

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Liberty Utilities (CalPeco Electric) LLC (U933E) for the Issuance of a Certificate of Public Convenience and Necessity to Acquire, Own, and Operate the Luning and Minden Solar Projects, Authorize Ratemaking Associated with the Solar Projects' Capital Investment and Operating Expenses, and Issuance of Expedited Decision Granting Such Relief.

Application 15-04-016
(Filed April 17, 2015)

**DECISION APPROVING SETTLEMENT AGREEMENT
SUBJECT TO CONDITIONS**

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**DECISION APPROVING SETTLEMENT AGREEMENT
SUBJECT TO CONDITIONS****Summary**

This decision approves an all party settlement agreement (Agreement) entered into by Liberty Utilities (CalPeco Electric) LLC (Liberty Utilities) and the Office of Ratepayer Advocates (ORA) (collectively, "Parties"), because, as conditioned, it is consistent with the law, in the public interest, and reasonable in light of the whole record.

Subject to the terms of the Agreement¹ as conditioned herein, the Commission authorizes Liberty Utilities to enter into a project purchase and sale agreement to acquire, operate, and maintain the Luning solar project, after its development and construction by a third party. Combined, the purchase and sale agreement and the settlement agreement include terms and conditions to ensure reasonable cost for Liberty Utilities' customers. The developer of the 50 megawatt (MW) Luning solar project seeks to achieve commercial operation by December 31, 2016 in order to qualify for a 30 percent federal investment tax credit in 2016.

An experienced developer will build the Luning project in Nevada, where it has received all necessary environmental and other approvals required to construct the project. The Commission approves Liberty Utilities' purchase of the completed and operational facility through a tax equity structure whereby it initially obtains a majority co-ownership interest in a development company holding the asset, as well as both the option and incentive to acquire the residual

¹ The (public version) Settlement Agreement is attached hereto as Attachment A.

interest from its tax equity partner (e.g., a financial institution) after approximately five years, thus obtaining 100% direct ownership of the solar facility. Liberty Utilities is authorized to enter into the necessary agreements to implement the tax equity purchase arrangement.

During the five-year interim tax equity period, Liberty Utilities is authorized to enter into a power purchase agreement to purchase the renewable power generated at Luning and to recover its Operating Expenses from the revenue of the purchased power. The Commission authorizes Liberty Utilities to recover its capital costs to acquire the Luning ownership interest, its Operating Expenses, and TEP-related expenses according to traditional cost-of-service ratemaking mechanisms as described in the Agreement.

The Agreement resolves all issues in Liberty Utilities' application and meets the criteria for approval of an all-party agreement, subject to three conditions:

- The Parties agree to allow up to five percent of the maximum reasonable cost holdback to be placed into rate base as of January 1, 2018 through its October 2017 PTAM Filing;
- The Parties agree to diligently adhere to the cost caps and other ratepayer protections set forth in Article 4 of the Agreement; and
- Liberty Utilities shall file Tier 2 Advice Letters with the Commission's Energy Division to allow review of the final, executed supporting agreements necessary to implement the proposed acquisition and financing structure, and to provide a one year status report on the Luning operations and expenses.

The estimated costs to ratepayers is the total of: (i) Liberty Utilities' capital expense of approximately 66% of the total purchase price; (ii) annual Operating

Expenses of approximately \$1.5 million; and (iii) five interim annual distributions to the TEP and a one-time buy-out payment, estimated in the aggregate to total less than \$10 million.

The approvals and authorizations contained herein are fact specific and are not to be construed by any party or interested person as a precedent or statement of policy of any kind in any current or future proceeding.

1. Background and Procedural History

Liberty Utilities (CalPeco Electric) LLC (Liberty Utilities) provides electricity to approximately 49,000 customers in portions of seven counties around the Lake Tahoe area. 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 Power Company d/b/a NV Energy (NV Energy).² Liberty Utilities is part of the NV Energy Balancing Authority Area, and not a part of the California Independent System Operator Balancing Authority Area. (CAISO)³

Liberty Utilities currently receives all of its energy pursuant to the terms of a requirements contract with NV Energy which is set to expire in December 2015. On April 17, 2015, Liberty Utilities filed an application for authorization to take steps and execute agreements to acquire, own, and operate two solar energy projects, and to receive Commission approval for ratemaking procedures for

² The Commission approved the Existing PPA in Decision 10-10-017 as an integral part of the transfer of Sierra Pacific’s California service territory to Liberty Utilities.

³ Stipulated Facts in Support of the Settlement Agreement (Stipulated Facts) at 4 (¶1).

Liberty Utilities to recover the related costs.⁴ Included in the application was Liberty Utilities' inquiry as to whether a Certificate of Public Convenience and Necessity (CPCN) would be required. In addition, Liberty Utilities provided evidence to support its view that additional renewable energy resources, separate from its restrictive requirements contract, could lead to offering its customers lower cost renewable energy. To achieve that end, Liberty Utilities conducted a "competitive solicitation process to identify solar project sites in Nevada and developers that could timely and reliably deliver the most competitively priced renewable energy to its customers."⁵ The process resulted in two proposed projects: Luning Project 40 Megawatts (MW) and Minden Project (20 MW).

Liberty Utilities and NV Energy made a new agreement to become effective on January 1, 2016 (2016 NV Energy Services Agreement) which (i) maintains NV Energy's obligation to continue to serve the full requirements of Liberty Utilities' electric loads, but (ii) permits Liberty Utilities to obtain solar energy from the Solar Projects at a lower price than NV Energy charges for Renewable Portfolio Standard (RPS) qualified renewable energy under the agreement.⁶ The new agreement was conditionally approved by the Commission on December 17, 2015.

⁴ Application (A.) 15-04-016; Sierra serves California customers in Nevada, Placer, Sierra, Plumas, Mono, Alpine, and El Dorado Counties; on May 7, 2015, the proceeding was categorized as ratesetting.

⁵ Stipulated Facts at 5 (¶2); Exhibit (Exh.) LU-10, chapter 4 (Testimony of Travis Johnson, P.E.) at 4-2 to 4-8, (e.g., evaluation factors emphasized price and viability, ten developers submitted 24 timely and qualified bids.)

⁶ In A.15-04-019, Liberty Utilities sought approval of the updated 2016 Energy Services agreement with NV Energy; *See*, D.15-12-021 (December 17, 2015) (Granting Conditional

Footnote continued on next page

According to the application, the “critical economic driver” of the projects is a thirty percent (30%) federal Investment Tax Credit (ITC) on the capital costs of qualifying solar projects. To maximize tax benefits and reduce the new generation costs to its customers, Liberty Utilities proposed a tax equity financing structure whereby a financing partner agrees to make a large capital acquisition investment through a project development company (co-owned by Liberty Utilities) in return for immediate tax benefits and other compensation. A few years later, Liberty Utilities stated it would acquire 100% direct ownership of the Solar Projects.

Liberty Utilities asked the Commission to: (i) approve initial joint ownership of each Solar Project with a Tax Equity Partner (TEP); (ii) authorize Liberty Utilities to enter power purchase agreements with the Solar Project Companies (PPAs); and (iii) authorize Liberty Utilities to buy out the ownership interest of the TEP in each of the Solar Projects in accordance with buy-out terms and the buy-out price to be set forth in the Tax Equity Partnership Agreements.⁷ Liberty Utilities also asked the Commission to set a “reasonable and prudent” maximum cost for the construction and initial operations, to authorize rate recovery for those costs and identified operating expenses, through traditional ratemaking means.⁸

Approval of an Energy Services and Power Purchase Agreement between Liberty Utilities and NV Energy.

⁷ A. 15-04-016 at 14-15. (Liberty Utilities states that the use of a Tax Equity Partner and Project Purchase Agreements decrease the customer’s responsibility for capital investment, protect ratepayers from various construction-related risks, and allow the benefits of the ITC to be returned to ratepayers more quickly.)

⁸ A.15-04-016 at 4, 24-25; Stipulated Facts in Support of the Settlement (Stipulated Facts) at 1 (¶2).

The Office of Ratepayer Advocates (ORA) filed a protest of the application in which it raised several issues, including whether a CPCN was required, and stated it expected to examine the process Liberty Utilities used to identify the proposed projects, the reasonableness of the costs and funding structure, and proposed and alternate cost recovery provisions.⁹ There is no other party of record in the proceeding.¹⁰

To obtain the necessary benefits of the ITC, Liberty Utilities stated it must obtain Commission approval no later than January 2016 in order to ensure the solar energy projects are placed in service no later than December 31, 2016.¹¹

On June 26, 2015, Administrative Law Judge (ALJ) Melanie Darling conducted a prehearing conference (PHC) attended by Liberty Utilities and ORA. On July 30, 2015, Liberty Utilities and Office of Ratepayer Advocates, contacted the ALJ seeking procedural information about how to follow-up on an “agreement in principle” they had reached. Pursuant to the agreement of the parties, assigned Commissioner Randolph and the ALJ temporarily deferred preparation of the Scoping Memo in order to provide the parties sufficient time

⁹ Protest by ORA at 3-4 (May 26, 2015).

¹⁰ On June 11, Mary and Steve Walker sent a document to the Commission which appeared to protest the application as to the Minden Project. However, the document was returned unfiled because it did not conform to the Commission’s rules for e-filing documents in a proceeding. The Walkers did not respond further, no protest was filed by them, and they did not further seek to become parties to the proceeding.

¹¹ A. 15-04-016 at 2, 12 (Under the law at the time of the application, the 30% ITC was available for solar projects placed into service by December 31, 2016, after that the ITC would be reduced to ten percent. However, the ITC was extended by the U.S. Congress on December 18, 2015. Nonetheless, the development company has secured its approvals for construction to begin in February 2016.)

to comply with Rule 12.1 and to prepare the motion for approval and submit supporting evidence for the record.

According to the Parties, on August 14, 2015, in accordance with Rule 12.1(b), Liberty Utilities, with the concurrence of ORA, noticed, convened and invited parties identified on the service list in this proceeding to participate in a telephone conference for the purpose of discussing settlement to be held on August 21, 2015.¹² A Draft document with terms “substantially identical” to those of the present Settlement Agreement (Agreement) was served on the service list on August 21, 2015 for discussion during the conference call. The conference call was held on August 21, 2015 and no person or party other than ORA and Liberty Utilities participated in the settlement conference call.¹³

On August 27, 2015, Liberty Utilities and ORA (Parties) filed and served the following:

- All-Party Motion For Commission Approval of Proposed Settlement Agreement
- All-Party Motion to Admit Certain Materials Into the Evidentiary Record
- Stipulated Facts, the Settlement Agreement, Amended and Restated Purchase and Sale Agreement related to the Luning Project (filed under seal), First Amended Service Agreement between Sierra Pacific Power Company (dba NV Energy) and Liberty Utilities, (Draft) Operations and Maintenance Agreement (filed under seal), (Draft) Power Purchase Agreement (PPA) (filed under seal), and three exhibits of responses by Liberty Utilities to data requests by ORA (filed with redactions in public version); and

¹² Stipulated Facts at 3-4 (¶6)..

¹³ *Id.* at 4 (¶7).

- Eight chapters of prepared testimony by Liberty Utilities; the Public Version was contemporaneously served on all parties with the Application.¹⁴
- All-Party Motion to File Under Seal the (Confidential Versions of) All-Party Motion For Commission Approval of Proposed Settlement Agreement, and Exhibits 1-3, 5-9 to the All-Party Motion to Admit Certain Materials Into the Evidentiary Record
- All-Party Motion to Shorten Time For the Submission of Comments on the Settlement Agreement
- All-Party Motion to Shorten Time To Respond to the All-Party Motion to Shorten Time For the Submission of Comments on the Settlement Agreement.

No responses, replies or comments to any of the five motions identified above have been submitted for filing by any party or interested person seeking party status.

1.1. Supplemental Information

Following two noticed telephonic status conferences with the Parties (on December 3 and 11, 2015) the Parties agreed to submit supplemental information in support of certain representations in the Agreement, particularly support for the factors used for estimated costs and savings. On December 7, 2015, the Parties submitted additional clarifying information and illustrative exhibits to support the proposed settlement.

On December 14, 2015, Liberty Utilities, on behalf of the Parties, filed a motion to admit Declaration of Gregory B. Sorenson to confirm, inter alia, that the project developer (Invenergy), through the development company, had

¹⁴ On April 17, 2015, Liberty Utilities filed a Motion for Leave to File a Confidential Version the Application and to Seal the Record as to the confidential portions of the testimony.

acquired all of the environmental and other applicable permits and approvals to construct the Luning project. The filing confirmed that pursuant to the National Environmental Protection Act (“NEPA”), the U.S. Bureau of Land Management (BLM) conducted the environmental analysis of the proposed Luning Project necessary to support a Right of Way (“ROW”) grant, including preparation of an Environmental Assessment (EA) which is available on the BLM website.¹⁵ On July 13, 2015, BLM approved a ROW grant for the Project. On November 30, 2015, BLM approved a Plan of Development (“POD”) which specifies how the Project should be built, operated, and maintained. On December 2, 2015, BLM issued a Notice to Proceed (“NTP”) to the Project developer, which authorizes the developer to begin construction of the Project in accordance with the POD. A copy of the NTP and the POD were attached the declaration.¹⁶

1.2. Submission

No party has submitted any responses, replies or comments about the supplemental submissions, or the minor modification to the rate recovery of invested capital. The proceeding is deemed submitted on December 14, 2015.

2. The Settlement Agreement

The proposed terms of the Agreement¹⁷ are substantially similar to the original application, but include additional customer protections sought by ORA. The Agreement clarifies that the developer will transfer its equity ownership

¹⁵

http://www.blm.gov/style/medialib/blm/nv/energy/luning_solar.Par.9563.File.dat/Final_EA_07_2009.pdf.

¹⁶ Motion by Liberty Utilities to Move Declaration of Gregory S.. Sorenson Into Record (December 14, 2015).

¹⁷ (Public Version) of the Settlement Agreement is attached hereto as Attachment A.

interests in the Luning development company to Liberty Utilities after the project is completed and the acquisition price is delivered to the developer. After the tax equity partner (TEP) makes its capital contribution to the acquisition price, Liberty Utilities will transfer a portion of the equity ownership interests to the TEP. Liberty Utilities will take possession of the Luning facility and maintain and operate it during the tax equity period.

The Parties state the terms were developed through the provision of information by Liberty Utilities and the ongoing communications between the Parties.¹⁸ The Parties represent that they engaged in numerous conference calls, and face-to-face meetings to discuss the approvals requested by Liberty Utilities and the issues raised by ORA in its protest. Three sets of ORA data requests and responses from Liberty Utilities are admitted into the record in this decision.¹⁹ ORA states it entered into the settlement to resolve this matter without having an evidentiary hearing.²⁰

One key difference from the original application is the exclusion of the Minden Project. The developers of the 20 MW Minden Project have not been able to secure the necessary permits to ensure that the project would be placed in service by December 31, 2016.²¹ Therefore, Liberty Utilities has dropped its requests related to that project, but revised its agreement with NV Energy and

¹⁸ All-Party Motion For Commission Approval of Proposed Settlement Agreement at 4.

¹⁹ Stipulated Facts at 3 (¶5).

²⁰ Exh, LU-2 at 4.

²¹ Stipulated Facts at 5-6 (¶4).

the developer of the Luning Project to increase the capacity from the originally planned 40 MW to 50 MW.²²

However, Liberty Utilities' basic approach to funding the costs of the acquisition of the Luning Project in conjunction with a TEP, and its proposals for obtaining 100% ownership of the Project in five years remain similar to the application. Additionally, the proposals for ratemaking, including eventual recovery of capital investment through rate base and operating expenses through general rates, is the same. These aspects are discussed in more detail below.

2.1 Tax Equity Benefits and Structure

Although the Investment Tax Credit (ITC) is available to the owner of a qualified solar project, a TEP is necessary due to IRS regulations which prohibit a utility owner from promptly flowing the full ITC benefits to its customers.²³ To retain the ITC, a utility would have to normalize the tax credit over the 30-year expected life span of the solar facility, and the significant economic value of utilizing the tax benefits in the near-term would be lost.²⁴

Liberty Utilities states that its corporate affiliates have substantial experience with tax equity arrangements to finance renewable energy projects.²⁵ The utility proposes a tax equity funding mechanism which will shift a

²² *Ibid.*; A description of the Luning Project site and technology is given in Exh. LU-10, chapter 2 (Testimony of Travis Johnson, P.E.) at 2-1 to 2-2, 2-6 to 2-7, 2-11 to 2-12.

²³ A.15-04-016 at 13, citing 26 U.S.C. §168 (depreciation only applies to public utility property if the property is depreciated using a normalization method of accounting); LU-4C.

²⁴ Exh. LU-10, chapter 6 at 6-3 to 6-4.

²⁵ Exh. LU-10, chapter 6 (Testimony of Todd Mooney) at 6-7; Liberty Utilities' parent company, recently used tax equity financing to construct a 20 MW solar photovoltaic facility in Kern County, California (the Southern Kern Solar Project.)

significant portion of the capital costs, and risks of development and construction, for the Luning Project to the TEP and the developer, respectively. The proposed structure is intended to reduce Liberty Utilities' capital investment to construct the Luning Project by an amount that reflects the ability of a TEP to utilize the ITC in the near-term.²⁶ Such tax benefits mean a TEP's capital contribution is "typically in the range of 30% to 40% of total project costs."²⁷

The developer is obligated to build the project to meet technical, cost, schedule and performance standards before Liberty Utilities completes its capital investment and takes possession.²⁸ The proposed TEP structure creates a commercial relationship in which (i) the project developer creates a Solar Project Development Company (SPDC) which owns and develops the Luning Project; (ii) once the facility is ready for operation, and the developer receives the purchase price, it will transfers its equity ownership interests in the Solar Project Development Company (SPDC) to Liberty Utilities which in turn transfers an equity share to the TEP; and (iii) the SPDC sells its generation to Liberty Utilities through a Power Purchase Agreement (PPA).²⁹ During the tax equity period (first five years), the PPA revenues will flow to the SPDC which, in turn, will pay

²⁶ *Id.* at 6-2; at 6-7 (potential TEPs include large national and international financial institutions with which Liberty Utilities' parent company has existing relationships.)

²⁷ *Id.* at 6-4.

²⁸ Stipulated Facts at 7 (¶7).

²⁹ This co-ownership of the SPDC may result in an "affiliate" relationship and application of the Commission's Affiliate Transaction Rules. The TEP, a financial institution, will not be an affiliate.

all Operating Expenses,³⁰ and make distributions to the TEP and to Liberty Utilities.

After most of the tax benefits have been exhausted, Liberty Utilities will make a one-time payment to the TEP to acquire the TEP's interests in the development company, dissolve the company, and assume direct 100% ownership of the Luning facility. A graphic illustration of the financing structure is attached hereto as Attachment B.

The SPDC will qualify for 99 percent of the accelerated benefits of the ITC and a to-be-determined portion of accelerated depreciation benefits.³¹ The TEP would receive an annual distribution of these benefits during the tax equity period. After approximately five years, Liberty Utilities can purchase, subject to specified project performance conditions, the TEP's residual ownership interests in the SPDC through a Buy-Out Payment, at or near fair market value.³² At that point, Liberty Utilities would convert its 100% ownership in the solar project company to 100% ownership of the Luning Solar Project; the PPAs would be terminated and the solar project company would be dissolved. Liberty Utilities then would own all the energy generated by the Luning Project.³³

These transactions are supported by several agreements briefly described below.

2.2. Supporting Agreements

A. 2016 NV Energy Services Agreement

³⁰ O&M, Administrative and General (A&G) and Property Taxes.

³¹ Exh. LU-10, chapter 6 (Testimony of Todd Mooney) at 6-5.

³² *Id.* at 6-6 to 6-7.

³³ *Id.* at 6-7.

The 2016 NV Energy Services Agreement provides that NV Energy will continue to service the full requirements of Liberty Utilities' electric loads, but also allow Liberty Utilities to replace some NV Energy supply with RPS-eligible solar energy generated by solar generation facilities owned by Liberty Utilities.³⁴ NV Energy would be obligated to deliver any energy Liberty Utilities obtains from its solar project into the California service territory at FERC-regulated cost-based rates.³⁵ As noted above, the 2016 NV Energy Services agreement has been conditionally approved by the Commission.

B. The Amended and Restated Purchase and Sale Agreement

The Luning Project is to be developed and constructed by Invenergy Solar Development LLC (Invenergy). Invenergy is an experienced, independently-owned company that develops, owns, and operates generation and energy storage facilities across North America and Europe.³⁶ The Amended and Restated Purchase and Sale Agreement³⁷ (PSA) between Invenergy and Liberty Utilities sets forth, inter alia, the developer's obligations, including technical specifications, to develop, acquire equipment for, construct, commission,

³⁴ Exh. LU-10, chapter 1 (Testimony of Michael R. Smart, P.E.) at 1-3; All Party Motion to Admit Certain Materials Into Evidentiary Record, Exhibit 4.

³⁵ *Ibid.*

³⁶ Exh. LU-10, chapter 2 at 2-4. Invenergy has developed, owns, and currently operates six utility-scale solar projects, ranging from 1MW to 20 MW.

³⁷ All Party Motion To Admit Certain Materials Into Evidentiary Record, Confidential Version Exhibit 3; the differences between the PSA submitted with the Application and the preliminarily executed one submitted with the Settlement Agreement are nominal. However, the latter also includes additional schedules, the Contractor's Scope of Work, and other building and testing specifications. Liberty Utilities was permitted to file this document under seal pursuant to this decision); *see*, Motion to File Under Seal various documents at 2, Matrix Attachment to Wittman Declaration at 4.

successfully test, timely place into service, and achieve commercial operation of the Luning facility in time and substance to qualify for the ITC.³⁸

Invenergy agrees to create the Solar Project Development Company (SPDC) through which it will own and develop the Luning project. Invenergy will sell its ownership interests in the SPDC to Liberty Utilities which, in turn, will sell an ownership interest to the TEP in return for partial funding to acquire the project.³⁹ The PSA further provides that upon completion of certain milestones, (e.g., timely commercial operation), including several conditions precedent, Liberty will pay milestone project costs to Invenergy.⁴⁰ A small percentage of payment will not occur until one-year performance tests are completed.⁴¹ In the event the developer fails to perform before or after the utility acquires the project, the PSA offers protective cost reductions to Liberty Utilities and its customers.⁴²

The Parties agree that the Commission should authorize Liberty Utilities to enter into the PSA.

C. Luning Power Purchase Agreement

During the tax equity period, Liberty Utilities will have all the operating and safety responsibility for the Luning facility pursuant to an agreement yet to

³⁸ LU-5 (Testimony of Jeff Norman) at 5-2 to 5-3; The preliminarily executed PSA is Confidential Exh. LU-10, chapter 3.

³⁹ *Id.* at 5-3.

⁴⁰ *Id.* at 5-5 (The conditions include confirmation by an independent engineer that the facility is ready to operate and reasonably likely to exceed estimated capacity.)

⁴¹ *Id.* at 5-4.

⁴² *Id.* at 5-6 to 5-8.

be executed with the developer.⁴³ The financing structure proposed by Liberty Utilities anticipates that Liberty Utilities will enter into a Power Purchase Agreement (PPA)⁴⁴ with SPDC to purchase 100 percent of the solar power generated during the tax equity period and thereafter, but with permission to terminate as early as five years after commencement.⁴⁵

In addition to other transaction-related terms, the PPA will establish the purchase price for the solar energy based on the costs derived from the competitive, arms-length RFP solicitation process from which the Luning project was selected. Liberty Utilities states the estimated purchase price will be several dollars less per MWh than the specified cost of RPS-qualified renewable energy supplied through the NV Energy Services Agreement.

The Parties agree that the Commission should grant Liberty Utilities authority to enter into the PPA.

D. Tax Equity Partner Agreements

If the Commission approves the project, Liberty Utilities will execute various commercial agreements with a TEP in connection with the financing and acquisition of the Luning project.⁴⁶ The agreements with the TEP will set forth

⁴³ LU-10, chapter 7 (Testimony of Michael D. Long) at 7-4; All Party Motion to Admit Certain Materials Into Evidentiary Record, Confidential Version, Exhibit 5. Pursuant to D. 06-06-066, Liberty Utilities was permitted to file a form of this document under seal in this decision; *see*, Motion to File Under Seal various documents, Matrix Attachment to Wittman Declaration at 4.

⁴⁴ All Party Motion to Admit Certain Materials Into Evidentiary Record, Confidential Version, Exhibit 6. Pursuant to D. 06-06-066, Liberty Utilities was permitted to file a form of this document under seal in this decision; *see*, Motion to File Under Seal various documents, Matrix Attachment to Wittman Declaration at 5.

⁴⁵ LU-2 (Settlement Agreement) at 8; LU-10, chapter 6 at 6-6.

⁴⁶ LU-10, chapter 5 at 5-3.

the terms of: (i) the joint acquisition by the utility and TEP of the ownership interests of the SPDC; (ii) the TEP's capital contributions; (iii) the TEP's utilization of the ITC and benefits of accelerated depreciation; (iv) SPDC's annual distributions to the TEP and Liberty Utilities; and (v) the timing and approximate cost of the "Buy-Out Payment" for Liberty Utilities to purchase the residual ownership interest of the TEP after approximately five years (after the tax equity period).⁴⁷

The Parties agree that the Commission should approve Liberty Utilities' joint ownership of the Luning project with a TEP, and authorize Liberty Utilities to buy out the TEP's ownership interest in accordance with the buy-out terms and buy-out price to be set forth in the TEP agreements. These agreements will not be executed unless and until the Commission approves the settlement authorizing the agreements and the steps necessary to launch the Luning solar project.

2.3. Protections for Customers of Liberty Utilities

The Agreement includes several provisions to address ORA's concerns about minimizing project development and construction risks, as well as operating costs, to Liberty Utilities' customers.⁴⁸ In particular, the Parties identify the following limitations set forth in the Agreement:

- § 4.1 - limits the amount of capital for which Liberty Utilities may seek rate recovery for its costs to own and operate the 50 MW Luning Project, to a Maximum Reasonable Cost Amount equivalent to approximately 66% of the total cost;

⁴⁷ *Id.*, chapter 6 at 6-5 to 6-7, 6-9.

⁴⁸ Motion to Adopt Proposed Settlement Agreement at 10.

- § 4.1 – ensures that Liberty Utilities flows to its customers the full value of any reductions in the Purchase Price required under the terms of the Luning PSA resulting from any delay in or inability by the developer to achieve commercial operation by December 31, 2016, to otherwise qualify for the 30 percent ITC, or to perform at adequate levels;
- § 4.3 - limits the amount of Luning Project Operating Expenses for which Liberty Utilities has the right to seek rate recovery during the first five years of operation (i.e., 2017 through 2021);⁴⁹
- § 4.4 - imposes a two percent cap on the TEP's Capital Contribution as the maximum annual amount Liberty Utilities may seek authority to recover in rates associated with its payment of the annual TEP Distribution;
- § 4.5 - to the extent proven necessary, the Parties agree to explore and propose possible alternative ratemaking mechanisms to best protect Liberty Utilities' customers from the Luning Project triggering steep escalations in rates in the first years of operation; and
- § 4.6 – if Liberty Utilities seeks any major change or modification to the Luning Project, it shall notify ORA of the major change or modification prior to making any filing with the Commission seeking approval of such major change.

2.4. Proposed Rate and Cost Recovery Mechanisms

With one exception, the Parties agree the Commission should authorize Liberty Utilities to place its costs to acquire, own, operate and maintain the Luning project into rates as of January 1, 2017. To the extent the PSA provides for Liberty Utilities to withhold its last payment of 5% of the total cost until

⁴⁹ LU-11 at 2.

performance tests are completed one year after commercial operation, the Parties have agreed that Liberty Utilities will not place the final 5% capital investment into rate base until January 1, 2018.⁵⁰

Liberty Utilities requests that it be allowed to recover through general rates and rate base accounting its costs the same way during and after the tax equity period to apply consistent ratemaking treatment over the life of the project.⁵¹ Although the tax equity financing structure initially provides Liberty Utilities with an indirect ownership share of the Luning facility through the SPDC, the Parties asks the Commission to treat the Luning facility as utility-owned generation (UOG) for ratemaking purposes as of the first day of commercial operation.

The requested treatment is based on the grounds that, from an operational perspective, Liberty Utilities will have possession of the Luning facility and function as if it is the owner-operator, including having all of the operating and safety responsibilities of the 100% owner of the project as of January 1, 2017. Additionally, Liberty Utilities will purchase and have rights to all of the bundled energy generated by the Luning project, and be responsible for payment of taxes and lease payments owed by the SPDC. Liberty Utilities contends the arrangement is “largely indistinguishable” from UOG.⁵²

⁵⁰ Declaration of Gregory S. Sorenson at 3 (¶7) (the Parties agreed to revise the Agreement to address the ratemaking issues raised by the residual 5% Project payment. The Parties would agree to revise the Agreement to authorize up to five percent of the MRC Amount into rate base as of January 1, 2018 through its October 2017 PTAM Filing.)

⁵¹ *Ibid.*

⁵² LU-8 (Response to ORA Data Request-02) at 3.

Therefore, the Parties agree that traditional cost-of-service ratemaking principles should apply to both the capital investment and various other costs Liberty Utilities seeks to recover.

2.4.1. Maximum Reasonable Cost

Pursuant to §399.14 and/or §1005.5, Liberty Utilities asks the Commission to establish the aggregate Maximum Reasonable Cost (MRC) for the utility to acquire and own the 50 MW Luning solar project.⁵³ The proposed MRC is proprietary and filed under seal, but represents Liberty Utilities' approximately two-thirds capital contribution of the estimated total cost of the 50 MW project. The total cost is derived from Invenergy's winning bid in the competitive solicitation process where price and schedule were important factors.

The Parties agree the Commission should approve the MRC and authorize Liberty Utilities to place 95% of its actual capital investment, up to the MRC Amount, into rate base as of January 1, 2017, through its October 2016 Post-Test Year Adjustment Mechanism (PTAM) Filing.⁵⁴ They also agree the Commission should authorize placing the remaining 5% scheduled for payment in 2017, into rate base on January 1, 2018. If Luning does not achieve commercial operation by January 1, 2017, Liberty Utilities shall, in consultation with ORA, submit to the Commission proposed adjustments to its 2017 rate recovery to account for a later operational date.

⁵³ LU-10, chapter 7 (Testimony of Michael D. Long) at 7-2.

⁵⁴ Settlement Agreement, Attachment A, at 7-8.

2.4.2. Luning Project Operating Expenses

As of January 1, 2017, Liberty Utilities will operate and maintain the Luning solar project and incur related expenses. The Parties identified and estimated various components of Operating Expenses related to the Luning Project during the first five years (before the Buy-Out of the TEP).⁵⁵ A table includes estimates for all categories of Operating Expenses ranging from approximately \$1.56 million in 2017 to \$1.81 million in 2021, amounts nominally less than the cost caps set forth in the Agreement.⁵⁶

The Parties agree the Commission should approve rate recovery by Liberty Utilities of the Luning Project Operating Expenses as follows:

- For 2017 and 2018 in an amount up to the applicable cost recovery cap set forth in the Agreement using the October 2016 PTAM;
- For 2019-2021 in an amount up to the applicable cost recovery cap set forth in the Agreement using the 2019 General Rate Case (GRC) for Liberty Utilities; and
- For 2022 and each succeeding year through Liberty utilities' future GRC proceedings.

2.4.3. TEP Distributions and Buy-Out Payment

During the tax equity period, the TEP will receive benefits in return for its capital contribution to the cost to purchase the Luning project. The benefits are: (i) 99% of the ITC; (ii) some amount of accelerated depreciation; (iii) annual TEP distributions from SPDC; and (iv) a one-time Buy-Out Payment. According to Liberty Utilities, these represent actual costs of acquisition of Luning, and are

⁵⁵ LU-11 at 2.

⁵⁶ *Ibid.*

included in the calculation of the cost-effectiveness of the project.⁵⁷ The Parties agree these costs do not represent capital investment and are not appropriate to add to rate base, subject to a rate of return.

Instead, the Parties agree the Commission should authorize Liberty Utilities to record these expenses in its Energy Cost Adjustment Clause (ECAC) account and to recover such expenses in accordance with its ECAC tariff as the most appropriate ratemaking mechanism. The recovery is then limited to actual costs.

3 Evidentiary Support for Settlement Agreement

The Parties reached settlement before evidentiary hearings were scheduled in this proceeding and, as a consequence, neither direct testimony nor other supporting documents have yet been made a part of the record.

At the time it filed its application, Liberty Utilities served public and confidential versions of its prepared, and redacted, direct testimony, *inter alia*, about its operations and resources, an overview of the Luning and Minden solar projects, descriptions of the RFP process, project evaluation and selection, descriptions of the necessity and viability of the projects, customer benefits from a tax equity financing structure, and proposed ratemaking for all costs estimated to be incurred by Liberty Utilities to acquire and operate the Luning Project.

In connection with the All-Party Motion for Commission Approval of Proposed Settlement Agreement, the Parties moved to admit certain public and confidential versions of materials into the evidentiary record, including the previously served testimony, additional documents including stipulated facts,

⁵⁷ A.15-04-016 at 27

responses to ORA data requests, and supporting draft agreements. The Parties also moved to admit into the record the supplemental information submitted on December 7 and December 14, 2015.⁵⁸

The All-Party motion should be granted as to the public versions of the materials.⁵⁹ The December 7, 2015 and December 14, 2015 motions should also be granted to admit the additional information into the record.

3.1. Confidentiality Issues

At the time Liberty Utilities filed its Application, it also filed its first motion to file Confidential Versions of the Application, including the attached draft PSAs for both proposed solar projects, and to seal the evidentiary record of Confidential Information in the testimony of four witnesses.⁶⁰

The Settling Parties made a second motion to file under seal the Confidential Versions of the All-Party Motion for Approval of the Proposed Settlement and Exhibits 1-3, and 5-9 to the All-Party Motion to Admit Certain Materials Into the Evidentiary Record. In both motions, parties rely on § 454.5(g) and § 583, General Order (GO) 66-C, Decision (D.) 06-06-066, D.08-04-023 and Rules 11.4 and 11.5.

D.06-06-066, as modified, establishes two matrices, one for investor-owned utilities (IOUs), the IOU Matrix, and one for energy service providers (ESPs), the ESP Matrix. Both matrices identify categories and sub categories of data entitled

⁵⁸ The testimony and documents are described more fully in Section 1 above.

⁵⁹ Exh. LU-10, chapter 3.

⁶⁰ Motion of Liberty Utilities LLC For Leave to File the Confidential Versions of the Application and Exhibits B and C to the Application Under Seal, and to Seal the Evidentiary Record Containing Confidential Information in the Testimony of Travis Johnson, Jeff Norman, Todd Mooney, and Michael Long (April 17, 2015).

to confidentiality and specify the nondisclosure terms applicable. The confidentiality afforded under the matrices is derived from statutory protections for non-public market sensitive and trade secret information, including authority set forth in § 454.5(g) and § 583, Government Code § 6254(k), and statutes referenced in the Commission's GO 66-C. The party claiming protection under either matrix must show:

- 1) That the material it is submitting constitutes a particular type of data listed in the Matrix;
- 2) Which category or categories in the matrix the data correspond to;
- 3) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data;
- 4) That the information is not already public; and
- 5) That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

In compliance with these requirements as applicable to the IOU Matrix, Liberty Utilities attached to the first Motion to File Under Seal a declaration and a matrix which satisfactorily addressed each requirement for confidential treatment of the Confidential Versions of the Application and testimony identified under the IOU matrix. The Settling Parties also attached to the settlement-related Motion to File Under Seal, a declaration and a matrix which satisfactorily addresses each requirement for confidential treatment of the identified documents under the IOU matrix. These matrices are attached hereto as Attachment C.

The motions to file under seal and to seal the evidentiary record should be granted. Confidential treatment of the identified information is necessary to protect against inappropriate disclosure of confidential, commercially sensitive

information pertaining to Liberty Utilities electric procurement resources and strategies, and confidential and proprietary cost information related to the acquisition of the Luning renewable generation facility. The information should be placed under seal subject to the confidentiality designation for this docket “C” which pertains to confidential information available to the Commission and signatories of confidentiality agreements for this docket.

Therefore, the record consists of the public and confidential versions of the admitted documents and exhibits, and the Supplemental Information, all of which are specifically identified in the Exhibit List attached hereto as Attachment D.

4. Standard of Review

The Commission has previously acknowledged there is “a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation.”⁶¹

4.1. Timeliness

Rule 12.1(a) of the Commission’s Rules of Practice and Procedure (Rules) provides that parties may file settlements “by written motion any time after the first PHC and within 30 days after the last day of hearing...” The PHC was held on June 26, 2015, but due to the parties’ statements of imminent settlement, no hearings have been held. Thus, the motion filed after the PHC is timely.

⁶¹ D. 92-12-019, 46 CPUC 2d 538, 551 [citation omitted].

4.2. Grounds for Approval

To approve a settlement, Rule 12.1(d) provides that the Commission must find that the settlement is “reasonable in light of the whole record, consistent with the law, and in the public interest”.

In addition, when presented with an all-party settlement, the Commission initially focuses upon the following particular considerations and asks whether: (1) the settlement commands the unanimous sponsorship of all active parties to the proceeding; (2) the sponsoring parties are fairly representative of the affected interests; (3) no term of the settlement contravenes statutory provisions or prior Commission decisions; and (4) the settlement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.⁶²

5 Discussion

The Commission has a strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.⁶³ This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.⁶⁴

⁶² See *San Diego Gas & Electric Company*, D.92-12-019, (1992) 46 CPUC2d 538, 550-551, which first articulated this standard. Subsequent decisions interpret the term “active parties” to refer to those parties that have participated in an ongoing, meaningful way. No Commission decision interprets the term to include every person or entity that, after obtaining party status, declined to participate further.

⁶³ See e.g., D.05-03-022 at 9.

⁶⁴ *Id.*

The proposed Agreement addresses Liberty Utilities' application and seeks Commission approval for the utility to acquire, own and operate the Luning project. We emphasize that the approvals and authorizations contained herein are fact specific and are not to be construed by any party or interested person as a precedent or statement of policy of any kind in any current or future proceeding.

This uncontested, all-party settlement presents the Commission with a creative approach to financing the acquisition costs of a turn-key renewable generation resource located in Nevada. The Agreement affects the uniquely positioned Liberty Utilities which is bound through prior Commission decision, due to its unique circumstance, to a full requirements contract from NV Energy, Inc., which includes a fixed price for renewable energy to serve Liberty Utilities' small California customer base.

We address, separately, the first two requirements of all-party settlements and then follow with a discussion of the remaining two requirements as part of a broader assessment of the legal and policy merits of the settlement consistent with Rule 12.1(d), including factors mentioned above (risks and expense of further litigation, whether negotiations were at arms-length, etc.). We next analyze these criteria with specific reference to the Agreement.

With the addition of some required reporting to the Commission to protect the public interest (discussed below), we find that the settlement is reasonable in light of the record, consistent with law, and in the public interest. If the parties accept the reporting requirements we impose, the settlement should be approved.

5.1. All Active Parties Sponsor Settlement

The only two parties to the proceeding – Liberty Utilities and ORA – sponsor the settlement. Therefore, the proposal meets this criterion.

5.2 Sponsoring Parties Fairly Represent Affected Interests

Liberty Utilities and ORA, which negotiated and sponsored the settlement, fairly represent the affected interests. Liberty Utilities represents the utility with obligations to provide sufficient supplies of energy to best ensure reliable service and also to procure sufficient amounts of RPS-qualified energy to satisfy its RPS requirements.

ORA represents the interests of regulated utility consumers in California, including the electric customers served by Liberty Utilities. ORA negotiated several explicit protections of ratepayers' interests included in the proposed settlement.

5.3. With Reporting Requirements, Settlement is Reasonable and Consistent with Law and the Public Interest

The last two inquiries under the all-party analysis examine whether any settlement terms contravene statutory provisions or prior Commission decisions and whether the settlement contains sufficient information to permit the Commission to discharge its future regulatory obligations. As the Parties recognize, this examination must permit the Commission to conclude, affirmatively, that the requirements of Rule 12.1(d) have been met. The Parties highlight multiple factors to support their case that the settlement meets all criteria necessary for approval and we review these additional arguments below.

5.3.1 Consistent with the Law

We agree with the Parties that the terms of the Agreement are consistent with the applicable statutes, rules, and prior Commission decisions. Our review for consistency with the law addresses Article 12 of our Rules of Practice and Procedure, which addresses settlements; § 399.14, applicable to utility-owned renewable generation; and § 1001, applicable to Certificates of Public Convenience and Necessity. The Parties state the settlement process was conducted in compliance with Article 12 of our Rules which govern settlements, and there is no evidence to the contrary. The Parties established that during the negotiations, they were represented by experienced counsel, the major issues in the Application were addressed, the negotiations were conducted at arms-length, and each Party desired to avoid the expense and time required for litigation.⁶⁵ In fact, the Agreement includes concessions by Liberty Utilities in the form of ratepayer protections negotiated by ORA in case the developer fails to timely deliver for purchase a fully operational, turn-key solar facility which meets performance standards and qualifies for the ITC.

The Luning project was selected as part of a competitive process conducted by Liberty Utilities in order to identify the solar project sites and developers that could timely and reliably deliver the most competitively priced renewable energy to Liberty Utilities' customers.

The proposed financing structure is consistent with the federal tax law which provides the thirty percent (30%) ITC in 2016 for qualified solar projects, if

⁶⁵ See, Decision 10-10-035. All-Party Motion For Approval of Settlement Agreement at 4 (¶5); L:U-10 chapter 2 (Settlement Agreement) at 4 (¶1.12, ¶1.13), 7 (¶2.4).

operational by December 31, 2016, and is consistent with the federal law's limitations on the accelerated use of the tax benefits by a utility.

Article 16, commencing at § 399.11, sets forth the Renewable Portfolio Standards Program (RPS) related to promoting achievement of the state's renewable energy generation targets (e.g., 33% by 2020.)⁶⁶ In 2011, the Legislature renumbered the procurement language of § 399.14 and added new language that authorized an electric utility, under certain conditions, to apply for Commission approval to "construct, own and operate" an eligible energy resource. Although Liberty Utilities will not construct the Luning facility, for purposes of this decision we apply the criteria outlined in § 399.14 applicable to utility-owned generation from renewable resources in our evaluation of the proposed settlement which seeks Commission approval for Liberty Utilities' to acquire, operate, and own the fully constructed, fully operational Luning solar project.

Subsection (b) prohibits the Commission from approving any such application unless the following two criteria are met:

- 1) The eligible renewable energy resource utilizes a viable technology at a reasonable cost; and
- 2) The eligible renewable energy resource provides comparable or superior value to ratepayers when compared to then recent contracts for generation provided by eligible renewable energy resources.

⁶⁶ § 399.11(a).

The Parties established the Luning project satisfies these criteria.⁶⁷ First, the proposed solar technology⁶⁸ has demonstrated commercial viability, and overall project viability is supported by the fact that Invenergy is an experienced developer, constructor, and operator of solar energy generation with a track record of timely project completion.⁶⁹ Invenergy is also a party to other Commission-approved PPAs with respect to other solar projects in California.⁷⁰

Secondly, Liberty Utilities could not have conducted a competitive solicitation to separately-acquire RPS generation through one or more power purchase agreements due to the particular constraints of its relationship with NV Energy, Inc. Nonetheless, Liberty Utilities demonstrated the Luning project is likely to provide comparable or superior cost RPS-qualified energy when compared to available alternatives.

For example, the estimated cost of the Luning energy is several dollars less per MWh than the price Liberty Utilities must pay NV Energy for renewable under its existing or pending requirements contract.⁷¹ Because cost was a primary factor in the RFP, the estimated Luning energy costs are also less than the other projects bid into the RFP issued by Liberty Utilities for the Solar

⁶⁷ LU-10, chapter 4 at 4-8, 4-12 to 4-14.

⁶⁸ *Id.* at 4-12 (The developer will use “highly efficient single-axis tracker mounted solar panels and thus pose virtually no technological risk”).

⁶⁹ LU-10, chapter 4 at 4-9.

⁷⁰ *See, e.g.*, In Resolution E-4439 (November 10, 2011), the Commission approved SDG&E’s request to enter into a PPA with the 6 MW Desert Green facility in Borrego Springs, California (“Desert Green”). In 2014, Invenergy purchased the Desert Green project from the original developer and Invenergy became the counterparty to the PPA with SDG&E. Invenergy then constructed the Desert Green project and began commercial operation in December 2014.

⁷¹ This result assumes approximately \$1.2 million in annual savings in Demand Charges under the NV Energy Services Agreement.

Projects. Lastly, Liberty Utilities provided some publically available cost data for prices paid by other utilities ranging from \$68.72/MWh to \$97/MWh for bundled renewable energy delivered between 2012 and 2015.⁷² Thus, within its unique facts, Liberty Utilities demonstrated that the proposed Luning facility could generate qualified RPS-energy at a competitive cost compared to its other real life options.

The Agreement does not provide for a CPCN to issue to Liberty Utilities for its purchase of the new plant under § 1001 . While § 399.14(a) clearly contemplates that a utility seeking approval of utility-owned renewable generation would typically apply to the Commission for a CPCN, we agree not to require a CPCN in this case for several reasons. First, the plant is located out of state. Second, the plant had full environmental review and approval by another agency - in this case, the BLM - with jurisdiction over environmental review where the plant will be built. Third, Liberty will not build the plant or acquire it from the outset. Finally, as we find elsewhere in this decision, the energy Liberty will purchase is needed, cost effective and subject to an appropriate cost cap. None of these factors - standing alone - necessarily dictates the outcome we reach here, but in combination they persuade us that approval of the Agreement is consistent with law.

Therefore, the Commission finds that the proposed Agreement, including authorizing Liberty Utilities to enter into various agreements to purchase the Luning plant, utilize a tax equity financing structure to acquire the Luning plant, and purchase power for the interim period, is consistent with the law.

⁷² LU-9 at 6.

5.3.1.1. Ratemaking Treatment

Ordinarily, a question about utility rates is measured by whether the costs are “just and reasonable.” (§ 451.) The Agreement adopts Liberty Utilities’ request that it be allowed to recover through general rates and rate base accounting its costs the same way during and after the tax equity period to apply consistent ratemaking treatment over the life of the project. The proposed ratemaking reflects traditional cost-of service ratemaking principles applied to all of the costs incurred by Liberty Utilities in connection with the two-step acquisition of the Luning facility and its operations.

Although Liberty Utilities must make the capital investment to acquire its initial ownership interest, it could be argued that its co-ownership of the SPDC, which will own the Luning facility for the interim period, is indirect and incomplete — and perhaps cause to consider delayed or alternate rate treatment.

Instead, we are persuaded that Liberty’s partial ownership interest in the completed Luning project, combined with its immediate possession, operation, maintenance, and bundling of energy are sufficient to treat up to 95% of its capital investment as in-service plant qualified for addition to rate base as of January 1, 2017. This result reflects a preference for substance over form. We condition this finding on the Parties’ agreement to defer including in rate base until 2018, the residual five percent payment of capital during 2017.

The cost caps to capital investment, Operating Expenses, and the ECAC treatment for TEP-related expenses are all consistent with reasonable ratemaking mechanisms applied by the Commission to ensure that only actual costs are recovered. Liberty Utilities’ ability to offset PPA costs with Operating Expense claims is efficient and does not alter this conclusion.

Section 399.14(c) requires the Commission to cap the total recoverable investment it finds reasonable and prudent “for the construction of the facility and the initial operation of the facility.” Following the RPS program’s policy interest in ensuring a reasonable cost cap to construct and operate renewable energy resources, the Parties ask that we refer to §399.14 (c) which requires the Commission “to specify a maximum cost determined to be reasonable and prudent” for construction and operation of the facility. We agree with the Parties, even though the Luning project does not easily fit within the terms of §399.14, that we should set a maximum reasonable cost (MRC) of acquisition. Here, the MRC is similar to the cost of construction and should protect ratepayers from unexpected costs from the developer in accord with the intent of § 399.14.

Therefore, we adopt the MRC for acquisition of the Luning facility agreed to by the Parties and admitted under seal as proprietary information.⁷³ It is approximately two-thirds of the total purchase price, i.e. Liberty Utilities’ total capital investment.⁷⁴ We further adopt the proposed cost caps on the Operating Expenses recoverable by Liberty Utilities and specified as ranging from \$1.2 million to \$1.6 million for 2017 through 2021, thereafter to be determined in the utility’s GRCs.⁷⁵

The Commission finds the ratemaking treatment of the costs to Liberty Utilities, as identified and capped in the Agreement and supporting documents,

⁷³ All Party Motion For Approval of the Proposed Settlement Agreement (confidential version) at 9 (¶4.1).

⁷⁴ *Ibid.*

⁷⁵ All Party Motion to Admit Additional Materials Into the record (December 7, 2015) at 2.

to acquire and initially operate the Luning facility should result in rates which are just and reasonable, and thus the proposed ratemaking provisions of the Agreement are consistent with the law.

5.3.2. Settlement Is In the Public Interest

We agree with the Parties that the proposed settlement is in the public interest for several reasons. Primarily, the Agreement will authorize Liberty Utilities to acquire its own renewable energy and generation source at a lower cost for its customers, thus meeting a substantial portion of its need to provide customers with a cost-effective and reliable source of renewable energy.

An experienced developer will build the solar project in Nevada, then Liberty will purchase it through a tax equity structure whereby it achieves proportional ownership interests and both the option and incentive to acquire the residual interest from its TEP after approximately five years, thus obtaining 100% direct ownership.

During the five-year interim tax equity period, Liberty Utilities will be authorized to purchase the renewable power generated at Luning during high demand summer months at cost-competitive rates and to recover its Operating Expenses from the costs of the purchased power. The additional renewable resource will contribute significantly to Liberty Utilities' ability to meet California's RPS at current and future levels and to satisfy state policy for the utility to diversify its energy resources.

The Agreement's embrace of the Luning project reflects the fact that Liberty Utilities can offer the tax benefits associated with the ITC, unavailable to itself, to a tax equity partner as an inducement to invest a significant amount of capital into the Luning project. The TEP's capital investment will directly reduce the capital investment needed from Liberty Utilities, resulting in renewable

electricity for Liberty Utilities' customers at a significantly lower cost than the total cost of building the facility itself.

Therefore, use of a TEP model and the SPDC to complete transfer of ownership of the turn-key facility decreases the customer's responsibility for capital investment, protects customers from various construction-related risks, and allow the benefits of the ITC to be returned to ratepayers more quickly. As described above, Liberty Utilities does not have to raise 100% funding to acquire the energy and the facility, nor does it have to finance and pay rate of return over the service life from its customers rates. Through use of the TEP, which can utilize tax benefits in five years (unavailable by law to the utility), Liberty Utilities' customers do not have to pay the full value of TEP's capital investment in order to acquire 100% interest of the facility.

The PSA and TEP structure require the developer to bear the construction-related risks, instead of Liberty Utilities' customers because the utility will only commit the capital if the facility is built timely, according to standards, and qualifies for the ITC. Moreover, the agreements will provide for Liberty Utilities' customers to obtain the benefit if any reductions in purchase price resulting from delay or inability of the developer to timely achieve commercial operation. We also observe the proposed ratemaking treatment will provide the customers of Liberty Utilities with cost stability regarding its RPS supplies.

Lastly, the public interest is served by the customer protections included in the proposed settlement which provide reductions to the purchase price if the Luning project is not completed on time or fails to perform as required of the developer. These price reductions would flow to the customers of Liberty Utilities.

Absent Commission approval of the proposed financing, power procurement, and ratemaking proposals advanced by the Agreement, as well as the updated NV Energy Services Agreement,⁷⁶ Liberty Utilities is constrained in its ability to acquire renewable energy at lower costs for its customers. Authorization for Liberty Utilities to acquire the Luning plant, operate it, and generate lower cost energy for its customers advances Liberty Utilities' achievement of its RPS requirements and new flexibility for Liberty Utilities to more cost-effectively meet its renewable procurement targets. The Commission finds these and the other enumerated results to be in the public interest.

However, with the exception of the NV Energy Services Agreement, the project purchase and sale agreement (PSA), the PPA between Liberty Utilities and the SPDC, and the Tax Equity Partner Agreements have not been executed in final form. Our oversight responsibilities and the public interest require that we ensure that the final versions of these agreements, to be executed after this decision is adopted, conform with the representations made by the Parties in the proceeding, and specifically made in the motion to adopt the proposed settlement, and the Agreement itself.

In order to ensure that the estimated costs and benefits asserted in the settlement are realized, one condition of our approval of the settlements that Liberty Utilities submit Tier 2 Advice Letters with the Commission's Energy Division to allow review of final, executed TEP agreements, the PSA, and the PPA, as well as a one year status report on the Luning operations and expenses.

⁷⁶ A.15-04-019; (D.15-12-021 Granting Conditional Approval of an Energy Services and Power Purchase Agreement Between Liberty Utilities (CalPeco Electric) LLC and NV Energy).

Therefore, the finding that the proposed settlement is in the public interest is conditioned on Liberty Utilities filing the Tier 2 Advice Letters with the executed agreements for review and comparison to the claims and cost estimates provided in support of the proposed settlement. The executed PSA, PPA, and TEP -related agreements shall be submitted to the Commission for review within 30 days of the date this decision is issued, or within ten days of final execution if not yet finalized. The Advice Letters shall provide a showing that the material terms are consistent with the draft or form agreements, and/or descriptive testimony, in the record as provided by Liberty Utilities in support of the Application and Settlement.

5.3.3. Settlement Agreement is Reasonable in Light of the Whole Record

The settlement is reasonable in light of the whole record. The exhibits and testimony admitted herein provide sufficient support for the adoption of the settlement. The Agreement addresses all major issues raised in this proceeding, and the evidentiary record created by the parties permits the Commission to thoroughly assess the Agreement's resolution of those issues.

Liberty Utilities' financing structure, common with renewable generation, was analyzed to ensure the stated benefits to ratepayers were present, and that sufficient protections to ratepayers exist in case the project is not built timely or performs inadequately. The Commission finds the proposed structure and ratepayer protections to be reasonable.

We reviewed various supporting agreements (most in draft form pending Commission approval) necessary to: (i) facilitate the tax equity structure used by Liberty to acquire the Luning plant after it is built; (ii) to maintain and operate the plant; (iii) to purchase the newly generated solar energy from the co-owned

development company for a five-year period; and (iv) to buy out the tax equity partner after five years to obtain 100% direct ownership of the plant. The Commission finds the proposed supporting agreements, as presented, reflect the representations of the Settling Parties and are reasonable in form.⁷⁷

Lastly, we reviewed the proposed ratemaking treatment of Liberty Utilities' acquisition costs and Operating Expenses and find that approval of the settlement as proposed should result in estimated rates which will be just and reasonable pursuant to § 451.

We find that the evidentiary record contains sufficient information for us to determine the reasonableness of the Agreement and for us to discharge any future regulatory obligations with respect to this matter. Therefore, the Commission finds the proposed settlement is reasonable in light of the whole record.

5.4. Conclusion

For the foregoing reasons, the Commission finds that the proposed settlement agreement is consistent with the law, in the public interest as conditioned, and is reasonable in light of the whole record. The Commission approves the Agreement as proposed, subject to the identified conditions imposed.

We further reiterate that this Agreement has no binding precedential value and this decision is based on the unique facts presented, including the limited options available to Liberty Utilities to acquire renewable resources and the brief

⁷⁷ As described above, we condition our approval of the settlement on Liberty Utilities submitting the executed agreements for review so the Commission can ensure that the estimated costs and benefits asserted in the settlement are realized.

time period during which the utility can utilize this particular financing structure to acquire Luning's solar energy for the benefit of its customers. The approvals and authorizations herein shall not be construed by any party or interested person as a precedent or statement of policy of any kind in any current or future proceeding.

6. Assignment of Proceeding

Liana M. Randolph is the assigned Commissioner and Melanie M. Darling is the assigned Administrative Law Judge in this proceeding

6 Waiver of Comment Period

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, all parties stipulated to waive the 30-day public review and comment period required by Section 311 of the Public Utilities Code and the opportunity to file comments on the proposed decision. Accordingly, this matter was placed on the Commission's agenda directly for prompt action.

Findings of Fact

1. On April 17, 2015, Liberty Utilities filed an application for authorization to take steps and execute agreements to acquire, own, and operate two solar energy projects, and to receive Commission approval for ratemaking procedures for Liberty Utilities to recover the related costs.

2. On August 27, 2015, Liberty Utilities and ORA (Parties) filed and served an All-Party Motion for Commission Approval of Proposed Settlement Agreement which presents unique facts for review.

3. All parties have agreed to settle this proceeding.

4. All issues in this proceeding are encompassed by, and resolved in, the Settlement Agreement.

5. The parties to the Settlement Agreement are all of the active parties in this proceeding.

6. The parties are fairly reflective of the affected interests.

7. As conditioned, no term of the Settlement Agreement contravenes statutory provisions or prior Commission decisions.

8. The Settlement Agreement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

9. The Settlement Agreement authorizes Liberty Utilities to acquire its own renewable energy and generation source at a lower cost for its customers, thus meeting a substantial portion of its need to provide customers with cost-effective and reliable sources of renewable energy.

10. The Parties cannot submit the final executed supporting agreements identified in the decision for review because the agreements will not be finalized until after the Commission adopts this decision.

11. During the approximately five-year tax equity period, Liberty Utilities is authorized to purchase the renewable power generated at Luning.

12. The Settlement Agreement provides for ratemaking treatment of costs incurred by Liberty Utilities which are consistent with traditional cost-of-service ratemaking principles.

Conclusions of Law

1. The Settlement Agreement fully resolves and settles all disputed issues among the parties concerning Liberty Utilities' application in this proceeding.

2. The ratemaking treatments for all expenses related to the acquisition and operation of the Luning facility described in the Settlement Agreement should result in just and reasonable rates.

3. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest, subject to the following conditions:

- a) The Parties agree to modify the Agreement to authorize up to five percent of the maximum reasonable cost into rate base as of January 1, 2018 through its October 2017 PTAM Filing;
- b) The Parties agree to diligently adhere to the cost caps and other ratepayer protections set forth in Article 4 of the Agreement; and
- c) Liberty Utilities shall file Tier 2 Advice Letters with the Commission's Energy Division to allow review of the final, executed supporting agreements necessary to implement the proposed acquisition and financing structure, and to provide a one year status report on the Luning operations and expenses.

4. Subject to the conditions in conclusion 2, the Settlement Agreement should be approved.

5. The approvals and authorizations contained herein are specific to the unique facts present and are not to be construed by any party, interested person, the Commission or any court as a precedent or statement of policy of any kind in any current or future proceeding.

6. This decision should be effective today so that the Settlement Agreement may be implemented expeditiously.

7. A.15-04-016 should be closed.

ORDER

1. The Settlement Agreement, (public version at Attachment A to this decision) is approved as conditioned, as follows:

- a) The Parties shall revise section 3.2 of the Agreement as follows:

“Authorize Liberty Utilities to seek the authority to place its costs to acquire and own the Luning Project **(a) up to 95% of the Maximum Reasonable Costs Amount** into rate base as of January 1, 2017 through its October 2016 PTAM Filing or another mechanism which the Parties may mutually agree upon; **and (b) up to 5% of the Maximum Reasonable Costs Amount into rate base as of January 1, 2018 through its October 2017 PTAM Filing or another mechanism which the Parties may mutually agree upon** (emphasis is the amendment); provided that to the extent the Luning Project does not achieve commercial operation as of January 1, 2017, Liberty Utilities shall, in consultation with ORA, submit an additional pleading to propose adjustments in its 2017 rate recovery necessary to account for the post-January 1, 2017 commercial operation date of the Luning Project.”

- b) The Parties shall diligently adhere to the cost caps and other ratepayer protections set forth in Article 4 of the Agreement;
- c) Liberty Utilities (CalPeco Electric) LLC (Liberty Utilities) shall file Tier 2 Advice Letters with the Commission’s Energy Division, no later than thirty (30) days after the date the decision is issued, or within ten days of execution if not finalized by this date, which provide the final, executed project purchase agreement, the power purchase agreement, and all the tax equity partner-related agreements for the Commission for review and comparison to the claims and cost estimates provided in support of the Settlement Agreement;
- d) The Advice Letters shall provide a showing that the material terms of each agreement are consistent with the draft and form agreements, and/or descriptive testimony in the record as provided by Liberty Utilities in support of the Application and Settlement; and

e) Liberty Utilities shall file a Tier 1 Advice Letter no later than March 1, 2018, which provides the Commission with a description of the performance of the Luning facility, actual cost of the power purchased by Liberty Utilities, actual generation of the Luning facility, and identifies all costs incurred during 2017 which Luning has, or intends to, recover in rates.

2. As set forth in the terms of the Settlement Agreement, Liberty Utilities (CalPeco Electric) LLC may seek rate recovery of authorized capital expenses and other costs related to acquisition and initial operation of the Luning facility, including through the use of its 2017 and 2018 Post-Test Year Adjustment Mechanism filings.

3. The All-Party Motion to Admit Certain Materials into the Evidentiary Record is granted as to the public versions of the materials.

4. The All-Party Motion to File Under Seal the (Confidential Versions of) All-Party Motion For Commission Approval of Proposed Settlement Agreement, and Exhibits 1-3, 5-9 to the All-Party Motion to Admit Certain Materials Into the Evidentiary Record is granted. In addition, the confidential version of the Application may be filed under seal.

5. The December 7, 2015 and December 14, 2015 motions by Liberty Utilities (CalPeco Electric) LLC to admit additional materials into the record are granted.

6. All other pending motions are deemed denied.

7. Application 15-04-016 is closed.

This order is effective today.

Dated _____, at San Francisco, California.