

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

Order Instituting Rulemaking to Promote Policy and
Program Coordination and Integration in Electric
Utility Resource Planning.

R.04-04-003
(Filed April 1, 2004)

**REPLY COMMENTS OF THE INDEPENDENT ENERGY
PRODUCERS ASSOCIATION ON THE STAFF'S CAPACITY
MARKETS WHITE PAPER**

GOODIN, MACBRIDE, SQUERI,
RITCHIE & DAY, LLP
Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@gmsr.com

Date: October 11, 2005

Attorneys for the Independent Energy
Producers Association

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In accordance with the Chief Administrative Law Judge's Ruling of August 25, 2005, the Independent Energy Producers Association ("IEP") submits its reply comments on the Capacity Markets White Paper prepared by the Commission's Energy Division.

Rather than respond to the specific items mentioned by the various parties in their comments, IEP will focus its comments on a few key points raised in the comments that the Commission should consider as it deliberates on capacity markets and other matters affecting the evolution of energy markets in California.

I. "DOING NOTHING IS UNACCEPTABLE"

As the California Independent System Operator ("CAISO") notes, "the current structure of California's electricity markets is incapable of sustaining the level of

resource adequacy consistent with the State’s traditional reliability standards.”¹ The status quo has not produced the infrastructure investment required to meet growing demand, and as a result California is threatened with the prospect of slim reserve margins or rolling blackouts during times of peak demand. In these circumstances, “long-run reliability can only be sustained by improving the current structure of the market or by carefully designing and implementing additional mechanism to secure the revenues needed to support the appropriate level of infrastructure development.”²

II. ADMINISTRATIVE ATTEMPTS TO SIMULATE MARKET FORCES CAN HAVE UNEXPECTED EFFECTS

While the current lack of infrastructure compels the Commission to take action, the Commission must also be thoughtful about the actions that it takes.

Administrative intervention in markets can have unexpected effects that can thwart achievement of the overall policy goal.

For example, many of the parties support the White Paper’s conclusion that the current mitigated energy market fails to provide sufficient revenues from energy sales to support investment in new resources, leading to proposals for the creation of capacity markets and other mechanisms to provide supplementary revenues to make up for the limitations of energy markets. However, the price signals that the energy market sends to communicate the need for greater investment in generation or increased demand reduction, for example, are dampened as alternative sources of revenues (*e.g.*, capacity

¹ CAISO’s Opening Comments, p. 2.

² CAISO’s Opening Comments, p. 2.

compensation) are developed to compensate for the mitigation of the energy markets.

This example illustrates one of the principles IEP urged the Commission to follow in its efforts to remedy the problems of California energy markets:

Market solutions benefit consumers and should be preferred over administrative solutions wherever feasible. Competitive market solutions are more effective in facilitating the right levels of investment and in keeping costs to consumers lower. However, regulatory intervention begets further regulatory intervention.³

At a more specific level, this illustration shows the need for the Commission to move forward expeditiously to develop a capacity market that is crucial to attracting new investment in capacity in California, while not losing sight of the equally crucial need to improve the price signals coming from energy markets. This is not a case of either/or, where the Commission can choose between progress on capacity markets and improvements to energy markets. Action and progress on both energy and capacity markets are critical if the Commission hopes to achieve the ultimate goal of reforming wholesale markets in order to attract sufficient investment in supply infrastructure. Thus, the Commission must move forward in reforming both capacity and energy markets, while it carefully considers how its actions in one area will affect its goals in another, and how an individual action fits into its long-run plan for improving California's electric markets.

³ IEP's Opening Comments, p. 4.

III. BILATERAL CONTRACTS SHOULD CONTINUE TO BE THE PRIMARY VEHICLES FOR PROCUREMENT

As IEP and others have repeatedly stated, in the current market environment, long-term power purchase contracts between suppliers and Load-Serving Entities (“LSEs”) are the only feasible way to attract investment in new dispatchable capacity resources. Other parties have suggested that a longer-term capacity market could emerge as a prime mechanism for procurement. These conflicting perspectives raise the important issue of the relation between bilateral contracting and the capacity market.

For its part, IEP clearly stated its views in its Opening Comments that “a centralized capacity market should not be conceived of as taking on more than a supporting role.”⁴ IEP also posed the question that it continues to believe should be central to the Commission’s deliberations on the White Paper and related topics: Does a centralized capacity market help encourage investment?

IEP recognizes that, due to concerns about shifting loads and stranded costs, some LSEs are reluctant to enter into long-term arrangements with suppliers.⁵ One of the benefits of a centralized capacity market with a standardized tradable capacity product is that it can provide a mechanism that will allow LSEs to acquire or shed capacity as their loads grow or shrink, respectively. However, it should be apparent that a short-term capacity market, by itself, will not attract investment in new power plants

⁴ IEP’s Opening Comments, p. 5.

⁵ See CAISO’s Opening Comments, p. 12.

and will not provide the stability investors require. If LSEs rely exclusively on the centralized capacity market to meet their needs, rather than committing to long-term contracts with suppliers, the capacity market will undermine, rather than further, the Commission's goal of attracting investment in generation.

For this reason, IEP urges the Commission to clarify that it intends that most transactions will take the form of negotiated bilateral contracts for capacity (and energy), and that the procurement of capacity will take place in an open, transparent, and competitive process. The short-term capacity market will support these bilateral transactions by providing a liquid market for shedding or acquiring incremental capacity as the LSEs' loads change.

IV. REGULATORY CREDIBILITY AND STABILITY ARE CRUCIAL

None of the comments on the White Paper quibbled with Recommendation No. 8: "Strive for regulatory credibility." Credibility with investors, however, also requires a form of consistency, so that investors do not have to fear that changes in political administrations or regulatory personnel will lead to changes in market structure. The Commission needs to articulate a plan for how the state will transition from the current unsatisfactory market structure to one that supports adequate investment in infrastructure and meets Californians' expectations for reliable electric service at competitive prices. As the CAISO's comments put it, "consideration of a short-term capacity market should be part of a larger effort to define and lay out a longer-term

‘roadmap’ for California,”⁶ and IEP agrees that creation of a centralized capacity market may be one of the important first steps along the path outlined in the roadmap.

The need to integrate individual initiatives with a longer-term road map also applies to the Commission’s consideration of other initiatives to improve energy markets. The Commission must necessarily pursue multiple initiatives simultaneously, but it is not always clear to observers how the various initiatives are linked or how they are intended to interact. In the next section, IEP offers its recommendations on how the Commission should proceed to ensure the continued development of competitive wholesale markets.

It is also apparent that the Commission and CAISO need to work together to formulate a *single* plan for the transition to a stable market structure. The CAISO’s comments demonstrate the need for a closer working relationship with the Commission. Investors and developers cannot and will not invest in California if the entities with the authority to shape energy markets in California do not present a unified vision and plan for the transition to a durable market structure.

V. RECOMMENDATIONS

As the CAISO points out, further Commission actions should take place in the framework of a broader roadmap, “a clear outline of the regulatory process to come and how development of a long-term resource adequacy program can or need be staged. It is clear that neither Californians nor the market can wait an extended period of time for

⁶ CAISO’s Opening Comments, p. 15.

the CPUC and others to clarify these issues.”⁷

Within that larger framework, the following actions are the most important for the Commission:

- Support the replacement of the CAISO’s current Must-Offer Obligation and Waiver Denial tariff provisions with the Reliability Capacity Services Tariff provisions proposed by IEP.
- Ensure that the Resource Adequacy Requirement is implemented on June 1, 2006, and is firmly enforced.
- Support the implementation and enforcement of local area requirements that ensure reliability and the development of local reliability pricing mechanisms that signal the need for additional resources in constrained local areas.
- Refine the long-term procurement process so that more resources are secured through long-term bilateral contracts, the key to infrastructure investment in the present circumstances, and so that the process provides greater transparency, which will in turn provide price and structural stability.
- Develop a capacity market structure that enhances and supports bilateral contracting.
- Support continued efforts at the CAISO to improve energy market price signals.

All of these actions should take place within a framework of an overall

⁷ CAISO’s Opening Comments, p. 19.

roadmap that articulates how the Commission intends to proceed from current conditions to a more robust electricity market that is able to attract investment in infrastructure that meets California's increasing demand for electricity.

Respectfully submitted this October 11, 2005 at San Francisco, California.

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

By /S/Brian T. Cragg
 Brian T. Cragg

Attorneys for the Independent Energy
Producers Association

CERTIFICATE OF SERVICE

I, Melinda LaJaunie, certify that I have on this 11th day of October 2005 caused a copy of the foregoing **REPLY COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE STAFF'S CAPACITY MARKETS WHITE PAPER; R.04-04-003** to be served on all the parties via Electronic Mail and/or Hand Delivery.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of October 2005 at San Francisco, California.

/S/Melinda LaJaunie
Melinda LaJaunie

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(Updated October 6, 2005)

| | | | |
|--|--|---|---|
| ENERGY AMERICA, LLC KEITH MCCREA SUTHERLAND, ASBILL & BRENNAN keith.mccrea@sablaw.com ROGER A. BERLINER MANATT, PHELPS & PHILLIPS, LLP rberliner@manatt.com LISA DECKER lisa.decker@constellation.com GARSON KNAPP FPL ENERGY, LLC garson_knapp@fpl.com JAMES ROSS RCS INC. jimross@r-c-s-inc.com OCCIDENTAL POWER SERVICES, INC. BP ENERGY COMPANY TOM SKUPNJAK CPG ENERGY toms@i-cpg.com APS ENERGY SERVICES COMPANY, INC. NEW WEST ENERGY CORPORATION LISA URICK SAN DIEGO GAS & ELECTRIC COMPANY lurick@sempra.com HOWARD CHOY COUNTY OF LOS ANGELES hchoy@isd.co.la.ca.us DAVID L. HUARD MANATT, PHELPS & PHILLIPS, LLP dhuard@manatt.com MARGARET R. SNOW MANATT, PHELPS & PHILLIPS msnow@manatt.com RANDALL W. KEEN MANATT PHELPS & PHILLIPS, LLP pucservice@manatt.com CONSTELLATION NEWENERGY, INC. MAUREEN LENNON WHITE & CASE mlennon@whitecase.com | MICHAEL MAZUR 3 PHASES ELECTRICAL CONSULTING TANDY MCMANNES SOLAR THERMAL ELECTRIC ALLIANCE mcmannes@aol.com QUIET LLC GREGORY S.G. KLATT DOUGLASS & LIDDELL klatt@energyattorney.com KEVIN DUGGAN CAPSTONE TURBINE CORPORATION kduggan@capstoneturbine.com DANIEL W. DOUGLASS DOUGLASS & LIDDELL douglass@energyattorney.com AMERICAN UTILITY NETWORK (A.U.N.) ANNETTE GILLIAM SOUTHERN CALIFORNIA EDISON COMPANY annette.gilliam@sce.com BERJ K. PARSEGHIAN SOUTHERN CALIFORNIA EDISON COMPANY berj.parseghian@sce.com BETH A. FOX SOUTHERN CALIFORNIA EDISON COMPANY beth.fox@sce.com CASE ADMINISTRATION SOUTHERN CALIFORNIA EDISON COMPANY case.admin@sce.com JAMES WOODRUFF SOUTHERN CALIFORNIA EDISON COMPANY woodrurb@sce.com MICHAEL A. BACKSTROM SOUTHERN CALIFORNIA EDISON COMPANY michael.backstrom@sce.com ELIZABETH HULL CITY OF CHULA VISTA ehull@ci.chula-vista.ca.us SEMPRA ENERGY SOLUTIONS DONALD P. GARBER SEMPRA ENERGY dgarber@sempra.com | FREDERICK M. ORTLIEB CITY OF SAN DIEGO fortlieb@sandiego.gov GEORGETTA J. BAKER SEMPRA ENERGY gbaker@sempra.com THEODORE ROBERTS SEMPRA ENERGY troberts@sempra.com KEITH MELVILLE SAN DIEGO GAS & ELECTRIC COMPANY KMelville@sempra.com MICHAEL SHAMES UTILITY CONSUMERS' ACTION NETWORK mshames@ucan.org WILLIAM E. POWERS POWERS ENGINEERING bpowers@powersengineering.c om CORAL POWER, LLC. PILOT POWER GROUP, INC. JOSEPH R. KLOBERDANZ SAN DIEGO GAS & ELECTRIC jkloberdanz@semprautilities.co m WENDY KEILANI SAN DIEGO GAS & ELECTRIC wkeilani@semprautilities.com WENDY KEILANIA SAN DIEGO GAS & ELECTRIC COMPANY WKeilani@semprautilities.com JOHN W. LESLIE LUCE, FORWARD, HAMILTON & SCRIPPS, LLP jleslie@luce.com KEITH E. FULLER ITRON, INC. keith.fuller@itron.com COMMERCE ENERGY, INC. COMMERCE ENERGY, INC. CITY OF CORONA DEPARTMENT OF WATER & POW GEORGE HANSON CITY OF CORONA george.hanson@ci.corona.ca.us | CHRIS KING CALIFORNIA CONSUMER EMPOWERMENT chris@emeter.com MARC D. JOSEPH ADAMS, BROADWELL, JOSEPH & CARDOZO mdjoseph@adamsbroadwell.co m JEANNE SOLE CITY AND COUNTY OF SAN FRANCISCO jeanne.sole@sfgov.org JOSEPH PETER COMO CITY AND COUNTY OF SAN FRANCISCO joe.como@sfgov.org MARION PELEO CALIFORNIA PUBLIC UTILITIES COMMISSION map@cpuc.ca.gov MICHEL PETER FLORIO THE UTILITY REFORM NETWORK mflorio@turn.org OSA ARMI SHUTE MIHALY & WEINBERGER LLP armi@smwlaw.com Amy C Yip-Kikugawa CALIF PUBLIC UTILITIES COMMISSION ayk@cpuc.ca.gov Karen P Paull CALIF PUBLIC UTILITIES COMMISSION kpp@cpuc.ca.gov Regina DeAngelis CALIF PUBLIC UTILITIES COMMISSION rmd@cpuc.ca.gov KAREN TERRANOVA ALCANTAR & KAHL, LLP filings@a-klaw.com NORA SHERIFF ALCANTAR & KAHL LLP nes@a-klaw.com ROD AOKI ALCANTAR & KAHL, LLP rsa@a-klaw.com SHERYL CARTER NATURAL RESOURCES DEFENSE COUNCIL scarter@nrdc.org |
|--|--|---|---|

SERVICE LIST – R.04-04-003
(Updated October 6, 2005)

EDWARD V. KURZ
PACIFIC GAS AND
ELECTRIC COMPANY
evk1@pge.com

JENNIFER K. POST
PACIFIC GAS AND
ELECTRIC COMPANY
jlk@pge.com

JOHN W. BOGY
PACIFIC GAS AND
ELECTRIC
j0b5@pge.com

MARY A. GANDESBERY
PACIFIC GAS AND
ELECTRIC COMPANY
magq@pge.com

BRIAN CRAGG
GOODIN, MAC BRIDE,
SQUERI, RITCHIE & DAY
bcragg@gmssr.com

BRIAN T. CRAGG
GOODIN MACBRIDE
SQUERI RITCHIE & DAY
LLP
bcragg@gmssr.com

CHRISTOPHER HILEN
DAVIS WRIGHT
TREMINE, LLP
chrishilen@dwt.com

JAMES D. SQUERI
GOODIN MACBRIDE
SQUERI RITCHIE & DAY
LLP
jsqueri@gmssr.com

JEANNE B. ARMSTRONG
RITCHIE & DAY, LLP
jarmstrong@gmssr.com

JOSEPH M. KARP
WHITE & CASE LLP
jkarp@whitecase.com

STEVEN F. GREENWALD
DAVIS WRIGHT
TREMINE, LLP
stevegreenwald@dwt.com

EDWARD W. O'NEILL
DAVIS WRIGHT TREMINE
LLP
edwardoneill@dwt.com

LISA A. COTTLE
WHITE & CASE LLP
lcottle@whitecase.com

MARK R. HUFFMAN
PACIFIC GAS AND
ELECTRIC COMPANY
mrh2@pge.com

SARA STECK MYERS
LAW OFFICES OF SARA
STECK MYERS
ssmyers@att.net

LYNNE BROWN
CALIFORNIANS FOR
RENEWABLE ENERGY,
INC.
l_brown123@hotmail.com

MAURICE CAMPBELL
CALIFORNIANS FOR
RENEWABLE ENERGY,
INC.
mecsoft@pacbell.net

CALPINE POWERAMERICA-
CA, LLC

AVIS CLARK
CALPINE CORPORATION
aclark@calpine.com

LINDA Y. SHERIF
CALPINE CORPORATION
linda.sherif@calpine.com

MARJORIE OXSEN
CALPINE CORPORATION
moxsen@calpine.com

RICK NOGER
PRAXAIR PLAINFIELD, INC.
rick_noger@praxair.com

WILLIAM H. BOOTH
LAW OFFICE OF WILLIAM
H. BOOTH
wbooth@booth-law.com

ERIC C. WOYCHIK
STRATEGY INTEGRATION
LLC
eric@strategyi.com

RAMONA GONZALEZ
EAST BAY MUNICIPAL
UTILITY DISTRICT
ramonag@ebmud.com

REED V. SCHMIDT
BARTLE WELLS
ASSOCIATES
rschmidt@bartlewells.com

GREGG MORRIS
GREEN POWER INSTITUTE
gmorris@emf.net

JOHN GALLOWAY
UNION OF CONCERNED
SCIENTISTS
jgalloway@ucsusa.org

CLYDE MURLEY
CONSULTING ON ENERGY
AND ENVIRONMENT
clyde.murley@comcast.net

NANCY RADER
CALIFORNIA WIND
ENERGY ASSOCIATION
nrader@calwea.org

TOM BEACH
CROSSBORDER ENERGY
tomb@crossborderenergy.com

PATRICK MCDONNELL
AGLAND ENERGY
SERVICES, INC.
pccmcdonnell@earthlink.net

JENNIFER HOLMES
ITRON INC.
jennifer.holmes@itron.com

MICHAEL E. BOYD
CALIFORNIANS FOR
RENEWABLE ENERGY,
INC.
michaeledwardboyd@sbcglobal.net

JUSTIN D. BRADLEY
SILICON VALLEY
MANUFACTURING GROUP
jbradley@svmg.org

BARRY F. MCCARTHY
MCCARTHY & BERLIN, LLP
bmcc@mccarthylaw.com

C. SUSIE BERLIN
MC CARTHY & BERLIN,
LLP
sberlin@mccarthylaw.com

CHRISTOPHER J. MAYER
MODESTO IRRIGATION
DISTRICT
chrism@mid.org

JOY A. WARREN
MODESTO IRRIGATION
DISTRICT
joyw@mid.org

ROBERT SARVEY
CALIFORNIANS FOR
RENEWABLE ENERGY,
INC.
sarveybob@aol.com

DAVID KATES
DAVID MARK AND
COMPANY
dkates@sonic.net

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
brbarkovich@earthlink.net

JOHN R. REDDING
ARCTURUS ENERGY
CONSULTING
johnredding@earthlink.net

JAMES WEIL
AGLET CONSUMER
ALLIANCE
jweil@aglet.org

JOHN C. GABRIELLI
GABRIELLI LAW OFFICE
gumbrelli@cs.com

SHAWN SMALLWOOD,
PH.D.
puma@davis.com

GEETA O. THOLAN
CALIFORNIA
INDEPENDENT SYSTEM
OPERATOR
gtholan@caiso.com

GRANT A. ROSENBLUM
CALIFORNIA
INDEPENDENT SYSTEM
OPERATOR
grosenblum@caiso.com

MATTHEW V. BRADY
MATTHEW V. BRADY &
ASSOCIATES
matt@bradylawus.com

DAN L. CARROLL
DOWNEY BRAND LLP
dcarroll@downeybrand.com

DOUGLAS K. KERNER
ELLISON, SCHNEIDER &
HARRIS LLP
dkk@eslawfirm.com

GREGGORY L.
WHEATLAND
ELLISON, SCHNEIDER &
HARRIS
glw@eslawfirm.com

LYNN HAUG
ELLISON, SCHNEIDER &
HARRIS, LLP
lmh@eslawfirm.com

STEVEN KELLY
INDEPENDENT ENERGY
PRODUCERS ASSN
steven@iepa.com

DIANA MAHMUD
STATE WATER
CONTRACTORS
dmahmud@mwdh2o.com

RONALD LIEBERT
CALIFORNIA FARM
BUREAU FEDERATION
rliebert@cfbf.com

MICHAEL ALCANTAR
ALCANTAR & KAHL LLP
mpa@a-klaw.com

SERVICE LIST – R.04-04-003
(Updated October 6, 2005)

I SCHOENBECK
RCS, INC.
dws@r-c-s-inc.com

BRIAN M. JONES
M.J. BRADLEY &
ASSOCIATES, INC.
bjones@mjbradley.com

CARLO ZORZOLI
ENEL NORTH AMERICA,
INC.
carlo.zorzoli@enel.it

ANDREA WELLER
STRATEGIC ENERGY, LTD
aweller@sel.com

JOSEPH B. WILLIAMS
MCDERMOTT WILL &
EMERGY LLP
jwilliams@mwe.com

MICHAEL A. YUFFEE
MCDERMOTT WILL &
EMERY LLP
myuffee@mwe.com

MARY LYNCH
CONSTELLATION ENERGY
COMMODITIES GROUP
mary.lynych@constellation.com

ERIC YUSSMAN
FELLON-MCCORD &
ASSOCIATES
eyussman@knowledgeinenergy.com

TRENT A. CARLSON
RELIANT ENERGY
tcarlson@reliant.com

GARY HINNERS
RELIANT ENERGY, INC.
ghinners@reliant.com

MICHAEL A. CRUMLEY
EL PASO CORPORATION
michael.crumley@elpaso.com

WAYNE TOMLINSON
EL PASO NATURAL GAS
william.tomlinson@elpaso.com

DAVID SAUL
SOLEL, INC.
dsaul@solel.com

CYNTHIA K. MITCHELL
ECONOMIC CONSULTING
INC.
ckmitchell1@sbcglobal.net

CURTIS KEBLER
GOLDMAN, SACHS & CO.
curtis.kebler@gs.com

NORMAN A. PEDERSEN
HANNA AND MORTON LLP
npedersen@hanmor.com

COLIN M. LONG
PACIFIC ECONOMICS
GROUP
cmlong@earthlink.net

ROGER PELOTE
WILLIAMS POWER
COMPANY, INC.
roger.pelote@williams.com

FRANK J. COOLEY
SOUTHERN CALIFORNIA
EDISON COMPANY
frank.cooley@sce.com

JANET COMBS
SOUTHERN CALIFORNIA
EDISON COMPANY
janet.combs@sce.com

LAURA GENAO
SOUTHERN CALIFORNIA
EDISON COMPANY
laura.genao@sce.com

DON WOOD
PACIFIC ENERGY POLICY
CENTER
dwood8@cox.net

TIM HEMIG
REGIONAL
ENVIRONMENTAL
BUSINESS NRG ENER
tim.hemig@nrgenergy.com

DANIEL A. KING
SEMPRA ENERGY
daking@sempra.com

ROB RUNDLE
SANDAG
rru@sandag.org

KEITH W. MELVILLE
SEMPRA ENERGY
kmelville@sempra.com

DONALD C. LIDDELL, P.C.
DOUGLASS & LIDDELL
liddell@energyattorney.com

THOMAS CORR
SEMPRA ENERGY
tcorr@sempra.com

YVONNE GROSS
SEMPRA ENERGY
ygross@sempraglobal.com

SCOTT J. ANDERS
UNIVERSITY OF SAN
DIEGO SCHOOL OF LAW
usdepic@yahoo.com

ABBAS M. ABED
SAN DIEGO GAS &
ELECTRIC
amabed@semprautilities.com

IRENE M. STILLINGS
SAN DIEGO REGIONAL
ENERGY OFFICE
irene.stillings@sdenergy.org

JOSEPH KLOBERDANZ
SAN DIEGO GAS &
ELECTRIC COMPANY
jkloberdanz@semprautilities.com

KELLY M. MORTON
SAN DIEGO GAS &
ELECTRIC
kmorton@sempra.com

MICHAEL SCHMIDT
SAN DIEGO GAS AND
ELECTRIC COMPANY
mschmidt@semprautilities.com

SUSAN FREEDMAN
SAN DIEGO REGIONAL
ENERGY OFFICE
susan.freedman@sdenergy.org

CENTRAL FILES
SAN DIEGO GAS &
ELECTRIC
centralfiles@semprautilities.com

JOSE C. CERVANTES
CITY OF SAN DIEGO
jcervantes@sandiego.gov

KURT J. KAMMERER
SAN DIEGO REGIONAL
ENERGY OFFICE
kjk@kjkammerer.com

MARK SHIRILAU
ALOHA SYSTEMS, INC.
marks@alohasys.com

CHARLES R. TOCA
UTILITY SAVINGS &
REFUND, LLC
ctoca@utility-savings.com

MARK J. SKOWRONSKI
SOLARGENIX AT INLAND
ENERGY GROUP
mjskowronski@inlandenergy.com

JUNE M. SKILLMAN
jskillman@prodigy.net

RENEE HOFFMAN
CITY OF ANAHEIM
rhoffman@anaheim.net

JIM MCARTHUR
ELK HILLS POWER, LLC
jmcarthur@elkhills.com

LAUREN CASENTINI
D & R INTERNATIONAL
lcaseyntini@drintl.com

DIANE I. FELLMAN
LAW OFFICES OF DIANE I.
FELLMAN
diane_fellman@fpl.com

MATTHEW FREEDMAN
THE UTILITY REFORM
NETWORK
freedman@turn.org

NOEL A. OBIORA
CALIFORNIA PUBLIC
UTILITIES COMMISSION
nao@cpuc.ca.gov

DANIELLE DOWERS
S. F. PUBLIC UTILITIES
COMMISSION
ddowers@sfwater.org

SEAN CASEY
SAN FRANCISCO PUBLIC
UTILITIES COMMISSIO
scasey@sfwater.org

DAN ADLER
CALIFORNIA CLEAN
ENERGY FUND
Dan.adler@calcef.org

DEVRA WANG
NATURAL RESOURCES
DEFENSE COUNCIL
dwang@nrdc.org

CHRIS ANN DICKERSON,
PHD
FREEMAN, SULLIVAN &
CO.
dickerson05@fscgroup.com

GRACE LIVINGSTON-
NUNLEY
PACIFIC GAS AND
ELECTRIC COMPANY
gxl2@pge.com

VALERIE J. WINN
PACIFIC GAS AND
ELECTRIC COMPANY
vfw3@pge.com

ROSALIE E. JOHNSON
AT&T COMMUNICATIONS
OF CALIFORNIA, INC.
rejohnson@att.com

PETER BRAY
PETER BRAY AND
ASSOCIATES
petertbray@yahoo.com

SERVICE LIST – R.04-04-003
(Updated October 6, 2005)

CALIFORNIA ENERGY
MARKETS
cem@newsdata.com

JAMES A. BOOTHE
HOLLAND & KNIGHT LLP
james.booth@hklaw.com

JEFFREY P. GRAY
DAVIS WRIGHT TREMAINE
LLP
jeffgray@dwt.com

LISA WEINZIMER
CALIFORNIA ENERGY
CIRCUIT
lisa_weinzimer@platts.com

LAW DEPARTMENT FILE
ROOM
PACIFIC GAS AND
ELECTRIC COMPANY
cpuccases@pge.com

MARGARET D. BROWN
PACIFIC GAS AND
ELECTRIC COMPANY
mdbk@pge.com

ED LUCHA
PACIFIC GAS AND
ELECTRIC COMPANY
el15@pge.com

SEBASTIEN CSAPO
PACIFIC GAS AND
ELECTRIC COMPANY
sscb@pge.com

ROBIN J. WALTHER
rwalther@pacbell.net

BARRY R. FLYNN
FLYNN RESOURCE
CONSULTANTS, INC.
brflynn@flynnrci.com

MICHAEL ROCHMAN
SCHOOL PROJECT UTILITY
RATE REDUCTION
service@spurr.org

KEITH WHITE
keithwhite@earthlink.net

ANDREW J. VAN HORN
VAN HORN CONSULTING
vhconsult@earthlink.net

JAY BHALLA
INTERGY CORPORATION
jay.bhalla@intergycorp.com

JACK PIGOTT
CALPINE CORPORATION
jackp@calpine.com

KENNETH ABREU
CALPINE CORPORATION
kena@calpine.com

STEVEN S. SCHLEIMER
CALPINE CORPORATION
sshleimer@calpine.com

GREGORY T. BLUE
DYNEGY INC.
greg.blue@dynegy.com

MONA TIERNEY
CONSTELLATION
NEWENERGY, INC.
mona.tierney@constellation.com

WILLIAM H. CHEN
CONSTELLATION NEW
ENERGY, INC.
bill.chen@constellation.com

STANLEY I. ANDERSON
POWER VALUE
INCORPORATED
sia2@pwrval.com

CATHERINE E. YAP
BARKOVICH & YAP, INC.
ceyap@earthlink.net

MRW & ASSOCIATES, INC.
mrw@mrwassoc.com

DAVID HOWARTH
MRW & ASSOCIATES, INC.
mrw@mrwassoc.com

DAVID MARCUS
dmarcus2@sbcglobal.net

CRAIG TYLER
TYLER & ASSOCIATES
craigtyler@comcast.net

EDWARD VINE
LAWRENCE BERKELEY
NATIONAL LABORATORY
elvine@lbl.gov

RYAN WISER
BERKELEY LAB
rhwiser@lbl.gov

KAREN NOTSUND
UC ENERGY INSTITUTE
knotsund@uclink.berkeley.edu

PHILLIP J. MULLER
SCD ENERGY SOLUTIONS
philm@scdenergy.com

JAN REID
COAST ECONOMIC
CONSULTING
janreid@coastecon.com

WILLIAM B. MARCUS
JBS ENERGY, INC.
bill@jbsenergy.com.

VIKKI WOOD
SACRAMENTO MUNICIPAL
UTILITY DISTRICT
vwood@smud.org

CARLOYN KEHREIN
ENERGY MANAGEMENT
SERVICES
cmkehrein@ems-ca.com

CALIFORNIA ISO
e-recipient@caiso.com

ERIC LEUZE
CALIFORNIA
INDEPENDENT SYSTEM
OPERATOR
eleuze@caiso.com

PHILIP D. PETTINGILL
CAISO
ppettingill@caiso.com

ROBERT SPARKS
CALIFORNIA
INDEPENDANT SYSTEM
OPERATOR
rsparks@caiso.com

BRIAN THEAKER
WILLIAMS POWER
COMPANY
brian.theaker@williams.com

DAVID LA PORTE
NAVIGANT CONSULTING

ED CHANG
FLYNN RESOURCE
CONSULTANTS, INC.
edchang@flynnrci.com

ANDREW B. BROWN
ELLISON, SCHNEIDER &
HARRIS, LLP
abb@eslawfirm.com

BRUCE MCLAUGHLIN
BRAUN & BLAISING P.C.
mclaughlin@braunlegal.com

DAN GEIS
AGRICULTURAL ENERGY
CONSUMERS ASSO.
dgeis@dolphingroup.org

KEVIN WOODRUFF
WOODRUFF EXPERT
SERVICES
kdw@woodruff-expert-
services.com

LOREN KAYE
POLIS GROUP
lkaye@ka-pow.com

MELANIE GILLETTE
DUKE ENERGY NORTH
AMERICA
mlgillette@duke-energy.com

SCOTT BLAISING
BRAUN & BLAISING, P.C.
blaising@braunlegal.com

WILLIAM W.
WESTERFIELD III
STOEL RIVES LLP
wwwesterfield@stoel.com

GREG BROWNELL
SACRAMENTO MUNICIPAL
UTILITY DISTRICT
gbrowne@smud.org

HOLLY B. CRONIN
hcronin@water.ca.gov

CAROLYN A. BAKER
cabaker906@sbcglobal.net

KAREN NORENE MILLS
CALIFORNIA FARM
BUREAU FEDERATION
kmills@cfbf.com

E. JESUS ARREDONDO
NRG ENERGY, INC.
jesus.arredondo@nrgenergy.com

KAREN LINDH
LINDH & ASSOCIATES
karen@klindh.com

NATHAN TOYAMA
SACRAMENTO MUNICIPAL
UTILITY DISTRICT
ntoyama@smud.org

DON WINSLOW
PPM ENERGY
don.winslow@ppmenergy.com

G. ALAN COMNES
DYNEGY POWER CORP.
alan.comnes@dynegy.com

MARK C. TREXLER
TREXLER
CLIMATE+ENERGY
SERVICES, INC.
mtrexler@climateservices.com

SAM SALDER
OREGON DEPARTMENT OF
ENERGY
samuel.r.sadler@state.or.us

LAURA J. SCOTT
LANDS ENERGY
CONSULTING INC.
lscott@landsenergy.com

SERVICE LIST – R.04-04-003
(Updated October 6, 2005)

LOS ANGELES DOCKET
OFFICE
CALIFORNIA PUBLIC
UTILITIES COMMISSION
LAdocket@cpuc.ca.gov

Aaron J Johnson
CALIF PUBLIC UTILITIES
COMMISSION
ajo@cpuc.ca.gov

Brian D. Schumacher
CALIF PUBLIC UTILITIES
COMMISSION
bds@cpuc.ca.gov

Bruce Kaneshiro
CALIF PUBLIC UTILITIES
COMMISSION
bsk@cpuc.ca.gov

Carol A Brown
CALIF PUBLIC UTILITIES
COMMISSION
cab@cpuc.ca.gov

Christine S Tam
CALIF PUBLIC UTILITIES
COMMISSION
tam@cpuc.ca.gov

Donald R Smith
CALIF PUBLIC UTILITIES
COMMISSION
dsh@cpuc.ca.gov

Donna J Hines
CALIF PUBLIC UTILITIES
COMMISSION
djh@cpuc.ca.gov

Eugene Cadenasso
CALIF PUBLIC UTILITIES
COMMISSION
cpe@cpuc.ca.gov

Jack Fulcher
CALIF PUBLIC UTILITIES
COMMISSION
jef@cpuc.ca.gov

Julie A Fitch
CALIF PUBLIC UTILITIES
COMMISSION
jf2@cpuc.ca.gov

Karen A Degannes
CALIF PUBLIC UTILITIES
COMMISSION
kdg@cpuc.ca.gov

Karen M Shea
CALIF PUBLIC UTILITIES
COMMISSION
kms@cpuc.ca.gov

Kenneth Lewis
CALIF PUBLIC UTILITIES
COMMISSION
kl1@cpuc.ca.gov

Lainie Motamedi
CALIF PUBLIC UTILITIES
COMMISSION
lrm@cpuc.ca.gov

Lisa Paulo
CALIF PUBLIC UTILITIES
COMMISSION
lp1@cpuc.ca.gov

Manuel Ramirez
CALIF PUBLIC UTILITIES
COMMISSION
mzr@cpuc.ca.gov

Mark S. Wetzell
CALIF PUBLIC UTILITIES
COMMISSION
msw@cpuc.ca.gov

Maryam Ebke
CALIF PUBLIC UTILITIES
COMMISSION
meb@cpuc.ca.gov

Meg Gottstein
CALIF PUBLIC UTILITIES
COMMISSION
meg@cpuc.ca.gov

Merideth Sterkel
CALIF PUBLIC UTILITIES
COMMISSION
mts@cpuc.ca.gov

Nilgun Atamturk
CALIF PUBLIC UTILITIES
COMMISSION
nil@cpuc.ca.gov

Paul Douglas
CALIF PUBLIC UTILITIES
COMMISSION
psd@cpuc.ca.gov

Philippe Auclair
CALIF PUBLIC UTILITIES
COMMISSION
pha@cpuc.ca.gov

Robert Elliott
CALIF PUBLIC UTILITIES
COMMISSION
rae@cpuc.ca.gov

Robert Kinosian
CALIF PUBLIC UTILITIES
COMMISSION
gig@cpuc.ca.gov

Scott Logan
CALIF PUBLIC UTILITIES
COMMISSION
sjl@cpuc.ca.gov

Shannon Eddy
CALIF PUBLIC UTILITIES
COMMISSION
sed@cpuc.ca.gov

Stephen St. Marie
CALIF PUBLIC UTILITIES
COMMISSION
sst@cpuc.ca.gov

Steve Linsey
CALIF PUBLIC UTILITIES
COMMISSION
car@cpuc.ca.gov

Terrie D Prosper
CALIF PUBLIC UTILITIES
COMMISSION
tdp@cpuc.ca.gov

Theresa Cho
CALIF PUBLIC UTILITIES
COMMISSION
tex@cpuc.ca.gov

Valerie Beck
CALIF PUBLIC UTILITIES
COMMISSION
vjb@cpuc.ca.gov

Zenaida G. Tapawan-Conway
CALIF PUBLIC UTILITIES
COMMISSION
ztc@cpuc.ca.gov

MARGARET TOBIAS
info@tobiaslo.com

ANDREW ULMER
SIMPSON PARTNERS, LLP
andrew@simpsonpartners.com

MICHAEL MESSENGER
CALIFORNIA ENERGY
COMMISSION
Mmesseng@energy.state.ca.us

JAMES MCMAHON
NAVIGANT CONSULTING,
INC.
JMcMahon@navigantconsultin
g.com

MEG GOTTSTEIN
meg@cpuc.ca.gov

BRETT FRANKLIN
CALIFORNIA ELECTRICITY
OVERSIGHT BOARD
bfranklin@eob.ca.gov

CONNIE LENI
CALIFORNIA ENERGY
COMMISSION
cleni@energy.state.ca.us

Don Schultz
CALIF PUBLIC UTILITIES
COMMISSION
dks@cpuc.ca.gov

JENNIFER TACHERA
CALIFORNIA ENERGY
COMMISSION
jtachera@energy.state.ca.us

KAREN GRIFFIN
CALIFORNIA ENERGY
COMMISSION
kgriffin@energy.state.ca.us

MICHAEL JASKE
CALIFORNIA ENERGY
COMMISSION
mjasje@energy.state.ca.us

PIERRE H. DUVAIR
CALIFORNIA ENERGY
COMMISSION
pduvair@energy.state.ca.us

Thomas Flynn
CALIF PUBLIC UTILITIES
COMMISSION
trf@cpuc.ca.gov

TOM GLAVIANO
CALIFORNIA ENERGY
COMMISSION
tglaviano@energy.state.ca.us

Wade McCartney
CALIF PUBLIC UTILITIES
COMMISSION
wsm@cpuc.ca.gov

PEGGY BERNARDY
CALIFORNIA
DEPARTMENT OF WATER
RESOURCES
dsandino@water.ca.gov

FERNANDO DE LEON
CALIFORNIA ENERGY
COMMISSION
fdeleon@energy.state.ca.us

ARLEN ORCHARD
SACRAMENTO MUNICIPAL
UTILITY DISTRICT
aorchar@smud.org

COLLEEN HICKS
CALIFORNIA
DEPARTMENT OF WATER
RESOURCES
chicks@water.ca.gov

JOHN PACHECO
CALIFORNIA
DEPARTMENT OF WATER
RESOURCES
jpacheco@water.ca.gov

SERVICE LIST – R.04-04-003
(Updated October 6, 2005)

KENNETH GLICK
CALIFORNIA ELECTRICITY
OVERSIGHT BOARD
kglick@eob.ca.gov

RON WETHERALL
CALIFORNIA ENERGY
COMMISSION
rwethera@energy.state.ca.us

ROSS A. MILLER
CALIFORNIA ENERGY
COMMISSION
rmiller@energy.state.ca.us

PUC/X70558.v1