIA ENERGY COMMISSION
1516 NINTH ST. MS 42
SACRAMENTO CA 95814
FOR: California Energy Commission
Email: agarcia@energy.state.ca.us
Status: STATE-SERVICE

MARGARET SHERIDAN
CALIFORNIA ENERGY COMMISSION
DEMAND ANALYSIS OFFICE
1516 NINTH ST, MS-22
SACRAMENTO CA 95814
FOR: California Energy Commission
Email: msherida@energy.state.ca.us
Status: STATE-SERVICE

KAREN NORENE MILLS ATTORNEY
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833
FOR: California Farm Bureau Federation
Email: kmills@cbbf.com
Status: PARTY

ROBERT SCOTT EXECUTIVE DIRECTOR
CAL. HOME ENERGY EFFICIENCY RATING SVCS.
20422 BEACH FLVD., STE 235
HUNTINGTON BEACH CA 92648
FOR: California Home Energy Efficiency Rating Services
Email: rscott@cheers.org
Status: PARTY

WILLIAM H. BOOTH
LAW OFFICES OF WILLIAM H. BOOTH
67 CARR DRIVE
MORAGA CA 94556
FOR: California Large Energy Consumers Association
Email: wbooth@booth-law.com
Status: PARTY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 327

EDWARD O'NEILL
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY ST, STE 800
SAN FRANCISCO CA 94111-6533
FOR: California Large Energy Consumers Association
Email: edwardoneill@dwt.com
Status: PARTY

KEITH R. MCCREA ATTORNEY
SUTHERLAND ASBILL & BRENNAN LLP
1275 PENNSYLVANIA AVE, NW
WASHINGTON DC 20004-2415
FOR: California Manufacturers & Technology Association
Email: keith.mccrea@sutherland.com
Status: PARTY

CHRIS BROWN EXECUTIVE DIRECTOR
CALIFORNIA URBAN WATER CONSERVATION
716 10TH ST, STE. 200
SACRAMENTO CA 95814-1807
FOR: California Urban Water Conservation
Email: chris@cuwcc.org
Status: PARTY

THOMAS ECKHART
CAL - UCONS, INC.
10612 NE 46TH ST
KIRKLAND WA 98033
FOR: CAL-UCONS, INC.
Email: tom@ucons.com
Status: PARTY

CENTRAL FILES SDG&E
8330 CENTURY PARK COURT - CP-31E
SAN DIEGO CA 92123
FOR: Central Files SDG&E
Email: CentralFiles@SempraUtilities.com
Status: INFORMATION

CHRIS SCRUTON
8690 CALVINE RD.
SACRAMENTO CA 95828
FOR: Chris Scruton
Email: cscruton@energy.state.ca.us
Status: PARTY

DENNIS J. HERRERA
CITY AND COUNTY OF SAN FRANCISCO
CITY HALL, ROOM 234
1 DR. CARLTON B. GOODLET PLACE
SAN FRANCISCO CA 94102
FOR: CITY AND COUNTY OF SAN FRANCISCO
Status: PARTY

ROB NEENAN
CALIFORNIA LEAGUE OF FOOD PROCESSORS
1755 CREEKSIDE OAKS DRIVE, STE 250
SACRAMENTO CA 95833
FOR: California League of Food Processors
Email: rob@clfp.com
Status: PARTY

DONALD C. LIDDELL
DOUGLASS & LIDDELL
EMAIL ONLY
EMAIL ONLY CA 0
FOR: California Natural Gas Vehicle Coalition/ Ice Energy
Inc. / TRANE
Email: liddell@energyattorney.com
Status: PARTY

ANTHONY WAYNE
CALIFORNIA RETROFIT, INC.
5195 JEFFDALE AVE.
WOODLAND HILLS CA 91364
Email: twayne@roadrunner.com
Status: INFORMATION

JAMES D. SQUERI ATTORNEY
GOODIN MACBRIDE SQUERI DAY & LAMPREYLLP
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
FOR: CBIA/CAA
Email: jsqueri@goodinmacbride.com
Status: PARTY

CERTICHRON, INC.
EMAIL ONLY
EMAIL ONLY CA 0
Email: cpuc@certichron.com
Status: INFORMATION

STEPHEN A. S. MORRISON
CITY & COUNTY OF SAN FRANCISCO
CITY HALL, SUITE 234
1 DR CARLTON B. GOODLET PLACE
SAN FRANCISCO CA 94102-4682
FOR: City & County of San Francisco
Status: PARTY

WILLIAM K. SANDERS DEPUTY CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM. 234
SAN FRANCISCO CA 94102-4682
FOR: City and County of San Francisco
Email: william.sanders@sfgov.org
Status: PARTY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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JEANNE M. SOLE DEPUTY CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM. 375
SAN FRANCISCO CA 94102-4682
FOR: City and County of San Francisco
Email: jeanne.sole@sfgov.org
Status: PARTY

SHAWN THOMPSON
CITY OF IRVINE
1 CIVIC CENTER PLAZA
IRVINE CA 92646
Email: sthompson@ci.irvine.ca.us
Status: INFORMATION

THOMAS L. TRIMBERGER CHIEF BUILDING OFFICIAL
CITY OF RANCHO CORDOVA
2729 PROSPECT PARK DRIVE
RANCHO CORDOVA CA 95670
Status: INFORMATION

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

NICHOLAS J. KARNO ATTORNEY
CLEAN ENERGY SOLUTIONS, INC.
618 SAN JUAN AVE
VENICE CA 90291
FOR: Clean Energy Solutions, Inc.
Email: nkarno@yahoo.com
Status: PARTY

TAM HUNT
HUNT CONSULTING
EMAIL ONLY
EMAIL ONLY CA 0
FOR: Community Environmental Council
Email: tam.hunt@gmail.com
Status: INFORMATION

SCOTT BOWMAN
CONSERVATION SERVICES GROUP
807 PARKVIEW DRIVE
EL SEGUNDA CA 90245
Email: scott.bowman@csggrp.com
Status: INFORMATION

ANN KELLY DEPARTMENT OF THE ENVIRONMENT
CITY AND COUNTY OF SAN FRANCISCO
11 GROVE ST
SAN FRANCISCO CA 94102
Email: ann.kelly@sfgov.org
Status: INFORMATION

SCOTT WENTWORTH
CITY OF OAKLAND
7101 EDGEWATER DRIVE, NO. 2
OAKLAND CA 94621
FOR: City of Oakland
Email: swentworth@oaklandnet.com
Status: PARTY

MARY TUCKER
CITY OF SAN JOSE, ENVIRONMENTAL SRVC DEP
200 EAST SANTA CLARA ST., 10TH FLR.
SAN JOSE CA 95113-1905
Email: mary.tucker@sanjoseca.gov
Status: INFORMATION

DAVID S. DAYTON PRESIDENT
CLEAN ENERGY SOLUTIONS, IINC.
1385 CAMBRIDGE ST
CAMBRIDGE MA 2139
FOR: Clean Energy Solutions, Inc.
Email: ddayton@cleanenergysol.com
Status: PARTY

JON W. SLANGERUP
CLEAREDGE POWER CORPORATION
7205 EVERGREEN PARKWAY
HILLSBORO OR 97124
FOR: ClearEdge Power Corporation
Email: js@clearedgepower.com
Status: PARTY

CARLOS LAMAS-BABBINI
COMVERGE, INC.
EMAIL ONLY
EMAIL ONLY CA 0
Email: clamasbabbini@comverge.com
Status: INFORMATION

ROBERT W. HAMMON, PH.D PRINCIPAL
CONSOL
7407 TAM OSHANTER DRIVE
STOCKTON CA 95210-3370
FOR: Consol
Email: Rob@ConSol.ws
Status: PARTY

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NANCY KIRSHNER-RODRIGUEZ CONSULTING
DEPARTMENT MANAGER
CONSOL
7407 TAM O SHANTER DRIVE
STOCKTON CA 95210-3370
Email: NancyKRod@conSol.ws
Status: INFORMATION

JODY LONDON
JODY LONDON CONSULTING
PO BOX 3629
OAKLAND CA 94609
FOR: County of Los Angeles, Internal Services
Department/The Local Government Sustainable
EnergyCoalition
Email: jody_london_consulting@earthlink.net
Status: PARTY

DAVID MATSON OFFICE OF LONG RANGE PLANNING
COUNTY OF SANTA BARBARA
30 E. FIGUEROA, 2ND FLR
SANTA BARBARA CA 93101
Email: dmatson@co.santa-barbara.ca.us
Status: INFORMATION

MALCOLM LEWIS PRESIDENT
CTG ENERGETICS, INC.
16 TECHNOLOGY DRIVE, STE 109
IRVINE CA 92618
FOR: CTG Energetics, Inc.
Email: mlewis@ctg-net.com
Status: PARTY

ERIC LEE SR. ENGINEER
DAVIS ENERGY GROUP
123 C ST
DAVIS CA 95616
FOR: Davis Energy Group
Email: elee@davisenergy.com
Status: PARTY

Suman Mathews
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
FOR: Division of Ratepayer Advocates
Email: srm@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
FOR: DRA
Email: dil@cpuc.ca.gov
Status: PARTY

NORA HERNANDEZ
COUNTY OF LOS ANGELES-INTERNAL SERVICES
1100 N. EASTERN AVE
LOS ANGELES CA 90063
Email: nhernandez@isd.co.la.ca.us
Status: INFORMATION

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

PETER CANESSA
CALIFORNIA STATE UNIVERSITY, FRESNO
1211 CHAPARRAL CIRCLE
SAN LUIS OBISPO CA 93401
FOR: CSUF
Email: pcanessa@charter.net
Status: PARTY

CLINTON COLE
CURRENT GROUP, LLC
20420 CENTURY BLVD
GERMANTOWN MD 20874
Email: CCole@currentgroup.com
Status: INFORMATION

DIV OF WATER AND AUDITS
WATER AND SEWER ADVISORY BRANCH
505 VAN NESS AVE., RM 3106
SAN FRANCISCO CA 94102
Status: STATE-SERVICE

CASSANDRA SWEET
DOW JONES NEWSWIRES
EMAIL ONLY
EMAIL ONLY CA 0
Email: cassandra.sweet@dowjones.com
Status: INFORMATION

Cheryl Cox
CALIF PUBLIC UTILITIES COMMISSION
DRA - ADMINISTRATIVE BRANCH
505 VAN NESS AVE RM 4101
SAN FRANCISCO CA 94102-3214
FOR: DRA
Email: cxc@cpuc.ca.gov
Status: STATE-SERVICE

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Thomas Roberts
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4104
SAN FRANCISCO CA 94102-3214
FOR: DRA
Email: tcr@cpuc.ca.gov
Status: STATE-SERVICE

GENE THOMAS
ECOLOGY ACTION
PO BOX 1188
SANTA CRUZ CA 95061-1188
Email: gthomas@ecoact.org
Status: INFORMATION

RICHARD LAUMAN VICE PRESIDENT
ECOS
433 CALIFORNIA ST, STE 630
SAN FRANCISCO CA 94104
Email: rlauman@ecosconsulting.com
Status: INFORMATION

JARED ASCH
EFFICIENCY FIRST
EMAIL ONLY
EMAIL ONLY CA 0
FOR: Efficiency First
Email: jared@efficiencyfirst.org
Status: PARTY

DAVID GORDON
EFM SOLUTIONS
10310 CAMINITO AGADIR
SAN DIEGO CA 92131
Email: david.gordon@efm-solutions.com
Status: INFORMATION

ELLEN PETRILL DIRECTOR, PUBLIC/PRIVATE
PARTNERSHIPS
ELECTRIC POWER RESEARCH INSTITUTE
EMAIL ONLY
EMAIL ONLY CA 00000-0000
Email: epetrill@epri.com
Status: INFORMATION

SHARON TALBOTT
EMETER CORPORATION
2215 BRIDGEPOINTE PARKWAY, STE 300
SAN MATEO CA 94404
Email: sharon@emeter.com
Status: INFORMATION

MAHLON ALDRIDGE
ECOLOGY ACTION
PO BOX 1188
SANTA CRUZ CA 95061-1188
Email: emahlon@ecoact.org
Status: INFORMATION

TED FLANIGAN PRESIDENT
ECOMOTION - THE POWER OF THE INCREMENT
1537 BARRANCA PARKWAY, STE F-104
IRVINE CA 92618
Email: TFlanigan@EcoMotion.us
Status: INFORMATION

CRYSTAL NEEDHAM SENIOR DIRECTOR, COUNSEL
EDISON MISSION ENERGY
3 MACARTHUR PLACE, STE. 100
SANTA ANA CA 92707
Email: cneedham@edisonmission.com
Status: INFORMATION

WALTER MCGUIRE
EFFICIENCY PARTNERSHIP
2962 FILLMORE ST
SAN FRANCISCO CA 94123
Email: wmcguire@fypower.org
Status: INFORMATION

BRUCE MATULICH EXECUTIVE DIRECTOR
ELECTRIC & GAS INDUSTRIES ASSOCIATION
3800 WATT AVE, STE 105
SACRAMENTO CA 95821
FOR: Electric & Gas Industries Association
Email: bmatulich@egia.com
Status: PARTY

LYNN HAUG ATTORNEY
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVE, STE 400
SACRAMENTO CA 95816-5905
Email: lmh@eslawfirm.com
Status: INFORMATION

DAVID MANOQUERRA
ENALASYS
250 AVENIDA CAMPILLO
CALEXICO CA 92231
FOR: Enalasy
Email: dmano@enalasys.com
Status: PARTY

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ERIC TAYLOR
ENALASYS
250 AVENIDA CAMPILLO
CALEXICO CA 92231
FOR: Enalasy
Email: etaylor@enalasys.com
Status: PARTY

LUKE HERMANN EVP, SALES & MARKETING
ENALASYS CORPORATION
250 AVENIDA CAMPILLO
CALEXICO CA 92231
Email: LukeH@enalasys.com
Status: INFORMATION

ERIC CUTTER
ENERGY AND ENVIRONMENTAL ECONOMICS, INC.
101 MONTGOMERY ST, STE 1600
SAN FRANCISCO CA 94104
Email: eric@ethree.com
Status: INFORMATION

STEVEN KIHM
ENERGY CENTER OF WISCONSIN
455 SCIENCE DRIVE, STE 200
MADISON WI 53711
Email: skihm@ecw.org
Status: INFORMATION

REUBEN DEUMLING
ENERGY ECONOMICS INC.
3309 SE MAIN ST
PORTLAND OR 97214
Email: 9watts@gmail.com
Status: INFORMATION

JIM BAZEMORE
ENERGY MARKET INNOVATIONS INC
83 COLUMBIA ST, STE 303
SEATTLE WA 98104-1417
Email: jbazemore@emi1.com
Status: INFORMATION

JENNIFER HOLMES
ENERGY MARKET INNOVATIONS INC.
83 COLUMBIA ST, STE 303
SEATTLE WA 98104
Email: jholmes@emi1.com
Status: INFORMATION

SARA STECK MYERS ATTORNEY
LAW OFFICES OF SARA STECK MYERS
122 28TH AVE
SAN FRANCISCO CA 94121
FOR: EnerNoc, Inc.
Email: ssmyers@att.net
Status: PARTY

MONA TIERNEY-LLOYD SENIOR MANAGER WESTERN
REG. AFFAIRS
ENERNOC, INC.
PO BOX 378
CAYUCOS CA 93430
FOR: Enernoc, Inc.
Email: mtierney-lloyd@enernoc.com
Status: PARTY

MELANIE GILLETTE DIR - WESTERN REG. AFFAIRS
ENERNOC, INC.
115 HAZELMERE DRIVE
FOLSOM CA 95630
Email: mgillette@enernoc.com
Status: INFORMATION

AMELIA GULKIS
ENSAVE, INC.
65 MILLER ST, STE 105
RICHMOND VT 5477
Email: ameliag@ensave.com
Status: INFORMATION

ROCKY BACCHUS CONSULTANT
EFFICIENCY POWER
6501 TARASCAS
EL PASO TX 79912
FOR: EP Investments
Email: rockybacchus@gmail.com
Status: PARTY

TAMI RASMUSSEN
EVERGREEN ECONOMICS
EMAIL ONLY
EMAIL ONLY CA 0
Email: Rasmussen@evergreenecon.com
Status: INFORMATION

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

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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SAMARA RASSI
FELLON-MCCORD & ASSOCIATES
9960 CORPORATE CAMPUS DR., STE 2500
LOUISVILLE KY 40223-4055
Status: INFORMATION

MISTI BRUCERI
1521 I ST
NAPA CA 94559
Email: mistib@comcast.net
Status: INFORMATION

MICHAEL CHENG
2723 HARLAND COURT
WALNUT CREEK CA 94598
Email: michael.cheng@paconsulting.com
Status: INFORMATION

TODD S. GLASSEY
EMAIL ONLY
EMAIL ONLY CA 0
Email: tglassey@certichron.com
Status: INFORMATION

ROBERT C. WILKINSON DIRECTOR, WATER POLICY
PROGRAM
4426 BREN BUILDING
SANTA BARBARA CA 93106
Email: wilkinson@es.ucsb.edu
Status: PARTY

JOHN KOTOWSKI
GLOBAL ENERGY PARTNERS, LLC
500 YGNACIO VALLEY RD, STE 450
WALNUT CREEK CA 94596
FOR: Global Energy Partners, LLC
Email: jak@gepllc.com
Status: PARTY

MARLO A. GO
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
Email: mgo@goodinmacbride.com
Status: INFORMATION

ANNETTE BEITEL
1014 PONTIAC RD.
WILMETTE IL 60091-1351
Email: annette.beitel@gmail.com
Status: INFORMATION

JOHN CELONA
505 VISTA AVE
SAN CARLOS CA 94070
Email: jcelona@sbcglobal.net
Status: INFORMATION

GREGORY CLAYBORN
3717 W. 59TH ST
LOS ANGELES CA 90043
Email: gclayborn@gmail.com
Status: INFORMATION

SAMUEL SIRKIN
6908 SW 37TH AVE
PORTLAND OR 97219
Email: samsirkin@cs.com
Status: INFORMATION

THOMAS P. CONLON PRESIDENT
GEOPRAXIS
PO BOX 5
SONOMA CA 95476-0005
Email: tconlon@geopraxis.com
Status: INFORMATION

GERRY HAMILTON
GLOBAL ENERGY PARTNERS, LLC
500 YGNACIO VALLEY RD, STE 450
WALNUT CREEK CA 94596
Email: ghamilton@gepllc.com
Status: INFORMATION

STEVEN LEHTONEN
GREEN PLUMBERS USA
4153 NORTHGATE BLVD., STE. 1
SACRAMENTO CA 95834-1218
FOR: Green Plumbers USA
Email: steve@greenplumbersusa.com
Status: PARTY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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CPUC DOCKET NO. A0807021, A0807022, A0807023, A0807031

Total number of addressees: 327

MICHAEL ROGERS SENIOR VP, MARKET
DEVELOPMENT
GREENHOMES AMERICA
152 TECHNOLOGY
IRVINE CA 92618
FOR: GreenHomes America
Email: mike.rogers@greenhomesamerica.com
Status: PARTY

JOHN M. CLARKSON
HEAT PROJECT UK
ENACT ENERGY
EMAIL ONLY
EMAIL ONLY CA 0
Email: john@enactenergy.com
Status: INFORMATION

REMI TAN AP - ARCHITECT
HELLER MANUS ARCHITECTS
221 MAIN ST, STE 940
SAN FRANCISCO CA 94044
FOR: Heller Manus Architects
Email: RemiT@hellermanus.com
Status: PARTY

DOUGLAS E. MAHONE
HESCHONG MAHONE GROUP
11211 GOLD COUNTRY BLVD., STE 103
GOLD RIVER CA 95670
Email: dmahone@h-m-g.com
Status: INFORMATION

PAUL NOTTI
HONEYWELL UTILITY SOLUTIONS
6336 SE MILWAUKIE AVE. 11
PORTLAND OR 97202
Email: paul.notti@honeywell.com
Status: INFORMATION

GREG TROPSA PRESIDENT
ICE ENERGY, INC.
9351 EASTMAN PARK DRIVE, UNIT B
WINDSOR CO 80550
FOR: Ice Energy Inc.
Email: gtropsa@ice-energy.com
Status: PARTY

ALICE LIDDELL
ICF INTERNATIONAL
620 FOLSOM ST, STE, 200
SAN FRANCISCO CA 94107
Email: aliddell@icfi.com
Status: INFORMATION

DR. HUGH (GIL) PEACH
H GIL PEACH & ASSOCIATES LLC
16232 NW OAKHILLS DRIVE
BEAVERTON OR 97006
Email: hgilpeach@scanamerica.net
Status: INFORMATION

JEFFREY HELLER FAIA - PRESIDENT
HELLER MANUS ARCHITECTS
221 MAIN ST, STE 940
SAN FRANCISCO CA 94044
FOR: Heller Manus Architects
Email: JeffreyH@hellermanus.com
Status: PARTY

OWEN HOWLETT
HESCHONG MAHONE GROUP, INC.
11211 GOLD COUNTRY BLVD., NO. 103
GOLD RIVER CA 95670
Email: owen_howlett@h-m-g.com
Status: INFORMATION

TOM WHITE
HOME ENERGY MAGAZINE
2124 KITTREDGE ST, STE 95
BERKELEY CA 94704
FOR: Home Energy Magazine
Email: TWhite@homeenergy.org
Status: PARTY

ANDREW W. WOOD ENERGY EFFICIENCY ENGINEER
HONEYWELL UTILITY SOLUTIONS
353 A VINTAGE PARK DRIVE
FOSTER CITY CA 94404
Email: andrew.wood3@honeywell.com
Status: INFORMATION

TOM HAMILTON
ICF INTERNATIONAL
14724 VENTURA BLVD., STE. 1001
SHERMAN OAKS CA 91403
FOR: ICF International
Email: thamilton@icfi.com
Status: PARTY

MICHAEL BOCCADORO
THE DOLPHIN GROUP
925 L ST, STE 800
SACRAMENTO CA 95814
FOR: Inland Empire Utilities, Chino Basin Coalition, Santa
Ana Watershed Project Authority
Email: aeconline@gmail.com
Status: PARTY

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Total number of addressees: 327

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

BRAD BERGMAN DIRECTOR
INTERGY CORPORATION
133 W. LEMON AVE.
MONROVIA CA 91016
Email: brad.bergman@intergycorp.com
Status: INFORMATION

GRANT COOKE VICE PRESIDENT
INTERGY CORPORATION
11875 DUBLIN BLVD, STE A201
DUBLIN CA 94568
Email: grant.cooke@intergycorp.com
Status: INFORMATION

ASHISH GOEL FOUNDER AND COO
INTERGY CORPORATION
11875 DUBLIN BLVD, STE A201
DUBLIN CA 94568
Email: ashish.goel@intergycorp.com
Status: INFORMATION

BOB RAMIREZ
ITRON, INC. (CONSULTING & ANALYSIS DIV.)
11236 EL CAMINO REAL
SAN DIEGO CA 92130
Email: bob.ramirez@itron.com
Status: INFORMATION

RACHEL HARCHARIK
ITRON, INC.
11236 EL CAMINO REAL
SAN DIEGO CA 92130
Email: rachel.harcharik@itron.com
Status: INFORMATION

ANN PETERSON
ITRON, INC.
1111 BROADWAY, STE 1800
OAKLAND CA 94607
Email: Ann.Peterson@itron.com
Status: INFORMATION

ROBERT E. BURT
INSULATION CONTRACTORS ASSN.
3479 ORANGE GROVE AVE., STE. A
NORTH HIGHLANDS CA 95660
FOR: Insulation Contractors Assn.
Email: burtt@macnexus.org
Status: PARTY

JAY BHALLA PRINCIPAL
INTERGY CORPORATION
11875 DUBLIN BLVD., STE A201
DUBLIN CA 94568
Email: jay.bhalla@intergycorp.com
Status: INFORMATION

RICHARD FOX DIRECTOR
INTERGY CORPORATION
11875 DUBLIN BLVD, STE A201
DUBLIN CA 94568
Email: rfox@intergycorp.com
Status: INFORMATION

JENNIFER FAGAN PRINCIPAL ENERGY CONSULTANT
ITRON, INC
1111 BROADWAY, STE 1800
OAKLAND CA 94607
FOR: ITRON, INC
Email: jennifer.fagan@itron.com
Status: INFORMATION

JOHN CAVALLI
ITRON, INC.
1111 BROADWAY, STE. 1800
OAKLAND CA 94607
Email: john.cavalli@itron.com
Status: INFORMATION

ALEX KANG
ITRON, INC.
1111 BROADWAY, STE. 1800
OAKLAND CA 94607
Email: alex.kang@itron.com
Status: INFORMATION

JEFF HIRSCH
JAMES J. HIRSCH & ASSOCIATES
12185 PRESILLA ROAD
CAMARILLO CA 93012-9243
Email: Jeff.Hirsch@DOE2.com
Status: INFORMATION

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JAY LUBOFF
JAY LUBOFF CONSULTING SERVICES
28850 GRAYFOX ST
MALIBU CA 90265-4253
Email: jcluboff@lmi.net
Status: INFORMATION

ERIK S. EMBLEM
3E INTERNATIONAL INCORPORATED
1809 S ST, STE 101-207
SACRAMENTO CA 95811
FOR: Joint Committee On Energy And Environmental
Policy
Email: eemblem@3eintinc.net
Status: PARTY

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

FRED COITO
KEMA INC
155 GRAND AVE, STE. 500
OAKLAND CA 94612-3747
Email: fred.coito@kema.com
Status: INFORMATION

KARIN CORFEE
KEMA, INC
155 GRAND AVE., STE 500
OAKLAND CA 94612-3747
Email: Karin.Corfee@kema.com
Status: INFORMATION

MARCIA W. BECK
LAWRENCE BERKELEY NATIONAL LABORATORY
EMAIL ONLY
EMAIL ONLY CA 0
Email: mwbeck@lbl.gov
Status: INFORMATION

G. PATRICK STONER
LOCAL GOVERNMENT COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000-0000
Email: pstoner@lgc.org
Status: INFORMATION

GARRICK JONES
JBS ENERGY
311 D ST
WEST SACRAMENTO CA 95605
Email: garrick@jbsenergy.com
Status: INFORMATION

JUDI G. SCHWEITZER
SCHWEITZER AND ASSOCIATES, INC.
25422 TRABUCO ROAD, STE.105-P
LAKE FOREST CA 92630
FOR: Judy G. Schweitzer
Email: judi.schweitzer@post.harvard.edu
Status: PARTY

KATHLEEN GAFFNEY
KEMA
155 GRAND AVE, STE 500
OAKLAND CA 94512-3747
FOR: KEMA
Email: kathleen.gaffney@kema.com
Status: INFORMATION

JENNIFER CANSECO
KEMA, INC.
155 GRAND AVE, STE. 500
OAKLAND CA 94612-3747
Email: jenna.canseco@us.kema.com
Status: INFORMATION

CLARK PIERCE
LANDIS+GYR
REGULATORY AFFAIRS
246 WINDING WAY
STRAFORD NJ 8084
Email: Clark.Pierce@us.landisgyr.com
Status: INFORMATION

EDWARD VINE
LAWRENCE BERKELEY NATIONAL LABORATORY
EMAIL ONLY
EMAIL ONLY CA 0
Email: elvine@lbl.gov
Status: INFORMATION

DAVID R. PETTIJOHN MANAGER, WATER RESOURCES
DEVELOPMENT
LOS ANGELES DEPT.OF WATER & POWER
111 NORTH HOPE ST, ROMM 1460
LOS ANGELES CA 90012
Email: David.Pettijohn@ladwp.com
Status: INFORMATION

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

THOMAS S. CROOKS DIRECTOR
MCR PERFORMANCE SOLUTIONS
3161 CAMERON PARK DR STE 216
CAMERON PARK CA 95682-7979
FOR: MCR Performance Solutions
Email: tcrooks@mcr-group.com
Status: PARTY

BOB HONDEVILLE
MODESTO IRRIGATION DISTRICT
1231 11TH ST
MODESTO CA 95354
Email: bobho@mid.org
Status: INFORMATION

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 0
Email: mrw@mrwassoc.com
Status: INFORMATION

DONALD GILLIGAN
NATIONAL ASSC. OF ENERGY SVC. COMPANIES
EMAIL ONLY
EMAIL ONLY DC 00000-0000
FOR: National Association of Energy Service Companies
Email: dgilligan@naesco.org
Status: PARTY

NOAH LONG
NATURAL RESOURCES DEFENSE COUNCIL
EMAIL ONLY
EMAIL ONLY CA 0
FOR: Natural Resources Defense Council
Email: nlong@nrdc.org
Status: PARTY

KRISTEN GRENFELL
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST 20TH FLR
SAN FRANCISCO CA 94104
Email: kgrenfell@nrdc.org
Status: INFORMATION

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

ADAM GOLDBERG
AGP, LLC
3003 BARKLEY GATE
FAIRFAX VA 22031
FOR: Mitsubishi Digital Electronics America
Email: adam@agp-llc.com
Status: PARTY

JOY A. WARREN REGULATORY ADMINISTRATOR
MODESTO IRRIGATION DISTRICT
1231 11TH ST
MODESTO CA 95354
Email: joyw@mid.org
Status: INFORMATION

TERRY L. MURRAY
MURRAY & CRATTY
8627 THORS BAY ROAD
EL CERRITO CA 94530
Email: tlmurray@earthlink.net
Status: INFORMATION

LARA ETTENSON
NATURAL RESOURCES DEFENSE COUNCIL
EMAIL ONLY
EMAIL ONLY CA 0
FOR: Natural Resources Defense Council
Email: lettenson@nrdc.org
Status: INFORMATION

JAMES CHOU
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 94104
Email: jchou@nrdc.org
Status: INFORMATION

JENNIFER BARNES
NAVIGANT CONSULTING, INC.
EMAIL ONLY
EMAIL ONLY CA 00000-0000
Email: Jennifer.Barnes@Navigantconsulting.com
Status: INFORMATION

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

KENNY SWAIN
NAVIGANT CONSULTING
3100 ZINFANDEL DRIVE, STE 600
RANCHO CORDOVA CA 95670
Email: kenneth.swain@navigantconsulting.com
Status: INFORMATION

DAVID NEMTZOW
NEMTZOW & ASSOCIATES
1254 9TH ST, NO. 6
SANTA MONICA CA 90401
Email: david@nemtzw.com
Status: INFORMATION

ANDREW MEIMAN SENIOR PROGRAM MANAGER
NEWCOMB ANDERSON MCCORMICK
EMAIL ONLY
EMAIL ONLY CA 0
Email: andrew_meiman@newcomb.cc
Status: INFORMATION

MATT SULLIVAN
NEWCOMB ANDERSON MCCORMICK
201 MISSION ST., STE 2010
SAN FRANCISCO CA 94105
Email: matt_sullivan@newcomb.cc
Status: INFORMATION

DAVID REYNOLDS MEMBER SERVICES MANAGER
NORTHERN CALIFORNIA POWER AGENCY
651 COMMERCE DRIVE
ROSEVILLE CA 95678-6420
Email: david.reynolds@ncpa.com
Status: INFORMATION

RICHARD T. SPERBERG
ONSITE ENERGY CORPORATION
2701 LOKER AVE WEST, STE 107
CARLSBAD CA 92010
Email: rsperberg@onsitenergy.com
Status: INFORMATION

LAURIE PARK
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, STE 600
RANCHO CORDOVA CA 95670-6078
Email: lpark@navigantconsulting.com
Status: INFORMATION

RON NICHOLS
NAVIGANT CONSULTING
3100 ZINFANDEL DRIVE, STE. 600
RANCHO CORDOVA CA 95670
FOR: Navigant Consulting
Email: rnichols@navigantconsulting.com
Status: PARTY

ANN L. MCCORMICK, P.E. PRINCIPAL
NEWCOMB ANDERSON MCCORMICK
201 MISSION ST, STE 2010
SAN FRANCISCO CA 94105
Email: ann_mccormick@newcomb.cc
Status: INFORMATION

JOHN M. NEWCOMB
NEWCOMB ANDERSON MCCORMICK
201 MISSION ST, STE 2010
SAN FRANCISCO CA 94105
Email: John_Newcomb@newcomb.cc
Status: INFORMATION

TERRY M. FRY
NEXANT, INC.
101 SECOND ST, 10TH FLR
SAN FRANCISCO CA 94105
Email: tmfry@nexant.com
Status: INFORMATION

SCOTT TOMASHEFSKY
NORTHERN CALIFORNIA POWER AGENCY
651 COMMERCE DRIVE
ROSEVILLE CA 95678-6420
Email: scott.tomashefsky@ncpa.com
Status: INFORMATION

SHARYN BARATA
OPINION DYNAMICS CORPORATION
EMAIL ONLY
EMAIL ONLY CA 00000-0000
Email: sbarata@opiniondynamics.com
Status: INFORMATION

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MICHAEL SACHSE
OPOWER
1911 FORT MYER DRIVE
ARLINGTON VA 22209
FOR: OPOWER
Email: michael@opower.com
Status: PARTY

JACK ROSENTHAL
P2S ENGINEERING, INC.
5000 EAST SPRING ST, 8TH FLR
LONG BEACH CA 90815
Email: jack.rosenthal@p2seng.com
Status: INFORMATION

CRISPIN WONG
PECI
EMAIL ONLY
EMAIL ONLY OR 0
Email: cwong@peci.org
Status: INFORMATION

MICHELE RODRIGUEZ
PLANNING SUSTAINABLE COMMUNITIES
220 MCALLISTER AVE
KENTFIELD CA 94904
Email: michele@boggis.com
Status: INFORMATION

ANNE ARQUIT NIEDERBERGER
POLICY SOLUTIONS
57 CLIFFORD TERRACE
SAN FRANCISCO CA 94117
Email: policy.solutions@comcast.net
Status: INFORMATION

PUJA DEVERAKONDA
POSITIVE ENERGY
EMAIL ONLY
EMAIL ONLY VA 00000-0000
FOR: Positive Energy
Email: puja@opower.com
Status: INFORMATION

ELIZABETH M. SOUZA
PREMIUM EFFICIENCY COOLING PROGRAM
6161 EL CAJON BLVD NO. 524
SAN DIEGO CA 92115
Email: Elizabeth.DeSouza@csggrp.com
Status: INFORMATION

SEAN HARRINGTON
OPOWER
1911 FORT MYER DRIVE
ARLINGTON VA 22209
Email: sean.harrington@opower.com
Status: INFORMATION

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

PETER M. SCHWARTZ ATTORNEY
PETER SCHWARTZ & ASSOCIATES, LLC
381 CHAPMAN DRIVE
CORTE MADERA CA 94925
FOR: Peter M. Schwartz
Email: pmschwartz@sbcglobal.net
Status: PARTY

LISA WEINZIMER
PLATTS MCGRAW-HILL
695 NINTH AVE, NO. 2
SAN FRANCISCO CA 94118
Email: lisa_weinzimer@platts.com
Status: INFORMATION

DIANA BJORNSKOV SENIOR PROGRAM MANAGER
PORTLAND ENERGY CONSERVATION, INC
1400 SW 5TH AVE, STE 700
PORTLAND OR 97201
Email: Dbjornskov@peci.org
Status: INFORMATION

EMILY HALLET
POSITIVE ENERGY
1515 N. COURTHOUSE RD., STE. 610
ARLINGTON VA 22201-2909
FOR: Positive Energy
Email: emily.hallet@positiveenergy.com
Status: INFORMATION

JOHN PROCTOR CHIEF EXECUTIVE OFFICER
PROCTOR ENGINEERING GROUP
418 MISSION AVE
SAN RAFAEL CA 94901
FOR: Proctor Engineering Group, Ltd.
Email: john@proctoreng.com
Status: PARTY

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BRIAN HEDMAN VICE PRESIDENT
QUANTEC, LLC
720 SW WASHINGTON ST, STE 400
PORTLAND OR 97205
Email: brian.hedman@cadmusgroup.com
Status: INFORMATION

M. SAMI KHAWAJA, PH.D
QUANTEC, LLC
SUITE 400
720 SW WASHINGTON ST
PORTLAND OR 97205
Email: Sami.Khawaja@cadmusgroup.com
Status: INFORMATION

ALISON WATSON
QUANTUM ENERGY SERVICES & TECHNOLOGIES
2001 ADDISON ST, STE 300
BERKELEY CA 94704
Email: awatson@quest-world.com
Status: INFORMATION

BECKY KING
QUEST
2001 ADDISON ST., STE 300
BERKELEY CA 94704
FOR: QuEst
Email: bking@quest-world.com
Status: PARTY

JAMES ROSS
RCS, INC.
500 CHESTERFIELD CENTER, STE 320
CHESTERFIELD MO 63017
FOR: RCS
Email: jimross@r-c-s-inc.com
Status: PARTY

J. ANDREW HOERNER
REDEFINING PROGRESS
1904 FRANKLIN ST
OAKLAND CA 94612
FOR: Redefining Progress
Email: hoerner@redefiningprogress.org
Status: PARTY

JANE S. PETERS, PH.D.
RESEARCH INTO ACTION, INC.
PO BOX 12312
PORTLAND OR 97212
Email: janep@researchintoaction.com
Status: INFORMATION

LAUREN CASENTINI
RESOURCE SOLUTIONS GROUP, INC.
60 STONE PINE ROAD, STE 100
HALF MOON BAY CA 94019
Email: lcasentini@rsgrp.com
Status: INFORMATION

ALISON TEN CATE
RESOURCE SOLUTIONS GROUP
60 STONE PINE ROAD, STE 100
HALF MOON BAY CA 94019
Email: atencate@rsgrp.com
Status: INFORMATION

HECTOR HUERTA
RICHARD HEATH AND ASSOCIATES, INC.
590 W. LOCUST AVE., STE 103
FRESNO CA 93650
Email: hhuerta@rhainc.com
Status: INFORMATION

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

ROBERT MOWRIS, P.E.
ROBERT MOWRIS & ASSOCIATES
PO BOX 2141
OLYMPIC VALLEY CA 96145
Email: rmowris@earthlink.net
Status: INFORMATION

JENNIFER CASTLEBERRY
RUNYON SALTZMAN & EINHORN
ONE CAPITOL MALL, STE 400
SACRAMENTO CA 95814
Email: jcastleberry@rs-e.com
Status: INFORMATION

ALANNA SLOAN
RUNYON SALTZMAN & EINHORN, INC.
ONE CAPITOL MALL, STE 400
SACRAMENTO CA 95814
Email: asloan@rs-e.com
Status: INFORMATION

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MOLLY HARCOS
RUNYON, SALTZMAN & EINHORN, INC.
1 CAPITOL MALL, STE 400
SACRAMENTO CA 95814
Email: mharcos@rs-e.com
Status: INFORMATION

WILLIAM W. WESTERFIELD III SR. ATTORNEY - OFF. OF
GEN. COUNSEL
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S ST, M.S. B402
SACRAMENTO CA 95817
FOR: SACRAMENTO MUNICIPAL UTILITY DISTRICT
Email: wwester@smud.org
Status: INFORMATION

VIKKI WOOD
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6301 S ST, MS A204
SACRAMENTO CA 95817-1899
Email: vwood@smud.org
Status: INFORMATION

JIM PARKS
SACRAMENTO MUNICIPAL UTILITY DIST.
6301 S ST, A204
SACRAMENTO CA 95817-1899
Email: jparks@smud.org
Status: PARTY

STEVEN D. PATRICK
SAN DIEGO GAS AND ELECTRIC COMPANY
555 WEST FIFTH ST, STE 1400
LOS ANGELES CA 90013-1011
FOR: San Diego Gas & Electric/Southern California Gas
Company
Email: SDPatrick@SempraUtilities.com
Status: PARTY

ATHENA BESA
SAN DIEGO GAS & ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 0
Email: ABesa@SempraUtilities.com
Status: INFORMATION

PEDRO VILLEGAS
SAN DIEGO GAS & ELECTRIC/ SO. CAL. GAS
EMAIL ONLY
EMAIL ONLY CA 0
Email: PVillegas@SempraUtilities.com
Status: INFORMATION

JOY C. YAMAGATA
SAN DIEGO GAS & ELECTRIC/SOCALGAS
8330 CENTURY PARK COURT, CP 32 D
SAN DIEGO CA 92123-1530
Email: JYamagata@SempraUtilities.com
Status: INFORMATION

CENTRAL FILES
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP-32DI
SAN DIEGO CA 92123
Email: CentralFiles@SempraUtilities.com
Status: INFORMATION

STEVEN MOSS
2325 THIRD ST
SAN FRANCISCO CA 94107
FOR: San Francisco Community Power
Email: steven@moss.net
Status: PARTY

MICHAEL BAKER VICE PRESIDENT
SBW CONSULTING, INC.
2820 NORTHUP WAY, STE 230
BELLEVUE WA 98004
Email: mbaker@sbwconsulting.com
Status: INFORMATION

RICHARD ESTEVES
SESCO, INC.
77 YACHT CLUB DRIVE
LAKE HOPATCONG NJ 7849
FOR: SESCO
Email: sesco@optonline.net
Status: PARTY

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

GREGGORY L. WHEATLAND
ELLISON SCHNEIDER & HARRIS L.L.P.
2600 CAPITOL AVE, STE 400
SACRAMENTO CA 95816-5905
FOR: Sierra Pacific Power Company
Email: glw@eslawfirm.com
Status: PARTY

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Total number of addressees: 327

BOB HINES ENERGY PROGRAMS
SILICON VALLEY LEADERSHIP GROUP
224 AIRPORT PARKWAY, STE 620
SAN JOSE CA 95110
FOR: Silicon Valley Leadership Group.
Email: bhines@svlg.net
Status: PARTY

LOURDES JIMENEZ-PRICE OFFICE OF THE GENERAL
COUNSEL
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S ST, MS B406
SACRAMENTO CA 95817-1899
FOR: SMUD
Email: ljimene@smud.org
Status: PARTY

DON ARAMBULA
SOUTHERN CALIFORNIA EDISON
6042 N. IRWINDALE AVE, BLDG. A
IRWINDALE CA 91702
Email: don.arambula@sce.com
Status: INFORMATION

LAURA I. GENAO
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800, 2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
Email: Laura.Genao@sce.com
Status: INFORMATION

TORY S. WEBER
SOUTHERN CALIFORNIA EDISON COMPANY
6042 N. IRWINDALE AVE, STE A
IRWINDALE CA 91702
Email: tory.weber@sce.com
Status: INFORMATION

HUGH YAO
SOUTHERN CALIFORNIA GAS COMPANY
EMAIL ONLY
EMAIL ONLY CA 0
Email: HYao@SempraUtilities.com
Status: INFORMATION

JENNIFER M. TSAO SHIGEKAWA
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY
Email: Jennifer.Shigekawa@sce.com
Status: INFORMATION

HANK RYAN EXECUTIVE DIR.
SMALL BUSINESS CALIFORNIA/SB CALIFORNIA
750 47TH AVE., NO. 56
CAPITOLA CA 95010
FOR: Small Business California
Email: hankryan2003@yahoo.com
Status: PARTY

PAUL WUEBBEN
SOUTH COAST AIR QUALITY MANAGEMENT DIST
21865 COPLEY DRIVE
DIAMOND BAR CA 91765-4178
FOR: South Coast Air Quality Management District
Email: pwuebben@aqmd.gov
Status: PARTY

BRUCE FOSTER
SOUTHERN CALIFORNIA EDISON COMPANY
601 VAN NESS AVE, STE. 2040
SAN FRANCISCO CA 94102
Email: bruce.foster@sce.com
Status: INFORMATION

KEVIN SHORE
SOUTHERN CALIFORNIA GAS COMPANY
555 W 5TH ST, GT28A4
LOS ANGELES CA 90013-1011
Email: KShore@SempraUtilities.com
Status: INFORMATION

KAREN W. WONG
SOUTHERN CALIFORNIA GAS COMPANY
555 W. 5TH ST, GT28A4
LOS ANGELES CA 90013
Email: KWong@SempraUtilities.com
Status: INFORMATION

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800 / 2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY
Email: case.admin@sce.com
Status: INFORMATION

LARRY R. COPE ATTORNEY
SOUTHERN CALIFORNIA EDISON
PO BOX 800, 2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: Southern California Edison Company
Email: larry.cope@sce.com
Status: PARTY

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CPUC DOCKET NO. A0807021, A0807022, A0807023, A0807031

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MONICA GHATTAS
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: Southern California Edison Company
Email: monica.ghattas@sce.com
Status: PARTY

MARIANNE KING
STAPLES MARKETING COMMUNICATIONS
N28W23050 ROUNDY DRIVE
PEWAUKEE WI 53072
FOR: STAPLES MARKETING COMMUNICATIONS
Email: mking@staplesmarketing.com
Status: INFORMATION

STEVE KROMER
SKEE
3110 COLLEGE AVE, APT 12
BERKELEY CA 94705
FOR: Steven Kromer
Email: jskromer@gmail.com
Status: INFORMATION

NIKHIL GANDHI
STRATEGIC ENERGY TECHNOLOGIES, INC.
17 WILLIS HOLDEN DRIVE
ACTON MA 1720
Email: gandhi.nikhil@verizon.net
Status: INFORMATION

SUMINDERPAL SINGH
SUNTULIT
4088 NORRIS ROAD
FREMONT CA 94536
Email: singh70@gmail.com
Status: INFORMATION

NICK HALL
TECMARKET WORKS
165 WEST NETHERWOOD ROAD, 2/F, STE A
OREGON WI 53575
Email: nphall@tecmarket.net
Status: INFORMATION

ROBERT GNAIZDA
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE., 2/F
BERKELEY CA 94704
FOR: THE GREENLINING INSTITUTE
Email: robertg@greenlining.org
Status: INFORMATION

BOBBI J. STERRETT SNR. SPECIALIST/STATE
REGULATORY AFFAIRS
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89150-0002
Email: bobbi.sterrett@swgas.com
Status: INFORMATION

JAMES R. STAPLES
STAPLES MARKETING COMMUNICATIONS
N28W23050 ROUNDY DRIVE
PEWAUKEE WI 53072
FOR: STAPLES MARKETING COMMUNICATIONS
Email: staples@staplesmarketing.com
Status: INFORMATION

SETH D. HILTON
STOEL RIVES, LLP
555 MONTGOMERY ST., STE 1288
SAN FRANCISCO CA 94111
Email: sdhilton@stoel.com
Status: INFORMATION

BRENT BARKETT
SUMMIT BLUE CONSULTING
1722 14TH ST, STE 230
BOULDER CO 80302
Email: bbarkett@summitblue.com
Status: INFORMATION

MATT GOLDEN
SUSTAINABLE SPACES, INC.
1167 MISSION ST, FLR 2
SAN FRANCISCO CA 94103
FOR: Sustainable Spaces, Inc.
Email: matt@sustainablespaces.com
Status: INFORMATION

CRAIG PERKINS
THE ENERGY COALITION
15615 ALTON PKWY, STE 245
IRVINE CA 92615
Email: cperkins@energycoalition.org
Status: INFORMATION

SAMUEL KANG MANAGING ATTORNEY
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE., 2ND FLR
BERKELEY CA 94704
FOR: The Greenlining Institute
Email: samk@greenlining.org
Status: PARTY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 327

GREY STAPLES
THE MENDOTA GROUP, LLC
EMAIL ONLY
EMAIL ONLY CA 0
Email: gstaples@mendotagroup.net
Status: INFORMATION

MARK L. PARSONS SR. DEPUTY GEN. COUNSEL
THE METROPOLITAN WATER DISTRICT OF SO.CA
PO BOX 54153
LOS ANGELES CA 90054-0153
FOR: The Metropolitan Water District of Southern California
Email: mparsons@mwdh2o.com
Status: PARTY

BILL MARCUS
JBS ENERGY
311 D ST, STE. A
WEST SACRAMENTO CA 95605
FOR: The Utility Reform Network
Email: bill@jbsenergy.com
Status: PARTY

BOB FINKLESTEIN
THE UTILITY REFORM NETWORK
115 SANSOME ST, STE 900
SAN FRANCISCO CA 94104
FOR: TURN
Email: bfinkelstein@turn.org
Status: PARTY

CYNTHIA K. MITCHELL
ENERGY ECONOMICS, INC.
530 COLGATE COURT
RENO NV 89503
FOR: TURN
Email: Cynthiakmitchell@gmail.com
Status: PARTY

LEIF MAGNUSON
U.S. EPA
WST-7 75 HAWTHORNE ST.
SAN FRANCISCO CA 94105
FOR: U.S. EPA
Email: magnuson.leif@epa.gov
Status: INFORMATION

MARIANN LONG ASSISTANT GENERAL MANAGER
UTILITIES JOINT SERVICES
201 S. ANAHEIM BLVD., NO. 101
ANAHEIM CA 92805
Email: mlong@anaheim.net
Status: INFORMATION

WILLIAM P. MCDONNELL
THE METROPOLITAN WATER DISTRICT
700 N. ALAMEDA ST
LOS ANGELES CA 90012
Email: bmcdonnell@mwdh2o.com
Status: INFORMATION

HAYLEY GOODSON STAFF ATTORNEY
THE UTILITY REFORM NETWORK
EMAIL ONLY
EMAIL ONLY CA 00000-0000
FOR: THE UTILITY REFORM NETWORK
Email: hayley@turn.org
Status: PARTY

MARYBELLE C. ANG STAFF ATTORNEY
THE UTILITY REFORM NETWORK
115 SANSOME ST, STE. 900
SAN FRANCISCO CA 94104
FOR: TURN
Email: mang@turn.org
Status: PARTY

MARCEL HAWIGER ENERGY ATTY
THE UTILITY REFORM NETWORK
115 SANSOME ST, STE 900
SAN FRANCISCO CA 94104
FOR: TURN
Email: marcel@turn.org
Status: PARTY

CRAIG TYLER
TYLER & ASSOCIATES
2760 SHASTA ROAD
BERKELEY CA 94708
Email: craigtyler@comcast.net
Status: INFORMATION

BENJAMIN FINKELOR PROGRAM MANAGER
UC DAVIS ENERGY EFFICIENCY CENTER
1 SHIELDS AVE
DAVIS CA 95616
Email: bmfinkelor@ucdavis.edu
Status: INFORMATION

PAUL KERKORIAN
UTILITY COST MANAGEMENT, LLC
6475 N PALM AVE., STE. 105
FRESNO CA 93704
Email: pk@utilitycostmanagement.com
Status: INFORMATION

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 327

CHERYL COLLART
VENTURA COUNTY REGIONAL ENERGY ALLIANCE
1000 SOUTH HILL ROAD, STE. 230
VENTURA CA 93003
Email: cheryl.collart@ventura.org
Status: INFORMATION

MARSHALL B. HUNT PROGRAMS DIRECTOR, UC DAVIS
WESTERN COOLING EFFICIENCY CENTER
633 PENA DRIVE
DAVIS CA 95618-6570
FOR: WESTERN COOLING EFFICIENCY CENTER
Email: mbhunt@ucdavis.edu
Status: INFORMATION

DON MEEK ATTORNEY
10949 SW 4TH AVE
PORTLAND OR 97219
FOR: Women's Energy Matters
Status: PARTY

BARBARA GEORGE
WOMEN'S ENERGY MATTERS
PO BOX 548
FAIRFAX CA 94978
FOR: Women's Energy Matters (WEM)
Email: wem@igc.org
Status: PARTY

CAROL YIN
YINSIGHT, INC
2275 HUNTINGTON DRIVE., 240
SAN MARINO CA 91108
Email: cyin@yinsight.net
Status: INFORMATION