



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

**FILED**

07-12-10  
04:59 PM

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

Application 09-10-028  
(Filed October 16, 2009)

Joint Application of Sierra Pacific Power  
Company (U903E) and California Pacific  
Electric Company, LLC for Authority to Enter  
Into Two Agreements.

Application 10-04-032  
(Filed April 30, 2010)

**OPENING BRIEF OF SIERRA PACIFIC POWER COMPANY (U903E) AND  
CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC**

Christopher A. Hilten  
Associate General Counsel  
Sierra Pacific Power Company  
6100 Neil Road  
Reno, NV 89511  
Tel. (775) 834-5696  
Fax. (775) 834-4811  
Email: [chilen@NVEnergy.com](mailto:chilen@NVEnergy.com)

Steven F. Greenwald  
Mark J. Fumia  
Vidhya Prabhakaran  
Davis Wright Tremaine LLP  
Suite 800  
505 Montgomery Street  
San Francisco, CA 94111-6533  
Tel. (415) 276-6500  
Fax. (415) 276-6599  
Email: [stevegreenwald@dwt.com](mailto:stevegreenwald@dwt.com)

Attorneys for California Pacific Electric  
Company, LLC

July 12, 2010

**TABLE OF CONTENTS**

	<u><b>Page</b></u>
I. INTRODUCTION .....	1
II. PROCEDURAL HISTORY/BACKGROUND .....	1
A. All Parties and Constituencies Other Than DRA Urge Approval of the Proposed Transaction .....	1
B. Overview of Response to DRA’s Opposition to the Proposed Transaction.....	2
C. Resolution of Concerns Raised by Local Interests .....	5
1. TDPUD Settlement .....	5
2. PSREC Settlement .....	6
D. Update Letters.....	6
E. Preparation of DRA Report and Evidentiary Hearings.....	7
III. STANDARD OF REVIEW .....	8
A. “No Harm to Ratepayers” is the Applicable § 854(a) Standard of Review .....	8
B. Section 854(d) Is Not Applicable .....	11
IV. JOINT APPLICANTS AND REASONS FOR THE TRANSACTION .....	12
A. Sierra Pacific Power Company .....	12
1. Sierra’s Reasons For Selling the California Utility .....	13
2. Sierra’s Sale Process Identified the Most Qualified Purchaser for the California Utility.....	15
a. Bidding Process .....	15
b. Negotiation of Purchase Agreement and Operating Agreements .....	16

c.	The Solicitation Process Enabled Sierra to Select a Highly Qualified Purchaser for the California Utility .....	16
B.	California Pacific Electric Company, LLC.....	17
C.	Algonquin Power & Utilities Corp. ....	18
D.	Emera Incorporated.....	19
E.	CalPeco’s Reasons for Pursuing the Transaction .....	21
F.	Regulatory Commitments .....	21
G.	DRA’s Challenges to Algonquin’s Qualifications and Emera’s Commitment Are Unsupported and Provide No Valid Basis for this Commission to Reject the Proposed Transaction.....	23
1.	Algonquin Has Sufficient Experience and Capability to Operate the California Utility .....	24
2.	Emera Has A Substantial History and Proven Track Record As An Investor for the Long-Term.....	27
V.	THE TRANSFER OF CONTROL IS IN THE PUBLIC INTEREST .....	29
A.	The Transition from Sierra to CalPeco Will Be Seamless.....	30
1.	DRA’s Speculation of Losses of Economies of Scale are Not Supported .....	31
B.	The Proposed Transaction Will Maintain or Improve the Quality and Reliability of Service for Customers.....	33
C.	The Proposed Transaction Will Not Increase Customer Rates or Total Revenues Collected from the Customers of the California Utility .....	36
1.	The Total Revenues to be Paid by the Customers of the California Utility Will Remain at the Same Level After Closing.....	36
2.	The Minor Adjustment to the ECAC Tariff CalPeco Requests is Warranted To Prevent Cost Shifting Among Customers .....	36

3.	CalPeco’s Costs Will Remain Comparable to the Costs Sierra Would Be Expected to Request in the 2010 GRC .....	38
a.	There Is No Potential For Rate Shock at the Next GRC for Ratepayers With CalPeco Any More Than There Would Be With Sierra .....	38
b.	The Transition Services Agreement Facilitates the Seamless Transition and Decreases any Possibility of any Adverse Rate Consequences .....	41
c.	The PSREC Settlement Will Not Increase Rates.....	43
<b>D.</b>	<b>The Proposed Transaction Will Maintain the Financial Condition of the California Utility.....</b>	<b>44</b>
1.	The Ring Fencing Provisions Appropriately “Wall Off” CalPeco from Any Financial Problems of Any Algonquin or Emera Affiliates.....	46
2.	There is No Need to Require that CalPeco’s Parents Provide CalPeco’s Lenders Guarantees on CalPeco’s Debt Financing.....	47
3.	CalPeco Will Have Adequate Funds to Operate; No “First Priority Condition” is Warranted .....	49
<b>E.</b>	<b>The Proposed Transaction Will Maintain or Improve the Quality of Management of the California Utility .....</b>	<b>52</b>
<b>F.</b>	<b>The Proposed Transaction Will Be Fair and Reasonable to the Affected Utility Employees .....</b>	<b>52</b>
<b>G.</b>	<b>The Proposed Transaction Will Not Harm California or Communities Served by the California Utility .....</b>	<b>53</b>
<b>H.</b>	<b>The Proposed Transaction Will Preserve the Jurisdiction of the Commission .....</b>	<b>54</b>
<b>I.</b>	<b>The Proposed Transaction Will Not Harm Competition .....</b>	<b>54</b>
<b>J.</b>	<b>Section 854(d) Alternatives .....</b>	<b>54</b>

VI.	POWER PURCHASE AND OTHER OPERATING AGREEMENTS.....	54
A.	Power Purchase Agreement.....	55
1.	Valmy Power Should Remain Part of Sierra’s Supply Portfolio to Serve Certain Customers .....	55
B.	Transition Services Agreement.....	59
C.	Emergency Backup Services Agreement.....	59
D.	Distribution Capacity Agreement and Borderline Customer Agreement.....	60
1.	Distribution Capacity Agreement.....	60
2.	Borderline Customer Agreement.....	61
E.	Interconnection Agreement and System Coordination Agreement.....	62
1.	Interconnection Agreement.....	62
2.	System Coordination Agreement.....	63
F.	Fringe Agreement and Reliability Support Agreement .....	63
G.	CalPeco Request for Commission Assertion of Exclusive Jurisdiction Over the Distribution Capacity Agreement and Reliability Support Agreement .....	64
H.	CalPeco Request to Recover Costs Incurred With Respect to the Operating Agreements .....	64
VII.	ADDITIONAL AUTHORIZATIONS SOUGHT .....	65
A.	Minimum Hold Condition/Internal Transfer Approval .....	65
1.	The Commission Should Not Impose A Minimum Hold Condition on Emera .....	65
2.	The Commission Should Grant the Internal Transfer Approval .....	66
B.	Other Authorizations.....	68

1. Transfer of CPCNs and Termination of Sierra Responsibility to Provide Public Utility Service ..... 68

2. CEQA Review is Unnecessary ..... 69

3. Approval of CalPeco Encumbrances of the Assets of the California Utility Including Accounts Receivable for Purpose of Debt Financing..... 69

**VIII. CONCLUSION ..... 69**

## TABLE OF AUTHORITIES

	Page(s)
<b>Statutes</b>	
§ 2720.....	9
§ 816.....	70
§ 818.....	70
§ 851.....	70
§15061(b)(3).....	69
<b>Other Authorities</b>	
Order No. 888, FERC Stats. & Regs ¶31,036.....	<i>passim</i>
<i>Re Application by Nova Scotia Power Incorporated for approval of certain Revisions to its Rates, Charges and Regulations, 2008 NSUARB 140 (Nov. 5, 2008)</i> .....	20
Rule 13.11.....	1
<b>Commission Decisions</b>	
D.00-06-079.....	9
D.01-06-007.....	52
D.01-09-057.....	9
D.02-11-025.....	29
D.02-12-068.....	<i>passim</i>
D.05-03-010.....	14, 22
D.06-02-033.....	<i>passim</i>
D.07-03-047.....	10
D.07-05-031.....	<i>passim</i>
D.07-05-061.....	46
D.84-07-063.....	48

D.88-01-063 .....	51
D.95-05-021 .....	51
D.96-11-017 .....	51

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

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

Application 09-10-028  
(Filed October 16, 2009)

Joint Application of Sierra Pacific Power Company (U903E) and California Pacific Electric Company, LLC for Authority to Enter Into Two Agreements.

Application 10-04-032  
(Filed April 30, 2010)

**OPENING BRIEF OF SIERRA PACIFIC POWER COMPANY (U903E) AND  
CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC**

**I. INTRODUCTION**

Pursuant to the Scoping Memo and Ruling of Assigned Commissioner (“Scoping Memo”) and Rule 13.11 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure (“Rules”), Sierra Pacific Power Company, a Nevada corporation (“Sierra”), and California Pacific Electric Company, LLC, a California limited liability company (“CalPeco,” and together with Sierra, “Joint Applicants”) submit this Opening Brief.

**II. PROCEDURAL HISTORY/BACKGROUND**

**A. All Parties and Constituencies Other Than DRA Urge Approval of the Proposed Transaction**

Joint Applicants filed the Joint Application of Sierra Pacific Power Company (U903E) and California Pacific Electric Company, LLC for Transfer of Control and Additional Requests Relating to Proposed Transaction (“Joint Application”) on October 16, 2009 seeking authority for Sierra to transfer to CalPeco (the “Transaction”) control of the assets and operations comprising the California electric distribution system and the Kings Beach Generation Facility owned and operated by Sierra (“California Utility”). On November 24, 2009, the Division of Ratepayer Advocates (“DRA”), the Plumas-Sierra Rural Electric Cooperative (“PSREC”), Truckee Donner Public Utility District (“TDPUD”), the City of Loyalton (“Loyalton”), the City of Portola (“Portola”), Sierra County, and Plumas County filed protests.

As will be explained, DRA is the lone party and only remaining constituency opposing the Transaction. PSREC, TDPUD, Loyaltan, Portola, Sierra County, Plumas County and the International Brotherhood of Electrical Workers Local 1245 (“Local 1245”) all support the Transaction and urge that the Commission timely approve it.

**B. Overview of Response to DRA’s Opposition to the Proposed Transaction**

The reasons underlying DRA’s continuing opposition appear not to be substantive or policy-related. DRA acknowledges that the proposed Transaction is not a merger or consolidation, and thus is not being promoted on the grounds of “synergistic” savings.<sup>1</sup> DRA recognizes, for example, that “savings” could be realized as part of the Transaction if CalPeco proposed to lay off employees or shut offices. DRA, however, does not advocate such actions to achieve cost savings.<sup>2</sup>

Rather, DRA’s concerns derive almost exclusively from its perspectives that (i) a change in utility ownership involves loss of the incumbent utility’s expertise and knowledge; (ii) larger entities are *per se* more efficient and consequently an acquisition of utility assets by a smaller entity, by definition, causes losses of “economies of scale” that will inevitably harm electric consumers; and (iii) the inherent uncertainties of the future, including decisions the Commission may make in future proceedings. Accordingly DRA urges rejection of the proposed Transaction and maintenance of the status quo. None of these grounds, individually or collectively, warrant rejection of the proposed Transaction.

Joint Applicants have structured the Transaction to provide the customers of the California Utility a “seamless transition”, ensuring that the electric consumers Sierra currently serves will not be adversely affected by the requested change of ownership. The same employees will provide the same service, the same power generated by the same generating resources will be delivered over the same facilities to the customers, and their rates will stay the same. Accordingly, on the day after Closing, these electric consumers will be in the same position as they are the day before Closing, or would be if Sierra remained their serving utility. Nonetheless, DRA insists that the transition cannot be seamless because Sierra, the existing service provider, will be replaced.<sup>3</sup>

---

<sup>1</sup> Joint Application, at 20; DRA/Phan, R.T. June 16, 2010, at 103.

<sup>2</sup> DRA/Phan, R.T. June 16, 2010, at 103.

<sup>3</sup> Ex. 50, DRA Report at 4; DRA/Phan, R.T. June 16, 2010, at 102-103.

The Public Utilities Code and this Commission's policies do not demand that the status quo remain in perpetuity. § 854(a) anticipates and authorizes changes in ownership and is not intended to erect impenetrable barriers. This Commission's decisions pursuant to § 854(a) demonstrate that changes in ownership, particularly those which introduce new entrants and attract additional investment capital into the California energy industry, are to be welcomed. The Commission has appropriately directed that a proposed § 854(a) application should be approved "absent [some] compelling reason."<sup>4</sup>

None of the concerns DRA raises, either individually or collectively, constitute a legally cognizable, let alone "compelling," reason to reject the proposed Transaction. DRA presents no facts warranting rejection of the Transaction; on the contrary, the facts refute its concerns. For instance, while it inexplicably contends that the proposed Transaction will harm the current Sierra employees,<sup>5</sup> DRA ignores that Local 1245 (which represents the employees) urges the Commission to expeditiously approve the transaction.<sup>6</sup>

The linchpin of DRA's economic concerns is the most general proposition that the change from Sierra's larger organization will cause a loss of "economies of scale" and thus in this case, CalPeco's smaller size will necessarily cause its costs and the resulting customer rates to increase above Sierra's levels. Recent experiences with massive corporations such as Enron, AIG and Citibank belie DRA's critical assumption that "bigger is always better." The actual facts and relevant circumstances of the proposed Transaction serve further to dispel DRA's perspective. CalPeco's ability to introduce a "local California-only" focus promises benefits in terms of service, regulatory transparency and efficiency.

DRA acknowledges that the total California Utility revenue requirement and the rates to the individual customers will remain the same on the day after Closing. It nonetheless opposes the Transaction based on its speculation of the costs it believes that CalPeco will request to be authorized rate recovery in the general rate case to be filed in 2011 ("2012 GRC"). These concerns are premature and speculative and provide no basis to reject the Transaction. If the

---

<sup>4</sup> *Application of PacifiCorp (U-901-E) and MidAmerican Energy Holdings Company for Exemption Under Section 853 (b) from the Approval Requirements of § 854(a) of the Public Utilities Code with Respect to the Acquisition of PacifiCorp by MidAmerican*, D.06-02-033, mimeo at 5 (Feb. 16, 2006); see also Section V, *infra*.

<sup>5</sup> Ex. 50, DRA Report, at 18-20.

<sup>6</sup> See November 30, 2009 Letter from Local 1245 to Commissioner Grueneich ("Local 1245 Letter"), attached as Exhibit G to Joint Applicants' Reply to DRA Report ("Joint Reply"), Ex. 1, Joint Reply; see also Section V.F., *infra*.

Commission rejects the Transaction and Sierra retains ownership, ratepayers would not be provided any greater “certainty” regarding the future rates Sierra will request in its 2012 GRC.

The only lawful basis for the Commission to reject the Transaction on this basis would be upon a finding that CalPeco’s ownership would unreasonably expose ratepayers to a potential “rate shock” in the 2012 GRC, and that conversely continued ownership by Sierra would eliminate any such possible rate shock risk. DRA makes no claim of any such possible “rate shock”; its fears instead focus on the “uncertainty” (i.e., it cannot project today the level of rate recovery CalPeco will request in the 2012 GRC). Moreover, DRA advances no facts which could support a finding that approval of the proposed Transaction would expose CalPeco’s electric consumers to an unacceptable level of rate shock the day after Closing, in the period proximate to the 2012 GRC, or in any other period.

DRA also advanced a curious proposition with respect to the Regulatory Commitments<sup>7</sup> that CalPeco, Emera Incorporated (“Emera”), Algonquin Power & Utilities Corp. (“Algonquin”),<sup>8</sup> and Sierra have made. As will be explained, Joint Applicants designed the initial Regulatory Commitments as an integral component of their absolute priority to ensure electric customers a seamless transition to service by CalPeco and to mitigate any possible adverse consequences of the proposed Transaction. During the extended period from the April 2009 execution of the Purchase Agreement and the end of the evidentiary hearings, Joint Applicants volunteered, often in response to concerns raised by DRA, to modify and supplement certain of these original Regulatory Commitments and to add new ones. However, rather than accept Joint Applicants’ proactive response, DRA challenged Joint Applicants for alleged “inconsistencies” DRA perceived between the original Regulatory Commitments offered and the

---

<sup>7</sup> The original Regulatory Commitments are designated as the “Regulatory Approval Plan” and are set forth in Exhibit 7.9(b) to the Asset Purchase Agreement. The original Regulatory Commitments are also contained in Exhibit F to Exhibit 1, Joint Reply. These original commitments have been reviewed and expanded throughout these proceedings. These revised Regulatory Commitments are contained in Appendix A to this Opening Brief. The revised Regulatory Commitments in Appendix A will be referenced in this Opening Brief as the “Regulatory Commitments” unless such reference is otherwise expressly stated to be to the “original” or “initial” Regulatory Commitments.

<sup>8</sup> Algonquin Power Income Fund, a mutual fund trust formed under the laws of the Province of Ontario, was the original entity that joined with Emera to form CalPeco. It converted to a conventional publicly traded corporation, Algonquin Power & Utilities Corp. on October 27, 2009.

Regulatory Commitments set forth in Appendix A which Joint Applicants now propose the Commission adopt.<sup>9</sup>

DRA's logic seems to be that Joint Applicants' sponsorship of supplemented and expanded Regulatory Commitments warrants rejection of the Transaction; in essence DRA argues that Joint Applicants should be "estopped" from agreeing to modify the initial Regulatory Commitments. Joint Applicants strongly disagree. These revisions to the initial Regulatory Commitments demonstrate the benefit of the regulatory process and further evidence Joint Applicants' commitment to provide a seamless transition and to avoid any harm possibly resulting from the Transaction.

### **C. Resolution of Concerns Raised by Local Interests**

#### **1. TDPUD Settlement**

At the prehearing conference, TDPUD reported that it and the Joint Applicants had agreed in principle to a settlement resolving the issues in the TDPUD Protest. The Joint Applicants and TDPUD shortly thereafter executed a Settlement Agreement ("TDPUD Settlement").<sup>10</sup> In its withdrawal of its protest, TDPUD expressed affirmative support for the Commission to grant the authorizations requested in the Joint Application.<sup>11</sup>

The TDPUD Settlement requires the execution of two additional, auxiliary agreements, each which requires Commission approval. These two TDPUD-related agreements are the subject of the pending Joint Application of Sierra Pacific Power Company and California Pacific Electric Company, LLC for Authority to Enter Into Two Agreements ("Auxiliary Application").<sup>12</sup> Administrative Law Judge ("ALJ") Vieth granted the consolidation of the Auxiliary Application with this proceeding.<sup>13</sup> ALJ Vieth also reported that the schedule for decision of the Auxiliary Application would be concurrent with the schedule for the Commission's assessment of the proposed Transaction.<sup>14</sup> No party protested the substance of the

---

<sup>9</sup> See e.g., Joint Applicants/Tedesco, R.T. June 16, 2010, at 93-94.

<sup>10</sup> The TDPUD Settlement itself does not require Commission approval.

<sup>11</sup> TDPUD filed its withdrawal of its protest on February 22 ("TDPUD Withdrawal Notice"). A copy of the TDPUD Withdrawal Notice is attached as Ex. A to Ex. 1, Joint Reply.

<sup>12</sup> Application 10-04-032.

<sup>13</sup> See Joint Motion of Sierra Pacific Power Company and California Pacific Electric Company, LLC for an Order to Consolidate Application 10-04-\_\_\_ with Application 09-10-028. See also email from ALJ Vieth, dated May 27, 2010 granting motion to consolidate, attached as Ex. B to Ex. 1, Joint Reply.

<sup>14</sup> ALJ Vieth email notice, June, 14, 2010. See *infra*, Section VI. F.

agreements which are the subject of the Auxiliary Application.<sup>15</sup> Joint Applicants request that the Commission grant the relief requested in the Auxiliary Application concurrently with its approval of the proposed Transaction.

## **2. PSREC Settlement**

ALJ Vieth also directed that Joint Applicants meet with PSREC, Loyalton, Portola, Sierra County, and Plumas County (collectively, “Aligned Protestants”) to seek to resolve the issues these parties raised in their respective protests.<sup>16</sup> The Scoping Memo reiterated this directive.<sup>17</sup>

After meeting in Portola, the Joint Applicants and the Aligned Protestants executed a settlement agreement (“PSREC Settlement”). In their notice of withdrawal of their respective protests (“Aligned Protestants Withdrawal Notice”), each Aligned Protestant expressed support for the proposed Transaction, and requested that the Commission grant the authorizations requested in the Joint Application “as promptly as possible.” They justified their request for this Commission to act expeditiously on the grounds that “[t]he more timely the Commission’s decision, the sooner the residents of the Loyalton/Portola area will benefit by the increased reliability of electric service ....”<sup>18</sup>

### **D. Update Letters**

In a letter dated April 7, 2010, Joint Applicants provided an update regarding certain matters (“April Update Letter”).<sup>19</sup> The April Update Letter reported on the TDPUD and PSREC Settlements, clarified that CalPeco’s request for authority to encumber its assets in connection with its debt financing includes a request for authority to encumber its accounts receivable,<sup>20</sup> and reported on the completion of Algonquin’s conversion to a conventional, publicly traded corporation.

---

<sup>15</sup> *See infra*, Section VI. F.

<sup>16</sup> PHC, R.T. Jan. 20, 2010, at 74.

<sup>17</sup> The Scoping Memo also scheduled that a public participation hearing be held in the Portola or Loyalton areas to enable the Commission to hear the electric service and reliability concerns that residents in those communities may have. Scoping Memo, at 16. In light of the PSREC Settlement, ALJ Vieth reported that the public participation hearing would not be necessary. *See* ALJ Vieth email notice, March 29, 2010, attached as Ex. D to Ex. 1, Joint Reply.

<sup>18</sup> Aligned Protestants Withdrawal Notice, at 3-4, attached as Ex. C to Ex. 1, Joint Reply. The PSREC Settlement does not require any present approvals by the Commission.

<sup>19</sup> Ex. 3, First Update Letter.

<sup>20</sup> Joint Application, at 66-67.

The April Update Letter also advised that Emera and Algonquin had agreed to slightly revise their respective ownership interests in CalPeco from a 50%/50% arrangement<sup>21</sup> to a structure in which Algonquin's subsidiary will own 50.001% of CalPeco, and Emera's subsidiary will own the remaining 49.999%.<sup>22</sup>

In a letter dated June 11, Joint Applicants reported on an amendment to the Power Purchase Agreement ("June 11 Update Letter"). As explained in the June 11 Update Letter, after Sierra discovered an "accounting misallocation," the Joint Applicants increased the amount of the monthly Demand Rate in the Power Purchase Agreement to reflect the correct allocation. The June 11 Update Letter represented that the electric consumers of the Sierra service territory will be "economically indifferent to the correction of the accounting misallocation that Joint Applicants are proposing."<sup>23</sup>

#### **E. Preparation of DRA Report and Evidentiary Hearings**

Based on DRA's representations that it would be unable to complete its review within 60 or 90 days, the ALJ granted DRA until May 7 to submit its report – almost 4 months after the prehearing conference and almost 7 months after the filing of the Joint Application.<sup>24</sup> DRA propounded nine separate formal sets of data requests, which Joint Applicants responded to thoroughly and without objection. Throughout this process, Joint Applicants and DRA engaged in several informal information exchanges. DRA submitted its Report on May 7 ("DRA Report"). Joint Applicants submitted their Reply to the DRA Report ("Joint Reply") on June 2.

---

<sup>21</sup> See Joint Application, at 3-4.

<sup>22</sup> This change results from Canada transitioning to the International Financial Reporting Standards in 2011. Enabling Algonquin to "control" CalPeco within the meaning of these accounting standards facilitates Algonquin's ability to account for its investment in CalPeco on a fully consolidated basis and enables Emera to use equity consolidation treatment. See Ex. 3, First Update Letter at 6; see also Joint Applicants/Robertson, R.T. June 16, 2010, at 32-33.

<sup>23</sup> The June 11 Update Letter is Ex. 4, Second Update Letter. The June 11 Update letter further explains that Sierra's customers have not been impacted by the accounting misallocation and that if the Commission were to reject the proposed Transaction, Sierra would propose the same correction in its next general rate filing that Joint Applicants are now proposing. Sierra submitted an additional letter dated June 16, 2010 (Ex. 5, Third Update Letter) explaining that in adjusting for its accounting misallocation for purposes of modifying the monthly Demand Rate, Sierra had mistakenly overstated the amount of the increase. Joint Applicants Ex. 5 reports that the correct monthly Demand Rate is \$12.02 per kW, as stated in Amendment No. 3 to Service Agreement (Exh. 11, Power Purchase Agreement Amendment No. 3).

<sup>24</sup> See PHC, R.T. Jan. 20, 2010, at 77-78.

Evidentiary hearings were conducted on June 16 and 17. Hearings were based on testimony derived from portions of the Joint Application, the entirety of the DRA Report and of the Joint Reply, and the April and June 11 Update Letters. Joint Applicants made available eight different witnesses to sponsor their testimony. Ms. Dao Phan sponsored the entirety of the DRA Report and served as DRA's only witness.

### III. STANDARD OF REVIEW

“[T]o approve [a] proposed transfer of control, the Commission must find that the proposal meets the public interest standard that prior Commission decisions define for § 854(a), after due consideration of § 854(d).”<sup>25</sup> The Scoping Memo ruled that that the proposed Transaction need not be assessed under §§ 854(b) or 854(c).<sup>26</sup> As will be further explained below, consideration of § 854(d) has been rendered moot.

#### A. “No Harm to Ratepayers” is the Applicable § 854(a) Standard of Review

DRA acknowledges that for purposes of transfer of control applications under § 854(a), “the Commission has articulated a standard of whether the transaction will be ‘adverse to the public interest.’”<sup>27</sup> Nonetheless, DRA has persisted that there is a substantive difference between a standard of “not adverse to the public interest” and “in the public interest.”<sup>28</sup>

DRA is wrong in suggesting dual or multiple standards. A Commission finding that a § 854(a) transaction would not be “adverse to the public interest” necessarily warrants a finding that the transaction is, in fact, “in the public interest.”

The Commission has explicitly and consistently explained that “no harm to ratepayers” is the standard the Commission shall apply in assessing a transfer of control under § 854(a):

---

<sup>25</sup> Scoping Memo, at 11.

<sup>26</sup> Scoping Memo, at 9:

§ 854 contains several subparts. We review all that apply here and explain why several do not... Though some parties argue that the Commission has discretion to apply §§ 854(b) and (c) to this application, they cannot establish that it must. Moreover, the pleadings filed to date fail to make a persuasive case that review of the proposed transaction under § 854(a) is inadequate to protect the public interest;

*see also* Ex. 50, DRA Report at 3.

<sup>27</sup> DRA Protest, at 3.

<sup>28</sup> DRA Report at 3.

The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.<sup>29</sup>

DRA has advanced two cases to support its inference that a § 854(a) applicant must make a showing of “positive benefits.”<sup>30</sup> However, these decisions reaffirm that the “no harm to ratepayers” standard is the Commission’s controlling § 854(a) criterion. In D.01-09-057, the application involved a transfer of water companies and thus implicated § 2720, which is germane only to transfer of control applications involving water companies.<sup>31</sup> Dicta suggesting that the transaction would also satisfy the § 854 public interest standard, does not, as DRA argues, suggest any ambivalence by this Commission that the controlling standard for § 854 applications is anything other than “no harm to ratepayers.”<sup>32</sup>

DRA also erroneously claims that D.06-02-033 evidences a universal rule, demanding a definitive finding of positive ratepayer benefits for the Commission to approve any transaction under § 854.<sup>33</sup> However D.06-02-033 offers no support for the DRA’s assertion that a successful § 854(a) applicant must demonstrate positive ratepayer benefits. On the contrary, in D.06-02-

---

<sup>29</sup> *In re Application of California-American Water Company (U-210-W) a California Corporation, RWE Aktiengesellschaft, a Corporation Organized Under the Laws of the Federal Republic of Germany, Thames Water Aqua Holdings GmbH, a Corporation Organized Under the Laws of the Federal Republic of Germany, and American Water Works Company, Inc. for an Order Authorizing the Sale by Thames GmbH of up to 100% of the Common Stock of American Water Works Company, Resulting in a Change of Control of California-American Water Company and For Such Related Relief as May be Necessary to Effectuate Such Transaction*, D.07-05-031, mimeo at 3 citing D.00-06-079 (May 3, 2007); see also *Joint Application of Lodi Gas Storage, L.L.C. (U-912-G) et al, For Expedited Ex Parte Authorization to Transfer Control of Lodi Gas Storage, L.L.C. to Buckeye Gas Storage LLC Through the Sale of the 100% Interest of Lodi Holdings, L.L.C. in Lodi Gas Storage, L.L.C., Pursuant to Public Utilities Code § 854(a)*, D.08-01-018, mimeo at 19-20 (Jan. 10, 2008).

<sup>30</sup> *See Application of Citizens Utilities Company of California (U-87-W), a California Corporation, and California-American Water Company, a California Corporation, for Each of the Following Orders: 1. Authorizing Citizens Utilities Company of California to Sell and to Transfer All of Its Water Utility Assets and Indebtedness to California-American Water Company; 2. Authorizing California-American Water Company to Acquire All of the Water Utility Assets and Indebtedness of Citizens Utilities Company of California and thereafter to Engage in and Carry on the Water Utility Business and Service to the Customers of Citizens Utilities Company of California; 3. Authorizing Citizens Utilities Company of California to Withdraw from the Water Utility Business; and 4. For Related Relief.*, D.01-09-057 (Sept. 20, 2001); see also D.06-02-033.

<sup>31</sup> *See* D.01-09-057, mimeo at 28.

<sup>32</sup> *Id.*, mimeo at 26-27.

<sup>33</sup> Ex. 50, DRA Report, at 4.

033, the Commission reaffirmed that “transactions that are subject to § 854(a) should be approved absent a compelling reason to the contrary.”<sup>34</sup> Upon determining “no compelling reasons to deny the transaction,” the Commission authorized MidAmerican’s purchase of the PacifiCorp service territory in California.<sup>35</sup>

Moreover, in D.07-03-047, in reaffirming its approval of a change of control under § 854(a), the Commission specifically rejected the argument DRA now advances the “public interest” standard requires a showing of “positive” ratepayer benefits:

...[The party challenging our approval under § 854(a) of the transaction] argues that D.06-11-019 [our initial approval decision] mistakenly applies the “adverse to the public interest” standard, and cites Commission decisions wherein the standard applied was whether such transfer of control would be “in the public interest.” [citations omitted] This claim lacks merit.<sup>36</sup>

The Commission has accordingly also rejected DRA’s objections to a § 854(a) application based on the alleged paucity of benefits:

We are not persuaded [by DRA’s argument that MidAmerican’s purchase of PacifiCorp’s California assets provides only “meager benefits]. The transaction provides modest but concrete benefits to ratepayers and the communities served by [the present utility] and there will be no harm to ratepayers or others with the conditions adopted by today’s Decision. This is enough for the proposed transaction to garner our approval under § 854(a).<sup>37</sup>

The Joint Application emphasizes, and DRA agrees, that the proposed Transaction does not involve a merger, and thus is not predicated on quantifiable economic “savings” derived from operational or administrative “synergies.”<sup>38</sup> CalPeco intends to preserve the “business as

---

<sup>34</sup> D.06-02-033, mimeo at 36.

<sup>35</sup> D.06-02-033, mimeo at 36.

<sup>36</sup> *Joint Application of Wild Goose Storage Inc., EnCana Corp., Carlyle/Riverstone Global Energy and Power Fund III, L.P., Carlyle/Riverstone Global Energy and Power Fund II, L.P. and Nisaka Gas Storage US, LLC for Review under Public Utilities Code Section 854 of the Transfer of Control of Wild Goose Storage Inc. from EnCana Corporation to Nisaka Gas Storage, US, LLC and for Approval of Financing under Public Utilities Code Section 85, D.07-03-047, mimeo at 4 (Mar. 15, 2007).*

<sup>37</sup> D.06-02-033, mimeo at 36.

<sup>38</sup> Joint Application, at 20; *see also* Joint Applicants/Robertson, R.T. June 16, 2010, at 53; DRA/Phan, R.T. June 16, 2010, at 103.

usual” status quo, maintaining all facilities and offices and retaining all employees.<sup>39</sup> The carefully-structured Power Purchase Agreement and other Operating Agreements,<sup>40</sup> the Regulatory Commitments and this Commission’s ongoing regulatory oversight ensures that the proposed Transaction will impose no adverse effects on the affected electric consumers. On this showing, the Commission has the authority to approve, and should approve, the Transaction in accordance with § 854(a).

**B. Section 854(d) Is Not Applicable**

§ 854(d) is no longer relevant to the Commission’s review of the proposed Transaction. While the Commission retains the discretion to deny the authority Joint Applicants request under § 854(a), the TDPUD Settlement and the PSREC Settlement removed any other “alternatives” for the Commission to consider as potentially contemplated by § 854(d).

The Commission should disregard any attempt by DRA to bootstrap its argument for a “positive benefits to ratepayers” standard by reference to § 854(d). Had the Commission determined that the language of § 854(d) somehow superseded the “no harm to ratepayers” standard under § 854(a), it would not have so clearly articulated its “no harm to ratepayers” standard.

Moreover, any effort by DRA to assert that the Commission should reject the Transaction based on § 854(d) must fail. The Scoping Memo imposes upon any party seeking to propose an “alternative” under § 854(d) as “preferable” to the proposed Transaction “the burden of going forward to introduce facts necessary to the findings required by § 854.”<sup>41</sup>

DRA has made no showing whatsoever to sustain this burden – the DRA Report offers no facts in its one passing reference to § 854(d).<sup>42</sup> In fact, a reading of the DRA Report indisputably demonstrates that DRA’s sole basis for opposing the Transaction is based on § 854(a).

Additionally, by any standard, § 854(d) is simply not applicable. Joint Applicants represent, and DRA concurs,<sup>43</sup> that approval for the proposed Transaction is not based on any

---

<sup>39</sup> Joint Application, at 20. In D.02-12-068, the Commission found that the purchasing utility provided benefits to ratepayers by committing to operate the acquired utility on a “business as usual” basis.

<sup>40</sup> The attendant agreements are collectively referred to as the “Operating Agreements” and individually referred to as an “Operating Agreement.”

<sup>41</sup> Scoping Memo, at 11.

<sup>42</sup> See DRA Report at 3.

<sup>43</sup> DRA/Phan, R.T. June 16, 2010, at 103.

short-term or long-term economic savings to be derived from operational or administrative “synergies.”<sup>44</sup> Thus, there are no “comparable” savings that must be achieved by any other option. DRA made no analysis of the adverse consequences of the Commission rejecting the proposed Transaction.<sup>45</sup> In all events, § 854(d) is not applicable and, even if it did apply, DRA has failed to carry its burden to demonstrate that a “reject the proposed Transaction” alternative is preferable.

#### **IV. JOINT APPLICANTS AND REASONS FOR THE TRANSACTION**

##### **A. Sierra Pacific Power Company**

Sierra is a Nevada corporation and wholly-owned subsidiary of NV Energy, Inc. (“NV Energy”), an investor-owned holding company incorporated under Nevada law. Sierra’s principal place of business is Reno, Nevada, and NV Energy’s principal place of business is Las Vegas. Sierra generates, transmits and distributes electric energy to approximately 366,000 customers throughout northern Nevada and California. It also serves 150,000 natural gas customers in Reno and Sparks, Nevada.

Sierra’s combined service territory covers over 50,000 square miles of western, central and northeastern Nevada, including the cities of Reno, Sparks, Carson City and Elko, and a portion of eastern California that is served by the California Utility. The California Utility serves approximately 46,000 retail electric customers in portions of Nevada, Placer, Sierra, Plumas, Mono, Alpine and El Dorado Counties. Almost 80% of Sierra’s California customers are located in the Lake Tahoe Basin.

The NV Energy corporate structure is not complicated. NV Energy is the holding company and it has six wholly-owned subsidiaries including Sierra and Nevada Power Company (the regulated public utility serving Las Vegas and the southern parts of Nevada).<sup>46</sup> Nonetheless,

---

<sup>44</sup> Application at 20; *see also* Joint Applicants/Robertson, R.T. June 16, 2010, at 53; DRA/Phan, R.T. June 16, 2010, at 103.

<sup>45</sup> For instance, despite DRA’s position that it is disadvantageous for employees to be required to remain employed by a company which desires no longer to engage in the public utility business in California, DRA did not consider that adverse consequence in urging the Commission to reject the proposed Transaction. DRA/Phan, R.T. June 16, 2010, at 113-114; *see also* D.07-05-031, mimeo at 13 and 33 (Findings of Fact No. 18).

<sup>46</sup> NV Energy’s corporate structure is depicted in Exhibit 12.

DRA based its report on the mistaken belief that Sierra and NV Energy are the “same” company and therefore Sierra is the ultimate parent company.<sup>47</sup>

Sierra is a stand alone corporate entity, legally distinct from NV Energy and Nevada Power. During cross-examination, DRA acknowledged that contrary to its prior understanding, the corporate structure for NV Energy is accurately set forth in Exhibit 12.<sup>48</sup>

Sierra has obtained debt financing secured by its physical assets in California and Nevada, and its parent NV Energy has not guaranteed its debt.<sup>49</sup> Neither this Commission nor the Public Utilities Commission of Nevada (“PUCN”) have imposed a “first priority” condition on NV Energy for purposes of ensuring Sierra has adequate funds available to provide its high quality utility service.<sup>50</sup> In fact, a need for the imposition of such a first priority condition has never even been raised. Ratepayer payments and other available sources of funds have provided adequate funds to enable Sierra to more than adequately serve its customers.<sup>51</sup>

### **1. Sierra’s Reasons For Selling the California Utility**

Sierra or a predecessor company has provided electric service in the California Utility’s service area for more than 100 years. Historically it made sense that the utility serving northern Nevada also provide electric service to the Lake Tahoe area. This structure was particularly appropriate during historical periods in which the California Utility load represented a significant portion of Sierra’s combined electric load in Nevada and California.<sup>52</sup>

Recent years and events have changed these circumstances. In 1999, Sierra and Nevada Power Company combined and each became subsidiaries of the holding company which is now named NV Energy. Together, Sierra and Nevada Power provide electric service to almost all of Nevada. Until most recently, Nevada has experienced the most explosive population growth in the nation. This population growth and accompanying economic boom substantially caused NV Energy’s retail load to escalate by almost 30% over the last decade. This growth has required,

---

<sup>47</sup> DRA’s confusion results because Sierra and Nevada Power conduct business as “NV Energy.” The operating utility subsidiaries’ use of the NV Energy trade name (or “doing business as” name) apparently caused DRA to incorrectly believe that Sierra and NV Energy are the same legal entity. DRA/Phan, R.T. June 16, 2010, at 141-142; *compare with* Joint Application, at 2.

<sup>48</sup> DRA/Phan, R.T. June 17, 2010, at 203.

<sup>49</sup> Ex. 1, Joint Reply at 29.

<sup>50</sup> Ex. 1, Joint Reply, at 33; *see* Sections V.D.2 and 3. *infra*.

<sup>51</sup> Joint Applicants’ objections to DRA’s proposal for the imposition of a “first priority condition” is discussed, *infra*, in Sections V.D.2 and 3.

<sup>52</sup> Joint Application, at 11-12.

and will continue to require, substantial investment in generation, transmission, and distribution infrastructure – NV Energy has invested an average of \$1 billion annually in Nevada for the last five years in order to maintain reliable electric services. As a result of this substantial Nevada load growth and required investment, NV Energy decided that it must focus more exclusively on the operations of its two Nevada utility subsidiaries.<sup>53</sup>

Beyond the substantial growth in its Nevada utility operations, as regulatory requirements have expanded in both California and Nevada, the challenges of operating a single utility under two (at times diverse) sets of regulatory requirements have increased. The substance of the California regulatory requirements themselves was not the driver for Sierra’s decision to divest from California. Rather, an impetus has been the relatively disproportionate amount of time and financial resources used in addressing California regulatory requirements, especially when its relatively small 46,000 customers are compared with NV Energy’s much larger total customer base.<sup>54</sup> In late 2007, NV Energy management therefore determined that it would be in the best interests of all of its customers for NV Energy to focus exclusively on its Nevada operations and to transfer responsibility for its California customers to a buyer who could directly focus on the distinct needs of the California service territory.<sup>55</sup>

There is no basis to question the appropriateness of NV Energy’s strategic decision to cease providing regulated utility services in California for purposes of concentrating on its primary jurisdiction. NV Energy’s decision to reduce the regulatory jurisdictions in which it provides utility service parallels the decision by Avista Corporation (“Avista”) to sell its California natural gas distribution service territory.<sup>56</sup> At the time, Avista provided natural gas service to an aggregate of almost 300,000 customers in Washington, Idaho, Oregon and California. Its California customers (fewer than 20,000) represented about 7% of its customer base.<sup>57</sup> Here, the 46,000 California customers represent less than 4% of the electric customers the NV Energy operating utilities serve.

---

<sup>53</sup> Joint Application, at 12-13.

<sup>54</sup> Joint Applicants/Bethel, R.T. June 16, 2010, at 15; *see also* Joint Application, at 12-13.

<sup>55</sup> Joint Application, at 12-13.

<sup>56</sup> *Re Avista Corporation Application and Southwest Gas Corporation for Authority to Sell Interests in Utility Property*, D.05-03-010 (Mar. 15, 2005). Coincidentally, Avista’s California service territory was also centered in the Lake Tahoe area.

<sup>57</sup> D.05-03-010, mimeo at 2.

In approving the Avista transaction, the Commission identified as a key reason prompting the decision to cease operations within California was to advance Avista’s “strategy to focus on its utility business in the Northwest.”<sup>58</sup> The Commission further recognized that the requested divestiture of California utility assets would enable “Avista [to divest] itself of a geographically remote service district and [concentrate] on its major gas distribution operations in the states of Washington, Idaho and Oregon.”<sup>59</sup> NV Energy’s proposed sale of the California Utility does not involve a “geographically remote service district.” Nonetheless, the proposed Transaction will similarly enable NV Energy to divest itself of a geographically separate district, subject to a different state regulatory regime, and to advance its corporate strategy to concentrate on the substantial needs of its electric operations in the fast-growing state of Nevada.

This Commission and DRA have previously determined that the public interest is best served by not compelling a company to provide utility service in a geographic area where it wishes to cease being the regulated utility.<sup>60</sup> NV Energy’s decision to sell the California Utility and focus on its Nevada operations represents an appropriate decision that is designed to advance the interests of its customers in both California and Nevada.

## **2. Sierra’s Sale Process Identified the Most Qualified Purchaser for the California Utility**

### **a. Bidding Process**

In February 2008, Sierra announced that it was exploring “strategic alternatives” for the California Utility. Sierra’s transaction team developed a list of potentially interested bidders considering the financial wherewithal of the potential bidders and their ability to assemble an experienced team capable of running the California Utility.

Next, Sierra distributed information concerning the California Utility to approximately 40 potential bidders. Sierra received non-binding indicative bids from seven bidders. Sierra evaluated the indicative bids based on, among other matters, price, bid viability, the completeness of the bid, and the bidder’s financial and operational qualifications. Based on this analysis, Sierra invited four short-listed bidders to participate in Stage II.

Sierra received binding bids from all four short-listed bidders. As with the Stage I indicative bids, Sierra’s evaluation of the binding bids encompassed more than just price, but

---

<sup>58</sup> *Id.*, mimeo at 2 (*quoting* Kelly O. Norwood, Avista Vice President of State and Federal Regulation).

<sup>59</sup> *Id.*, mimeo at 8-9.

<sup>60</sup> *See* D.07-05-031, mimeo at 13 and 33 (Findings of Fact No. 18).

also extended to additional factors, including the bidder's operational, financial, and managerial qualifications; the bidder's Regulatory Approval Plan discussed below; the bidder's commitment to customer service and employees; and overall fit for the California Utility.

After evaluating the bids, Sierra determined Algonquin's bid, among other qualities, offered a fair price, the operational, financial and managerial qualifications to own and operate the California Utility, and a detailed set of customer-focused Regulatory Commitments.<sup>61</sup>

**b. Negotiation of Purchase Agreement and Operating Agreements**

Sierra and Algonquin originally contemplated executing the Purchase Agreement in late 2008. However, the transaction was delayed briefly largely due to the then ongoing global financial crisis. In partial response to these developments and to further enhance CalPeco's financial and operating capabilities, Algonquin decided to partner with Emera.

DRA's cross examination of Mr. Robertson tried to intimate that the only reason for Algonquin to seek a partnership with Emera was a concern by Algonquin of its capabilities, operating unilaterally, to finance its purchase of, and to competently operate, the California Utility. On the contrary, Algonquin's combination with Emera was not a "shotgun marriage," precipitated by some Algonquin financial exigency or other anxiety regarding operating capabilities. As Mr. Robertson explained, the Algonquin-Emera combination represented the culmination of several years of discussions and Algonquin's determination that Emera would "for several reasons,"<sup>62</sup> be a "good partner" for the CalPeco acquisition.

The Sierra selection process determined that Algonquin is more than qualified to acquire and operate the California Utility independently. The evidence also establishes, and DRA does not dispute, that Emera is also fully capable on its own to acquire and operate the California Utility. CalPeco which represents the combination of the two parties' operational experience, financial capabilities, and similar long-term investment strategies is exceptionally well qualified to own and operate the California Utility.<sup>63</sup>

**c. The Solicitation Process Enabled Sierra to Select a Highly Qualified Purchaser for the California Utility**

To emphasize the paramount importance of this Commission approving the entity Sierra would select to purchase the California Utility, Sierra obligated any prospective purchaser to

---

<sup>61</sup> Joint Application, at 14-15.

<sup>62</sup> Joint Applicants/Robertson, R.T. June 16, 2010, at 30-31.

<sup>63</sup> Joint Application, at 16.

contractually commit to a “pro forma” list of regulatory commitments.<sup>64</sup> Sierra’s mandatory commitments included the essential characteristics that this Commission has identified as required of the purchaser of utility assets in order for this Commission to authorize the transaction pursuant to § 854(a).

The Sierra-demanded criteria included:

- experience at operating, and the proven capability to operate, a distribution utility;
- the commitment and ability to continue to offer the same, or greater, level of service at comparable rates;
- the commitment and ability to carry out the regulatory initiatives and policies of California law and this Commission;
- a desire to focus primarily on California operations;
- the commitment and ability to maintain a strong local presence in the service territory within the Lake Tahoe area;
- the commitment and ability to retain Sierra’s California labor force;
- a long-term business objective to operate an electric distribution utility; and
- in general, the abilities, qualifications, and characteristics that would best ensure that the Commission would approve the transaction and entrust the purchaser with the responsibility to provide service to Sierra’s California customers and to be the employer for Sierra’s California employees.<sup>65</sup>

**B. California Pacific Electric Company, LLC**

CalPeco is a newly-created California limited liability company through which Algonquin and Emera will jointly acquire the California Utility. It is directly owned by California Pacific Utility Ventures, LLC, a California limited liability company (“CPUV”). Algonquin and Emera indirectly own CalPeco through direct ownership of two wholly-owned subsidiaries, Liberty Electric Co.,<sup>66</sup> and Emera US Holdings, Inc., respectively. Emera and Algonquin have agreed to slightly revise their respective ownership interests in CalPeco from the

---

<sup>64</sup> The proposed regulatory approval plan that Sierra included with its bid solicitation materials is attached as Exhibit 17 of the Joint Application.

<sup>65</sup> Joint Application, at 16-17.

<sup>66</sup> Subsequent to the filing of the Joint Application, Algonquin Power Fund (America) Inc. transferred its ownership interest in CPUV to Liberty Electric Co., a wholly-owned subsidiary of Algonquin.

50%/50% arrangement originally contemplated.<sup>67</sup> As of the Closing, Algonquin's subsidiary will own 50.001% of CalPeco, and Emera's subsidiary will own the remaining 49.999%.<sup>68</sup>

Joint Applicants have demonstrated that either Algonquin or Emera on its own would be a qualified successor to Sierra and that their combination in CalPeco indisputably offers the electric consumers and employees of the California Utility a most worthy successor. DRA nonetheless challenges the qualifications and commitment of Algonquin and Emera, both individually and collectively.

On one hand, DRA praises Emera's operating experience and financial strength, but somehow transforms this praise for Emera into an unsupported allegation that somehow Algonquin, by itself, lacks the ability to competently and safely operate an electric distribution utility. DRA then bootstraps this supposed lack of Algonquin capability with the unsubstantiated claim that Emera is a "stalking horse" which intends to abandon any participation in CalPeco within moments after Closing.<sup>69</sup> DRA's arguments (i) alleging inability by Algonquin and (ii) that Emera's repeated representations to be long term participant in CalPeco are disingenuous, are addressed in later sections.<sup>70</sup>

### **C. Algonquin Power & Utilities Corp.**

Algonquin is a diversified electrical power generation and utility infrastructure company. Algonquin owns and operates an approximately \$1 billion (Cdn) portfolio of renewable power generation and utility operations across North America. Over 50% of Algonquin's revenues are generated through its US-based operations.

Algonquin is publicly traded on the Toronto Stock Exchange under the symbol "AQN." Algonquin's investments produced revenues of approximately \$213 million (Cdn) and cash from operations of approximately \$67 million (Cdn).

Algonquin has been a successful developer and long-term operator of independent, electric generating facilities. As Mr. Robertson reported:

I believe we have the ultimate track record of maintaining and holding our investments. We are the poster children for the buy-and-hold strategy for the assets that we—that we own.<sup>71</sup>

---

<sup>67</sup> Joint Application, at 3-4.

<sup>68</sup> See attachment to first Update Letter, Exhibit 3.

<sup>69</sup> Ex. 50, DRA Report, at 5-6; Ex. 1, Joint Reply, at 14.

<sup>70</sup> See Section IV.G, *infra*.

<sup>71</sup> Joint Applicants/Robertson, R.T. June 16, 2010 at 87.

Algonquin is one of the largest renewable power companies in Canada. It owns and operates more than 500 MW of renewable and thermal electric generation facilities in the United States and Canada, including hydropower, wind, biomass, and waste energy facilities.<sup>72</sup>

Algonquin's Power Generation unit includes 45 renewable power generating facilities and 16 high-efficiency thermal generating facilities,<sup>73</sup> including (i) hydroelectric facilities located in four states and four Canadian provinces, (ii) a 105 MW contracted wind farm developed in Manitoba, Canada, and (iii) high-efficiency cogeneration facilities located in Connecticut and California.<sup>74</sup>

The Algonquin Utility Services unit owns and operates 19 regulated utilities located in four states, providing retail water and sewer utility service to more than 75,000 customers.<sup>75</sup> Of significance to CalPeco's proposed purchase of the California Utility is that Algonquin has successfully introduced in these relatively small utilities innovative, state-of-the-art billing systems and customer communication programs designed to enhance customer service.<sup>76</sup>

#### **D. Emera Incorporated**

Emera is incorporated under the laws of the Province of Nova Scotia, Canada. It is an energy holding company with approximately \$5.4 billion of assets (Cdn).<sup>77</sup> It owns and operates utilities participating in the generation, transmission and distribution of electricity; utilities participating in the transmission of natural gas; and unregulated businesses participating in energy marketing and electric generation.

Emera is publicly traded on the Toronto Stock Exchange under the symbol "EMA." In 2008, it had net earnings of approximately \$150 million (Cdn). Emera's corporate ratings are BBB+ by Standard & Poor's and Baa2 by Moody's.

---

<sup>72</sup> Joint Application at 4-5; Joint Applicants/Robertson, R.T. June 16, 2010, at 26.

<sup>73</sup> Joint Application at 5. Subsequent to the filing of the Joint Application, through an acquisition Algonquin's renewable power generating facilities increased to 45 and its high-efficiency thermal generating facilities similarly increased to 16.

<sup>74</sup> Algonquin owns the Sanger Cogeneration project located just outside of Fresno, California. It sells power from this natural gas-fired project under a Commission-approved standard offer agreement to Pacific Gas and Electric Company ("PG&E") which will expire in 2022. In 2008, Algonquin increased the capacity of the Sanger Cogeneration Project to 56 MW. Joint Application at 5, fn. 4.

<sup>75</sup> Joint Applicants/Robertson, R.T. June 16, 2010, at 26.

<sup>76</sup> Joint Application, at 27-28; Joint Applicants/Robertson, R.T. June 16, 2010, at 73-74.

<sup>77</sup> The \$5.4 billion is the most current figure Emera has publicly reported and it updates the \$5.3 billion amount originally stated at page 5 in the Joint Application.

Emera's assets and businesses include both regulated electric utility and unregulated facilities and resources. It owns two regulated electric utilities: Nova Scotia Power Inc. ("Nova Scotia Power") based in Halifax, Nova Scotia and Bangor Hydro-Electric Company based in Bangor, Maine. These utilities in the aggregate serve over 600,000 electric customers in Nova Scotia and Maine through approximately 3,700 miles of transmission lines and almost 20,000 miles of distribution lines. Emera also owns and operates Emera Energy Services, which provides gas and power marketing and asset management services to utilities, energy producers, marketers, and other customers, and Emera Utility Services, which provides electric transmission and distribution services to electric utilities and cable companies.<sup>78</sup>

Emera and its subsidiaries have a substantial operating record and a nationally recognized safety record. DRA acknowledges Emera's wealth of operating experiences.<sup>79</sup> The Canadian Electricity Association has rated Nova Scotia Power as the safest power company in Canada and consistently ranks several of Nova Scotia's power plants in the top 10 for operational excellence.<sup>80</sup>

Emera is a leader in renewable energy development and operations. In 1979, Nova Scotia Power installed the first wind turbine generator in Canada. Emera has continued to be the central force and leader in the development of wind energy and tidal electric power technology in the Province of Nova Scotia. Nova Scotia Power generates tidal electric power by harnessing the tidal power of the Bay of Fundy, extracting power from tides through the Annapolis Royal Generating Station, the only tidal generating station operating in North America. Nova Scotia Power has also partnered with OpenHydro to develop an in-stream tidal turbine project that it expects will result in the deployment of the first operating commercial in-stream tidal power generation turbine.<sup>81</sup>

---

<sup>78</sup> Joint Application, at 5-7.

<sup>79</sup> Ex. 50, DRA Report, at 6.

<sup>80</sup> See, e.g., Ex. 22 of Joint Application, *Re Application by Nova Scotia Power Incorporated for approval of certain Revisions to its Rates, Charges and Regulations*, 2008 NSUAR 140 (Nov. 5, 2008) at paragraph 68 (in which the Nova Scotia Utility and Review Board accepted the conclusion that Nova Scotia Power "is a well managed utility that operate[d] at a lower [Operating, Maintenance and General Expenses (OM&G)] cost basis than its comparators when adjusted for its scale" and that it "compares favorably to the benchmark firms on OM&G expense when normalized by power generated, number of customers, number of employees and amount of revenue generated.") (citations omitted).

<sup>81</sup> Joint Application, at 7; more information about the OpenHydro tidal turbine is available at: <http://www.nspower.ca/site-nsp/media/nspower/Grid%20Connected%20Turbine%20>

### **E. CalPeco's Reasons for Pursuing the Transaction**

Algonquin and Emera each own and operate high-quality infrastructure assets that generate fair and reasonable returns. Each invests in energy and infrastructure assets with the business objective of owning regulated utility assets on a long-term basis. As such, the acquisition of the California Utility both advances these business strategies and provides an opportunity to acquire a utility business with sound assets, capable management, and predictable and reasonable earnings.<sup>82</sup>

Algonquin and Emera were initially, and remain, attracted to the California Utility because of its size, location, and customer profile, and the fact that it will be subject to regulation by this Commission, and only this Commission. Emera and Algonquin also believe that the California regulatory environment exhibits a positive history of fair and consistent rulings. Standard & Poor's reported in late 2008 that California regulation compares favorably with other U.S. regulatory jurisdictions. Such regulatory predictability and consistency were and remain an important factor in CalPeco's decision to invest in the California Utility.<sup>83</sup>

In addition, Algonquin and Emera concluded that a strong work force was in place with the capability to continue to run the operation, which will be complemented by the utility management experience of both companies. As staunch advocates of renewable energy initiatives, the acquisition of CalPeco is further attractive as it presents both Algonquin and Emera an opportunity to develop and implement renewable energy initiatives in a state that has long embraced the value of renewable energy.<sup>84</sup>

### **F. Regulatory Commitments**

In developing its requirements for prospective bidders and in selecting bids, Sierra placed a high priority on the bidder committing to terms and conditions which are consistent with this

---

[Testing%202008%20\(Small\).zip](#). This initiative has gained the support of both the Province of Nova Scotia and Sustainable Development Technology Canada. Sustainable Development Technology Canada is a not-for-profit foundation established by the Government of Canada. It finances and supports the development and demonstration of clean technologies which provide solutions to issues of climate change, clean air, water quality and soil, and which deliver economic, environmental and health benefits to Canadians.

<sup>82</sup> See Joint Application, at 18; The Commission approved a similar transaction where the acquiring party purchased the utility on the similar basis that it represented a good investment. See D.06-02-033, mimeo at 5 (Feb. 16, 2006).

<sup>83</sup> Joint Application, at 18-19.

<sup>84</sup> Joint Application, at 18.

Commission's precedents and policy preferences with respect to utility mergers and acquisitions. Sierra's decision to short list and select Algonquin was in large part based on the completeness and quality of the regulatory approval plan and corresponding commitments Algonquin submitted. Algonquin accepted each of the regulatory commitments Sierra required and Algonquin volunteered additional commitments. Moreover, the Joint Applicants have clarified and supplemented the initial Regulatory Commitments to respond to issues and concerns subsequently raised.

The Regulatory Commitments volunteered by CalPeco, Algonquin, and Emera (as described below) are consistent with factors that the Commission has considered and conditions imposed in approving similar requests under § 854(a).<sup>85</sup> These commitments are designed to protect the electric customers of the California Utility and the public from potential adverse impacts of the sale and otherwise ensure a seamless transition between service providers.<sup>86</sup>

Exhibit 7.9(b) of the Purchase Agreement memorializes certain initial Regulatory Commitments as part of CalPeco's contractual arrangements with Sierra. At the request of Administrative Law Judge Vieth<sup>87</sup> and for the convenience of all parties, Joint Applicants are including as Appendix A, the consolidated and updated set of Regulatory Commitments. The Regulatory Commitments in Appendix A reflect and incorporate the clarifications and additional commitments that Joint Applicants made throughout the regulatory process, and should render moot any additional DRA arguments asserting any "inconsistency" or "incompleteness" associated with the initial Regulatory Commitments.<sup>88</sup>

---

<sup>85</sup> See D.06-02-033; see also D.05-03-010.

<sup>86</sup> The Commission similarly identified these factors in its determination of "public interest" in the MidAmerican acquisition. D.06-02-033, mimeo at 35-36.

<sup>87</sup> Vieth, R.T. June 17, 2010, at 215-16.

<sup>88</sup> The updated Regulatory Commitments in Appendix A do not modify, limit or expand the Joint Applicants' respective rights and obligations under the Asset Purchase Agreement, including with respect to the fulfillment or non-fulfillment of any of the conditions precedent to the Closing of the proposed Transaction. For example, Emera requested that the Commission refrain from imposing a "minimum hold condition" per the original set of Regulatory Commitments (See Regulatory Commitment 3(g) of Exhibit 7.9(b) of the APA). This provision is, however, not included in Appendix A as these Regulatory Commitments are intended to be limited to the commitments applicable during the post-Closing period. As set forth in Section VII.A.1, *infra*, Emera continues to request that the Commission refrain from imposing any such minimum hold condition on its ownership of CalPeco; there is no possible benefit to any constituency for the Commission to impose such a condition.

Appendix A also provides a “redline” showing the changes from the initial Regulatory Commitments in Exhibit 7.9(b) to the current version. In addition to supplementing the original Regulatory Commitments, the revised version (i) changes the nomenclature from the commercial terms used in the Purchase Agreement such as “Buyer,” “ Seller,” and “Purchased Assets” to the terms (i.e. CalPeco, Sierra, and California Utility) used in this proceeding; and (ii) removes in the context of this opening brief, certain provisions in the original Regulatory Commitments which relate to contractual arrangements between CalPeco and Sierra under the Purchase Agreement, as opposed to commitments by CalPeco and its owners with respect to the ownership and operation of the California Utility after Closing.

Joint Applicants request that the Commission adopt the Regulatory Commitments in Appendix A as the conditions on which the Commission approves the proposed Transaction.

**G. DRA’s Challenges to Algonquin’s Qualifications and Emera’s Commitment Are Unsupported and Provide No Valid Basis to Reject the Proposed Transaction**

Contrary to DRA’s inference and innuendo-laden challenges to Algonquin and Emera’s joint intent and complementary capabilities to acquire and operate the California Utility, Algonquin and Emera are each independently qualified and committed to be a long-term and active participant in the financial affairs, management and operation of CalPeco. DRA argues that Algonquin and Emera’s requests that the Commission provide some limited regulatory flexibility in the ownership structure of CalPeco represent “evidence” that Emera has no commitment to own CalPeco<sup>89</sup> and will “abandon” CalPeco immediately after Closing.<sup>90</sup> Integral to DRA’s argument that Emera intends to be only a transitory participant in CalPeco is the associated assertion that Algonquin lacks the capabilities to itself reliably and safely operate an electric distribution utility. Thus according to DRA’s theory, Algonquin needs Emera’s “participation” to obtain this Commission’s approval of the proposed Transaction.

These accusations are absolutely baseless, totally refuted by Algonquin’s and Emera’s written and oral testimony, and must be summarily rejected. DRA’s unsupported claims of Algonquin’s alleged inexperience or of an alleged “cut and run” strategy by Emera provide no rational basis for this Commission to reject the proposed Transaction.

---

<sup>89</sup> Ex. 50, DRA Report, at 6.

<sup>90</sup> Ex. 50, DRA Report, at 5.

## 1. Algonquin Has Sufficient Experience and Capability to Operate the California Utility

DRA asserts that Algonquin has insufficient experience to safely and reliably operate the California Utility because Algonquin (i) “has no experience owning and operating an electric distribution utility;” and (ii) “has very minimal experience operating water and sewer utilities, and no demonstrated experience operating electric distribution utilities.”<sup>91</sup>

Neither the evidence nor common sense supports DRA’s accusations that Algonquin lacks the professional competence to operate CalPeco. Algonquin has the operating experience and other qualifications to safely and reliably operate the California Utility. Moreover, it should be reiterated that DRA’s challenges directed solely at Algonquin are not germane --CalPeco (i.e. the combination of Algonquin and Emera) is the applicant seeking § 854(a) authority to own and operate the California Utility.

In any event, DRA’s “evidence” of the Algonquin inability it alleges is predicated on two propositions: (i) Algonquin has never operated an electric distribution utility; and (ii) Algonquin has less “experience [than] Emera has in owning and operating electrical distribution facilities.”<sup>92</sup> With respect to its first point, DRA conspicuously fails to provide any evidence to suggest why such “direct” experience in operating an electric distribution system should by itself be determinative of an entity’s capabilities to operate CalPeco. DRA admits that Algonquin’s lack of experience directly operating an electric distribution utility does not *per se* disqualify it from capably operating the California Utility.<sup>93</sup> Moreover, when asked to identify “any aspect of operating an electrical distribution utility which DRA believes that Algonquin is not qualified to perform,” DRA identified no function; its response was circular: Algonquin has no “experience operating an electrical distribution utility.”<sup>94</sup>

DRA supports its criticism by unfavorably comparing Algonquin’s capability to Emera, which DRA recognizes has great experience in owning and operating utility assets.<sup>95</sup> The fact

---

<sup>91</sup> Ex. 50, DRA Report at 6.

<sup>92</sup> Ex. 50, DRA Report, at 6.

<sup>93</sup> See DRA Response to Joint Applicants’ Request 7(b), attached as Exhibit L to Joint Reply, Exhibit 1 (DRA does not contend that only a company that has direct experience in operating an electric distribution system would be qualified to own and operate the California Utility); see also DRA/Phan, R.T. June 17, 2010, at 174.

<sup>94</sup> DRA Response to Joint Applicants’ Request 7(d), attached as Exhibit L to Joint Reply, Exhibit 1. See also DRA/Phan, R.T. June 17, 2010, at 174.

<sup>95</sup> Ex. 50, DRA Report, at 6.

that Algonquin does not have Emera's 130 years of distribution utility operating experience in no way suggests a lack of meaningful utility operating experience or capability by Algonquin. First, Algonquin itself has successfully operated, for many years, numerous hydroelectric, fossil, and biomass generation facilities, as well as regulated water and sewer distribution utilities.

Second, DRA ignores Sierra's determination that Algonquin has the operational and managerial qualifications to operate the California Utility.<sup>96</sup> Sierra's selection process was comprehensive and specifically included "experience at operating, and the proven capability to operate, a distribution utility" as one, of many, selection criteria.<sup>97</sup> Sierra selected Algonquin at a time when Emera was not involved and over other entities that had such "direct" electric distribution utility operating experience. DRA advances no reason for the Commission to reject Sierra's determination of Algonquin's qualifications and adopt DRA's opinion.

Third, and most importantly, Algonquin, by any objective standard, has the precise experience and qualifications necessary to operate a small electric distribution utility, particularly in the context of this Transaction. It has a successful record of operating small regional water and sewer distribution utilities; there are obvious similarities in operating regulated utility delivery systems – billing, regulatory relations, customer service, and accounting.<sup>98</sup> DRA acknowledges that Algonquin's back office experiences with billing systems, accounting, and customer service functions for water and sewer utilities have direct applicability to operation of an electric distribution utility.<sup>99</sup>

DRA's unflattering portrayal notwithstanding, Algonquin has demonstrated the ability to operate electric generation facilities that can serve loads much larger than the California Utility. Algonquin serves approximately 75,000 regulated water and sewer customers; the California Utility has 46,000 customers. The average and peak MW loads of the California Utility are approximately 80-90 MW and 120-130 MW, respectively; Algonquin now owns and operates over 500 MW of generating facilities.<sup>100</sup>

DRA's cross-examination sought to infer that Algonquin lacks the ability and commitment to procure power for the California Utility and to conduct its operations with the

---

<sup>96</sup> Joint Application, at 14-18.

<sup>97</sup> Joint Application, at 16.

<sup>98</sup> See Joint Applicants/Mughal, R.T. June 16, 2010, at 18.

<sup>99</sup> DRA/Phan, R.T. June 17, 2010, at 176.

<sup>100</sup> Joint Application, at 4; see also Joint Applicants/Robertson, R.T. June 16, 2010, at 26.

highest degree of safety.<sup>101</sup> Any such suggestions by DRA demand immediate rejection.<sup>102</sup> Although there is no reason to doubt Algonquin's ability to generate or otherwise procure power for the California Utility, under the Power Purchase Agreement, Sierra will retain the responsibility for power procurement for the California Utility. Sierra will thus deliver the same power as currently is delivered through the same facilities— approval of the proposed Transaction will not alter the power procurement process.

With respect to safety, Algonquin's electric generation and water distribution experiences demonstrate its capability to operate utility infrastructure safely, capably and reliably. DRA recognizes that Algonquin's operation of water utilities ensures that Algonquin already places absolute, paramount importance on safety.<sup>103</sup> DRA also acknowledges that operating electric generating facilities also demand absolute adherence to the strictest safety requirements.<sup>104</sup>

Lastly, DRA's criticisms of Algonquin's operating capabilities ignore two realities: the day-to-day operations of any utility are conducted by its employees, and the very same Sierra field employees who today provide reliable and safe service to the customers of the California Utility will continue to perform the same functions for these customers.<sup>105</sup> There is absolutely no basis to suggest that the change in the identity of the employer will cause a decrease in the commitment and capability of the work force.

In fact, Local 1245 believes the employment of its members by CalPeco will preserve the current quality of service and reliability, and also will promise potential enhancements:

The members of Local 1245 are a hard-working, motivated and highly skilled union workforce that has helped Sierra respond to the many service challenges inherent in providing reliable electric service in a mountainous terrain with severe weather conditions. We look forward to playing the same vital role with CalPeco to maintain and enhance the quality of service, and to ensure the reliability of that service, to its customers within California.<sup>106</sup>

---

<sup>101</sup> Joint Applicants/Mughal, R.T. June 16, 2010, at 18-19.

<sup>102</sup> See DRA Response to Joint Applicants' Request 7(c), attached as Ex. L to Joint Reply, Exhibit 1 (DRA summarily dismisses Algonquin's small utility operating experience on the conclusory grounds that "The two experiences [--experience in operating smaller-scale water and sewer service utilities and experience owning and operating electrical distribution facilities] are not comparable").

<sup>103</sup> DRA/Phan, R.T. June 17, 2010, at 176.

<sup>104</sup> DRA/Phan, R.T. June 17, 2010, at 176.

<sup>105</sup> DRA/Phan, R.T. June 17, 2010, at 175.

<sup>106</sup> Exhibit G, Local 1245 Letter, at 1.

The record in this proceeding indisputably demonstrates that DRA's insinuations about Algonquin's lack of direct experience in operating an electric distribution utility offers no basis for the Commission to reject the proposed Transaction.

## **2. Emera Has A Substantial History and Proven Track Record As An Investor for the Long-Term**

DRA engaged a different strategy in attacking Emera's participation in the acquisition of the California Utility and ultimately in the operations of CalPeco. DRA uniformly praises Emera's operating experience and financial strength,<sup>107</sup> yet it concurrently asserts that Emera has no intention in being a long term or meaningful participant in CalPeco.<sup>108</sup> The undisputed facts and commercial reality refute DRA's assertions that Emera's participation in the proposed Transaction has been to serve as a "stalking horse" for Algonquin. The evidence demands that the Commission reject DRA's unfounded accusations that Emera intends to withdraw from CalPeco or that Emera will "abandon" CalPeco.

DRA argues that Emera would "abandon" CalPeco if Emera were to sell or reduce its percentage ownership in CalPeco. It further claims that Emera would so "abandon" CalPeco, even if Emera would retain a sizable, but indirect, ownership of CalPeco.<sup>109</sup> Based on its fears of "corporate abandonment," DRA determined that CalPeco's customers are likely to be deprived the benefits offered by Emera's financial strength, experience in developing renewable energy projects, and operating experience.<sup>110</sup>

The Commission must summarily reject DRA's "abandonment" fictions – they are devoid of any factual basis and are contrary to undisputed facts and commercial logic. First, Emera and Algonquin have represented:

Such a possible adjustment [i.e. Emera transferring its equity investment from directly into CalPeco to an indirect investment by investing in Algonquin] could aid decision-making at the CalPeco operating level, but at the same time continue to enable Algonquin and CalPeco to make use of Emera's financial strength, expertise in renewable resource development, and operating experience.<sup>111</sup>

---

<sup>107</sup> Ex. 50, DRA Report, at 6.

<sup>108</sup> Ex. 50, DRA Report, at 5-6.

<sup>109</sup> Ex. 50, DRA Report, at 5.

<sup>110</sup> DRA/Phan, R.T. June 17, 2010, at 182 -187.

<sup>111</sup> Ex. 3, First Update, at 6. Any such additional investment by Emera in Algonquin would be in addition to the 9.9% interest in Algonquin that Emera has agreed to acquire upon Closing. *See* Joint Application, at 7.

Emera's operating history further belies DRA's accusations of any such "cut and run" business strategy. Mr. Tedesco emphasized that Emera maintains partnership and joint ownership arrangements for the long-term:

...[O]ur track record demonstrates that we seek to hold assets longer term, and we would not be participating in this particular transaction [i.e. participation in CalPeco to purchase the California Utility] if we didn't think it made sense for us in the long term."<sup>112</sup>

Emera's "track record" of long term asset holdings include its minority ownership interests in St. Lucia Electricity Services Ltd (a 19% interest) and Grand Bahamas Power Company (a 25% interest), which collectively serve over 70,000 customers in the Caribbean. Emera also recently acquired a 38% interest in Light & Power Holdings Ltd., which is the parent company of The Barbados Light & Power Company Limited serving 120,000 customers. Emera also has joint ownership interests in several electric generating assets, including a 50% interest in the Bear Swamp 600 MW pumped storage facility in northern Massachusetts. It also holds an 8.2% interest in OpenHydro, an Irish developer of tidal power turbine technology.<sup>113</sup>

Emera's ownership interests in utility assets demonstrate that it has remained active in management even in instances in which it holds an indirect relationship to the operating utility through its ownership in an upstream company.<sup>114</sup> In such instances Emera has used its ownership to assist the operating utility with respect to financial and operating matters.

Confronted with undisputed evidence, DRA nonetheless continues to urge that the Commission reject Emera's actual ownership and operating history, and make a finding that absent Emera retaining an ownership interest directly in CalPeco:

Emera will be out of the picture. Emera will be an upstream owner somewhere and may or may not stick around.<sup>115</sup>

Mr. Tedesco testified on behalf of Emera that it would not be participating in this Transaction if it did not make sense for Emera to participate over the long term.<sup>116</sup> The Commission is obligated to decide this matter on the basis of the facts in evidence. It would be unlawful for it to entertain DRA's insistence to reject undisputed and credible evidence, accept

---

<sup>112</sup> Joint Applicants/Tedesco, R.T. June 16, 2010, at 87.

<sup>113</sup> Ex. 1, Joint Reply, at 18-19.

<sup>114</sup> Ex. 1, Joint Reply, at 18-19; Joint Applicants/Tedesco, R.T. June 16, 2010, at 83-84.

<sup>115</sup> DRA/Phan, R.T. June 17, 2010, at 186.

<sup>116</sup> Joint Applicants/Tedesco, R.T. June 16, 2010, at 87.

DRA's unfounded accusations disputing Emera's commitment to be a long-term participant in CalPeco, and on such bases decline to authorize the proposed Transaction.

## V. THE TRANSFER OF CONTROL IS IN THE PUBLIC INTEREST

As explained in Section III.A, the standard for the Commission under § 854(a) to determine if a requested transfer of control should be approved is whether the Transaction will not be "adverse to the public interest."<sup>117</sup> Joint Applicants have ensured that the transfer of control of the California Utility from Sierra to CalPeco will be seamless to the electric consumers in the Sierra California service territory. This Transaction will not be "adverse to the public interest" and thus satisfies the § 854(a) public interest standard.

Foremost, the revenue requirement and rates approved by this Commission prior to Closing will not change as a result of this Transaction. After Closing, as would be the case even if Sierra were to retain ownership of the California Utility rates will likely change, due to the normal operation of the ECAC tariff and as a result of the Commission authorizing higher rates in the 2012 GRC.

The Commission has delineated rules and criteria to assess whether the applicants have satisfied the controlling § 854(a) "not adverse to the public interest" standard. Additionally, if necessary to ensure that a proposed transaction is "not adverse to the public interest," and as a preferable alternative to rejecting the transaction all together, the Commission has imposed conditions on its granting of the § 854(a) authority. As explained previously,<sup>118</sup> the Regulatory Commitments set forth in Appendix A incorporate the conditions this Commission has imposed on a company acquiring a California utility that could be germane to the sale of the California Utility.

The proposed Transaction has similarities to the Commission's approval of both Avista's sale of its California natural gas assets and MidAmerican's acquisition of PacifiCorp's California electric operations. As is the case with Sierra, the selling utilities (Avista and PacifiCorp) each operated utilities in multiple states and each had only a relatively small presence in California. As of the time of the MidAmerican acquisition, PacifiCorp served 44,000 customers within California in a service territory that straddles the Oregon-California border.<sup>119</sup> Here, the

---

<sup>117</sup> See *Application of Comcast Business Communications, Inc. for Approval of the Change to Control of Comcast Business Communications, Inc.*, D.02-11-025, mimeo at 41 (Findings of Fact 20) (Nov. 7, 2002).

<sup>118</sup> See Section IV.F, *supra*.

<sup>119</sup> D.06-02-033, mimeo at 3.

California Utility serves 46,000 customers and similarly straddles the Nevada-California boundary.

In approving the MidAmerican purchase, the Commission identified seven criteria to guide its § 854 (a) assessment. The record demonstrates that the proposed Transaction satisfies each of these seven criteria and thus by any standard warrants approval under § 854(a).<sup>120</sup>

**A. The Transition from Sierra to CalPeco Will Be Seamless**

As explained previously, Joint Applicants have specifically designed the proposed Transaction to ensure that the ownership transition from Sierra to CalPeco will be seamless for ratepayers. CalPeco will maintain, and seek to improve, the quality of service for the customers of the California Utility. CalPeco, and the current Sierra employees it will hire, will also continue to provide safe and reliable service.

DRA necessarily acknowledges that the same facilities Sierra currently uses will continue to deliver the same power from the same power resources to the customers of the California Utility the day after Closing.<sup>121</sup> The lone challenge that DRA has asserted to the “seamless” characteristic of the proposed Transaction is the requested change of ownership.<sup>122</sup>

Anticipating the possible challenges that a new owner could face after Closing to itself procure sufficient power resources and transmission rights to reliably serve the California Utility, Sierra developed a multi-year power purchase agreement under which it will provide 100% of the new owner’s power needs on a cost-of-service basis. The resulting Power Purchase Agreement retains for CalPeco’s customers the very same benefits of the reliable power supply resources and cost-based pricing that these California customers enjoy today. Moreover, the Joint Applicants have entered the other Operating Agreements designed to ensure that CalPeco can upon Closing provide the California Utility customers the same reliable electric service on the same cost-of-service basis they receive now.

DRA supports CalPeco’s commitment to offer employment to all current employees of the California Utility and continue to operate all California offices.<sup>123</sup> Joint Applicants have also

---

<sup>120</sup> In identifying these criteria, the Commission cautioned that it is “not obligated” to use these criteria and that it “may choose to use none, some, or all of these criteria in future [§ 854(a)] proceedings.” D.06-02-033, mimeo at 24. The Commission did add, however, that the criteria do “provide a useful framework for analyzing the transaction.” *Id.*, at 23-24.

<sup>121</sup> DRA/Phan, R.T. June 16, 2010, at 101.

<sup>122</sup> DRA Report, at 4; DRA/Phan, R.T. June 16, 2010, at 101-103.

<sup>123</sup> DRA/Phan, R.T. June 16, 2010, at 103.

entered into a Transition Services Agreement that enables CalPeco to elect to have Sierra perform each function Sierra currently performs for its California customers and on “at cost” basis, based on a reasonable approximation of the actual costs required by Sierra to provide service.<sup>124</sup> The other Operating Agreements are similarly designed to ensure that the Transaction will leave all stakeholders in the same position before and after Closing.

**1. DRA’s Speculation of Losses of Economies of Scale are Not Supported**

As discussed before,<sup>125</sup> DRA argues that the proposed Transaction will harm the customers of the California Utility due to DRA’s proposition that the reduction from Sierra’s larger customer base will necessarily deprive Sierra’s customers of unspecified economies of scale.<sup>126</sup> DRA is expected to argue that because the 1999 combination between Nevada Power and Sierra achieved certain cost savings by elimination of redundancies,<sup>127</sup> and enabled the combined entity to obtain certain economic advantages due to its larger asset base and customer population,<sup>128</sup> a sale of the California Utility to a smaller entity must result in a loss of bargaining power.<sup>129</sup>

DRA’s economic notions ignore that the proposed Transaction has been purposefully structured to retain the positive economies of scale Sierra’s California customers presently realize. Moreover, any possible limited losses of economies of scale will likely be offset by the efficiencies that result from CalPeco’s local focus, flexibility and the removal of any “diseconomies of scale.”<sup>130</sup>

The largest cost item for the California Utility will continue to be power procurement costs. It accounts for approximately \$45-\$50 million of the California Utility’s \$75-\$80 million revenue requirement.<sup>131</sup> DRA acknowledges that CalPeco’s customers will enjoy the same economies of scale Sierra currently provides its California customers through the cost-based

---

<sup>124</sup> Ex. 1, Joint Reply, at 46-47; Joint Applicants/Tomchuk, R.T. June 16, 2010, at 49-50.

<sup>125</sup> See Section II.B, *supra*.

<sup>126</sup> See DRA Report, at 14-16.

<sup>127</sup> Joint Applicants/Bethel, R.T. June 16, 2010, at 11, 13-14.

<sup>128</sup> Joint Applicants/Bethel, R.T. June 16, 2010, at 12-13.

<sup>129</sup> Joint Applicants/Tedesco, R.T. June 16, 2010, at 51. See also Exhibit R to Exhibit 1 in which DRA acknowledges that its claims that the Transaction should be rejected based on the perceived loss of economies of scale rests totally on the basis that Sierra’s larger customer base *per se* provides economies which will be necessarily be lost under CalPeco ownership.

<sup>130</sup> Joint Applicants/Robertson, R.T. June 16, 2010, at 54-55

<sup>131</sup> DRA/Phan, R.T. June 16, 2010, at 127.

pricing in the Power Purchase Agreement. DRA also recognizes that these economies of scale are similarly preserved by the Emergency Backup Services Agreement and the Borderline Customer Agreement.<sup>132</sup>

Further and most significantly, while professing fear about increased costs due to the supposed loss of economies of scale, DRA presented no evidence of the possible magnitude in dollars or percentage of its concern. Thus as will be explained in Section V.C.3.a, *infra*, even accepting DRA's concerns that the Transaction may cause some slight loss of certain economies of scale (and also assuming no offsetting cost efficiencies through the elimination of "diseconomies of scale"), DRA's economies of scale argument in no event creates a risk of a significant increase in rates which would impose an unacceptable level of "rate shock" on the customers of the California Utility.

DRA also expressed concern that CalPeco could not state definitively the line-by-line level of expenses it would expect to incur after Closing. However, as Mr. Robertson explained, CalPeco it will not have the necessary information to provide a reliable number broken down to that level of detail until it assumes ownership and begins operating the California Utility on a day-to-day basis.<sup>133</sup>

Electronic billing provides a specific example where, contrary to DRA's fundamental premise, CalPeco's local focus and smaller size, and the advantage of being subject exclusively to California regulatory jurisdiction, can enable CalPeco to offer greater customer services generally within the existing operating cost structure.<sup>134</sup> Ironically, DRA sought to portray Sierra's decision not to offer electronic billing options as a basis for the Commission to reject the Transaction. DRA's cross-examination was designed to demonstrate that if the larger Sierra found electronic billing to be too expensive for the California service territory, then by definition, it would necessarily be cost prohibitive for CalPeco to offer the service.

However, as Mr. Robertson testified and, Sierra witness Mr. Tomchuk confirmed, CalPeco's smaller size, the opportunity to introduce computer systems designed specifically for the California tariff system<sup>135</sup> and Algonquin's prior successes in introducing cost-effective

---

<sup>132</sup> DRA/Phan, R.T. June 16, 2010, at 128-129.

<sup>133</sup> Joint Applicants/Robertson, R.T. June 16, 2010, at 55.

<sup>134</sup> Joint Applicants/Robertson, R.T. June 16, 2010, at 73-74.

<sup>135</sup> NV Energy elected not to offer electronic billing in California because in part its computer technology was designed to operate within the Nevada regulatory framework and NV Energy determined this "platform" could not integrate electronic billing for its relatively small number

electronic billing services in its other smaller utilities should enable it to introduce electronic billing cost-effectively to the California Utility.<sup>136</sup>

Similarly, CalPeco expects to reopen the South Lake Tahoe customer service counter at no incremental cost.<sup>137</sup> Thus, any purported losses of economies of scale that DRA speculates may occur due to the Transaction could very well be offset by gains associated with CalPeco's local focus and flexibility.

**B. The Proposed Transaction Will Maintain or Improve the Quality and Reliability of Service for Customers**

CalPeco has made a commitment to adopt, maintain and strive to improve the high quality of service that Sierra has historically provided its California customers.<sup>138</sup> CalPeco intends to satisfy this commitment to service first by offering employment to the Sierra employees who operate the California Utility system today. CalPeco also intends to utilize the same facilities and, through the Power Purchase Agreement, will obtain the same power from the same supply sources be delivered to its customers. By remaining interconnected "utility neighbors" located within the same Balancing Authority area, and by participating in the Coordination Committee,<sup>139</sup> CalPeco and Sierra will continue to optimize the benefits of their interconnected systems. Additionally, it should be reiterated CalPeco's owners have substantial experience in utility operations which they intend to share with and use to benefit CalPeco and its customers.<sup>140</sup>

---

of California customers on a cost-effective basis. Joint Applicants/Robertson/Tomchuk, R.T. June 16, 2010, at 73-75.

<sup>136</sup> Joint Applicants/Tomchuk, R.T. June 16, 2010, at 72-75.

<sup>137</sup> Joint Applicants/Robertson, R.T. June 16, 2010, at 72-73. Sierra closed this customer service center because given its size and other needs, it could not justify the incremental costs. In contrast, with its singular focus on California and ability to have all of its employees dedicated to serve the California Utility, CalPeco believes it can reopen the Lake Tahoe customer service counter at no incremental cost. Joint Applicants / Tomchuk Robertson, R.T. June 16, 2010, 72-75.

<sup>138</sup> Appendix A, Regulatory Commitment 3(g).

<sup>139</sup> See Section 4.1 of System Coordination Agreement, Exhibit 15 to the Joint Application; see also Section VI.E.2, *infra*.

<sup>140</sup> See Sections IV.C, D, and G, *supra*.

The Commission has recognized that improvements to customer service constitute a ratepayer benefit favoring approval of a § 854(a) application.<sup>141</sup> CalPeco's focus exclusively on California and the Lake Tahoe communities is expected to enable it to build upon the high quality customer service that Sierra has been able to provide. An entity whose sole purpose is to serve 46,000 customers, with senior management physically present within the service territory and located within a discrete and relatively close geographic area, will be able to better serve these customers than an entity charged with providing service for over one million customers in another state and with corporate headquarters in Nevada.<sup>142</sup> Though Sierra has obtained great knowledge of the terrain and familiarity with the local communities, the employees of Sierra will carry over their collective knowledge and familiarity with the service territory and its geography, and CalPeco's customers will retain the benefits of their experience and knowledge.<sup>143</sup>

As Local 1245 explains, CalPeco's smaller size and "local presence" will benefit its customers:

We [Local 1245] also believe that CalPeco's local presence, smaller size, resulting sharper focus, and ability to concentrate on matters of particular importance to California and the Lake Tahoe Basin communities will benefit its customers in terms of the quality of the service.<sup>144</sup>

CalPeco's local and sharper focus promises to translate into improved customer services in several respects. The Commission has recognized in assessing prior transfers of control applications under § 854(a) that the buyer's commitment to have a "representative available locally is an important aspect of customer service."<sup>145</sup> CalPeco intends to maintain its corporate headquarters and management within the California Utility's service territory.<sup>146</sup>

Second, CalPeco will maintain a customer service headquarters at a location within the California service territory.<sup>147</sup> As explained in the preceding section, the physical concentration

---

<sup>141</sup> See, e.g. *Re Joint Application of California-American Water Company, RWE Aktiengesellschaft, Thames Water Aqua Holdings GmbH, and Apollo Acquisition Company*, D.02-12-068, mimeo at 17, 54 (Findings of Fact 11) (Dec 19, 2002).

<sup>142</sup> Joint Application, at 27-28.

<sup>143</sup> Joint Applicants/Bethel, R.T. June 16, 2010, at 23.

<sup>144</sup> Ex. 1, Joint Reply, Exhibit G, Local 1245 Letter, at 2.

<sup>145</sup> D.02-12-068, mimeo at 34, 56 (Findings of Fact 25).

<sup>146</sup> Appendix A, Regulatory Commitment 4(b).

<sup>147</sup> Appendix A, Regulatory Commitment 4(b).

of the CalPeco employees within the California service territory will enable a more advantageous deployment of personnel, including the reopening of the South Lake Tahoe customer service counter.

Third, CalPeco can introduce software capabilities enabling its customers to receive bills, make payments, initiate service, and schedule service calls electronically.<sup>148</sup> Electronic communications can provide CalPeco's customers both economic and service benefits. The ability to communicate electronically is particularly beneficial given that a meaningful portion of the California Utility customers either live in remote areas or reside in other areas most of the year. Certain of these customers currently resort to third party payment intermediaries, which charge transaction fees to pay their bills. Electronic payment options will provide some of these customers with a means of minimizing these third party services which could result in an immediate reduction in their overall monthly electricity costs.<sup>149</sup>

Online services can also enable a customer to more effectively communicate with CalPeco, whether for initiating service, alerting it to a service problem, or scheduling a service call.<sup>150</sup> In approving the RWE acquisition of California American Water Company, the Commission recognized that the customers of the acquired utility realize benefits by "having their problems ascertained, analyzed, and addressed by field personnel in a more accurate, timely, and efficient manner."<sup>151</sup>

CalPeco will also continue the demand-side management programs the Commission has approved and Sierra has implemented. CalPeco should have the opportunity to employ the same outside energy efficiency contractors that Sierra currently utilizes and thus be able to maintain these services at the current cost levels.<sup>152</sup>

Evidencing its commitment to renewable power development and energy efficiency within the service territory, CalPeco has already become a participant in the Lake Tahoe Green Energy District with, among others, the Lake Tahoe Community College, the Lake Tahoe Unified School District, the City of South Lake Tahoe, the State of California Tahoe Conservancy, and the U.S. Forest Service. The objectives of the Lake Tahoe Green Energy

---

<sup>148</sup> Joint Application, at 27-28; Joint Applicants/Robertson R.T. June 16, 2010, at 73-74.

<sup>149</sup> Joint Application, at 27-28.

<sup>150</sup> Joint Application, at 28.

<sup>151</sup> D.02-12-068, mimeo at 17.

<sup>152</sup> Joint Applicants/Tomchuk, R.T. June 16, 2010, at 76-77.

District include the following initiatives within the Lake Tahoe communities: facilitating the implementation of energy efficiency measures, installing geothermal technology, and establishing a Green Data Center Demonstration Project.<sup>153</sup>

DRA has not challenged Joint Applicants' assertion that CalPeco will maintain the reliability of service after the Closing; Local 1245 and the Aligned Protestants anticipate improved service under CalPeco ownership.<sup>154</sup> There is no basis for a finding that approval of the proposed Transaction will expose California electric consumers to any possible degradation of quality or reliability of service.

**C. The Proposed Transaction Will Not Increase Customer Rates or Total Revenues Collected from the Customers of the California Utility**

**1. The Total Revenues to be Paid by the Customers of the California Utility Will Remain at the Same Level After Closing**

The Joint Applicants have structured the Operating Agreements to enable CalPeco, after the Closing, to collect from customers the same amount of revenues that Sierra would otherwise collect on an aggregate basis and to charge individual customers at the same rate levels.<sup>155</sup> DRA has expressed no concern regarding the revenue requirement and rate levels on the day after Closing.<sup>156</sup> DRA's basis for opposing the Transaction is the rate requests it speculates CalPeco may advance in its 2012 GRC (which of course has not been filed and is not presently before the Commission).

**2. The Minor Adjustment to the ECAC Tariff CalPeco Requests is Warranted To Prevent Cost Shifting Among Customers**

Because the manner in which CalPeco will incur costs to serve customers will differ from Sierra (i.e., the transition from owning generation to procuring power through a full requirements Power Purchase Agreement), CalPeco requests authority to reclassify certain components of general rates to ECAC rates. The requested reallocation of the total rate burden between general rates and ECAC rates will enable CalPeco to collect from customers the same total revenues as Sierra would otherwise recover for power generation, transmission, fuel and purchased power.<sup>157</sup>

---

<sup>153</sup> Joint Application, at 29.

<sup>154</sup> See Exhibits C and G to Exhibit 1, Joint Reply.

<sup>155</sup> Joint Application at 30-31; see also Ex. 4, Second Update Letter at 4.

<sup>156</sup> DRA/Phan, R.T. June 16, 2010, at 102.

<sup>157</sup> T&G charges to customers of the California Utility currently include an allocation of the costs of the Kings Beach Generation Facility. As CalPeco will own the Kings Beach Generation Facility, the costs attributable to the Kings Beach Generation Facility will not be included in the T&G costs under the Power Purchase Agreement.

Although the rates charged to customers on the day after Closing will not change, the reclassification of the transmission and generation (“T&G”) rate components (including demand charges) will result in a greater portion of CalPeco’s revenue being assigned to fuel and purchased power recovery (ECAC rates) and a reduced portion being assigned to general rates. This transition requires a change in the manner in which a portion of ECAC costs are billed, both in order to avoid cost-shifting between customers and to enable the amount of each customer’s aggregate per kWh charge in the monthly bill to remain the same after Closing.<sup>158</sup>

Joint Applicants propose that CalPeco be authorized to recover \$1.4 million of T&G costs under the Power Purchase Agreement that Sierra currently bills to A-3 customers on a per kW basis on the same basis in its general rates, but as an element of CalPeco’s ECAC rates.<sup>159</sup> Authorizing CalPeco to continue to collect \$1.4 million of the T&G Power Purchase Agreement costs on the same kW-basis through ECAC rates will minimize any possibility of rate shifting among A-3 customers and provide the customers of the California Utility with the desired seamless transition.

This change in the collection of a small component of the ECAC rates will enable the total rate obligation for each customer to remain the same after Closing as the customer would pay if the Transaction did not occur. CalPeco accordingly requests authority to recover the costs that Sierra currently recovers through the Transmission Charge and the Generation Charge as part of its ECAC rates.<sup>160</sup> These charges would continue to be separately stated on the bills, but identified as part of the ECAC rates, and would be collected using the same combination of per kW and per kWh charges that are used by Sierra to collect these costs through general rates currently.

DRA has raised no issue relating, or any objection, to the rate reallocation and the minor change in the ECAC tariff that Joint Applicants request.

---

<sup>158</sup> Joint Application, at 35.

<sup>159</sup> The need for this authority is to prevent cost-shifting among A-3 customers. *See* Joint Application, at 36.

<sup>160</sup> The current line items are described in the Joint Application, at 37.

### **3. CalPeco's Costs Will Remain Comparable to the Costs Sierra Would Be Expected to Request in the 2010 GRC**

DRA acknowledges that rates will not increase the day after Closing.<sup>161</sup> DRA's opposition to the Transaction is premised solely on the "uncertainties" of the level of rate recovery that DRA postulates CalPeco will request in the 2012 GRC.

The determinative rate issue for the Commission in this § 854(a) application is whether there is any legitimate basis to suggest that approval of the proposed Transaction will expose the customers to some unacceptable level of "rate shock," and such risk would not arise absent the proposed change in ownership.

#### **a. There Is No Potential For Rate Shock at the Next GRC for Ratepayers With CalPeco Any More Than There Would Be With Sierra**

DRA's concerns relating to the 2012 GRC provide no cognizable basis for this Commission to deny approval of the proposed Transaction. First, CalPeco is not making any request with respect to possible future rates in this proceeding.<sup>162</sup> A general rate case is the appropriate Commission forum to address requests for rate recovery.

Second, DRA's objections to the amount that it fears CalPeco will request in its 2012 GRC wrongfully intimates that by approving the proposed Transaction, this Commission will be writing CalPeco a "blank check" for any level of rates in its 2012 GRC. Obviously, and as even DRA recognizes -- with respect to any rate authority CalPeco may request, the Commission will assess the request and grant recovery of only those expenses it finds just and reasonable, cost-effective and in the best interests of ratepayers.<sup>163</sup>

Third, even if DRA could establish that rates following the 2012 GRC would increase marginally under CalPeco, the potential for some marginal difference between CalPeco and Sierra rates after the 2012 GRC offers no legal or policy ground for the Commission to reject the Transaction. Neither a § 854(a) applicant nor the incumbent utility must guarantee that rates will not increase over time. Indeed, as with most other electric utilities, it has been Sierra's experience to request increases in its general rate cases. Costs should reasonably be expected to

---

<sup>161</sup> DRA/Phan, R.T. June 16, 2010, at 102 and 115.

<sup>162</sup> DRA/Phan, R.T. June 16, 2010, at 115.

<sup>163</sup> DRA/Phan, R.T. June 16, 2010, at 115-116. DRA has also committed to advocate zealously on behalf of CalPeco's customers in the 2012 GRC. DRA/Phan, R.T. June 16, 2010, at 116.

increase; for instance, Sierra is currently engaged in collective bargaining and its labor costs will likely increase from current levels.<sup>164</sup>

Moreover, Joint Applicants have structured the Transaction, the Power Purchase Agreement and the other Operating Agreements with the intent that the transfer of ownership will retain for the electric consumers of the California Utility the same cost parameters that they are exposed to now with Sierra. Joint Applicants make no promise or guarantees that the Transaction will mitigate or eliminate the normal risks that confront electric consumers. CalPeco's customers will face price variations due to fluctuations in fuel costs just the same as currently confront Sierra's customers. Approval or rejection of the Transaction will not expose the electric consumers within the service territory of the California Utility to a different risk exposure.<sup>165</sup>

Importantly, DRA presents no evidence that could support a finding that approval of the Transaction by itself will expose CalPeco's customers to a greater risk of rate shock. First, DRA offers no projection as to the rate level that Sierra would request if it retains the California Utility.<sup>166</sup> Thus DRA presented no evidence challenging CalPeco's expectation that the rate levels it will request in the 2012 GRC would be comparable to the amount that Sierra would be expected to request in a Sierra 2012 GRC. Thus DRA presents no cognizable or quantifiable basis to suggest that the rate level that CalPeco will request in its 2012 GRC would subject California utility customers to a higher risk of rate shock should the Commission reject the proposed Transaction.

Moreover, while DRA has expressed anxieties about future rates, its concerns (even assuming they are even valid) focus on a very small portion of Sierra's approximate \$75-\$80 million revenue requirement. Foremost, between \$45 and \$50 million of the revenue requirement will be based on the Power Purchase Agreement, which are costs customers would bear whether Sierra or CalPeco owns the California Utility.

---

<sup>164</sup> Ex. 1, Joint Reply, at 49-50.

<sup>165</sup> As expressed by Mr. Robertson:

This ...[Transaction] has been ... very specifically structured such that the ratepayers going forward are exposed to the same cost structures and cost areas that they are exposed to right now -- .... So it has been very much the philosophy and premise of this entire transaction to preserve [the] risk exposures the day after [C]losing as they are the day before. Joint Applicants/Robertson, R.T., June 16, 2010 at 57.

<sup>166</sup> DRA/Phan, R.T. June 16, 2010, at 116.

DRA's unsubstantiated rate concerns relating to any "loss of supposed economies of scale" are restricted to certain O&M and administrative costs which comprise roughly 10% of the total revenue requirement.<sup>167</sup> With respect to this relatively minor portion of the expenses, there is no basis to project that CalPeco's requests in its 2012 GRC may exceed the rate levels Sierra would be requesting. Sierra's current projection of its 2012 GRC test year for the O&M costs, the basis of DRA's fears of escalating costs under CalPeco ownership, would be a minimum of \$8.8 million.<sup>168</sup>

DRA has no independent estimate of the projected O&M costs Sierra would request if it prosecuted a 2012 GRC.<sup>169</sup> Moreover, this \$8.8 million likely represents the low end of the cost range that Sierra would request in a 2012 GRC. Sierra has historically projected costs in rate cases in excess of its current cost levels and has no reason to expect its 2012 GRC to be any different. Sierra's labor costs, for instance, are likely to increase from current levels in light of its ongoing negotiations with Local 1245. Sierra would expect these O&M costs projected for its hypothetical 2012 GRC to exceed its present costs in other areas.<sup>170</sup>

Most of the expenses encompassed in any projection of Sierra's O&M costs for a hypothetical 2012 GRC have a reasonable likelihood of remaining substantially similar under CalPeco ownership. Labor costs represent approximately \$4.6 million of costs. Given that CalPeco will retain the same employees and provide comparable compensation packages, this cost should be similar. Likewise, CalPeco will be purchasing Sierra's trucks and other vehicles and the approximate half-million dollar cost Sierra incurs to operate and provide fuel should not change due to CalPeco ownership.

Thus, there should be no more than \$3-\$4 million of the total O&M costs which are theoretically 'at risk' for an increase as a result of the proposed Transaction. Even assuming a 15% escalation on this \$3 to \$4 million equates to a total operating cost increase of \$450,000 to \$600,000 – a less than 1% increase of the total revenue requirement for the California Utility, and certainly no basis for a concern about rate shock.

---

<sup>167</sup> Ex. 1, Joint Reply, at 48-49.

<sup>168</sup> This figure reflects \$8.25 million of O&M costs (as calculated in Sierra's good faith estimation of the cost incurred to operate the distribution system as proposed in Sierra's 2008 GRC) plus the Commission-authorized annual attrition adjustment of \$185,000. Ex. 1, Joint Reply at 45-51.

<sup>169</sup> DRA/Phan, R.T. June 16, 2010, at 116.

<sup>170</sup> Ex. 1, Joint Reply, at 48-51.

CalPeco expects no such 15% increase. Nonetheless, CalPeco is comfortable that its costs with respect to the O&M costs would be comparable to the costs that Sierra would incur if it retained ownership.

. . . [A]s [CalPeco looks] at the 2012 GRC . . . sitting here today there is nothing in evidence from our perspective that would lead us to believe that there would be any cost increase arising from administration or operating costs that wouldn't be present if Sierra continued to own [the California Utility].<sup>171</sup>

**b. The Transition Services Agreement Facilitates the Seamless Transition and Decreases Any Possibility of Any Adverse Rate Consequences**

The Transition Services Agreement provides CalPeco a “free option” to “cherry pick” among the functions it chooses to have Sierra continue to perform after Closing. Approval of the Transition Services Agreement imposes no costs on CalPeco’s customers. The Transition Services Agreement can only benefit CalPeco’s customers.

Nonetheless, DRA suggests the Transition Services Agreement will increase costs and thus urges rejection of the proposed Transaction, in part, due to its opposition to the Transition Services Agreement. DRA claims that ratepayers could be harmed because the services CalPeco will elect that Sierra provide have yet to be specifically identified and the actual dollar cost for each service has yet to be precisely calculated.<sup>172</sup> Whatever misgivings DRA may have its benefits, the Commission should approve the Transition Services Agreement. Moreover, DRA has failed to demonstrate that its concerns about the Transition Services Agreement will cause rates to increase or otherwise warrant rejection of the Transaction.

Contrary to DRA’s claim, the Transition Services Agreement does define the scope of services Sierra is obligated to provide - “all services currently offered.”<sup>173</sup> Second, services that Sierra performs will be billed “on an ‘at cost’ basis, based on a reasonable approximation of the actual costs incurred by Sierra to provide the services.”<sup>174</sup> Transition agreements are a standard

---

<sup>171</sup> Ex. 1, Joint Applicants/Robertson, R.T. June 16, 2010, at 59.

<sup>172</sup> Ex. 50, DRA Report, 14-16; *but see* fn. 171, *supra*; DRA/Phan, R.T. June 16, 2010, at 130-133.

<sup>173</sup> Transition Services Agreement, Section 2.1 (Exhibit 12 to Joint Application); *see* DRA/Phan, R.T. June 16, 2010, at 131-32. In addition, CalPeco has begun to identify the services it will be requesting Sierra to offer under the Transition Services Agreement.

<sup>174</sup> Transition Services Agreement (Exhibit 12 to Joint Application), Section 7.1(a); *See* Ex. 50, DRA Report, at 14-16; *see also* Joint Application, at 56-57; Joint Applicants/Tomchuk, R.T. June 16, 2010, at 76; DRA/Phan, R.T. June 16, 2010, at 133.

business practice in which a seller offers to provide services to the buyer to facilitate a seamless transition and help maintain existing cost levels for a transitional period.<sup>175</sup> Accordingly, the Transition Services Agreement both increases the certainty of a seamless transition and provide a further cushion against CalPeco's customers being exposed to any possible rate shock.

Frankly, the basis for DRA's opposition to the Transition Service Agreement remains unclear. If CalPeco obligates Sierra to provide a service at Sierra's cost, CalPeco's customers are in the same position as if the Transaction is rejected and Sierra retains ownership; if Sierra's actual costs are higher or its service inferior to CalPeco's other options, CalPeco will elect not to have Sierra provide the service.

The incongruity of DRA's opposition to the Transition Services Agreement is further highlighted by its criticism that the term of the Transition Services Agreement is too short. On cross-examination, DRA witness Phan conceded that this criticism could be fairly construed as recognition by DRA that during its term the Transition Services Agreement will in fact benefit CalPeco's customers.<sup>176</sup>

Approval of the Transition Services Agreement will impose no new costs on CalPeco's customers. During the period between Closing and the effectiveness of the rates authorized in the CalPeco 2012 GRC, CalPeco itself will pay the legitimate costs incurred under the Transition Services Agreement (i.e., rates will not be increased upon Closing to accommodate any payments made under the Transition Services Agreement (or for any other expense)).<sup>177</sup>

Furthermore, in its 2012 GRC, CalPeco will request approval, to the extent advantageous, to continue to purchase the services that Sierra will make available under the Transition Services Agreement. If the Commission then finds that CalPeco's procurement of such services from Sierra will not be cost-effective, it can decline to authorize CalPeco rate recovery associated with the Transition Services Agreement and/or it can direct that CalPeco cease obtaining specified services under the Transition Services Agreement.<sup>178</sup>

---

<sup>175</sup> *Id.*

<sup>176</sup> DRA/Phan, R.T. June 16, 2010, at 134; *compare with* DRA Report, at 15.

<sup>177</sup> DRA/Phan, R.T. June 16, 2010, at 133.

<sup>178</sup> DRA/Phan, R.T. June 16, 2010, at 133-134. In the Joint Application, CalPeco suggested that it was requesting that the Commission approve the Transition Services Agreement and authorize CalPeco to recovery in rates all costs that it will incur to procure services from Sierra under the Transition Services Agreement. During the course of the proceeding and in response to the concerns expressed by DRA, CalPeco revised its request to be limited to (i) in this proceeding the Commission authorize CalPeco to perform under the Transition Services Agreement; and (ii)

**c. The PSREC Settlement Will Not Increase Rates**

DRA maintains that the proposed Transaction “has generated a total of \$1.4 million in additional incremental costs that would not otherwise exist, for the 2012 GRC.”<sup>179</sup> These supposed incremental costs are based on DRA’s incorrect interpretation of the PSREC Settlement. This supposed \$1.4 million ratepayer burden DRA associates with the PSREC Settlement represent a major component of its claim that the Transaction will harm ratepayers. DRA’s position misinterprets the PSREC settlement and is wrong in several material respects.

The Transaction did not cause the reliability concerns addressed in the PSREC Settlement; the reliability issues the Aligned Protestants voiced arose under Sierra’s ownership and must be addressed regardless whether CalPeco or Sierra owns the California Utility. Contrary to DRA’s logic, rejection of the Transaction will not “solve” the concerns the Aligned Protestants raised regarding the reliability and safety issues in the Loyalton and Portola area.<sup>180</sup> In this regard, it should be emphasized that the PSREC Settlement will terminate if the Commission decline to approve the proposed Transaction.<sup>181</sup>

Second, the PSREC Settlement imposes no costs on ratepayers:

Joint Applicants themselves have the exclusive responsibility for any current obligations, financial [or] otherwise, to PSREC and the other members of the Aligned Protestants coalition. With respect to possible payment obligations to be made after the effective date of CalPeco’s 2012 GRC, no dollar will be paid by a CalPeco customer, absent the Commission first specifically finding the expense reasonable and cost effective and [it] then approving the expenditure and associated rate recovery.<sup>182</sup>

---

authorize CalPeco to seek rate recovery in its 2012 GRC for any payments that CalPeco shall make to Sierra pursuant to the Transition Services Agreement in the period once the rates authorized in the 2012 GRC become effective.

<sup>179</sup> Ex. 50, DRA Report, at 11.

<sup>180</sup> DRA concedes that its argument that the proposed Transaction imposes \$1.4 million of incremental costs associated with the PSREC settlement assumes that Sierra would take no action to address the reliability issues raised by the residents of and governmental officials from Portola and Loyalton. DRA/Phan, R.T. June 16, 2010, at 124. In contrast, the Scoping Memo directed the Joint Applicant’s (i.e., Sierra and CalPeco) “to discuss the concerns of the customers [in Portola and Loyalton] and asses how reasonable concerns might be addressed.” Scoping Memo at 16.

<sup>181</sup> PSREC Settlement, Section 8, Appendix Q to Ex. 1, Joint Reply, at 11.

<sup>182</sup> Ex. 1, Joint Reply, at 39. This clear statement by Joint Applicants notwithstanding, DRA continued to persist that the PSREC Settlement exposes ratepayers unconditionally to reimburse

No substantive response to DRA’s objections to the PSREC Line Crew Agreement or the possible CalPeco investment in the Herlong Transmission Project need be made.<sup>183</sup> As stated clearly in the above quote, no rate recovery is being requested in this proceeding to fund these activities. Any current costs being incurred are the full responsibility of CalPeco and Sierra. If and when CalPeco (or Sierra to the extent that the Commission rejects the Transaction) requests funds to increase reliability in, and potential sources of supply for, the Loyalton and Portola areas, the Commission can assess those cost requests in that proceeding based on the most current information and with a full record.

In short, DRA’s claim that the Transaction must be rejected due to ratepayer harm attributable to the PSREC Settlement must fail – there is no nexus between the Transaction and the reliability concerns raised by the Aligned Protestants, and approval of the Transaction imposes zero costs on electric consumers associated with the PSREC Settlement.

**D. The Proposed Transaction Will Maintain the Financial Condition of the California Utility**

DRA argues that the Transaction will not provide “adequate financial protections to CalPeco.”<sup>184</sup> DRA further asserts that Algonquin and Emera’s collective “lack of financial commitment will adversely impact the California Utility and the affected customers should CalPeco become financially insolvent.”<sup>185</sup> The bases for DRA’s position are:

1. The ring fencing provisions CalPeco propose are “two way” and thus inappropriately designed to “protect” Algonquin and Emera;
2. Algonquin and Emera have not agreed to guarantee the debt of CalPeco; and
3. Algonquin and Emera are not agreeing to a “first priority condition.”

As will be explained, while DRA expresses its objection under the rubrics of ring fencing, debt guarantee, and first priority condition, the singular essence of DRA’s concern is

---

Joint Applicants for a \$250,000 payment to be made to PSREC shortly after Closing. DRA/Phan, R.T. June 16, 2010, at 125-126, 196-197; *compare with* Joint Reply at 40, fn. 110. Joint Applicants added Section 3(f) to the Regulatory Commitments in Appendix A to negate any possible doubt regarding doubt regarding the \$250,000 payment.

<sup>183</sup> Ex. 1, Joint Reply, at 36-41; DRA Report, at 10-11.

<sup>184</sup> Ex. 50, DRA Report, at 7.

<sup>185</sup> Ex. 50, DRA Report, at 9.

that Algonquin and Emera provide sufficient assurance that CalPeco will have the funds necessary to provide reliable utility service even in the remote event that CalPeco experiences some unexpected financial catastrophe. For instance, although DRA persistently maintained that the supposed “two-way” characteristic of the ring fencing provisions demands rejection of the proposed Transaction, it ultimately acknowledged that if Algonquin and Emera made the appropriate commitments to make funds available to CalPeco during any period of financial hardship, DRA would drop its objections to the ring fencing provisions.<sup>186</sup>

CalPeco has responded to DRA’s concerns:

1. Other than the reality that no one can predict the future with 100 percent certainty, there is no reason to suspect that CalPeco will lack the necessary funds to provide utility service. CalPeco should have “sufficient cash from operations, infusions of equity capital from [California Public Utility Ventures, LLC], and the use of short-term borrowings sufficient to fund operations and maintenance, capital expenditures, debt service costs, and dividends.”<sup>187</sup> In approving the MidAmerican acquisition, the Commission found that almost the near identical representation satisfies its requirements that the purchaser demonstrate that the acquired utility will have sufficient funds to operate.<sup>188</sup> Moreover, DRA itself has no basis for concern about CalPeco having sufficient funds – its sole concern is what happens in the theoretical event that CalPeco lacks funds.<sup>189</sup>
2. With respect to DRA’s “what if” concern, and setting aside the fact that no such “absolute assurance” exists today from NV Energy, Algonquin and Emera stated their intentions in the initial Regulatory Commitments and Joint Reply to ensure that CalPeco will be adequately funded under exigent circumstances. This commitment has been enhanced as is now set forth in Appendix A, Section 1(g):

Emera and Algonquin will provide sufficient initial equity to fund fifty percent (50%) of the purchase price for CalPeco. CalPeco shall seek to obtain the balance of the required capital necessary for the purchase price through stand-alone debt issued by CalPeco. Algonquin and Emera are prepared to make this initial equity investment and invest any additional equity in CalPeco based on

---

<sup>186</sup> DRA/Phan, R.T. June 16, 2010, at 161-162.

<sup>187</sup> Joint Application, at 42; Ex. 1, Joint Reply, at 31.

<sup>188</sup> D.06-02-033, mimeo at 26.

<sup>189</sup> DRA/Phan, R.T. June 16, 2010, at 140; 169.

their understanding that the Commission shall grant CalPeco timely recovery in rates (i) for the reasonable expenses it will make or undertake, respectively, to provide electric service; and (ii) for CalPeco to earn a reasonable return of and on CalPeco's investment in rate base. On this basis Emera and Algonquin are committed to ensure that CalPeco maintains sufficient funds to operate and has sufficient capital available for necessary capital investments. CalPeco, Algonquin and Emera acknowledge that dividends or similar distributions by CalPeco may be restricted as necessary to maintain minimum equity levels that are reasonable in relation to any equity ratio requirements.

The fact that (i) there is no basis to believe that CalPeco will lack the funds to operate; and (ii) Algonquin and Emera have made the necessary commitment to provide CalPeco with additional equity, consistent with the utility compact, in the off-chance that CalPeco does in fact experience an unexpected financial exigency, should resolve any question about the financial condition of CalPeco after the Closing and the financial commitment of Algonquin and Emera. With this understanding, DRA's concerns about ring fencing, debt guarantees, and first priority conditions can be readily resolved.

**1. The Ring Fencing Provisions Appropriately “Wall Off” CalPeco from Any Financial Problems of Any Algonquin or Emera Affiliates**

It is undisputed that (i) the purpose of ring fencing is the “. . . the legal walling off of certain assets or liabilities within a corporation”;<sup>190</sup> and (ii) CalPeco's ring fencing proposal fully protects CalPeco's assets from an adverse financial situation of the upstream owners.<sup>191</sup> Despite its criticisms, DRA accepts that CalPeco's ring fencing provisions fully protect CalPeco from any adverse financial circumstances of any upstream company; DRA's concerns are based not on the substance of the protections, but rather on its misperception that CalPeco's ring fencing provisions somehow negate Emera and Algonquin's commitment to ensure that CalPeco has sufficient funds to operate.<sup>192</sup>

DRA's attack on CalPeco's ring fencing provisions is based on a legal fiction – the “one way” ring fencing DRA advocates simply does not (and cannot) exist. Any effective ring fencing must be “two way” to “wall-off” the financial structure of the operating utility from the

---

<sup>190</sup> Joint Application of SFPP, L.P. (PLC-9 Oil), CALNEV PIPE LINE, L.L.C., KINDER MORGAN, INC., and KNIGHT HOLDCO LLC for Review and Approval under Public Utilities Code Section 854 of the Transfer of Control of SFPP, L.P. and CALNEV PIPE LINE, L.L.C.) D.07-05-061, mimeo at 36, fn. 22 (May 24, 2007).

<sup>191</sup> DRA/Phan, R.T. June 16, 2010, at 135-136.

<sup>192</sup> Ex. 50, DRA Report, at 7-9 DRA/Phan, R.T. June 16, 2010, at 137-140.

other members of its corporate family. As such, ring fencing must be “two-way.” As a matter of corporate law, Affiliate A cannot be legally “walled off” from Affiliate B without Affiliate B being correspondingly “walled off” from Affiliate A.<sup>193</sup> Ring fencing protections are intended to insulate corporate entities from the potentially harmful economic activities of their affiliates.

DRA’s fears regarding adequacy of funds are misplaced; the ring fencing measures have a singular purpose – to insulate CalPeco from financial problems other Algonquin and Emera affiliates may experience. DRA concedes that the ring fencing provisions that surround CalPeco effectively accomplish this purpose.<sup>194</sup>

## **2. There is No Need to Require that CalPeco’s Parents Provide CalPeco’s Lenders Guarantees on CalPeco’s Debt Financing**

DRA’s demand that Algonquin and Emera guarantee the debt of CalPeco misconstrues the role of, and ignores the absence of any need for, parental guarantees of the debt of operating utility subsidiaries. DRA maintains:

[The absence of a parental guarantee of CalPeco’s debt] poses great risks for CalPeco and its customers. Should CalPeco fail, there will be no safety net for [CalPeco and its customers].<sup>195</sup>

DRA’s demand that Algonquin and Emera guarantee CalPeco’s debt on these grounds is misplaced for several reasons: (i) it is unlikely that CalPeco will “fail”; (ii) in the event that CalPeco needs incremental funds, Algonquin and Emera have made Regulatory Commitment 1(g); and (iii) obligating Algonquin and Emera to guarantee CalPeco’s debt will not provide ratepayers the desired “safety net” or any other benefit. It should again be reiterated that today NV Energy provides no such parental guarantee for the debt of Sierra<sup>196</sup> – thus as Joint Applicants represent, the transition from debt financing secured by Sierra’s utility assets to debt financing secured by CalPeco’s utility assets will be seamless.

Apart from DRA’s mistaken notion that a parental guarantee of the operating utility’s debt provides a back up source of “emergency” rainy day funding, which it does not, DRA offers no reason for Algonquin and Emera to guarantee CalPeco’s debt. The standard utility industry practice is that financing entities accept utility assets as adequate security to issue debt and they

---

<sup>193</sup> See DRA Response to Joint Applicants’ Request 10(a), attached as Exhibit M to the Ex. 1, Joint Reply.

<sup>194</sup> DRA/Phan, R.T. June 16, 2010, at 135-136.

<sup>195</sup> Ex. 50, DRA Report, at 8.

<sup>196</sup> Ex. 1, Joint Reply at 29; DRA/Phan, R.T. June 17, 2010, at 162-166.

thus do not require, as evidenced by the absence of an NV Energy guarantee of Sierra's debt,<sup>197</sup> guarantees of utility debt by upstream owners.

Not surprisingly, no party is aware of any instance of this Commission requiring a parent company to guarantee the debt of its operating utility. Contrary to DRA, D.84-07-063 provides no such precedent.<sup>198</sup> In that proceeding, the oil pipeline applicant did not request that the Commission approve any debt financing. It rather requested, and was granted, in accordance with §§ 818 and 829, an *exemption* from having to obtain prior Commission approval to issue debt. The Commission imposed the requirement of the parental guarantee not as a condition of the utility incurring any debt, but rather as a condition of it being granted the exemption.<sup>199</sup>

Further, with respect to its insistence for parental guarantees of CalPeco's debt, DRA fails to identify any possible ratepayer benefit. CalPeco expects that its cost of debt will be competitive with the cost of debt which is outstanding for NV Energy.<sup>200</sup> As a distribution-focused electric utility, CalPeco's debt should be expected to be competitive against the cost of debt for a combined transmission, distribution and generation utility, such as NV Energy.

DRA has not demonstrated that if Sierra retained ownership of the California Utility that its cost of debt in the 2012 GRC would be less than CalPeco's cost of debt. DRA's sole contention regarding the cost of debt is that smaller utilities are *per se* riskier, and that their size alone will raise the cost of debt.<sup>201</sup> As demonstrated by CalPeco's testimony and the facts (that DRA conceded) the cost of debt is a function of multiple factors including (i) the amount of debt relative to the value of the asset; (ii) the equity/debt ratio, with the greater percentage of equity, the more attractive the financing; (iii) the quality of the regulatory commission; and (iv) the amount and sanctity of the revenue stream.<sup>202</sup> In this context, DRA's uninformed mantra that "larger loans" are somehow better for ratepayers and its associated demand for a parental guarantee must be rejected.

---

<sup>197</sup> Ex. 1, Joint Reply at 29; DRA/Phan, R.T. June 17, 2010, at 165-166.

<sup>198</sup> DRA Response to Joint Applicants' Request 11(b) and 11(c), attached as Exhibit N to Ex. 1, Joint Reply, at 29.

<sup>199</sup> Moreover, distinguishing D.84-07-063, the Commission's practice was to "impute [the parent's] cost of debt and capital structure." In contrast, CalPeco shall request that its rates be set based on its own (i.e. and not its upstream owners) cost of debt and equity and its own capital structure. See Ex.1, Joint Reply, at 29-30; see also Joint Application at 38-39.

<sup>200</sup> Joint Applicants/Robertson, R.T. June 16, 2010, at 91.

<sup>201</sup> DRA/Phan, R.T. June 17 and 18, 2010, at 116, 166, 198, 200-202.

<sup>202</sup> DRA/Phan, R. T. June 17, 2001, at 200-202.

Contrary to DRA's belief, the absence of a parental guarantee of debt will not deprive the utility of any "safety net."<sup>203</sup> Consistent with the regulatory compact, Emera and Algonquin have made the requisite "safety net" commitment that CalPeco will have sufficient funds to operate. There is no economic, policy or legal reason for a regulatory commission to require a creditworthy distribution company like CalPeco to provide its debt financing parties greater security than market conditions and standard industry practice require.

### **3. CalPeco Will Have Adequate Funds to Operate; No "First Priority Condition" is Warranted**

Most of the initial Regulatory Commitments were specifically designed to adopt orders and conditions that the Commission has approved or imposed in previous § 854(a) applications for the purpose of safeguarding the financial condition of the purchased utility.<sup>204</sup> As explained previously, in Appendix A, Section 1(g), Algonquin and Emera have supplemented and further clarified the commitment to ensure that CalPeco shall have sufficient funds to provide utility services.

There is simply no basis to reject the Transaction on the basis that (i) CalPeco will not be able to generate sufficient funds to operate,<sup>205</sup> or (ii) if CalPeco experiences a shortage of operating funds that Algonquin and Emera will refrain from having sufficient funds available to enable CalPeco to continue to provide utility service. For an operating distribution utility, especially one such as CalPeco that will purchase power procurement services, payments by ratepayers should provide more than adequate funds to operate. There is no basis to believe that this Commission will fail to grant CalPeco just and reasonable rates and allow it to earn a reasonable return on and of its capital.<sup>206</sup> As well, Emera and Algonquin are well capitalized.<sup>207</sup>

In this context, DRA's demand for a so-called first priority condition must be rejected. It is unnecessary, has been rejected by the Commission in near identical circumstances, and would raise serious legal issues regarding its imposition. DRA's proposal would obligate Algonquin

---

<sup>203</sup> Ex. 50, DRA Report, at 8.

<sup>204</sup> Joint Application, at 40-42.

<sup>205</sup> DRA/Phan, R.T. June 17, 2010, at 171.

<sup>206</sup> DRA/Phan, R.T. June 17, 2010, at 170.

<sup>207</sup> DRA/Phan, R.T. June 17, 2010, at 169. *See* Ex. 13, Joint Applicants' Response to DRA Data Request 4-12(a)

and Emera to subordinate the needs of all their other utility customers across North America to the needs of the 46,000 customers in California.<sup>208</sup>

The decision by Algonquin and Emera to not offer a first priority condition in no way suggests any lack of financial commitment to CalPeco.<sup>209</sup> As expressed by Mr. Robertson:

Emera and Algonquin are making the affirmative statement that – which I think is commonsensical – that after putting 75 or 80 million dollars into CalPeco as an equity investment that we would continue to fund CalPeco as necessary for it to be a – a ongoing and continuing business entity, subject of course to the expectation of the utility compact that when we invest capital, we earn a return. I mean that’s—perhaps it’s implicitly stated, but we of course are believing in investing in this business.<sup>210</sup>

Two companies are getting together to invest tens upon tens of millions of dollars in a utility operation in the state of California. It is inconceivable to, I believe, both our businesses that we would allow that business to fail in such a way as it prejudiced the ratepayers of California, after investing that sort of money, subject to the utility compact being honored between ourselves and those ratepayers.<sup>211</sup>

DRA advances no legal or policy reason for its continued insistence for a first priority condition. DRA’s references to the utility holding company decisions for Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company provide no precedent for imposition of a first priority on Algonquin and Emera.<sup>212</sup> In each instance, the holding company was being formed as part of a reorganization of the regulated electric utility, and the Commission imposed the first priority condition as a condition for its approval of the formation of the holding company.<sup>213</sup> Here, Algonquin and Emera are not being formed as part of the formation of a holding company for the California Utility.

---

<sup>208</sup> DRA/Phan, R.T. June 16, 2010, at 147; DRA/Phan, R.T. June 17, 2010, at 172.

<sup>209</sup> *Compare* Ex. 50, DRA Report at 9.

<sup>210</sup> Joint Applicants/Robertson, R.T. June 16, 2010, at 95.

<sup>211</sup> Joint Applicants/Robertson, R.T. June 16, 2010, at 97.

<sup>212</sup> Ex. 50, DRA Report, at 8-9.

<sup>213</sup> *See Application of Pacific Gas and Electric Company (U 39 M) for Authorization to Implement a Plan of Reorganization Which Will Result in a Holding Company Structure* D.96-11-017, PG&E Cal. PUC LEXIS 1141 (Nov. 6, 1996) *Application of Southern California Edison Company (U 338-E) for authorization to implement a plan of reorganization which will result in a holding company structure*, D.88-01-063, 1988 Cal. PUC LEXIS 2 (Jan. 28, 1988); *Application of San Diego Gas & Electric Company (U 902-M) for Authorization to Implement a*

The more applicable precedent is that the Commission has not found any need to impose any such first priority condition on NV Energy with regard to its ownership of the California Utility.<sup>214</sup> Moreover, outside of the inapposite holding company decisions, DRA cites no § 854 (a) application in which the Commission imposed any such first priority condition. Additionally, in the Cal-Am/RWE proceeding, the Commission expressly rejected any need for a “first priority” condition.<sup>215</sup> It determined the commitments made by RWE were sufficient to ensure that Cal-Am had “all necessary capital to fulfill all of its obligations.”<sup>216</sup> The Commission similarly accepted MidAmerican’s representations that PacifiCorp would “obtain sufficient cash from its operations, regular infusions of equity capital from MidAmerican, and steady increases in short-term debt.”<sup>217</sup> Algonquin and Emera have made the analogous representation.<sup>218</sup> DRA has not challenged this representation and the Commission should similarly find Algonquin and Emera’s showing sufficient in this context.

Second, California’s imposition of the first priority condition DRA urges would raise a host of significant legal, policy, implementation, and perhaps Constitutional issues.<sup>219</sup> In rejecting a similar DRA demand for the imposition on RWE of a first priority condition, the Commission appropriately recognized that upstream companies that operate regulated utilities in numerous states could not agree to a condition that gave its California operations an absolute priority over all of its other regulated operations.<sup>220</sup> Similarly, the Commission should not, and may not, require that Algonquin and Emera commit in all instances to subordinate the capital needs of all their other regulated utilities to the possible needs of CalPeco.<sup>221</sup>

---

*Plan of Reorganization Which Will Result in a Holding Company Structure*, D.95-05-021, 1995 Cal. PUC LEXIS 440 (May 10, 1995).

<sup>214</sup> DRA/Phan, R.T. June 16, 2010, at 148; Ex.1, Joint Reply at 33.

<sup>215</sup> D.02-12-068, mimeo at 30-31.

<sup>216</sup> D.02-12-068, mimeo at 31.

<sup>217</sup> D.06-02-033, mimeo at 26.

<sup>218</sup> Joint Application, at 42.

<sup>219</sup> See Ex. 1, Joint Reply, at 32-34.

<sup>220</sup> See D.02-12-068, mimeo at 31.

<sup>221</sup> Joint Applicants/Robertson, R.T. June 16, 2010, at 97.

DRA offers no basis or applicable precedent for the Commission to find that the Regulatory Commitments set forth in Appendix A fail to provide the necessary assurance of adequate funds to operate the California Utility.

**E. The Proposed Transaction Will Maintain or Improve the Quality of Management of the California Utility**

DRA has not challenged that the proposed Transaction will maintain or improve the quality of management of the California Utility, except with regard to its doubts surrounding the extent of Algonquin's experience. As was explained in Section IV.G.1, Algonquin has sufficient experience to operate the California Utility. Moreover, DRA has particularly highlighted Emera's competence and over 130 years of utility operating experience.<sup>222</sup>

**F. The Proposed Transaction Will Be Fair and Reasonable to the Affected Utility Employees**

In deciding whether to authorize a transfer of control of a public utility, the Commission considers whether the proposed transfer is "fair and reasonable" to the affected utility employees. The Commission's assessment includes consideration on the manner in which the proposed transfer will affect jobs, pay and benefits.<sup>223</sup> This Commission has uniformly held that support from the union which represents the employees of the affected utility that support justifies a finding that the transaction is fair and reasonable to employees.<sup>224</sup>

Local 1245, the bargaining unit for the Sierra employees, has urged the Commission to approve the Transaction.<sup>225</sup> Incongruously, DRA spoke with the union representative, did not report its communication in the DRA Report,<sup>226</sup> but now incredulously urges the Commission to reject the recommendation of Local 1245.

Contrary to DRA's arguments, the proposed Transaction has been since Day 1 designed to fully protect the interests of the current Sierra employees. The Regulatory Commitments assure that the Transaction will be fair to the current employees of the California Utility, and

---

<sup>222</sup> See Ex. 50, DRA Report, at 6.

<sup>223</sup> D.06-02-033, mimeo at 32; *In re Joint Application of Citizens Telecommunications Company of California, Inc. (U-1024-C), and GTE California Incorporated (U-1002-C) for Authority and Approval Under Pub. Util. Code Sections 851 and 854 for GTEC to Sell and Transfer Assets to CTC California*, D.01-06-007, mimeo at 57 (June 7, 2001).

<sup>224</sup> See D.02-12-068, mimeo at 39.

<sup>225</sup> See Exhibit G, Local 1245 Letter attached to Ex. 1, Joint Reply.

<sup>226</sup> DRA/Phan, R.T., June 16, 2010 at 114-115.

include a commitment to offer employment to Sierra's regular, full-time employees currently working in California, including those currently represented by Local 1245.<sup>227</sup>

CalPeco's offers of employment to the affected Sierra employees will be at a level of base pay similar to such employees' pay as Sierra employees. DRA objects to the Transaction due to a theoretical possibility that four employees with short tenures as Sierra employees will be potentially prejudiced with respect to the length and calculation of the vesting period for their post retirement benefits (assuming they accept CalPeco's employment offer). DRA's contentions and concerns evidence a misunderstanding of the federal labor laws and the collective bargaining process. First, given that Sierra is currently the only employer legally authorized to negotiate with Local 1245, CalPeco has no authority whatsoever now to seek to resolve the unfairness DRA hypothesizes.<sup>228</sup>

Second, these compensation issues, including pension, post-retirement benefits other than pension ("PBOPs"), vesting periods, and the extent to which past service with Sierra does or does not count, are by law mandatory subjects of the collective bargaining negotiations between CalPeco and Local 1245 (assuming it does become the bargaining unit).<sup>229</sup> DRA acknowledges that it has no reason to believe that the rights of any Sierra employee who accepts employment with CalPeco will not be protected by the collective bargaining process.<sup>230</sup>

There is no basis for the Commission to seek to resolve these collective bargaining issues in this proceeding and further no basis for the Commission to consider rejecting the Transaction based on speculation as to how the negotiations on these issues will ultimately be sorted out.

For all these reasons, the Commission should find that the proposed Transaction will be fair and reasonable to the affected utility employees.

**G. The Proposed Transaction Will Not Harm California or Communities Served by the California Utility**

The Joint Application describes the reasons the proposed Transaction will not harm California or communities served by the California Utility.<sup>231</sup>

---

<sup>227</sup> Joint Application, at 43-44; Section 4 of Appendix A sets forth the Regulatory Commitments with respect to the Sierra employees.

<sup>228</sup> Ex.1, Joint Reply at 53.

<sup>229</sup> Ex. 1, Joint Reply at 53.

<sup>230</sup> DRA/Phan, R.T. June 16, 2010, at 111.

<sup>231</sup> Joint Application, at 44-46.

Moreover, all the local interests and communities which participated in this proceeding support the Transaction. DRA has not offered any specific challenge to the evidence presented by the Joint Applicants. Therefore, the Commission should find that the proposed Transaction does not harm California or communities served by the California Utility.

**H. The Proposed Transaction Will Preserve the Jurisdiction of the Commission**

The Joint Application demonstrates that the proposed Transaction will preserve the jurisdiction of the Commission.<sup>232</sup> Administrative Law Judge Vieth was able to clarify Algonquin and Emera’s commitment to make the necessary books and records available to the Commission and this clarification is now memorialized in the updated Regulatory Commitments.<sup>233</sup>

DRA has not challenged the showings made by Joint Applicants. Therefore, the Commission should find that the proposed Transaction will preserve the jurisdiction of the Commission.

**I. The Proposed Transaction Will Not Harm Competition**

The Joint Application describes why the proposed Transaction will not harm competition.<sup>234</sup>

Algonquin and Sierra intend to make their respective filings under the Hart-Scott-Rodino (“HSR”) law by mid –August.<sup>235</sup> DRA has not challenged the facts the Joint Applicants presented. Therefore, the Commission should find that the proposed Transaction will not harm competition.

**J. Section 854(d) Alternatives**

As demonstrated in Section III.B, there are no § 854(d) alternatives to consider. Therefore, the Commission should find that the proposed Transaction is in the public interest under § 854(a).

**VI. POWER PURCHASE AND OTHER OPERATING AGREEMENTS**

The Joint Application describes the Power Purchase and the various other Operating Agreements which Joint Applicants structured to enable a seamless and cost-effective transition

---

<sup>232</sup> Joint Application, at 46-47.

<sup>233</sup> ALJ Vieth, R.T. June 17, 2010, at 209; Section 2 of Appendix A, Regulatory Commitments.

<sup>234</sup> Joint Application, at 47-48.

<sup>235</sup> Under the HSR regulations, as the 50.001% owner of CalPeco, Algonquin will make an HSR filing on behalf of the CalPeco owners. Joint Applicants expect that the Federal Trade Commission will grant approval within 30 days after submission.

of the California Utility from Sierra to CalPeco. This Commission's approval of the Power Purchase Agreement and the other Operating Agreements is warranted because they facilitate the continued provision of reliable and cost-effective utility services in the California service territory.

**A. Power Purchase Agreement**

The Power Purchase Agreement is structured to effectively preserve the current situation – as of Closing, CalPeco will provide its customers power from the same Sierra power sources and deliver the power over the same lines and at cost-based rates.<sup>236</sup>

The Joint Application demonstrates that the payment terms for the Power Purchase Agreement are reasonable and that payments should be recoverable through the ECAC mechanism, subject only to ongoing Commission review of the reasonableness of CalPeco's administration of the agreement. The Power Purchase Agreement has also been structured to enable CalPeco to satisfy the resource adequacy requirements which CalPeco will be subject to. Moreover, under the Power Purchase Agreement, Sierra will continue to deliver to CalPeco power from eligible renewable energy resources per California's RPS under §399.11 et seq.<sup>237</sup> DRA has not challenged any aspect of the Power Purchase Agreement (other than the Valmy issue discussed in the next section). Therefore, the Commission should make the requested findings, and authorize CalPeco to enter into the Power Purchase Agreement and recover in rates the payments it shall make.

**1. Valmy Power Should Remain Part of Sierra's Supply Portfolio to Serve Certain Customers**

The fact that Sierra supplies power to its California customers from the coal-fired Valmy Plant emerged as an issue in this proceeding. DRA advocates that the Commission reject the Transaction because (i) it is unclear whether the Commission will allow Sierra to continue to supply California with power from Valmy pursuant to the Power Purchase Agreement; and (ii)

---

<sup>236</sup> See Joint Application at 48-55. Sierra submitted the Power Purchase Agreement to FERC on July 2, 2010 (FERC Docket No. ER10-1719-000). As explained in the Update Letters, Joint Applicants have entered three amendments to the Power Purchase Agreement. Ex. 4, Second Update Letter; Ex. 5, Third Update Letter; and Ex. 11, Amendment No. 3 PPA.

<sup>237</sup> The flexibility CalPeco negotiated in the Power Purchase Agreement also preserve for CalPeco the opportunity to fully develop renewable power itself or to procure renewable power from third party sources. Amendment No. 1 included with the Power Purchase Agreement in Exhibit 10 of the Joint Application.

any such exclusion of Valmy power as a result of the Transaction causes rates to increase by approximately 10 percent.<sup>238</sup>

Despite objecting to the Transaction on the fear of a Commission ruling to exclude Valmy power from California, DRA steadfastly refuses to advocate any position whether the Commission should allow Sierra to continue to supply Valmy power to California if it approves the Transaction—even when presented with the economic reality that rates would rise if the Commission were to hereafter exclude power from Valmy from California.<sup>239</sup>

In any event, DRA’s demand that the possibility of a “wrong” ruling on Valmy dictates that the Commission reject the proposed Transaction is wrong. First, any decision by this Commission on whether Sierra can continue to serve California customers with Valmy power has no bearing on the § 854(a) question of whether the proposed Transaction is “not adverse to the public interest.” Valmy power currently flows into California and if the Transaction is rejected, Valmy power will continue to be part of Sierra’s supply portfolio to serve its California customers (absent some other intervening and unrelated action by the Commission or the Legislature). Thus the consumption of Valmy power within California will not result from the Commission’s approval of this § 854(a) application.

The sole decision for the Commission in this proceeding with respect to Valmy power is whether in approving the Transaction, the Commission will either (i) preserve the current status quo (i.e., Valmy power being sold to California electric consumers at its cost); or (ii) theoretically try to change the status quo (i.e., refuse to allow Sierra to sell Valmy power to California). Joint Applicants urge that the Commission allow the pre-Closing status quo to continue – maintenance of existing power sources and customer costs.

Joint Applicants acknowledge that Valmy presents a policy question for the Commission -- should CalPeco customers continue to receive power delivered from the Valmy coal-fired power plant? Allowing power from the coal-fired Valmy Plant to remain part of Sierra’s California supply portfolio comports with the Interim GHG EPS and also accounts for the economic and environmental realities of the policy decision facing the Commission. Joint Applicants further contend that removal of Valmy power from the Sierra supply portfolio would elevate “form over substance,” and trigger a number of adverse consequences, but provide no emission reductions or other environmental or economic benefits to California residents.

---

<sup>238</sup> See DRA Report at 12-14.

<sup>239</sup> DRA/Phan, R.T. June 16, 2010, at 117-119.

As part of its economic dispatch, and regardless of whether it “sells” the Valmy power to California, Sierra will continue to operate Valmy at the same capacity levels as it does today.<sup>240</sup> Denying CalPeco customers the ability to “purchase” Valmy power will not reduce the amount of Valmy generation; as a practical matter, electrons from the plant will continue to physically flow into California (even if the Valmy power is not “sold” to CalPeco) and Valmy emissions will continue to migrate into California in the same manner that they do today.<sup>241</sup>

The sole consequence of a decision by this Commission to refuse to allow Sierra to sell Valmy power to CalPeco will be that the price of power to CalPeco’s customers will be arbitrarily increased (and the beneficiaries of this incremental revenue will be Sierra’s remaining customers in Nevada).<sup>242</sup> A Commission ruling that Valmy power should be removed from the portfolio of power would increase annual power purchase costs for California customers by \$7.6 million starting in 2011, or roughly a 10 percent increase in customer rates.<sup>243</sup>

On the other hand, a ruling maintaining the Valmy status quo would not contravene any of the resource planning and supply objectives of the Interim GHG EPS. The GHG EPS seeks to achieve its objectives by prohibiting utilities from entering “new” long-term power supply agreements of at least five years duration. However, both DRA<sup>244</sup> and Joint Applicants recognize that in drafting this language, the Commission did not anticipate the circumstances the proposed Transaction and Valmy pose – that is the execution of a “new” power purchase agreement whose sole purpose is maintenance of the existing Commission-approved supply portfolio.

The policy objective the Interim GHG EPS seeks to achieve by prohibiting longer term “new” agreements is to impede the financing and construction of new coal-fired plants and prohibit incremental coal power from existing facilities from entering into California.<sup>245</sup> Approving the proposed Transaction and allowing California customers to continue to share the pricing advantages of Valmy power with their Nevada counterparts (in all events, California customers will continue to share in the impacts of Valmy power) will be consistent with these

---

<sup>240</sup> DRA/Phan, R.T. June 16, 2010, at 123-124.

<sup>241</sup> Ex.1, Joint Reply at 42.

<sup>242</sup> Ex. 1, Joint Reply, at 41-44; DRA/Phan, R.T. June 16, 2010, at 119-124.

<sup>243</sup> Ex. 1, Joint Reply at 43.

<sup>244</sup> DRA Report at 13.

<sup>245</sup> See Ex. 1, Joint Reply at 42.

objectives – no new coal facility construction will be facilitated and no incremental coal power supply will become part of the California resource supply.<sup>246</sup>

The Power Purchase Agreement initially had a three year term.<sup>247</sup> However the Energy Division expressed concerns that limiting the Power Purchase Agreement to a three year term could expose CalPeco customers to the risk of “rate shock” upon expiration of the Power Purchase Agreement.<sup>248</sup> In response to these concerns, CalPeco and Sierra extended the initial term of the Power Purchase Agreement to five years and Sierra executed a “commitment letter” which obligates Sierra to offer to supply CalPeco’s requirements under a new agreement (for up to an additional five years) with pricing based upon Sierra’s system average costs.<sup>249</sup> It would thus be sadly ironic if the Commission were, by ordering that Sierra “withhold” Valmy power from the Power Purchase Agreement, to subject CalPeco’s customers with an approximate 10% rate increase immediately after the Closing due to actions taken to protect them from “rate shock.”<sup>250</sup>

Joint Applicants believe it would be in the best interests of the customers of the California Utility to maintain the five year term of the Power Purchase Agreement. They agree with the Energy Division’s assessment that a longer term provides greater rate stability.<sup>251</sup> However, if shortening the term to less than 5 years would facilitate this Commission’s decision-making and enable it to allow California electric consumers to continue to be supplied with Valmy power, Joint Applicants are amenable to reduce the term.<sup>252</sup> DRA would support the Commission allowing Valmy power to continue to be sold to California if the term were reduced below the five year threshold.<sup>253</sup>

---

<sup>246</sup> Ex. 1, Joint Reply, at 41-44; DRA/Phan, R.T. June 16, 2010, at 119-124.

<sup>247</sup> Power Purchase Agreement, Section 3, included as Exhibit 10 of the Joint Application; Joint Applicants/Branch, R.T. June 16, 2010, at 44.

<sup>248</sup> Joint Applicants/Branch, R.T. June 16, 2010, at 44.

<sup>249</sup> See Amendment No. 1 included with the Power Purchase Agreement in Exhibit 10 of the Joint Application; see also Joint Application, at 49.

<sup>250</sup> Exhibit 1, Joint Reply at 43-44.

<sup>251</sup> Joint Applicants/Branch, R.T. June 16, 2010, at 144, 207-208.

<sup>252</sup> Joint Applicants/Branch, R.T. June 16, 2010, at 45, 207-208.

<sup>253</sup> DRA/Phan, R.T. June 16, 2010, at 122-123.

## **B. Transition Services Agreement**

The Transition Services Agreement is structured to provide a contractual basis for CalPeco to procure certain services from Sierra on an “at cost” and transitional basis. As discussed in Section V.C.3.b supra, and DRA’s concerns notwithstanding, the Transition Services Agreement is in the public interest.

Thus, the Commission should determine that the terms of the Transition Services Agreement are just and reasonable, approve the agreement, and authorize CalPeco in its 2012 GRC to request authority to recover in rates the costs it will pay Sierra for services provided during the effectiveness of the rates authorized in the 2012 GRC under the Transition Services Agreement.

## **C. Emergency Backup Services Agreement**

The Emergency Backup Services Agreement is structured to allow CalPeco to utilize the Kings Beach Generation Facility in the same way that Sierra currently does to provide power to its customers in response to emergency situations. The Emergency Backup Service Agreement provides reliable backup service, without the need for any incremental facilities, while fairly allocating costs to both CalPeco and Sierra customers.<sup>254</sup>

The terms of the Emergency Backup Service Agreement are just and reasonable. Joint Applicants accordingly request that the Commission (i) approve the agreement; (ii) authorize CalPeco to include 100% of the net book value of Kings Beach, as of the Closing in its rate base; (iii) authorize CalPeco to account for the capacity and energy payments Sierra shall make as revenue offsets to CalPeco’s cost of service; (iv) authorize CalPeco for ratemaking purposes to depreciate 50% of the capital costs associated with Kings Beach in accordance with Sierra’s present 60-year depreciation schedule, and (v) authorize CalPeco to depreciate the remaining 50% of the capital cost associated with Kings Beach in accordance with the 20-year depreciation schedule on which Sierra’s capacity payments are calculated.<sup>255</sup>

DRA has not challenged any of the showings or requests the Joint Applicants have made regarding the Emergency Backup Service Agreement. Therefore, the Commission should

---

<sup>254</sup> Joint Application at 55-56. CalPeco’s sales of Sierra under the Emergency Backup Service Agreement represent wholesale sales or power subject to FERC’s jurisdiction. On July 2, 2010, CalPeco accordingly submitted the Emergency Backup Service Agreement to FERC for its acceptance (FERC Docket No. EC10-1703-000).

<sup>255</sup> Joint Application, at 55-56.

authorize CalPeco perform in accordance with the terms of the, Emergency Backup Service Agreement and grant the other accounting, ratemaking and other approvals requested.

**D. Distribution Capacity Agreement and Borderline Customer Agreement**

**1. Distribution Capacity Agreement**

Sierra currently uses electric distribution facilities within California to receive power from sources in Nevada and then flows the power back to Nevada to serve certain customers located within Sierra's Nevada service territory. Under the Distribution Capacity Agreement, Sierra will be entitled to continue to use the capacity on these distribution facilities sufficient to enable it to continue to serve such customers in this cost-effective manner. Sierra will be obligated to compensate CalPeco on a cost-of service basis for access to the distribution capacity that CalPeco makes available.

The Joint Application sets forth the grounds on which the Commission should authorize CalPeco to provide distribution capacity services to Sierra in accordance with the terms and conditions, including rate methodology and resulting rates, in the Distribution Capacity Agreement. CalPeco also requests the authority to account for the Distribution Capacity Agreement revenues as an offset against its cost of service.<sup>256</sup>

The Joint Application explains that it may be possible to construe the services that CalPeco will be providing Sierra under the Distribution Capacity Agreement as “unbundled retail transmission service in interstate commerce,” which determination could subject both the distribution facilities and the service that CalPeco provides to FERC's exclusive jurisdiction.<sup>257</sup> However, the facilities and provision of service should be categorized as an unbundled local distribution service” which would enable the facilities and the Distribution Capacity Agreement, as intended by Joint Applicants, to remain subject to this Commission's exclusive jurisdiction.

The Joint Application sets forth how the applicable FERC “seven factor test” supports Joint Applicant's position that the services provided under the Distribution Capacity Agreement qualified as unbundled local distribution service.<sup>258</sup> While Joint Applicants believe that under each of FERC's seven factors, the Distribution Capacity Agreement qualifies as unbundled local distribution, it is important to highlight that FERC has adopted a policy to accord deference to a state's determination that the particular facilities are “local distribution” facilities and thus should

---

<sup>256</sup> Joint Application, at 60-61, 76.

<sup>257</sup> Joint Application, at 60-65.

<sup>258</sup> Joint Application, at 62-65. For the convenience of the parties, Joint Applicants are reproducing the FERC Seven Factor Test analysis in Appendix B to this Opening Brief.

remain subject to the state's regulatory jurisdiction.<sup>259</sup> Accordingly, Joint Applicants urge that this Commission find that the facilities to be employed in the Distribution Capacity Agreement are such "local distribution" facilities and to accordingly assert jurisdiction over the agreement.<sup>260</sup> Such assertion of jurisdiction by this Commission best ensures that FERC will, as CalPeco requests, defer to this Commission and refrain from asserting its jurisdiction.

DRA has not challenged CalPeco's request that it be authorized to provide Sierra distribution capacity services in accordance with the terms and conditions, including rates, under the Distribution Capacity Agreement, to account for the revenues in the manner CalPeco proposes, or that the Commission retain and assert exclusive jurisdiction over Distribution Capacity Agreement and the associated facilities. The Commission should thus authorize CalPeco to perform in accordance with the Distribution Capacity Agreement, to assert its jurisdiction over the Distribution Capacity Agreement, and grant the associated accounting, ratemaking and other approvals requested.

## **2. Borderline Customer Agreement**

The Borderline Customer Agreement will enable CalPeco and Sierra each to serve customers in areas proximate to the state border with existing cost-effective facilities. It provides that (i) CalPeco will deliver and sell energy to Sierra at the state boundary, which energy Sierra will resell to certain "borderline customers" located within Sierra's franchised service territory in Nevada; and (ii) Sierra will deliver and sell energy to CalPeco at the state boundary, which energy CalPeco will resell to certain borderline customers located within CalPeco's franchised service territory.

The Joint Application sets forth the background of, and the reasons warranting the Commission to (i) authorize CalPeco's performance under the Borderline Customer Agreement; both in its capacity of purchasing wholesale power from Sierra and in its corresponding role to sell wholesale power to Sierra; (ii) authorize CalPeco to recover in rates the payments it will make to Sierra for purchases under the Borderline Customer Agreement, subject only to ongoing Commission review of the reasonableness of CalPeco's administration of the agreement; and (iii)

---

<sup>259</sup> Joint Application at 62; Order No. 888, FERC Stats. & Regs. ¶31,036.

<sup>260</sup> CalPeco accordingly on July 2, 2010 filed a Request for Declaratory Order at FERC (FERC Docket No. EL10-75-000) requesting that FERC disclaim jurisdiction over the facilities and confirm this Commission's exclusive jurisdiction over the Distribution Capacity Agreement and associated distribution facilities.

authorize CalPeco to account for any revenues it receives from Sierra as an offset against its ECAC purchase power costs.<sup>261</sup>

DRA has not challenged CalPeco's request that it be authorized to sell and correspondingly sell Sierra wholesale power for purposes of enabling the cost-effective service to retail customers located proximate to the Nevada-California boundary in accordance with the terms and conditions, including rates, of the Borderline Customer Agreement, to be authorized to recover in rates the payments CalPeco shall make to Sierra in accordance with the Borderline Customer Agreement, or to account for the revenues Sierra shall pay under the Borderline Customer Agreement in the manner CalPeco proposes.

Therefore, the Commission should authorize CalPeco to perform in accordance with, the Borderline Customer Agreement and grant the requested accounting, ratemaking and other approvals requested with respect to the Borderline Customer Agreement.

## **E. Interconnection Agreement and System Coordination Agreement**

### **1. Interconnection Agreement**

The Interconnection Agreement addresses issues relating to the interconnections between the CalPeco distribution facilities and the Sierra distribution facilities at the California-Nevada border and the FERC-jurisdictional transmission facilities within California which Sierra will retain. The terms and conditions are relatively standard for such an interconnection agreement between two adjacent load service systems and will remain in effect for as long as any portion of the two systems remains interconnected.<sup>262</sup>

As the interconnection services that Sierra will be providing under the Interconnection Agreement are subject to FERC jurisdiction, on July 2, 2010, Sierra submitted the Interconnection Agreement to FERC and requested that it be accepted.<sup>263</sup> Joint Applicants request that this Commission authorize CalPeco to recover any payments it may make to Sierra under the Interconnection Agreement, subject only to ongoing Commission review of the reasonableness of CalPeco's administration of the agreement.

---

<sup>261</sup> Joint Application, at 59-60. As their respective sales to each other under the Borderline Customer Agreement are wholesale sales subject to FERC's jurisdiction, each CalPeco and Sierra on July 2, 2010, submitted its respective Section 205 application requesting FERC to accept the Borderline Customer Agreement. CalPeco (FERC Docket No. ER10-1703-000); Sierra (FERC Docket No, ER10-1709-000).

<sup>262</sup> Joint Application at 57-58.

<sup>263</sup> FERC Docket No. ER10-1712-000.

DRA has not challenged to this reasoning by the Joint Applicants. Therefore, the Commission should authorize CalPeco to enter the Interconnection Agreement and grant it the other requested approvals relating to it.

## **2. System Coordination Agreement**

The System Coordination Agreement serves an analogous purpose as the Interconnection Agreement and serves to govern the relationships between the Joint Applicants that arise from the contiguous and integrated nature of their electric distribution systems.<sup>264</sup>

The Joint Application sets forth the grounds on which Joint Applicants request that the Commission should find reasonable CalPeco's execution of the agreement. DRA has not challenged CalPeco's request for authority to execute and perform under the terms of the System Coordination Agreement. Therefore, the Commission should authorize CalPeco to perform under the System Coordination Agreement.

### **F. Fringe Agreement and Reliability Support Agreement**

As set forth in the Auxiliary Application, the Fringe Agreement provides the contractual basis for a cooperative arrangement between Sierra and TDPUD arising from the contiguous nature of Sierra's and TDPUD's respective service territories and the locations of the services territory boundary, which in places bisects roads and residential neighborhoods. In the absence of such cooperative arrangements, it would be necessary for both utilities to construct duplicative distribution facilities, at increased cost to the their respective customers. Thus, the Fringe Agreement recognizes that these cooperative arrangements facilitate the provision of cost-effective service and memorializes the terms and conditions upon which both Sierra (or CalPeco as of the Closing) and TDPUD each provide (and will continue to provide) electric distribution service to Fringe Customers.<sup>265</sup>

The Reliability Support Agreement is structured to provide both CalPeco's and TDPUD's customers a backup delivery path for electric service and at no incremental cost, in the event of an outage on either one of CalPeco's or TDPUD's primary delivery paths.<sup>266</sup>

Joint Applicants described its reasons in the Auxiliary Application for their belief that the Commission should find reasonable Joint Applicants' execution of the agreements. In both its protest to the Auxiliary Application and on cross-examination, DRA stated that its opposition to

---

<sup>264</sup> Joint Application at 58-59.

<sup>265</sup> A.10-04-032, at 4-6.

<sup>266</sup> A.10-04-032, at 8.

the Fringe Agreement and the Reliability Support Agreement are predicated solely on DRA's opposition to the proposed Transaction; stated differently, if the Commission approves the proposed Transaction, DRA has no opposition to the terms or conditions of either the Fringe Agreement or the Reliability Support Agreement.<sup>267</sup>

Therefore, assuming the Commission approves the proposed Transaction, it should also find (i) Sierra's execution of, and CalPeco's assumption of and performance under, the Fringe Agreement reasonable; (ii) CalPeco's execution of, and performance under, the Reliability Support Agreement reasonable, (iii) with respect to the Fringe Agreement authorize CalPeco to implement the ratemaking and accounting protocols requested; and (iv) with respect to the Reliability Support Agreement about its exclusive jurisdiction over CalPeco's participation in it.

In the event the Commission does not approve the Transaction, Sierra makes the alternative requests described in Section VIII, *infra*.

**G. CalPeco Request for Commission Assertion of Exclusive Jurisdiction Over the Distribution Capacity Agreement and Reliability Support Agreement**

As described in Section VI.D.1 above, Joint Applicants have urged that this Commission find that the facilities to be employed in the Distribution Capacity Agreement are "local distribution" facilities and to accordingly assert jurisdiction over the agreement. Joint Applicants have also urged that the Commission similarly find that the facilities to be employed in the Reliability Support Agreement are also "local" distribution facilities and to accordingly assert jurisdiction over that agreement as well for the same reasons.<sup>268</sup>

DRA has not offered any specific challenge to this reasoning by the Joint Applicants. Therefore, the Commission should assert its exclusive jurisdiction over the Distribution Capacity Agreement and the Reliability Support Agreement.

**H. CalPeco Request to Recover Costs Incurred With Respect to the Operating Agreements**

Joint Applicants described its reasons in its Joint Application for the Commission to grant CalPeco's recovery of its costs incurred with respect to the Operating Agreements. DRA has not offered any specific challenge to this reasoning by the Joint Applicants. Therefore, the Commission should grant CalPeco's recovery of its costs with respect to the Operating Agreements as requested.

---

<sup>267</sup> DRA/Phan, R.T. June 17, 2010, at 189-190; A.10-04-032, DRA Protest at 4.

<sup>268</sup> See Application 10-04-032, Sections II.B.1 and 2, at 9-12.

## VII. ADDITIONAL AUTHORIZATIONS SOUGHT

### A. Minimum Hold Condition/Internal Transfer Approval

#### 1. The Commission Should Not Impose A Minimum Hold Condition on Emera

Section 3(h) of the Regulatory Commitments obligates Algonquin to commit to own at least 50% of CalPeco for a minimum period of 10 years.<sup>269</sup> Emera has not contractually or otherwise committed to any such minimum period of ownership in CalPeco. Emera further requests that the Commission refrain from imposing any such “Minimum Hold” condition.<sup>270</sup> The DRA Report opposed CalPeco’s associated request for the Internal Approval Transfer (which will be discussed immediately below), but it did not directly state any position on Emera’s request that the Commission refrain from imposing a Minimum Hold Condition if the Commission were to approve the proposed Transaction.<sup>271</sup>

Both Algonquin and Emera recognize the importance that the buyer of any utility system be committed to serve as a long-term owner and operator of the utility. Each company appreciates that customers could be subject to unnecessary risk and harm if this Commission approved the sale to a buyer whose business plan would be to purchase a utility and shortly thereafter “flip” it, for a premium, to a third party.<sup>272</sup>

Emera’s request should not be construed as suggesting any intent for it to “flip” or otherwise shortly sell any portion of CalPeco. Its desire to not be subject to a Minimum Hold Condition is simply a matter of maintaining corporate flexibility, consistent with its other investments. It is Emera’s perspective that regulatory provisions such as Minimum Hold Conditions are not conducive to effective partnerships. As Mr. Tedesco explained using the metaphor of a marriage:

To draw an analogy ,,,,[imposition of a Minimum Hold Condition is] a bit like saying, well, would you like to get married, and I promise we’ll stay married for at least two or three years. It’s, from our perspective, not a way to start a relationship.<sup>273</sup>

---

<sup>269</sup> Appendix A, Regulatory Commitment 3(h).

<sup>270</sup> See Joint Application at 68-70.

<sup>271</sup> See Ex. 50, DRA Report at 5-7.

<sup>272</sup> Joint Application, at 69.

<sup>273</sup> Joint Applicants/Tedesco, R.T. June 16, 2010, at 86.

Mr. Tedesco also reiterated that Emera would not be participating in this Transaction if it did not make sense for Emera to participate over the long term.<sup>274</sup>

Emera's commitment to be an active and long-term participant in CalPeco is thoroughly set forth in Section IV.G.2, *supra*. The commitment is further evidenced by, among other matters, its agreement to also purchase a 9.9% interest in Algonquin, which has committed to hold its interest in CalPeco for a ten year period and by Emera's long term holdings in its other utility investments.<sup>275</sup>

In all events, there is no benefit to ratepayers, and DRA has suggested none, by the Commission imposing a Minimum Hold Condition on Emera. Emera would (absent the Commission approving the Internal Transfer Approval and with the protective conditions discussed below), and DRA agrees, be required to submit an § 854(a) application and request the Commission's approval as an absolute precondition to selling any portion of its ownership in CalPeco.<sup>276</sup> In any such § 854(a) application, and based on the facts and circumstances then existing,<sup>277</sup> the Commission can either accept or reject the request for Emera to reduce its ownership. The Commission could approve the reduction in Emera ownership, but also consider imposing conditions to mitigate any possible adverse consequences the Commission may perceive at that time (if any) to be associated with any such reduction in Emera ownership.

Thus, granting Emera's request that the Commission refrain from imposing a Minimum Hold Condition will preserve the regulatory status quo – fully preserving the Commission's ability to decide requests authorized by statute to be based on the record. Imposing a Minimum Hold Condition would arbitrarily “prejudge” any § 854(a) request Emera would possibly make during the prohibited period, and without the benefit of a record.

## **2. The Commission Should Grant the Internal Transfer Approval**

DRA has offered almost no challenge to the substance of the Internal Transfer Approval. Its opposition focuses on its misplaced concern that the Internal Transfer Approval is intended to enable Emera to abandon any ownership interest in CalPeco immediately upon Closing. Contrary to DRA, the Internal Transfer Approval would provide customer benefits by allowing

---

<sup>274</sup> Joint Applicants/Tedesco, R.T. June 16, 2010, at 87.

<sup>275</sup> Joint Application at 7.

<sup>276</sup> DRA/Phan, R.T. June 17, 2010, at 177.

<sup>277</sup> DRA/Phan, R.T. June 17, 2010, at 179.

Algonquin and Emera some amount of flexibility and facilitate their ability to ascertain the corporate ownership structure which they ultimately deem optimal.<sup>278</sup>

Most importantly in no event, as DRA urges, should the request for the Internal Transfer Approval be construed as a lack of commitment by Emera to participate fully in CalPeco. As explained in the Joint Application, reconfirmed in the Joint Reply, and absolutely demonstrated in the hearings, Emera intends to be a long-term participant in the activities of CalPeco.<sup>279</sup>

To respond fully to DRA's concerns that approval of the Internal Transfer Approval would precipitate Emera's "abandonment" of CalPeco and deprive CalPeco's customers of Emera's operating expertise and financial resources, in the revised Regulatory Commitments, Emera and Algonquin have agreed to accept the following additional terms and conditions upon the exercise of the Internal Approval Transfer (in the event the Commission were to approve it):

Any reduction in the dollar amount of Emera's direct investment in CalPeco will be made up by an increase in a corresponding dollar amount of Emera's investment in Algonquin;

Emera shall maintain its investment in Algonquin for a minimum period of three (3) years;

Should Emera use the Internal Transfer Approval process to sell down all or any portion of its direct ownership in CalPeco, Emera nonetheless through its ownership in Algonquin would continue to be active in the oversight of CalPeco in a manner designed to enable CalPeco to continue to realize the benefits of Emera's financial and operating strengths and resources and in developing renewable projects; and

Regardless of the authority that the Commission grants with respect to the Internal Transfer Approval with respect to changes of ownership interests in CalPeco between Algonquin and Emera, in no event shall Algonquin reduce for a minimum period of ten (10) years its ownership interest in CalPeco below the fifty percent (50%) interest committed to in Section 3(h) above.

This offer reaffirms, contrary to DRA's theories that Emera fully intends to continue to be a management resource and meaningful economic participant in CalPeco, regardless of the level of its direct ownership interest. Additionally, there is no expectation that Emera and

---

<sup>278</sup> Ex. 1, Joint Reply at 18.

<sup>279</sup> See e.g., Ex. 1, Joint Reply at 17.

Algonquin would use the Internal Transfer Approval process to make repeated changes in their respective ownership percentages of CalPeco.<sup>280</sup>

Emera's experience in being an upstream participant in multi-tiered ownership of utility companies should further alleviate any concern. In instances in which Emera has participated in operating utilities through ownership in upstream companies, it has actively and positively assisted management of the operating company. For example, Emera is a member of the Board of each St. Lucia Electricity Services Ltd (a 19% interest) and Grand Bahamas Power Company (a 25% interest). It also offers operational and other advice to these companies to improve customer service, operations, or fuel procurement strategies.<sup>281</sup> With respect to its 50% interest in the Bear Swamp 600 megawatts pumped storage facility in northern Massachusetts, Emera oversees this investment by offering advice on realizing value and seeking energy sales opportunities.<sup>282</sup>

The Internal Transfer Approval request reasonably facilitates the transfer of an ownership interest between affiliated parties, provides commercial flexibility to the joint owners of CalPeco, and thus benefits CalPeco's customers. The Commission should approve the request.

## **B. Other Authorizations**

### **1. Transfer of CPCNs and Termination of Sierra Responsibility to Provide Public Utility Service**

The Joint Application sets forth the grounds for these requests the Joint Applicants are making which are necessary for the sale of the California Utility from Sierra to CalPeco in the event that the Commission grants the requested authority in accordance with § 854(a).<sup>283</sup>

In the Scoping Memo, the Commission determined that in the event it grants the § 854(a) authority requested, it would also grant the requests that Sierra's certificates of public convenience and necessity be transferred to CalPeco and that Sierra be relieved of its public utility obligations within its current California service territory.<sup>284</sup>

The Commission should grant the requested § 854(a) authority and therefore also grant the associated requests identified above.

---

<sup>280</sup> Joint Applicants/Tedesco, R.T. June 16, 2010, at 33-34.

<sup>281</sup> Ex.1, Joint Reply, at 17; Joint Applicants/Tedesco, R.T. June 16, 2010, at 83-84.

<sup>282</sup> Ex.1, Joint Reply at 18-19.

<sup>283</sup> Joint Application, at 68.

<sup>284</sup> Scoping Memo at 12.

## 2. CEQA Review is Unnecessary

The Scoping Memo determined that the proposed Transactions qualifies for an exemption from CEQA pursuant to §15061(b)(3) of the CEQA guidelines, inasmuch it can be seen with certainty that the proposed Transaction will have no significant impact on the environment.<sup>285</sup>

No issue has been raised during the proceedings to question that determination. Joint Applicants accordingly request that the Commission affirm the Scoping Memo's determination that no CEQA review is required for the Commission to approve the Transaction.

## 3. Approval of CalPeco Encumbrances of the Assets of the California Utility Including Accounts Receivable for Purpose of Debt Financing

Joint Applicants described in the Joint Application the reasons for the Commission to grant authority for CalPeco to encumber the California Utility assets including accounts receivable in connection with the debt financing.<sup>286</sup> DRA has not challenged this request and acknowledges that encumbering the utility assets will not render CalPeco unable to provide utility service.<sup>287</sup> Therefore, the Commission should grant CalPeco the authority it seeks in this regard.

## VIII. CONCLUSION

WHEREFORE, Sierra and CalPeco respectfully request that the Commission issue an Order to become effective upon the date of issuance as follows:

- A. Find the proposed Transaction to be in the public interest and authorize, pursuant to § 854(a), the transfer of control of Sierra's California Utility to CalPeco, in accordance with the terms and conditions of the Purchase Agreement and as described in the Joint Application, the Joint Reply, the Auxiliary Application, and the revised Regulatory Commitments in Appendix A, attached hereto;
- B. Transfer, effective as of the Closing of the Transaction, to CalPeco the CPCNs held by Sierra that are necessary to enable CalPeco to serve the electric customers resident within the service territory of the California Utility;
- C. Grant CalPeco authority under §§ 816, 818 and 851 to finance a portion of its acquisition of the California Utility and encumber its utility assets and its

---

<sup>285</sup> Scoping Memo, at 10.

<sup>286</sup> See Joint Application, at 70-71. In Ex. 3, First Update Letter, CalPeco clarified its request to specifically include the authority to encumber its customer accounts payable in order to obtain its debt financing.

<sup>287</sup> DRA/Phan, R.T. June 16, 2010, at 145.

accounts receivables for such purposes, and to enter into all necessary related transactions;

- D. Assert its regulatory jurisdiction over the Distribution Capacity Agreement and the Reliability Support Agreement and the transactions and provision of services contemplated by those agreements, in each case, effective as of the Closing of the proposed Transaction;
- E. Approve the Operating Agreements, the Fringe Agreement and the Reliability Support Agreement and authorize CalPeco to perform its obligations under the Operating Agreements, the Fringe Agreement and the Reliability Support Agreement on the terms and conditions set forth in the end of the agreements and described in the Joint Application and the Auxiliary Application respectively, and effective as of the Closing of the proposed Transaction, and in connection with this request:
  - 1. Determine that it is reasonable for CalPeco to have executed the Operating Agreements, the Fringe Agreement and the Reliability Support Agreement;
  - 2. Authorize CalPeco to provide and/or receive service under, and take all other actions required by, the Operating Agreements, Fringe Agreement and Reliability Support Agreement in accordance with the terms of the agreements;
  - 3. Authorize CalPeco to incur the costs provided for in the Power Purchase Agreement, Interconnection Agreement and the Borderline Customer Agreement; determine that CalPeco's incurrence of such costs is prudent; and authorize CalPeco to recover in rates the payments it will make in accordance with these agreements, subject only to ongoing Commission review regarding the reasonableness of CalPeco's administration of these agreements;
  - 4. Authorize CalPeco to seek recovery in its 2012 GRC for costs it projects it will incur under the Transition Services Agreement during the period for which rates will be authorized in that proceeding; and
  - 5. Authorize CalPeco to charge the rates set forth in the Borderline Customer Agreement, the Distribution Capacity Agreement, the Fringe Agreement and the Emergency Backup Service Agreement, to provide the services set

forth in each agreement in accordance with its terms, and to account for and flow through to its customers the revenues it will receive from each agreement in the manner proposed in the Joint Application or the Auxiliary Agreement; respectively.

- F. Authorize the adjustments in ratemaking, as requested in the Joint Application;
- G. Refrain from imposing an Emera Minimum Hold Condition as a condition of approving the transfer of control of the California Utility from Sierra to CalPeco;
- H. Authorize the Internal Transfer Approval described in the Joint Application, and as modified by, and subject to the conditions set forth in, the revised Regulatory Commitments in Appendix A;
- I. Confirm the finding of the Scoping Memorandum that CEQA does not apply to the Transaction;
- J. Terminate, effective as of the Closing of the Transaction, the responsibilities of Sierra as a public utility in California with respect to the California Utility;
- K. Grant, to the extent not expressly contemplated above and effective as of the Closing of the Transaction, the Ancillary Authorizations and the requests made in the Auxiliary Application;
- L. Authorize Sierra and CalPeco to enter into, execute, and perform in accordance with the terms and conditions of all other documents which may be reasonably necessary and incidental to the performance of the transactions which are the subject of the Purchase Agreement, the Joint Application as the Auxiliary Application; and
- M. Grant such additional authorization or further relief to Joint Applicants as may be deemed necessary to accomplish the purposes of the Purchase Agreement, the Operating Agreements, the Fringe Agreement, the Reliability Support Agreement, the Joint Application and the Auxiliary Application.

Alternatively, in the event that the Commission decides not to grant the requests set forth above relating to the proposed Transaction, Sierra requests that the Commission (i) find the Fringe Agreement to be in the public interest; (ii) authorize Sierra to perform its obligations under the Fringe Agreement, on the terms and conditions set forth therein; and (iii) authorize Sierra to recover in rates the costs it incurs for service provided to customers under the Fringe Agreement.



**Appendix A**  
**Regulatory Commitments**

**1. Separateness.**

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

---

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

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

**2. Books and Records.**

- (a) CalPeco shall maintain separate books and records, systems of accounts, financial statements and bank accounts and shall in all events maintain its books and records in full compliance with Commission, and to the extent applicable, FERC, rules and regulations. All financial books and records of CalPeco will be kept in the California operations office, and, together with any records of any Emera and/or Algonquin affiliate that are relevant to CalPeco (wherever held), will be made available for review by the Commission upon request. Algonquin and Emera will make available to the Commission upon request its books and records and the books and records of any of their respective affiliates that allocate overhead or have operational or financial dealings with CalPeco, including any Algonquin or Emera affiliate that is a recipient of any funds (including dividends or similar distributions) from CalPeco. Algonquin, Emera and CalPeco have reviewed the Commission’s regulations and decisions on affiliate transactions and commit to comply fully with such rules and regulations.
- (b) Neither Algonquin nor Emera nor any of their respective affiliates conducts any other business within the geographic proximity of the California Utility. Accordingly, Algonquin and Emera (and their respective affiliates) do not

anticipate that CalPeco and either Algonquin and/or Emera (and/or their respective affiliates) will be providing any operations-related services to one another. It is, however, contemplated that Algonquin or Emera (or their respective affiliates) may provide management, administrative, and regulatory services to CalPeco with respect to the California Utility. In the event that Algonquin and/or Emera (and/or or their respective affiliates) provide services to CalPeco or CalPeco provides services to Algonquin and/or Emera (and/or their respective affiliates), CalPeco will develop and file with the Commission such shared services agreements and such agreements will comply with applicable affiliate rules and regulations of the Commission.

### **3. Operating Commitments.**

- (a) Credit extended by Algonquin or Emera, jointly or individually, to CalPeco will be at rates and upon terms no less advantageous than those otherwise available to CalPeco from unaffiliated third parties for similar transactions.
- (b) CalPeco will conduct business in the same or similar manner as it has under Sierra's ownership concerning functions such as power delivery, contracting and management, system operation and maintenance activities, safety and service reliability, customer service functions, and billing operations. With respect to regulatory relations, CalPeco will maintain a manager level representative (having such authority as may be required by the Commission) physically present in an office located within the California Utility's service territory with primary responsibility for maintaining Sierra's positive relationships with, and responding to requests for information from, the Commission and other regulatory agencies. CalPeco will also engage competent and respected area consultants such as the Davis Wright Tremaine law firm to provide CalPeco with San Francisco-based support and presence with respect to the maintenance of such positive relationship.
- (c) For an initial period extending through the filing of the next general rate case for the California Utility, CalPeco will maintain and accept all tariffs of the California Utility existing at the Closing or approved by the Commission in response to filings made by Sierra prior to the Closing and as requested to be modified in this proceeding with respect to (i) the reallocation of certain amounts of revenue recovery from general rate to ECAC rate recovery and (ii) the ECAC tariff as explained and requested at pages 30-37 of the Joint Application (but shall not be required to accept a reduction or roll-back in such rates pursuant to the Required Regulatory Approvals).<sup>2</sup> In this § 854(a) proceeding, CalPeco is requesting no increase in rates or in the total revenue requirement; on the day after Closing, rates for the customers of the California Utility shall remain at the same

---

<sup>2</sup> References to "Joint Application" herein are to the Joint Application of Sierra Pacific Power Company (U903E) and California Pacific Electric Company, LLC for Transfer of Control and Additional Requests Relating to Proposed Transaction filed with the Commission on October 16, 2009, as updated and supplemented by Joint Applicants' letters to Administrative Law Judge Vieth dated April 7, 2010, June 11, 2010 and June 16, 2010.

rate levels as the day prior to Closing and the total revenue requirement shall remain the same.

- (d) CalPeco shall provide service to its customers in compliance with all rules, regulations and decisions issued by the Commission. Among other matters, CalPeco will not change any rate or any other terms and conditions of service for its customers without first having obtained the necessary Commission approvals and CalPeco shall comply with all existing statutes and Commission regulations regarding affiliated interest transactions.
- (e) CalPeco agrees to maintain the existing low-income programs as part of the pending request under § 854(a) to acquire the California Utility. CalPeco shall operate within the existing rate case cycles now in effect for Sierra, including for general rates and ECAC rates.
- (f) CalPeco and Sierra have entered into a settlement agreement with the Plumas-Sierra Rural Electric Cooperative (“PSREC”), City of Loyalton, City of Portola, Sierra County and Plumas County (“PSREC Settlement”). The PSREC Settlement is Exhibit Q to Exhibit 1 to the proceeding. The PSREC Settlement obligates Sierra and CalPeco to make certain payments to PSREC at specified times and subject to certain conditions. Among these is a payment of \$250,000 to be made to PSREC within fifteen days of Closing. Under the terms of the PSREC Settlement, in the event that the Commission were to ultimately approve CalPeco making an \$1 million investment in the Herlong Transmission Project (as defined in the PSREC Settlement) and to authorize CalPeco to recover rates on this investment, PSREC has agreed that it will credit the \$250,000 payment as an advance payment against CalPeco’s \$1 million investment. CalPeco and Sierra commit that if CalPeco never requests authority to make an investment in the PSREC Herlong Transmission Project or if CalPeco requests Commission authorization to invest in the Herlong Transmission Project and the Commission rejects such request in its entirety, that CalPeco and Sierra will retain 100% of the cost responsibility for the \$250,000 payment to PSREC (i.e., customers will be held harmless).
- (g) CalPeco shall adopt, maintain and strive to improve the high quality of service standards that Sierra presently provides its customers.
- (h) Algonquin shall own at least fifty percent (50%) of CalPeco for a minimum period of ten (10) years.
- (i) CalPeco has requested that the Commission approve that either Algonquin or Emera be allowed to transfer to the other all or any portion of its ownership interest in CalPeco and without the need for any additional approval by the Commission (“Internal Transfer Approval”). The Internal Transfer Approval is described at page 70 and 71 of the Joint Application. In the event that the Commission were to grant the request for the Internal Transfer Approval, Emera and Algonquin will also commit to the following additional terms and conditions:

1. Any reduction in the dollar amount of Emera's direct investment in CalPeco will be made up by an increase in a corresponding dollar amount of Emera's investment in Algonquin;
2. Emera shall maintain its investment in Algonquin for a minimum period of three (3) years;
3. Should Emera use the Internal Transfer Approval process to sell down all or any portion of its direct ownership in CalPeco, Emera nonetheless through its ownership in Algonquin would continue to be active in the oversight of CalPeco in a manner designed to enable CalPeco to continue to realize the benefits of Emera's financial and operating strengths and resources and in developing renewable projects; and
4. Regardless of the authority that the Commission grants with respect to the Internal Transfer Approval with respect to changes of ownership interests in CalPeco between Algonquin and Emera, in no event shall Algonquin reduce for a minimum period of ten (10) years its ownership interest in CalPeco below the fifty percent (50%) interest committed to in Section 3(h) above.

**4. Employees and Management Team.**

- (a) CalPeco intends to the extent practicable to retain the same experienced operations team that has been responsible for operations of the California Utility under Sierra's ownership. Any additional management team members which need to be recruited by CalPeco shall be experienced in electric utility operations.
- (b) CalPeco intends to maintain a local headquarters within the California Utility's service territory, including maintaining a local management and customer service headquarters at a location within such service territory.
- (c) CalPeco intends to offer each of Sierra's current administration and operations employees located within the service territory employment with CalPeco at the same locations with responsibilities and remuneration consistent with each of their existing roles. Accordingly, CalPeco shall make no material changes in the nature of the employment roles of the California Utility fulfilled by individuals located within the service territory and intends, to the extent practical, to recruit within the California Utility service territory any additional operations staff necessary to replace functions currently performed by staff of Sierra located in Nevada. CalPeco will recognize the service and seniority of the former employees of Sierra who accept CalPeco's offer of employment for all non-pension purposes, which would include post retirement benefits such as vacation, sick pay benefits, and retiree health benefits.

**5. Premium and Cost Synergies.**

- (a) CalPeco agrees that its rate recovery shall be calculated based on the regulatory value of the California Utility, as depreciated by Sierra, and totally independent of the purchase price to acquire the California Utility. CalPeco shall in no event

seek to recover the excess of the purchase price over the regulatory book value of the utility assets (i.e., “premium”) in rates. Any premium which CalPeco shall pay shall not be recorded in the accounts of CalPeco utilized in the establishment of rates and tariffs for the California Utility.

- (b) The cost levels CalPeco shall use to request rates in future general rate cases shall be based on the actual recorded cost levels of CalPeco and will incorporate any cost savings synergies arising in comparison to the baseline costs established in Sierra’s 2008 rate case with respect to the California Utility.
- (c) CalPeco shall not seek to recover from ratepayers the “transaction costs” (e.g. investment banking and legal fees, and perimeter metering costs) associated with its acquisition of the California Utility. CalPeco recognizes that its incurrence of any such “transaction costs” is not related to the provision of electric service to the ratepayers of the California Utility and thus these costs are necessarily to be borne exclusively by its owners.

**6. California Regulatory Programs.**

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

**Exhibit 7.9(b)**

**Appendix A**

**Regulatory Approval Plan Commitments**

**4-1 Separateness.**

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

---

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

of ~~its~~their respective affiliates. ~~Each Member~~Algonquin and Emera each shall finance and fund ~~its~~their respective other business activities independently of ~~Buyer~~CalPeco. The assets of ~~Buyer~~CalPeco shall be used solely and exclusively for the purpose of providing electric distribution services to its customers and securing any debt financing obtained by ~~Buyer~~CalPeco.

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

## 2.2. Books and Records.

- (a) ~~Buyer~~CalPeco shall maintain separate books and records, systems of accounts, financial statements and bank accounts and shall in all events maintain its books and records in full compliance with ~~CPUC~~Commission, and to the extent applicable, FERC, rules and regulations. All financial books and records of ~~Buyer~~CalPeco will be kept in the ~~state~~California operations office, and, together with any records of any ~~Emera and/or Algonquin~~ affiliate that are relevant to ~~Buyer~~CalPeco (wherever held), will be made available for review by the ~~CPUC~~Commission upon request. ~~Each Member~~Algonquin and Emera will make available to the ~~CPUC~~Commission upon request ~~its~~ books and records ~~of such Member and other~~and the books and records of ~~any of their respective~~ affiliates ~~of such entity~~ that allocate overhead or have operational or financial dealings with ~~Buyer. The Buyer Group and Buyer~~CalPeco, including any ~~Algonquin or Emera~~ affiliate that is a recipient of any funds (including dividends or similar distributions) from CalPeco. Algonquin, Emera and CalPeco have reviewed the ~~CPUC~~Commission's regulations and decisions on affiliate transactions and commit to comply fully with such rules and regulations.
- (b) Neither ~~the Buyer Group~~Algonquin nor Emera nor any ~~affiliate of a Member of their respective affiliates~~ conducts any other business within the geographic proximity of the ~~Purchased Assets~~California Utility. Accordingly, ~~the Buyer Group does~~Algonquin and Emera (and their respective affiliates) ~~do~~ not anticipate that ~~Buyer and the Buyer Group (including its Members~~CalPeco and either ~~Algonquin and/or Emera (and/or their respective~~ affiliates) will be providing any operations-related services to one another. It is, however, contemplated that ~~a Member~~Algonquin or Emera (or their respective affiliates) may provide management, administrative, and regulatory services to ~~Buyer~~CalPeco with respect to the ~~Business or the Purchased Assets. In the event that services are provided between Buyer and any Member or its affiliates,~~BuyerCalifornia Utility. ~~In the event that Algonquin and/or Emera (and/or or their respective affiliates) provide services to CalPeco or CalPeco provides services to Algonquin and/or Emera (and/or their respective affiliates),~~ CalPeco will develop and file with the ~~CPUC~~Commission such shared services agreements and such agreements will comply with applicable affiliate rules and regulations of the ~~CPUC~~Commission.

## 3.3. Operating Commitments.

- (a) Credit extended by ~~a Member or its affiliates to Buyer~~Algonquin or Emera, ~~jointly or individually, to CalPeco~~ will be at rates and upon terms no less advantageous than those otherwise available to ~~Buyer~~CalPeco from unaffiliated third parties for similar transactions.
- (b) ~~Buyer~~CalPeco will conduct business in the same or similar manner as it has under ~~Seller~~Sierra's ownership concerning functions such as power delivery, contracting

and management, system operation and maintenance activities, safety and service reliability, customer service functions, and billing operations. With respect to regulatory ~~regulations, Buyer~~relations, CalPeco will maintain a manager level representative (having such authority as may be required by the CPUC Commission) physically present in an office located within the California Utility's service territory with primary responsibility for maintaining ~~Seller~~Sierra's positive relationships with, and responding to requests for information ~~front~~from, the CPUC Commission and ~~the~~ other regulatory agencies. ~~Buyer~~CalPeco will also engage competent and respected area consultants such as the Davis Wright Tremaine law firm to provide ~~Buyer~~CalPeco with San Francisco-based support and presence with respect to the maintenance of such positive relationship.

- (c) For an initial period extending through ~~at least~~ the filing of the next general rate case for the ~~Business, Buyer~~California Utility, CalPeco will maintain and accept all tariffs of the ~~Business~~California Utility existing at the ~~Effective Time~~Closing or approved by the CPUC Commission in response to filings made by ~~Seller prior to the Effective Time~~Sierra prior to the Closing and as requested to be modified in this proceeding with respect to (i) the reallocation of certain amounts of revenue recovery from general rate to ECAC rate recovery and (ii) the ECAC tariff as explained and requested at pages 30-37 of the Joint Application (but shall not be required to accept a reduction or roll-back in such rates pursuant to the Required Regulatory Approvals).<sup>2</sup> In this § 854(a) proceeding, CalPeco is requesting no increase in rates or in the total revenue requirement; on the day after Closing, rates for the customers of the California Utility shall remain at the same rate levels as the day prior to Closing and the total revenue requirement shall remain the same.
- (d) ~~Buyer~~CalPeco shall provide service to its customers in compliance with all rules, regulations and decisions issued by the CPUC Commission. Among other matters, ~~Buyer~~CalPeco will not change any rate or any other terms and conditions of service for its customers without first having obtained the necessary CPUC Commission approvals and ~~Buyer~~CalPeco shall comply with all existing statutes ~~regarding~~ and CPUC Commission regulations regarding affiliated interest transactions.
- (e) ~~Buyer shall not request an increase in rates for its customers as part of the Required Regulatory Approvals. Buyer shall also maintain the existing low-income programs.~~CalPeco agrees to maintain the existing low-income programs as part of the pending request under § 854(a) to acquire the California Utility.

---

<sup>2</sup> References to "Joint Application" herein are to the Joint Application of Sierra Pacific Power Company (U903E) and California Pacific Electric Company, LLC for Transfer of Control and Additional Requests Relating to Proposed Transaction filed with the Commission on October 16, 2009, as updated and supplemented by Joint Applicants' letters to Administrative Law Judge Vieth dated April 7, 2010, June 11, 2010 and June 16, 2010.

CalPeco shall operate within the existing rate case cycles now in effect for Sierra, including for general rates and ECAC rates.

- (f) CalPeco and Sierra have entered into a settlement agreement with the Plumas-Sierra Rural Electric Cooperative (“PSREC”), City of Loyalton, City of Portola, Sierra County and Plumas County (“PSREC Settlement”). The PSREC Settlement is Exhibit Q to Exhibit 1 to the proceeding. The PSREC Settlement obligates Sierra and CalPeco to make certain payments to PSREC at specified times and subject to certain conditions. Among these is a payment of \$250,000 to be made to PSREC within fifteen days of Closing. Under the terms of the PSREC Settlement, in the event that the Commission were to ultimately approve CalPeco making an \$1 million investment in the Herlong Transmission Project (as defined in the PSREC Settlement) and to authorize CalPeco to recover rates on this investment, PSREC has agreed that it will credit the \$250,000 payment as an advance payment against CalPeco’s \$1 million investment. CalPeco and Sierra commit that if CalPeco never requests authority to make an investment in the PSREC Herlong Transmission Project or if CalPeco requests Commission authorization to invest in the Herlong Transmission Project and the Commission rejects such request in its entirety, that CalPeco and Sierra will retain 100% of the cost responsibility for the \$250,000 payment to PSREC (i.e., customers will be held harmless).
- (g) ~~(f)~~ BuyerCalPeco shall adopt, maintain and strive to improve the high quality of service standards that ~~Seller~~Sierra presently provides its customers.
- (h) ~~(g)~~Algonquin Power shall ~~commit to~~ own at least fifty percent (50%) of BuyerCalPeco for a minimum period of ten (10) years. ~~Seller acknowledges that, under Section 8.2(b) of this Agreement, it is a condition to the Closing of the transactions contemplated by the Agreement that no Final Regulatory Order shall have imposed an affirmative obligation on Emera to continue to own its interest in Buyer for any specific period of time following the Closing Date.~~
- ~~(h)~~ ~~In any application submitted to the CPUC with respect to the Required Regulatory Approvals, Buyer shall be entitled to request that the CPUC (i) pre-approve Member Transfers and/or (ii) exempt Member Transfers from, or otherwise deem Member Transfers to be exempt from, any future requirement to obtain CPUC approval. For purposes of this subparagraph (h), “Member Transfer” means, at any time following the Closing, a transfer from one Member to the other Member of all or any portion of the transferring Member’s interest in Buyer. To the extent Buyer requests pre-approval or exemption as permitted in this subparagraph (h), denial of any such requests in a Final Regulatory Order shall not be deemed to give rise to a material adverse effect with respect to the form of the Final Regulatory Order pursuant to Section 8.2(e).~~

- (i) CalPeco has requested that the Commission approve that either Algonquin or Emera be allowed to transfer to the other all or any portion of its ownership interest in CalPeco and without the need for any additional approval by the Commission (“Internal Transfer Approval”). The Internal Transfer Approval is described at page 70 and 71 of the Joint Application. In the event that the Commission were to grant the request for the Internal Transfer Approval, Emera and Algonquin will also commit to the following additional terms and conditions:

Any reduction in the dollar amount of Emera’s direct investment in CalPeco will be made up by an increase in a corresponding dollar amount of Emera’s investment in Algonquin;

Emera shall maintain its investment in Algonquin for a minimum period of three (3) years;

Should Emera use the Internal Transfer Approval process to sell down all or any portion of its direct ownership in CalPeco, Emera nonetheless through its ownership in Algonquin would continue to be active in the oversight of CalPeco in a manner designed to enable CalPeco to continue to realize the benefits of Emera’s financial and operating strengths and resources and in developing renewable projects; and

Regardless of the authority that the Commission grants with respect to the Internal Transfer Approval with respect to changes of ownership interests in CalPeco between Algonquin and Emera, in no event shall Algonquin reduce for a minimum period of ten (10) years its ownership interest in CalPeco below the fifty percent (50%) interest committed to in Section 3(h) above.

#### **4.4. Employees and Management Team.**

- (a) BuyerCalPeco intends to the extent practicable to retain the same experienced operations team that has been responsible for operations of the BusinessCalifornia Utility under SellerSierra’s ownership. Any additional management team members which need to be recruited by BuyerCalPeco shall be experienced in electric utility operations.
- (b) BuyerCalPeco intends to maintain a local headquarters within the California Utility’s service territory, including maintaining a local management and customer service headquarters at a location within such service territory.
- (c) BuyerCalPeco intends to offer each of SellerSierra’s current administration and operations employees located within the service territory employment with BuyerCalPeco at the same locations with responsibilities and remuneration consistent with each of their existing roles. Accordingly, BuyerCalPeco shall

make no material changes in the nature of the employment roles of the ~~Business~~California Utility fulfilled by individuals located within the service territory and intends, to the extent practical, to recruit within the California Utility service territory any additional operations staff necessary to replace functions currently performed by staff of ~~Seller located in Nevada~~Sierra located in Nevada. CalPeco will recognize the service and seniority of the former employees of Sierra who accept CalPeco's offer of employment for all non-pension purposes, which would include post retirement benefits such as vacation, sick pay benefits, and retiree health benefits.

#### **5-5. Premium and Cost Synergies.**

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

#### **6-6. California Regulatory Programs.**

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

Document comparison by Workshare Professional on Monday, July 12, 2010 1:50:52 PM

<b>Input:</b>	
Document 1 ID	interwovenSite://DWTDOCS/DWT/15007586/1
Description	#15007586v1<DWT> - Original Regulatory Approval Plan -Exhibit 7.9(b)
Document 2 ID	interwovenSite://DWTDOCS/DWT/15015146/1
Description	#15015146v1<DWT> - 0089731 Clean Appendix A for New Redline
Rendering set	Standard

<b>Legend:</b>	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	144
Deletions	133
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	277

## Appendix B

### **Excerpt from Joint Application of Joint Applicants’ Analysis of FERC “Seven Factor Test” Demonstrating that Distribution Capacity Agreement is Subject to This Commission’s Jurisdiction**

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

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

#### **Background of Jurisdictional Issues**

Section 201 of the Federal Power Act<sup>2</sup> establishes exclusive federal jurisdiction for FERC to regulate the transmission of electricity in interstate commerce. Importantly, FERC’s jurisdiction over interstate transmission does not extend to the regulation of local distribution services. The distinction between “FERC-jurisdictional transmission” facilities and “State-PUC local distribution” facilities has at times raised an issue as to whether particular facilities are subject to FERC or state regulatory jurisdiction.

---

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

<sup>2</sup> 16 U.S.C. § 824(b).

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

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

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

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

### **FERC’s Seven Factor Test**

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

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

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

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

\* \* \*

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

\* \* \*

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

\* \* \*

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

---

<sup>3</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,771.

<sup>4</sup> *Id.*, at 31,783.

<sup>5</sup> *Id.*, at 31,783-84.

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

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

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

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

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

---

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

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

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

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

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

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

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

---

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

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

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

---

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

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

**CERTIFICATE OF SERVICE**

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111.

On July 12, 2010, I caused the following to be served:

**OPENING BRIEF OF SIERRA PACIFIC POWER COMPANY (U903E) AND  
CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC**

enclosed in a sealed envelope, by first class mail on the attached service lists A.09-10-021/A.10-04-032.

/s \_\_\_\_\_  
Judy Pau