

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Joint Application of Sierra Pacific Power Company (U903E) and California Pacific Electric Company, LLC for Transfer of Control and Additional Requests Relating to Proposed Transaction.

A.09-10-028
(Filed October 16, 2009)

PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES

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I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") protests the above captioned joint application of Sierra Pacific Power Company ("Sierra") and California Pacific Electric Company ("CalPeco") to transfer to CalPeco control of the assets and operations comprising the California electric distribution system and the Kings Beach Generation Facility owned and operated by Sierra (the "California Utility assets"). Sierra will retain all transmission under the jurisdiction of the Federal Energy Regulatory Commission ("FERC") and other assets within California. Sierra and CalPeco (collectively, "Joint Applicants") filed their application on October 16, 2009. This application first appeared on the Commission's Daily Calendar on October 26, 2009. Pursuant to Rule 2.6(a), this protest is timely filed.

The Joint Applicants seek authorization under Section 854(a) of the California Public Utilities Code¹ to sell Sierra's California Utility assets to CalPeco. In the alternative, Joint Applicants ask that the application be approved pursuant to Section 851.

¹ Statutory references are to the California Public Utilities Code, unless otherwise indicated.

According to the application, the buyer, CalPeco, is a newly-created entity through which Algonquin Power Income Fund (“Algonquin”), a mutual fund trust formed under the laws of the Province of Ontario, Canada, and Emera Incorporated (“Emera”), an energy holding company incorporated under the laws of the Province of Nova Scotia, Canada, will jointly acquire the California Utility. CalPeco is directly owned by California Pacific Utility Ventures, LLC, (“CPUV”) a California limited liability company. Algonquin and Emera indirectly own CalPeco through direct ownership of two wholly-owned subsidiaries, Algonquin Power Fund (America) Inc. and Emera US Holdings, Inc. These affiliates each hold a 50% ownership interest in CPUV. (Application at p. 3.)

In connection with the grant of authority to transfer control under Section 854(a), Joint Applicants also request approval for certain actions and agreements they claim are ancillary to, and necessary for the completion of, the transaction. These actions and agreements include, among other things, a five-year Power Purchase Agreement under which Sierra will provide CalPeco its full electric requirements “at rates reflecting Sierra’s actual costs and based on Sierra’s ‘system average cost’” (Application at p. 49); an Emergency Backup Service Agreement, under which CalPeco will provide Kings Beach capacity and energy to Sierra for emergency backup service (Application at p. 55); a Transition Services Agreement, pursuant to which Sierra will make various operating and administrative services available “at cost” to CalPeco (Application at pp. 56-57); authorization of certain adjustments in ratemaking which would enable CalPeco to reclassify certain components of general rates to Energy Cost Adjustment Clause (“ECAC”) rates (Application at pp. 30-38); authorization under Sections 816, 818, and 851 for CalPeco to incur debt to finance a portion of the purchase price, and to encumber the California Utility assets as part of its financing of the acquisition and operation of the California Utility (Application at pp. 66-67); approval for either Algonquin or Emera to transfer to the other all or any portion of its ownership interest in CalPeco, without the need for any additional approval by this Commission (Application at pp. 70-71); and a request that the Commission refrain from imposing any Minimum Hold Condition on Emera (Application at pp. 68-69).

II. IDENTIFIED ISSUES

DRA is currently reviewing the application and the requests set forth by the Joint Applicants. This protest and the identified issues discussed below are based on DRA's initial and limited review of the filing. DRA may identify and develop other issues as further discovery and analysis is completed. DRA has initiated limited discovery requests as part of an overall review of the Joint Applicants' filing. DRA contemplates submitting a report in this proceeding which will present its findings, conclusions, and recommendations concerning the proposed transaction.

A. Standard of Review

Joint Applicants contend that this transaction is subject to review under Section 854(a), and not Section 851, as the transaction is functionally the sale of Sierra's entire Commission-jurisdiction utility. (Application at p. 19.) Under Section 854(a), the Commission may approve a transfer of control upon finding that the transaction "is in the public interest." (D.06-02-033, *mimeo*, p. 23.) Joint Applicants appear to contend that the standard for reviewing this transaction should be "whether the transaction will not be 'adverse to the public interest.'" (Application at p. 25.) DRA disagrees with Joint Applicants' characterization of the standard of review. Although the Commission has articulated a standard of whether the transaction will be "adverse to the public interest," the Commission has also inquired into whether a transfer will provide positive benefits to ratepayers and the community. Joint Applicants rely on D.06-02-033 for their assertion that the standard is a finding of "no harm to ratepayers." (Application at p. 25, citing D.06-02-033, *mimeo* at p. 36.) However, the Commission's use of the "no harm to the ratepayers" standard is not well settled. In D.01-09-057, for example, involving California-American Water Company's acquisition of Citizens Utilities Company of California, there was a dispute over which standard of review to use, the "no harm to ratepayers" or "positive ratepayer benefits." The Commission did not definitively resolve the question, but found that the transaction was in the public interest regardless of which standard was chosen. (D.01-09-057, *mimeo*, at pp., 26-27.) Even in D.06-02-033, the decision relied upon by Joint Applicants, the Commission found that the transaction

provided “modest but concrete benefits to ratepayers and the communities served by PacifiCorp, and there will be no harm to ratepayers or others with the conditions adopted by today’s Decision.” (D.06-02-033, *mimeo*, at p. 36 (emphasis added).) Thus, the Commission found positive ratepayer benefits *as well as* found that there will be no harm. The standard that the Commission should find positive benefits for the ratepayer as well as the community is further underscored by the Commission’s statement that a transaction may be approved “if serious harm is mitigated *and the benefits of the transaction clearly outweigh the detriments.*” (*Id.*, at p. 35 (emphasis added).)

DRA respectfully submits that the standard the Commission should follow is to find that there are positive benefits for the ratepayers and the communities affected by the transaction. Such an examination is expressly required under Section 854(b). Joint Applicants assert that Sections 854(b) and 854(c) do not expressly apply to this transaction as Sierra’s and CalPeco’s gross annual California revenues are each below \$500 million. (Application at p. 19.) However, even when these provisions do not expressly apply to a transaction, the Commission has used the criteria set forth in those statutes to provide guidance and context for a public interest examination. (See, e.g., D.01-09-057, *mimeo*, at pp. 26-27, 41; D.07-05-061, *mimeo*, at p. 24, citing D.02-12-068; D.08-01-018, *mimeo*, at pp. 19-20.)

Claiming similarities with the MidAmerican/PacifiCorp transaction (as well as the Avista/Southwest Gas transaction), Joint Applicants propose to use the same criteria used in D.06-02-033 to evaluate whether the transaction is in the public interest. (Application at p. 26.) In D.06-02-033, the Commission used criteria similar to those in Section 854(c) in evaluating MidAmerican’s acquisition of PacifiCorp.² DRA requests that in

² The criteria used by Joint Applicants, and by the Commission in MidAmerican decision D.06-02-033, look into whether the transaction will be harmful to the State and local economies and the communities served by the utility. In contrast, Section 854(c) requires the Commission to consider whether the transaction will be *beneficial* to State and local economies and the communities served. The criteria set forth in 854(c), including whether the transaction would be beneficial to the local community, have been used by the Commission in reviewing previous acquisition transactions. (See D.01-09-057.) DRA accordingly requests that the Commission use the criteria set forth in 854(c) and evaluate whether the transaction will be beneficial to these economies and communities.

addition to the criteria set forth in Section 854(c), the Commission evaluate this transaction using the criteria set forth in Section 854(b) which require ratepayers to receive not less than 50% of the short-term and long-term forecasted economic benefits of the proposed acquisition.

This transaction should be subject to a higher level of scrutiny for several reasons. Although the California revenues of Sierra and CalPeco are less than \$500 million/year, the parties involved in this transaction are not small, troubled companies. As the Application states, Algonquin owns and operates an approximately \$1 billion (Cdn) portfolio of renewable power generation and utility operations across North America, and Emera is a holding company with approximately \$5.3 billion (Cdn) of assets. (Application at pp. 4-5.)

Moreover, DRA has serious concerns about the potential losses of economies of scale and efficiencies that may result from this transaction. Joint Applicants assert that the proposed acquisition has similarities to the Commission's approval of MidAmerican's acquisition of PacifiCorp, and seek to use the same criteria used in D.06-02-033. Joint Applicants attempt to liken this transaction to MidAmerican by characterizing that transaction as "MidAmerican's acquisition of PacifiCorp's California electric operations" and noting that the size of PacifiCorp's California customer base is similar to the 46,000 customers that would be served by CalPeco. However, MidAmerican did not involve carving off PacifiCorp's California customers into a wholly separate service territory that was to be served by a new company. That transaction involved selling *all* of PacifiCorp's common stock to MidAmerican, not just an "acquisition of PacifiCorp's California electric operations." The 44,000 California customers were to remain part of PacifiCorp's larger service territory with 1.6 million customers, and PacifiCorp was to be operated "much as it is today". (D.06-02-033 at pp. 3, 6.) Thus, the MidAmerican case does not present the same potential loss of efficiencies and economies of scale as the instant transaction.

Likewise, Joint Applicants' comparison with the Avista case is not entirely on point. Avista was selling its California facilities in South Lake Tahoe, facilities which

were “geographically remote” from its other distribution operations in Washington, Idaho and Oregon. Joint Applicants attempt to claim that this transaction will similarly enable NV Energy to divest itself of a “geographically separate district.” (Application at p. 13.) However, the service territory at issue here is only “separated” by state line. Moreover, in Avista, the buyer was already serving much of the Lake Tahoe Basin and had existing service territories that were contiguous with the South Lake Tahoe district. The Commission found, and DRA agreed, that with a larger presence in California, Southwest Gas could save money through greater economies of scale and greater bargaining power. (D.05-03-010, *mimeo*, at p. 9.)

DRA has concerns about the short-term and long-term implications this transaction will have on the ratepayers, and is propounding discovery to analyze this issue. For the reasons stated above, DRA believes that in addition to reviewing the transaction under Section 854(c), the Commission should look at what short-term and long-term benefits the California ratepayers would receive as a result of this transaction.

B. Interim Greenhouse Gas Emissions Performance Standard and the Application of AB 32’s Greenhouse Gas Reduction Measures

The Joint Applicants claim that the transaction transitioning ownership of the California Utility from Sierra’s ownership to CalPeco will be “seamless from the perspective of its California customers.” (Application at p. 17.) To this end, Sierra developed a multi-year power purchase agreement (“PPA”) through which it would provide 100% of the new owner’s power needs on a cost-of-service basis, “essentially a continuation of the power supply resources and pricing used today to serve the California Utility customers.” (*Id.*) The application also claims that the parties have structured the Operating Agreements to enable CalPeco, after Closing, to collect from customers the same amount of revenues that Sierra would otherwise have charged and collected from customers and to charge individual customers at the same rate levels after the Closing, using the same rates and revenues that the Commission approves in Sierra’s 2009 general rate case (GRC). (Application at pp. 30-31, 38.)

As described in the Application, Sierra has continued to utilize its Valmy coal-fired power plant to serve its California customers. Under the PPA, CalPeco customers will receive their power from exactly the same generation resources they do now from Sierra, including the Valmy Plant. (Application at p. 53.) Currently, Sierra’s utilization of the Valmy Plant to serve its California customers is in compliance with the Commission’s Interim Greenhouse Gas Emissions Performance Standard (“Interim GHG EPS”) adopted in Decision (“D.”) 07-01-039, because the Interim GHG EPS allows the continued use of baseload generation resources that were already utilized by California load serving entities (“LSEs”) as of the date of the adoption of D.07-01-039. (D.07-01-039, *mimeo*, at p. 5, 7.) However, the GHG EPS does apply to baseload generation procured under contract when the LSE enters into a “new or renewed” contract with a term of five or more years. (*Id.*, at pp. 4, 9-10.) For contracts with multiple generating sources, including Power Purchase Agreements, the Commission looks at the characteristics and emissions of each individual plant to see if it meets the EPS. (*Id.*)

As Joint Applicants point out in their application, CalPeco is entering into a “new” power purchase agreement to procure system power from Sierra. (Application at p. 53.) Nonetheless, Joint Applicants believe that the continued provision of Valmy power to California will be compliant with the Interim GHG EPS because the sources of power from which Sierra will provide power to CalPeco under the PPA will be the same sources that Sierra currently uses to serve customers of the California Utility. (*Id.*) However, Joint Applicants cite no authority supporting this notion. Indeed, a review of D.07-01-039 reveals that the Commission did not exactly contemplate this situation, and therefore it remains uncertain whether the Commission will agree with Joint Applicants on this point, as it may contravene the Commission’s greenhouse gas policies and Senate Bill (“SB”) 1368.³

³ Moreover, any special treatment Sierra now enjoys as a multi-jurisdictional entity would be lost once CalPeco takes over as a purely California company.

If the Commission determines that the PPA is in fact a new contract subject to the GHG EPS, then CalPeco and Sierra would need to remove Valmy power from the generating portfolio. As Joint Applicants state in their application:

Because the cost to produce power at Valmy is lower than Sierra's system average cost of power, removing Valmy power from the Power Purchase Agreement will cause an increase in the capacity cost and the energy cost under the Power Purchase Agreement, which will have to be passed on to customers of the California Utility.

(Application at p. 54.) This would make the transaction uneconomical for the 46,000 ratepayers of the California Utility. DRA is performing discovery to determine what the costs to ratepayers will be with the inclusion of the Valmy Plant and without the inclusion of the Valmy Plant.

Even if, however, the Commission determines that the PPA, including the continued inclusion of Valmy power, complies with the Commission's Interim GHG EPS, that compliance will become irrelevant once Assembly Bill ("AB") 32's greenhouse gas emission reduction measures go into effect in 2012. The GHG EPS adopted in D.07-01-039 is an interim step towards the implementation of AB 32. Under AB 32, the California Air Resources Board ("CARB") is to adopt greenhouse gas emission limits and emission reduction measures ("CARB GHG reduction measures") that establish a system of market-based declining annual aggregate emission limits by January 1, 2011, to become operative on January 1, 2012. (Cal. Health and Safety Code, § 38562). Under AB 32 all sources of electric power generated in California or imported into the state are subject to reporting requirements and the CARB GHG reduction measures, and there is no grandfathering. (Cal. Health and Safety Code, §§ 38530(b)(2), 38562.) DRA is concerned about what the effects of AB 32's CARB GHG reduction measures will have on this transaction. If CalPeco continues to obtain power from the Valmy Plant after January 1, 2012, it may be required to purchase additional allowances under the CARB GHG reduction measures. This could make the transaction uneconomical for the 46,000 California Utility ratepayers. DRA is reviewing the application to determine if Sierra

agreed to pay for any emission credits CalPeco may require, and has propounded discovery to find out if the parties conducted any analysis about the underlying assumptions they may have made regarding these potential costs in their contractual arrangements. DRA is also looking into how and whether CalPeco expects to pass along these potential costs to its 46,000 customers. DRA intends to review the effects of the Interim GHG EPS and CARB GHG reduction measures on this transaction, and will submit its findings and recommendations in its report.

C. Minimum Ownership Requirements and Approval for Internal Ownership Transfers Without Commission Review

Joint Applicants ask that the Commission grant certain requests relating to the retention of ownership interests in CalPeco. First, Joint Applicants state that section 3(g) of the Regulatory Commitments obligates Algonquin Power to commit to own at least 50% of CalPeco for a minimum period of 10 years. (Application at p. 68.) However, Emera has made no such commitment, and Joint Applicants request that the Commission refrain from imposing any such minimum hold condition on Emera.

Second, CalPeco requests Commission approval for either Algonquin or Emera to transfer to the other all or any portion of its ownership interest in CalPeco, without the need for any additional approval by this Commission (the “Internal Transfer Approval”). (Application at pp. 70-71.) Presumably, the operation of these two requests together would mean that for the first 10 years, Algonquin could not transfer to Emera any portion of its ownership interest in CalPeco that would result in Algonquin’s ownership interest going below 50%. However, DRA is concerned that the operation of the agreements themselves may result in a loophole whereby Algonquin could transfer all of its interest in CalPeco to Emera, and Emera could then turn around and “flip” the company. Although Joint Applicants claim that Emera has a record of holding its previous purchases, there is no guarantee that approving these requests will not expose ratepayers to adverse effects of “flipping” or otherwise shortly selling any portion of CalPeco at a

later date. DRA intends to review these agreements in more detail and provide recommendations to address this concern, if necessary, in its report.

Likewise, DRA is concerned that approval of the “Internal Transfer Approval” may subject ratepayers to additional risks and greater liability. Even if Emera and Algonquin are each individually fit to own and operate CalPeco today, that does not necessarily mean that they will be so five or ten years down the road. Moreover, DRA has concerns that this request may contravene the requirements of Sections 851 and 854, which provide that the Commission must review and approve any transfer of ownership. DRA questions the ability of this Commission to bind a future Commission in this regard to prevent it from exercising its police powers and restrict its ability to review any such transaction to safeguard the public interest. (See, e.g., *Sale v. California Railroad Comm.* (1940) 15 Cal. 2d 612, 616 (“The Commission has continuing jurisdiction to rescind, alter or amend its prior orders at any time.”); *In re Pacific Gas & Electric Company* (1988) [D.88-12-083] 30 CPUC 2d 189, and cases cited therein (Commission lacks the power to approve settlements that bind future Commissions.); *Avco Community Developers, Inc. v. South Coast Regional Comm.* (1976) 17 Cal. 3d 785, 800 (California Supreme Court declared that “it is settled that the government may not contract away its right to exercise the police power in the future.”); *Mott v. Cline* (1927) 200 Cal. 434, 446 (“The police power being in its nature a continuous one, must ever be reposed somewhere, and cannot be barred or suspended by contract or irrevocable law. It cannot be bartered away even by express contract.”). DRA intends to further explore these issues and present its findings and recommendations in its report.

D. Transition Services Agreement

Joint Applicants have requested the Commission to authorize the “Transition Services Agreement” which Joint Applicants claim is a key component in providing a “seamless transition to the electric consumers of the California Utility.” (Application at p. 56.) The Transition Services Agreement (“TSA”) “provides a contractual basis for Sierra to provide to CalPeco, on a transitional basis, certain services CalPeco needs to provide electric distribution services to its customers.” (*Id.*) The TSA has a base term of

24 months, with an option for CalPeco to extend the term for another 12 months. According to Joint Applicants, the services that Sierra offers CalPeco will be billed on an “at cost” basis, based on a “reasonable approximation” of the actual costs incurred by Sierra to provide the services. (*Id.* at 57.)

DRA is concerned about the effects of the TSA on ratepayers because the details of the agreement are lacking. Although CalPeco has the option to purchase services from Sierra, there is nothing in the TSA demonstrating what services CalPeco will in fact be purchasing from Sierra, or what the actual costs for those services will be. Due to these uncertainties as to how much these services will cost CalPeco, DRA has concerns about what effects this transaction will have on ratepayers when CalPeco files its next rate case in 2012, and whether ratepayers will be better off with Sierra.

Moreover, DRA is concerned about what effect the loss of economies of scale and efficiencies will have on CalPeco’s ability to provide services, both in-house and through third party contracts, and the cost of those services. DRA intends to evaluate this question in more detail, and has initiated discovery asking Joint Applicants to identify and provide a list of all third party contracts that currently serve Sierra’s entire service territory; a list of Sierra’s third party contracts that CalPeco plans on retaining after the Closing date; and a list of all third party contracts that CalPeco intends to share with any of its parent companies. DRA is also asking Joint Applicants to identify all “general office” services currently being provided by Sierra to the California Utility, as well as the costs that are currently being charged to the California Utility. DRA is also inquiring into whether CalPeco has performed any projections of currently allocated “general office” costs. DRA will review this information and provide its analysis and any recommendations in its report.

E. Short-term and Long-Term Benefits to Ratepayers and the Local Communities Affected by the Proposed Transaction

DRA is looking into identifying any short-term and long-term benefits as a result of the proposed transfer of control. DRA has propounded discovery requesting any

short-term and/or long-term economic impact assessments performed by the Joint Applicants. DRA has also asked Joint Applicants to identify the short-term and long-term economic benefits to ratepayers, both quantifiable and non-quantifiable, associated with the proposed transfer of control, as well as any forecasts of short-term and/or long-term economic benefits allocation between shareholders and ratepayers. In addition, DRA is looking at whether there are any quantifiable and non-quantifiable benefits to the local communities as a result of the proposed transfer of control.

As explained above, DRA is concerned that divesting 46,000 California ratepayers from Sierra's much larger service territory will result in loss of efficiencies and economies of scale which will be detrimental to the California ratepayers. DRA is looking at what cost-savings, efficiencies or other synergy savings that may be achieved with the proposed transfer of control, and have asked Joint Applicants to provide any studies or analyses performed with regard to these savings or efficiencies. DRA anticipates discussing its findings on these issues, and any proposed recommendations, in its report to the Commission.

F. Future Power Supply

DRA intends to evaluate the application in more detail to determine how CalPeco plans on purchasing power in the future, and what impact this will have on future rates. The application states that upon expiration of the five-year term of the PPA, CalPeco can seek to procure power from any source. (Application at p. 50.) The application also states that in the event CalPeco cannot independently secure sufficient power "at competitive prices" to serve its requirements after the PPA expires, Sierra has committed to provide, for an additional five years, CalPeco up to its full requirements for non-renewable power. Sierra will charge CalPeco at rates based on Sierra's "average system cost" to provide the power CalPeco requires. (Application at p. 52.) DRA has propounded discovery to obtain more information about what Joint Applicants mean by the term "competitive prices" and "average system cost" as used in the application. DRA is also inquiring into whether the California customers' rates currently served by Sierra are based on Sierra's "average system cost," and have asked Joint Applicants to provide a comparison of the current rates

and projected rates based on “average system cost.” DRA intends to review this issue further and provide its analysis and recommendations in its report.

G. Other Ratemaking Issues

According to the Joint Applicants, CalPeco will acquire ownership only of the directly assigned California distribution assets plus general plant physically located in the California Utility service area. Additionally, CalPeco will acquire 100% of the Kings Beach Generation Facility. The application states that the total net plant in service for regulatory purposes will be reduced from approximately \$165.8 million for Sierra to approximately \$97.2 million to CalPeco. (Application at p. 33.) DRA intends to verify these amounts.

In addition, Joint Applicants plan on reclassifying certain rate components from general rates to Energy Cost Adjustment Clause (“ECAC”) rates. (Application at pp. 33-34.) Joint Applicants claim that “in the aggregate the total amount of revenue collected from CalPeco’s customers will remain at the same level as under Sierra’s ownership and that a customer after Closing will pay the same total rate as it would have if Sierra continued to own the California Utility.” (*Id.* at p. 34.) DRA intends to verify this reclassification of rates and how revenues are calculated, and evaluate the impact this reclassification will have on the ratepayer. DRA also intends to examine the differences in costs of providing power through utility-owned generation sources versus purchasing power from outside generation sources.

The application also shows revenues paid by Sierra to CalPeco under the Emergency Backup Service Agreement (EBSA Revenues) and the Distribution Capacity Agreement (DCA Revenues). (Application at p. 34.) DRA intends to review these agreements in more detail and verify how these costs and revenues are calculated. DRA has propounded discovery requesting a detailed explanation of how these revenues are calculated and a copy of all calculations used to derive these amounts. DRA intends to present its findings in its report.

H. Management Structure

DRA has asked Joint Applicants to provide a detailed explanation describing how the Applicants will ensure that there will be no adverse impacts on CalPeco's management and management structure.

The application also shows that CalPeco's board of directors is made up of four officers from Emera and Algonquin, located out-of-state or in Canada. DRA is inquiring as to whether this board of directors will set the policy and operational direction for CalPeco. DRA is concerned that this board may not be responsive to local concerns. DRA has propounded discovery requests addressing this issue.

I. Employee Impact/Benefits

The application states that "The proposed transaction will not adversely affect current Sierra employees. CalPeco intends to offer employment to Sierra's regular, full-time employees currently working in California...." The application states that CalPeco's offers of employment to the affected Sierra employees will be at a level of base pay "similar to such employees' pay as Sierra employees." (Application at p. 44.) The application also states that CalPeco will be offering employee benefit plans that are "materially different" in certain respects than the current Sierra plans. (*Id.*) DRA is obtaining information on and reviewing any differences in pay and benefit plans that CalPeco is offering compared to the current Sierra pay and benefit plans. DRA has also requested information from the Joint Applicants concerning any expected changes to CalPeco's policies with regard to its employees. DRA is also inquiring into whether CalPeco intends to keep all existing union agreements between IBEW Local 1245 and to honor all collective bargaining agreements, and has asked Joint Applicants to identify any expected changes.

The application also states that CalPeco will recognize the service and seniority of each of the former Sierra employees who accept offers of employment from CalPeco, and will count this service with Sierra in determining non-retirement employee benefits such as vacation accrual and sick pay benefits. DRA has asked Joint Applicants to identify all the non-retirement employee benefits that CalPeco will be offering with regard to this

statement. DRA is also inquiring into whether CalPeco intends to count such service and seniority with Sierra in determining retirement benefits as well, and has asked Joint Applicants to identify all post-retirement benefits CalPeco intends to offer to former Sierra employees, including pension plans.

DRA is also looking into how post-retirement benefits other than pensions (“PBOPs”), as well as the pensions of vested and almost-vested employees will be funded. DRA is inquiring as to the current values of the pensions and PBOPs already collected from Sierra for NV Energy and for the affected California employees of CalPeco, the amounts of pensions and PBOPs funds owed to the affected California employees and to the NV Energy Employees, as well as how the funded balance of pensions and PBOPs will be treated. DRA is also inquiring how pensions and PBOPs will be handled for those employees who are currently partially vested with Sierra and choose to continue to work for CalPeco, and is obtaining more information about which utility will have these costs on the books. DRA is also looking at how costs associated with California employees who have retired and are currently collecting a pension and PBOPs will be treated after the date of the sale. Once DRA has obtained the information it requires concerning these issues, DRA will further evaluate the effect this transaction will have on employees and the ratepayer, and present its findings in its report.

J. Whether There Were Any Reasonable Alternative Options to the Proposed Transaction Considered by Sierra

DRA has propounded discovery in order to review other reasonable alternative options available and considered by Sierra. DRA plans to analyze this issue further and provide recommendations in its report.

III. PROCEDURAL MATTERS

A. Categorization

Joint Applicants request that the Commission classify this proceeding as ratesetting because the proceeding does not clearly fit into any of the categories as defined in Rules 1.3(a) and 1.3(d) of the Commission’s Rules of Practice and Procedure,

and because Rule 7.1(e)(2) specifies that when a proceeding does not clearly fit into any of the categories, it should be conducted under the rules for ratesetting proceedings. DRA agrees that this proceeding should be classified as ratesetting.

B. Determination of the Need for Hearings

The Joint Applicants contend that the application contains all of the information necessary for the Commission “to reach findings on all issues that that California statutes require the Commission to address” assessing a Section 854(a) application. (Application at p. 73, footnote omitted.) Joint Applicants request that the Commission assess their request based on their submission and without the need to conduct an evidentiary hearing. As discussed above, DRA believes this application should be reviewed by using the criteria in Section 854(c) as well as Section 854(b). The application does not analyze the transaction using the criteria in 854(b). Therefore, DRA submits that additional information is needed in order for the Commission to assess the transaction, and the Commission should not assess Joint Applicants’ request based on their submission alone. Even if the Commission were to use only the criteria in Section 854(c) to review the transaction, DRA has still identified a number of issues that need to be explored in order for the Commission to conduct an adequate review. At this time, DRA is still in the process of reviewing and analyzing the application and cannot say whether evidentiary hearings will be necessary. DRA recommends that a prehearing conference be convened by the Commission to address procedural matters regarding the application including the need for hearings.

C. Determination of Issues to Be Considered

The discussion above encompasses the issues DRA has identified to date based on its initial, limited review of the application. DRA may identify additional issues to be considered once it has conducted discovery and performed a thorough review of the application.

D. Proposed Schedule

DRA believes that the schedule proposed by Joint Applicants does not provide sufficient time for DRA to conduct discovery, conduct a full review of the application, and submit a report for the Commission's consideration in this matter. DRA requests that the Commission convene a prehearing conference to address scheduling matters.

IV. CONCLUSION

DRA respectfully recommends that the Commission categorize this proceeding as ratesetting, that the scope of the proceeding include, but not be limited to, the issues identified in this protest. DRA also recommends that the Commission schedule a prehearing conference to address the need for hearings and scheduling matters.

Respectfully submitted,

/s/ KIMBERLY J. LIPPI

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November 24, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES** to each party of record on the official service list in **A.09-10-028** via electronic mail.

Parties who did not provide an electronic mail address, were served by U.S. mail with postage prepaid listed on the official service list.

Executed on **November 24, 2009** at San Francisco, California.

/s/ NELLY SARMIENTO
Nelly Sarmiento

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