

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



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Joint Application of California Pacific Electric Company, LLC (U933-E), Algonquin Power & Utilities Corp., Liberty Energy Utilities Co., Emera Incorporated, Emera US Holdings Inc., and California Pacific Utility Ventures, LLC for Expedited Approval of Indirect Transfer of Control of California Pacific Electric Company, LLC (U933-E) pursuant to California Public Utilities Code Section 854(a).

A.11-09-012
(Filed September 14, 2011)

**ALL-PARTY MOTION FOR COMMISSION ADOPTION
AND APPROVAL OF PROPOSED SETTLEMENT AGREEMENT**

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1. INTRODUCTION

- 1.1. In accordance with Rule 12.1, subdivision (a) of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure (Rule), the Settling Parties (as defined in section 2 below) jointly move for Commission approval and adoption of the attached proposed settlement agreement (Settlement).
- 1.2. This Motion states the factual and legal bases of the Settlement; advises the Commission of its scope; and presents the grounds on which Commission approval and adoption are urged.
- 1.3. As the Motion explains, the Settlement complies with Section 854, subdivision (a),¹ as well as Commission requirements for approval of

¹ The term “Section” means a statutory provision of the California Public Utilities Code, unless otherwise stated.

settlements under Rule 12.1, subdivision (d), because it is reasonable in light of the whole record, consistent with the law, and in the public interest. Accordingly, the Settling Parties respectfully urge the Commission to adopt and approve the Settlement.

2. DEFINITIONS

- 2.1. The term “Settling Parties” means the “Joint Applicants” and the Division of Ratepayer Advocates (DRA).
- 2.2. The term “Joint Applicants” means the following:
 - 2.2.1. Algonquin Power & Utilities Corp. (Algonquin), which is incorporated under the Canada Business Corporations Act;
 - 2.2.2. Liberty Energy Utilities Co. (Liberty Energy Utilities), a Delaware corporation which currently owns 50.001% of California Pacific Utility Ventures, LLC (CPUV) and will own 100% of CPUV if the Commission approves Application (A.) 11-09-012;
 - 2.2.3. CPUV, a California limited liability company which wholly owns California Pacific Electric Company, LLC (CalPeco);
 - 2.2.4. CalPeco, a California limited liability company;
 - 2.2.5. Emera Incorporated (Emera), which is incorporated under the laws of the Province of Nova Scotia, Canada, and wholly owns Emera US Holdings Inc. (EUSHI); and
 - 2.2.6. EUSHI, a Delaware corporation, which currently owns 49.999% of CPUV and will transfer its entire CPUV ownership to Liberty Energy Utilities if the Commission approves A.11-09-012.

- 2.3. The term “Additional Algonquin Entities” means the following:
- 2.3.1. Liberty Utilities (Canada) Corp. (LUCC), a wholly owned subsidiary of Algonquin, which is incorporated under the Canada Business Corporations Act and wholly owns Liberty Utilities Co. (LUC).²
- 2.3.2. LUC, a Delaware corporation,³ which wholly owns Liberty Energy Utilities;
- 2.4. The term “Upstream Owner” or “Upstream Ownership” means a business entity that has a direct or indirect ownership interest in CalPeco as per Commission Decision (D.) 10-10-017, Ordering Paragraph (O.P.) 1, subdivision (b) (“[A]ny change of ownership affecting CalPeco’s upstream owners must be sought by application filed pursuant to Public Utilities Code Section 854.”⁴).
- 2.5. The term “Regulatory Commitments” means those provisions that O.P. 1 of D. 10-10-017 refers to as “the Regulatory Commitments attached to this Order as Appendix 3.”⁵

3. BACKGROUND

- 3.1. In D.10-10-017, the Commission granted A.09-10-028 and A.10-04-032 (consolidated), which *inter alia* authorized Sierra Pacific Power Company (Sierra) to sell to CalPeco its California electric distribution facilities and

² See *Algonquin Power & Utilities Corp. Third Quarter Report 2011* at p. 2, available at http://www.algonquinpower.com/financial/quarterly_reports.asp/.

³ DRA notes that A.11-09-012 mentions LUC’s ownership of Liberty Energy Utilities; upstream owner LUCC was not referenced. See A.11-09-012 at p. 6 n.7.

⁴ *CalPeco*, D.10-10-017, O.P. 1(b) at p. 63, available at http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/124926.pdf/.

⁵ *Id.* O.P. 1 at p. 62.

the Kings Beach Generating Station.⁶ DRA had opposed the sale and acquisition.⁷

- 3.2. Appendix 2 to D.10-10-017 illustrates the arrangement of CalPeco's Upstream Owners at the time when D.10-10-017 was issued.⁸
- 3.3. On September 14, 2011, in accordance with D.10-10-017, O.P. 1(b), the Joint Applicants requested that the Commission approve the transfer of EUSHI's 49.999% ownership of CPUV to Liberty Energy Utilities.⁹ Related to this transaction, Emera would acquire an additional 6.9% equity stake in Algonquin.¹⁰
- 3.4. On October 24, 2011, DRA protested A.11-09-012, and on November 11, 2011, the Joint Applicants replied.
- 3.5. CalPeco is an electric utility serving 46,000 or more ratepayers. DRA seeks to ensure that any change in Upstream Owners does not diminish the safeguards for ratepayers set forth in D.10-10-017.¹¹
- 3.6. On November 30, 2011, Commissioner Sandoval and Administrative Law Judge (ALJ) Kenney held a Prehearing Conference (PHC). During the PHC and in response to Commissioner Sandoval's request, the Joint Applicants agreed to file declarations (Declarations) with the Commission reaffirming

⁶ Sierra's California service areas consisted of approximately 46,000 retail electric customers residing or doing business in seven California counties: Alpine, El Dorado, Mono, Nevada, Plumas, Placer, and Sierra. Eighty percent or more of these ratepayers are located in the Lake Tahoe Basin area. D.10-10-017 at 3-4.

⁷DRA Protest in A.09-10-028/A.10-04-032 (dated June 3, 2010), *available at* <http://docs.cpuc.ca.gov/EFILE/P/118972.htm>

⁸D.10-10-017, app. 2, *available at* http://docs.cpuc.ca.gov/published/FINAL_DECISION/124928.htm.

⁹See D.10-10-017 at 61, Conclusion of Law 14, which requires Joint Applicants file an application under section 854 for Commission approval for change of Upstream Owners.

¹⁰See A.11-09-012, at 11.

¹¹See *DRA Prehearing Conference Statement* (filed Nov. 22, 2011) at 4 ("The question now is whether Emera's Regulatory Commitments to the Commission and DRA in D.10-10-017 would be vitiated by Emera's sale of its entire ownership interest in CalPeco to Liberty Energy Utilities?").

that their duties and obligations under the Regulatory Commitments would remain in full force and effect, notwithstanding any changes made in the Upstream Ownership of CalPeco resulting from Commission approval of A.11-09-012.¹² The Declarations also reaffirmed that after such approval, the Joint Applicants would comply with the Commission's direction in D.10-10-017 to provide their officers and employees to testify in California regarding matters pertinent to CalPeco, as the Commission, itself, may determine to be necessary, consistent with established principles of due process and fundamental fairness.¹³

- 3.7. On December 9, 2011, the Joint Applicants made their First Compliance Filing, which submitted the Declarations. On December 16, 2011, their Second Compliance Filing included a copy of the pertinent Subscription Agreement between Algonquin and Emera.
- 3.8. On December 15 and 16, 2011, Joint Applicants and DRA met by telephone to discuss settlement. At DRA's request, Algonquin agrees for Settlement purposes to have the Additional Algonquin Entities, which were not applicants in A.11-09-012, provide their officers and employees to testify in California regarding matters pertinent to CalPeco, as the Commission, itself, may determine to be necessary, consistent with established principles of due process and fundamental fairness.
- 3.9. On December 16, 2011, on behalf of the Settling Parties, DRA by e-mail informed assigned Commissioner Sandoval, ALJ Kenney, and the Service List that the Settling Parties had reached a settlement in principle, and requested that the Commission suspend the proceeding pending filing and disposition of the Settlement and Motion.

¹² A.11-09-012 PHC Transcript at 40-41.

¹³ D.10-10-017 at 63, at O.P. 1(c).

- 3.10. Subsequently, ALJ Kenney requested a weekly status report from the Settling Parties.
- 3.11. On December 23, 2011, the issued Assigned Commissioner Ruling and Scoping Memo stated that the schedule for this proceeding would depend on when the Parties submit a settlement; its content; and the timing of the events that may occur regarding it. After filing of the Motion with the attached Settlement, additional rulings regarding the proceeding schedule and the submission date may be issued.¹⁴
- 3.12. On January 11, 2012, in accordance with Rule 12.1, subdivision (b), the Parties provided due notice (including instructions for attending) to the A.11-09-012 Service List in this matter that a telephonic settlement conference would be held on January 18, 2012 at 4:00 p.m. At the teleconference, only the Joint Applicants and DRA attended.

4. ARGUMENTS AND AUTHORITIES

- 4.1. The Settlement Agreement meets Commission standards for approval of settlements in Rule 12.1, subdivision (d), which states as follows:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

- 4.2. *The Settlement is reasonable in light of the whole record.*
 - 4.2.1. DRA was concerned that if approved, A. 11-09-012's changes of upstream owners would "vitate" the force and effect of the Regulatory Commitments that D.10-10-017 adopted for the protection of the ratepayers. This Settlement ensures that those Regulatory Commitments remain binding on the Joint Applicants, even if A.11-09-012 were approved.

¹⁴ Assigned Commissioner Ruling and Scoping Memo at 3–4 (dated Dec. 23, 2011), *available at* <http://docs.cpuc.ca.gov/EFILE/RULC/156260.htm/>.

- 4.2.2. The Settling Parties agree that the Commission has jurisdiction to enforce the terms of the Settlement, including the Regulatory Commitments.
- 4.2.3. As in D.10-10-017, in the Settlement the Joint Applicants agree to provide their officers and employees to testify in California regarding matters pertinent to CalPeco, as the Commission, itself, may determine to be necessary, consistent with established principles of due process and fundamental fairness.
- 4.2.4. Further, the Settlement provides that Algonquin will have the Additional Algonquin Entities, which are not parties to A.11-09-012, provide their officers and employees to testify in California regarding matters pertinent to CalPeco, as the Commission, itself, may determine to be necessary, consistent with established principles of due process and fundamental fairness.
- 4.2.5. Therefore, based on the foregoing and the whole record, which *inter alia* includes A.11-09-012, DRA's Protest, the Joint Applicants' Reply, the PHC Statements and transcript, and the Joint Applicants' two Compliance Filings, the Settling Parties submit that the Settlement is reasonable.

4.3 *The Settlement is consistent with the law.*

- 4.3.1. The Settlement's terms and conditions are basically the same as the holdings in D.10-10-017 that the Commission upheld as not adverse to the public interest under Section 854(a).¹⁵ For example:
- In the Settlement, the Joint Applicants acknowledge and reaffirm that their duties and obligations under the Regulatory Commitments adopted in D.10-10-017, appendix 3, shall remain

¹⁵ See D.10-10-017 at 60, Conclusion of Law 3, subdivision (a).

in force and effect, notwithstanding any changes made in the upstream ownership of CalPeco as a result of Commission approval of A.11-09-012.

- Under the Settlement, the Joint Applicants agree that the officers and employees of the Joint Applicants will be made available to testify in California regarding matters pertinent to CalPeco, as the Commission, itself, may determine to be necessary, consistent with established principles of due process and fundamental fairness. Additionally, Algonquin agrees that the officers and employees of the Additional Algonquin Entities will be made available to testify in California regarding matters pertinent to CalPeco, as the Commission, itself, may determine to be necessary, consistent with established principles of due process and fundamental fairness.

4.3.2. The Settling Parties adopt by reference as if incorporated herein the Commission's Findings of Fact, Conclusions of Law, and Ordering Paragraphs in D.10-10-017.

4.3.3. Therefore the Settlement is not adverse to the public interest under Section 854(a) and meets Commission requirements for settlements under Rule 12(d).

4.4. *The Settlement is in the public interest.* The Settlement ensures that the ratepayer protections established under the Regulatory Commitments which the Commission adopted in D.10-10-017, at appendix 3, will remain enforceable against Emera, notwithstanding EUSHI's transfer of its direct ownership in CPUV to Algonquin's Liberty Energy Utilities under A.11-09-012. Therefore the Settlement is in the public interest.

5. **CONCLUSION**

- 4.3. Based on the foregoing, the Settling Parties respectfully urge the Commission to grant this Motion and thereby approve and adopt the attached proposed Settlement. The Settlement is reasonable in light of the whole record, consistent with law, and in the public interest.
- 4.4. On behalf of their respective Settling Parties, the attorneys signing below have executed this Motion as of the date stated below in accordance with Rule 1.8.

Respectfully submitted,

/s/ **CLEVELAND W. LEE**

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