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

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

**JOINT PREHEARING CONFERENCE STATEMENT OF  
PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE, PLUMAS COUNTY, SIERRA  
COUNTY, CITY OF PORTOLA AND CITY OF LOYALTON**

Plumas-Sierra Rural Electric Cooperative (“PSREC”), Plumas County, Sierra County, City of Portola and City of Loyalton (hereinafter collectively referred to as the “Protesting Parties”) hereby submit this Joint Prehearing Conference Statement.

**I. Background**

**A. The Proposed Transaction**

On October 16, 2009, Sierra Pacific Power Company (“SPPC”) and California Pacific Electric Company, LLC (CalPeco”) submitted Application (“A.”) 09-10-028 requesting authorization pursuant to California Public Utilities Code (“PU Code”) §854(a) to transfer control of the assets and operations that make-up SPPC’s California electric distribution system, as well as its Kings Beach Generation facility, to CalPeco. CalPeco is a new company formed for the purpose of owning and operating SPPC’s California electric distribution facilities. CalPeco is ultimately owned and controlled by two Canadian companies, Algonquin Utility Services (“Algonquin”) of Toronto, Ontario and Emera Incorporated (“Emera”) of Halifax, Nova Scotia. CalPeco intends to make its headquarters at Tahoe Vista, California which is located approximately 60 miles from the City of Portola and 50 miles from the City of Loyalton via Highways 267 and 89, a notoriously treacherous road that is subject to closures due to inclement weather and wild fires.

The California electric distribution facilities that SPPC seeks authorization to transfer to CalPeco are located in portions of Nevada, Placer, Sierra, Plumas, Mono, Alpine and El Dorado Counties. The SPPC electric distribution facilities serve approximately 46,000 retail electric customers, most of whom are located in the immediate Lake Tahoe area. Of this total, it is Protestants' understanding that there are approximately 2,225 customers (less than 5% of SPPC's total California electric distribution customers) in the Loyalton and Portola areas. If the sale is completed, CalPeco would be an electric company subject to the Commission's jurisdiction. It is our understanding that CalPeco does not intend to own any transmission facilities or provide transmission services that would subject it to the jurisdiction of the Federal Energy Regulatory Commission ("FERC").

**B. The Protesting Parties**

As part of the proposed sale, SPPC proposes to transfer the electric distribution facilities that serve customers in the Loyalton and Portola areas. These two service area pockets are geographically remote from the remainder of SPPC's California service territory and as rural communities with strong agricultural bases are significantly different in character than the remainder of SPPC's California electric distribution system around Lake Tahoe. The cities of Loyalton and Portola are located in Sierra County and Plumas County, respectively. The City of Loyalton, the City of Portola, Sierra County, and Plumas County have each filed protests to protect the interests of their respective residents and to express their strong preference that the Commission consider an option that would have PSREC, rather than CalPeco, serve its residents. This option would further the public interest and provide both long-term and short-term benefits to ratepayers in the Loyalton and Portola areas and to the remaining ratepayers that would be transferred to CalPeco. Resolutions (and an accompanying letter) prepared by the Board of Supervisors of Sierra County, the City Counsel of Portola (together with a letter from Mayor John Larrieu), and a letter from the Board of Supervisors of Plumas County, each expressing these governmental bodies' strong preference to have its citizens served by PSREC rather than CalPeco, will be provided to the Commission at the Prehearing Conference.

PSREC provides electric service to customers in both Sierra and Plumas Counties. Its service territory virtually surrounds SPPC's electric distribution service territory in Loyalton and Portola. PSREC, which was formed in 1937, is a consumer-owned, not-for-profit rural electric

cooperative. PSREC is controlled by a seven person board of directors elected on a rotating basis for 3 year terms from the local communities in the PSREC service territory. PSREC also provides telecommunication services including satellite TV, high-speed internet and cellular phone services to the region, including many of SPPC's ratepayers in Plumas and Sierra Counties. Consequently, PSREC already has an existing commercial relationship with many of SPPC's ratepayers.

Many residents in the Portola area of Plumas County and the Loyalton area of Sierra County have signed petitions expressing their desire to be served by PSREC, rather than CalPeco. Copies of those signed petitions will be submitted at the Prehearing Conference.

As part of SPPC's auction to sell its California electric distribution facilities, PSREC expressed its interest to purchase SPPC's electric distribution facilities in Plumas and Sierra Counties. However, SPPC's bidding protocol included the criteria that that the bid should be for the entire service territory. Consequently, PSREC was not invited to participate in the next stage of the bidding process, as PSREC was not interested in acquiring SPPC's entire California service territory, but only those areas in Plumas and Sierra Counties that are adjacent to PSREC's current service territory. These areas are remote from the remainder of the Lake Tahoe customers served by SPPC.

### **C. Public Utilities Commission §854 and the Standard for Review**

SPPC and CalPeco state that the proposed sale should be subject to review pursuant to Public Utilities Code §854(a). PU Code §854(a) requires Commission approval before "any person or corporation shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state." The Commission has noted on numerous occasions that the purpose of §854(a) is to enable the Commission, before any transfer of public utility authority is consummated, to review and assess the proposed transaction and to take such action, as a condition of the transfer, as the public interest may require.

The Joint Applicants' allege that the proper standard that the Commission should use to review their Joint Application under §854(a) is the "no harm to ratepayers standard." In support of this proposition, Joint Applicants rely on the Commission's determinations involving various independent gas storage utilities that are not traditional investor-owned public utilities with

captive ratepayers. In discussing this standard, the Commission noted that it has on occasion also inquired whether a transfer will provide positive ratepayer benefits, although it has not considered ratepayer benefits in reviewing change of control applications of independent gas storage providers. (D.06-11-019 at 14-15). In numerous other cases the standard used by the Commission in reviewing a proposed transfer of control for a more traditional utility is “whether the proposed transaction is in the public interest and is beneficial to ratepayers.” (See, for example, D.07-05-031 at 9 involving *California American Water Company*).

Furthermore, even if one were to accept for purposes of argument Joint Applicants “no harm to ratepayer standard,” it is clear that the transaction being reviewed should not be approved if the result of the transfer would simply be to continue a condition that should be rectified. For example, while arguably not further harming ratepayers, the transfer of a utility that has service quality issues to another utility that simply promises to maintain business as usual certainly would not be in the public interest. Another example would be the transfer of an under-capitalized utility to another equally under-capitalized utility would not result in any further harm to ratepayers, but certainly it would not be in the public interest. Thus, it is clear that the public interest must be considered in applying §854(a).

In determining whether the proposed transaction is in the public interest, the Commission frequently uses the provisions set forth in §854(c) to guide it in its determination even though the transaction may involve utilities with gross annual California revenues of less than \$500 million. The Protesting Parties believe that the proposed sale of SPPC’s California electric distribution facilities to CalPeco should be examined in light of a number of the criteria set forth in §854(c). In particular, would the proposed sale:

- (1) Maintain or improve the financial condition of the resulting public utility doing business in the state.
- (2) Maintain or improve the quality of service to public utility ratepayers in the state.
- (3) Maintain or improve the quality of management of the resulting public utility doing business in the state.

(6) Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility.

(8) Provide mitigation measures to prevent significant adverse consequences which may result.

In addition, in reviewing such application under the criteria set forth in PU Code §854(c), subsection (d) of that same statute requires:

When reviewing a merger, acquisition, or control proposal, the commission shall consider reasonable options to the proposal recommended by other parties, including no new merger, acquisition, or control, to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal.

Joint Applicants claim that other options provision are only considered under unique circumstances and when it provide system-wide benefits while avoiding the possible adverse consequences. The circumstances surrounding service to ratepayers in the Portola and Loyaltan areas are unique. Furthermore, transferring these customers to PSREC as a condition of approving this application will not only be beneficial to ratepayers in the Loyaltan and Portola area, but can also provide short-term and long-term economic savings to other CalPeco ratepayers in the Lake Tahoe area.

Finally, the Commission also has looked to PU Code §854(b) to guide it in its determination. Subsection (1) requires that the Commission find that the proposal provides short-term and long-term economic benefits to ratepayers. Subsection (3) requires that it not adversely affect competition. Joint Applicants allege that §854(b) is not applicable to this type of transaction. While §854(b)(2) may primarily have application to mergers, there is no reason to believe that §854(b) is not applicable to transfers of control and sales of one utility to another. Certainly, the sale of one utility to another may affect competition and should be considered by the Commission in its review of the proposed transaction.

## **II. ISSUES TO BE CONSIDERED**

The following material issues of fact should be considered in an evidentiary hearing:

1. Will CalPeco maintain or improve the financial condition of the public utility? This issue should be examined in light of Algonquin's inability to obtain financing for the acquisition on its own and Emera's refusal to commit to maintain its ownership interest in CalPeco. Does CalPeco have the financial strength to make any necessary capital improvements to improve the quality of service to remote service territories, such as Loyalton and Portola?

2. Will the sale to CalPeco maintain or improve the quality of service to ratepayers in the state? Will CalPeco have all of the tools and resources that are currently available to SPPC to remedy quality of service issues? If CalPeco does not have these tools and resources, will the quality of service further deteriorate? The Protesting Parties believe that to be the case. CalPeco will not own transmission lines or have favorable access to the sources of transmission or generation beyond the transition period that are currently available to SPPC. Furthermore, is CalPeco's representation to maintain business as usual in the public interest, if the quality of service is not up to standard? This issue is especially true if other options are available.

3. Should SPPC be relieved of its public utility obligation by selling a system in which there are quality of service issues to a buyer who does not have all of the tools and resources that are available to SPPC, especially if the buyer simply promises to continue business as usual? Under such circumstances should SPPC be required to make reliability improvements before it is allowed to transfer the facilities, including such improvements as the Fort Sage Transmission Project, or other alternative transmission paths, or ensuring that the Loyalton Generator is available? What were the reasons behind SPPC's decision to terminate discussions and arrangements for the Fort Sage Transmission Line?

4. Will the transaction maintain or improve the quality of management? This issue must be examined in light of the fact that Algonquin has never managed an electric distribution system and Emera has refused to commit to maintain its ownership interest in CalPeco for a specified period.

5. Will the transaction be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility? Specifically, what are the benefits of the transaction to customers Portola and Loyalton? Will electric reliability to Loyalton and Portola be improved? How? Will rates increase? What are the costs to CalPeco and its ratepayers of improving the quality of service to customers in Loyalton and Portola? Are there ways to avoid such additional costs while still improve the quality of service to Loyalton and Portola?

6. What mitigation measures can be adopted to prevent significant adverse consequences? Are there mitigation measures that could be adopted, such as the sale of the facilities in Loyalton and Portola to PSREC, where electric reliability could be improved without requiring additional capital expenditures or increasing operating costs by CalPeco?

7. Was the bidding protocol used by SPPC to select Algonquin as the winning bidder the public interest? Should SPPC's desire to sell its California distribution system as a whole, take precedence over other options that may be more favorable to the public interest? What is the significance of CalPeco's so-called Regulatory Commitments?

8. Would the sale to PSREC of that portion of the electric distribution system that is used to serve Loyalton and Portola improve the quality of service to that area, without causing CalPeco to incur additional capital expenditures or operating costs that would be reflected in the electric rates of its customers?

9. What are the short-term and long-term benefits to ratepayers in Loyalton and Portola of selling that portion of SPPC's electric distribution system that is used to serve Loyalton and Portola to PSREC? What are the short-term and long term benefits to the remaining customers of CalPeco? What capital improvements might be needed to be made to improve reliability to Loyalton and Portola? How would these measures be reflected in rates to CalPeco customers?

10. Do the transition provisions provide CalPeco with a competitive advantage?

### **III. HEARINGS**

#### **A. Local Hearings Should be Held**

This matter is of significant interest and importance to the residents of Plumas and Sierra Counties, in particular to the residents that live in the Portola and Loyalton area. The Protesting Parties request that hearings be held in either Portola or Loyalton. The cities of Portola and Loyalton would assist the Commission in making the necessary arrangements.

#### **B. Hearing Schedule**

The Protesting Parties propose the following procedural schedule:

January 20, 2010 – Prehearing Conference

February 12, 2010 – Scoping Memo issued

March 26, 2010 – Joint Applicants file testimony

May 7, 2010 – DRA and Protesting Parties file testimony

May 21, 2010 – Rebuttal testimony filed.

June 7, 2010 – June 10, 2010 – Evidentiary hearings held in Portola or Loyalton.

July 9, 2010 – Opening Briefs due.

August 6, 2010 – Reply Briefs due.

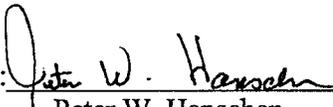
**IV. CONCLUSION**

Plumas-Sierra Rural Electric Cooperative, Plumas County, Sierra County, City of Portola and City of Loyalton request that the Commission set the Joint Application for hearing so that the issues set forth above can be fully explored.

Respectfully submitted,

January 20, 2010

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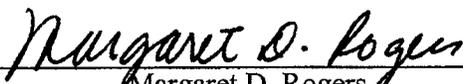
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## CERTIFICATE OF SERVICE

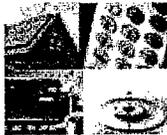
I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **JOINT PREHEARING CONFERENCE STATEMENT OF PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE, PLUMAS COUNTY, SIERRA COUNTY, CITY OF PORTOLA AND CITY OF LOYALTON** on the attached service list. Service was effected by one or more means indicated below:

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Executed in Walnut Creek, California on January 20, 2010.

  
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