

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking regarding policies, procedures and rules for the Low Income Energy Efficiency Programs of California's energy utilities.

Rulemaking 07-01-042 (Filed January 25, 2007)

ADMINISTRATIVE LAW JUDGE'S RULING FINDING GREENLINING INSTITUTE, A WORLD INSTITUTE FOR A SUSTAINABLE HUMANITY, THE UTILITY REFORM NETWORK, DISABILITY RIGHTS ADVOCATES, AND LATINO ISSUES FORUM ELIGIBLE TO CLAIM COMPENSATION

1. Summary

This ruling finds Greenlining Institute (Greenlining), A World Institute for a Sustainable Humanity (World Institute), The Utility Reform Network (TURN), Disability Rights Advocates, and Latino Issues Forum (LIF) eligible to claim compensation in this proceeding pursuant to Sections 1801-1804¹ of the California Public Utilities Code, which guide the Commission's intervenor compensation program. This finding of eligibility, however, does not necessarily guarantee an award of compensation.

The requirements of Sections 1801-1804 relevant to notices of intent to claim compensation are addressed below.

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¹ All statutory references in this ruling are to California Public Utilities Code.

2. Timeliness of the Notices of Intent

Section 1804(a)(1) requires an intervenor who intends to seek a compensation award to file a notice of intent to claim compensation within 30 days after the prehearing conference, if any is held.

A prehearing conference was held in this proceeding on March 7, 2007. The intervenors filed timely notices of intent: Greenlining – on March 19, 2007; World Institute – on April 4, 2007; LIF – on April 5, 2007, and TURN and Disability Rights Advocates – on April 6, 2007.

3. Customer Status

In a notice of intent "a participant [i.e., an intervenor] should state how it meets the definition of a customer..." (Decision (D.)98-04-059, p. 88.) According to Section 1802(b)(1), "customer" means any of the following: a participant representing consumers, a representative authorized by a customer, or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential or certain small commercial customers. Additionally, intervenor groups or organizations are required to indicate the percentage of their membership that are residential ratepayers. (D.98-04-059, p. 83.)

As discussed below, each of these intervenors is a customer, as defined in Section 1802(b)(1)(C), in that it is a representative of a group or organization representing residential or small commercial customers.

Greenlining constituents are purchasers of energy services from utilities. Greenlining states that approximately 75 percent of its members are residential and 25 percent are small business customers. Greenlining's by-laws authorize it to represent the interests of residential ratepayers.

World Institute's constituents are all residential ratepayers. World Institute's articles of incorporation authorize it to represent the interests of residential ratepayers.

TURN represents the interests of residential and small commercial customers of California utilities. TURN estimates that the vast majority of its dues-paying members are residential ratepayers. TURN's articles of incorporation authorize it to represent the interests of residential customers.

Disability Rights Advocates represents the interests of customers with disabilities. Disability Rights Advocates' articles of incorporation authorize it to represent the interests of disabled customers.

LIF represents the interests of ratepayers, especially low-income and Latinos. LIF estimates it represents a constituency that is 90 percent residential and 10 percent small business customers. LIF's bylaws authorize it to represent the interests of low income communities, Latinos and residential ratepayers, including users of energy utility services.

4. Significant Financial Hardship

Only those customers upon whom participation or intervention would impose a significant financial hardship are entitled to intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the notice of intent to claim intervenor compensation. When an intervenor addresses the issue of significant financial hardship in the notice of intent, a ruling on the notice of intent shall determine whether the customer meets the standards of "significant financial hardship" set forth in Section 1802(g). (Section 1804(b)(1).)

Section 1802(g) defines "significant financial hardship" as inability of the customer to "afford, without undue hardship, to pay the costs of effective

participation, including advocate's fees, expert witness fees, and other reasonable costs of participation." The statute provides that in the case of a group or organization, the "significant financial hardship" standard is met when the economic interest of the individual members of the organization is small in comparison to the costs of effective participation in the proceeding. (Section 1802(g).)

Greenling's, TURN's, Disability Rights Advocates' and LIF's showings of significant financial hardship are made in their notices of intent. World Institute elected to show significant financial hardship in its request for an award of compensation.

4.1 Greenling

Greenlining asserts that participation in this proceeding would pose a significant financial hardship pursuant to Section 1804(b)(1), which states in part,

A finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding.

Greenlining refers to the Joint Commissioner Ruling dated April 1, 2004, in Investigation (I.)04-02-007. Unfortunately, the prior finding cannot support a rebuttable presumption now; this rulemaking commenced on January 25, 2007, which is almost three years after the date of issuance of the ruling to which Greenlining refers.

In order to qualify for compensation, Greenlining must provide a substantive showing of significant financial hardship, pursuant to Section 1802(g). It may do so in its request for compensation. If during the intervening period the Commission makes a finding of significant financial hardship in another proceeding, Greenlining may ask us to apply a rebuttable presumption pursuant to Section 1804(b)(1).

4.2 TURN

TURN refers to a finding of significant financial hardship in a ruling issued on November 15, 2006, in I.06-06-014. Because this proceeding commenced within one year of the date of the prior finding of significant financial hardship regarding TURN, that finding applies to TURN's participation in this proceeding pursuant to Section 1804(b)(1).

4.3 Disability Rights Advocates

Disability Rights Advocates contends that its participation in this proceeding constitutes significant financial hardship, as described in Section 1802(g). The intervenor asserts that it represents the interests of low income households with a disabled family member and that the economic interest of individual members of that group is small when compared to the costs of effective participation in this proceeding.

Disability Rights Advocates states that it relies upon awards of attorney's fees as well as donations, and that it does not accept fees from its clients and receives no government funding. Disability Rights Advocates notes that while it also receives grants for certain special projects, no funds from any sources have been obtained to directly support its participation in this proceeding. Disability Rights Advocates explain that absent eligibility for intervenor compensation, it would not have adequate resources to advocate for people with disabilities.

The above representations constitute a sufficient showing of significant financial hardship in this proceeding and establish that Disability Rights Advocates meets the standard set in Section 1802(g).

4.4 LIF

LIF addresses the issue of significant financial hardship pursuant to the provisions of Section 1802(g). It explains that the savings it is able to provide to

individual low-income customers are quite small compared to the costs of its participation.

We find that LIF meets the standard set in Section 1802(g).

5. Nature and Extent of Participation

An intervenor must address its "planned participation in the proceeding." (Sections 1804(a)(2)(A)(i).) An intervenor also must show that it will represent customer interests that would otherwise be underrepresented. (D.98-04-059, p. 83.)

The intervenors' statements of nature and extent of their planned participation in the proceeding, generally, fall within the scope of this proceeding. Intervenors are responsible to stay informed about possible changes in the scope of this proceeding, and if any occur, to reconsider the degree of the intervenor's involvement. Intervenor's work on issues that are outside the scope of this proceeding will not be compensated.

5.1 Greenlining

Greenlining expects to be active in the following aspects of the proceeding: (1) the Low Income Energy Efficiency program objectives to serve the need of target communities; (2) goal-based budgeting strategies; (3) processes for considering program improvements between utility budget cycles; (4) the relationship of this rulemaking to the California Solar Initiative; (5) the integration of Low Income Energy Efficiency programs with other energy efficiency programs; and (6) the impact of renter access, water conservation programs and gas furnace programs on underserved communities, low-income and minority communities.

Greenlining asserts that it will represent the interests of low-income, non-English speaking, and other consumers that would otherwise be underrepresented. Greenlining indicates that it has not yet formulated a complete plan regarding the nature and extent of its participation. Greenlining also notes that it will seek to coordinate with other intervenors to avoid duplication of effort.

5.2 World Institute

World Institute intends to participate fully in this proceeding. World Institute asserts that it brings to this proceeding unique perspectives and expertise on low-income programs, renewables, water, and sustainability. World Institute plans to not only expand upon existing programs in terms of potential dollars, but also participate in the areas of "green" technologies, partnering with low-income communities, reducing greenhouse gases, involving renters and master-meter customers, and coordinating with the California Solar Initiative and existing non-low-income energy efficiency efforts. World Institute explains that it may mean addressing health and safety issues of participating low-income households, integrating environmental justice and pollution prevention with programs and strategies for hard-to-reach eligible populations.

Some of the issues World Institute intends to address, such as renewables, green technologies, sustainability, and environmental justice appear to be outside the scope of this proceeding, which would make them ineligible for compensation. World Institute amended its notice of intent on April 10, 2007, in ways that appear to synchronize it plans to analyze with the articulated scope of issues in this proceeding.

5.3 TURN

TURN expects to be active in some, but not all, phases of the rulemaking. It expects to be active in the issue of Low Income Energy Efficiency program objectives and goals, in workshops on the utilities' implementation of Assembly

Bill (AB) 2104 and renter access to Low Income Energy Efficiency. However, in AB 2104 issues, TURN sees its role as monitoring, rather than active. TURN expects to consider the extent to which Low Income Energy Efficiency should be coordinated with the California Solar Initiative, the energy efficiency programs, and water conservation activities. TURN also expects to monitor cost-benefit models, goals-based budgeting, and evaluation, measurement and verification (EM&V) issues. TURN does not anticipate addressing mid-cycle program improvements, natural gas appliance testing, and Low Income Energy Efficiency management and administration.

TURN asserts that it is the only party specifically representing residential and small commercial ratepayers' interests, because the Division of Ratepayer Advocates (DRA) represents the interests of all ratepayers. There are, however, four other intervenors in this proceeding representing the interests of residential customers, with three of them representing also small commercial ratepayers. In this regard, TURN indicates that it will coordinate closely with DRA and other intervenors to avoid unnecessary duplication of effort.

5.4 Disability Rights Advocates

In the current phase of the proceeding, Disability Rights Advocates plans to focus on concerns of its unique constituency, such as Low Income Energy Efficiency program objectives and goals, targeted outreach to person with disabilities to increase the energy efficiency penetration rate among that community, accessible formats for materials, and any other disability-related concerns.

Disability Rights Advocates states that it is likely to be the only intervenor specifically representing the interests of people with disabilities.

Disability Rights Advocates observes that some of the issues facing people with disabilities are common to all low-income customers. If feasible, and in order to avoid any undue duplication, Disability Rights Advocates will seek to coordinate its efforts with other intervenors to the extent that they share the same position. Disability Rights Advocates states that it is already coordinating with the DRA and TURN to identify common issues of concern and to work efficiently to address these issues.

5.5 LIF

LIF plans to participate fully in this proceeding. It intends to advocate for Low Income Energy Efficiency program accessibility to low-income ratepayers, renters, master-metered customers, and transient customers. LIF also plans to advocate for coordination of Low Income Energy Efficiency programs with the California Alternative Rates for Energy (CARE) program, California Solar Initiative, and other low-income programs.

LIF notes that, because many of the customer groups seek similar goals, it will seek to coordinate its participation in order to prevent unnecessary duplication of efforts.

6. Itemized Estimate of Compensation

The intervenor must provide an "itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appears at the time." (Section 1804(a)(2)(A) (ii).) Rule 17.1(c) also requires that the notice of intent separately state the expected budget for participating on each issue. The category of general costs not attributable to a particular issue may also be included. Rule 17.1(c).

6.1 Greenlining

Greenlining provides the following rough estimate of the expenses:

Description	Amount
Attorney Robert Gnaizda (150 hrs at \$520/hr)	\$ 78,000
Attorney Thalia N.C. Gonzalez (300 hrs at \$215/hr)	\$ 64,500
Attorney Mark Rutledge (200 hrs at \$150/hr)	\$ 30,000
Subtotal	\$172,500
Outside experts and consultants	\$ 40,00
Other costs (postage, copies, deliveries, supplies, etc.)	\$ 2,500
Travel	\$ 1,000
TOTAL	\$219,500

Greenlining plans to allocate 650 hours of attorneys' time to matters in this proceeding plus spend \$40,000 on consultants. Greenlining's budget seems excessive in light of Greenlining's interests, the likelihood that hearings will not be conducted in the proceeding and the scope of the proceeding. Greenlining must justify its request for compensation, including the reasonableness of the attorney and expert hours spent and hourly rates.

6.2 World Institute

World Institute provides the following rough estimate of its expenses:

Description	Amount
Attorney Susan E. Brown (55 hours at \$400/hour)	\$22,000
Expert/Policy Analysts:	
Michael Karp (85 hours at \$175/hr)	\$14,875
Chuck Ebert (20 hours at \$85/hr)	\$ 1,700
Incidental costs (postage, copies, etc.)	\$ 800
Hearing and travel costs	\$ 3,900
TOTAL	\$43,275

World Institute's April 10, 2007 amendment to the notice of intent provides the following expected budget for participating on each issue:

Issues	% Budget	Brown	Karp	Ebert
LIEE program objectives, goals and priorities, including budget, equity, access needs assessment, new technology, and program leveraging with community based organization, health and safety	20%	\$4,400	\$2,975	
Program access for renters and master- metered customers, including mobile home park customers	10%	\$2,200	\$1,487.50	
Coordination with California Solar Initiative	10%	\$2,200	\$1,487.50	
Best-practices, renewable technologies, linkages to sustainability as it relates to low-income households and greenhouse gas reduction/cost-benefit models	20%	\$4,400	\$2,975	
Integration with other energy efficiency programs, including water conservation	15%	\$3,300	\$2,231.25	
Program management, administration, cost-benefit analyses, including program leveraging with community-based organizations/EM&V	10%	\$2,200	\$1,487.50	
General, procedural, case management	15%	\$3,300	\$ 2,231.25	\$1,700
Total expert attorney estimate		\$ 22,000	\$14,875	\$1,700

World Institute's estimates appear to be reasonable. As any intervenor, World Institute will need to fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

6.3 TURN

TURN provides the following estimates of the expenses:

Attorney/Category	Estimated Time &	Estimated
	Rates	Cost

Hayley Goodson, Attorney	100 hrs at \$195/hour	\$19,500
Robert Finkelstein, Attorney	5 hrs at \$400/hour	\$ 2,000
Marcel Hawiger, Attorney	5 hrs at \$280/hour	\$ 1,400
Consultant	20 hrs at \$140/hour	\$ 2,800
Other direct expenses		\$ 300
TOTAL	130 hours	\$26,000

TURN provides the following budget for each issue:

Issue	Estimated Percent of Budget
LIEE goals and objectives	40%
Goals-based budgeting	10%
Cost-benefit models	10%
Coordination with the California Solar Initiative program	5%
EM&V	10%
Integration of LIEE with EE programs	15%
Renter access to LIEE	5%
Water conservation as part of LIEE	5%

TURN's provides, in general, reasonable estimates. When TURN ultimately seeks compensation, TURN must fully support its claims, including the reasonableness of the time spent and hourly rates.

6.4 Disability Rights Advocates

Disability Rights Advocates plans the following budget:

Attorney/Category	Amount
Melissa Kasnitz, attorney (60 hours at \$390 per hour)	\$23,400
Mary-Lee Kimber, attorney (100 hours at \$190 per hour)	\$19,000
Law Clerk (25 hours at \$100 per hour)	\$ 2,500

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Costs	\$ 2,000
TOTAL	\$46,900

Disability Rights Advocates states the following expected budget for participating on each issue:

Issue	Percent of Time
General/Procedural/Case Management	20%
 Reviewing Commission Ruling Reviewing parties' filings Coordinating with other consumer groups General case management 	20,70
LIEE Program Objectives and Priorities	30%
 Defining program objectives and goals (especially social program aspects) Strategies for goal implementation (in context of persons with disabilities) 	
LIEE Goal-Based Budgeting	20%
Defining the universe of LIEE participantsPrioritizing target populations	
LIEE Program Access for Renters	20%
Outreach to renters with disabilitiesIncentives for landlords to participate	
Other LIEE Issues	10%
 Evaluate whether these issues (as they proceed) involved concerns of low income customers and persons with disabilities 	
Possible participation, if necessary	

Disability Rights Advocates' estimates appear to be reasonable. At the time of the intervenor compensation request, Disability Rights Advocates, as any intervenor, must fully support the reasonableness of the hours, spent, hourly rates, and other costs it incurred in this proceeding.

6.5 LIFLIF's estimated costs of participation are as follows:

Attorney/Category	Estimated Amount
Enrique Gallardo, Attorney (300 hours at \$295/hour)	\$88,500
Incidental costs (postage, copies, deliveries, etc.)	\$ 750
Travel and hearing costs	\$ 750
TOTAL	\$90,000

LIF also states the following expected budget for each issue:

Issues	Percent and Budget
General Cost/Case Management	10% - \$9,000
Review Commission documents	
Review parties' filing	
Review settlements	
Evaluation of LIEE goals	20% - \$18,000
 Expansion of LIEE budget 	
 Definitions of target households 	
Standard of program delivery	
Program design to assure accessibility	20% - \$18,000
 Accessibility to all low-income ratepayers 	
Accessibility to renters	
Accessibility to transient ratepayers	
Accessibility to master-metered customers	10% - \$9,000
Implementation of AB 2104	
Coordination with CARE, other programs	10% - \$9,000
 Coordination of eligibility processes 	
 Coordination of assign proper LIEE services 	
Coordination with California Solar Initiative Program	10% - \$9,000
Increased focus on water conservation	10% - \$9,000
 Synergies in water and energy conservation 	

Benefits to customers	
Appropriate outreach to ensure full participation	10% - \$9,000
TOTAL	100% - \$90,000

LIF's itemized estimates of attorney's time appear excessive. At the time of LIF's intervenor compensation claims, LIF must provide a thorough justification for the hours spent, hourly rate, and costs of the proceeding.

7. Duplication of Effort

Section 1801.3(f) requires the Commission to administer the intervenor compensation program in a manner that "avoids unproductive or unnecessary participation of similar interests otherwise adequately represented...." A review of the NOIs filed in this proceeding suggests there may be considerable overlap in the intervenors' interests, expertise and issue areas. We expect intervenors to coordinate their work with each other and other parties where feasible to avoid duplication and to distinguish contributions from those of other parties in requests for compensation. (D.06-12-041, pp. 13-14.) The Commission may deny compensation requests to the extent they seek awards for unnecessary duplication.

IT IS RULED that:

- 1. Greenlining Institute is a customer as that term is defined in Section 1802(b)(1)(C) and has met the eligibility requirements of Section 1804(a).
- 2. Greenlining Institute did not demonstrate significant financial hardship in its notice of intent. Greenlining Institute must make such a showing in its request for intervenor compensation, as set forth in this ruling, to be eligible for an award.
- 3. A World Institute for a Sustainable Humanity is a customer as that term is defined in Section 1802(b)(1)(C) and has met the eligibility requirements of

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Section 1804(a), except that it has not provided a showing of significant financial

hardship in its notice of intent.

4. The Utility Reform Network (TURN) is a customer as that term is defined

in Section 1802(b)(1)(C) and has met the eligibility requirements of Section

1804(a). TURN has established by rebuttable presumption a significant financial

hardship in this proceeding, as set forth in Section 1804(b)(1).

5. Disability Rights Advocates is a customer as that term is defined in

Section 1802(b)(1)(C), has met the eligibility requirements of Section 1804(a) and

established significant financial hardship in this proceeding, pursuant to

Section 1802(g).

6. Latino Issues Form (LIF) is a customer as that term is defined in

Section 1802(b)(1)(C) and has met the eligibility requirements of Section 1804(a).

LIF established by rebuttable presumption a significant financial hardship in this

proceeding, as set forth in Section 1802(g).

Dated May 10, 2007, at San Francisco, California.

/s/ KIM MALCOLM

Kim Malcolm

Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated May 10, 2007, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

***** SERVICE LIST *******

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******* APPEARANCES ********

Susan E. Brown

A WORLD INSTITUTE FOR SUSTAINABLE HUMANI

PO BOX 428

MILL VALLEY CA 94942

(415) 686-0883

sebesq@comcast.net

For: A World Institute for Sustainable Humanity

James Hodges

ACCES

1069 45TH STREET

SACRAMENTO CA 95819

(916) 451-7011

hodgesjl@surewest.net

Michael Lamond

ALPINE NATURAL GAS OPERATING COMPANY

PO BOX 550

15 ST. ANDREWS ROAD, SUITE 7

VALLEY SPRINGS CA 95252

(209) 772-3006

anginc@goldrush.com

Edward G. Poole

Attorney At Law ANDERSON & POOLE

601 CALIFORNIA STREET, SUITE 1300

SAN FRANCISCO CA 94108-2818

(415) 956-6413

epoole@adplaw.com

For: Western Manufactured Housing Cmmunities Association

Gregory Redican

Deputy Director

COMMUNITY ACTION AGENCY OF SAN MATEO

930 BRITTAN AVENUE

SAN CARLOS CA 94070

(650) 595-1342

gredican@caasm.org

Carolyn Cox

General Manager

5213 ROSEANA COURT

FAIR OAKS CA 95628

(916) 961-9478

carolyncox 2@sbcglobal.net

Melissa W. Kasnitz

Attorney At Law

DISABILITY RIGHTS ADVOCATES

2001 CENTER STREET, THIRD FLOOR

BERKELEY CA 94704-1204

(510) 665-8644

pucservice@dralegal.org

William W. Westerfield, 111

Attorney At Law

ELLISON, SCHNEIDER & HARRIS L.L.P.

2015 H STREET

SACRAMENTO CA 95814

(916) 447-2166

www@eslawfirm.com

For: Sierra Pacific Power Company

Ronald Moore

GOLDEN STATE WATER/BEAR VALLEY

ELECTRIC

630 EAST FOOTHILL BOULEVARD

SAN DIMAS CA 91773 (909) 394-3600 X 682

rkmoore@gswater.com

Bill Julian

43556 ALMOND LANE

DAVIS CA 95618

(530) 758-8882

billjulian@sbcglobal.net

Enrique Gallardo

LATINO ISSUES FORUM

160 PINE STREET, SUITE 700

SAN FRANCISCO CA 94111

(415) 547-7550

enriqueg@lif.org

Alex Sotomayor

MARAVILLE FOUNDATION 5729 UNION PACIFIC AVENUE

LOS ANGELES CA 90022

(323) 869-4501

(323) 007-4301

alexsot@aol.com

John Dutcher

Vice President - Regulatory Affairs

MOUNTAIN UTILITIES

3210 CORTE VALENCIA

FAIRFIELD CA 94534-7875

(707) 426-4003

ralf1241a@cs.com

Mary - Lee Kimber Attorney At Law DISABILITY RIGHTS ADVOCATES 2001 CENTER STREET, 3RD FLOOR BERKELEY CA 94704-1204 (510) 665-8644 pucservice@dralegal.org

Don Wood Sr.
PACIFIC ENERGY POLICY CENTER
4539 LEE AVENUE
LA MESA CA 91941
(619) 463-9035
dwood8@cox.net

Chonda J. Nwamu PACIFIC GAS AND ELECTRIC COMPANY POST OFFICE BOX 7442 SAN FRANCISCO CA 94120 (415) 973-6650 cjn3@pge.com

Craig M. Buchsbaum Attorney At Law PACIFIC GAS AND ELECTRIC COMPANY 77 BEALE STREET, B30A SAN FRANCISCO CA 94105 (415) 973-4844 cmb3@pge.com

Josephine Wu PACIFIC GAS AND ELECTRIC COMPANY PO BOX 770000, MAIL CODE B9A SAN FRANCISCO CA 94177 (415) 973-3414 jwwd@pge.com

Luke Tougas PACIFIC GAS AND ELECTRIC COMPANY PO BOX 770000, MC B9A SAN FRANCISCO CA 94177 (415) 973-3610 LATc@pge.com

Peter Ouborg PACIFIC GAS AND ELECTRIC COMPANY PO BOX 7442, B30A SAN FRANCISCO CA 94120-7442 (415) 973-2286 pxo2@pge.com

Ryan Flynn Attorney PACIFICORP 825 NE MULTNOMAH, SUITE 1800 PORTLAND OR 97232 (503) 813-5854 Shayleah Labray PACIFICORP 825 NE MULTNOMAH, SUITE 2000 PORTLAND OR 97232 (503) 813-6176 Shayleah.LaBray@Pacificorp.Com

Rashid A. Rashid Legal Division RM. 4107 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-2705 rhd@cpuc.ca.gov

Kim F. Hassan
Attorney At Law
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, HQ-12
SAN DIEGO CA 92101
(619) 699-5097
khassan@sempra.com
For: Southern California Gas Company & San Diego
Gas Electric Company

Lisa G. Urick Attorney At Law SAN DIEGO GAS & ELECTRIC COMPANY 101 ASH STREET SAN DIEGO CA 92101 (619) 699-5070 Lurick@sempra.com

Elena Mello SIERRA PACIFIC POWER COMPANY 6100 NEIL ROAD RENO NV 89520 (775) 834-5696 emello@sierrapacific.com

Michael Montoya Senior Attorney SOUTHERN CALIFORNIA EDISON 2244 WALNUT GROVE AVE. ROSEMEAD CA 91770 montoym1@sce.com

Stacie Schaffer Attorney At Law SOUTHERN CALIFORNIA EDISON 2244 WALNUT GROVE AVE. ROSEMEAD CA 91770 (626) 302-3712 Stacie.Schaffer@sce.com

ryan.flynn@pacificorp.com

Michael R. Thorp SOUTHERN CALIFORNIA GAS COMPANY 555 WEST FIFTH STREET, GT-14E7 LOS ANGELES CA 90013-1011 (213) 244-2981 mthorp@sempra.com

Bobbi J. Sterrett Specialist/State Regulatory Affairs SOUTHWEST GAS CORPORATION PO BOX 98510 LAS VEGAS NV 89150-0002 (702) 364-3309 bobbi.sterrett@swgas.com

Francisco V. Aguilar Attorney At Law SOUTHWEST GAS CORPORATION 5241 SPRING MOUNTAIN ROAD LAS VEGAS NV 89193 (702) 876-7183 francisco.aguilar@swgas.com

Valerie J. Ontiveroz SOUTHWEST GAS CORPORATION PO BOX 98510 LAS VEGAS NV 89193-8510 (702) 876-7323 valerie.ontiveroz@swgas.com

Richard Villasenor TELACU 12252 MC CANN DRIVE SANTA FE SPRINGS CA 90670 (562) 777-1142 richvilla4@hotmail.com

Thalia N.C. Gonzalez ROBERT GNAIZDA THE GREENLINING INSTITUTE 1918 UNIVERSITY AVENUE, 2ND FLR. BERKELEY CA 94704 (510) 926-4002 thaliag@greenlining.org

Hayley Goodson Attorney At Law THE UTILITY REFORM NETWORK 711 VAN NESS AVENUE, SUITE 350 SAN FRANCISCO CA 94102 (415) 929-8876 hayley@turn.org Raymond J. Czahar, C.P.A. Chief Financial Officer WEST COAST GAS COMPANY 9203 BEATTY DRIVE SACRAMENTO CA 95826 (916) 364-4100 westgas@aol.com

Irene K. Moosen Attorney At Law WESTERN MANUFACTURED HOUSING COMM. SVCS. 53 SANTA YNEZ AVENUE SAN FRANCISCO CA 94112 (415) 587-7343 irene@igc.org

****** STATE EMPLOYEE *******

Zaida Amaya-Pineda Energy Division 770 L STREET, SUITE 1050 Sacramento CA 95814 (916) 324-8684 zca@cpuc.ca.gov

Mariana C. Campbell Division of Ratepayer Advocates RM. 4101 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-2731 mcl@cpuc.ca.gov

Melicia Charles Energy Division AREA 4-A 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 355-5502 mvc@cpuc.ca.gov

Jeannine Elzey
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2801
jme@cpuc.ca.gov

Hazlyn Fortune Energy Division AREA 4-A 505 VAN NESS AVE

San Francisco CA 94102 3298 (415) 703-1809 hcf@cpuc.ca.gov

Robert Kinosian Division of Ratepayer Advocates RM. 4205 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-1500 gig@cpuc.ca.gov For: DRA

Alik Lee Division of Ratepayer Advocates RM. 4101 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-2050 ayo@cpuc.ca.gov

Robert Lehman Division of Ratepayer Advocates RM. 4102 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-2245 leh@cpuc.ca.gov

Kim Malcolm Administrative Law Judge Division RM. 5005 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-2822 kim@cpuc.ca.gov

Michaela Pangilinan Energy Division AREA 4-A 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-1816 wow@cpuc.ca.gov

Sarvjit S. Randhawa Energy Division AREA 4-A 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-2274 ssr@cpuc.ca.gov

Thomas M. Renaghan Division of Ratepayer Advocates Sarita Sarvate Energy Division AREA 4-A 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-5574 sbs@cpuc.ca.gov

Terrie J. Tannehill Energy Division AREA 4A 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-1224 tjt@cpuc.ca.gov

Joseph Wanzala Division of Ratepayer Advocates RM. 4101 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-1185 jcw@cpuc.ca.gov

Sean Wilson Water Division AREA 3-C 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-1818 smw@cpuc.ca.gov

******* INFORMATION ONLY ********

Michael Mazur Chief Technical Officer 3 PHASES ENERGY SERVICES, LLC 2100 SEPULVEDA BLVD., SUITE 38 MANHATTAN BEACH CA 90266 (310) 798-5275 mmazur@3phases.com

Paul Delaney AMERICAN UTILITY NETWORK (A.U.N.) 10705 DEER CANYON DRIVE ALTA LOMA CA 91737 (805) 390-5632 pssed@adelphia.net

Dave Stephenson

RM. 4205 505 VAN NESS AVE San Francisco CA 94102 3298 (415) 703-2107 tmr@cpuc.ca.gov

David J. Coyle ANZA ELECTRIC COOPERATIVE, INC 58470 HIGHWAY 371 ANZA CA 92539-1909 (909) 763-4333

Don Stoneberger APS ENERGY SERVICES SUITE 750 400 E. VAN BUREN STRREET PHOENIX AZ 85004 (602) 744-5007

Ryan Bernardo BRAUN & BLAISING, P.C. 915 L STREET, SUITE 1270 SACRAMENTO CA 95814 (916) 837-8480 bernardo@braunlegal.com

Robert J. Bicker Legislative Analyst CALIFORNIA APARTMENT ASSOCIATION 980 NINTH STREET, SUITE 200 SACRAMENTO CA 95814 (800) 967-4222 rbicker@caanet.org

Rob Gunnin Vice President Supply COMMERCE ENERGY, INC. 600 ANTON BLVD., SUITE 2000 COSTA MESA CA 92626 (714) 259-2502 rgunnin@commerceenergy.com

Gregory J. Kosier
Portfolio Manager
CONSTELLATION NEWENRGY, INC.
350 SOUTH GRND AVENUE, 38TH FLOOR
LOS ANGELES CA 90071
(213) 996-6116
Gregory.Kosier@constellation.com

Maria Y. Juarez
Deputy Director
DEPARTMENT OF COUMMINTY ACTION
RIVERSIDE COUNTY
2038 IOWA AVENUE, SUITE B-102
RIVERSIDE CA 92507

Rate Regulation Manager - Western Regio AMERICAN WATER WORKS SERVICE CO. 4701 BELOIT DRIVE SACRAMENTO CA 95838 (916) 568-4260 dstephenson@amwater.com

Jason Wimbley
Division Chief, Energy&Environ Programs
DEPT. OF COMMUNITY SERVICES &
DEVELOPMEN
700 NORTH 10TH STREET, ROOM 258
SACRAMENTO CA 95814
(916) 341-4356
jwimbley@csd.ca.gov

Ortensia Lopez Executive Director EL CONCILIO OF SAN MATEO 1419 BURLINGAME AVE., SUITE N BURLINGAME CA 94010 (650) 373-1087 or10sia@aol.com

Janine L. Scancarelli
Attorney At Law
FOLGER, LEVIN & KAHN, LLP
275 BATTERY STREET, 23RD FLOOR
SAN FRANCISCO CA 94111
(415) 986-2800
jscancarelli@flk.com

Joseph F. Wiedman Attorney At Law GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP 505 SANSOME STREET, SUITE 900 SAN FRANCISCO CA 94111 (415) 392-7900 jwiedman@goodinmacbride.com

Jody S. London JODY LONDON CONSULTING PO BOX 3629 OAKLAND CA 94609 (510) 459-0667 jody_london_consulting@earthlink.net

Richard Mccann M.CUBED 2655 PORTAGE BAY ROAD, SUITE 3 DAVIS CA 95616 (530) 757-6363 rmccann@umich.edu

Kyle Maetani MK PLANNING CONSULTANTS (951) 955-3563

mjuarez@riversidedpss.org

Bob Hondeville

MODESTO IRRIGATION DISTRICT

1231 11TH STREET

MODESTO CA 95354

(209) 526-7373

bobho@mid.org

Joy Warren

Attorney At Law

MODESTO IRRIGATION DISTRICT

1231 11TH STREET

MODESTO CA 95354

(209) 526-7389

joyw@mid.org

John Jensen President

MOUNTAIN UTILITIES

PO BOX 205

KIRKWOOD CA 95646

(209) 258-7444

jjensen@kirkwood.com

John Newcomb

696 SOUTH TIPPECANOE AVENUE

SAN BERNARDINO CA 92415

jnewc@capsbc.sbcounty.gov

For: Community Action Partnership of San Bernardino

County

Linda Fontes

PACIFIC GAS & ELECTRIC COMPANY

123 MISSION ROOM 1404 MC H14F

SAN FRANCISCO CA 94105

(415) 973-6239

lcf2@pge.com

Roland Risser

Director, Customer Energy Efficiency

PACIFIC GAS & ELECTRIC COMPANY

MAIL CODE N6G

PO BOX 770000

SAN FRANCISCO CA 94177

(415) 973-8437

rjrb@pge.com

Brian K. Cherry

Director Regulatory Relations

PACIFIC GAS AND ELECTRIC COMPANY

77 BEALE STREET, B10C

SAN FRANCISCO CA 94106

(415) 973-7226

bkc7@pge.com

2740 W. MAGNOLIA BLVD., STE 103

BURBANK CA 91505

(818) 846-6272

kmaetani@aol.com

Frances L. Thompson

PACIFIC GAS AND ELECTRIC COMPANY

123 MISSION STREET, RM. 1408 MC H14G

SAN FRANCISCO CA 95177

(415) 973-2486

flt2@pge.com

Law Department File Room

PACIFIC GAS AND ELECTRIC COMPANY

PO BOX 7442

SAN FRANCISCO CA 94120-7442

cpuccases@pge.com

Mary O'Drain

PACIFIC GAS AND ELECTRIC COMPANY

123 MISSION - ROOM 1410, MC H14G

SAN FRANCISCO CA 94177

(415) 973-2317

mjob@pge.com

Marisa Decristoforo

PACIFICORP

825 NE MULTNOMAH STREET, SUITE 800

PORTLAND OR 97232

(503) 813-6084

marisa.decristoforo@pacificorp.com

Rvan Flvn

PACIFICORP

825 NE MULTNOMAH STREET

PORTLAND OR 97232

(503) 813-5854

ryan.flynn@pacificorp.com

Robert Marshall

PLUMAS SIERRA RURAL ELECTRIC

PO BOX 2000

PORTOLA CA 96122-2000

(916) 832-4261

Richard Polanco

Senator

3701 GLENALBY DRIVE

LOS ANGELES CA 90065

(323) 343-8702

Senpolanco22@aol.com

Tom Hamilton
Energy Program Manager
QUALITY BUILT
15330 AVENUE OF SCIENCE
SAN DIEGO CA 92128
(800) 547-5125
thamilton@qualitybuilt.com

Allan Rago QUALITY CONSERVATION SERVICES, INC. SUITE E

MONTCLAIR CA 91763 (909) 445-0450 arago@qcsca.com

4701 ARROW HIGHWAY

M. Sami Khawaja, Ph.D QUANTEC, LLC SUITE 400 720 SW WASHINGTON STREET PORTLAND OR 97205 (503) 228-2992 Sami.Khawaja@quantecllc.com

Ron Garcia RELIABLE ENERGY MANAGEMENT, INC. 6250 PARAMOUNT BLVD. LONG BEACH CA 90805 (562) 984-5511 ron@relenergy.com

Pamela L. Gorsuch Program Manager RHA INC 1026 MANGROVE AVE., SUITE 20 CHICO CA 95926 pamela@rhainc.com

Joe Williams
Ceo
RICHARD HEATH AND ASSOCIATES, INC.
590 W. LOCUST AVENUE, STE 103
FRESNO CA 93650
(559) 447-7000
joe@rhainc.com

Kristine Lucero
Project Coordinator
RICHARD HEATH AND ASSOCIATES, INC.
590 W. LOCUST AVENUE, SUITE 103
FRESNO CA 93650
(559) 447-7000
kristine@rhainc.com

Rick C. Noger PRAXAIR PLAINFIELD, INC. 2678 BISHOP DRIVE SAN RAMON CA 94583 (925) 866-6809 rick_noger@praxair.com

Central Files
Regulatory Affairs
SAN DIEGO GAS & ELECTRIC CO.
8330 CENTURY PARK COURT-CP31E
SAN DIEGO CA 92123-1530
(858) 654-1766
CentralFiles@semprautilities.com

Steve Rahon
Director, Tariff & Regulatory Accounts
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32C
SAN DIEGO CA 92123-1548
lschavrien@semprautilities.com

Yole Whiting SAN DIEGO GAS & ELECTRIC COMPANY 8335 CENTURY PARK COURT SAN DIEGO CA 92123 (858) 654-1274 ywhiting@semprautilities.com

Joy C. Yamagata SAN DIEGO GAS & ELECTRIC/SOCALGAS 8330 CENTURY PARK COURT SAN DIEGO CA 91910 (858) 654-1755 jyamagata@semprautilities.com

Greg Bass SEMPRA ENERGY SOLUTIONS 101 ASH STREET. HQ09 SAN DIEGO CA 92101-3017 (619) 696-3177 gbass@semprasolutions.com

Larry Rackley SIERRA PACIFIC POWER CO. PO BOX 10100 RENO NV 89520 (775) 834-4801 lrackley@sppc.com

Mary O. Simmons SIERRA PACIFIC POWER COMPANY RATES & REGULATORY AFFAIRS Jack Parkhill Manager - Csbu SOUTHERN CALIFORNIA EDISON 2131 WALNUT GROVE ROSEMEAD CA 91770 jack.parkhill@sce.com

John Fasana SOUTHERN CALIFORNIA EDISON 2131 WALNUT GOVE AVE. ROSEMEAD CA 91770 john.fasana@sce.com

Akbar Jazayeiri SOUTHERN CALIFORNIA EDISON COMPANY 2241 WALNUT GROVE AVENUE PO BOX 800 ROSEMEAD CA 91770 (626) 302-3630 akbar.jazayeri@sce.com

Case Administration SOUTHERN CALIFORNIA EDISON COMPANY LAW DEPARTMENT 2244 WALNUT GROVE AVENUE ROSEMEAD CA 91770 (626) 302-4875 case.admin@sce.com

Central Files SOUTHERN CALIFORNIA GAS COMPANY 555 W. FIFTH STREET, GT14D6 LOS ANGELES CA 90013-1011 centralfiles@semprautilities.com

Steven D. Patrick Attorney At Law SOUTHERN CALIFORNIA GAS/SDG&E 555 WEST 5TH STREET, GT14E7 LOS ANGELES CA 90013-1034 (213) 244-2954 spatrick@sempra.com

Mark A. Rutledge THE GREENLINING INSTITUTE 1918 UNIVERSITY AVENUE, 2ND FLR. BERKELEY CA 94704 (510) 926-4016 markr@greenlining.org 6100 NEIL ROAD, P.O. BOX 10100 RENO NV 89520 (775) 834-5870 msimmons@sierrapacific.com

Regina Costa Research Director THE UTILITY REFORM NETWORK 711 VAN NESS AVENUE, SUITE 350 SAN FRANCISCO CA 94102 (415) 929-8876 X312 rcosta@turn.org

Michael Shames Attorney At Law UTILITY CONSUMERS' ACTION NETWORK 3100 FIFTH AVENUE, SUITE B SAN DIEGO CA 92103 (619) 696-6966 mshames@ucan.org

Sheila Dey
WESTERN MANUFACTURED HOUSING
COMMUNITIES
455 CAPITOL MALL STE 800
SACRAMENTO CA 95814
(916) 448-7002
sheila@wma.org

Ladonna Williams Executive Director PO BOX 5653 VALLEJO CA 94591 (707) 712-4088 zzeria@aol.com

(END OF SERVICE LIST)