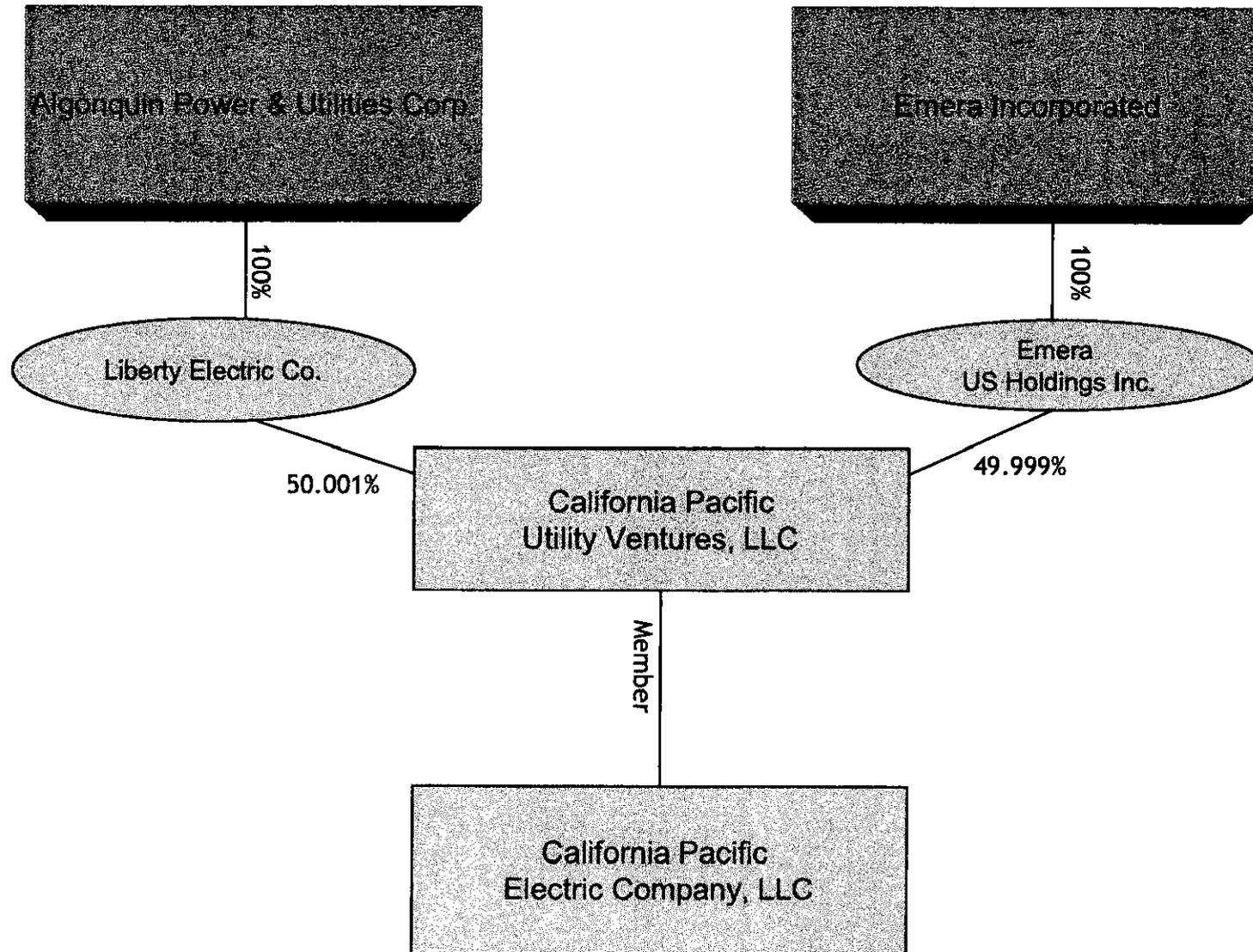


CalPeco Ownership Structure



APPENDIX 3

Regulatory Commitments

1. Separateness.

- (a) The California Utility¹ shall be held in a separate legal subsidiary (CalPeco) with no other operations. The only other California business activity currently undertaken by Algonquin Power & Utilities Corp. (“Algonquin”) and/or by Emera Incorporated (“Emera”) and/or their respective affiliates is a non-utility cogeneration power plant in the Fresno area (“Sanger Cogeneration”), which is owned and operated by Algonquin. Sanger Cogeneration sells power only at wholesale. It owns no electric distribution or transmission lines and it serves no retail electric customers. Sanger Cogeneration shall have no ownership or other interest in CalPeco. There shall be no overlapping of employees or responsibilities between the operations of Sanger Cogeneration and CalPeco.
- (b) Although each of Algonquin and Emera is an experienced owner/operator of regulated utilities and actively involved in developing and operating electric generating assets, including renewable generation sources, neither Algonquin nor Emera owns utility assets in the State of California subject to public utility regulation. In the event that either Algonquin or Emera were to acquire any other regulated utility in addition to CalPeco:
1. The assets of such other public utility would be held in a legal entity separate from CalPeco;
 2. Algonquin or Emera, as the case may be, would segregate the capitalization, financing, and working cash for such other utility and CalPeco in totally separate money pools;
 3. There would be no cross ownership or other interests between such other utility and CalPeco; and
 4. The operations of such other utility and CalPeco would be totally discrete.
- (c) CalPeco will not provide financing or guarantees for, extend credit to, or pledge utility assets in support of either Algonquin or Emera or any of their respective affiliates. Algonquin and Emera each shall finance and fund their respective other business activities independently of CalPeco. The assets of CalPeco shall be used solely and exclusively for the purpose of providing electric distribution services to its customers and securing any debt financing obtained by CalPeco.

¹ Capitalized terms used in the Regulatory Commitments and not otherwise defined in the Regulatory Commitments have the meanings ascribed to such terms in the Joint Application.

- (d) To the extent that Algonquin or Emera shall finance its non-utility or any business activities other than CalPeco's provision of public utility service, any such financing shall provide the financing parties no recourse to CalPeco's assets.
- (e) CalPeco shall not alter the "ring fencing" provisions set forth in sections 1(a)-1(d) above without first requesting and obtaining approval from the Commission to make any such change.
- (f) CalPeco shall not transfer any physical assets used to provide services to its customers to either Algonquin or Emera or any of their respective affiliates without first obtaining the necessary approvals from the Commission and shall in no event request approval to transfer any physical assets if such transfer would impair CalPeco's ability to fulfill its public utility obligations to serve, or to operate in a prudent and efficient manner.
- (g) Emera and Algonquin will provide sufficient initial equity to fund fifty percent (50%) of the purchase price for CalPeco. CalPeco shall seek to obtain the balance of the required capital necessary for the purchase price through stand-alone debt issued by CalPeco. Algonquin and Emera are prepared to make this initial equity investment and invest any additional equity in CalPeco based on their understanding that the Commission shall grant CalPeco timely recovery in rates (i) for the reasonable expenses it will make or undertake, respectively, to provide electric service; and (ii) for CalPeco to earn a reasonable return of and on CalPeco's investment in rate base. On this basis Emera and Algonquin are committed to ensure that CalPeco maintains sufficient funds to operate and has sufficient capital available for necessary capital investments. CalPeco, Algonquin and Emera acknowledge that dividends or similar distributions by CalPeco may be restricted as necessary to maintain minimum equity levels that are reasonable in relation to any equity ratio requirements.
- (h) CalPeco shall hold all of its assets in its own name, and will maintain adequate capital and number of employees in light of its business purposes. CalPeco shall maintain the current level of employees for a period of at least three (3) years.

2. Books and Records.

- (a) CalPeco shall maintain separate books and records, systems of accounts, financial statements and bank accounts and shall in all events maintain its books and records in full compliance with Commission, and to the extent applicable, FERC, rules and regulations. All financial books and records of CalPeco will be kept in the California operations office, and, together with any records of any Emera and/or Algonquin affiliate that are relevant to CalPeco (wherever held), will be made available for review by the Commission upon request. Algonquin and Emera will make available to the Commission upon request its books and records and the books and records of any of their respective affiliates that allocate overhead or have operational or financial dealings with CalPeco, including any Algonquin or Emera affiliate that is a recipient of any funds (including dividends

or similar distributions) from CalPeco. Algonquin, Emera and CalPeco have reviewed the Commission's regulations and decisions on affiliate transactions and commit to comply fully with such rules and regulations.

- (b) Neither Algonquin nor Emera nor any of their respective affiliates conducts any other business within the geographic proximity of the California Utility. Accordingly, Algonquin and Emera (and their respective affiliates) do not anticipate that CalPeco and either Algonquin and/or Emera (and/or their respective affiliates) will be providing any operations-related services to one another. It is, however, contemplated that Algonquin or Emera (or their respective affiliates) may provide management, administrative, and regulatory services to CalPeco with respect to the California Utility. In the event that Algonquin and/or Emera (and/or or their respective affiliates) provide services to CalPeco or CalPeco provides services to Algonquin and/or Emera (and/or their respective affiliates), CalPeco will develop and file with the Commission such shared services agreements and such agreements will comply with applicable affiliate rules and regulations of the Commission.

3. Operating Commitments.

- (a) Credit extended by Algonquin or Emera, jointly or individually, to CalPeco will be at rates and upon terms no less advantageous than those otherwise available to CalPeco from unaffiliated third parties for similar transactions.
- (b) CalPeco will conduct business in the same or similar manner as it has under Sierra's ownership concerning functions such as power delivery, contracting and management, system operation and maintenance activities, safety and service reliability, customer service functions, and billing operations. With respect to regulatory relations, CalPeco will maintain a manager level representative (having such authority as may be required by the Commission) physically present in an office located within the California Utility's service territory with primary responsibility for maintaining Sierra's positive relationships with, and responding to requests for information from, the Commission and other regulatory agencies. CalPeco will also engage competent and respected area consultants such as the Davis Wright Tremaine law firm to provide CalPeco with San Francisco-based support and presence with respect to the maintenance of such positive relationship.
- (c) For an initial period extending through the filing of the next general rate case for the California Utility, CalPeco will maintain and accept all tariffs of the California Utility existing at the Closing or approved by the Commission in response to filings made by Sierra prior to the Closing and as requested to be modified in this proceeding with respect to (i) the reallocation of certain amounts of revenue recovery from general rate to ECAC rate recovery and (ii) the ECAC tariff as explained and requested at pages 30-37 of the Joint Application (but shall not be required to accept a reduction or roll-back in such rates pursuant to the

Required Regulatory Approvals).² In this § 854(a) proceeding, CalPeco is requesting no increase in rates or in the total revenue requirement; on the day after Closing, rates for the customers of the California Utility shall remain at the same rate levels as the day prior to Closing and the total revenue requirement shall remain the same.

- (d) CalPeco shall provide service to its customers in compliance with all rules, regulations and decisions issued by the Commission. Among other matters, CalPeco will not change any rate or any other terms and conditions of service for its customers without first having obtained the necessary Commission approvals and CalPeco shall comply with all existing statutes and Commission regulations regarding affiliated interest transactions.
- (e) CalPeco agrees to maintain the existing low-income programs as part of the pending request under § 854(a) to acquire the California Utility. CalPeco shall operate within the existing rate case cycles now in effect for Sierra, including for general rates and ECAC rates.
- (f) CalPeco and Sierra have entered into a settlement agreement with the Plumas-Sierra Rural Electric Cooperative (“PSREC”), City of Loyalton, City of Portola, Sierra County and Plumas County (“PSREC Settlement”). The PSREC Settlement is Exhibit Q to Exhibit 1 to the proceeding. The PSREC Settlement obligates Sierra and CalPeco to make certain payments to PSREC at specified times and subject to certain conditions. Among these is a payment of \$250,000 to be made to PSREC within fifteen days of Closing. Under the terms of the PSREC Settlement, in the event that the Commission were to ultimately approve CalPeco making an \$1 million investment in the Herlong Transmission Project (as defined in the PSREC Settlement) and to authorize CalPeco to recover rates on this investment, PSREC has agreed that it will credit the \$250,000 payment as an advance payment against CalPeco’s \$1 million investment. CalPeco and Sierra commit that if CalPeco never requests authority to make an investment in the PSREC Herlong Transmission Project or if CalPeco requests Commission authorization to invest in the Herlong Transmission Project and the Commission rejects such request in its entirety, that CalPeco and Sierra will retain 100% of the cost responsibility for the \$250,000 payment to PSREC (i.e., customers will be held harmless).
- (g) CalPeco shall adopt, maintain and strive to improve the high quality of service standards that Sierra presently provides its customers.

² References to “Joint Application” herein are to the 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 filed with the Commission on October 16, 2009, as updated and supplemented by Joint Applicants’ letters to Administrative Law Judge Vieth dated April 7, 2010, June 11, 2010, and June 16, 2010.

- (h) Algonquin shall own at least fifty percent (50%) of CalPeco for a minimum period of ten (10) years.
- (i) CalPeco has requested that the Commission approve that either Algonquin or Emera be allowed to transfer to the other all or any portion of its ownership interest in CalPeco and without the need for any additional approval by the Commission (“Internal Transfer Approval”). The Internal Transfer Approval is described at page 70 and 71 of the Joint Application. In the event that the Commission were to grant the request for the Internal Transfer Approval, Emera and Algonquin will also commit to the following additional terms and conditions:
 - 1. Any reduction in the dollar amount of Emera's direct investment in CalPeco will be made up by an increase in a corresponding dollar amount of Emera's investment in Algonquin;
 - 2. Emera shall maintain its investment in Algonquin for a minimum period of three (3) years;
 - 3. Should Emera use the Internal Transfer Approval process to sell down all or any portion of its direct ownership in CalPeco, Emera nonetheless through its ownership in Algonquin would continue to be active in the oversight of CalPeco in a manner designed to enable CalPeco to continue to realize the benefits of Emera's financial and operating strengths and resources and in developing renewable projects; and
 - 4. Regardless of the authority that the Commission grants with respect to the Internal Transfer Approval with respect to changes of ownership interests in CalPeco between Algonquin and Emera, in no event shall Algonquin reduce for a minimum period of ten (10) years its ownership interest in CalPeco below the fifty percent (50%) interest committed to in Section 3(h) above.

4. Employees and Management Team.

- (a) CalPeco intends to the extent practicable to retain the same experienced operations team that has been responsible for operations of the California Utility under Sierra’s ownership. Any additional management team members which need to be recruited by CalPeco shall be experienced in electric utility operations.
- (b) CalPeco intends to maintain a local headquarters within the California Utility’s service territory, including maintaining a local management and customer service headquarters at a location within such service territory.
- (c) CalPeco intends to offer each of Sierra’s current administration and operations employees located within the service territory employment with CalPeco at the same locations with responsibilities and remuneration consistent with each of their existing roles. Accordingly, CalPeco shall make no material changes in the nature of the employment roles of the California Utility fulfilled by individuals

located within the service territory and intends, to the extent practical, to recruit within the California Utility service territory any additional operations staff necessary to replace functions currently performed by staff of Sierra located in Nevada. CalPeco will recognize the service and seniority of the former employees of Sierra who accept CalPeco's offer of employment for all non-pension purposes including vacation, sick pay benefits and for non-pension post retirement benefits such as retiree health benefits.

5. Premium and Cost Synergies.

- (a) CalPeco agrees that its rate recovery shall be calculated based on the regulatory value of the California Utility, as depreciated by Sierra, and totally independent of the purchase price to acquire the California Utility. CalPeco shall in no event seek to recover the excess of the purchase price over the regulatory book value of the utility assets (i.e., "premium") in rates. Any premium which CalPeco shall pay shall not be recorded in the accounts of CalPeco utilized in the establishment of rates and tariffs for the California Utility.
- (b) The cost levels CalPeco shall use to request rates in future general rate cases shall be based on the actual recorded cost levels of CalPeco and will incorporate any cost savings synergies arising in comparison to the baseline costs established in Sierra's 2008 rate case with respect to the California Utility.
- (c) CalPeco shall not seek to recover from ratepayers the "transaction costs" (e.g. investment banking and legal fees, and perimeter metering costs) associated with its acquisition of the California Utility. CalPeco recognizes that its incurrence of any such "transaction costs" is not related to the provision of electric service to the ratepayers of the California Utility and thus these costs are necessarily to be borne exclusively by its owners.

6. California Regulatory Programs.

- (a) Subject to the exemptions which are to be sought pursuant to the Required Regulatory Approvals as set out in the Power Purchase Agreement, CalPeco shall reaffirm Sierra's commitment to comply fully with the California RPS standards, the Commission's GHG Emissions Performance Standard, and the compliance requirements for operators of generating units imposed by the Commission's General Order 167.

(END OF APPENDIX 3)

APPENDIX 4

Excerpt from Joint Application of Joint Applicants' Analysis of FERC "Seven Factor Test" Demonstrating that Distribution Capacity Agreement is Subject to This Commission's Jurisdiction

Because (i) CalPeco will be providing Sierra capacity from the CalPeco distribution facilities for purposes of allowing Sierra to serve its retail customers in Nevada; (ii) Sierra will retain title to the power as it flows through the CalPeco facilities; and (iii) Sierra will be the load-serving distribution utility making the ultimate retail sales, CalPeco's provision of such distribution capacity service is "local distribution" service, appropriately subject to jurisdiction by this Commission. Under current law, while the FERC has exclusive jurisdiction over unbundled retail transmission service in interstate commerce, unbundled local distribution service is within the exclusive jurisdiction of the Commission.

Joint Applicants accordingly request that the Commission: (i) determine that all distribution facilities that will be transferred to CalPeco are properly considered to be "local distribution" facilities under the exclusive jurisdiction of the Commission, (ii) retain regulatory jurisdiction over such facilities after the Closing and assert jurisdiction over the Distribution Capacity Agreement and the transactions contemplated thereby, and (iii) authorize CalPeco to provide such distribution capacity services to Sierra based on the rates and other terms set forth in the agreement.¹

Background of Jurisdictional Issues

Section 201 of the Federal Power Act² establishes exclusive federal jurisdiction for FERC to regulate the transmission of electricity in interstate commerce. Importantly, FERC's jurisdiction over interstate transmission does not extend to the regulation of local distribution services. The distinction between "FERC-jurisdictional transmission" facilities and "State-PUC local distribution" facilities has at times raised an issue as to whether particular facilities are subject to FERC or state regulatory jurisdiction.

¹ CalPeco will be advising the FERC that the Joint Applicants have requested the Commission to assert jurisdiction over the Distribution Capacity Agreement.

² 16 U.S.C. § 824(b).

Traditionally, all retail sales of electricity were "bundled" with the delivery service for such sales, requiring the customer to pay an integrated charge that recovered the costs of both power procurement and delivery. FERC traditionally has not attempted to assert jurisdiction over the transmission or distribution component of any retail sales that are "bundled" with delivery of the electricity.

In Order No. 888, FERC required the "unbundling" of wholesale sales of electricity from the transmission service associated with those wholesale sales. FERC accordingly obligated transmission owners to offer a separate transmission service with specific requirements, including, the establishment of separate rates for transmission service and the offering of transmission service according to a standardized OATT.

Some states also began requiring that transmission and distribution providers, who previously sold a bundled retail product, to also "unbundle" the retail sale of power from the delivery component. The transmission service of these now unbundled transactions had previously been regulated by the states as part of a bundled retail product.

In Order No. 888, FERC held that such "transmission" service to such "unbundled" state retail customers would be subject to FERC's exclusive jurisdiction. FERC then had to determine the point at which the distribution facilities transitioned from providing interstate FERC-regulated transmission service to providing state-regulated "local distribution" service. In Order No. 888, FERC identified seven factors that it would consider in assessing whether the service CalPeco will provide under the Distribution Capacity Agreement constitutes service by "transmission" facilities or "local distribution" facilities.

FERC's Seven Factor Test

The seven factors FERC will consider on a case-by-case basis to determine whether particular facilities are local distribution facilities include: (i) local distribution facilities are normally in close proximity to retail customers; (ii) local distribution facilities are primarily radial in character; (iii) power flows into local distribution systems; it rarely, if ever, flows out; (iv) when power enters a local distribution system, it is not reconsigned or transported on to some other market; (v) power entering a local distribution system is consumed in a comparatively restricted geographical area; (vi) meters are based at the transmission/local

distribution interface to measure flows into the local distribution system; and (vii) local distribution systems will be of reduced voltage.³

FERC acknowledges that the application of its seven factors is necessarily judgmental, and that not all seven factors have to be satisfied for the facilities to be considered distribution. Importantly, FERC has adopted a policy to accord deference to a state's determination that particular facilities are "local distribution" facilities and are to be subject to the state's regulatory jurisdiction:⁴

Based on concerns raised by state commissions, we have further determined that it is appropriate to provide deference to state commission recommendations regarding certain transmission/local distribution matters that arise when retail wheeling occurs...

* * *

We believe that [this] Commission should take advantage of state regulatory authorities' knowledge and expertise concerning the facilities of the utilities that they regulate.

* * *

Moreover, we recognize that in some cases [this] Commission's seven technical factors may not be fully dispositive and that states may find other technical factors that may be relevant. We will consider jurisdictional recommendations by states that take into account other technical factors that the state believes are appropriate in light of historical uses of particular facilities...

* * *

If the utility's classifications and/or cost allocations are supported by the state regulatory authorities and are consistent with the principles established in the Final Rule [this] Commission will defer to such classifications and/or cost allocations. In order to give such deference, we expect state regulators to specifically evaluate the seven indicators and any other relevant facts and to make recommendations consistent with the essential elements of the Rule.⁵

³ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,771.

⁴ *Id.*, at 31,783.

⁵ *Id.*, at 31,783-84.

Thus, Joint Applicants request that this Commission exercise its “knowledge and expertise” concerning the distribution facilities to be used in the Distribution Capacity Agreement, apply FERC’s seven factor test, determine that all CalPeco facilities are local distribution facilities, and assert its jurisdiction over the facilities and the Distribution Capacity Agreement.

Application of the Seven Factor Test Demonstrates that Facilities to be Employed in the Distribution Capacity Agreement Should Remain Subject to this Commission’s Jurisdiction

Factor 1 - Local distribution facilities are normally in close proximity to retail customers. Sierra’s California retail customers are concentrated in the South Lake Tahoe and North Lake Tahoe areas, with smaller clusters of customers in Portola, Loyalton, Truckee, Markleville, and Coleville/Walker. Virtually all of these customers are served by distribution facilities that are within 15 miles of these communities. Distribution facilities in the other areas are located even closer to the customers.

Factor 2 - Local distribution facilities are primarily radial in character. Absent an emergency situation in the Incline Village area, the California Utility distribution facilities are exclusively radial in nature. Power flows over the lines in only one direction, *i.e.*, toward the retail customers where it is consumed, and there is no generation in the area except for the 12 MW Kings Beach Generation Facility. South Lake Tahoe is served by radial lines from Sierra’s distribution system in Carson City, Nevada. Sierra’s transmission system in Truckee, California serves the North Lake Tahoe area. The remaining areas are also served by radial lines from the Sierra system.

Factor 3 - Power flows into local distribution systems; it rarely, if ever, flows out. Almost all of the power that will flow into CalPeco’s system will be consumed by customers within the CalPeco service territory.⁶ The only material exception will be the power that Sierra will inject into CalPeco’s system for purposes of serving Sierra’s retail customers in Stateline, Incline Village and Verdi in accordance with the Distribution Capacity Agreement. CalPeco’s

⁶ As previously explained, CalPeco and Sierra have also executed the Borderline Customer Agreement for purposes of enabling both Parties to serve customers in their respective service territories and in proximity to the state border with existing facilities. Additionally, Sierra has been selling PG&E a small amount of wholesale power (just over 2 MW) in the Echo Summit, California area for purposes of enabling PG&E to serve its retail load in that area.

estimated total winter peak load of 120 MW is significantly larger than the estimated coincident peak load of approximately 23 MW that will flow to Sierra's Nevada customers in Incline Village, Stateline and Verdi.⁷

Factor 4 - When power enters a local distribution system, it is not reconsigned or transported on to some other market. The only distribution capacity that CalPeco will make available to a third party will be reflected in the Distribution Capacity Agreement and for the specific and limited purpose of enabling Sierra to most cost-effectively serve portions of its retail load in Stateline, Incline Village and Verdi. None of this power will flow into any market other than the isolated areas of Sierra's Nevada service territory referenced in Factor 3 above.

Factor 5 - Power entering a local distribution system is consumed in a comparatively restricted geographical area. The rationale given for Factor 1 applies equally to this factor.

Factor 6 - Meters are based at the transmission/local distribution interface to measure flows into the local distribution system. Perimeter metering will be installed and maintained to measure all flows into and out of CalPeco's distribution system.

Factor 7 - Local distribution systems will be of reduced voltage. Among the distribution assets that Sierra will be convey to CalPeco are 1400 miles of 12.5 kV, 14.4 kV, and 25.9 kV distribution circuits, 75 miles of 60kV distribution lines, and 19 miles of 120 kV distribution lines. The 120 kV and 60 kV lines connect CalPeco's distribution substations to Sierra's transmission and distribution systems. Two of the 120 kV lines connect CalPeco's South Lake Tahoe area with the Sierra distribution system at the Nevada/California state boundary, and the other 120 kV line connects the CalPeco North Lake Tahoe system to the Sierra transmission system at Truckee, California. There are also 60 kV lines in the North Lake Tahoe and South Lake Tahoe systems, and 14.4 kV distribution circuits will serve as interconnection points between the CalPeco and Sierra systems at Incline Village, Stateline, and Verdi.

There is no single definition of the physical or engineering characteristics of a "reduced voltage" distribution line. FERC has approved lines as high as 138 kV as local distribution

⁷ A small amount of power is expected to flow from the Kings Beach Generation Facility into western Incline Village on those occasions when Kings Beach is operated to provide reliability backup service to the north Lake Tahoe area in the event of a transmission or distribution outage. Under the Borderline Customer Agreement, power will flow from the CalPeco distribution system across the state line to Sierra's system to serve only three Nevada customers; the amount of power that moves across the state line is *de minimis*.

based on their function. Significantly, in one instance, FERC relied upon the determination of this Commission that the particular 138 kV facilities are local distribution facilities.⁸ More recently, FERC also approved 115 kV lines as local distribution.⁹

The limited nature of three 120 kV lines to be transferred to CalPeco and the circumstances of their use, combined with the fact that the remaining lines are at a voltage of 60kV or below, should be considered to satisfy the seventh of FERC's factors. However, even if not all of the transferred lines are technically considered to be "reduced voltage," that result should not outweigh the six other factors clearly supporting the conclusion that the facilities are local distribution facilities that are properly subject to this Commission's jurisdiction.

⁸ *Pacific Gas and Electric Company, et al.*, 77 FERC ¶ 61,077 at 61,325 (1996).

⁹ *Puget Sound Energy, Inc.*, 110 FERC ¶ 61,229 at 61,856 (2005).