Decision **PROPOSED DECISION OF ALJ VIETH** (Mailed 9/14/2010)

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)
And Related Matters.	Application 10-04-032 (Filed April 30, 2010)

DECISION CONDITIONALLY APPROVING CONSOLIDATED APPLICATIONS

TABLE OF CONTENTS

Title **Page**

DECISION CONDITIONALLY APPROVING CONSOLIDATED APPLICATIONS..... 1
1. Summary 2
2. Identification of Parties 3
2.1. Overview 3
2.2. Sierra 4
2.3. CalPeco 5
3. Summary of Authority Sought 9
4. Standard of Review..... 10
5. The Transfer Application: Discussion..... 17
5.1. Reason for the Transfer 17
5.2. Impact on Service 19
5.3. Impact on Costs 23
5.3.1. O&M and Other Miscellaneous Costs 24
5.3.2. Transition Services Agreement.....27
5.3.3. PSREC Settlement.....27
5.3.4. Valmy 30
5.4. Impact on the Financial Condition of the California Utility 34
5.4.1. Capital and Debt Guarantees; Ring-Fencing 35
5.4.2. Emera Minimum Hold Condition; Internal Transfer Approval 42
5.5. Impact on Quality of Management 45
5.6. Impact on Utility Employees..... 45
5.7. Impact on California and Local Communities..... 46
5.8. Impact on Commission Jurisdiction..... 46
5.9. Impact on Competition 47
5.10. Other Operating Agreements..... 47
5.11. Conclusion 49
6. Ancillary Agreements to the TDPUD Settlement: Discussion 50
6.1. Fringe Agreement 50
6.2. Reliability Support Agreement 51
6.3. Conclusion 51
7. Compliance with the California Environmental Quality Act..... 52
8. Comments on Proposed Decision..... 52
9. Assignment of Proceeding..... 53
Findings of Fact..... 53
Conclusions of Law 60
ORDER 63

LIST OF APPENDICES

Appendix 1 – List of Abbreviations and Acronyms

Appendix 2 – CalPeco Ownership Structure

Appendix 3 – Regulatory Commitments

Appendix 4 – Excerpt from Joint Application of Joint Applicants' Analysis of FERC "Seven Factor Test" Demonstrating that Distribution Capacity Agreement is Subject to this Commission's Jurisdiction

DECISION CONDITIONALLY APPROVING CONSOLIDATED APPLICATIONS

1. Summary

Subject to the following conditions, we approve the transfer to California Pacific Electric Company, LLC (CalPeco) of the California electric distribution facilities and the Kings Beach Generating Station owned by Sierra Pacific Power Company (Sierra):

- Power from Sierra's Valmy Power Plant may be included in the supply provided under the Power Purchase Agreement and any additional power purchase agreement which Sierra and CalPeco may enter upon the expiration of the initial five-year agreement as long a Sierra makes no new ownership investment in Valmy, within the context of the Emissions Performance Standard rules adopted in Decision 07-01-039 and any relevant, subsequent modifications of that decision;
- The Internal Transfer Authority is not approved and any change of ownership affecting CalPeco's upstream owners must be sought by application filed pursuant to Public Utilities Code Section 854;
- CalPeco and its upstream owners must expressly recognize the Commission's legal right to call their officers and employees to testify in California regarding matters pertinent to CalPeco, consistent with established principles of due process and fundamental fairness.

In all other respects we approve the authority sought in the transfer application, as amended in the course of this proceeding and as conditioned by the Regulatory Commitments attached to this decision as Appendix 3. Joint Applicants have established that the transfer will not harm ratepayers; in fact, certain service improvements are likely in the near term, at no cost to ratepayers.

We also approve the two ancillary agreements involving Sierra, CalPeco and Truckee-Donner Public Utility District in order to permit the continued

cooperation that permits cost-effective, reliable service to customers in both of these contiguous, small service territories.

2. Identification of Parties

2.1. Overview

For ease of discussion, today's decision generally refers to Application (A.) 09-10-028, which asks the Commission to approve a change in public utility ownership and control, as the transfer application.

The three active parties include the proposed seller, Sierra Pacific Power Company (Sierra) and the proposed buyer, California Pacific Electric Company, LLC (CalPeco).[1] We refer to these project proponents, collectively, as Joint Applicants. The third active party, the Commission's Division of Ratepayer Advocates (DRA), opposes the transfer from Sierra to CalPeco.

Several other parties initially protested the proposed transfer, but all of them reached settlements with Joint Applicants and withdrew their protests prior to evidentiary hearing. These parties include Truckee-Donner Public Utilities District (TDPUD), which withdrew its protest on February 22, 2010, and the following entities, referred to as Aligned Protestants, which collectively withdrew their individual protests on March 29, 2010: the City of Loyalton, the City of Portola, Plumas County, Sierra County, and Plumas-Sierra Rural Electric Cooperative (PSREC).

We are aware that two other entities, which are not parties, have submitted letters of support for the proposed transfer and urge us to approve it -- the International Brotherhood of Electrical Workers Local Union 1245 (Local

[1] Appendix 1 contains a list of the abbreviations and acronyms used in today's decision.

1245), whose members work for Sierra and have been offered continued employment by CalPeco, and Sierra Pacific Industries, which owns a 14 megawatt (MW) biomass cogeneration facility in the City of Loyalton. Sierra Pacific Industries previously wrote to oppose the transfer but subsequently has resolved its dispute with Sierra and now supports the transfer.[2]

2.2. Sierra

Sierra is a public utility that generates, transmits and distributes electricity to some 366,000 customers in northern Nevada and California; Sierra also serves about 150,000 natural gas customers in Reno and Sparks, Nevada. Organized as a Nevada corporation, Sierra is wholly-owned by NV Energy Inc. (NV Energy), an investor-owned holding company incorporated under Nevada law. NV Energy has five other, wholly-owned subsidiaries, including Nevada Power, the regulated public utility which serves Las Vegas and southern Nevada. In total, NV Energy serves about 1.2 million customers in Nevada.

Sierra's California retail electric customer base encompasses about 46,000 customers in seven counties (Nevada, Placer, Sierra, Plumas, Mono, Alpine and El Dorado), with approximately 80% of those customers located in the Lake Tahoe Basin. Sierra's California service territory is a winter-peaking load; the mountainous terrain rises from nearly 5,000 feet to 9,000 feet and most customers are located at elevations above 6,000 feet. In addition, the California service territory is outside the control area of the California Independent System Operator. Electricity generated in Nevada and delivered into California through

[2] These letters have been placed in the correspondence file for this docket.

Sierra's transmission facilities is the source of most of the electric power supplied to the California service territory.

2.3. CalPeco

CalPeco is a newly created, California limited liability company directly owned by California Pacific Utility Ventures, LLC, a California limited liability company. CalPeco's ultimate, indirect owners are two publicly traded Canadian companies -- Algonquin Power & Utilities Corp. (Algonquin) and Emera Incorporated (Emera). These entities' will hold their indirect ownership stakes -- 50.001% by Algonquin and 49.999% by Emera -- through their respective, wholly owned subsidiaries, Liberty Electric Co. and Emera US Holdings, Inc., both Delaware corporations.[3] Appendix 2 to today's decision illustrates this ownership chain.

Initially formed in 1987, Algonquin is a diversified electrical power generation and utility infrastructure company with a principal place of business in Toronto, Ontario. According to the transfer application: "Algonquin owns

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[3] The Algonquin and Emera 50%/50% ownership arrangement initially described in the transfer application has changed. Joint Applicants explain:

> This change results from Canada transitioning to the International Financial Reporting Standards in 2011. Algonquin and Emera have determined that enabling Algonquin to "control" CalPeco within the meaning of these accounting standards facilitates Algonquin being authorized to account for its investment in CalPeco on a fully-consolidated basis and enables Emera to use equity consolidation treatment." (Exhibit (Ex.) 3 at 6.)

In addition, the chain of ownership of CalPeco on the Algonquin side has changed. According to the transfer application, initially Algonquin planned for its subsidiary, Algonquin Power Fund (America) Inc., to directly hold CalPeco. However, Algonquin subsequently had that subsidiary transfer 100% of its ownership interest in CalPeco to another Algonquin subsidiary, Liberty Electric Co.

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."[4] Algonquin has two business units, a Power Generation unit that includes 45 renewable power generating facilities and 16 high-efficiency thermal generating facilities in four states and four Canadian provinces, and a Utility Services unit that owns and operates regulated water and sewer utility systems in four states.[5] At hearing, Joint Applicants' witness testified that the recent acquisition of a water and wastewater system in Texas has increased Algonquin's regulated utility business to 19 systems with 75,000 total customers.

Following its conversion on October 27, 2009, to a conventional, publicly traded corporation, Algonquin now trades under the symbol "AQN" on the Toronto Stock Exchange. Previously, Algonquin was known as Algonquin Power Income Fund, a mutual fund trust established under the laws of the Province of Ontario, Canada.

Emera, incorporated under the laws of the Province of Nova Scotia, Canada, is an energy holding company with a principal place of business in Halifax, Nova Scotia. According to the transfer application, Emera holds "approximately $5.3 billion of assets (Cdn)" and "owns and operates utilities participating in the generation, transmission and distribution of electricity; utilities participating in the transmission of natural gas; and unregulated

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[4] Transfer Application at 4.

[5] In California, Algonquin owns the Sanger Cogeneration project, a 56 MW natural gas-fired facility near Fresno. Sanger sells power to Pacific Gas and Electric Company under a Commission-approved standard offer contract that will expire in 2012.

businesses participating in the energy marketing and electric generation."[6] Emera has over 130 years of experience in owning and operating utility assets, a safety record nationally recognized in Canada, and extensive experience in partnership and joint ownership arrangements, including a 600 MW pumped storage facility in northern Massachusetts.

Regarding the relationship with Algonquin, Joint Applicants state:

> Emera is engaged in a strategic partnership with Algonquin through which the companies may collaborate in select utility infrastructure and renewable generation investment, such as the proposed co-ownership of CalPeco. Emera has also agreed to acquire a 9.9% interest in Algonquin upon Closing.[7]

The transfer application does not name CalPeco's direct owner, California Pacific Utility Ventures, LLC, or its indirect owners, Emera, Algonquin and their subsidiaries, as applicants. DRA's opening brief raises this, for the first time, as a fatal flaw that must be corrected by amendment of the transfer application to name each of these entities. According to DRA, Public Utilities Code Section 854(a) requires such amendment.[8]

Section 854(a) provides, in relevant part:

> No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission … Any merger, acquisition, or control without that prior authorization shall be void and of no effect …

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[6] Transfer Application at 5.

[7] Transfer Application at 7.

[8] Unless otherwise noted, all subsequent references to a statutory section or sections are to the California Public Utilities Code.

Joint Applicants' reply brief argues that DRA's contention is not only untimely but also incorrect. According to Joint Applicants, only when an upstream owner is being sold, resulting in a change of indirect ownership, must the application name indirect owners. Neither brief cites authority.

Joint Applicants also state that there is no substantive need to amend the application. They point out that Algonquin and Emera have been active participants in this proceeding from the beginning, have voluntary presented senior executives as witnesses at hearing, and have conceded the Commission's jurisdiction to enforce the various promises and representations, termed Regulatory Commitments (see Appendix 3 to today's decision), that CalPeco and its direct and indirect owners have made to customers and to the Commission.

We need not undertake an exhaustive statutory analysis here, where CalPeco's owners are not contesting the Commission's jurisdiction. However, when a utility tier transfer results in new indirect owners for that utility, we think naming all such entities as applicants is the better practice, and we urge the Docket Office and our administrative law judges to be more vigilant in ensuring that this better practice is broadly and consistently followed.[9] Because Joint Applicants have fully disclosed the existence of California Pacific Utility Ventures, LLC, as well as Emera and Algonquin and their immediate subsidiaries in the chain of control of CalPeco, have presented witnesses from

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[9] See for example, *Joint Application of California-American Water Company, RWE Aktiengesellschaft, Thames Water Aqua Holdings GmbH, Thames Water Plc, and Apollo Acquisition Company to merge with and into American Water Works Company, resulting in a change of control of California-American Water Company,* D.02-12-068 (2002). The merger between the parent of CalAm and the subsidiary of RWE, resulted in RWE and each intervening subsidiary obtaining indirect control of CalAm and all were named as applicants.

Algonquin and Emera, and have placed issues concerning these entities directly before the Commission for decision, our ability to fully consider this transfer has not been circumscribed. We intend that the reach of today's decision extend to the direct and indirect owners of CalPeco and will require their assent as a condition of any authority granted in the Ordering Paragraphs.

3. Summary of Authority Sought

Sierra proposes to transfer to CalPeco ownership and operation of Sierra's California service territory and all distribution assets, as well as the King's Beach Generating Station (King's Beach facility), a 12-MW diesel-fired generator located in King's Beach near Lake Tahoe (collectively, the California Utility).

The transfer application describes the transaction as "functionally the sale of Sierra's entire Commission-jurisdictional utility."[10] The sales price, to be calculated more precisely based upon various factors including outstanding accounts payables and accounts receivables at closing, is estimated to range between approximately $132 and $137 million. CalPeco commits not to seek to recover in rates either the premium paid for the assets of the California Utility or any transactions costs. CalPeco commits to ask, in a future 2012 CalPeco general rate case, that the Commission establish the revenue requirement according to the dollar value of CalPeco's rate base, not the purchase price, and that those subsequent ratemaking computations include any cost savings CalPeco may have realized, compared to the pre-savings baseline in Sierra's last general rate case. Appendix 3 of today's decision lists these and all other Regulatory Commitments by CalPeco and its owners. The transfer application also

[10] Transfer Application at 19.

incorporates seven agreements, referred to collectively as the Operating Agreements, and asks the Commission to make certain findings about them concurrent with approval of the transfer.

We have consolidated the transfer application with A.10-04-032, which seeks approval of two ancillary agreements resulting from Joint Applicants' settlement with TDPUD. The ancillary agreements, termed the Fringe Agreement and the Reliability Support Agreement, are structured to ensure the continuation of existing, cooperative arrangements that benefit the contiguous service territories of both, small electric utilities.

Today's decision reviews the transfer application first because the ancillary agreements are dependent upon it in substantial part. Our discussion of the transfer application begins in Section 5. Our discussion of the ancillary agreements begins in Section 6.

4. Standard of Review

No party disputes that we should apply § 854, which generally governs mergers and similar transfers of control, rather than § 851, which typically governs sales of assets. In fact, Joint Applicants explain that they have structured the transaction as a sale of all California-jurisdictional assets, rather than a merger or sale of stock, simply because the California Utility is not organized, legally, as a separate entity from Sierra. Review under § 854 is consistent with the Commission's procedural approach in Decision (D.) 05-03-010, where the Commission approved the sale of Avista Corporation's South Lake Tahoe gas facilities (the California portions of Avista's multi-state utility operations) to Southwest Gas Corporation.

Consistent with the scoping memo, our review of the transfer under § 854 focuses on § 854(a), which we quote in relevant part in Section 2.3, above. Thus,

to approve the proposed transfer of control, the Commission must find that the proposal meets the public interest standard that prior Commission decisions define for § 854(a). Typically the Commission has required an applicant to show that a proposed transfer is "not adverse to the public interest" though occasionally the Commission has articulated the standard as requiring a showing that a transfer is "in the public interest."[11] The scoping memo directed the parties to brief these alternative terms, if they contend that the distinction is material.

The parties' witness testimony and briefs recast this nuanced disagreement as a much more fundamental one centered on whether the public interest requires a showing of "no harm to ratepayers" (Joint Applicants' contention) or "positive benefits to ratepayers and the community" (DRA's contention). DRA argues that the Commission should require showings on at least some of the criteria that §§ 854(b) and (c) specify for inquiry when one or more parties to a proposed transfer has gross California revenues of more than $500 million, and moreover, that these showings should establish that the transfer yields net benefits to ratepayers compared to the status quo.[12] DRA does not dispute that

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[11] See for example, D.07-05-031, which approved the transfer of control over California-American Water Company (CalAm) at the holding company level:

> 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. (D.07-05-031 at 3, citing D.00-06-079 at 13.)

[12] Section 854(b) requires the Commission to find short-term and long-term benefits for ratepayers, an equitable allocation of such benefits between shareholders and ratepayers, and no adverse impact upon competition. Section 854(c) requires that the public interest assessment result in express findings on eight criteria (impact on the financial condition of the resulting utility, on service quality, on management quality, on utility employees, on shareholders, on state and local economies, on the

Footnote continued on next page

Sierra's 2008 annual California revenues were approximately $72 million or that CalPeco had no California revenues. DRA relies on two prior Commission decisions: D.01-09-057, which authorized California-American Water Company (CalAm) to acquire Citizens Utilities Company of California and D.06-02-033, which authorized PacifiCorp's acquisition by MidAmerican Energy Holdings Company (MidAmerican). Neither decision establishes a positive benefits test for transactions such as the proposed Sierra/CalPeco transfer.

The first decision DRA cites, D.01-09-057, concerns the acquisition of one water utility by another under § 854(a) and the Public Water System Investment and Consolidation Act of 1997, consisting of §§ 2718-2720 (the Act). The Act authorizes the post-acquisition rate base of a transferred water distribution system to be set at fair market value, which in some instances may be higher than the historical value, and which therefore places an additional cost on ratepayers. Before approving such a rate base increase the Commission must find that the transaction proposed improves the health and stability of the water system in several enumerated ways, thereby benefiting ratepayers. The Office of Ratepayer Advocates, the predecessor of DRA, argued that the Commission could – and should -- look to the criteria listed in § 854(b) and (c) in assessing ratepayer value. CalAm argued that the Commission's long-term standard requires a showing of no harm to ratepayers and that its proposal clearly met

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Commission's jurisdiction, and on whether any proposed mitigations avoid adverse consequences). For a proposed transaction to gain approval, review of the first three criteria must result in findings that the transfer will "maintain or improve" the status quo; review of the second three criteria must result in findings that the transfer is "fair and reasonable."

that test, but also would meet a positive ratepayer benefits standard. Regarding the appropriate standard, Conclusion of Law 9 in D.01-09-057 merely states:

> Sections 854(b) and 854(c) do not by their terms apply to water utilities. The Commission may, but need not, consider the extent to which the factors set forth in those sections bear on the public interest in this proceeding.

Furthermore, while D.01-09-057 summarizes information the applicants had put forward on some § 854(c) criteria, the decision does not tie its public interest findings or approval to § 854(c).

The second decision DRA cites, D.06-02-033, concerns a transfer at the holding company level by which MidAmerican acquired indirect ownership and control of PacifiCorp, an energy utility, from Scottish Power PLC. The decision observes that no entity to the transaction has sufficient California revenues to trigger application of § 854(b) and (c) and it does not discuss either subsection further. The decision's public interest assessment begins by setting out seven criteria to be considered given the facts of the transfer at issue, however, and simple comparison of these criteria with those in § 854(b) and (c) shows an overlap. D.06-02-033 focuses on the proposed transaction's impact on: the financial condition of the utility, service quality, management quality, affected utility employees, the state of California and local communities, Commission jurisdiction, and competition. D.06-02-033 states:

> Although we are not obligated to use the above criteria to evaluate the proposed transaction, these criteria provide a useful framework for analyzing the transaction. Our use of the above

> criteria is completely discretionary, and we may choose to use none, some, or all of these criteria in future proceedings.[13]

After assessing the evidence put forward, D.06-02-033 concludes that the transaction should be approved and rejects DRA's contention that the benefits are "meager" or insufficient:

> The transaction provides modest but concrete benefits to ratepayers and the communities served by PacifiCorp, 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).[14]

Though we address Joint Applicants' showing in Section 5, we observe here that the transfer application, as filed, addresses each of the criteria examined in D.06-02-033.

Similarly, in D.00-06-079, which issued more than a decade ago, the Commission observed "… our decisions over the years have laid out a number of factors that should be considered in making the determination of whether a transaction will be adverse to the public interest."[15] D.00-06-079 mentions several factors -- antitrust considerations, economic and financial feasibility, purchase price, value of consideration exchanged, efficiencies, operating costs savings – and there are others. Clearly, not every one of them is relevant to every review under § 854(a).

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[13] D.06-02-033 at 23.

[14] D.06-02-033 at 36.

[15] D.00-06-079 at 14.

The parties' dispute about the standard of review applicable to the transfer application suggests confusion about several distinct concepts and so, based on the foregoing review of precedent, we provide the following guidance.

First, to ensure that a proposed transfer is not adverse to the public interest under § 854(a), the Commission must be able to evaluate evidence on the important impacts of that transfer – whatever they might be – and find no harm to ratepayers. Second, some of the criteria enumerated in §§ 854(b) and (c) mirror criteria identified by past Commission decisions as relevant to a public interest assessment under § 854(a), and depending upon the nature of the transfer at issue, may well be relevant and even necessary to the specific public interest assessment required. Third, only where §§ 854(b) and (c) expressly apply, must the Commission make all of the findings those subsections require.

Next, we turn to § 854(d), which in relevant part, requires the Commission to "consider reasonable options to the proposal recommended by other parties." Initially PSREC challenged the proposed transfer and argued that it should be allowed to purchase the Loyalton/Portola portion of Sierra's California service territory. However, following a meeting held in the Loyalton/Portola area pursuant to the scoping memo's direction, PSREC and Joint Applications settled their differences.[16] PSREC, which withdrew its opposition to the transfer application before evidentiary hearings and without having put forward prepared testimony on its alternative proposal, now urges us to authorize the transfer. No other party has introduced facts to describe any alternative for us to consider under 854(d). Though DRA opposes the transfer and urges us to reject

[16] The PSREC Settlement Agreement is Exhibit Q to Exhibit 1.

it, we have that authority already under § 854(a). Specifically, were we to determine that Joint Applicants have failed to show that the transfer is not adverse to the public interest, we would be obliged to deny it, unless conditions could be imposed to cure the identified defect(s). Given the procedural status of the transfer application, § 854(d) is no longer pertinent to our review.

Section 816 and § 818, which concern issuance of stocks, bonds, etc., and § 851, which as relevant here concerns the encumbrance of utility assets, provide the statutory basis for the financing authority sought. No dispute exists here.

Finally, we address application of Public Resources Code § 21080 et seq., known as of the California Environmental Quality Act (CEQA). Joint Applicants' assert and no party contests that the transfer of control of the California Utility from Sierra to CalPeco "will not result in any change in the operation of the public utility serving these California customers … [and] does not request any new construction, or changes in the use of existing assets and facilities."[17] We find no evidence that operational change will result and no new facilities are proposed. Pursuant to § 15061(b)(3) of the CEQA guidelines, inasmuch as it can be seen with certainty that the project will have no significant impact upon the environment, the transfer application qualifies for an exemption from CEQA and the Commission need not perform any further environmental review.

Joint Applicants have the burden of proof to establish that the Commission should approve the transfer application and the ancillary agreements.

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[17] Transfer Application at 72.

5. The Transfer Application: Discussion

Below we review Joint Applicants' explanation for why they and their owners seek this transfer, the evidence Joint Applicants have offered in support of the transfer, and the basis for DRA's opposition. The discussion largely follows the common organizational outline the parties' use in their concurrent briefs.

5.1. Reason for the Transfer

According to the transfer application and witness testimony, Sierra wishes to sell the California Utility to enable its owner, NV Energy, to focus on Nevada operations, which now extend to most of that state. Load growth in Nevada has required NV Energy to invest an average of $1 billion annually over the past five years to maintain reliable service to the nearly 1.2 million customers it now serves there. Because that load growth has been heaviest in areas that do not border Lake Tahoe (where most of the California Utility's 46,000 customers are located), California operations now serve less than 4% of NV Energy's customer base. The sale, if approved, also provides NV Energy the ability to consolidate all of its operations under a single state regulatory agency and respond to a single set of regulatory directives.

The transfer application describes the genesis of the proposed transaction. Sierra commenced a search in early 2008 for suitable, potential bidders and distributed bid information to an initial list of 40 entities. Sierra required any potential bidder to contractually agree to a list of regulatory commitments and to meet the following criteria:

- 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.[18]

Sierra received non-binding bids from seven entities and short-listed four of them, based on review of various criteria (price, bid viability, the completeness of the bid, the bidder's financial and operational qualifications, etc.). Following further review of these criteria and others (impact on employees and customers, etc.), Algonquin emerged as the entity with the best "overall fit." [19] In late 2008, Sierra and Algonquin contemplated executing a purchase agreement, but against the backdrop of the continuing, global financial crisis, Algonquin determined to form CalPeco jointly with Emera. Joint Applicants' witness readily admitted that like many other entities, Algonquin's stock price dropped during the fall of 2008 and its access to capital was impaired. The witness testified that Algonquin's board believed that a joint acquisition with

[18] Transfer Application at 16-17. The complete, initial list (Ex. 17 to the transfer application) is an earlier version of the Regulatory Commitments found in Appendix 3 of today's decision.

[19] Transfer Application at 15.

Emera would be "prudent" but that the rationale was not based solely on Emera's financial strength.[20] The transfer application reports that the financial markets appear to have viewed the formation of CalPeco by Algonquin and Emera positively, based on stock prices and debt ratings following public announcement of their joint enterprise to purchase the California Utility.

The transfer application states that from the standpoint of CalPeco's owners, Algonquin and Emera, the proposed transfer fits with their mutual business objectives to expand ownership and operation of regulated utility assets, with a view to long-term acquisition and, in some instances, opportunities "to develop and implement renewable energy initiatives."[21] Further,

> [F]or Emera, this transaction opens up a new market, while providing the opportunity to increase value to its jointly-owned energy infrastructure assets with Algonquin. For Algonquin, this transaction represent an important element in the strategic expansion of its utility infrastructure portfolio and the predictable, long-term related returns that the California Utility will contribute to the stability of its earnings year to year.[22]

DRA has not put forward evidence that challenges Joint Applicants' explanation of the interest of either the sellers or the buyers in the proposed transaction.

5.2. Impact on Service

Joint Applicants represent that the proposed transfer will continue safe and reliable service and will maintain, and in some instances improve, the

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[20] Tr. at 30.

[21] Transfer Application at 18.

[22] Transfer Application at 18-19.

quality of service customers experience today. Aligned Protestants, who are located in Loyalton, Portola and adjacent portions of the California Utility's service territory and who raised the sole customer challenge to the proposed transfer, now support it. Initially they criticized the reliability of electric service in their remote area, claiming: (1) local generation is insufficient; (2) existing transmission cannot deliver sufficient power from more distant sources; and (3) field staffing (one person) cannot possibly handle the other kinds of equipment and infrastructure failures that occur in this mountainous and largely rural area. Notably, at the PHC Aligned Protestants did not contend that Sierra should be required to continue to serve them, but rather that PSREC should be authorized to serve instead.

Without conceding any of the alleged service problems, Joint Applicants have agreed to investigate partnering with PSREC to improve local reliability in the Loyalton/Portola area. Generally, however, electric power throughout the entire service territory will continue to move into California from Nevada or elsewhere outside California over the same facilities as it does now (the small King's Beach facility provides very limited local generation). The Power Purchase Agreement, Ex. 10 to the transfer application, ensures delivery of CalPeco's full requirements, including 20% from renewable sources eligible for California's Renewable Portfolio Standard (RPS), at rates reflecting Sierra's actual costs and based on Sierra's system-average cost, for an initial term of five years. The Power Purchase Agreement gives CalPeco certain rights to develop and/or procure other renewable sources during the five-year term. It also provides an additional, five-year right to obtain power from Sierra in an amount up to CalPeco's full requirements for nonrenewable sources. Ongoing transmission will be negotiated in accordance with federal law on non-

discriminatory, open access transmission and Sierra's Federal Energy Regulatory Commission (FERC) tariffs.

With respect to reliability in the Loyalton/Portola area, Joint Applicants have reached an agreement with PSREC for CalPeco to contract for additional line crew assistance as needed (we discuss this below in Section 5.3.3, as part of the PSREC Settlement). In South Lake Tahoe, they propose to reopen a customer service counter that now is closed. While generally CalPeco expects to hire the same employees who now operate the system for Sierra, Joint Applicants also have disclosed CalPeco's plans to locate corporate headquarters, senior management and a customer service headquarters in the service territory. They suggest these initiatives should benefit service by increasing local accountability. Further, Joint Applicants describe CalPeco's intention to introduce software capabilities that will give customers electronic options for bill receipt, payment, service initiation, and scheduling service calls. They claim this initiative follows on Algonquin's successful efforts to introduce "innovative, state-of-the-art billing systems and customer communication programs designed to cost-effectively enhance customer service" to other, small, regulated water and sewer utilities it owns and operates in four states.[23] They predict the CalPeco initiative, similarly, will yield both economic and service quality benefits for many customers who live in remote areas and for others who are not domiciled in the service territory year-round. Likewise, Joint Applicants describe CalPeco's preliminary involvement in the Lake Tahoe Green Energy District, which is working to implement, locally, a number of energy efficiency measures and to pursue other

[23] Transfer Application at 5.

"green" projects. Other participants in this enterprise include the local school district and community college, as well as the City of South Lake Tahoe, the State of California Tahoe Conservancy, and the United States Forest Service.

Joint Applicants also point to the favorable assessment by Local 1245 of the proposed transfer's service quality impacts:

> 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.[24]

DRA disputes the need for any of the service improvements proposed for Portola/Loyalton and elsewhere. DRA's primary contention is that these and other changes necessarily will increase costs for CalPeco. DRA predicts that as a standalone utility with 46,000 customers, CalPeco will lack the economies of scale available to Sierra and that therefore, the transfer will lead to a substantial rate increase request in the next general rate case. Service quality cannot be divorced completely from its cost, and we discuss these cost concerns below. However, nothing in the record suggests that service quality will decline under CalPeco. Rather service quality will continue at present levels generally, and in some respects may improve, given Joint Applicants' stated intentions as well as its responsiveness to registered customer concerns.

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[24] Ex. 1, Attachment G, November 30, 2009 letter from Local 1245 to Commissioner Grueneich.

5.3. Impact on Costs

Joint Applicants maintain that the transaction has been structured to enable CalPeco, post-closing, to collect from customers the same total revenues that Sierra is authorized to charge and collect, at the same rate levels now applicable to individual customers.[25] DRA does not dispute this but argues that cost increases are inevitable, that they will lead to rate increases in the future, and that for these reasons the Commission simply should deny the transfer application.

The "Premium and Cost Synergies" section of the Regulatory Commitments contains three promises that shield customers from costs solely attributable to the proposed transfer from Sierra's ownership: (1) CalPeco will not seek to recover from customers the purchase premium (the excess of the purchase price over recorded, regulatory book values for utility assets); (2) CalPeco will use its actual recorded costs levels, including any cost savings (from installation of electronic systems, etc.), as its basis for rate requests in future general rate cases; and (3) CalPeco will not seek to recover from customers transaction costs (investment banking and legal fees, and perimeter metering costs).

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[25] Joint Applicants ask the Commission to authorize CalPeco to reclassify certain components of general rates to Energy Cost Adjustment Clause (ECAC) rates. This reallocation request arises because CalPeco, which will own no transmission assets and no generation assets other than the King's Beach facility, will purchase both services under the Power Purchase Agreement. Thus, while total revenues will not change, a greater portion of the total will be attributable to fuel and purchased power. The reallocation will avoid cost-shifting between customers and the aggregate, per kilowatt hour (kWh) charge in each customer's monthly bill will remain the same. DRA has not opposed this reallocation.

However, DRA warns that if the transfer is approved, CalPeco likely will seek a sizable rate increase when it files its first general rate case in 2012. DRA identifies the following as areas of particular concern: Operations and Maintenance (O&M) and certain, other miscellaneous costs; the Transition Services Agreement between CalPeco and Sierra; the settlement with PSREC; and the uncertainty regarding imports of power from Sierra's coal-fired Valmy Power Plant (Valmy). We examine each of these below. Joint Applicants are correct that this transfer application should not be turned into a general rate case. Nonetheless, it is incumbent upon us to assess the record before us for signs of the kinds of serious cost consequences that necessarily must affect any public interest assessment under § 854(a).

DRA's opening brief also argues, for the first time, that CalPeco should agree to forego filing a general rate case until three years beyond 2012. Joint Applicants object to this so-called, three-year, rate case "stay out." Not only do we lack a record on any alleged benefits and detriments of this proposal vis a vis CalPeco, but a general rate case deferral is at odds with our policy preference for regular, orderly review of utility operations. We denied DRA's request for one-year rate deferrals for PacifiCorp in D.07-05-031 and for CalAm in D.02-12-068. We decline to impose a three-year deferral here.

5.3.1. O&M and Other Miscellaneous Costs

DRA contends that CalPeco's smaller size will translate into reduced purchasing power, resulting in increased costs, and ultimately, higher rates. Joint Applicants contend that the evidence does not support DRA's position. They point out that over half ($45 to $50 million) of the current $75 to $80 million revenue requirement is attributable to power supply, which will continue to be incurred at the same cost under the Power Purchase Agreement. While they

dispute DRA's claim that CalPeco's smaller size means the certain loss of any economies of scale that Sierra has enjoyed, they also argue that such purchasing advantage could only apply to a portion of the O&M and administrative costs that comprise, in the aggregate, about 10% of the total revenue requirement. Over half of these costs can be expected to be quite stable, since CalPeco expects to hire the same employees under similar compensation packages (presently about $4.6 million) and to purchase and operate the same trucks and other vehicles.

On this point Joint Applicants' witness testified:

> [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].[26]

Joint Applicants' brief quantifies the theoretical "risk" of the rest of the O&M costs ($3 to $4 million) escalating at 15% and argues that the resulting increase ($450,000 to $600,000), which would raise the total revenue requirement by less than 1 %, could not reasonably be termed rate shock. Joint Applicants hasten to state that they do not anticipate that CalPeco's recorded costs will cause them to ask for 15% rate increase in O&M, however. Their witness testified:

> CalPeco expects no such 15% increase. Nonetheless, CalPeco is comfortable that its costs with respect to the O&M costs would be

[26] Tr. at 59.

> comparable to the costs that Sierra would incur if it retained ownership.[27]

While a general rate case will be the place to review the reasonableness of actual costs incurred, this record does not suggest cost consequences of a magnitude large enough for us to find that the proposed transfer will harm ratepayers and therefore, is adverse to the public interest. Our assessment should not be construed to support a reasonableness finding or authorize rate recovery in a future general rate case.

DRA also discounts Joint Applicants' suggestion that cost savings will result from new, electronic capabilities for billing and for scheduling service. DRA relies on testimony that Sierra previously determined electronic billing for the California Utility did not make economic sense. But as Joint Applicants explain, CalPeco would be installing a standalone system based on California rates and tariffs, not adapting an existing system, based on Nevada rates and tariffs, for a small group of customers in California. To be sure, neither party has offered any quantification to support its economic claims. Given Algonquin's apparent past success in this area, we are not persuaded by DRA's assertion that the plan has no merit.

[27] Joint Applicants Opening Brief at 40.

DRA contends that other service enhancements (the reopened customer service counter, etc.) will increase costs without providing value. Again, Joint Applicants state they expect such measures to be cost-effective. Regardless, a general rate case is the place to assess whether undertakings of this nature and relative magnitude are reasonable and warrant recovery in rates.

These issues do not compel a finding that the proposed transaction is adverse to the public interest. Again, this assessment should not be construed to support a reasonableness finding or authorize rate recovery in a future general rate case.

5.3.2. Transition Services Agreement

Under the Transition Service Agreement, Ex. 12 to the transfer application, CalPeco has the option to ask Sierra to perform at cost for 24 months, with a 12-month extension, any of the services Sierra now provides to the California Utility. DRA faults the agreement and Joint Applicants for not specifying, now, precisely which services CalPeco will request. DRA also speculates that once the agreement expires, CalPeco will likely incur higher costs and will seek to collect those higher costs in rates. The Transition Services Agreement appears to be a prudent, interim arrangement to ensure continued good service to ratepayers, rather than a measure that will cause them harm. A general rate case is the place to assess the reasonableness of projections of future costs. These issues do not compel a finding that the proposed transaction is adverse to the public interest.

5.3.3. PSREC Settlement

Joint Applicants' settlement with PSREC is not before us for approval. We discuss the settlement here because of its implications for future costs. While PSREC and the other Aligned Protestants in the Loyalton/Portola area support the settlement, DRA asserts that it "does not offer any benefit to the CalPeco

ratepayers at all" and "has generated $1.4 million in additional incremental costs that would not otherwise exist."[28]

The PSREC Settlement has two primary components. One concerns development of additional transmission capacity in that portion of the service territory and the other, line crew support for the single lineman based there. The Assigned Commissioner's scoping memo directed Joint Applicants to meet in the Loyalton/Portola area with PSREC and the other Aligned Protestants to discuss the problems alleged "and assess how reasonable concerns might be addressed."[29] Again, while Joint Applicants have not conceded that any portion of the California Utility suffers from reliability or service deficiencies, we observe that the executed settlement responds to all of Aligned Protestants' allegations (lack of sufficient transmission, lack of back-up generation, and assignment of a single lineman to the area). Nonetheless, if in a future general rate case Joint Applicants fail to prove the reasonableness of either part of the settlement, neither part will ever have any effect upon rates.

With respect to transmission, the settlement provides for CalPeco and Sierra shareholders to make a capital investment of $250,000 in PSREC's Herlong Transmission Project. In addition, Sierra will work with PSREC to increase transmission capacity through PSREC's Marble Substation, in order to expand reliability for both by means of additional, backup transmission service. Joint Applicants describe the Herlong Project as follows:

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[28] Ex. 50 at 11.

[29] Scoping Memo and Ruling of Assigned Commissioner, February 25, 2010 at 16.

> This project is to be structured to connect PSREC's system directly with Sierra's system to provide PSREC greater access to less expensive power from sources east of California. PSREC also intends that this project provide CalPeco's customers greater reliability by the addition of an additional transmission line and also access to additional generation sources north and east of California.[30]

Under the settlement, if CalPeco determines the Herlong Project has sufficient, independent merit to CalPeco's ratepayers to warrant a further capital investment, and if the Commission subsequently agrees and grants CalPeco authority to make that investment on behalf of ratepayers, CalPeco will commit a total of $1 million to the project. In that case, the settlement provides for the initial $250,000 shareholder payment to be credited against CalPeco's $1 million investment. We have no reason to attempt to weigh here whether the Herlong Project will have value for CalPeco. That issue belongs in a future general rate case.[31]

The resource support agreement in the PSREC Settlement provides the terms by which CalPeco will obtain additional line crew services in the Loyalton/Portola area (one lineman and a bucket truck, or the equivalent, for a minimum number of hours annually over a ten-year initial term). CalPeco agrees to absorb 100% of the cost of the resource support agreement between the

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[30] Ex. 1 at 37.

[31] Joint Applicants admit that at present there is no transmission path between the Herlong Project and customers in the Loyalton/Portola area and that this "could render the Herlong project to be of potentially limited value" to CalPeco. (Ex. 1 at 39.) For this reason the PSREC Settlement has been structured to commit PSREC to enter into other commercial arrangements that will yield a solution for CalPeco.

date of closing and the effective date for rates authorized in a 2012 general rate case.

These issues do not compel a finding that the proposed transaction is adverse to the public interest.

5.3.4. Valmy

As discussed above in Section 5.2, the Power Purchase Agreement provides for five years' continued delivery of CalPeco's full requirements for electric power at Sierra's system-average cost. Currently, Sierra's power supply mix to its California customers includes electricity generated at Sierra's coal-fired Valmy plant, which commenced operations in the early 1980's. The question arises whether CalPeco may contract for five years for a power supply mix that includes Valmy, given California's statutorily-mandated greenhouse gas (GHG) Emissions Performance Standard (EPS). According to DRA, the rate consequences of prohibiting inclusion of Valmy make the proposed transfer uneconomical – the 2012 impact will be an increase in the average residential rate by "9.95% from $0.12405 per kWh to $.13639 per kWh," following close upon a sizeable residential rate increase (7.75%) in Sierra's 2009 general rate case.[32] Joint Applicants calculate the rate impact for the more expensive cost supply mix at $7.6 million starting in 2011.[33]

In accordance with the statutory guidance in Senate Bill (SB) 1368 (Stats. 2006, ch. 598), enacted in September 2006, the Commission opened a rulemaking to develop the EPS and appropriate rules to implement it.

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[32] Ex. 50 at 14.

[33] Ex. 1 at 43.

D.07-01-039 approves Adopted Interim EPS Rules.[34] Central to the issues before us is this definition in SB 1368:

> "Long-term financial commitment" means either a new ownership investment in baseload generation or a new or renewed contract with a term of five years or more years, which includes procurement of baseload generation."[35]

The statute explicitly prohibits the Commission from approving a long-term financial commitment, and any load-serving entity from entering into one, unless the baseload generation supplied under that long-term financial commitment complies with the EPS.[36] Under current law, Sierra may continue to supply power to its California customers from the non-EPS compliant, coal-fired Valmy, however, because Sierra has owned Valmy for several decades. Joint Applicants' witness testified that Sierra has no plans, at present, to make what D.07-01-039 has defined as new ownership investments in Valmy (major retrofits, etc., that would prolong Valmy's useful life by five years or more). Hence, as long as Sierra makes no prohibited, new ownership investments, there is no long-term financial commitment in the context of SB 1368. Enter the contractual arrangement with CalPeco, however, and the picture changes somewhat -- does the Power Purchase Agreement represent a prohibited new contract? D.07-01-039 looks at other contracting issues (what constitutes

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[34] *Interim Opinion on Phase 1 Issues: Greenhouse Gas Emissions Performance Standard* (2007), D.07-01-039; the Adopted Interim EPS Rules are found at Attachment 7.

[35] SB 1368, Section 2, codifying Pub. Util. Code § 8340 (subpart (j)).

[36] Joint Applicants report that they initially contemplated a three-year term for the Power Purchase Agreement but that discussion with the Commission's Energy Division caused them to expand the period to five years to increase supply and price stability.

baseload, how to prevent gaming in contracts with unspecified sources for system reliability, etc.) but does not examine the issue the transfer application raises. Nor has the Commission had occasion to consider the question to date.

Joint Applicants, who argue Valmy should remain in the supply mix, urge us to "allow the pre-Closing status quo to continue – maintenance of existing power sources and customer costs."[37] They point out that while approving the transfer but excluding Valmy supply from California will affect the costs for California customers (since power from Valmy is produced below Sierra's system average cost), nothing else will change. Sierra will continue to operate the highly-depreciated Valmy at the same capacity for the benefit of Nevada customers and any emissions that migrate into California now will continue to do so. On the other hand, rejecting the transfer will obligate Sierra to continue to serve the California Utility, which also ensures the continued operation of Valmy.

Since D.07-01-039 provides no direct guidance, we turn to the policy goals of SB 1368, which D.07-01-039 summarizes as follows:

> An EPS is needed to reduce California's financial risk exposure to the compliance costs associated with future GHG emissions (state and federal) and associated future reliability problems in electricity supplies. Put another way, it is needed to ensure that there is no "backsliding" as California transitions to a statewide GHG emissions cap: If LSEs [load serving entities] enter into long-term commitments with high-GHG emitting baseload plants during this transition, California ratepayers will be exposed to the high cost of retrofits (or potentially the need to purchase expensive offsets) under future emission control regulations. They will also be

[37] Joint Applicants' Opening Brief at 56.

> exposed to potential supply disruptions when these high-emitting facilities are taken off line for retrofits, or retired early, in order to comply with future regulations. A facility-based GHG emissions performance standard protects California ratepayers from these backsliding risks and costs during the transition to a load-based GHG emissions cap.[38]

Under the facts applicable here, it is difficult to see how prohibiting inclusion of Valmy power in the Power Purchase Agreement's supply mix for a term of five years would further SB 1368's policy goals. Rather, continued import of Valmy power under the Power Purchase Agreement simply preserves the status quo, operationally and economically. Therefore, we find that inclusion of Valmy power under the Power Purchase Agreement for a five-year term is not a covered procurement, within the context of SB 1368 and D.07-01-039, and thus, is not subject to our EPS rules.[39] Beyond the contract's five-year term, we should continue to view Valmy under the same rules that would apply were Sierra to continue to serve the California Utility. Thus, Valmy power may be included in the supply provided under any additional power purchase agreement which Sierra and CalPeco may enter upon the expiration of the initial five-year Power Purchase Agreement as long a Sierra makes no new ownership investment in Valmy, as defined by D.07-01-039, and any relevant, subsequent modifications. Our determination interprets D.07-01-039 solely with respect to Valmy and does not modify D.07-01-039.

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[38] D.07-01-039 at 3.

[39] D.07-01-039 uses the term "covered procurement" to mean the types of generation and financial commitments subject to the EPS, pursuant to SB 1368.

5.4. Impact on the Financial Condition of the California Utility

In summary, in addition to a public interest finding under § 854(a), Joint Applicants seek authority under § 816, § 818, and § 851 for CalPeco to finance up to 50% of the acquisition price and to encumber utility assets, including accounts receivables, as security for the debt issuance. As stated previously, Algonquin and Emera have committed to fund CalPeco to ensure initial capitalization of at least 50% equity; their respective ownership shares are Algonquin, 50.001%, and Emera, 49.999%. CalPeco will exist as a stand alone financial entity, with its own capital structure, debt, and credit rating.

Joint Applicants represent that they developed the Regulatory Commitments (Appendix 3) to incorporate conditions the Commission has required in prior § 854(a) applications to safeguard the financial condition of the California jurisdictional utility. The Regulatory Commitments, which confirm a high degree of separateness in CalPeco's structural and financial relationship with its owners and their subsidiaries, include these promises:

- The sole purpose of CalPeco's immediate parent, California Pacific Utility Ventures, LLC, will be to own CalPeco;
- CalPeco's assets will be used solely to provide electric distribution services to its customers and to secure any debt it obtains;
- Any financing by Algonquin and Emera of any business activities other than CalPeco will provide the financing parties no recourse to CalPeco's assets;
- Algonquin and Emera will fund all other business activities independently of CalPeco;
- CalPeco will not provide financing to, guarantees for, extend credit to, or pledge any of its assets on behalf of Algonquin, Emera, or any of their subsidiaries;

- Algonquin and Emera commit to ensure that CalPeco has sufficient capital available for necessary capital investments;
- Dividend distributions by CalPeco may be restricted to maintain minimum, required equity levels;
- CalPeco will retain separate books, financial records, employees and assets and these will be based in California.

Joint Applicants and DRA disagree about whether these commitments provide adequate financial security and we discuss their contentions below.

5.4.1. Capital and Debt Guarantees; Ring-Fencing

DRA contends that CalPeco's owners must guarantee its needs for capital and debt, that their commitments in this respect are inadequate, and therefore, that the Commission should impose a first priority condition on them as a condition of any transfer.[40] DRA also contends that the ring-fencing measures proposed are inadequate, describing them as "two-way" measures designed to protect Algonquin and Emera as much as or more than CalPeco.[41] From DRA's

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[40] The first priority condition is fundamental to the Commission's authorization of the formation of the California holding companies that own and control this state's major energy utilities. See for example, D.88-01-063, 1988 Cal. PUC LEXIS 2 *78 (Southern California Edison Company); D.95-12-018, 1995 Cal. PUC LEXIS 931 *72 (San Diego Gas & Electric Company), D.96-11-017, 1996 Cal. PUC LEXIS 1141 *74; as modified by D.99-04-068, 1999 Cal. PUC LEXIS 242 *151 (Pacific Gas and Electric Company); D.98-03-073, 1998 Cal. PUC LEXIS 1 *260, *290 (Enova [Southern California Gas Company, San Diego Gas & Electric Company merger]). The Commission also imposed a first priority condition on the transfer of control affecting jurisdictional portions of two common carrier pipeline utilities, SFPP, L.P. and Calnev Pipe Line, L.L.C., where the new ownership structure comprised a privately-held, limited liability company and a consortium of investment banks, diversified financial services providers, and private equity funds. See D.07-05-061.

[41] Ex. 50 at 8. The Commission discussed ring-fencing in D.07-05-061, as follows:

Footnote continued on next page

perspective, if the Commission approves this transaction without imposing a first priority condition, it should require Joint Applicants to obtain a non-consolidation opinion that demonstrates the adequacy of the ring-fencing measures.

Joint Applicants' briefs generally challenge DRA for focusing too much on the potential for harm to CalPeco should exigent financial circumstances arise. While Joint Applicants' are correct that it is impossible to guarantee, with absolute assurance, the financial security of any entity into the unknowable future, we do not agree that DRA is amiss for seriously considering the impact of exigent circumstances. At a minimum, recent financial history urges caution. However, we do not find it unreasonable that Joint Applicants oppose imposition of a first priority condition. Algonquin and Emera own regulated utilities in Canada and in four other states in this country and argue that, legally and practically, they cannot put CalPeco in first place before those other entities.

Ring-fencing is the legal walling off of certain assets or liabilities within a corporation. Conceptually, in the context of a public utility within a holding company structure, ring-fencing includes a number of measures that may be implemented to protect the economic viability of the utility by insulating it from the potentially riskier activities of unregulated affiliates and thereby, ensuring the utility's financial stability and the reliability of its service. (See Beach Andrew N., Gunter J. Elert, Brook C. Hutton, and Miles H. Mitchell. Maryland Commission Staff Analysis of Ring-Fencing Measures For Investor-Owner Electric and Gas Utilities. The National Regulatory Research Institute-Volume 3, December 2005 at 7). A non-consolidation opinion is not a ring-fencing measure per se, but focuses on the effect of ring-fencing. A non-consolidation opinion demonstrates that a utility has enough ring-fencing provisions to protect it from being pulled into a holding company bankruptcy. (D.07-05-061, footnote 22.)

As Joint Applicants observe, the Commission recognized this reality in D.02-12-068, when it approved the change of control of CalAm but declined to impose a first priority condition. Joint Applicants further contend that their situation is similar to PacifiCorp's acquisition by MidAmerican, where the Commission found an acceptable safety net in MidAmerican's promise to "obtain sufficient cash from its operations, regular infusions of equity capital from [MidAmerican's holding company], and steady increases in short-term debt."[42] Joint Applicants point to the Regulatory Commitments for similar promises by Algonquin and Emera.

Regarding equity infusions, Joint Applicants full commitment now states:

> 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.[43]

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[42] D.06-02-033 at 26.

[43] Appendix B, Regulatory Commitments, Section 1(g).

An earlier version did not commit Algonquin and Emera to provide equity beyond the initial capital infusion; the change was made after hearings, at least in part in response to DRA's criticism. DRA's opening brief argues that the amended commitment remains deficient. DRA faults the amended version because it "put[s] the onus on CalPeco to maintain the necessary funding to operate" and also, as DRA reads the commitment, because it means that rate recovery must be assured before any capital infusions are made.[44] DRA further contends that the commitment effectively defines capital as additional equity, only, and therefore "is too limiting."[45] DRA refers to the Commission's discussion of capital in D.02-01-039, an interim decision in the Commission's 2002 investigation into, among other things, the meaning of the first priority condition in the context of the holding company structures for the major California energy utilities. There, the Commission examined the holding companies' policies in the context of the electricity crisis. Findings 5 and 6 of D.02-01-039 provide:

> 5. The term "capital," where not otherwise limited or qualified, encompasses all of the following: the money and property with which a company carries on its corporate business; a company's assets, regardless of source, utilized for the conduct of the corporate business and for the purpose of deriving gains and profits; and a company's working capital.

[44] DRA Opening Brief at 20.

[45] DRA Opening Brief at 21.

> 6. The term "capital" is not limited in the first priority condition to mean only "equity capital," infrastructure investment, or any other term that does not include, simply, money or working cash.[46]

We conclude that DRA overstates its case on this point. While we agree with DRA that the definition of capital should be understood, plainly, to include money or working cash, the following, very broad clause in Regulatory Commitment 1(g) is reasonably read to encompass working capital as well as capital expenditure: "… Emera and Algonquin are committed to ensure that CalPeco maintains sufficient funds to operate and has sufficient capital available for necessary capital investments."

DRA's other interpretations of Regulatory Commitment 1(g) also fail to persuade. Rather, the language reflects two established, general principles: (1) a regulated utility should be self-supporting where possible, and (2) under the decades old regulatory compact, rate recovery can be expected for all reasonable expenditures made in the provision of safe and reliable utility service. We do not think the amended commitment can fairly be read to suggest that Algonquin or Emera plan to abandon CalPeco if an unusual or extreme need for cash should arise. Even before Joint Applicant's revised this commitment to extend it to additional equity infusions, their witness testified:

> [I]f there were an extraordinary event – a storm of some profound magnitude that required some kind of capital infusion to protect the asset, then I would assume that CalPeco would either seek to obtain

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[46] *Investigation into Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company and their respective holding companies,* D.02-01-039 (2002)

> those funds or they'd be forthcoming from the parent to protect the asset.[47]

In addition, DRA argues that CalPeco's small size may increase its cost of debt. As DRA notes, this claim is frequently heard in ratemaking proceedings at the Commission, though it is not accurate in all instances. DRA has not shown, however, how a parental guarantee will benefit ratepayers by ensuring a lower debt rating for CalPeco, particularly when such a guarantee is at odds with standard ring-fencing measures. While the actual cost of debt cannot be known in advance, Joint Applicants' witness testimony further explains their representation that it should be competitive with NV Energy's debt:

> Our discussion with the capital markets and lenders in the capital markets have led us on behalf of CalPeco to conclude that the cost of debt that will be sought by CalPeco will be competitive with the cost of debt which is currently outstanding on behalf of NVE.
>
> ….
>
> It is through looking at the ratios – the debt-to-energy ratios, looking at interest coverage ratios – that leads us to conclude that the rating that CalPeco will enjoy will be competitive, if not perhaps better in some respects, than NV Energy who has obviously a much broader business offering.[48]

A parental debt guarantee also serves to undermine the separateness which ring-fencing establishes. DRA does not discuss this issue. Its ring-fencing concerns focus on what DRA's terms the "two way" rather than "one way" nature of the measures that Joint Applicants propose. According to DRA, while

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[47] Tr. at 85.

[48] Tr. at 91-92.

the ring-fencing proposals do protect CalPeco from the bankruptcy of its upstream owners, they unreasonably protect Algonquin and Emera from providing any assistance in the case of CalPeco's financial distress. However, the testimony of DRA's witness suggests that DRA's concern really is that CalPeco's owners provide additional capital if needed – and subject to the definitional clarification discussed above, Joint Applicants have addressed that. Asked what Joint Applicants should do to mitigate problems with their ring-fencing proposal, DRA's witness testified that "… the Commission could order the parent company to infuse money into CalPeco if there's future financial hardship."[49]

With respect to the comparative adequacy of the ring-fencing measures that Joint Applicants' propose, we observe the measures offer value, though they are structured differently than those that MidAmerican developed in the context of the PacifiCorp acquisition. The PacifiCorp ring-fencing includes provision for an independent director at PacifiCorp; before any amendment can be made to the ring-fencing, the independent director must approve the amendment and there must be rating agency confirmation that the amendment will not result in a credit downgrade.[50] In Regulatory Commitment 1(e), Joint Applicants propose

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[49] Tr. at 138.

[50] See D.06-02-033 at 25 and Appendix D: Adopted Conditions, 11.

The National Regulatory Research Institute publication quoted above in footnote 41 discusses a number of ring-fencing measures designed to protect the financial viability of a utility, including: (1) capital structure requirements, (2) dividend restrictions, (3) unregulated investment restrictions, (4) prohibition on utility asset sales, (5) collateralization requirements, (6) working capital restrictions, (7) prohibitions on inter-company loans, (8) maintenance of stand-alone bonds, and (9) independence of

Footnote continued on next page

that no ring-fencing changes be made without Commission approval, which provides a high degree of oversight and ratepayer protection. Moreover, we retain regulatory jurisdiction to proactively require revisions to the ring-fencing measures, given appropriate notice and opportunity to be heard. On balance then, we find the ring-fencing measures adequate – at least at this time – and need not require Joint Applicants to undertake the additional expense of obtaining a nonconsolidation opinion.

5.4.2. Emera Minimum Hold Condition; Internal Transfer Approval

Algonquin commits to own at least 50% of CalPeco for at least ten years. Emera makes no such commitment, though according to Ex. 3, the first of several status update letters letter submitted prior to hearing, upon closing Emera now plans to acquire a 9.9% interest in Algonquin in addition to its indirect interest in CalPeco. However, the Emera Minimum Hold Condition, a condition to the closing contained in the Purchase Agreement specifies that "[n]o Final Regulatory Order shall have imposed an affirmative obligation on Emera to continue to own its interest in [CalPeco] for any specific period of time following the Closing Date."[51] Joint Applicants represent that Emera's disinclination to be bound to hold its interest in CalPeco for any specific period should not be construed as "any intent to 'flip' or otherwise shortly sell" its interest in CalPeco

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board members. (The National Regulatory Research Institute-Volume 3, December 2005 at 5.)

We observe that statute and our regulatory policies effectively impose several of the enumerated measures (for example, utility sales restrictions and capital structure requirements).

[51] Transfer Application, Ex. 8, Article VIII, 8.2(h).

but "is simply a matter of maintaining corporate flexibility."[52] In response to DRA's cross-examination at hearing, Joint Applicants' witness testified: "I believe we have the ultimate track record of maintaining and holding our investments. I think we are the poster children for the buy-and-hold strategy for the assets that we … own." [53] Emera's position on this issue basically reflects a "different philosophy" than Algonquin's, he testified, and would wrongly be construed to mean anything else.[54]

DRA links its concern about the Emera Minimum Hold Condition to a second proposal, termed the Internal Transfer Approval. As described in the transfer application, the Internal Transfer Approval would permit "either Algonquin or Emera to transfer to the other all or any portion of its ownership interest in CalPeco, and without the need for an additional approval by this Commission."[55] In Ex. 3, Joint Applicants clarify that they do not intend that this authority override Algonquin's commitment to retain its investment in CalPeco for at least ten years. Ex. 3 also indicates that Joint Applicants would not object to the conditioning of the Internal Transfer Approval upon a requirement that any decrease in Emera's interest in CalPeco occur concurrently with a proportional increase of Emera's ownership interest in Algonquin. Joint Applicants' witness explained that the companies want the Internal Transfer Approval "for convenience and investment flexibility."[56] However much they

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[52] Transfer Application at 69.

[53] Tr. at 87.

[54] Tr. at 87.

[55] Transfer Application at 70.

[56] Tr. at 33.

might like to have it, the Internal Transfer Approval is not a deal breaker. Joint Applicants' witness also testified: "[I]f it would increase the Commission's comfort, we would be comfortable with filing, if necessary, for any of those transfers an 854(a) application for your approval."[57]

DRA contends that the Internal Transfer Approval is not only a bad idea that effectively would permit Emera to abandon CalPeco, posing risks for ratepayers, but more critically, that it is contrary to law. DRA observes that (1) § 851 and § 854 require Commission approval before any transfer of assets or change of control, and that lacking such approval, a transaction is void, and (2) that any attempt by this Commission to pre-approve such transactions, even if lawful, cannot bind future Commissions.

We agree with DRA that these two requests are inter-related. We do not agree that we should impose a minimum hold condition upon Emera. We desire stability for regulated utilities, but we also recognize that § 851 and § 854 provide legal means for approval of reasonable requests for changes in ownership and control. The record does not establish that the proposed transfer is unreasonable unless we impose a minimum hold condition upon Emera. We are less sanguine about the internal transfer authority sought. Whether or not it is lawful (the briefs do not adequately discuss whether the Commission effectively may pre-approve transactions that otherwise would require the filing and review of § 851 and/or § 854 applications), Joint Applicants have not established the Internal Transfer Approval is free of risk to ratepayers. By filing the transfer application as they did, Joint Applicants clearly reached their own determination

[57] Tr. at 34.

that Emera and Algonquin should partner in the way proposed. Should they wish to change the financial arrangement at some time in the future, they must file a new application that explains why the proposed change would not be adverse to the public interest.

5.5. Impact on Quality of Management

DRA favorably acknowledges Emera's more than 130-year history of owning and operating electric utility facilities, including electric distribution and transmission systems. But because Algonquin's own, direct expertise is with electric generation facilities and small water and sewer systems, DRA registers concern that without Emera's long-term involvement, the transfer will result in weakened management. Joint Applicants have made a sufficient showing that CalPeco will have competent, professional management, including a competent initial board of directors, whose credentials are listed in Ex. 23 to the transfer application.

5.6. Impact on Utility Employees

As mentioned above in Section 5.2, Local 1245 submitted a letter in support of the transaction shortly after Joint Applicants filed the transfer application. DRA challenges Local 1245's support (though it did not call a union representative or any other employee at hearing), contending that CalPeco has not proposed to offer affected employees continued employment under precisely the same terms and conditions that Sierra now offers. While the witness testimony is not entirely clear on this point, it suggests that the terms for retirement vesting may change for one or more employees who are not vested at present. Regulatory Commitment 4(c) merely states: "CalPeco will recognize the service and seniority of the former employees of Sierra who accept CalPeco's offer of employment for all non-pension purposes including vacation, sick pay

benefits and for non-pension post retirement benefits such as retiree health benefits." It appears Local 1245 has not expressed pension concerns and DRA has not discredited Local 1245's letter of support. We find that Joint Applicants have made a sufficient showing that CalPeco will treat employees fairly.

5.7. Impact on California and Local Communities

Joint Applicants focus on service improvements, local hiring as needed, and an increased local presence under CalPeco, all of which can only yield some benefit to the state and local community. DRA's contends that the likelihood of future rate increases render any change uneconomical. We will carefully consider the reasonableness of any rate increase requests in a future rate case filing, weighing evidence on actual costs and actual benefits in that forum. The record on these issues in the transfer application does not establish ratepayer harm.

5.8. Impact on Commission Jurisdiction

Joint Applicants represent that Sierra not only undertook to fully apprise potential bidders of California's jurisdictional requirements but that CalPeco and its owners accept the Commission's jurisdiction and commit to comply with the Commission's orders and with state law. Witness testimony and the Regulatory Commitments confirm the latter, generally, and DRA does not contest this aspect of the proposed transfer. We agree that Joint Applicants have made a sufficient showing that the transfer will not undermine or interfere with the Commission's jurisdiction regarding access to books and records of its owners or with respect to regulatory policies such as the RPS and the GHG EPS. However, though the issue is raised in the Assigned Commissioner's scoping memo, the record does not fully address the Commission's ability to call officers and employees of

CalPeco's jurisdictionally foreign, upstream owners to testify in California regarding matters pertinent to CalPeco. To avoid the possibility of future confusion, any approval of the proposed transaction must be conditioned upon access to such officers and employees as the Commission, itself, may determine to be necessary, consistent with established principles of due process and fundamental fairness.

5.9. Impact on Competition

Joint Applicants contend, and DRA does not contest, that the proposed transaction will have no adverse impact on energy markets in California. As Joint Applicants note, the proposed transaction is not a merger of two existing utilities, which might raise market power concerns. Joint Applicants also report that Algonquin, as the 50.001% owner of CalPeco, and Sierra will make the filings with the Federal Trade Commission required under the federal law know as Hart-Scott-Rodino. The record on this issue shows no ratepayer harm.

5.10. Other Operating Agreements

We discuss above two of the seven Operating Agreements that are integral to the proposed transfer – the Power Purchase Agreement (Section 5.2), including inclusion of supply from Valmy (Section 5.3.4) and the Transition Services Agreement (Section 5.3.2). The remaining five, uncontested agreements comprise the following:

- Emergency Backup Service Agreement (Ex. 11 to the transfer application);
- Interconnection Agreement (Ex. 16 to the transfer application);
- System Coordination Agreement (Ex. 15 to the transfer application);
- Borderline Customer Agreement (Ex. 13 to the transfer application); and
- Distribution Capacity Agreement (Ex. 14 to the transfer application).

The Emergency Backup Service Agreement governs CalPeco's proposed provision to Sierra of capacity and energy from the Kings Beach facility for emergency backup service.

The Interconnection Agreement provides how Sierra and CalPeco propose to ensure continued interconnection and coordinated operations between the California Utility's Commission-jurisdictional facilities and Sierra's transmission assets in California, which are subject to jurisdiction by FERC. In particular, if FERC accepts Sierra's request to file the agreement under Section 205 of the Federal Power Act, Joint Applicants ask the Commission to authorize CalPeco to recover any payments it must make to Sierra under the agreement, subject only to ongoing Commission review of the reasonableness of CalPeco's administration of the agreement.

The System Coordination Agreement provides how CalPeco and Sierra propose to coordinate non FERC-jurisdictional, operational matters related to the integrated nature of the California service territory and Sierra's distribution system in Nevada.

The Borderline Customer Agreement provides how CalPeco and Sierra propose to sell wholesale power in order to permit each utility to serve, in the most cost effective way with existing resources, certain customers located near the California-Nevada border. Under the agreement, each utility will apply to FERC for authority to sell power at the rates set forth in the agreement. Joint Applicants ask the Commission to authorize CalPeco to recover payments to Sierra in rates, subject only to ongoing Commission review of the reasonableness of CalPeco's administration of the agreement. Joint Applicants ask the Commission to authorize CalPeco to account for any revenues it receives from Sierra as an offset against its ECAC purchased power costs.

The Distribution Capacity Agreement governs how CalPeco proposes to make capacity on the California Utility's distribution system available to Sierra so that Sierra can cost-effectively serve certain of its Nevada customers located near the California-Nevada border, recognizing that Sierra currently uses electric distribution facilities within California to receive power from Nevada and then to flow that power back to those customers. Joint Applicants' analysis (see Appendix 4 to today's decision) describes why these distribution facilities of the California Utility are "local distribution" facilities subject to the exclusive jurisdiction of the Commission under FERC's seven-factor test. Joint Applicants ask the Commission to retain jurisdiction over the facilities after the closing and authorize CalPeco to provide distribution to Sierra based on the rates and terms in the agreement.

Each of these Operating Agreements has been drafted to permit CalPeco and Sierra to continue to provide electric power, post-closing, to their respective customers in the same way and at the same price as occurs at present.

5.11. Conclusion

Subject to the conditions specifically identified above and in the related Ordering Paragraphs, the transfer application is not adverse to the public interest and should be approved. Joint Applicants' have established that the transfer will not harm ratepayers; in fact, certain service improvements are likely in the near term, at no cost to ratepayers. To the extent service improvements trigger higher costs that result in a request for an increase in rates in 2012 and beyond, CalPeco is on notice that we will carefully scrutinize its 2012 general rate case showing. As is standard in a general rate case, CalPeco will have the burden of proof to establish the reasonableness of its request.

6. Ancillary Agreements to the TDPUD Settlement: Discussion

As mentioned in Section 3, Joint Applicants' settlement with TDPUD requires Commission approval of the two ancillary agreements filed as exhibits to A.10-04-032, the Fringe Agreement (Ex. A to that application) and the Reliability Support Agreement (Ex. B). TDPUD initially filed a protest to the transfer application, claiming that it would be harmed by the proposed transfer unless steps were taken to avoid that harm. Joint Applicants and TDPUD reached a settlement that resolved TDPUD's concerns and the two ancillary agreements implement that settlement. DRA does not specifically contest either agreement.

6.1. Fringe Agreement

The Fringe Agreement memorializes certain informal, cooperative arrangements between TDPUD and Sierra that have permitted them to serve customers located on or near the border of their contiguous service territories without building uneconomic and duplicative electric distribution facilities. The cooperation has been and continues to be necessary given the terrain and the location of the service territory boundary, which bisects certain roads and residential neighborhoods. The Fringe Agreement obligates Sierra to assign its rights and responsibilities to CalPeco upon the closing of the proposed transaction. The agreement also memorializes Sierra's, and subsequently CalPeco's, right to rate recovery from those fringe customers served by the California-jurisdictional utility. Since these costs are included within Sierra's revenue requirement calculations at present, the Fringe Agreement will not change revenue requirement.

6.2. Reliability Support Agreement

The Reliability Support Agreement obligates CalPeco, upon closing, to continue to participate in the arrangement that Sierra and TDPUD have negotiated to provide their customers with an alternative path for delivery of electric power, should backup be needed because of an outage on either utility's primary delivery paths. A.10-04-032 describes, in detail, the physical configuration and specific facilities involved. The agreement provides that neither entity will charge for use of any of its distribution facilities for backup delivery. Joint Applicants explain: "It is anticipated that the circumstances in which the use of either of these backup facilities under the [Reliability Support Agreement] will be provided will be rare and largely the result of unpredictable line outages."[58] As with the Distribution Capacity Agreement discussed in Section 5.10, approval of the Reliability Support Agreement relies upon a Commission determination that local distribution facilities are involved (see Appendix 4 to today's decision).

6.3. Conclusion

Each agreement essentially memorializes the status quo and permits CalPeco to stand in the shoes of Sierra vis a vis TDPUD, to the mutual benefit of both CalPeco and TDPUD. Joint Applicants have established good reason for the authority sought by A.10-04-032. Accordingly, that application should be approved, as more particularly set out in the Ordering Paragraphs of today's decision.

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[58] A.10-04-032 at 8.

7. Compliance with the California Environmental Quality Act (CEQA)

The sole remaining issue is whether, as Joint Applicants assert, the proposed transfer qualifies for an exemption from CEQA. Under CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure, we are required to consider the environmental consequences of projects that are subject to our discretionary approval. [59]

We acknowledge that in some cases it is possible that a change of ownership and/or control may alter an approved project, result in new projects, or change facility operations in ways that have an environmental impact. However, as the transfer application states, the proposed change of control will not result in a change in operation or change in the use of existing assets and facilities. Nor do Joint Applicants seek approval of new construction or request approval for any future utility infrastructure. In accordance with today's decision and except as otherwise authorized herein, CalPeco will continue to operate the California Utility in the manner the Commission has approved for Sierra.

8. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Joint Applicants and DRA filed comments on October 4, 2010 and Joint Applicants filed reply comments on October 11, 2010.

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[59] See, Public Resources Code § 21080.

Joint Applicants agree to comply with each of the three conditions on the transfer that the proposed decision recommends. Joint Applicants also suggest several minor modifications to the decision text, findings, conclusions, and ordering paragraphs to provide further clarity, or in a few instances, to make corrections. The suggestions are well taken and we revise the proposed decision accordingly.

DRA opposes the proposed decision and reiterates the major arguments in its briefs. DRA's contentions do not establish factual or legal error, however. DRA proposes that the Commission impose one, additional condition on the transfer by requiring that Sierra take back the California Utility if CalPeco is unable to fulfill the other conditions. This proposal goes beyond the scope of comments recognized by Rule 14.3(c). Since we have no record upon which to evaluate the proposal, we accord it no weight.

We make other, minor revisions to the proposed decision to correct typographical errors. To cure an inadvertent omission and support the relevant ordering paragraph, we include a brief discussion of the reason the transfer does not require review under CEQA, together with an associated finding and conclusion.

9. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. The proposed transfer from Sierra to CalPeco has been structured as a sale of all California-jurisdictional assets, rather than a merger or sale of stock, because the California Utility is not organized, legally, as a separate entity from Sierra. Sierra's California Utility consists of its California-jurisdictional service

territory and all distribution assets, as well as the King's Beach Generating Station, a 12-MW diesel-fired generator located in King's Beach near Lake Tahoe.

2. Sierra wishes to sell the California Utility to enable its owner, NV Energy, to focus on Nevada operations, which now serve nearly 1.2 million customers located throughout most of that state, given recent load growth. The California Utility's operations represent less than 4% of NV Energy's customer base. The sale would permit NV Energy to consolidate all of its operations under a single, state regulatory agency and respond to a single set of regulatory directives

3. CalPeco is a newly created, California limited liability company. Appendix 2 reflects the organizational ownership chain. CalPeco's ultimate, indirect owners are two publicly traded Canadian companies, Algonquin, which will hold 50.001% stake in CalPeco, and Emera, which will hold 49.999%.

4. The proposed transfer fits the mutual business objectives of CalPeco's owners, Algonquin and Emera, to expand ownership and operation of regulated utility assets, with a view to long-term acquisition and, in some instances, the potential for investment in renewable energy.

5. As qualified in Finding 33, CalPeco's owners do not contest the Commission's jurisdiction. Because Joint Applicants have fully disclosed the existence of California Pacific Utility Ventures, LLC, as well as Emera and Algonquin and their immediate subsidiaries in the chain of control of CalPeco, have presented witnesses from Algonquin and Emera at hearing, have offered Regulatory Commitments that include promises by Algonquin and Emera, and have placed issues concerning these entities directly before the Commission for decision, our ability to fully consider this transfer has not been circumscribed.

6. Sierra's 2008 annual California revenues were approximately $72 million and CalPeco had no California revenues.

7. The record contains no evidence that the transfer will result in operational change and no new facilities are proposed.

8. Appendix 3 lists all Regulatory Commitments by CalPeco and its owners; subject to clarification of Regulatory Commitment 1(g) as described in Finding 25, the Regulatory Commitments are reasonable, will not result in harm to ratepayers, and may yield some ratepayer benefits.

9. The sales price which is estimated to range between approximately $132 and $137 million, will be calculated more precisely based upon various factors including outstanding accounts payables and accounts receivables at closing; however, the Regulatory Commitments prohibit CalPeco from seeking to recover in rates either the premium paid for the assets of the California Utility or any transactions costs.

10. The proposed transfer will continue safe and reliable service and generally, will maintain the quality of service customers experience today. Service for customers in the remote Loyalton/Portola area should improve given CalPeco's promises to undertake the reliability measures discussed in the body of this decision. Some customers may experience other service improvements, also discussed in the body of this decision.

11. Post-closing CalPeco will collect from customers the same total revenues that Sierra is authorized to charge and collect, at the same rate levels now applicable to individual customers.

12. O&M and administrative costs, which arguably might benefit the most from any economies of scale, comprise in the aggregate about 10% of the California Utility's total revenue requirement. Over half of these costs should be quite stable (given similar compensation packages for the same work force and continued use of the same trucks and other vehicles), which leaves only about

$3 to $4 million potentially subject to cost escalation in a 2012 general rate case. For the purposes of illustration, only, a 15% escalation of that $3 to $4 million would result in a revenue requirement increase of $450,000 to $600,000, which is less than 1% of total revenue requirement.

13. CalPeco expects to be able to economically install electronic capabilities for billing and for scheduling service, based upon Algonquin's past success in this area.

14. CalPeco expects the reopening of the customer service counter in South Lake Tahoe to be cost-effective.

15. Under the Transition Service Agreement, which is one of the Operating Agreements, CalPeco has the reasonable option to ask Sierra to perform at cost for 24 months, with a 12-month extension, any of the services Sierra now provides to the California Utility.

16. The settlement with PSREC is not before the Commission in this docket and will have no impact on the rates of California customers, if at all, unless and until CalPeco seeks recovery for any expenditures associated with the PSREC settlement in the CalPeco 2012 general rate case and the Commission authorizes the recovery.

17. Sierra's coal-fired Valmy Power Plant commenced operations in the early 1980's and Sierra has no plans, at present, to make new ownership investments in Valmy.

18. Given the facts, prohibiting inclusion of Valmy power in the Power Purchase Agreement's supply mix for a term of five years will not further SB 1368's policy goals. The exclusion will affect costs for California customers (since power from Valmy is produced below Sierra's system average cost) but nothing else will change, as Sierra will continue to operate the highly-

depreciated Valmy at the same capacity for the benefit of Nevada customers and any emissions that migrate into California now will continue to do so.

19. The rate consequences of prohibiting inclusion of Valmy power in the Power Purchase Agreement's supply mix will increase power costs by $7.6 million starting in 2011, or put another way, increase the average residential rate in 2012 by 9.95% from $0.12405 per kWh to $.13639 per kWh.

20. Rejecting the transfer will obligate Sierra to continue to serve the California Utility, which also ensures the continued operation of Valmy.

21. Continued import of Valmy power under the Power Purchase Agreement simply preserves the status quo, operationally and economically, and therefore is not a covered procurement, within the context of SB 1368 and D.07-01-039 and is not subject to the Commission's EPS rules.

22. Beyond the Power Purchase Agreement's five-year term, Valmy should be viewed under the same rules that would apply were Sierra to continue to serve the California Utility. Thus, as long a Sierra makes no new ownership investment in Valmy, power from that plant may be included in the supply mix provided under any additional power purchase agreement, which Sierra and CalPeco may enter upon the expiration of the initial, five-year Power Purchase Agreement.

23. While the cost consequences of the transfer in 2012 and beyond are uncertain, the evidence does not suggest cost consequences of a magnitude large enough to support a finding that proposed transfer will harm ratepayers and therefore, is adverse to the public interest.

24. Algonquin and Emera own regulated utilities in Canada and in four other states in the United States.

25. CalPeco's amended Regulatory Commitment 1(g), which promises infusions of necessary equity from CalPeco's indirect owners, is reasonably read to encompass working capital as well as capital expenditure.

26. A parental guarantee of debt serves to undermine the separateness which ring-fencing establishes.

27. The ring-fencing measures that Joint Applicants' propose offer value as discussed in the body of this decision.

28. The record does not establish that unless we impose a minimum hold condition upon Emera, the proposed transfer is unreasonable.

29. Joint Applicants have not established their Internal Transfer Authority is free of risk for ratepayers.

30. Joint Applicants have made a sufficient showing that CalPeco will have competent, professional management, including a competent initial board of directors.

31. Local 1245 supports the transfer and in other respects, Joint Applicants have made a sufficient showing that CalPeco will treat employees fairly.

32. Service improvements (even if minor), local hiring as needed, and an increased local presence for the utility can only yield some benefit to the state and local community; the record does not establish ratepayer harm.

33. With one exception, the record generally confirms that CalPeco and its owners accept the Commission's jurisdiction and commit to comply with the Commission's orders and with state law. To avoid the possibility of future confusion, any approval of the proposed transaction must be conditioned upon access to such officers and employees of CalPeco's jurisdictionally foreign, upstream owners as the Commission, itself, may determine to be necessary, consistent with established principles of due process and fundamental fairness.

34. The transfer application incorporates seven Operating Agreements, which comprise, in addition to the Power Purchase Agreement and Transition Services Agreement, these five: Emergency Backup Service Agreement, Interconnection Agreement, System Coordination Agreement, Borderline Customer Agreement, and Distribution Capacity Agreement. Each of these agreements has been drafted to permit CalPeco and Sierra to continue to provide electric power, post-closing, to their respective customers in the same way and at the same price as occurs at present.

35. Joint Applicants' settlement with TDPUD requires Commission approval of the two ancillary agreements filed as exhibits to A.10-04-032, the Fringe Agreement and the Reliability Support Agreement.

36. The Fringe Agreement memorializes certain informal, cooperative arrangements between TDPUD and Sierra that have permitted them to serve customers located on or near the border of their contiguous service territories without building uneconomic and duplicative electric distribution facilities. The agreement obligates Sierra to assign its rights and responsibilities to CalPeco upon closing and will not change revenue requirement.

37. The Reliability Support Agreement obligates CalPeco, upon closing, to continue to participate in the arrangement that Sierra and TDPUD have negotiated to provide their customers, at no additional charge, with an alternative path for delivery of electric power, should backup be needed because of an outage on either utility's primary delivery paths.

38. The Fringe Agreement and the Reliability Support Agreement essentially memorialize the status quo and permit CalPeco to stand in the shoes of Sierra vis a vis TDPUD, to the mutual benefit of both CalPeco and TDPUD. Joint

Applicants have established good reason for the authority sought by A.10-04-032.

39. With respect to the Distribution Capacity Agreement (in A.09-10-028) and the Reliability Support Agreement (in A.10-04-032), the Commission should determine that local distribution facilities are involved and assert jurisdiction over them.

40. The proposed transfer of control will have no significant effect upon the environment, because after the transfer CalPeco will continue to operate the California Utility in the manner the Commission has approved for Sierra, except as modified by today's decision.

Conclusions of Law

1. The proposed transfer from Sierra to CalPeco should be reviewed under § 854, which generally governs mergers and similar transfers of control, rather than § 851, which typically governs sales of assets. More particularly, the transfer should be reviewed under § 854(a).

2. Neither D.01-09-057 nor D.06-02-033 established a positive benefits test for transactions such as the proposed Sierra/CalPeco transfer.

3. The following principles apply to a transfer proposed under § 854(a):

   (a) to ensure that a transfer is not adverse to the public interest, the Commission must be able to evaluate evidence on the important impacts of that transfer – whatever they might be – and find no harm to ratepayers;

   (b) some of the criteria enumerated in §§ 854(b) and (c) mirror criteria identified by past Commission decisions as relevant to a public interest assessment under § 854(a), and depending upon the nature of the transfer at issue, may well be relevant and even necessary to the specific public interest assessment required; and

   (c) only where §§ 854(b) and (c) expressly apply, must the Commission make all of the findings those subsections require.

4. No party has introduced facts to describe any alternative for the Commission to consider under § 854(d).

5. The requested financing authority is governed by is § 816 and § 818, which concern issuance of stocks, bonds, etc., and § 851, which as relevant here, concerns the encumbrance of utility assets.

6. Pursuant to § 15061(b)(3) of the CEQA guidelines, inasmuch as it can be seen with certainty that the project will have no significant impact upon the environment, the transfer application qualifies for an exemption from CEQA and the Commission need not perform any further environmental review.

7. The reach of today's decision necessarily extends to the direct and indirect owners of CalPeco; specifically, any approval of the proposed transaction must be conditioned upon access to such officers and employees of CalPeco's jurisdictionally foreign, upstream owners as the Commission, itself, may determine to be necessary, consistent with established principles of due process and fundamental fairness.

8. A general rate case is the forum for review of the reasonableness of actual costs incurred and actual benefits associated with those costs.

9. No finding or conclusions of law in this decision supports a reasonableness finding or authorizes rate recovery in a future general rate case.

10. D.07-01-039 provides no direct guidance regarding whether the supply mix under the Power Purchase Agreement may or may not include electric power from Valmy.

11. The Commission has not imposed a first priority condition on the owners of a California-jurisdictional utility that also own utilities in other regulatory jurisdictions.

12. The Commission retains regulatory jurisdiction to proactively require revisions to the ring-fencing measures included in the Regulatory Commitments, given appropriate notice and opportunity to be heard.

13. Section 851 and § 854 provide legal means for approval of reasonable requests for changes in ownership and control of public utilities regulated by this Commission.

14. Should any of CalPeco's direct or indirect owners wish to change arrangements governing their ownership and control of CalPeco, they must file a new application under § 854 that explains why the change proposed would not be adverse to the public interest.

15. Subject to the condition on the Power Purchase Agreement's inclusion of power from Valmy, CalPeco should be authorized to enter into the Power Purchase Agreement, the Interconnection Agreement and the Borderline Customer Agreement under the terms and conditions therein, which we deem to be reasonable. Accordingly, the costs incurred under each agreement will be deemed to be prudently incurred and CalPeco is authorized to recover those costs, subject to review for reasonableness of CalPeco's administration of each agreement.

16. The Distribution Capacity Agreement (in A.09-10-028) and the Reliability Support Agreement (in A.10-04-032) involve local distribution facilities subject to the jurisdiction of this Commission.

17. The proposed transfer qualifies for an exemption from CEQA pursuant to the CEQA guidelines § 1506(b)(3) and so additional environmental review is not required.

18. This decision should be effective immediately to minimize business uncertainty for the parties and all affected by the transfer of Sierra's California Utility to CalPeco.

O R D E R

IT IS ORDERED that:

1. As conditioned by this Ordering Paragraph, the transfer from Sierra Pacific Power Company (Sierra) to California Pacific Electric Company, LLC (CalPeco) is not adverse to the public interest. Accordingly, subject to the Regulatory Commitments attached to this Order as Appendix 3 and subject to the following conditions, Application 09-10-028 is granted, the seven Operating Agreements are approved, and Sierra may transfer to CalPeco, Sierra's California-jurisdictional electric distribution facilities and the Kings Beach Generating Station, together with those Certificates of Public Convenience and Necessity held by Sierra that are required for CalPeco to serve California customers:

(a) Power from Sierra's Valmy Power Plant (Valmy) may be included in the supply provided under the five-year term of the Power Purchase Agreement (one of the Operating Agreements) and any extension of that term as long a Sierra makes no new ownership investment in Valmy, within the context of the Emissions Performance Standard rules adopted by Decision 07-01-039, and any subsequent modifications of that decision.

(b) The Internal Transfer Authority is not approved and any change of ownership affecting CalPeco's upstream owners must be sought by application filed pursuant to Public Utilities Code Section 854.

(c) Liberty Electric Co., Algonquin Power & Utilities Corp., Emera US Holdings, Inc., and Emera Incorporated must each notify the Director of the Commission's Energy Division in writing within 30 days of the effective date of this decision of its agreement to provide its 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.

2. The California Public Utilities Commission affirmatively asserts jurisdiction over the Distribution Capacity Agreement (one of the Operating Agreements) and the local distribution facilities described therein.

3. The financing authority requested by California Pacific Electric Company, LLC pursuant to Public Utilities Code Sections 816, 818, and 851 is granted.

4. The ratemaking adjustments requested by California Pacific Electric Company, LLC to recognize the provision of power under the Purchase Power Agreement and accordingly, reallocate certain components of general rates to Energy Cost Adjustment Clause rates without increasing total revenues, are approved.

5. Application 09-10-028 qualifies for an exemption from the California Environmental Quality Act and the Commission need not perform any further environmental review.

6. California Pacific Electric Company, LLC (CalPeco) shall file tariffs consistent with this Order no less than 15 days prior to the anticipated closing of the transfer from Sierra Pacific Power Company to CalPeco. The tariffs shall be effective upon the closing, subject to confirmation of compliance by the Director of the Commission's Energy Division or her designee.

7. Effective upon the closing of the transfer, the responsibilities of Sierra Pacific Power Company as a pubic utility in California shall terminate.

8. Sierra Pacific Power Company (Sierra) and California Pacific Electric Company, LLC (CalPeco) shall notify the Director of the Commission's Energy Division in writing of the transfer from Sierra to CalPeco within 30 days of the date of the transfer. A true copy of the instruments of transfer shall be attached to the notification.

9. The authority for the transfer from Sierra Pacific Power Company to California Pacific Electric Company, LLC shall expire if not exercised within one year from the effective date of this Order.

10. Application 10-04-032 is granted and Sierra Pacific Power Company (Sierra) may enter into the Fringe Agreement and the Reliability Support Agreement as requested in that application. During the period prior to the closing of the transfer from Sierra to California Pacific Electric Company, LLC (CalPeco), Sierra is authorized to account for the expenses it incurs and the revenues it receives to serve customers under the Fringe Agreement, pursuant to the terms therein. Upon closing, CalPeco is authorized to accept assignment of the Fringe Agreement from Sierra and to account for the expenses it incurs and the revenues it receives to serve customers under the Fringe Agreement, pursuant to the terms therein. CalPeco also may enter into the Reliability Support Agreement. The California Public Utilities Commission affirmatively asserts jurisdiction over the Reliability Support Agreement and the local distribution facilities described therein.

11. Application (A.) 09-10-028 and A.10-04-032 are closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX 1

LIST OF ABBREVIATIONS AND ACRONYMS

A.	Application
Algonquin	Algonquin Power Income Fund
CalAm	California American Water Company
CalPeco	California Pacific Electric Company, LLC
CEQA	California Environmental Quality Act
D.	Decision
DRA	Division of Ratepayer Advocates
ECAC	Energy Cost Adjustment Clause
Emera	Emera Incorporated
EPS	Emissions Performance Standard
Ex.	Exhibit
FERC	Federal Energy Regulatory Commission
GHG	greenhouse gas
kWh	kilowatt hour
King's Beach facility	King's Beach Generating Station
Local 1245	International Brotherhood of Electrical Workers Local Union 1245
MidAmerican	MidAmerican Energy Holdings Company
MW	megawatt
NV Energy	NV Energy Inc.
O&M	Operations and Maintenance
PSREC	Plumas-Sierra Rural Electric Cooperative
RPS	Renewable Portfolio Standard
Sierra	Sierra Pacific Power Company
TDPUD	Truckee-Donner Public Utilities District
Valmy	Valmy Power Plant

(END OF APPENDIX 1)

Vieth Appendices 2-4