

**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)

**COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY
(U 39 M) ON PROPOSED DECISION OF ALJ GAMSON**

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TABLE OF CONTENTS

	Page
I. EXECUTIVE SUMMARY	1
1. Benchmarking is Customer-Driven -Benchmarking is a customer-driven process and customers can decline to participate.....	2
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.....	2
B. The PD’s Rationale for Rejecting the IOUs’ Proposed Modification for Exclusive Use of the ESPM Benchmarking Tool is Factually Incorrect.....	3
C. The PD’s Conclusion that it is Feasible to Benchmark All Commercial Buildings Within the 2010-2012 Program Cycle is Factually Incorrect.....	4
1. The Benchmarking Process is Driven by the Customer.....	4
2. Customer Confidentiality Obligations Interfere with the Mandate to Benchmark All Buildings.....	5
3. The PD Should Not Order the IOUs to Benchmark All Buildings.....	6
II. CONCLUSION.....	7
APPENDIX A	

TABLE OF AUTHORITIES

	Page(s)
STATUTES	
Cal. Pub. Util. Code § 394.4(a).....	5
MISCELLANEOUS	
Assem. Bill No. 1103	passim
Pacific Gas and Electric Company Electric Rule 9.M.....	5
Pacific Gas and Electric Company Gas Rule 9.M.....	5
CA Long Term Energy Efficiency Strategic (Jan. 2011)	6, 7

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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]ustomer information shall be confidential unless the customer consents in writing. This shall encompass confidentiality of customer specific billing, credit, or usage information.”^{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 PD fails to address the fact that the proxy data would also be subject to customer confidentiality

^{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); *see also* Pacific Gas and Electric Company Electric Rule 9.M; Pacific Gas and Electric Company Gas Rule 9.M.

^{12/} *See Id.*

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.

In declining to modify D.09-09-047 to include the proposed modification—that the IOUs

^{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.

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,

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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</u> utility-run local commercial energy efficiency programs, shall adopt the

^{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 government buildings and facilities impacted by a utility program in a substantial way;</u>
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>

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 14, 2011, I served a true copy of:

**COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 M) 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 14th day of March, 2011, at San Francisco, California.

/s/

PAMELA J. DAWSON-SMITH

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

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Last Updated: March 9, 2011

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Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

Total number of addressees: 326

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 9, 2011

CPUC DOCKET NO. A0807021; -022; -023; -031

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