

Decision PROPOSED DECISION OF ALJ KENNEY

(Mailed November 12, 2015)

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

In the Matter of the Application of  
Liberty Utilities (CalPeco Electric) LLC  
(U 933 E) for Authority to Execute 2016  
NV Energy Services Agreement and for  
Rate Recovery of the Costs It Will Incur  
Pursuant to the Agreement, and Urging  
Issuance of Expedited Decision Granting  
Such Relief.

Application 15-04-019  
(Filed April 24, 2015)

**DECISION GRANTING CONDITIONAL APPROVAL OF AN ENERGY  
SERVICES AND POWER PURCHASE AGREEMENT BETWEEN  
LIBERTY UTILITIES (CALPECO ELECTRIC) LLC AND NV ENERGY**

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**DECISION GRANTING CONDITIONAL APPROVAL OF AN ENERGY SERVICES AND POWER PURCHASE AGREEMENT BETWEEN LIBERTY UTILITIES (CALPECO ELECTRIC) LLC AND NV ENERGY**

**1. Summary**

This decision conditionally approves an energy services and power purchase agreement between Liberty Utilities (CalPeco Electric) LLC (Liberty Utilities) and Sierra Pacific Power Company doing business as NV Energy (hereafter, “the NV Energy PPA”). Liberty Utilities is a public utility regulated by the California Public Utilities Commission. NV Energy is a public utility regulated by the Public Utilities Commission of Nevada.

Under the NV Energy PPA, Liberty Utilities will purchase from NV Energy virtually all of the conventional and renewable energy that Liberty Utilities delivers to its customers. The price of the purchased energy will be NV Energy’s average system cost to generate or buy the energy, plus transmission costs to deliver the energy. There are no safety issues.

Today’s decision approves the NV Energy PPA with two conditions. First, the term of the NV Energy PPA must be shortened to less than five years so that the agreement complies with the Commission’s Emissions Performance Standard. Second, the NV Energy PPA must be amended to incorporate the text of the Commission’s non-modifiable terms and conditions for renewable energy contracts. Liberty Utilities shall file a Tier 1 advice letter within 20 days that contains the NV Energy PPA with the amendments adopted by today’s decision. However, if these conditions are not acceptable to Liberty Utilities and/or NV Energy, then Liberty Utilities shall file a Tier 1 advice letter within 20 days which provides notice that the conditions are rejected. In that case, Application 15-04-019 shall be deemed denied.

This proceeding is closed.

## **2. Description of Liberty Utilities**

In Decision (D.) 10-10-017, the Commission approved the transfer of Sierra Pacific Power Company's (Sierra Pacific) service territory in California to Liberty Utilities (CalPeco Electric) LLC (Liberty Utilities). Liberty Utilities is a public utility as defined by Public Utilities Code Section (Pub. Util. Code §) 216(a) and an electrical corporation as defined by Pub. Util. Code § 218. All of its service territory was acquired from Sierra Pacific.

Liberty Utilities serves some 49,000 customers in seven counties (Nevada, Placer, Sierra, Plumas, Mono, Alpine, and El Dorado), with approximately 80% of its customers located in the Lake Tahoe Basin. Except for one diesel generating station that is available for emergency use only,<sup>1</sup> Liberty Utilities must buy all the energy it delivers to its customers. Since January 1, 2011, Liberty Utilities has purchased nearly all of the conventional and renewable energy it delivers to its customers through a "full requirements" power purchase agreement (PPA) with Sierra Pacific d/b/a/ NV Energy (the "Existing PPA").

The Commission approved the Existing PPA in D.10-10-017 as an integral part of the transfer of Sierra Pacific's California service territory to Liberty Utilities. The Existing PPA provides Liberty Utilities with:

- Essentially 100 percent of the energy that Liberty Utilities delivers to its customers.
- All balancing, dispatch, and ancillary services for the energy delivered by Liberty Utilities to its customers.

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<sup>1</sup> Liberty Utilities owns the 12 megawatt diesel Kings Beach Generation Station.

- Sufficient renewable energy and renewable energy credits to enable Liberty Utilities to comply with its Renewables Portfolio Standard (RPS) requirements.
- The same level of resource adequacy that NV Energy provides to its own customers in the State of Nevada.

The Existing PPA terminates on December 31, 2015. However, the agreement may be extended by four months pursuant to Section 26.4 of the proposed NV Energy PPA that is the subject of today's decision.

### **3. Procedural Background**

Liberty Utilities filed Application (A.) 15-04-019 on April 24, 2015. In A.15-04-019, Liberty Utilities requests approval of the *Service Agreement Between Sierra Pacific Power Company and Liberty Utilities (CalPeco Electric) LLC*, dated April 21, 2015 (hereafter, the "NV Energy PPA") and to recover the associated costs through its Energy Cost Adjustment Clause (ECAC) mechanism.

Notice of A.15-04-019 appeared in the Commission's Daily Calendar on May 4, 2015. The Commission's Office of Ratepayer Advocates (ORA) filed a protest on June 3, 2015. There were no other protests or responses.

Liberty Utilities and ORA each filed a prehearing conference (PHC) statement on June 5, 2015. The PHC was held June 9, 2015, which was followed by the issuance of the *Assigned Commissioner's Ruling and Scoping Memo* (Scoping Memo) on June 24, 2015.

In Resolution ALJ 176-3356, dated May 7, 2015, the Commission preliminary determined pursuant to Rule 7.1 of the Rules of Practice and Procedure (Rules) that the category for this proceeding is ratesetting and that a hearing is needed. The ratesetting category was affirmed by the Scoping Memo. However, Liberty Utilities and ORA agreed at the PHC that a hearing is not needed. Therefore, the Scoping Memo determined pursuant to Rule 7.3(a) that a

hearing is not needed in this proceeding. This changed determination on the need for a hearing is affirmed by today's decision pursuant to Rule 7.5.

As required by the Scoping Memo and rulings issued by the assigned Administrative Law Judge (ALJ), Liberty Utilities and ORA filed the following documents to develop the evidentiary record of this proceeding:

- On June 16, Liberty Utilities filed a document containing (a) a copy of the Existing PPA; (b) the "Commitment Letter" referenced in A.15-04-019 at 7 - 9; (c) a summary of Liberty Utilities' purchases and costs under the Existing PPA for the years 2012, 2013, and 2014; (d) a map of Liberty Utilities' service territory; (e) an explanation of whether the California Environmental Quality Act applies to A.15-04-019; (f) information regarding compliance with Pub. Util. Code § 451; and (g) information regarding compliance with Rule 3.2.
- On July 2, Liberty Utilities filed a document providing information regarding (a) compliance with Rule 3.2; (b) cost comparisons between the Existing PPA and the proposed NV Energy PPA; and (c) compliance with Commission rules for resource adequacy (RA) and RPS procurement contracts.
- On July 8, Liberty Utilities filed a document containing (a) forecasted costs, rates, and greenhouse gas (GHG) emissions under the NV Energy PPA; and (b) information a compliance with RPS requirements, assuming Liberty Utilities does not acquire two solar projects that are the subject of A.15-04-016.
- On July 28, Liberty Utilities filed a document providing information about costs and load forecasts related to the NV Energy PPA that Liberty Utilities submitted in this proceeding and in its 2016 General Rate Case (A.15-05-008).
- On July 30, Liberty Utilities filed a document containing all of its responses to ORA's discovery requests. ORA separately filed a document containing certain energy and price information it obtained from third-party sources.
- On August 4, 2015, Liberty Utilities filed an amendment to the document filed on July 2, 2015. The amendment consisted of

- public disclosure of certain information that had been redacted in the public version of the document filed on July 2, 2015.
- On August 6, Liberty Utilities and ORA filed opening comments. On August 24, Liberty Utilities and ORA filed reply comments.
  - On September 18, Liberty Utilities filed proof of compliance with the notice requirements in Rules 3.2(b), (c), and (d).
  - On October 23, Liberty Utilities filed a document containing information about compliance with the Emissions Performance Standard set forth in D.07-01-039.
  - On October 26, Liberty Utilities filed a document providing information about compliance with the Commission's non-modifiable standard terms and conditions for RPS procurement contracts.

On July 31, 2015, Liberty Utilities and NV Energy amended the NV Energy PPA to provide Liberty Utilities with more flexibility to optimize the size of two solar projects that Liberty Utilities may acquire to replace energy that Liberty Utilities purchases under the NV Energy PPA. In particular, the original NV Energy PPA enabled Liberty Utilities to replace energy supplied under the agreement with energy from a 20 megawatt (MW) solar project and a 40 MW solar project. The amended NV Energy PPA preserves Liberty Utilities' right to designate two solar projects for up to 60 MW of capacity, but Liberty Utilities can now designate two solar projects of any capacity, as long as the combined capacity of both projects does not exceed 60 MW. All references to the NV Energy PPA in today's decision refer to the amended NV Energy PPA.<sup>2</sup>

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<sup>2</sup> Liberty Utilities' Opening Comments filed on August 6, 2015, included a copy of the amended NV Energy PPA with a redline comparison to the original NV Energy PPA.

#### **4. Summary of A.15-04-019**

Application 15-04-019 requests a Commission order that:

1. Approves the NV Energy PPA.
2. Finds that the costs that Liberty Utilities will incur under the NV Energy PPA are reasonable and fully recoverable by Liberty Utilities through its ECAC mechanism, subject only to Liberty Utilities' prudent administration of the contract.
3. Finds that the NV Energy PPA fully satisfies Liberty Utilities' RA obligations for the term of the agreement.
4. Finds that the supply of renewable energy provided to Liberty Utilities by the NV Energy PPA may count towards satisfying Liberty Utilities' RPS obligations during the delivery term.

##### **4.1. The NV Energy PPA**

The NV Energy PPA obligates NV Energy to supply Liberty Utilities with its full requirements for conventional energy at a price equal to NV Energy's average system cost for conventional energy. With one exception identified below, NV Energy will use the same supply portfolio to provide conventional energy to both its own customers in Nevada and to Liberty Utilities.

With respect to renewable energy, the NV Energy PPA obligates NV Energy to supply RPS-eligible energy from five geothermal projects owned by a third party. The price of the renewable energy supplied to Liberty Utilities will be NV Energy's average cost to buy the energy. Liberty Utilities' cost for renewable energy under the NV Energy PPA will be at least 20 percent less than the Existing PPA.

The NV Energy PPA obligates NV Energy to deliver RPS-eligible energy equal to 23.0% of Liberty Utilities' load requirements in 2016, escalating to 30.5% in 2022. However, Liberty Utilities may elect to receive less RPS-eligible energy, or none at all, if Liberty Utilities obtains RPS-eligible energy from one or two

solar projects with a combined capacity of up to 60 MW. Liberty Utilities has requested authority to acquire two solar projects in A.15-04-016.<sup>3</sup>

The NV Energy PPA will satisfy most, but not all, of Liberty Utilities' RPS procurement obligations. Liberty Utilities intends to meet its full RPS procurement obligations by a combination of the following:

- RPS energy deliveries from the solar projects that are the subject of A.15-04-016.
- RPS energy deliveries from five geothermal projects pursuant to the NV Energy PPA.
- Excess RPS energy deliveries in prior years which Liberty Utilities has "banked" and is allowed to use to satisfy future year RPS purchase requirements.
- Purchases of up to 8 MW per year from renewable resources located in Liberty Utilities' service territory as described in more detail below.
- Purchases of RPS energy and/or unbundled renewable energy credits ("RECs") from the market.

Other key provisions in the NV Energy PPA include:

**Reduction in Demand Charge.** The Demand Charge in the Existing PPA is \$12.02 per kilowatt-month (kW-month). The NV Energy PPA has a reduced Demand Charge of \$9.37 kW-month. Liberty Utilities estimates that the reduced Demand Charge will yield annual savings of \$2.34 million.

**Reduction in Assumed Line Losses.** The NV Energy PPA reduces the distribution line loss factor from 1.0710 percent to 1.0629 percent, and the

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<sup>3</sup> On August 27, 2015, Liberty Utilities and ORA filed an All-Party Motion for Commission Approval of Proposed Settlement Agreement in A.15-04-016, in which, inter alia, Liberty Utilities only seeks authorization to acquire the 50 MW Luming Project. A Proposed Decision on the motion is pending.

transmission line loss factor from 1.0234 percent to 1.0157 percent. Liberty Utilities estimates that the reduced line loss factors will save \$200,000 annually.

**Reduction in Monthly Distribution Charge.** The NV Energy PPA reduces the monthly distribution charge from \$22,700 to \$19,240.

**Excluding the Valmy Coal Plant.** The supply portfolio under the Existing PPA includes NV Energy's Valmy coal-fired power plant. Under the NV Energy PPA, none of the energy delivered to Liberty Utilities will come from the Valmy coal plant. Liberty Utilities forecasts that excluding the Valmy coal plant from the supply portfolio will decrease the cost of conventional energy under the NV Energy PPA compared to the Existing PPA.

**Resource Adequacy.** Under the Existing PPA, NV Energy is obligated to make commercially reasonable efforts to maintain generation reserves in accordance with the criteria applicable to NV Energy's own retail load. This obligation continues under the NV Energy PPA.

**Ancillary Services.** The NV Energy PPA retains NV Energy's existing obligation to provide load balancing, load following, and other ancillary services.

**Emissions Allowances.** The NV Energy PPA obligates NV Energy to procure the requisite emission allowances associated with the energy it delivers to Liberty Utilities, and obligates Liberty Utilities to reimburse NV Energy for its costs to acquire the emission allowances. Liberty Utilities also has the option to self-procure emission allowances.

**Opportunity to Procure In-Service Territory Generation.** As stated previously, the NV Energy PPA provides Liberty Utilities with flexibility to replace energy provided by the agreement with energy from two solar projects with a combined capacity of 60 MW. These solar projects do not have to be located in Liberty Utilities' service territory. The NV Energy PPA also allows

Liberty Utilities to replace energy provided by the agreement with energy from renewable resources and Qualifying Facilities with a combined capacity of 8 MW that are located in Liberty Utilities' service territory and interconnected to Liberty Utilities' distribution system.

**Term of the NV Energy PPA.** The NV Energy PPA has a maximum term of six years and four months (January 1, 2016 – April 30, 2022). However, either party may terminate the agreement effective May 1, 2019 (i.e., after three years and four months, assuming an effective date of January 1, 2016) by providing written notice no later than February 1, 2018.

**Governing Law.** The Existing PPA provides that New York law governs. In the proposed NV Energy PPA, California law governs.

#### **4.2. Rate Recovery Through the ECAC Mechanism**

Liberty Utilities recovers the costs it incurs under the Existing PPA through its ECAC mechanism. In A.15-04-019, Liberty Utilities requests authority to continue to use its ECAC mechanism to recover the costs it will incur under the NV Energy PPA, subject only to Liberty Utilities' prudent administration of the contract.

### **5. Summary of ORA's Position**

ORA recommends that the Commission approve the NV Energy PPA with the following conditions:

1. The supply portfolio for the energy delivered to Liberty Utilities must include the Valmy coal-fired power plant.
2. The scope of Liberty Utilities' next ECAC proceeding<sup>4</sup> must include an opportunity for ORA and the Commission's Energy Division to audit and analyze whether the NV Energy PPA is

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<sup>4</sup> Liberty Utilities' current ECAC proceeding is A.15-05-008.

- costlier than the Existing PPA. If the Commission finds that the NV Energy PPA is costlier, then the Commission should assess the reasonableness of the higher costs.
3. Require Liberty Utilities to submit a compliance filing in its next ECAC proceeding that demonstrates (i) the costs incurred under the NV Energy PPA are reasonable, and (ii) that Liberty Utilities has met its RPS and RA obligations. If Liberty Utilities is not in compliance with its RPS and/or RA obligations, then the Commission should impose penalties or other remedies.
  4. Require Liberty Utilities to request in Rulemaking (R.) 15-02-020<sup>5</sup> that the Commission establish Liberty Utilities' RPS obligations, including compliance standards, monitoring requirements, and enforcement remedies pursuant to Pub. Util. Code § 399.11 et seq.

## 6. Discussion

Our decision on whether to approve or reject the NV Energy PPA is based on the criteria set forth below.

### 6.1. Need for Procurement

A threshold issue is whether Liberty Utilities has a need to purchase power.<sup>6</sup> The Existing PPA provides Liberty Utilities with essentially all energy needed to serve Liberty Utilities' customers. Because the Existing PPA expires at the end of 2015,<sup>7</sup> Liberty Utilities has a manifest need to procure sufficient resources to serve 100 percent of its customer load starting in 2016.

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<sup>5</sup> The caption for R.15-02-020 reads: "Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development of, California Renewables Portfolio Standard Program."

<sup>6</sup> Pursuant to Pub. Util. Code § 454.5(i) and D.04-02-044, Liberty Utilities is not required to submit long-term procurement plans for Commission review and approval.

<sup>7</sup> Section 26.4 of the NV Energy PPA has a "safety net" provision that obligates NV Energy to provide Liberty Utilities with sufficient energy to serve its customers through April 30, 2016.

## 6.2. Reasonable Costs

An essential criterion in our assessment of the NV Energy PPA is whether the costs that Liberty Utilities will incur under the agreement are reasonable. We find that the costs are reasonable for the following reasons.

First, setting aside the treatment of NV Energy's Valmy coal-fired power plant, the cost of conventional energy under the NV Energy PPA will be identical to the cost of conventional energy under the Existing PPA, which the Commission previously found to be reasonable.<sup>8</sup> All conventional energy that Liberty Utilities purchases under the NV Energy PPA will be dispatched from NV Energy's supply portfolio on a least cost basis<sup>9</sup> and priced at NV Energy's average system cost to generate and/or purchase the dispatched energy.<sup>10</sup>

Second, the cost of renewable energy under the NV Energy PPA will be at least 20 percent less than the cost of renewable energy under the Existing PPA,<sup>11</sup> and compares favorably to the 2015 "Cost of Generation Model Output" for geothermal energy submitted by ORA.<sup>12</sup>

Third, the NV Energy PPA includes the following additional cost reductions relative to the Existing PPA.<sup>13</sup>

- Reduction in the Demand Charge from \$12.02/kW to \$9.37/kW that equates to an annual savings of approximately \$2.34 million.

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<sup>8</sup> D.10-10-017, at Conclusion of Law 15.

<sup>9</sup> Liberty Utilities Response to ORA Data Requests (July 30, 2015), at DR-ORA-LIB\_MRL-07.

<sup>10</sup> Average system costs will be based on utility cost-of-service principles. (Liberty Utilities Reply Comments (Aug. 24, 2015), at 7 - 8.)

<sup>11</sup> A.15-04-019, at 14; Liberty Utilities Opening Comments (Aug. 6, 2015), at 12 and 19; and Liberty Utilities Reply Comments (Aug. 24, 2015), at 6.

<sup>12</sup> ORA Supplement (July 30, 2015), at unnumbered pages 8 and 9.

<sup>13</sup> A.15-04-019 at 13 - 17; and Liberty Utilities Opening Comments (Aug. 6, 2015), at 12 - 13.

- Reductions in the line loss factors on NV Energy's transmission and distribution systems. These reductions equate to annual savings of approximately \$200,000 at projected purchase levels.
- Reduction in the monthly Distribution Charge from \$22,700 to \$19,240.

Altogether, the NV Energy PPA will result in cost reductions of approximately \$600,000 per month compared to the Existing PPA.<sup>14</sup>

Finally, the NV Energy PPA excludes NV Energy's Valmy coal-fired power plant from the supply portfolio that will be used to provide energy to Liberty Utilities. Liberty Utilities forecasts that excluding the Valmy coal plant from the supply portfolio will reduce both the cost of energy purchased under the NV Energy PPA and GHG emissions.<sup>15</sup>

We decline to adopt ORA's recommendation to approve the NV Energy PPA with the condition that the Valmy coal plant be included in the supply portfolio. ORA's recommendation is premised on its conclusion that the Valmy coal plant will be a low cost producer of electricity because the cost of coal fuel is less than the cost of natural gas fuel per British thermal unit.

While we share ORA's concern for the pocketbooks of Liberty Utilities' customers, we find that ORA's conclusion lacks adequate foundation. Fuel is only one component of the cost of generating electricity. There are many other costs, including plant depreciation, maintenance, repairs, and overheads. Also, power plants differ in their efficiency in converting fuel to electricity. Taking all these factors into consideration, Liberty Utilities forecasts that the natural gas

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<sup>14</sup> Liberty Utilities Response (Oct. 26, 2015), at 12.

<sup>15</sup> Liberty Utilities Opening Comments (Aug. 6, 2015), at 13 – 15. Liberty Utilities filed under seal its forecast of the price of electricity from the Valmy coal-fired plant.

plants in NV Energy's supply portfolio can generate electricity at an average cost that is at least \$3/MWh less than the Valmy coal plant.<sup>16</sup>

Even if ORA is correct – that the Valmy coal plant will generate electricity at a lower cost compared to the natural gas plants in NV Energy's supply portfolio - we conclude that it is reasonable to exclude the Valmy coal plant from the supply portfolio used to serve Liberty Utilities' customers because of the coal plant's relatively high emissions of greenhouse gases. It is the policy of the State of California to reduce greenhouse gas emissions to 40% below 1990 levels by 2030.<sup>17</sup> Excluding the Valmy coal plant from the supply portfolio is a reasonable step towards achieving the State's goal.

We acknowledge ORA's concern that Liberty Utilities did not provide substantive support for its assertion that the cost of renewable energy under the NV Energy PPA will be significantly lower than under the Existing PPA.<sup>18</sup> Nonetheless, we will accept at face value Liberty Utilities' assertion - made under

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<sup>16</sup> Liberty Utilities Reply Comments (Aug. 24, 2015), at 12 - 13. We recognize that the NV Energy's price differential of \$3/MWh reflects a higher price of coal relative to natural gas compared to the information submitted by ORA.

<sup>17</sup> On April 29, 2015, Governor Brown issued Executive Order B-30-15 expanding the State's carbon emission reduction and climate change adaptation goals. The order establishes an interim target of reducing greenhouse gas emissions to 40% below 1990 levels by 2030 in order to ensure that California meets its goal of reducing greenhouse gas emissions to 80 percent below 1990 levels by 2050. The order also requires all state agencies with jurisdiction over sources of greenhouse gas emissions to implement measures, pursuant to statutory authority, to achieve reductions of greenhouse gas emissions to meet the 2030 goal.

<sup>18</sup> ORA Opening Comments (Aug. 6, 2015), at 6. Liberty Utilities' forecasted cost savings for renewable energy are confidential and were filed under seal.

penalty of perjury - that the NV Energy PPA reduces renewable energy costs relative to the Existing PPA.<sup>19</sup>

On the other hand, a primary reason for our finding that the costs of the NV Energy PPA are reasonable is Liberty Utilities' representation that the NV Energy PPA will result in lower costs for renewable energy compared to the Existing PPA. If the NV Energy PPA does not result in lower costs for renewable energy, we need to be informed so that we may take appropriate action.

Therefore, consistent with ORA's recommendation, we will require Liberty Utilities to submit a compliance filing in its next ECAC proceeding that contains the following:

1. A comparison of the unit cost (\$/MWh) of renewable energy under the NV Energy PPA versus the Existing PPA. This comparison shall assume the following:
  - a. The unit cost (\$/MWh) of renewable energy under the NV Energy PPA is the "Renewable Rate" as defined in Exhibit D, Section D.5, of the NV Energy PPA.
  - b. The unit cost (\$/MWh) of renewable energy under the Existing PPA equals the fraction "Renewable Cost ÷ Renewable MWh" as these terms are defined in Exhibit D, Section D.5, of the Existing PPA.<sup>20</sup>
2. Workpapers containing all calculations and source documents used to prepare the information in Item 1, above.

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<sup>19</sup> Application 15-04-019, at 19; Liberty Utilities Supplemental Response (July 2, 2015, at 23 and 35 (confidential version); Liberty Utilities Opening Comments (Aug. 6, 2015), at 19 and unnumbered page 35; and Liberty Utilities Reply Comments (Aug. 24, 2015), at 6 and 17.

<sup>20</sup> The definitions of "Renewable Cost" and "Renewable MWh" in the Existing PPA are identical to the definitions in the NV Energy PPA. A copy of the Existing PPA is contained in Liberty Utilities Response (June 16, 2015), Exhibit 1. A copy of the NV Energy PPA is contained in Liberty Utilities Opening Comments (August 6, 2015), Exhibit 1.

ORA and the Commission's Energy Division shall each have an opportunity to verify, by audits or other means, the completeness and accuracy of the compliance filing.<sup>21</sup>

We emphasize that today's decision does not expand the scope of Liberty Utilities' next ECAC proceeding to consider whether the renewable energy costs that Liberty Utilities incurs under the NV Energy PPA are reasonable. Rather, the scope of the next ECAC proceeding shall include the issue of whether Liberty Utilities has administered the NV Energy PPA in a prudent manner so that Liberty Utilities' renewable energy costs under the NV Energy PPA are less than what Liberty Utilities would have incurred if the Existing PPA had remained in effect.

### **6.3. Resource Adequacy**

The NV Energy PPA will supply essentially all of the energy delivered to Liberty Utilities' customers starting in 2016. Consequently, it is imperative that the NV Energy PPA provide a sufficient and reliable supply of energy.

The Commission is required by Pub. Util. Code § 380(a) to establish resource adequacy ("RA") requirements for all load-serving entities in consultation with the California Independent System Operator ("CAISO"). However, the Commission has not yet established RA requirements for Liberty Utilities. This is because, in part, Liberty Utilities' service territory is located entirely within the NV Energy Balancing Authority Area (BAA) and thus

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<sup>21</sup> We recognize that renewable energy costs may rise under the Existing PPA if it were to remain in effect. The issue for the next ECAC proceeding is whether Liberty Utilities' renewable energy costs under the NV Energy PPA are lower than what Liberty Utilities' costs would have been if the Existing PPA had remained in effect.

is not part of the CAISO BAA. Also, because Liberty Utilities does not deliver energy into the CAISO BAA, Liberty Utilities does not affect CAISO operations.<sup>22</sup>

Although the Commission has not established RA requirements for Liberty Utilities, Pub. Util. Code §§ 380(c) and 380(d) require Liberty Utilities to maintain sufficient generating capacity to serve its load requirements:

**§ 380(c):** Each load-serving entity shall maintain physical generating capacity adequate to meet its load requirements, including, but not limited to, peak demand and planning and operating reserves. The generating capacity shall be deliverable to locations and at times as may be necessary to provide reliable electric service.

**§ 380(d):** Each load-serving entity shall, at a minimum, meet the most recent minimum planning reserve and reliability criteria approved by the Board of Directors of the Western Systems Coordinating Council or the Western Electricity Coordinating Council.

We find that the NV Energy PPA will enable Liberty Utilities to serve its load requirements in accordance with Pub. Util. Code § 380(c) and § 380(d). In particular, the agreement obligates NV Energy to provide the same service reliability to Liberty Utilities' customers as NV Energy provides to its own customers.<sup>23</sup> All of NV Energy's supply portfolio (excluding the Valmy coal plant) is committed to meeting the full load requirements of Liberty Utilities' customers, including peak demand. When necessary to serve Liberty Utilities' customers, NV Energy must increase output at an operating facility, start up an idle facility, or procure energy in the market. In addition, NV Energy is

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<sup>22</sup> Liberty Utilities Opening Comments (Aug. 6, 2015), at 22 - 23.

<sup>23</sup> NV Energy PPA, at Section 4.

obligated to supply energy to Liberty Utilities at 38 delivery points, as needed, to provide reliable electric service.<sup>24</sup>

To ensure adequate supply, the NV Energy PPA obligates NV Energy to maintain generating reserves in accordance with regulations established by the Public Utility Commission of Nevada (PUCN). The PUCN requires NV Energy to submit long-term Integrated Resource Plans (IRPs) to meet load forecasts. As part of the IRP process, the PUCN determines whether NV Energy's load forecasts are reasonable and whether NV Energy will have sufficient resources to meet its forecasted load requirements, plus a 15% planning reserve margin. NV Energy's load forecasts include its contractual obligation under both the Existing PPA and the proposed NV Energy PPA to supply the full load requirements of Liberty Utilities' customers.<sup>25</sup>

Federal regulations also require NV Energy to procure adequate resources to serve Liberty Utilities. In particular, NV Energy is a Registered Entity with the North American Electric Reliability Corporation (NERC) within the jurisdiction of the Western Electricity Coordinating Council (WECC) for a number of NERC functions that encompass Liberty Utilities' service territory, including Transmission Planner, Transmission Operator, Resource Planner, Balancing Authority, and Planning Authority. As a Transmission Planner, NV Energy develops a long-term plan for the adequacy of the transmission systems within its area. As a Resource Planner, NV Energy develops a long-term plan for the resource adequacy (including supply resources and demand resources) within its

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<sup>24</sup> Liberty Utilities Opening Comments (Aug. 6, 2015), at 25; Liberty Utilities Reply Comments (Aug. 24, 2015) at 15; and the NV Energy PPA, at Section 5 and Exhibit B.

<sup>25</sup> Liberty Utilities Supplemental Response (July 2, 2015), at 13 - 15; Liberty Utilities Opening Comments (Aug. 6, 2015), at 26; and the NV Energy PPA, at Section 4.4.

area. As a Planning Authority, NV Energy coordinates, integrates, and evaluates transmission and resource plans within a Planning Coordinator area that includes Liberty Utilities' service area. And as a Balancing Authority and Transmission Operator, NV Energy plans and operates its electric system to provide resource adequacy under both normal and contingency conditions. In addition, NERC Reliability Standard TOP-002-2.1b requires the NV Energy Balancing Authority to plan for capacity and energy reserve requirements for any single contingency.<sup>26</sup>

In sum, federal regulations require NV Energy to plan and operate its Balancing Area in a manner that provides resource adequacy under both normal and contingency conditions. Because Liberty Utilities' service territory is in the NV Energy BAA, Liberty Utilities' customers are afforded the same resource adequacy as all other loads served within the NV Energy BAA.<sup>27</sup>

NERC itself conducts periodic reviews of actual resource adequacy (called Reserve Margins). NERC published its most recent Long-Term Reliability Assessment in November 2014. The report states that for the Northwest Power Pool, the subregion of WECC encompassing the NV Energy BAA, the Reserve Margin will range between 16.77% to 16.98% in years 2015 - 2024.<sup>28</sup>

For the previous reasons, we find that the NV Energy PPA will provide a robust level of RA for Liberty Utilities' customers. However, because the Commission has not adopted RA requirements for Liberty Utilities pursuant to Pub. Util. Code § 380(a), we decline to adopt Liberty Utilities' request to find that

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<sup>26</sup> Liberty Utilities Supplemental Response (July 2, 2015), at 16 - 18; and Liberty Utilities Opening Comments (Aug. 6, 2015), at 26 - 27.

<sup>27</sup> Liberty Supplemental Response (July 2, 2015), at 17 - 18.

<sup>28</sup> Liberty Utilities Supplemental Response (July 2, 2015), at 18 - 19.

the NV Energy PPA will completely satisfy Liberty Utilities' RA requirements over the term of the agreement. We also decline to adopt ORA's recommendation to require Liberty Utilities to submit a filing in its next ECAC that demonstrates compliance with its RA obligations. Instead, we will consider in Rulemaking (R.) 14-10-010<sup>29</sup> or a successor proceeding the following issues:

1. The establishment of specific RA standards, RA reporting requirements, and related regulations for Liberty Utilities pursuant to Pub. Util. Code § 380(a) et seq.
2. Other related matters, if any, as determined by the assigned Commissioner for R.14-10-010 or a successor proceeding.

The assigned Commissioner for R.14-10-010 or a successor proceeding may determine the exact scope of the above issues as well as the schedule and procedures for addressing these issues.

#### **6.4. Emissions Performance Standard**

In D.07-01-039, the Commission adopted a GHG Emissions Performance Standard (EPS) pursuant to Pub. Util. Code §§ 8340 and 8341. In general, the EPS limits carbon dioxide emissions for baseload power plants to 1,100 pounds per MWh.<sup>30</sup>

Decision 07-01-039 requires PPAs with a term of at least five years to be with specified resources that can demonstrate compliance with the EPS. "Specified" means that the contract identifies the individual power plant(s) that will be delivering power. Conversely, D.07-01-039 permits PPAs with

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<sup>29</sup> The caption for R.14-10-010 reads: "Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Procurement Obligations for the 2016 and 2017 Compliance Years."

<sup>30</sup> D.07-01-039, at 4, defines a baseload power plant as one that is "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%."

unspecified resources and baseload power plants that do not comply with the EPS, provided that the term of the PPA is less than five years. Liberty Utilities' Application 15-04-019 did not address compliance D.07-01-039 and the EPS.

The NV Energy PPA has a term of six years and four months. Consequently, D.07-01-039 requires the NV Energy PPA to be with specified resources that can demonstrate compliance with the EPS. The NV Energy PPA does specify resources for renewable energy that appear to comply with the EPS (i.e., five geothermal power plants). However, most of the energy that Liberty Utilities will purchase under the NV Energy PPA is from unspecified resources. We conclude that because the NV Energy PPA obligates Liberty Utilities to purchase energy from unspecified resources for a period of more than five years, the agreement does not comply with D.07-01-039.

So that the NV Energy PPA complies with D.07-01-039, we will approve the agreement with the condition that the term of the agreement is reduced to less than five years. Liberty Utilities shall demonstrate compliance with this condition by filing a Tier 1 advice letter within 20 days from the effective date of today's decision. The advice letter shall contain one of the following:

1. An amended NV Energy PPA with a revised Section 3 of the agreement that specifies a delivery term of less than five years. The amended NV Energy PPA may include non-substantive revisions that are necessary to incorporate the revised Section 3, such as revised pagination and new signature pages. The Tier 1 advice letter shall include both a redline version of the amended NV Energy PPA and a "final form" version of the agreement.
2. A copy of the notice provided by Liberty Utilities to NV Energy which informs NV Energy that Liberty Utilities has elected to

exercise its right under Section 3.2(1) of the agreement to terminate the agreement effective May 1, 2019.<sup>31</sup>

**6.5. Consistency with RPS Procurement Plan**

In D.14-11-042, the Commission accepted and deemed final Liberty Utilities’ 2014 Renewables Portfolio Standard Procurement Plan (RPS Procurement Plan).<sup>32</sup> Liberty Utilities’ RPS Procurement Plan states:

Liberty Utilities has procured all of its electricity, including its renewable power, from NV Energy through a 5-year power purchase agreement (PPA) which is currently scheduled to terminate on December 31, 2015. NV Energy has committed to negotiate a new agreement to provide all or a portion of Liberty Utilities’ electricity needs, for a period of up to five years, should Liberty Utilities so request. As part of that commitment, NV Energy will only charge Liberty Utilities for any such power at rates based on Sierra’s average system cost to provide the scope of service that Liberty Utilities may request.

\* \* \* \* \*

For the period from 2012 to 2015, Liberty Utilities’ RPS procurement is satisfied through the [Existing PPA] with NV Energy. Liberty Utilities is investigating its procurement options for post 2015 energy and renewables, including discussions with NV Energy and expects to make a decision before fall 2014. (Liberty Utilities Supplemental Response filed on July 2, 2015, Exhibit 1, at 1 - 3. Footnote omitted.)

Liberty Utilities’ RPS Procurement Plan explicitly contemplates that Liberty Utilities might enter into a new bilateral contract with NV Energy for both conventional and renewable energy. We find that the NV Energy PPA is

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<sup>31</sup> Section 3.2(1) of the NV Energy PPA states: “Either party may terminate this Agreement effective 12:01 a.m., Pacific Time, on May 1, 2019 by providing written notice no later than February 1, 2018.”

<sup>32</sup> D.14-11-042, at 3 and Ordering Paragraph 3.

consistent with Liberty Utilities' RPS Procurement Plan that the Commission accepted and deemed final in D.14-11-042.

We decline to adopt ORA's recommendation to require Liberty Utilities to (1) submit a compliance filing in its next ECAC proceeding that shows Liberty Utilities has met its RPS obligations; and (2) request in R.15-02-020 that the Commission establish RPS obligations, compliance standards, monitoring requirements, and enforcement remedies for Liberty Utilities. The Commission has already addressed these matters. RPS compliance requirements and reporting requirements are set forth in D.12-06-038. RPS enforcement remedies are set forth in D.14-12-023.

#### **6.6. Standard Terms and Conditions**

The Commission has adopted a set of standard terms and conditions (STCs) for RPS procurement contracts. The STCs were first adopted in D.04-06-014 and subsequently amended in D.07-11-025, D.08-08-028, D.10-03-021, D.11-01-025, and D.13-11-024. Several of the STCs are "non-modifiable" and must be included in every RPS procurement contract.

The NV Energy PPA does not include the text of any of the non-modifiable STCs, which was not disclosed in A.15-04-019. In response to ALJ rulings directing Liberty Utilities to demonstrate compliance with the Commission's non-modifiable STCs, Liberty Utilities asserts that the NV Energy PPA contains only minor deviations from the non-modifiable STCs, and that the objectives of the non-modifiable STCs are accomplished through various provisions in the NV Energy PPA. Liberty Utilities also cites several Commission decisions that approved deviations from the non-modifiable STCs.

In deciding whether to approve Liberty Utilities' deviations from the non-modifiable STCs, it is helpful to first review the origin and purpose of these

STCs. The impetus for the STCs is Pub. Util. Code § 399.13(a)(4)(C), which requires the Commission to adopt standard terms and conditions for RPS procurement contracts.<sup>33</sup> As required by statute, the Commission adopted STCs in D.04-06-014, including several non-modifiable STCs. In D.06-10-019, the Commission articulated the overarching purpose of the non-modifiable STCs:

We think it is obvious, however, that all contracts for RPS-eligible generation (whether with large utilities, small utilities, multi-jurisdictional utilities, ESPs, or CCAs, and no matter what their duration) must ensure that RPS buyers and sellers are buying and selling the same thing, with the same environmental attributes, for approved contractual periods, with the same legal requirements related to basic contractual elements. The non-modifiable terms and conditions were originally adopted to encourage statewide consistency and transparency of contracts that were the result of utilities' solicitations for RPS procurement. These goals remain valid for contracts for RPS procurement[.] (D.06-10-019, at 32.)

In D.08-04-009, the Commission reiterated that the non-modifiable STCs must be included in every RPS procurement contract:

Each contract used for RPS compliance by an investor-owned utility (IOU), including a small or multijurisdictional utility (SMJU), must contain the... non-modifiable STCs[.] (D.08-04-009, at 2.)

In D.11-06-030, the Commission held that the substantive provisions of the non-modifiable STCs cannot be altered. The Commission further held that modifications to the non-substantive provisions are permitted, but only if such modifications provide the same or greater ratepayer protections.<sup>34</sup>

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<sup>33</sup> Section 399.13(a)(4)(C) was previously 399.14(a)(2)(D).

<sup>34</sup> D.11-06-030, at Conclusions of Law 4 and 6.

With the origin and purpose of the non-modifiable STCs in mind, we next consider Liberty Utilities' requested deviations from these STCs. There are five non-modifiable STCs that apply to the NV Energy PPA. The text of these five non-modifiable STCs and the corresponding provisions in the NV Energy PPA are shown side-by-side in Appendix A of today's decision.

Appendix A reveals that Liberty Utilities has made wholesale changes to the non-modifiable STCs. In fact, the actual text of the non-modifiable STCs is largely absent from the NV Energy PPA. Liberty Utilities' characterization of these wholesale changes as "minor deviations" is manifestly not true.

We decline to consider Liberty Utilities' assertion that the objectives of the non-modifiable STCs are achieved by various provisions in the NV Energy PPA. The failure to include the actual text of the non-modifiable STCs in the NV Energy PPA violates several Commission decisions, including D.11-01-025 at Ordering Paragraphs (OP) 4.P and 4.Q; D.10-03-021 at OP 35; D.07-11-025 at OP 1 and Appendix A; and D.04-06-014 at OP 1.

The inclusion of the non-modifiable STCs in RPS procurement contracts is a prerequisite for the Commission's approval of such contracts. Accordingly, we will approve the NV Energy PPA with the condition that Liberty Utilities amends the agreement to include the text of the non-modifiable STCs. If Liberty Utilities and NV Energy accept this condition, Liberty Utilities shall submit the amended agreement via a Tier 1 advice letter within 20 days from the effective date of today's decision. The amended agreement may include the following non-substantive modifications:

- In the non-modifiable STCs, the words "Buyer" and "Seller" may be replaced with "Liberty Utilities" and "NV Energy," respectively.
- Revised pagination.

- New signature pages and dates.

The Tier 1 advice letter shall include (1) the NV Energy PPA with the amendments shown in redline; (2) a signed and executed copy of the amended NV Energy PPA in final form; and (3) a table listing each amendment and its location in the amended agreement.

At this time, we do not read any of the provisions in the NV Energy PPA as conflicting with the non-modifiable STCs that must be added to the agreement pursuant to today's decision. However, if there are such conflicts, the non-modifiable STCs shall control.

If Liberty Utilities and/or NV Energy decline to amend the NV Energy PPA in accordance with today's decision, then Liberty Utilities shall file a Tier 1 advice letter within 20 days from the effective date of today's decision which provides notice that the amendments are not accepted. In that case, Application 15-04-019 shall be deemed denied because the NV Energy PPA would not comply with the EPS or include the Commission's mandatory, non-modifiable STCs for RPS procurement contracts.

#### **6.7. Renewable Project Viability**

The NV Energy PPA will provide Liberty Utilities with renewable energy from five geothermal projects, each of which is currently operating.<sup>35</sup> Accordingly, we find that the NV Energy PPA does not pose any issues with respect to renewable project development and viability.

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<sup>35</sup> Liberty Utilities Supplemental Response (July 2, 2015), at 29.

### **6.8. Portfolio Content Categories**

Pursuant to Pub. Util. Code § 399.17(b) and D.11-12-052,<sup>36</sup> Liberty Utilities is exempt from the requirement to make an upfront showing in A.15-04-019 regarding compliance with renewable Portfolio Content Categories.

### **6.9. Long-Term Contracting Requirement**

Pub. Util. Code § 399.13(b) requires that a certain proportion of a utility's RPS procurement contracts to be at least ten years' duration:

**§ 399.13(b):** A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. The commission may authorize a retail seller to enter into a contract of less than ten years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured through contracts of at least ten years' duration.

In D.12-06-038, the Commission established a long-term contracting requirement pursuant to § 399.13(b) that must be met in order for retail sellers<sup>37</sup> such as Liberty Utilities to count RPS procurement from contracts of less than ten years in duration for compliance with the RPS program.<sup>38</sup> In particular, D.12-06-038 requires retail sellers that sign short-term contracts during the compliance period of 2014 - 2016 to also sign long-term contracts during the

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<sup>36</sup> D.11-12-052, at 63, Conclusion of Law 23, and Ordering Paragraph 16.

<sup>37</sup> Section 399.12(j) defines a retail seller as an entity engaged in the retail sale of electricity to end-use customers located within the state.

<sup>38</sup> For the purpose of implementing Section 399.13(b), D.12-06-038 defines a short-term contract as a contract with a duration of less than ten years, and a long-term contract as a contract with a duration of at least ten years.

same compliance period that promise MWh equal to at least 0.25% of total retail sales during the period of 2011 - 2013.<sup>39</sup>

The NV Energy PPA is a short-term contract as defined by D.12-06-038 that was executed during the compliance period of 2014 - 2016. Therefore, in accordance with D.12-06-038, Liberty Utilities cannot count the renewable energy credits associated with the NV Energy PPA towards Liberty Utilities' RPS requirements for the 2014 - 2016 compliance period, unless and until Liberty Utilities enters one or more long-term contracts in the same compliance period equaling at least 0.25% of its total retail sales during 2011 - 2013. Liberty Utilities acknowledges this situation, and states that it intends to meet the Long-Term Contracting Requirement by the end of the 2014 - 2016 compliance period.<sup>40</sup>

#### **6.10. RPS Eligibility and Commission Approval**

In A.15-04-019, Liberty Utilities requests a Commission finding that the renewable energy provided by the NV Energy PPA may count towards satisfying Liberty Utilities' RPS obligations over the term of the agreement. All of the renewable energy that Liberty Utilities purchases under the NV Energy PPA will come from five geothermal projects. The NV Energy PPA, at Exhibit H, identifies the five geothermal projects, provides the California Energy Commission's (CEC) RPS identification number for each project, and lists the Western Renewable Energy Generation Information System (WREGIS) identification number for each project.

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<sup>39</sup> D.12-06-038, at 39 - 40 and Ordering Paragraph 15.

<sup>40</sup> Liberty Utilities Opening Comments (Aug. 6, 2015), at 20.

The CEC certifies eligible renewable energy resources pursuant to Pub. Util. Code § 399.13. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission requires a standard, non-modifiable “eligibility” clause (i.e., STC 6) in all RPS contracts that requires a seller to warrant that: (1) the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” (2) the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and (3) the seller will use commercially reasonable efforts to maintain eligibility if there is a change in law affecting eligibility. The Commission also requires a standard, non-modifiable “CPUC Approval” clause (i.e., STC 1) in all RPS contracts which includes the statement that “CPUC Approval” of an RPS contract is defined as a final, non-appealable order that approves the RPS contract and contains an explicit finding that “any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.”<sup>41</sup>

Notwithstanding the “CPUC Approval” clause, the Commission lacks jurisdiction to determine whether a project is an “Eligible Renewable Energy Resource” for RPS purposes. Only the CEC may certify that a project is an eligible renewable energy resource. Consequently, the effectiveness of the

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<sup>41</sup> The text of STCs 1 and 6 is provided in D.08-04-009 at Appendix A, and reproduced in Appendix A of today’s decision.

Commission's finding in the "CPUC Approval" clause (STC 1) is contingent on the CEC's certification that the five geothermal projects are "Eligible Renewable Energy Resources." The language in the NV Energy PPA - as amended by today's decision that the five geothermal projects are "procurement from an eligible renewable energy resource" must be true when energy is first delivered, not when the NV Energy PPA was signed or at the issuance of today's decision.

While we include the required finding here, this finding has never been intended, and shall not be read now, to allow generation from a resource that is not RPS-eligible to count towards an RPS compliance obligation absent CEC certification. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. The Commission may scrutinize contract enforcement pursuant to its authority to oversee utilities' administration of RPS contracts.

### **6.11. Safety**

Pub. Util. Code § 451 requires every public utility to furnish and maintain adequate service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of its patrons, employees, and the public. We find that the NV Energy PPA complies with Pub. Util. Code § 451 because it will provide Liberty Utilities with a reliable supply of energy for essentially 100% of its customer load, and because it obligates NV Energy to provide energy in a manner consistent with "utility good practices" for safety and reliability.<sup>42</sup>

## **7. Cost Recovery**

Consistent with long-standing Commission practice, Liberty Utilities is authorized to fully recover the costs that it incurs under the NV Energy PPA

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<sup>42</sup> NV Energy PPA at Section 24.1.

through its ECAC mechanism, subject to the condition that Liberty Utilities must administer the NV Energy PPA in a prudent manner.<sup>43</sup>

We decline to adopt ORA's recommendation to require Liberty Utilities to demonstrate in its next ECAC proceeding that the costs it incurs under the NV Energy PPA are reasonable. Our decisions approving PPAs typically assess whether the associated costs are reasonable. If we find the costs are reasonable, our decisions will authorize utilities to recover the costs in their ECAC proceedings (or similar proceedings), subject to the utility's prudent administration of the contract.<sup>44</sup> Today's decision, *supra*, finds that the costs associated with the NV Energy PPA are reasonable.

## 8. California Environmental Quality Act

The NV Energy PPA is a contract pursuant to which Liberty Utilities will purchase power from NV Energy. The power delivered by NV Energy will be from resources already in operation. NV Energy will not build any additional resources as a direct result of the NV Energy PPA.<sup>45</sup>

The Commission's review and approval of the NV Energy PPA does not trigger the California Environmental Quality Act (CEQA)<sup>46</sup> because a contract to purchase power by a regulated entity is not a "project" pursuant to CEQA. CEQA defines a "project" as "[a]ctivities involving the issuance to a person of a

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<sup>43</sup> The Commission requires RPS procurement contracts to include the non-modifiable STC 1, which defines "CPUC Approval" as including approval of "payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement." (D.08-04-009, Appendix A at 3.)

<sup>44</sup> See, for example, Resolution E-4712, dated March 26, 2015, at 4; Resolution E-4661, dated September 11, 2014, at Finding 8 and Ordering Paragraph (OP) 2; Resolution E-4676, dated Aug. 28, 2014, at Finding 9; and D.14-07-016, at Section 5.3.3, Conclusion of Law 2, and OP 2.

<sup>45</sup> Liberty Utilities Opening Comments (Aug. 6, 2015), at 30 - 31.

<sup>46</sup> CEQA is codified in California Public Resources Code (Pub. Res. Code) § 21000 et seq.

lease, permit, license, certificate, or other entitlement for use by one or more public agencies.” (Pub. Res. Code § 21065.) Commission approval of a PPA does not confer a lease, permit, license, certificate, or any other entitlement on the seller. Rather, it is an assurance that the utility will recover through its rates the costs that it incurs under the contract. It is well-settled that such a ratemaking order is not project under CEQA.<sup>47</sup>

Likewise, the Commission is not a “responsible agency” under CEQA when it approves PPAs. A “responsible agency” is defined as a public agency other than the lead agency which has discretionary approval power over the project. (Pub. Res. Code § 21069.) While the Commission has considerable discretion over whether to approve a PPA, it does not have power to approve or deny the underlying generation project. The project underlying the PPA could proceed regardless of the Commission's decision.<sup>48</sup>

## **9. Comments on the Decision**

The proposed decision of the assigned Commissioner in this matter was mailed to the parties in accordance with Pub. Util. Code § 311, and comments were allowed pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed on December 2, 2015, by Liberty Utilities. There were no reply comments.

Today’s decision incorporates the following revisions in response to Liberty Utilities’ comments on the proposed decision (PD):

- The title of today’s decision is expanded to better describe the agreement that is approved by today’s decision.<sup>49</sup>

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<sup>47</sup> D.15-05-051, at 29 – 31 and Conclusion of Law 13.

<sup>48</sup> Ibid.

<sup>49</sup> Liberty Utilities Comments on the PD (Dec. 2, 2015), at 2.

- The requirement for Liberty Utilities' ECAC compliance filing to include a comparison of the total costs under the NV Energy PPA versus the Existing PPA is deleted.<sup>50</sup>
- The instructions for determining the unit cost of renewable energy under the Existing PPA, which Liberty Utilities must report in its ECAC compliance filing, are revised in Section 6.2 and OP 5 of today's decision.<sup>51</sup>
- A footnote is added in Section 6.2 of today's decision that states where certain definitions regarding the unit cost of renewable energy in the Existing PPA can be found.<sup>52</sup>
- A reference to Pub. Util. Code § 380(a) is added to Section 6.3 of today's decision.<sup>53</sup>
- Finding of Fact No. 11 in the PD is deleted. The remaining Findings of Fact are renumbered accordingly.<sup>54</sup>
- Renumbered Finding of Fact No. 11 is revised to state that the NV Energy PPA does not include the text of the Commission's mandatory, non-modifiable STCs for RPS procurement contracts.<sup>55</sup>
- A citation of D.07-11-025 in Section 6.6 of today's decision is expanded to encompass Appendix A of D.07-11-025.
- Non-substantive revisions that include (1) conforming changes to various parts of today's decision to reflect the previously identified revisions; (2) listing an additional document in Section 3 of today's decision; (3) correcting spelling errors; (4) formatting and punctuation changes; and (5) revising imprecise terminology.

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<sup>50</sup> Liberty Utilities Comments on the PD (Dec. 2, 2015), at Exhibit 1, pages 1, 2, and 7.

<sup>51</sup> Liberty Utilities Comments on the PD (Dec. 2, 2015), at Exhibit 2.

<sup>52</sup> Liberty Utilities Comments on the PD (Dec. 2, 2015), at Exhibit 2.

<sup>53</sup> Liberty Utilities Comments on the PD (Dec. 2, 2015), at 10 - 11.

<sup>54</sup> Liberty Utilities Comments on the PD (Dec. 2, 2015), at Exhibit 1, page 6.

<sup>55</sup> Liberty Utilities Comments on the PD (Dec. 2, 2015), at 14.

Liberty Utilities' comments on the PD include a number of recommended revisions that we decline to adopt for the reasons set forth below.

### **9.1. ECAC Compliance Filing Regarding Renewable Energy Costs**

We decline to adopt Liberty Utilities' recommendation to forego the requirement to submit a compliance filing in its next ECAC proceeding that provides a comparison of the unit cost of renewable energy under the NV Energy PPA versus the Existing PPA. There is no merit to Liberty Utilities' claim that the compliance filing constitutes an improper after-the-fact reasonableness review of the NV Energy PPA.<sup>56</sup> As stated in Section 6.2 of today's decision, Liberty Utilities did not provide substantive support for its assertion that the unit cost of renewable energy under the NV Energy PPA will be significantly less than under the Existing PPA. Nonetheless, today's decision approves the NV Energy PPA based, in part, on Liberty Utilities' repeated statements that the unit cost of renewable energy under the NV Energy PPA will be less than the Existing PPA.<sup>57</sup> If the NV Energy PPA does not result in a lower unit cost for renewable energy, we need to be informed so that we may take appropriate action. The ECAC compliance filing is an appropriate tool to determine if the NV Energy PPA has, in fact, resulted in a lower unit cost for renewable energy.

There is no merit to Liberty Utilities' comment that it did provide substantive support for its assertion that the NV Energy PPA will result in a lower unit cost for renewable energy. After reviewing all parts of the record

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<sup>56</sup> Liberty Utilities Comments on the PD (Dec. 2, 2015), at 6 - 9.

<sup>57</sup> Application 15-04-019, at 19; Liberty Utilities Supplemental Response (July 2, 2015, at 23 and 35 (confidential version); Liberty Utilities Opening Comments (Aug. 6, 2015), at 19 and unnumbered page 35; and Liberty Utilities Reply Comments (Aug. 24, 2015), at 6 and 17.

cited by Liberty Utilities in its comments on the PD,<sup>58</sup> we find nothing more than Liberty Utilities' bare assertion that the NV Energy PPA will result in a lower unit cost for renewable energy compared to the Existing PPA.

## 9.2. Resource Adequacy

Liberty Utilities argues that the Commission should not consider the establishment of RA requirements for Liberty Utilities in R.14-10-010 or a successor proceeding because:

The Proposed Decision fails to recognize that the Commission's entire RA program... is focused on ensuring supply reliability within the CAISO. As an LSE outside of the CAISO, Liberty does not deliver energy into, serve any load in, or otherwise affect CAISO operations. Section 380(a) does contemplate that the Commission establish RA requirements for "all load-serving entities." However, the Legislature preconditioned the directive with instructions that the Commission establish these RA requirements "in consultation with the" CAISO and thus the Commission has not previously obligated Liberty to participate in RA proceedings focused on utilities serving load within the CAISO. Moreover, the comprehensive reporting requirements for the larger LSEs within the CAISO are simply not necessary for Liberty because it only has essentially one source for its supply of power (i.e. the [NV Energy PPA]). (Liberty Utilities' Comments on the PD, at 10 - 11. Footnotes omitted.)

As explained in Section 6.3 of today's decision, the Commission has not yet established RA requirements for Liberty Utilities as required by Pub. Util. Code § 380(a), which states as follows:

**§ 380(a):** The Commission, in consultation with the Independent System Operator, *shall establish resource adequacy requirements for all load-serving entities.* (Emphasis added.)

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<sup>58</sup> Liberty Utilities' Comments on the PD (Dec., 2, 2015), at 8.

We believe it would be most efficient to consider the establishment of RA requirements for Liberty Utilities in R.14-10-010 (or a successor proceeding), which is a RA-focused proceeding. There, Liberty Utilities can inform the Commission about Liberty Utilities' unique situation, and the Commission can adopt RA requirements for Liberty Utilities that reflect its circumstances.<sup>59</sup> In any event, Liberty Utilities' opposition to the venue where the Commission will consider the establishment of statutorily mandated RA requirements for Liberty Utilities does not constitute a legal or factual error in the PD.

Next, Liberty Utilities asserts the PD errs because:

[T]he Proposed Decision mistakenly construes the [NV Energy PPA] as simply a "PPA." Such a characterization understates the purpose, scope, and significance of the [NV Energy PPA], and ignores the fundamental differences between Liberty and California's large [LSEs]. In contrast to Liberty, the large LSEs serve customers within the [CAISO] balancing authority area with energy procured through many traditional power purchase agreements with individual generators and power marketers....

The problems with the Proposed Decision emanate from its effort to fit Liberty (a "square peg") into the "round hole" regulatory framework the Commission has established for LSEs operating within the CAISO and having hundreds of supply resources and associated PPAs.

The Proposed Decision also fails to recognize the legal and policy guidance this Commission provided in approving the [Existing PPA] at the time of Liberty's acquisition of NV Energy's California service territory in [D.10-10-017]. In particular, with respect to the [Existing PPA], the Commission... did not challenge the [Existing PPA's] ability to provide sufficient RA. (Liberty Utilities Comments on the PD, at 2 - 4. Footnote omitted.)

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<sup>59</sup> Today's decision does not prejudge any issue in R.14-05-010 or a successor proceeding.

Today's decision does not misconstrue the purpose, scope, and significance of the NV Energy PPA. An accurate summary of the agreement is provided in Section 4.1 of today's decision.

Today's decision does not ignore the fact that Liberty Utilities is outside the CAISO BAA. This matter is discussed in Section 6.3 of today's decision.

Today's decision does not ignore the legal and policy guidance provided by D.10-10-017 with respect to RA for Liberty Utilities. That decision does not address RA whatsoever and, therefore, provides no guidance regarding RA.

Finally, Liberty Utilities contends that:

It would be unfair if the Commission approved the [NV Energy PPA], later set additional and potentially different RA requirements for Liberty in the CAISO-focused RA proceeding, and then after-the-fact found the [NV Energy PPA] does not satisfy these newly-created RA requirements. (Liberty Utilities Comments on the PD, at 10.)

Liberty Utilities' concern that it will be treated unfairly in a future Commission proceeding is unfounded and demonstrates no legal or factual error in the PD.

### **9.3. Emissions Performance Standard**

In its comments on the PD, Liberty Utilities asserts:

[T]he Proposed Decision bases its finding that the [NV Energy PPA] is not EPS compliant on the statement that "most of the energy that Liberty [] will purchase under the [NV Energy PPA] is from unspecified resources." This portion of the Proposed Decision is wrong, and ignores (i) the evidence Liberty presented identifying the specific RPS and conventional resources from which NV Energy will deliver energy to Liberty; and (ii) the fact that the 2016 Agreement is a full requirements, load following agreement and not a PPA providing power from a specific resource. (Liberty Utilities Comments on the PD, at 10. Footnotes omitted.)

As noted in Section 6.4 of today's decision, D.07-01-039 requires PPAs with a term of at least five years to be with specified resources that can demonstrate compliance with the EPS. "Specified" means that the contract identifies the individual power plant(s) that will be delivering power.<sup>60</sup> The only "specified" resources in the NV Energy PPA are five geothermal power plants that will provide RPS-compliant energy. Most of the energy that Liberty Utilities will purchase under the NV Energy PPA will come from power plants and power purchase agreements in NV Energy's supply portfolio that are not specified (i.e., not identified) in the NV Energy PPA as required by D.07-01-039.

The fact that the NV Energy PPA is a full requirements, load-following agreement is irrelevant to whether the NV Energy PPA complies with the requirement in D.07-01-039 that new PPAs with a term of at least five years must be with specified resources that can demonstrate compliance with the EPS. In sum, Liberty Utilities has not shown any legal or factual errors regarding the provisions in the PD pertaining to EPS compliance.

#### **9.4. Non-Modifiable STCs**

In its comments on the PD, Liberty Utilities asserts:

The Proposed Decision's requirement that the [NV Energy PPA] be amended to include every word of the Commission's STCs (i.e. the "RPS Condition") is unnecessary, provides no benefit to any constituency, and will increase costs. The RPS Condition exalts form over substance because: (i) the core finding of the Proposed Decision that RPS agreements must contain the exact language of every STC... misstates Commission precedent and misconstrues the policy objectives for the STCs; (ii) the Commission has previously approved numerous deviations from the STCs for other utilities;

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<sup>60</sup> D.07-01-039, at 10, 13 - 14 and Attachment 7.

(iii) D.10-10-017 assessed these identical RPS-related in the Existing Agreement terms (other than its use of New York law) and found that the terms would “not undermine or interfere with the Commission’s jurisdiction ... with respect to regulatory policies such as the RPS ...”; and (iv) Liberty demonstrated in detail that the terms of the [the NV Energy PPA] are substantively identical to the STCs and provide the same, and in some instances greater, protection to Liberty’s customers. (Liberty Utilities’ Comments on the PD, at 13 - 14. Footnotes omitted.)

There is no merit to Liberty Utilities’ assertion that RPS procurement contracts do not have to contain the text of the non-modifiable STCs. In D.08-04-009, the Commission held that the non-modifiable STCs must be included in every RPS procurement contract:

Each contract used for RPS compliance by an investor-owned utility (IOU), including a small or multijurisdictional utility (SMJU), must contain the... non-modifiable STCs[.] (D.08-04-009, at 2.)

In D.11-06-030, the Commission held that the substantive provisions of the non-modifiable STCs cannot be altered. The Commission further held that the non-substantive provisions may be altered, but only if such alterations provide the same or greater ratepayer protections.<sup>61</sup>

None of the six decisions cited by Liberty Utilities in its comments on the PD provides precedent for the wholesale departure from the text of the non-modifiable STCs in the NV Energy PPA. In the specific part of the first decision cited by Liberty Utilities, D.07-02-011, the Commission revised one of the non-modifiable STCs (regarding “environmental attributes”) and directed the large electric utilities to include the revised non-modifiable STC in their RPS

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<sup>61</sup> D.11-06-030, at Conclusions of Law 4 and 6.

procurement contracts going forward.<sup>62</sup> Of relevance here, D.07-02-011 does not authorize deviations from the adopted text of non-modifiable STCs, which is what Liberty Utilities seeks to do in the instant proceeding.

The second decision cited by Liberty Utilities, D.07-04-039, approved a substantive deviation from the text of a non-modifiable STC in an RPS procurement contract.<sup>63</sup> However, to the extent this one decision constitutes applicable precedent, it has been superseded by subsequent decisions cited in Section 6.6 of today's decision (including D.11-06-030, D.11-01-025, D.10-03-021, D.08-04-009, and D.07-11-025) that require RPS procurement contracts to contain the text of the non-modifiable STCs.

In the specific part of the third decision cited by Liberty Utilities, D.10-03-021, the Commission adopted several new and revised non-modifiable STCs.<sup>64</sup> Of relevance here, D.10-03-021 does not authorize deviations from the adopted text of non-modifiable STCs.

The fourth decision cited by Liberty Utilities, D.13-03-030, approved a PPA wherein a large electric utility agreed to buy energy from several power plants, including one power plant that was not RPS eligible. Decision 13-03-030 authorized non-substantive changes to two non-modifiable STCs so that it was

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<sup>62</sup> D.07-02-011, at 40 - 43.

<sup>63</sup> D.07-04-039 approved a revision to the non-modifiable "assignment" STC, which required the lender for the project to agree to be bound by the PPA. The electric utility applicant in that proceeding claimed the non-modifiable "assignment" STC was "almost universally unacceptable to sellers." (D.07-04-039, at 10.) The Commission noted in D.07-04-039 that it intended to consider in another proceeding if the non-modifiable "assignment" STC should be reclassified to an STC that could be modified. (D.07-04-039, at 11 - 14.) In D.07-11-025, the Commission converted the non-modifiable "assignment" STC into a modifiable STC.

<sup>64</sup> D.10-03-021, at 77 - 78.

clear that these STCs did not apply to the non-RPS eligible power plant.<sup>65</sup> We do not interpret D.13-03-030 as providing precedent for discarding essentially all of the text of the non-modifiable STCs as Liberty Utilities seeks to do in the instant proceeding. To the contrary, D.13-03-030 states in Conclusion of Law 4:

Contracts for the purchase of electricity from eligible renewable energy resources **must include the STCs** set forth in D.08-04-009, and revised in D.08-08-028 and D.11-01-025. (Emphasis added.)

The fifth decision cited by Liberty Utilities, D.14-03-035, approved a PPA that contained non-substantive revisions to two non-modifiable STCs. In both cases, the sole change was to replace “Delivery Term” with “Extension Term” to reflect the unique circumstances of the PPA.<sup>66</sup> We do not interpret D.14-03-035 as providing precedent for discarding essentially all of the text of the non-modifiable STCs as Liberty Utilities seeks to do in the instant proceeding.

The final decision cited by Liberty Utilities, D.10-10-017, approved the Existing PPA as part of the transfer of Sierra Pacific’s service territory in California to Liberty Utilities pursuant to Pub. Util. Code § 854. Liberty Utilities states that the Existing PPA and the NV Energy PPA contain similar departures from the text of the non-modifiable STCs, and that the Commission approved these departures via the following provision in D.10-10-017:

We agree that Joint Applicants have made a sufficient showing that the transfer will not undermine or interfere with the Commission’s jurisdiction regarding access to books and records of its owners or with respect to regulatory policies such as the RPS and the GHG EPS. (D.10-10-017, at 46.)

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<sup>65</sup> D.13-03-030, at 9 – 10. The Commission admonished the electric utility that careful drafting of the PPA could have avoided deviations from the text of the non-modifiable STCs. (Ibid.)

<sup>66</sup> D.14-03-035, at 9, Findings of Fact 18 and 19, and Conclusion of Law 3.

We interpret the above provision in D.10-10-017 as addressing the Commission's jurisdiction, not departures from the text of the non-modifiable STCs. We recognize, however, that the Existing PPA approved by D.10-10-017 contains major departures from the text of the non-modifiable STCs. We accord little weight to this precedent because D.10-10-017 does not mention, let alone address, the departures from the non-modifiable STCs contained in the Existing PPA. We conclude that the controlling precedent is provided by the numerous decisions cited previously that explicitly require RPS procurement contracts to include the text of the non-modifiable STCs.

Finally, we decline to consider the merits of Liberty Utilities' assertion that the terms of the NV Energy PPA are substantively identical to the non-modifiable STCs and provide the same or greater protections to Liberty Utilities' customers. As stated in Section 6.6 of today's decision, the inclusion of the non-modifiable STCs in RPS procurement contracts is a prerequisite for the Commission's approval of such contracts. The fact that the NV Energy PPA fails to include essentially all of the text of the non-modifiable STCs violates several Commission decisions, including D.11-01-025 at OPs 4.P and 4.Q; D.10-03-021 at OP 35; D.07-11-025 at OP 1 and Appendix A; and D.04-06-014 at OP 1.

## **10. Assignment of the Proceeding**

Liane M. Randolph is the assigned Commissioner for this proceeding and Timothy Kenney is the assigned Administrative Law Judge.

### **Findings of Fact**

1. The Existing PPA provides essentially all of the energy that Liberty Utilities delivers to its customers.
2. The Existing PPA terminates on December 31, 2015, but can be extended by four months under the NV Energy PPA.

3. Liberty Utilities has a need to procure resources to serve 100 percent of its load requirements starting in 2016.

4. The NV Energy PPA will provide essentially 100 percent of the energy that Liberty Utilities delivers to its customers, including RPS-eligible energy. The term of the NV Energy PPA is January 1, 2016, through April 30, 2022. Liberty Utilities can terminate the NV Energy PPA effective May 1, 2019, by providing written notice to NV Energy no later than February 1, 2018.

5. The Commission has not established RA requirements for Liberty Utilities.

6. NV Energy has sufficient resources to reliably supply 100 percent of the energy needed to serve Liberty Utilities' load requirements.

7. The NV Energy PPA will provide sufficient and reliable energy to meet Liberty Utilities' load requirements.

8. The costs that Liberty Utilities incurs under the NV Energy PPA are reasonable and will be less than what Liberty Utilities would incur if the Existing PPA had remained in effect.

9. Although Liberty Utilities asserts under penalty of perjury that the cost of RPS energy under the NV Energy PPA will be at least 20 percent less than what Liberty Utilities would pay if the Existing PPA had remained in effect, Liberty Utilities did not substantiate its assertion.

10. It is reasonable to exclude the Valmy coal plant from NV Energy's supply portfolio used to serve Liberty Utilities' customers because of the coal plant's high emissions of greenhouse gases.

11. The NV Energy PPA does not include the text of the Commission's mandatory, non-modifiable STCs for RPS procurement contracts.

12. Except for five designated geothermal power plants that will supply renewable energy under the NV Energy PPA, the NV Energy PPA is a contract for the purchase of energy from unspecified resources.

13. The NV Energy PPA does not pose any issues with respect to renewable project development and viability.

14. Liberty Utilities' RPS Procurement Plan indicates that Liberty Utilities might enter into a bilateral contract with NV Energy for both conventional and renewable energy.

15. The NV Energy PPA does not include the Commission's adopted text for non-modifiable STCs for RPS contracts.

16. The NV Energy PPA is consistent with Liberty Utilities' obligation under Pub. Util. Code § 451 to provide safe and reliable service.

17. All of the renewable power that NV Energy delivers to Liberty Utilities under the NV Energy PPA will come from five geothermal projects. The NV Energy PPA, at Exhibit H, identifies the five geothermal projects, provides the CEC RPS identification number for each project, and lists the WREGIS identification number for each project.

18. In Resolution ALJ-176-3356, dated May 7, 2015, the Commission preliminarily determined that hearings were needed in this proceeding.

19. There were no requests for an evidentiary hearing.

**Conclusions of Law**

1. The NV Energy PPA will enable Liberty Utilities to serve its load requirements in accordance with Pub. Util. Code § 380(c) and § 380(d).
2. Liberty Utilities' request for a Commission finding that the NV Energy PPA completely satisfies Liberty Utilities' RA obligations over the term of the agreement should be denied because the Commission has not adopted RA requirements for Liberty Utilities.
3. The Commission should establish RA requirements for Liberty Utilities pursuant to Pub. Util. Code 380(a) et seq. To that end, the scope of R.14-10-010 and/or a successor proceeding should include the following issues: (i) The establishment of RA standards, reporting requirements, and related regulations for Liberty Utilities pursuant to Pub. Util. Code § 380(a) et seq.; and (ii) other related matters, if any, as determined by the assigned Commissioner for R.14-10-010 and/or successor proceeding. The assigned Commissioner for R.14-10-010 and/or successor proceeding should have discretion to determine (A) the exact scope of issues (i) and (ii), above, and (B) the schedule and procedures for addressing these issues.
4. It is the policy of the State of California to reduce greenhouse gas emissions to 40% below 1990 levels by 2030. Excluding the Valmy coal plant from the contracted supply portfolio in the NV Energy PPA is a reasonable step towards achieving the State's goal.
5. Payments made by Liberty Utilities pursuant to the NV Energy PPA are fully recoverable in rates over the life of the agreement, subject to Commission review of Liberty Utilities' administration of the PPA.
6. In its next ECAC proceeding, Liberty Utilities should demonstrate that it has administered the NV Energy PPA in a prudent manner by, in part,

submitting a compliance filing that shows whether, and to what extent, the costs for renewable energy under the NV Energy PPA are less than what the costs for renewable energy would have been if the Existing PPA had remained in effect. ORA and the Commission's Energy Division should each have an opportunity to verify, by audits or other means, the completeness and accuracy of the compliance filing.

7. D.07-01-039 requires PPAs with a term of five years or more to be with specified resources that comply with the EPS. This requirement does not apply to PPAs with a term of less than five years.

8. The NV Energy PPA does not comply with D.07-01-039 because the agreement provides for the purchase of energy from unspecified resources for a term that exceeds five years.

9. So that the NV Energy PPA complies with D.07-01-039, the agreement should be approved with the condition that its term is reduced to less than five years.

10. The NV Energy PPA is consistent with Liberty Utilities' RPS Procurement Plan that was accepted and deemed final by D.14-11-042.

11. Pursuant to Pub. Util. Code § 399.17(b) and D.11-12-052, Liberty Utilities is exempt from the requirement to make a showing in this proceeding regarding compliance with renewable Portfolio Content Categories.

12. The following non-modifiable STCs apply to the NV Energy PPA: STC 1, STC 6, STC 17, REC-1, and REC-2.

13. The NV Energy PPA does not comply with the following Commission decisions that require RPS procurement contracts to include the text of non-modifiable STCs: D.08-04-009, D.08-08-028, D.10-03-021, D.11-01-025, and D.13-11-024. The NV Energy PPA should be approved with the condition that the agreement is amended to incorporate the text of these non-modifiable STCs.

14. In the event there is a conflict between the existing provisions in the NV Energy PPA and the non-modifiable STCs that are added to the agreement pursuant to today's decision, the non-modifiable STCs should control.

15. The NV Energy PPA is a short-term contract as defined by D.12-06-038 that was executed during the compliance period of 2014 - 2016. Pursuant to D.12-06-038, Liberty Utilities may not count the RECs associated with the NV Energy PPA towards Liberty Utilities' RPS requirements for the 2014 - 2016 compliance period unless and until Liberty Utilities executes one or more long-term contracts, as defined by D.12-06-038, in the same compliance period equaling at least 0.25% of Liberty Utilities' total retail sales in 2011 - 2013.

16. The supply of renewable energy delivered by NV Energy to Liberty Utilities pursuant to the NV Energy PPA is procurement from an eligible renewable energy resource for purposes of determining Liberty Utilities' compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Pub. Util. Code § 399.11 et seq.), D.03-06-071, D.11-12-020 and D.11-12-052, or other applicable law.

17. The immediately preceding Conclusion of Law does not (i) allow generation from a non-RPS eligible renewable energy resource to count towards an RPS compliance obligation; (ii) absolve NV Energy of its obligation to obtain

and maintain CEC certification; or (iii) absolve Liberty Utilities of its obligation to pursue remedies for breach of contract.

18. The NV Energy PPA should be approved, subject to the conditions set forth in the following Order. If Liberty Utilities and/or NV Energy reject these conditions, then Liberty Utilities should file a Tier 1 advice letter within 20 days from the effective date of today's decision which provides notice that the conditions are not accepted. In that case, A.15-04-019 should be deemed denied because the NV Energy PPA would not comply with the EPS or include the applicable non-modifiable STCs for RPS procurement contracts.

19. Liberty Utilities should submit the NV Energy PPA, with the amendments required by today's decision, for Commission review and approval by filing a Tier 1 advice letter within 20 days from the effective date of today's decision.

20. CEQA does not apply to the NV Energy PPA.

21. There is no need for evidentiary hearings. The changed determination on the need for hearings should be approved in accordance with Rule 7.5.

22. The following Order should be effective immediately so that the disposition of the NV Energy PPA can be finalized in accordance with the Order.

**O R D E R**

**IT IS ORDERED** that:

1. The *First Amended Service Agreement Between Sierra Pacific Power Company and Liberty Utilities (CalPeco Electric) LLC* (“the NV Energy PPA”) that is appended to the *Opening Comments of Liberty Utilities (CalPeco Electric) LLC (U 993 E)* filed on August 6, 2015, is approved with the following conditions:

- a. The term of the NV Energy PPA shall be reduced to less than five years.
- b. The NV Energy PPA shall be amended to include the text of the following non-modifiable standard terms and conditions (STCs) for Renewables Portfolio Standard procurement contracts: STCs 1, 6, 17, REC-1, and REC-2. The text of these non-modifiable STCs is provided in Appendix A of today’s decision.

2. If the conditions in Ordering Paragraph 1 are accepted, then Liberty Utilities (CalPeco Electric) LLC (“Liberty Utilities”) shall file a Tier 1 advice letter within 20 days from the effective date of this Order, stated below, that contains the following:

- a. Either (i) an amended power purchase agreement (“NV Energy PPA”) approved by Ordering Paragraph 1, above, that specifies a revised delivery term of less than five years in Section 3 of the NV Energy PPA, or (ii) a copy of the notice provided by Liberty Utilities to Sierra Pacific Power Company d/b/a NV Energy that informs NV Energy that Liberty Utilities has elected to exercise its right in Section 3.2(1) of the NV Energy PPA to terminate the agreement effective May 1, 2019.
- b. An amended NV Energy PPA that includes the text of the following non-modifiable standard terms and conditions (STCs) for Renewables Portfolio Standard procurement contracts: STCs 1, 6, 17, REC-1, and REC-2. The text of these non-modifiable STCs is provided in Appendix A of today’s decision.

- c. A copy of the amended NV Energy PPA with all amendments shown in redline format.
- d. A table listing each amendment and its location (i.e., section number and page number) in the amended NV Energy PPA.
- e. A signed and executed copy of the amended NV Energy PPA in final form.
- f. The NV Energy PPA, with the amendments authorized by this Ordering Paragraph 2, may include the following non-substantive amendments:
  - i. In the non-modifiable STCs that are added to the NV Energy PPA pursuant to OP 2.b, the words “Buyer” and “Seller” may be replaced with “Liberty Utilities” and “NV Energy,” respectively.
  - ii. Revised pagination.
  - iii. New signature page(s) and dates.

3. In the event there is a conflict between the existing provisions in the amended power purchase agreement (“NV Energy PPA”) approved by Ordering Paragraph (OP) 1, and the non-modifiable standard terms and conditions (“non-modifiable STCs”) that are added to the NV Energy PPA pursuant to OP 2.b, the non-modifiable STCs shall control.

4. The costs that Liberty Utilities (CalPeco Electric) LLC (“Liberty Utilities”) incurs pursuant to the amended power purchase agreement approved by Ordering Paragraph 1 are fully recoverable in rates through Liberty Utilities’ Energy Cost Adjustment Clause mechanism, subject to Liberty Utilities’ prudent administration of the agreement.

5. The first Energy Cost Adjustment Clause application that Liberty Utilities (CalPeco Electric) LLC files after the effective date of this Order, stated below, shall include a compliance filing that shows:

- a. A comparison of the unit cost of renewable energy under the NV Energy Purchase Power Agreement (“PPA”) approved by Ordering Paragraph 1, above, versus the Existing PPA. This comparison shall assume the following:
    - i. The unit cost of renewable energy under the NV Energy PPA is the “Renewable Rate” as defined in Exhibit D, Section D.5, of the NV Energy PPA.
    - ii. The unit cost of renewable energy under the Existing PPA equals the fraction “Renewable Cost ÷ Renewable MWh” as these terms are defined in Exhibit D, Section D.5, of the Existing PPA.
  - b. Workpapers containing all calculations and source documents used to prepare the information in Item 5.a, above.
6. The scope of Liberty Utilities (CalPeco Electric) LLC’s next Energy Cost Adjustment Clause proceeding shall include an opportunity for the Commission’s Office of Ratepayer Advocates and the Commission’s Energy Division to each verify, by audits or other means, the completeness and accuracy of the compliance filing described in Ordering Paragraph 5.
7. The scope of Rulemaking (R.) 14-10-010 and/or successor proceeding shall include the establishment of resource adequacy standards, reporting requirements, and related regulations for Liberty Utilities (CalPeco Electric) LLC pursuant to Public Utilities Code Section 380(a) et seq. The assigned Commissioner for R.14-10-010 and/or a successor proceeding shall determine (a) the exact scope of the issues to be addressed pursuant to this Ordering Paragraph, and (b) the schedule and procedures for addressing these issues.
8. There is no need for evidentiary hearings in this proceeding.

9. If the conditions in Ordering Paragraph 1 are not accepted by Liberty Utilities (CalPeco Electric) LLC (“Liberty Utilities”) and/or Sierra Pacific Power Company d/b/a/ NV Energy, then Liberty Utilities shall file a Tier 1 advice letter within 20 days from the effective date of this Order, stated below, which provides notice that the conditions are not accepted. In that case, Application 15-04-019 shall be deemed denied.

10. The Tier 1 advice letter that Liberty Utilities (CalPeco Electric) LLC files pursuant to Ordering Paragraphs 2 or 9, above, shall also be filed in the docket of Application 15-04-019 and served on the service list for Application 15-04-019.

11. Application 15-04-019 is closed.

This Order is effective today.

Dated \_\_\_\_\_, 2015, at San Francisco, California.

**Appendix A: Non-Modifiable Standard Terms and Conditions (STCs)**

Appendix A provides a side-by-side comparison of (1) the Commission's non-modifiable STCs that are applicable to the NV Energy PPA, and (2) the corresponding provisions in the NV Energy PPA.

<b>Side-by-Side Comparison of (1) the Commission’s Non-Modifiable STCs,                      and (2) the Corresponding Provisions in the NV Energy PPA                      (Source: Liberty Utilities Response Filed on October 26, 2015, at Exhibit 1)</b>	
	<b>Corresponding Provision in the NV Energy PPA                      (Shown with Bold Font)</b>
<p>STC 1 (CPUC Approval): “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms: (a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and (b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.</p>	<p>Section 26.2: California Public Utilities Commission. <b>Liberty shall submit this Agreement for the approval of the CPUC within thirty (30) days of the Effective Date. If the CPUC does not issue a final order approving the Agreement (“CPUC Approval Order”) by December 15, 2015, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2015; provided after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.2 shall be deemed to have been waived. In addition, either Party may terminate this Agreement with written notice to the other Party if the CPUC issues an order approving, but modifying this Agreement in a manner materially adverse to the terminating-Party, approving this Agreement with conditions that are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the CPUC order. The CPUC Approval Order must contain the following findings:</b></p> <p><b>(1) that the costs to be incurred by Liberty under this Agreement and throughout the Delivery Term are prudent and fully recoverable by Liberty through the Energy Cost Adjustment Clause mechanism, subject only to Liberty’s prudent administration of this Agreement;</b></p> <p>(2) that this Agreement fully satisfies Liberty’s Resource Adequacy obligations for the Delivery Term; and</p> <p><b>(3) that the supply of renewable energy that may be provided to Liberty by NV Energy under this Agreement may be used towards satisfying Liberty’s RPS obligations during the Delivery Term.</b></p>

<b>Side-by-Side Comparison of (1) the Commission’s Non-Modifiable STCs, and (2) the Corresponding Provisions in the NV Energy PPA (Source: Liberty Utilities Response Filed on October 26, 2015, at Exhibit 1)</b>	
	<b>Corresponding Provision in the NV Energy PPA (Shown with Bold Font)</b>
<p><u>STC 6 (Eligibility)</u>: Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.</p>	<p><u>Section 6.2</u>: NV Energy shall provide renewable <b>energy from a pool of geothermal projects (“NVE Pool”)</b> under contract to NV Energy which have been certified by the California Energy Commission (“CEC”) as eligible to meet the requirements for the California RPS program overseen by the CPUC (“CEC Certification”).</p> <p><u>Section 24.1</u>: (1) NV Energy warrants that it will <b>transfer to Liberty good title to the capacity and energy and RECs delivered to Liberty under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Points....</b></p>
<p><u>STC 17 (Applicable Law)</u>: Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.</p>	<p><u>Section 27.9: Governing Law and Venue</u>. <b>This Agreement (as well as any claim or controversy arising out of or relating to this Agreement) shall be governed by and construed in accordance with the laws of the State of California, but otherwise without regard to the conflicts of laws rules [SIC] that would require the laws of another jurisdiction to apply.</b> Each Party hereto irrevocably submits to the exclusive jurisdiction of the federal and state courts (subject to the following) located in the State of Nevada, waives any objection which it may have to the laying of venue of any proceedings brought in any such court, and waives any claim that such proceedings have been brought in an inconvenient forum; and agrees that any and all claims, controversies or disputes arising from or relating to</p>

<b>Side-by-Side Comparison of (1) the Commission’s Non-Modifiable STCs,                      and (2) the Corresponding Provisions in the NV Energy PPA                      (Source: Liberty Utilities Response Filed on October 26, 2015, at Exhibit 1)</b>	
	<b>Corresponding Provision in the NV Energy PPA                      (Shown with Bold Font)</b>
	<p>this Agreement will be submitted in the federal courts of Nevada located in Reno for resolution; provided, however, that in the event jurisdiction may not be had in federal court, then the Parties agree to submit any and all such disputes, claims or controversies to state district courts of Nevada located in Reno, provided further, however, that if litigation is brought by a third party in another jurisdiction that requires that this Agreement be construed in that litigation, nothing herein shall require that a separate proceeding be brought in Nevada.</p> <p><u>Section 27.10:</u> <b>EACH PARTY IRREVOCABLY WAIVES ANY AND ALL OF ITS RESPECTIVE RIGHTS TO ANY JURY TRIAL WITH RESPECT TO ANY ACTION, LITIGATION OR JUDICIAL PROCEEDINGS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION OR PROCEEDING IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.</b> In the event such litigation or judicial proceedings are instituted by either Party, the prevailing Party shall be entitled to award of its reasonable (i) costs and (ii) attorneys’ fees, incurred in connection with such litigation or proceedings.</p>

<b>Side-by-Side Comparison of (1) the Commission’s Non-Modifiable STCs, and (2) the Corresponding Provisions in the NV Energy PPA</b> (Source: Liberty Utilities Response Filed on October 26, 2015, at Exhibit 1)	
	<b>Corresponding Provision in the NV Energy PPA</b> (Shown with Bold Font)
<p><u>STC REC-1 (Transfer of Renewable Energy Credits (RECs))</u>: Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.</p>	<p><u>Section 6.2</u>: NV Energy shall provide <b>renewable energy from a pool of geothermal projects (“NVE Pool”) under contract to NV Energy which have been certified by the California Energy Commission (“CEC”) as eligible to meet the requirements for the California RPS program overseen by the CPUC (“CEC Certification”)...</b></p> <p><u>Section 6.5</u>: NV Energy shall provide to Liberty, for its use in Liberty’s RPS filings with the CPUC or the CEC, any supporting documentation the CPUC or CEC reasonably and consistent with applicable statutes requires Liberty to provide to demonstrate <b>Liberty’s compliance with its RPS requirements.</b></p> <p><u>Section 24.1 Warranties</u>: (1) NV Energy warrants that <b>it will transfer to Liberty good title to the capacity and energy and RECs delivered to Liberty under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Points.</b> EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 24, NV ENERGY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CAPACITY AND ENERGY SUPPLIED OR TO BE MADE AVAILABLE UNDER THIS AGREEMENT</p>

<b>Side-by-Side Comparison of (1) the Commission’s Non-Modifiable STCs,                      and (2) the Corresponding Provisions in the NV Energy PPA                      (Source: Liberty Utilities Response Filed on October 26, 2015, at Exhibit 1)</b>	
	<b>Corresponding Provision in the NV Energy PPA                      (Shown with Bold Font)</b>
<p><u>STC REC-2 (Tracking of RECs in WREGIS)</u>: Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.</p>	<p><u>Section 6.4</u>: No later than 120 days after the end of each calendar year of the Delivery Term, NV Energy shall transfer to Liberty RECs for the quantity of renewable energy provided by NV Energy for the prior calendar year. The RECs transferred shall be of NV Energy’s choice from RECs generated by the NVE Pool during such calendar year. <b>NV Energy shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all Western Renewable Energy Generating Information System certificates associated with all RECs corresponding to all MWh of energy NV Energy delivers to Liberty under this Agreement are properly issued to Liberty.</b></p>

**(End of Appendix A)**