INDEPENDENT
ENERGY
PRODUCERS

June 13, 2011

Honesto Gatchalian and Maria Salinas
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
jnj@cpuc.ca.gov; mas@cpuc.ca.gov

RE: COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON DRAFT RESOLUTION E-4405

Dear Mr. Gatchalian/Ms. Salinas:

The Independent Energy Producers Association ("IEP") is a trade association representing the interests of developers and operators of electric generation facilities. We have been active in Commission-related contract issues for 30 years and most recently in the development and implementation of the California Renewables Portfolio Standard ("RPS") statute. We appreciate the opportunity to comment on Draft Resolution E-4405 related to a project proposal that has undergone the time-consuming rigors of a Commission-approved and utility-implemented competitive solicitation process.

Pacific Gas and Electric Company ("PG&E") seeks Commission approval of a 20-year Power Purchase Agreement (PPA) with North Star Solar, LLC (North Star Solar). The North Star Solar facility is a proposed 60 megawatt (MW) photovoltaic (PV) facility in the Westlands Water District, a known solar resource area near Mendota, California. Interconnected directly to the high-voltage transmission system, the facility is projected to generate 119 gigawatt-hours per year of renewable energy. The project is expected to become operational beginning June 30, 2013. Draft Resolution E-4405 rejects the PPA on the ground that the price of energy under the PPA is too high in relation to recent bids.

1215 K Street • Suite 900 • Sacramento, CA 95814 • office: 916-448-9499 • fax: 916-448-0182 • email: iep@iepa.com

IEP is concerned that Draft Resolution E-4405 contains a fundamental flaw, creating an "apple to oranges" comparison of a fully executed PPAs with bids in a totally different solicitation for different renewable products. The Draft Resolution sets a dangerous precedent for future PPAs submitted for approval that have been delayed as they work their way through the existing procurement process. The Draft Resolution may create the conditions for delayed decision-making and inaction. Legitimate bidders in competitive RPS Request for Offers ("RFO") solicitations need assurance that when they participate and compete fairly in a Commission-approved procurement mechanism, their projects will be reviewed in light of the product sought and the context of the solicitation in which they participated. The draft Resolution sets this expectation on its head.

The North Star Solar project is the result of PG&E's 2009 RPS solicitation, and PG&E states that the contract price exceeds the applicable 2009 market price referent (MPR). The project was proposed, evaluated, and finally negotiated consistent with the Commission's RPS program, including review by an Independent Evaluator. The project is coming to the Commission for approval nearly two years after it was bid in PG&E's 2009 RPS RFO, which is a fairly normal lag-time for projects submitted into a utility's RPS RFO. There is no suggestion that the bid evaluation and review process was abused or resulted in the selection of projects inconsistent with Commission's goals.

The Draft Resolution rejects the PPA and concludes that the North Star Solar PPA's price is not competitive with bids submitted in PG&E's February 2011 solicitation to acquire 50 MWs of solar PV.

The fundamental flaw of Draft Resolution E-4405 is that it sets up an "apples and oranges" comparison that is a recipe for inaction. The Draft Resolution compares two different renewable products subject to two separate procurement mechanisms (*e.g.,* RPS (eligible at any size) vs. Solar PV (less than 20 MWs)) occurring over different time frames. Moreover, the Draft Resolution compares the price of a fully negotiated PPA, which has gone through the rigorous and time-consuming

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Commission-approved review process, with bids for projects that have not yet been completely vetted by PG&E or the Commission.

The Draft Resolution raises several concerns that will have long-term ramifications on the successful implementation of the RPS. First, bids in a competitive procurement may not end up as the final price of the negotiated agreement submitted to the Commission for approval. Thus, a comparison of the price term of an executed agreement with a future bid is skewed, in most cases to the disadvantage of the executed PPA. The Commission must avoid creating a "grass is always greener" precedent of comparing fully executed PPAs with initial bids or proposals. Competitive solicitations may include speculative projects, bids submitted as "loss leaders," and bids for which the underlying emerging technology is promoted with untested claims of rapidly declining costs.

Second, for the Commission's RPS RFO process to have any integrity, projects submitted by the utilities for Commission approval should be recognized as having undergone a rigorous bid evaluation among many competitors, lengthy negotiation with the utility to finalize the PPA, and an independent review process. This process is focused on a particular RPS product specified in a particular RFO. Comparisons of executed PPAs with alternative products, or similar products sought through different procurement mechanisms in different time periods, undermines the integrity of the RPS RFO process.

The Commission should not fall into the trap of rejecting a fully negotiated contract today based on the expectation that costs for future, speculative projects will be lower. In the context of the 2009 RFO, the standard for review was fairly established for projects submitted at that time. That was the market reality that this PPA and its competitors responded to in submitting their bids. The Draft Resolution does not suggest that this PPA was "out of the money" with the other competitive bids, for this renewable product, submitted at the time. Rather it is seduced by the expectation of future prices at a lower cost.

However, using this same logic, it is reasonable to expect that the bids submitted in 2011, after being fully negotiated and processed through the

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Commission, will be at higher prices than bids that will be seen in the future. Trying to "time the market" in this way will lead to inaction and ultimately a failure to meet the RPS goals.

The point of competitive markets is to drive prices downward and to foster innovation. It is logical to assume that a healthy RPS market creating demand will result in new technologies and lower prices in the future. However, there is a temporal aspect to markets, with prices reflecting moments in time. A procurement process that requires two years to get to ultimate Commission approval will have a very difficult time ever getting to "the right price."

The Commission has the authority and responsibility to reject projects that are not just and reasonable in the context of the specific products being sought through a specific procurement mechanism. These responsibilities, however, should be exercised in light of the requirements and protocols applied by the Commission at the time the utilities' procurements were initiated. To do otherwise risks undermining the regulatory certainty necessary to make the competitive procurement process an efficient and effective means to develop new generation in a timely manner.

The Draft Resolution rejects this PPA predicated on what it sees as lower prices in the current market. IEP hopes that this is in fact the case, although it remains to be seen. If it is the case, it is the result of a competitive market, building off of a stability established in past solicitations. As the market moves forward, we should expect further technological advances and cost reductions. However, this success will be chilled if the Commission sets a precedent that price and terms bid today will be judged on the basis of market conditions at some uncertain point in the future.

It is clear that the Commission is legitimately concerned about price. While the promise of a lower price is inviting, the Commission should be careful not to undermine the integrity of its overall process. The Commission should evaluate this PPA and approve or reject it on the basis of the type of product and price that the Commission authorized in the 2009 RPS RFO conducted by PG&E.

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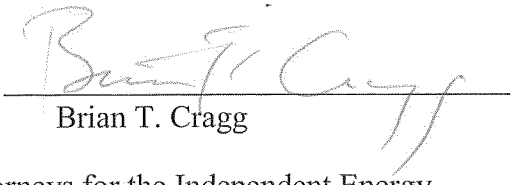
In addition, the Commission should seek ways to truncate the overly time-consuming negotiation and approval process in the current market structure. Two years is way too long to maintain a bid while awaiting the Commission's approval. The Commission should strive for a 60-day process. A market with bids, contracts and approvals closer in time will better reflect current prices and better serve all parties.

Thank you for considering our concerns.

Respectfully submitted,

Steven Kelly
Policy Director
Independent Energy Producers Association
1215 K Street, Suite 900
Sacramento, CA 95814

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321

By 
Brian T. Cragg

Attorneys for the Independent Energy Producers Association

cc. Jason Simon, Energy Division
Service List
President Michael Peevey
Commissioner Mark Ferron
Commissioner Mike Florio
Commissioner Catherine Sandoval
Commissioner Timothy Alan Simon
Director Julie Fitch, Energy Division
Chief Administrative Law Judge Karen Clopton
General Counsel Frank Lindh

1215 K Street • Suite 900 • Sacramento, CA 95814 • office: 916-448-9499 • fax: 916-448-0182 • email: iep@iepa.com

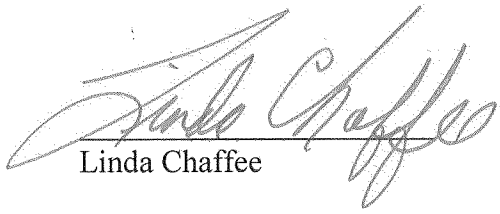
CERTIFICATE OF SERVICE

I, Linda Chaffee, certify that I have on this 13th day of June 2011 caused a copy of the foregoing

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON DRAFT RESOLUTION E-4405

to be served on all known parties to R.11-05-005 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of June 2011 at San Francisco, California.



Linda Chaffee

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Service List – R.11-05-005
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ANDREW B. BROWN
abb@eslawfirm.com

JASON ABIECUNAS
abiecunasjp@bv.com

ADAM BROWNING
abrowning@votesolar.org

ARI CITRIN
acitrin@prosoliana.com

MICHAEL BOCCADORO
aecaonline@gmail.com

ANNE GILLETTE
AEG@cpuc.ca.gov

Anne E. Simon
aes@cpuc.ca.gov

ALEX KANG
alex.kang@itron.com

ALEXANDRA KONIECZNY
alexandra.konieczny@sutherland.com

ALEX MARTIN
amartin@nextlight.com

AMBER RIESENHUBER
amber@iepa.com

AARON RENFRO
AMRO@pge.com

AIMEE M. SMITH
AMSmith@SempraUtilities.com

ANDERS GLADER
anders.glader@elpower.com

ANDRE DEVILBISS
andre.devilbiss@recurrentenergy.com

ANDREA MORRISON
andrea.morrison@directenergy.com

ANDREW LUSCZ
Andrew.Luscz@GlacialEnergy.com

ANDREW J. VAN HORN
andy.vanhorn@vhcenergy.com

ANDY KATZ
andykatz@sonic.net

ANGELA GREGORY
angela.gregory@DirectEnergy.com

ART RIVERA
artrivera@comcast.net

Andrew Schwartz
as2@cpuc.ca.gov

ALYSSA T. KOO
atk4@pge.com

ANN L. TROWBRIDGE
atrowbridge@daycartermurphy.com

AUSTIN M. YANG
austin.yang@sfgov.org

ANUPAMA VEGE
avege@firstwind.com

MATTHEW BARMACK
barmackm@calpine.com

BRIAN T. CRAGG
bcragg@goodinmacbride.com

BARRY H. EPSTEIN
bepstein@fablaw.com

RYAN BERNARDO
bernardo@braunlegal.com

BETH VAUGHAN
beth@beth411.com

WILLIAM S. KAMMERER
bill@fitcoalition.com

BRUNO JEIDER
BJeider@ci.burbank.ca.us

BRIAN K. CHERRY
bkc7@pge.com

SCOTT BLAISING
blaising@braunlegal.com

ROBERT B. GEX
bobgex@dwt.com

BARBARA R. BARKOVICH
brbarkovich@earthlink.net

BRIAN PRUSNEK
Brian.Prusnek@sce.com

BRIAN THEAKER
brian.theaker@nrgenergy.com

BRYAN SCHWEICKERT
bryan.schweickert@ladwp.com

BRIAN S. BIERING
bsb@eslawfirm.com

Burton Mattson
bwm@cpuc.ca.gov

BETH SCHOSHINSKI
BXSZ@pge.com

CHRISTIAN MENTZEL
c.mentzel@cleanenergymaui.com

CARRIE A. DOWNEY
cadowney@cadowneylaw.com

CASE ADMINISTRATION
case.admin@sce.com

TIMOTHY CASTILLE
castille@landsenergy.com

CATHERINE M. KRUPKA
catherine.krupka@sutherland.com

CATHIE ALLEN
cathie.allen@pacificorp.com

CATHY A. KARLSTAD
cathy.karlstad@sce.com

CHARLES J. BLACK
CBlack@riversideca.gov

CINDY L. CASSELMAN
ccasselman@pilotpowergroup.com

CHARLES CHANG
cchang@cityofpasadena.net

CAITLIN COLLINS LIOTIRIS
ccollins@Energystrat.com

HILARY CORRIGAN
cem@newsdata.com

NOBLE AMERICAS ENERGY SOLUTIONS LLC
CentralFiles@SempraUtilities.com

CENTRAL FILES
CentralFiles@SempraUtilities.com

CHAD CHAHBAZI
chad@cenergypower.com

MICHAEL CHESTONE
chestonem@sharpsec.com

CHRISTOPHER A. HILEN
chilen@sppc.com

CHRIS LEVERIZA
chris.leveriza@glacialenergy.vi

CHRIS KING
chris@emeter.com

CURTIS KEBLER
CKebler@SempraGeneration.com

CLARE LAUFENBER GALLARDO
claufenb@energy.state.ca.us

CONSTANCE LENI
cleni@energy.state.ca.us

Chloe Lukins
clu@cpuc.ca.gov

CLYDE MURLEY
clyde.murley@comcast.net

CAROLYN KEHREIN
cmkehrein@ems-ca.com

CORY M. MASON
cmmw@pge.com

CHERYL LEE
CNL@cpuc.ca.gov

ERIC OSBORN
cpacc@calpine.com

CHERYL PONDS
cponds@ci.chula-vista.ca.us

CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC
cpuc@liberty-energy.com

REGULATORY FILE ROOM
CPUCCases@pge.com

DOCKET COORDINATOR
cpucdockets@keyesandfox.com

ERIN RANSLOW
cpucrulings@navigantconsulting.com

CHARLES R. MIDDLEKAUFF
CRMd@pge.com

CARL STEEN
csteen@bakerlaw.com

CATHY S. WOOLLUMS
cswoollums@midamerican.com

Christopher Danforth
ctd@cpuc.ca.gov

CHRISTOPHER T. ELLISON
cte@eslawfirm.com

CYNTHIA WOOTEN
cwooten@lumenxconsulting.com

CYNTHIA A. BRADY
cynthia.brady@constellation.com

CYNTHIA FONNER BRADY
cynthia.brady@constellation.com

DIANE MOSS
d.moss@renewables100.org

DANIEL A. KING
DAKing@SempraGeneration.com

DAN ADLER
Dan.adler@calcef.org

DANIELLE OSBORN-MILLS
danielle@ceert.org

DAVID OLIVER
david.oliver@navigantconsulting.com

DAVID A. BISCHEL
davidb@cwo.com

DAVID E. MORSE
davidmorse9@gmail.com

DAVID OLIVARES
davido@mid.org

DEE ANNA BODINE
DBodine@LibertyPowerCorp.com

DAVID PECK
DBP@cpuc.ca.gov

David Peck
dbp@cpuc.ca.gov

DAVID R. BRANCHCOMB
dbranchcomb@spi-ind.com

DAN L. CARROLL
dcarroll@downeybrand.com

DOUGLAS E. COVER
dcover@esassoc.com

DOUG DAVIE
ddavie@wellhead.com

DENNIS W. DE CUIR
dennis@ddecuir.com

DEREK DENNISTON
Derek@AltaPowerGroup.com

DOUGLAS M. GRANDY, P.E.
dgrandy@caonsitegen.com

DANIEL V. GULINO
dgulino@ridgewoodpower.com

DAVID L. HUARD
dhuard@manatt.com

DIANE I. FELLMAN
Diane.Fellman@nrgenergy.com

WILLIAM F. DIETRICH
dietrichlaw2@earthlink.net

WILLIAM DIETRICH
dietrichlaw2@earthlink.net

DANIEL JURIJEW
djurijew@capitalpower.com

DOUGLAS K. KERNER
dkk@eslawfirm.com

DESPINA NIEHAUS
DNiehaus@SempraUtilities.com

JAMES L. BYARD PH.D.
DocToxics@aol.com

DAVID ORTH
dorth@krcd.org

Dorothy Duda
dot@cpuc.ca.gov

DOUGLAS MCPHERSON
Douglas@Idealab.com

DANIEL W. DOUGLASS
douglass@energyattorney.com

DIANA SANCHEZ
dsanchez@daycartermurphy.com

DAVID SAUL
dsaul@pacificsolar.net

DANIELLE MATTHEWS SEPERAS
dseperas@calpine.com

DAVID TOWNLEY
dtownley@infiniacorp.com

DAVID VIDAVER
dvidaver@energy.state.ca.us

DAWN WEISZ
dweisz@marinenergyauthority.org

DONALD SCHOENBECK
dws@r-c-s-inc.com

DAVIS WRIGHT TREMAINE, LLC
dwtcpucdockets@dwt.com

ED CHIANG
echiang@elementmarkets.com

EDWARD A. MAINLAND
ed.mainland@sierraclub.org

ED SMELOFF
ed.smeloff@sunpowercorp.com

SHANNON EDDY
eddyconsulting@gmail.com

EDWARD W. O'NEILL
edwardoneill@dwt.com

ELIZABETH HADLEY
ehadley@reupower.com

ELIZABETH WRIGHT
ej_wright@oxy.com

EVELYN KAHL
ek@a-klaw.com

ED LUCHA
ELL5@pge.com

EDWARD VINE
elvine@lbl.gov

ELENA MELLO
emello@sppc.com

ELIZABETH RASMUSSEN
erasmussen@marinenergyauthority.org

CALIFORNIA INDEPENDENT SYSTEM OPERATOR
e-recipient@caiso.com

CALIFORNIA ISO
e-recipient@caiso.com

ERIC CHERNISS
eric.cherniss@gmail.com

ERIK STUEBE
Eriks@ecoplexus.com

ERIN GRIZARD
Erin.Grizard@BloomEnergy.com

ELAINE SISON-LEBRILLA
esison@smud.org

TERRY FARRELLY
farrellytc@earthlink.net

FRANK DE ROSA
fderosa@nextlight.com

FREEMAN S. HALL
fhall@solarelectricsolutions.com

KAREN TERRANOVA
filings@a-klaw.com

FREDERICK M. ORTLIEB
fortlieb@sandiego.gov

AMY FREES
freesa@thirdplanetwind.com

FRED W. NOBLE
fwnoble@WintecEnergy.com

FRED G. YANNEY
fyanney@fulbright.com

ANGELINA GALITEVA
galiteva@aol.com

GREG BASS
gbass@noblesolutions.com

GURCHARAN BAWA
gbawa@cityofpasadena.net

GEORGE WILTSEE
george.wiltsee@sce.com

GEOREG GISEL
ggisel@indenergysolutions.com

GABRIEL HERRERA
gherrera@energy.state.ca.us

GLORIA BRITTON
GloriaB@anzaelectric.org

GREGG MORRIS
gmorris@emf.net

CAMILLE A. GOULET
GouletCA@email.laccd.edu

GABE PETLIN
gpetlin@3degreesinc.com

Gretchen T. Dumas
gtd@cpuc.ca.gov

GERALD T. ROBINSON
gtrobinson@lbl.gov

GRACE LIVINGSTON-NUNLEY
GXL2@pge.com

HAROLD M. ROMANOWITZ
hal@rwitz.net

HARRY SINGH
harry.singh@gs.com

HOLLY B. CRONIN
hcronin@water.ca.gov

HIMANSHU PANDEY
HPandey@ci.burbank.ca.us

HEATHER RAITT
hraitt@energy.state.ca.us

HANNON RASOOL
HRasool@SempraUtilities.com

CAROL J. HURLOCK
hurlock@water.ca.gov

HUGH YAO
HYao@SempraUtilities.com

INGER GOODMAN
igoodman@commerceenergy.com

IAN MCGOWAN
imcgowan@3DegreesInc.com

MIGNON MARKS
info@calseia.org

JEFF COX
j.miles.cox@sbcglobal.net

Joseph A. Abhulimen
jaa@cpuc.ca.gov

JACK MCNAMARA
jackmack@suesec.com

JIM STACK, PH.D.
James.Stack@CityofPaloAlto.org

JANET M. GAGNON
janet.gagnon@solarworldusa.com

JANICE LIN
janice@strategenconsulting.com

L. JAN REID
janreid@coastecon.com

JARED W. JOHNSON
jared.johnson@lw.com

JEANNE B. ARMSTRONG
jarmstrong@goodinmacbride.com

JASON YAN
jay2@pge.com

JOHN CASADONT
JCasadont@BlueStarEnergy.com

JENNIFER CHAMBERLIN
JChamberlin@LSPower.com

J. COURTNEY OLIVE
jcolive@bpa.gov

JEAN-CALUDE BERTET
Jean-Claude.Bertet@ladwp.com

JEANNE M. SOLE
jeanne.sole@sfgov.org

JEFF HIRSCH
Jeff.Hirsch@DOE2.com

JEFF NEWMAN
Jeff.Newman@bth.ca.gov

JEFFREY P. GRAY
jeffgray@dwt.com

JENINE SCHENK
jenine.schenk@apses.com

JENNIFER BARNES
Jennifer.Barnes@Navigantconsulting.com

Julie A. Fitch
jf2@cpuc.ca.gov

JOE GRECO
jgreco@terra-genpower.com

JIM HOWELL
jim.howell@recurrentenergy.com

JIM METROPULOS
jim.metropulos@sierraclub.org

JAMES P. WHITE
jim_p_white@transcanada.com

JEDEDIAH J. GIBSON
jjg@eslawfirm.com

JOSEPH M. KARP
jkarp@winston.com

JACQUELINE KEPKE
jkepke@ch2m.com

JOHN KERN
jkern@bluestarenergy.com

JASON B. KEYES
jkeyes@keyesandfox.com

JANIS LEHMAN
JLehman@anaheim.net

JOHN W. LESLIE, ESQ.
jleslie@luce.com

Jason Simon
jls@cpuc.ca.gov

JANE E. LUCKHARDT
jluckhardt@downeybrand.com

Jaclyn Marks
jm3@cpuc.ca.gov

JAN MCFARLAND
jmcfarland@treasurer.ca.gov

JAMES MCMAHON
jmcmahon@8760energy.com

Julie Halligan
jmh@cpuc.ca.gov

JOHN NIMMONS
jna@speakeasy.org

JESSICA NELSON
jnelson@psrec.coop

JODY LONDON
jody_london_consulting@earthlink.net

JOSEPH LANGENBERG
Joe.Langenberg@gmail.com

JOHN DEWEY
john@deweygroup.com

JOHN DUNN
john_dunn@transcanada.com

JOHN R. REDDING
johnrredding@earthlink.net

JOHN M. SPILMAN
johnspilman@netzero.net

JONATHAN JACOBS
jon.jacobs@paconsulting.com

JONI A. TEMPLETON
Joni.Templeton@sce.com

JORDAN A. WHITE
jordan.white@pacificorp.com

JOY A. WARREN
joyw@mid.org

Jordan Parrillo
jp6@cpuc.ca.gov

JAN PEPPER
jpepper@svpower.com

JENNIFER PIERCE
jpierce@semprautilities.com

JOHN PITTS
jpittsjr@pcgconsultants.com

JP ROSS
jpross@sungevity.com

JEFFREY REHFELD
jrehfeld@naturener.net

JUDITH SANDERS
jsanders@caiso.com

JUDITH SANDERS
jsanders@caiso.com

JANINE L. SCANCARELLI
jscancarelli@crowell.com

JOHN PAPPAS
jsp5@pge.com

JULIANNE SPEARS
jspears@orrick.com

JAMES D. SQUERI
jsqueri@goodinmacbride.com

JACK STODDARD
jstoddard@manatt.com

JUDY PAU
judypau@dwt.com

JULIETTE ANTHONY
juliettea7@aol.com

JAMES WEIL
jweil@aglet.org

JAMES B. WOODRUFF
jwoodruff@nextlight.com

JIM WOODWARD
jwoodwar@energy.state.ca.us

Jonathan J. Reiger
jzr@cpuc.ca.gov

KAREN KHAMOU
k1k3@pge.com

Karin M. Hieta
kar@cpuc.ca.gov

KAREN KOCHONIES
Karen.Kochonies@MorganStanley.com

KAREN LINDH
karen@klindh.com

KEVIN BOUDREAUX
kb@EnerCalUSA.com

KEITH MCCREA
keith.mccrea@sablaw.com

KEITH WHITE
keithwhite@earthlink.net

KELLY CAUVEL
kelly.cauvel@build-laccd.org

KENNY SWAIN
kenneth.swain@navigantconsulting.com

KERRY EDEN
kerry.eden@ci.corona.ca.us

KERRY HATTEVIK
kerry.hattevik@nexteraenergy.com

KEVIN A. LYNCH
kevin.lynch@iberdrolaren.com

KEVIN T. FOX
kfox@keyesandfox.com

KELLY FRANCONE
KFrancone@energystrat.com

KELLY GIDDENS
kgiddens@orrick.com

Ke Hao Ouyang
kho@cpuc.ca.gov

KEVIN J. SIMONSEN
kjsimonsen@ems-ca.com

GREGORY S.G. KLATT
klatt@energyattorney.com

KAREN NORENE MILLS
kmills@cfbf.com

KAREN N. MILLS
kmills@cfbf.com

AVIS KOWALEWSKI
kowalewskia@calpine.com

KRISTIN BURFORD
kristin@consciousventuresgroup.com

KEITH SWITZER
kswitzer@gswater.com

SOCAL WATER/BEAR VALLEY ELECTRIC
kswitzer@gswater.com

ROGER KROPKE
kswitzer@scwater.com

Keith D White
kwh@cpuc.ca.gov

KATE ZOCCHETTI
kzocchet@energy.state.ca.us

LAURA I. GENAO
Laura.Genao@sce.com

LAURIE MAZER
Laurie.Mazer@bp.com

LISA A. COTTLE
lcottle@winston.com

LAUREN ROHDE
ldri@pge.com

LEONARD LEICHNITZ
leichnitz@lumospower.com

LEILANI JOHNSON KOWAL
leilani.johnson@ladwp.com

LORRAINE GONZALES
lgonzale@energy.state.ca.us

DONALD C. LIDDELL
liddell@energyattorney.com

LINDA FISCHER
lindaf@mid.org

LINDSAY ZAITSOFF
lindsay_zaitsoff@transalta.com

LYNN M. HAUG
lmh@eslawfirm.com

LILY M. MITCHELL
lmitchell@hanmor.com

LAURIE PARK
lpark@navigantconsulting.com

LESLIE E. SHERMAN
lsherman@orrick.com

LEE TERRY
lterry@water.ca.gov

LUKE DUNNINGTON
luke.dunnington@recurrentenergy.com

LON W. HOUSE, PH.D
lwhouse@innercite.com

LAURA WISLAND
lwisland@ucsusa.org

LYNN M. ALEXANDER
lynn@lmaconsulting.com

MARK STOUT
m.stout@meridianenergyusa.com

MARCEL HAWIGER
marcel@turn.org

MARCIE MILNER
marcie.milner@shell.com

MARK THOMPSON
mark.thompson@powerex.com

MARK ETHERTON
mark@pdsplc.com

MARK FUMIA
markfumia@dwt.com

MARTIN HOMEC
martinhomec@gmail.com

MARY C. HOFFMAN
mary@solutionsforutilities.com

TIM MASON
masont@bv.com

MATT MILLER
matt.miller@recurrentenergy.com

MATTHEW FREEDMAN
matthew@turn.org

Michael Colvin
mc3@cpuc.ca.gov

MIKE CAMPBELL
mcampbell@sfwater.org

MICHAEL E. CARBOY
mcarboy@signalhill.com

MARK CHEDIAK
mchediak@bloomberg.net

BRUCE MCLAUGHLIN
mclaughlin@braunlegal.com

MEGAN COX
mcox@calplg.com

MARCUS V. DA CUNHA
mdacunha@ecoplexus.com

MICHAEL DAY
mday@goodinmacbride.com

MICHAEL B. DAY
mday@goodinmacbride.com

MICHAEL DEANGELIS
mdeange@smud.org

MICHAEL DEANGELIS
mdeange@smud.org

MARC D. JOSEPH
mdjoseph@adamsbroadwell.com

MEREDITH LAMEY
meredith_lamey@transcanada.com

MARK FRAZEE
mfrazee@anaheim.net

MICHAEL P. GINSBURG
mginsburg@orrick.com

GRADY MATHAI-JACKSON
MGML@pge.com

MICHAEL WHEELER
michael.wheeler@recurrentenergy.com

MICHAEL E. BOYD
michaelboyd@sbcglobal.net

Matthew Deal
mjd@cpuc.ca.gov

MIKE JENSEN
mjensen@mercedid.org

Mary Jo Stueve
mjs@cpuc.ca.gov

MADELON A. KUCHERA
mkuchera@bluestarenergy.com

MICHAEL MAZUR
mmazur@3PhasesRenewables.com

MARK MCDANNEL
mmcdannel@lacsd.org

MAGGIE CHAN
MMCL@pge.com

MOHAN NIROULA
mniroula@water.ca.gov

MARJORIE OXSEN
moxsen@calpine.com

MICHAEL ALCANTAR
mpa@a-klaw.com

MELISSA P. MARTIN
mpf@stateside.com

Marcelo Poirier
mpo@cpuc.ca.gov

COOL EARTH SOLAR
mpr-ca@coolearthsolar.com

MARC PRYOR
mpryor@energy.state.ca.us

MANUEL RAMIREZ
mramirez@sfwater.org

MARK HUFFMAN
mrh2@pge.com

Mark R. Loy
mrl@cpuc.ca.gov

MRW & ASSOCIATES, LLC
mrw@mrwassoc.com

MANDIP KAUR SAMRA
msamra@anaheim.net

MATTHEW TISDALE
MWT@cpuc.ca.gov

NANCY NORRIS
Nancy.Norris@powerex.com

Noel Obiora
nao@cpuc.ca.gov

ROSS BUCKENHAM
nblack@calbioenergy.com

NEAL DE SNOO
ndesnoo@ci.berkeley.ca.us

NEDRA YOUNG
nedrayoung@gmail.com

NELLIE TONG
nellie.tong@us.kema.com

NORA SHERIFF
nes@a-klaw.com

NICHOLE FABRI ZANDOLI
nicole.fabri@clearenergybrokerage.com

Nilgun Atamturk
nil@cpuc.ca.gov

Nika Rogers
nlr@cpuc.ca.gov

NANCY L. MURRAY
nmurray@naturener.net

NORMAN J. FURUTA
norman.furuta@navy.mil

NORMAN A. PEDERSEN
npedersen@hanmor.com

NGUYEN QUAN
nquan@gswater.com

NANCY RADER
nrader@calwea.org

NIELS KJELLUND
nxk2@pge.com

OBADIAH BARTHOLOMY
obartho@smud.org

PATRICK VANBEEK
patrick.vanbeek@commercialenergy.net

PATRICK VAN BEEK
Patrick.VanBeek@CommercialEnergy.net

PAUL FENN
paulfenn@local.org

PANAMA BARTHOLOMY
pbarthol@energy.state.ca.us

PETER BLOOD
pblood@columbiaenergypartners.com

PAMELA DOUGHMAN
pdoughma@energy.state.ca.us

PETER EICHLER
peter.eichler@libertywater.com

PETER T. PEARSON
peter.pearson@bves.com

PETER MORITZBURKE
pfmoritzburke@gmail.com

PETER W. HANSCHEN
phanschen@mofo.com

PHILLIP REESE
phil@reesechambers.com

RYAN PLETKA
pletkarj@bv.com

PAUL D. MAXWELL
pmaxwell@navigantconsulting.com

Paul Douglas
psd@cpuc.ca.gov

POLLY SHAW
pshaw@suntechamerica.com

PAUL DELANEY
pssed@adelphia.net

G. PATRICK STONER
pstoner@lgc.org

RICHARD W. RAUSHENBUSH
r.raushenbush@comcast.net

RAFI HASSAN
rafi.hassan@sig.com

JOHN DUTCHER
Ralf1241a@cs.com

RAMESH RAMCHANDANI
ramesh.ramchandani@commercialenergy.net

RAMONA GONZALEZ
ramonag@ebmud.com

RANDY HOWARD
Randy.Howard@ladwp.com

HANS ISERN
reg@silveradopower.com

CASE COORDINATION
RegRelCPUCCases@pge.com

SILVERADO POWER LLC
regulatory@silveradopower.com

ARNO HARRIS
regulatory_affairs@recurrentenergy.com

RENEE H. GUILD
renee@gem-corp.com

RANDALL W. HARDY
rhardy@hardyenergy.com

RICHARD F. CHANDLER
richard.chandler@bp.com

RICK A. LIND
rick@sierraecos.com

RICK C. NOGER
rick_noger@praxair.com

ROBERT J. GILLESKIE
rjgilleskie@san.rr.com

RANDALL W. KEEN
rkeen@manatt.com

RONALD MOORE
rkmoore@gswater.com

Raj Naidu
rkn@cpuc.ca.gov

RICHARD MCCANN
rmccann@umich.edu

RACHEL MCMAHON
rmcmahon@amonix.com

Regina DeAngelis
rmd@cpuc.ca.gov

ROSS A. MILLER
rmiller@energy.state.ca.us

Rahmon Momoh
rmm@cpuc.ca.gov

RONALD M. CERNIGLIA
ron.cerniglia@directenergy.com

RON PERRY
ron.perry@commercialenergy.net

ROXANE J. PERRUSO
roxane.perruso@tac-denver.com

RHONE RESCH
rresch@seia.org

ROB ROTH
rroth@smud.org

REED V. SCHMIDT
rschmidt@bartlewells.com

ROBIN J. WALTHER
rwalther@pacbell.net

RYAN HEIDARI
ryan.heidari@endimensions.com

SUNCHETH BHAT
S2B9@pge.com

SAEED FARROKHPAY
saeed.farrokhpay@ferc.gov

KENNETH SAHM WHITE
sahm@fitcoalition.com

SAM MASLIN
sam.maslin@recurrentenergy.com

SARA BIRMINGHAM
sara@solaralliance.org

ANNIE STANGE
sas@a-klaw.com

C. SUSIE BERLIN
sberlin@mccarthylaw.com

SCOTT GOORLAND
scott.goorland@fpl.com

SETH D. HILTON
sdhilton@stoel.com

SEAN P. BEATTY
sean.beatty@genon.com

SEAN GALLAGHER
seang@kroadpower.com

SHAUN HALVERSON
SEHC@pge.com

SAMANTHA G. POTTENGER
sgp@eslawfirm.com

Mitchell Shapson
sha@cpuc.ca.gov

SHANI KLEINHAUS
shani@scvas.org

SCOTT HARDING
sharding@iidenergy.com

SHELDON KIMBER
sheldon.kimber@recurrentenergy.com

STANDISH O'GRADY
sho@ogrady.us

SUZY HONG
shong@goodinmacbride.com

SIOBHAN DOHERTY
siobhan.doherty@frv.com

SHAUNA WIEST
slwiest@stoel.com

SARA KAMINS
SMK@cpuc.ca.gov

STEVEN C. NELSON
SNelson@Sempra.com

SNULLER PRICE
snuller@ethree.com

SHERIDAN J. PAUKER
spauker@wsgr.com

SHAUN PILLOTT
spillott@capitalpower.com

Sarah R. Thomas
srt@cpuc.ca.gov

SARA STECK MYERS
ssmyers@att.net

SKY STANFIELD
sstanfield@keyesandfox.com

STEPHANIE C. CHEN
StephanieC@greenlining.org

STEPHEN BURNAGE
stephen.burnage@gmail.com

STEVE BRINK
steveb@cwo.com

STEVEN F. GREENWALD
stevegreenwald@dwt.com

STEVEN KELLY
steven@iepa.com

SUE MARA
sue.mara@rtoadvisors.com

SUSAN MUNVES
susan.munves@smgov.net

Sean A. Simon
svn@cpuc.ca.gov

TAM HUNT
tam.hunt@gmail.com

TASHIANA WANGLER
Tashiana.Wangler@PacifiCorp.com

Traci Bone
tbo@cpuc.ca.gov

ANTHONY BRUNELLO
tbrunello@calstrat.com

THERESA BURKE
tburke@sfwater.org

THADEUS B. CULLEY
tculley@keyesandfox.com

THOMAS R. DARTON
tdarton@pilotpowergroup.com

TREVOR DILLARD
tdillard@sppc.com

TED KO
ted@fitcoalition.com

TOM FAUST
tfaust@redwoodrenewables.com

TOM HALL
thall@laccd.edu

THOMAS HOBSON
thomase.hobson@ge.com

THOMAS CORR
thomaspcorr@gmail.com

TIFFANY K. ROBERTS
Tiffany.Roberts@lao.ca.gov

TIM ROSENFELD
tim@marinemt.org

TIMEA ZENTAI
timea.Zentai@navigantconsulting.com

TODD JAFFE
tjaffe@energybusinessconsultants.com

TIM LINDL
tjl@a-klaw.com

TARA S. KAUSHIK
tkaushik@manatt.com

TIM LOCASCIO
tlocascio@libertypowercorp.com

TOBIN RICHARDSON
tobinjmr@sbcglobal.net

TODD EDMISTER
todd.edmister@bingham.com

TODD JOHANSEN
todd.johansen@recurrentenergy.com

THOMAS ELGIE
Tom.Elgie@powerex.com

THOMAS J. VICTORINE
tom_victorine@sjwater.com

R. THOMAS BEACH
tomb@crossborderenergy.com

TRACY PHILLIPS
TPhillips@TigerNaturalGas.com

TOM POMALES
tpomales@arb.ca.gov

TRACY REID
TReid@fce.com

TED HOWARD
TRH@cpuc.ca.gov

THEODORE E. ROBERTS
TRoberts@SempraUtilities.com

THOMAS W. SOLOMON
tsolomon@winston.com

TIMOTHY N. TUTT
ttutt@smud.org

EMILIO E. VARANINI, III
varanini@sbcglobal.net

VIDHYA PRABHAKARAN
vidhyaprabhakaran@dwt.com

VALERIE J. WINN
vjw3@pge.com

VALERIE PUFFER
vpuffer@gwpenergy.com

VENKAT SURAVARAPU
vsuravarapu@cera.com

VIKKI WOOD
vwood@smud.org

BILLY BLATTNER
WBlattner@SempraUtilities.com

WILLIAM H. BOOTH
wbooth@booth-law.com

BARBARA GEORGE
wem@igc.org

BRAD WETSTONE
wetstone@alamedamp.com

WILL PLAXICO
wplaxico@axiopower.com

WILLIAM W. WESTERFIELD III
wwester@smud.org

JUSTIN C. WYNNE
wynne@braunlegal.com

YAREK LEHR
ylehr@ci.azusa.ca.us

Yuliya Shmidt
ys2@cpuc.ca.gov

MICHAEL MEACHAM
ENVIRONMENTAL RESOURCE MANAGER
CITY OF CHULA VISTA
city of Chula Vista
276 FOURTH AVENUE
CHULA VISTA, CA 91910

MORGAN HANSEN
MORGAN STANLEY - COMMODITIES
2000 WESTCHESTER AVE., 1ST FLOOR
PURCHASE, NY 10577

SAMARA M. RASSI
REGULATORY AFFAIRS ANALYST
FELLON-MCCORD & ASSOCIATES
10200 FOREST GREEN BLVD., STE. 601
LOUISVILLE, KY 40223-5183

COMMERCE ENERGY, INC.
5251 WESTHEIMER RD., STE. 1000
HOUSTON, TX 77056-5414

3 PHASES RENEWABLES LLC
2100 SEPULVEDA BLVD, SUITE 37
MANHATTAN BEACH, CA 90266

HARVEY M. EDER
PUBLIC SOLAR POWER COALITION
1218 12TH STREET, NO. 25
SANTA MONICA, CA 90401

KELLIE M. HANIGAN
ENCO UTILITY SERVICES
8141 E. KAISER BLVD., STE. 212
ANAHEIM, CA 92808

SOLAR SEMICONDUCTOR INC.
1292 KIFER ROAD, SUITE 808
SUNNYVALE, CA 94086

TONY CHEN
SR. MANGER, BUSINESS DEVEL.
COOL EARTH SOLAR
4659 LAS POSITAS RD., STE. 94551
LIVERMORE, CA 94551

MOUNTAIN UTILITIES
PO BOX 1
KIRKWOOD, CA 95646

PUC/X129457.v1