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

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| In the Matter of the Application of Liberty Utilities (CalPeco Electric) LLC (U 933 E) for Commission Approval to Finance, Construct, Own, and Operate the Luning Expansion Project, Authorize Ratemaking Associated with the Project's Capital Investment and Operating Expenses, and Issuance of Expedited Decision Granting Such Relief. | Application 21-04- ___<br>(Filed April 9, 2021) |

# APPLICATION OF LIBERTY UTILITIES (CALPECO ELECTRIC) LLC (U 933 E) FOR COMMISSION APPROVAL TO FINANCE, CONSTRUCT, OWN, AND OPERATE THE LUNING EXPANSION PROJECT, AUTHORIZE RATEMAKING ASSOCIATED WITH THE PROJECT'S CAPITAL INVESTMENT AND OPERATING EXPENSES, AND ISSUANCE OF EXPEDITED DECISION GRANTING SUCH RELIEF

**PUBLIC REDACTED VERSION**

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April 9, 2021

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**PUBLIC REDACTED VERSION**

## I. INTRODUCTION AND SUMMARY

Pursuant to California Pub. Util. Code section 399.14 and the California Public Utilities Commission's ("Commission") Rules of Practice and Procedures ("Rules"), Liberty Utilities (CalPeco Electric) LLC ("Liberty") files this Application ("Application") to request Commission approval to finance, construct, own, operate, and maintain the Luning Expansion Project, a combined 60 MW solar facility and 240 MWh lithium-ion battery storage facility.

Liberty provides electricity to approximately 49,000 customers in the Lake Tahoe area but its service territory is located entirely within the northern portion of the NV Energy Balancing Authority Area ("NVE BAA"). Unfortunately, the northern portion of the NVE BAA is severely transmission constrained, limiting the ability of Liberty to use local greenfield development or to access out-of-state resources to satisfy its renewable energy goals. Liberty has determined that the Luning Expansion Project, which will provide clean solar energy in combination with battery storage, is the most practicable and cost-effective project to address Liberty's renewables access issues and NV Energy's transmission constraints, help satisfy Liberty's peak load requirements, and further Liberty's goals of providing its customers with 100% low greenhouse gas ("GHG") and/or renewable energy in the timeliest manner.

To reduce the costs of developing, constructing and operating the Luning Expansion Project, Liberty purposely located and designed it to take advantage of the existing interconnection and support infrastructure serving Liberty's operating Luning Solar Energy Facility.[1] The Luning Expansion Project will be built adjacent to Liberty's Luning Solar Energy Facility, on a site in Mineral County, Nevada, and will use the existing one-mile 120 kV transmission line constructed for the Luning Solar Energy Facility and interconnected to NV Energy's Table Mountain substation.[2] Liberty and NV Energy have already completed and executed a Material Modification to the Luning Solar Energy Facility interconnection agreement for this purpose (the "Material Modification").[3] The Material Modification review process determined that no transmission upgrades are needed for NV Energy to deliver energy generated by the Luning Expansion Project to Liberty's service territory in California.[4] The Material Modification will also allow the use of the transmission rights 24/7 from Luning to Liberty's service territory. Finally, the Luning Expansion Project will share the Luning Solar Energy Facility's existing operations and maintenance ("O&M") building and require only a relatively small expansion of the existing Luning Solar Energy Facility substation.[5]

Liberty also requests that the Commission approve Liberty's use of the same tax equity investment structure for the Luning Expansion Project as the Commission previously approved, and Liberty successfully employed, for Liberty's Luning Solar Energy Facility and the subsequent Turquoise Solar Facility.[6] The tax equity investment structure allowed Liberty to

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[1] Chapter 2 (Testimony of Maruncic), pp.1-2. In Application ("A.") 15-04-016, Liberty sought Commission approval to purchase, own, and operate 60 MW of solar generation from two solar projects to be built in Nevada. The Commission approved Liberty's purchase and operation of the first solar project, the 50 MW Luning Solar Project, now referred to as the Luning Solar Energy Facility, and associated ratemaking, in Decision (D.) 16-01-021. The Luning Solar Energy Facility was placed into service in February, 2017.

[2] Chapter 2 (Testimony of Maruncic), p.1.

[3] Chapter 2 (Testimony of Maruncic), pp.2, 10-11.

[4] Chapter 2 (Testimony of Maruncic), pp.1-2.

[5] Chapter 2 (Testimony of Maruncic), p.2. If necessary, Liberty will prepare and subsequently submit, for CPUC approval, a shared services agreement with the Luning Solar Energy Facility for this purpose.

[6] In D.17-12-008, the Commission approved Liberty's application to acquire, own and operate the 10 MW Turquoise Solar Project (A.16-12-009), now referred to as the Turquoise Solar Facility, and associated ratemaking. The Turquoise Solar Facility was placed into service in November, 2019.

take advantage of the Federal Investment Tax Credit ("ITC") for both projects, providing significant savings to Liberty's customers.[7] However, the current 30% ITC requires that solar projects begin construction in 2019 and be "placed in service" by December 31, 2023.[8] If the "placed into service" deadline is not met, the ITC will be reduced to 26%.[9] Therefore, Liberty has structured the financing and construction of the Luning Expansion Project to meet the December 31, 2023 deadline and respectfully requests that the Commission approve this Application in an expedited fashion to allow the Luning Expansion Project to secure the full 30% ITC benefit and allow for Liberty's customers to receive the enhanced cost reduction benefit that the tax equity investment structure and the 30% ITC will provide.[10]

Toward that end, Liberty has already issued an RFP for the Engineering, Procurement and Construction ("EPC") contract for the Luning Expansion Project. Based on the responses to the RFP, Liberty currently estimates that the EPC contract cost for the Luning Expansion Project will be [redacted] and that development and financing costs and contingencies will total approximately [redacted], for a total Project Cost of [redacted].[11] Liberty currently anticipates, based on the tax equity market, that the Tax Equity Partner will contribute approximately [redacted] of the total Project Cost for the Luning Expansion Project (approximately [redacted]).[12] Therefore, Liberty requests that the Commission, pursuant to its authority under Pub. Util. Code section 399.14 and/or Pub. Util. Code section 1005.5, establish and approve an aggregate Maximum Reasonable Cost of [redacted] (the net of the Total Project

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[7] *See* Section V.D. (Project Financing) of this Application and Chapter 5 (Testimony of Melnyk), pp.3-4.

[8] Chapter 5 (Testimony of Melnyk), pp.3-4. Liberty started construction of the Luning Expansion Project by purchasing 12 pad mount transformers in 2019, thereby satisfying the first ITC qualification requirement. Chapter 5 (Testimony of Melnyk), p.4.

[9] If the proposed U.S. Green Act is passed and signed into law, the 30% ITC may be extended, but currently, both passage and approval of the Green Act, and any extension of the 30% ITC, is speculative.

[10] Though the ITC differential of 4.0% may seem small, the financial consequences of failing to obtain the 30% ITC would be significant for Liberty and its customers, equating to approximately [redacted] in upfront Tax Equity funding resulting in approximately [redacted] in additional first year costs to be recovered in rates. Chapter 5 (Testimony of Melnyk), p.3, fn.2.

[11] Chapter 3 (Testimony of Maruncic), pp.5-6.

[12] *See* Section V.D. (Project Financing) of this Application and Chapter 5 (Testimony of Melnyk), p.8.

Cost of [redacted] minus the Tax Equity Partner contribution of [redacted]) for Liberty to develop, construct, acquire and own the Luning Expansion Project.[13]

In addition, the Commission determined, in approving Liberty's Luning Solar Project application, that while Pub. Util. Code section 399.14(a) "clearly contemplates that a utility seeking approval of utility-owed renewable generation would typically apply to the Commission for a CPCN, *we agree <u>not</u> to require a CPCN in this case for several reasons*."[14] Those reasons were that (1) the Luning Solar Project was "located out of state;" (2) the Luning Solar Project had "full environmental review and approval by another agency," specifically, the U.S. Bureau of Land Management ("BLM"); (3) Liberty was not going to build the project; and (4) the energy that Liberty would purchase from the Luning Solar Project was "needed, cost-effective and subject to an appropriate price cap."[15]

For similar reasons, Liberty requests that the Commission find that a CPCN is *<u>not</u>* required for the Luning Expansion Project:

(1) The Luning Expansion Project will be located in Nevada, adjacent to the Luning Solar Energy Facility.

(2) The Luning Expansion Project will have "full environmental review and approval by another agency," again, by the BLM.

(3) As will be described in more detail in Sections V.B. and V.D. of this Application, Liberty intends both to act as the Project Developer for the Luning Expansion Project and to participate in the financing of the construction of the Luning Expansion Project through a Joint

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[13] This MRC amount assumes the Commission approves the requested tax equity investment structure and that the Tax Equity Partner will contribute 32 percent of the projected capital costs of the Luning Expansion Project. *See* Section V.D.2.c. of this Application.

[14] D.16-01-021, pp.32, (emphasis added). A CPCN was not required for the Turquoise Project because it was only a 10 MW project. D.17-12-008, p.10.

[15] D.16-01-021, pp.32-33.

Venture arrangement, likely with the selected EPC contractor. Both actions will significantly reduce Liberty's project development and construction costs for the Luning Expansion Project.

Liberty has the expertise to act as the Project Developer based on its prior experience with the development and construction of the Luning Solar Energy Facility and the Turquoise Solar Facility. In addition, Liberty can access, as needed, the expertise of its parent companies, Algonquin Power & Utilities Corporation ("APUC") and Liberty Utilities, which have extensive U.S. experience in developing and constructing solar projects.[16] In its Turquoise Solar Project application, Liberty requested a waiver of Rule V(E) of the Commission's Affiliate Transaction Rules ("ATRs") to allow APUC employees to assist, if necessary, with the development and implementation of the Turquoise Solar Project. The Commission granted the waiver with the provision that those services be provided at cost.[17] Liberty requests the Commission grant a similar waiver of Rule V(E) of the Commission's ATRs for any assistance provided by APUC and/or Liberty Utilities for the development of the Luning Expansion Project, with the same "at cost" provisions.

However, Liberty will not be directly involved in building the Luning Expansion Project. The EPC contractor will be responsible for the construction and all construction risks, other than, as described in Section V.C. (Project Selection) of this Application, Liberty potentially sharing, with the EPC contractor, the costs of the solar modules and battery storage components in the unlikely event those costs exceed the estimates included in the EPC contract.[18]

(4) As will be discussed in Section IV of this Application, the energy that Liberty will be purchasing from the Luning Expansion Project is needed, cost-effective and will be subject to an appropriate MRC price cap.

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[16] Chapter 5 (Testimony of Melnyk), pp.8-9; Chapter 2 (Testimony of Maruncic), p.3.

[17] D.17-12-008, pp.12-13 and OP 3.

[18] Chapter 3 (Testimony of Maruncic), pp.4-5. If, as expected, those costs are less than included in the EPC contract, Liberty and its customers will share those savings with the EPC contractor.

Finally, as required by the Luning Solar Project Settlement Agreement, on April 8, 2021, prior to filing the Application, Liberty met with the Public Advocates Office to discuss the Luning Expansion Project Application.[19] Liberty intends to work closely with the Public Advocates Office and all other interested parties to resolve any issues with the Application, as Liberty did for its Luning Solar Project and Turquoise Solar Project applications.

In sum, this Application shows that the Luning Expansion Project is cost-competitive and cost-effective, will help Liberty satisfy its California's renewable portfolio standard ("RPS") requirements and GHG reduction goals for 2030 and further Liberty's goal of providing all of its customers' electricity needs with 100% low GHG and/or renewable energy.

## II. REQUESTED RELIEF

For the reasons set forth in this Application and the attached testimony, Liberty respectfully requests that the Commission:

- Approve Liberty entering into Joint Venture arrangement and EPC contract to finance, develop and construct the Luning Expansion Project;
- Determine that for ratemaking purposes the aggregate Maximum Reasonable Cost for Liberty to develop, construct and own the Luning Expansion Project is [redacted];
- Approve Liberty's initial joint ownership of the Luning Expansion Project with a Tax Equity Partner, including the creation of a separate entity, the "Luning Expansion Project Company," to own and operate the Luning Expansion Project, authorize Liberty to enter a hedge (the "Luning Hedge") with the Luning Expansion Project Company, and authorize Liberty to buy out the ownership interest of the Tax Equity Partner in the Luning Expansion Project Company after the first five years in accordance with the terms of the Tax Equity Partnership Agreements;[20]
- Authorize Liberty to file Tier 2 Advice Letters to provide the final, executed Joint Venture arrangement and EPC contract, the shared services agreement (if necessary) with the Luning Solar Energy Facility, the Luning Hedge and all tax equity partner-related agreements for Commission review no later than ten days after execution of the final document(s).

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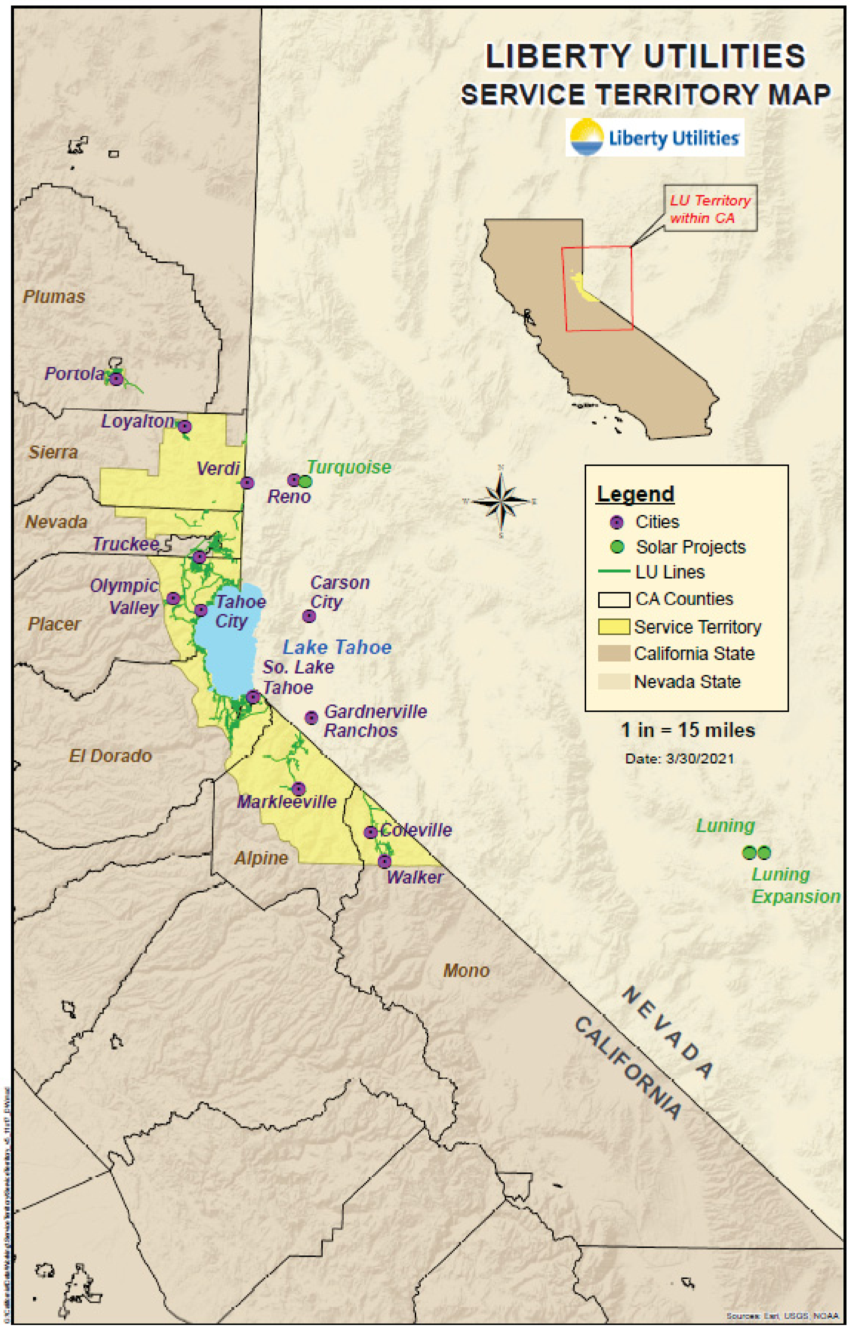
[19] D.16-01-021, p.19 and Attachment A, "Settlement Agreement Between the Office of Ratepayer Advocates and Liberty Utilities (CalPeco Electric) LLC," section 4.6, requiring Liberty to notify ORA (now the Public Advocates Office) before seeking Commission approval of "any major change or modification that may be required" to the Luning Solar Project.

[20] *See* Section V.D. (Project Financing) of this Application and Chapter 5 (Testimony of Melnyk).

- Authorize Liberty to recover the following "Project Operating Expenses" which are the costs associated with the operation and maintenance of the Luning Expansion Project as general rates during the Luning Expansion Project's entire operating life, including the initial five-year Tax Equity Period. The Project Operating Expenses are comprised of the following:
  - Costs to operate and maintain the Luning Expansion Project ("O&M Costs");
  - Administrative and general costs associated with the operation of the Luning Expansion Project, including land lease and insurance costs ("A&G Costs"); and
  - Property tax payments associated with the ownership of the Luning Expansion Project ("Property Tax");
- Authorize Liberty to seek authority, in a Tier 2 Advice Letter, to place its Project Operating Expenses and its Luning Expansion Project development, construction and ownership costs, up to the Maximum Reasonable Cost, into rate base within 30 days following the mechanical completion of the Luning Expansion Project;
- Authorize Liberty to record the financing expenses associated with the Joint Venture arrangement in its Energy Cost Adjustment Clause ("ECAC") account and to recover those financing expenses in accordance with its ECAC Tariff;
- Authorize Liberty to record the "Tax Equity Partner Expenses," which are those distributions made by the Luning Expansion Project Company to the Tax Equity Partner during the initial years of the Luning Expansion Project's operations ("Tax Equity Partner Distribution") as well as the payment Liberty expects to make to purchase the Tax Equity Partner's ownership interest in the Luning Expansion Project Company ("Buy-Out Payment") in its ECAC account and to recover such Tax Equity Partner Expenses in accordance with its ECAC Tariff;
- Approve this Application and grant the authorizations requested in a final decision to be issued no later than April 30, 2022, in order to ensure that the Luning Expansion Project can be placed in service by the fourth quarter of 2023 so that Liberty's customers can receive the maximum benefit of the proposed tax equity investment structure and the current 30% ITC.
- Grant a waiver of the Commission's Affiliate Transaction Rules, Rule V(E), to allow Liberty to use, at cost, and only if necessary, the expertise of employees of its parent companies, APUC and/or Liberty Utilities, for Project Development purposes;
- Find that a CPCN is not required for the Luning Expansion Project;
- Grant Liberty's motion for confidentiality being filed concurrently;
- Grant such other relief as is necessary to effectuate the Application and authorize rate recovery for the associated costs.

## III. BACKGROUND

Liberty provides electricity to approximately 49,000 customers in portions of seven counties around the Lake Tahoe area. The service territory is geographically compact and generally encompasses the western portions of the Lake Tahoe Basin (almost 80% of Liberty's customers are in the Lake Tahoe Basin), extending north to Portola, and south to Markleeville. The following map shows Liberty's service territory and the locations of Liberty's Luning Solar Energy Facility, Turquoise Solar Facility and proposed Luning Expansion Project.



Liberty is winter-peaking with peak loads occurring at night, typically during the holiday season. Further, given Liberty's location, it has few industrial customers, but larger seasonal and highly variable loads associated with ski resorts and hotel operations. Liberty is located within the NVE BAA and is not part of the California Independent System Operator ("CAISO") Balancing Authority Area. The northern portion of the NVE BAA is transmission constrained, limiting the ability for greenfield projects to interconnect and wheel power to Liberty.

In D.15-12-021, the Commission authorized Liberty to enter into an NV Energy Services Agreement pursuant to which NV Energy would serve the full energy requirements of Liberty's electric loads for the maximum term of January 1, 2016 through April 30, 2022. Of particular importance, the NV Energy Services Agreement allowed Liberty to displace NV Energy RPS generation by procuring RPS-generation from future "Liberty Renewable Projects" (eventually, the Luning Solar Energy Facility and the Turquoise Solar Facility) and required NV Energy to deliver energy from those projects over NV Energy's transmission facilities into Liberty's California service territory at FERC-regulated cost-based rates.

Prior to the expiration of the NV Energy Services Agreement, Liberty began working with NV Energy on a replacement Energy Services Agreement (the "2021 NV Energy ESA"), which was submitted for Commission approval on September 4, 2020, in Advice Letter ("AL") 153-E,[21] and approved by the Commission on November 19, 2020. The 2021 NV Energy ESA provides material benefits for Liberty's customers as it allows Liberty to (1) continue to develop additional utility-owned renewable resources, such as the Luning Expansion Project; (2) explore possible alternative transmission arrangements; (3) reduce the distribution charge and demand charge rate paid to NV Energy; and (4) remove the demand ratchet so that charges better reflect actual demand.

Unfortunately, significant transmission limitations within the NV Energy balancing authority area severely constrain Liberty's ability to use local greenfield development or to access out-of-state resources to satisfy its renewable energy goals. Further, unlike entities

[21] AL 153-E, "Liberty Utilities (CalPeco Electric) LLC (U-933 E) – Request for Approval of 2021 Energy Services Agreement with Sierra Pacific Power Company, dba NV Energy."

located within CAISO, there is no energy market for Liberty to resell any surplus energy production, meaning that Liberty must find ways to balance its resource portfolios and cumulative customer demand, which peaks during winter evenings.[22] Therefore, as described in Liberty's recently submitted Final RPS Plan, Liberty is adapting its procurement/portfolio strategy for low-carbon and renewable resources to address these constraints and limitations.[23] As Liberty's witness Hoekstra explains, the Luning Expansion Project, in combination with the existing Luning Solar Energy Facility and the Turquoise Solar Facility, and future microgrid and behind the meter storage projects, best satisfies Liberty's primary resource planning objectives of reliability, environmental stewardship and reasonable cost.[24]

## IV. THE LUNING EXPANSION PROJECT IS THE BEST OPTION FOR LIBERTY TO MEET ITS RPS REQUIREMENTS, ADVANCE THE COMMISSION'S DECARBONIZATION POLICIES AND PROVIDE ITS CUSTOMERS WITH NEEDED RELIABILITY, RESILIENCY AND PRICE STABILITY

### A. The Luning Expansion Project Will Significantly Advance Liberty's Ability to Meet its RPS and Decarbonization Goals

Liberty's witness Hoekstra describes how and why the Luning Expansion Project will allow Liberty to significantly advance its efforts to "achieve its RPS obligations and GHG emissions reduction targets in a timely and cost-effective manner, including the 65% long-term RPS contracting requirement mandated by SB 350, the higher RPS and GHG reduction targets mandated by SB 100, and potentially more stringent environmental mandates that may emerge in the future," as well as to "ultimately serve all of its customer load with renewable and/or low-GHG energy."[25]

In particular, the Luning Expansion Project:

- Best positions Liberty to meet or exceed future, potentially more stringent, GHG reduction requirements because it outperforms the GHG Benchmarks associated with both the current 46 MMT and 38 MMT statewide targets;

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[22] Final Renewables Portfolio Standard Procurement Plan of Liberty Utilities ("Final RPS Plan"), submitted in R.18-07-003, dated Feb. 19, 2021, p.5. In 2020, Liberty's peak demand occurred on December 28th at 9:00 p.m.

[23] *Id.*

[24] Chapter 4 (Testimony of Hoekstra), pp.2-3.

[25] Chapter 4 (Testimony of Hoekstra), p.1.

- Provides superior GHG reductions through 2030 because it produces the greatest displacement of energy and carbon emissions from system power purchased either under the 2021 NV Energy ESA or from the bilateral power market;
- Provides Liberty with a pathway to meet or exceed the 65% long-term RPS contracting requirement mandated by SB 350;
- Produces superior cost and rate benefits to Liberty's bundled customers by maximizing Liberty's ability to leverage available benefits of the current 30% ITC safe-harbor provisions in order to reduce the costs of building and operating new solar and storage resources for the benefit of customers; and
- Improves Liberty's ability to accelerate the date by which it can significantly reduce and potentially end its dependence on power supplies from NV Energy and achieve its goal of 100% reliance on renewable and low-GHG resources to serve its customers.[26]

### B. The Luning Expansion Project Benefits Liberty's Customers by Adding Reliability, Resiliency and Price Stability to Liberty's RPS Energy Supply

If the Commission approves Liberty's Luning Expansion Project Application, Liberty will be able to replace the RPS energy it would otherwise purchase from NVE pursuant the 2021 NV Energy ESA. As Liberty witness Maruncic describes, the ability to displace NVE provided energy through self-supply will provide (1) reliability, in particular, because the Luning Expansion Project will be under Liberty's direct control; (2) resiliency, because the battery storage system provides more flexibility in the delivery of renewable energy from the project during periods of higher demand; and (3) price stability because: (a) the Luning Expansion Project's capital costs will be fixed and be depreciated; (b) there is no fuel cost, and thus no fuel cost escalation risk associated with solar generation; (c) the Luning Expansion Project's O&M costs are expected to be relatively fixed; and (d) rate base ratemaking enables the costs to Liberty's customers for the Luning Expansion Project's RPS energy to be based on actual production costs rather than market prices which have often exhibited volatility.[27]

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[26] Chapter 4 (Testimony of Hoekstra), p.5.

[27] Chapter 1 (Testimony of Maruncic).

### C. The Luning Expansion Project is the Most Practical and Cost-Effective Project to Address Liberty's System Needs and RPS Goals.

Liberty's witness Hoekstra provides a detailed explanation of how Liberty determined that the Luning Expansion Project is the most cost-effective project to (1) address Liberty's renewables access issues and NV Energy's transmission constraints; (2) help satisfy Liberty's peak load requirements; and (3) further Liberty's goals of reaching 100% low GHG and/or renewable energy, all in the quickest and most practicable manner.[28]

As Liberty's witness Hoekstra describes, the Luning Expansion Project will provide, over its 35-year life-cycle, estimated Net Benefits to Liberty's customers of [redacted] on a nominal basis and [redacted] on a net present value ("NPV") basis, using a [redacted] and conservatively assuming [redacted] in Liberty's system load, [redacted] in the usable output from the Luning Expansion Project and a [redacted] in NVE demand charges and renewable energy rates.[29]

## V. OVERVIEW OF THE LUNING EXPANSION PROJECT

### A. Description

Liberty witness Maruncic provides a detailed description of the Luning Expansion Project and site, including the current status of permitting, environmental review, and development.[30] To summarize, the Luning Expansion Project will be built on an approximately 566 acre site adjacent to Liberty's existing Luning Solar Energy Facility in Mineral County, Nevada. The Luning Expansion Project will be a combined 60 MW AC/76 MW DC solar facility and 240 MWh lithium-ion battery storage facility with the capability to produce a theoretical maximum generation output of approximately 174,000 MWh each year (equivalent to a theoretical maximum net capacity factor of approximately 32.6 percent).[31] Liberty projects

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[28] Chapter 4 (Testimony of Hoekstra), pp.1-4. This presumes that the Commission approves the Luning Expansion Project by April 30, 2022 to ensure that Liberty can utilize the current 30% ITC, which requires that the Luning Expansion Project be placed into service by Dec. 1, 2023. Chapter 4 (Testimony of Hoekstra), and Chapter 5 (Testimony of Melnyk), pp.3-4.

[29] Chapter 4 (Testimony of Hoekstra), pp.8-10.

[30] Chapter 2 (Testimony of Maruncic).

[31] Chapter 2 (Testimony of Maruncic), p.1.

the Luning Expansion Project will have a 35-year life with an average generation degradation over time of approximately 0.5 percent/year, associated with the aging of the solar panels and lithium-ion batteries (including the expectation of replacing the lithium-ion batteries after 20 years).[32]

The Luning Expansion Project will consist of several primary components, including approximately 224,000 First Solar PV modules (or silicon cell equivalent), ATI Trackers (or single-axis tracker equivalent), SMA inverters (or equivalent), Tesla battery systems (or equivalent), access roads, an electrical collection system, medium voltage transformers, and site security. The Luning Expansion Project will connect, via a 34.5 kV medium voltage feeder to the existing Luning Solar Energy Facility substation and thence via the existing gen-tie line to the existing NV Energy Table Mountain substation, located approximately one mile away.[33]

The Luning Expansion Project site is administered by the BLM, which has indicated that Liberty will be able to leverage the environmental review reports previously prepared for the existing Luning Solar Energy Facility for the BLM's environmental review of the Luning Expansion Project, thereby reducing the scope, time and costs of additional environmental work.[34] Other applicable federal, state and/or local permitting requirements will be resolved through the National Environmental Policy Act ("NEPA") process led by the BLM and will include stakeholders such as the U.S. Fish and Wildlife Service ("USFWS") and the Nevada Department of Wildlife.

Similarly, the development timeline and construction costs for the Luning Expansion Project will be reduced by Liberty's ability to utilize some of the existing infrastructure built for the existing Luning Solar Energy Facility, including sharing the use of the Luning Solar Energy Facility's O&M building and Liberty and NV Energy's execution of the Material Modification to the Luning Solar Energy Facility's interconnection agreement to allow the Luning Expansion

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[32] Chapter 2 (Testimony of Maruncic), p.1.

[33] Chapter 2 (Testimony of Maruncic), p.9.

[34] Chapter 2 (Testimony of Maruncic), p.2.

Project to share the Luning Solar Energy Facility's 120 kV gen-tie transmission line to the Table Mountain substation (which will require only relatively small modifications). In addition, the Material Modification review process determined that no transmission upgrades will be needed for NV Energy to deliver energy generated by the Luning Expansion Project to Liberty's service territory in California.

The cost-effectiveness analysis presented in the testimony in Chapter 4 assumes conservatively that the projected generation output from the Luning Expansion Project that is actually usable to serve Liberty's customers' load will be constrained below the theoretical maximum of 174,000 MWh per year because of the following factors:

- No Surplus Sales Constraint**.** The Luning Expansion Project is primarily designed to provide renewable energy during winter and evening periods while the existing Luning and Turquoise Solar projects currently serve daytime loads. The 2021 NV Energy ESA requires Liberty to balance its renewable generation with its actual load and prevents Liberty from selling surplus output during hours when its generation facilities' output exceeds Liberty's customers' hourly load. This constraint means that during certain hours, generation output from the Luning Expansion Project will need to be reduced below its theoretical maximum because it is not physically required to serve customer load. Conservatively, this could mean that approximately 22% of the theoretical maximum output of the Luning Expansion Project could be constrained in 2024.[35]
- Interconnection Capacity Constraint**.** As required by the Material Modification, the Luning Expansion Project and existing Luning Solar Energy Facility must be operated in a coordinated fashion to restrict the total output from the combined facilities (including battery charging and discharging) that can be received into the NV Energy system for redelivery to Liberty's California service territory during all hours to the interconnection and gen-tie facilities' maximum transfer capability of 50 MW.[36] This constraint means that during certain hours, generation output from the Luning Expansion Project will need to be reduced further below its theoretical maximum because it is not physically deliverable through the Luning interconnection facilities.[37]
- Nonetheless, as Liberty's load grows and the existing Luning Solar Energy Facility's solar production slowly degrades over its lifetime, the level of curtailments of the Luning Expansion Project are expected to decrease as well, which will permit the usable share of the Luning Expansion Project's theoretical

[35] Chapter 7 (Testimony of Liu), p.3.

[36] Chapter 2 (Testimony of Maruncic), pp.10-11.

[37] Chapter 7 (Testimony of Liu), p.1.

> maximum generation output to increase over time.[38] In addition, Liberty intends to investigate additional projects to further optimize the utilization of the Luning Expansion project – including but not limited to: demand management and increased interconnection that could lead to resiliency and reliability improvements located in the Liberty service territory.

Taking these constraints and future trends into account, Liberty has projected that the generation output of the Luning Expansion Project that is actually usable during its first year of operation in 2024 will be approximately 125,000 MWh per year, escalating thereafter at approximately 0.44% per year.[39] Further, Liberty commits to exploring other options for increasing the export possibilities for the Luning Expansion Project, such as increased interconnection and transmission, if it becomes available.

Finally, the Luning Expansion Project will use and follow the existing Luning Solar Energy Facility's Health and Safety Program, modified to address Luning Expansion Project specific manufacturers/modules, trackers, battery storage equipment, power inverters and transformers, etc.[40]

Liberty estimates that construction of the Luning Expansion Project will take approximately 12 months after all necessary permits and approval, including final Commission of this Application, have been obtained. That is why Liberty is requesting the Commission issue a final decision approving this Application no later than April 30, 2022, to provide sufficient time following Commission approval for Liberty to order long-lead time equipment (i.e., solar modules and battery storage components) and for the Luning Expansion Project to be built and placed in service, by the fourth quarter of 2023, which is required if Liberty's customers are to receive the maximum benefit of the proposed tax equity investment structure and the current 30% ITC.

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[38] Chapter 7 (Testimony of Liu), pp.3-4.

[39] Chapter 4 (Testimony of Hoekstra), pp.9-10; Chapter 7 (Testimony of Liu), pp.3-4.

[40] Chapter 2 (Testimony of Maruncic), p.12.

## B. Liberty will be the Project Developer, reducing the development costs of the Luning Expansion Project

Liberty has successfully overseen the construction and operation of the Luning Solar Energy Facility and the Turquoise Solar Facility and, therefore, is confident that, for the following reasons, it can develop the Luning Expansion Project without the need to hire a third-party independent developer, which also will reduce the costs of the Luning Expansion Project:

1. The Luning Expansion Project will use already developed deliverables and existing infrastructure associated with the Luning Solar Energy Facility;[41]
2. Liberty and its parent companies, APUC and/or Liberty Utilities, possess significant Project Development experience to manage Engineering, Procurement and Construction ("EPC") contracts;[42]
3. Project and construction risk will be put on the EPC contractor, with payments at significant milestones for the project limiting those risks to Liberty and its customers;[43]
4. By undertaking the Project Developer role, Liberty will save a significant amount of the usual project development fees.[44]

## C. Project Selection

As previously discussed, Liberty must place the Luning Expansion Project in service by December 31, 2023 in order to qualify for the current 30% federal ITC available to solar plus storage projects. For that reason, Liberty already has begun its outreach and solicitation process to identify EPC contractors that can timely, reliably and cost-effectively construct the Luning Expansion Project.[45]

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[41] Chapter 2 (Testimony of Maruncic).

[42] As previously discussed, Liberty requests that the Commission grant Liberty a waiver of Rule V(E) of the Commission's Affiliate Transaction Rules with respect to the possible use, if necessary, of the project development expertise of employees who also provide services to Liberty's parent companies, APUC and/or Liberty Utilities, such services to be provided at cost. D.17-12-008, pp.12-13 and OP 3.

[43] Chapter 2 (Testimony of Maruncic), p.3. The sole exception is, as described in Section V.C. of this Application, that Liberty and the EPC contractor will share the expected savings (and though unlikely, cost increases) of the actual costs of the solar modules and battery storage components.

[44] Chapter 2 (Testimony of Maruncic), p.3. Liberty also is considering hiring a third-party construction manager to oversee the EPC contractor's construction activities.

[45] Chapter 3 (Testimony of Maruncic), p.1-2.

As detailed in the testimony of Liberty witness Maruncic, Liberty conducted a solicitation and evaluation process with the assistance of Burns and McDonnell, a third-party engineering firm with significant experience with solar project diligence, design, and construction.[46] On August 24, 2020, Liberty issued a Request for Proposal ("RFP") for an EPC contract for the Luning Expansion Project. Liberty circulated the announcement to bidders in the industry, focusing, particularly, on bidders with experience in large scale battery storage construction.[47] No affiliate of Liberty or its parent companies were asked to submit a bid.[48]

Liberty initially received only two responsive bids and neither bidder was able (or willing) to provide firm prices for the major components, batteries and solar modules of the Luning Expansion Project. Both bidders claimed that, for a number of reasons, including the advancement of battery technology, the uncertainty of the 2020 election and the impact of the election on tariffs, firm prices could not be sufficiently determined for a purchase and delivery two years in the future.[49]

Hoping to receive more interest and more accurate pricing, Liberty reopened the RFP process for the EPC contract and extended the bid deadline to December 21, 2020.[50] This time, Liberty received four bids. One was an outlier, with estimated total construction costs of [redacted], while the other three were similar, estimating total construction costs of approximately [redacted]. However, the remaining three bidders all raised the same concerns about the inability to estimate firm prices for the battery and solar modules.[51] In order to remain on schedule to complete construction of the Luning Expansion Project by the end of 2023, Liberty has proposed, and received positive bidder response to the following additional conditions for the final EPC contract: (1) the EPC contract will include a "Guaranteed Maximum Price" which

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[46] Chapter 3 (Testimony of Maruncic), pp.1-4. The credentials of Burns and McDonnell are attached to Chapter 3 (Testimony of Maruncic), as Appendix A. Burns and McDonnell was also involved in Liberty's selection of the Luning Solar Energy Facility and the Turquoise Solar Facility.

[47] Chapter 3 (Testimony of Maruncic), p.1.

[48] Chapter 3 (Testimony of Maruncic), pp.3-4.

[49] Chapter 3 (Testimony of Maruncic), pp.2-4.

[50] Chapter 3 (Testimony of Maruncic), p.2.

[51] Chapter 3 (Testimony of Maruncic), pp.3-4.

would include estimated costs for the required batteries, solar modules and associated equipment, based on current, immediately delivered prices; and (2) if the actual costs for the delivered batteries and solar modules differ from the estimated costs included in the Guaranteed Maximum Price, Liberty and the EPC contractor will share the savings or additional costs.[52]

Considering that battery and solar modules prices have been declining in recent years and are expected to continue to decline, Liberty firmly believes that the actual costs for the delivered batteries and solar modules will be less than projected in the Guaranteed Maximum Price. If that occurs, Liberty's customers will receive 100% of Liberty's share of the savings, which is estimated to be [redacted] of the total savings. However, if, in the unlikely event that battery and solar module prices do increase beyond the estimates built into the EPC's Guaranteed Maximum Price, Liberty will share those price increases equally with the EPC contractor, meaning that Liberty's customers only will be responsible for [redacted] of the increased costs.[53]

When the final bids, with these new conditions, are received, Liberty will evaluate each project bid based on its pricing as well as a number of factors developed to best assess the project's overall viability, including the technologies proposed and the bidder's qualifications and experience, focusing on the likelihood of the bidder's ability to achieve commercial operations of the Luning Expansion Project by the end of 2023.[54]

Liberty expects to select the EPC contractor and finalize all details of the EPC contract in the first quarter of 2022.[55] Liberty will file a copy of the EPC contract with the Commission, as a supplement to this Application, for the Commission's review.

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[52] Chapter 3 (Testimony of Maruncic), pp.4-5.

[53] Chapter 3 (Testimony of Maruncic), pp.4-5.

[54] Chapter 3 (Testimony of Maruncic).

[55] Chapter 3 (Testimony of Maruncic), p.5.

### D. Project Financing

#### 1. Short Term Financing

As described by Liberty witness Melnyk, Liberty intends to finance the development and construction of the Luning Expansion Project through a Joint Venture arrangement, likely with the selected EPC contractor. The purpose for using a Joint Venture arrangement is to enable the Luning Expansion Project to secure financing during construction in a way that limits Liberty's upfront investment, mitigates financial risk and reduces Liberty's financing costs, providing savings to its customers.[56]

As currently being discussed, Liberty and the Joint Venture Partner ("JV Partner") will form a 50/50 limited liability partnership (the "Joint Venture") and through an intermediary entity ("HoldCo"), the Joint Venture will own the interests in an entity ("ProjectCo") that holds the rights and interests in the Luning Expansion Project. On a specified funding date ("Funding Date") prior to project financing being obtained, Liberty and JV Partner each will contribute approximately 5% of the Luning Expansion Project's capital cost into the Joint Venture as equity ("Funded Amount").[57]

Funding of construction activities above the Funded Amount prior to the project financing would be funded as debt by a loan from Liberty to the ProjectCo ("Liberty Loan"). The Liberty Loan is not expected to exceed [redacted].[58] The JV Partner would not be allowed to transfer any of its interests in the Joint Venture, HoldoCo or ProjectCo to any other entity, other than Liberty, at Liberty's option.[59]

After the Commercial Operation Date ("COD"), Liberty would have the right to purchase the JV Partner's 50% equity interest (the "Option"), for an amount determined under a formula

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[56] Chapter 5 (Testimony of Melnyk), pp.1-3.

[57] Chapter 5 (Testimony of Melnyk), p.1.

[58] Chapter 5 (Testimony of Melnyk), pp.1-2.

[59] Chapter 5 (Testimony of Melnyk), p.2.

that would be generally equal to the JV Partner's Funded Amount, plus a rate of return commensurate to their risk profile from the Funding Date until the exercise of the option.[60]

Liberty is planning to execute the JV structure documents in the second quarter of 2022.[61] Liberty will file a copy of the JV structure documents with the Commission, as a supplement to this Application, for the Commission's review.

**2. Long-Term Financing**

**a. The Tax Equity Investment Structure**

As Liberty witness Melnyk describes, a tax equity investment structure is a method of financing renewable energy projects to optimize the value in the near term of available tax incentives available for solar energy projects.[62] In a tax equity investment structure, large, tax-paying corporations (typically large banks and insurance companies) become equity partners in a solar project ("Tax Equity Partners"). In exchange for providing a significant portion of the capital investment of the partnership, the Tax Equity Partner receives the tax incentives (ITCs and Modified Accelerated Cost Recovery System ("MACRS")) from the project during the first 5-7 years of the project's life and cash distributions as part of its return and recovery of the capital invested. Utilizing capital from tax equity investors provides a benefit to Liberty's customers as a significant portion of the benefits the Tax Equity Partner receives are in the form of tax benefits which cannot be used by Liberty's customers.[63] Liberty estimates that the savings resulting from the use of a tax equity structure for the Luning Expansion Project will be approximately [redacted] over a 10 year period in Liberty's integrated resource plan and up to [redacted] over the 35 year expected life of the Luning Expansion Project.[64]

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[60] Chapter 5 (Testimony of Melnyk), p.2.

[61] Chapter 5 (Testimony of Melnyk), p.3.

[62] Chapter 5 (Testimony of Melnyk), pp.3-4

[63] Chapter 5 (Testimony of Melnyk), pp.4-6.

[64] Chapter 5 (Testimony of Melnyk), p.3.

**b. The Capital Investment by the Tax Equity Partner Will Enable Liberty to Reduce the Costs of the Luning Expansion Project for the Benefit of its Customers**

The federal ITC – currently offering a 30 percent tax credit on the capital cost of qualifying commercial solar and battery systems – is one of the most important policy mechanisms promoting the development of solar energy in the United States. Under current law, the 30% ITC will be available for utility-scale solar projects that started construction in 2019 and are placed into service before December 31, 2023.[65] Projects that miss that deadline for being placed into service will only qualify for a reduced ITC tax credit of 26%.[66] In addition to the ITC, the Luning Expansion will also qualify for accelerated depreciation using the five-year MACRS schedule.[67] Depreciation is a deductible expense that reduces taxable income, decreasing income tax payable by Liberty. Depreciating the assets of the Luning Expansion Project over a five-year timeframe (compared to the approximately 35-year life of the project) creates income tax losses for the Luning Expansion Project in its first five years of commercial operations.[68]

In decisions approving utility ownership of renewable energy facilities, the Commission has required that California utilities seek to maximize the availability of existing tax incentives for the benefit of their customers. For example, in approving PG&E's solar PV utility ownership program, the Commission mandated that PG&E "seek to maximize the use of tax benefits available to support solar development, including the Investment Tax Credit and the Modified Accelerated Cost Recovery System," the benefits of which the Commission directed "should accrue to ratepayers to the extent practicable."[69] In approving Liberty's Luning Solar Project application, the Commission recognized the benefit of Liberty structuring its purchase and operation of the Luning Solar Project in a way that would "allow the benefits of the ITC to be

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[65] Chapter 5 (Testimony of Melnyk), pp.3-4. Liberty started construction of the Luning Expansion Project by purchasing 12 pad mount transformers in 2019, thereby satisfying the first ITC qualification requirement. Chapter 5 (Testimony of Melnyk), p.4.

[66] 26 U.S.C. § 48(a)(2)(A)(ii).

[67] 26 U.S.C. section 168.

[68] Chapter 5 (Testimony of Melnyk), p.7.

[69] D.10-04-052, OP 6.

returned to ratepayers more quickly."[70] In D.17-12-008, the Commission approved a similar structure allowing Liberty's Turquoise Solar Project to obtain the benefits of ITC as well.

Tax normalization rules of the IRS impair the ability of a utility that directly owns a renewable energy project to maximize for its customers the benefits the ITC offers. While tax incentives are immediately available to the owner of a renewable energy project, such as a solar and storage projects, IRS regulations prohibit utilities from flowing these benefits immediately to their customers.[71] To retain eligibility for the tax incentives, the utility owner must "normalize" the tax incentives by spreading their benefit over the expected life of the project. For example, if Liberty directly owned the Luning Expansion Project without a Tax Equity Partner, Liberty would only be able to credit its customers with 1/35th of the value of the ITC each year (assuming a 35-year project life). As a result, Liberty's customers would lose, in the near term, the economic value otherwise associated the 30 percent ITC if Liberty were required to directly own the Luning Expansion Project without a Tax Equity Partner.[72]

However, by using a Tax Equity Partner, Liberty will be able to reduce the amount it places into rate base by the amount of capital contribution made by the Tax Equity Partner which, in turn, reflects the economic value of the Tax Equity Partners ability to utilize the tax credits in the near term. Because the Tax Equity Partner is able to realize this additional "time value of money" benefit, its capital contribution will reduce costs to ratepayers throughout the life of the project.[73]

**c. The Structure of the Tax Equity Participation**

The Tax Equity Partner, in return for its currently anticipated [redacted] investment,[74] will obtain a partnership interest in the Luning Expansion Project. Liberty anticipates that a partnership interest in the Luning Expansion Project will need to provide the Tax Equity Partner

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[70] D.16-01-021, p.36.

[71] D.16-01-021, p.12, fn. 23.

[72] Chapter 5 (Testimony of Melnyk), p.6.

[73] Chapter 5 (Testimony of Melnyk), p.6.

[74] Chapter 5 (Testimony of Melnyk), p.8.

with: (i) [redacted] of the ITC;[75] (ii) some amount of the accelerated depreciation benefits; and (iii) partnership distributions in an annual amount equal to approximately [redacted] of the Tax Equity Partner's initial investment ("Tax Equity Partner Distribution"), for a period that typically extends a short time beyond the fifth anniversary of commercial operations.[76]

This tax equity structure will require the creation of a separate Luning Expansion Project Company to own and operate the Luning Expansion Project. Prior to the Buy-Out, the Luning Expansion Project Company will be jointly owned by both Liberty and the Tax Equity Partner. Since the Luning Expansion Project Company will be a separate legal entity distinct from Liberty, Liberty and the Luning Expansion Project Company will execute a hedge ("Luning Hedge") by which Liberty will purchase 100% of the Luning Expansion Project's generation for its customers. The payments that Liberty will make to the Luning Expansion Project Company under the Luning Hedge, combined with the sale of energy to NV Energy, will constitute the revenue of the Luning Expansion Project Company.[77]

The partnership agreement between Liberty and the Tax Equity Partner ("Tax Equity Partnership Agreement") will provide that the Luning Expansion Project Company will use the revenues paid by Liberty in accordance with the Luning Hedge to pay Liberty's Project Operating Expenses, which Liberty will solely provide for the entire life of the Luning Expansion Project, including during the five-year Tax Equity Period. After accounting for Project Operating Expenses, the Tax Equity Partnership Agreement will provide for the Luning Expansion Project Company to make the Tax Equity Partner Distributions to the Tax Equity Partner. After paying the distribution to the Tax Equity Partner, the Luning Expansion Project Company will distribute the remainder of its revenues as a distribution to Liberty.[78]

Liberty anticipates, based on the current tax equity market, that it will contribute approximately [redacted] of the Luning Expansion Project's total Project Cost of [redacted] or

[75] Liberty will receive the remaining 1% ITC.

[76] Chapter 5 (Testimony of Melnyk), p.6.

[77] Chapter 5 (Testimony of Melnyk), p.7.

[78] Chapter 5 (Testimony of Melnyk), p.7.

approximately [redacted] (i.e., [redacted] of [redacted]), as may be adjusted, and the Tax Equity Partner will contribute approximately [redacted] of the total Project Cost or approximately [redacted] (i.e., [redacted] of [redacted]), as may be adjusted.[79] The Tax Equity Partner would receive an annual amount equal to approximately [redacted] of the Tax Equity Partner's initial investment as the Tax Equity Partner Distribution from the Luning Expansion Project. Assuming that the Tax Equity Partner's contribution will equal [redacted] of the total Project Cost, the annual amount of aggregate Tax Equity Partner Distribution will be approximately [redacted].[80]

However, these contribution amounts are only estimates for now, as Liberty cannot seriously engage in commercial negotiations with a potential Tax Equity Partner until the Commission approves this Application and the overarching project approach has secured a high degree of regulatory certainty. Liberty will continue to survey the market to identify potential Tax Equity Partners that can offer the best financial terms for Liberty's customers until that occurs, at which time Liberty will then select a Tax Equity Partner and negotiate the Tax Equity Partnership Agreements with that counterparty.[81]

#### d. Post-Tax Equity Partnership

Liberty will have the right to purchase the Tax Equity Partner's residual ownership interest in the Luning Expansion Project Company shortly after the end of the five-year Tax Equity Period. The purchase price (i.e., "Buy-Out Payment") for the Tax Equity Partner's residual ownership interest in the Luning Expansion Project (typically five percent) would be calculated based on a corresponding percentage of the Project's "fair market value." At the present time, Liberty projects that the Buy-Out payment for the Luning Expansion Project will be approximately [redacted].[82]

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[79] Chapter 5 (Testimony of Melnyk), p.8.

[80] Chapter 5 (Testimony of Melnyk), p.8.

[81] Chapter 5 (Testimony of Melnyk), p.8.

[82] Chapter 5 (Testimony of Melnyk), p.7.

Upon exercising this right and paying the Buy-Out Payment, Liberty would acquire 100% direct ownership of the Luning Expansion Project Company and thereby the entire Luning Expansion Project. At that point, the obligation to pay the annual Tax Equity Partner Distribution would terminate and the Luning Expansion Project would be owned by Liberty just like any other utility-owned generation resource.[83] Liberty will pay, and, therefore, should be allowed to recover through its general rates, its costs to own, operate, and maintain the Luning Expansion Project like any other utility cost-of-service facility.

#### e. The Commission has Approved Similar Tax Equity Investment Structures for Liberty's Luning Solar Energy Facility and Turquoise Solar Facility

In D.16-01-021 and D.17-12-008, the Commission approved and Liberty successfully employed the same type of tax equity structure for the development and acquisition of the Luning Solar Energy Facility and Turquoise Solar Facility as it intends to employ for the development and acquisition of the Luning Expansion Project. In particular, the Tax Equity Partnership created for the Luning Solar Energy Facility is expected to end in 2022 and the Luning Solar Energy Facility will become wholly owned by Liberty at that time.[84] For these reasons, Liberty fully expects that its prior experience using this type of tax equity structure will help Liberty streamline and improve the tax equity financing process for the Luning expansion Project.

As part of the Commission's approval of the Luning Solar Energy Facility, the Commission ordered that Liberty file Tier 2 Advice Letters providing the final, executed project agreements and all tax equity partner-related agreements for Commission review no later than ten days after execution of the final documents.[85] Similarly, in its decision approving the settlement agreement for the Turquoise Project, the Commission noted that "[c]onsistent with the Commission's prior direction in D.16-01-021, Liberty proposes to file the asset management service agreement and other tax-equity related agreements to the Commission via a Tier 2

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[83] Chapter 5 (Testimony of Melnyk), p.8.

[84] Chapter 5 (Testimony of Melnyk), pp.8-9

[85] D.16-01-021, OP 1(c).

Advice Letter when such agreements are finalized."[86] Therefore, Liberty similarly requests that the Commission authorize Liberty to file a Tier 2 Advice Letter providing the final, executed Tax-Equity Partner-related agreements for Commission review subject to the same conditions.

## VI. RATEMAKING

Liberty is not requesting, in this Application, that the Commission authorize Liberty to increase or change any existing rates. Rather, Liberty requests that the Commission authorize Liberty to seek recovery for the costs it will incur to develop, operate and maintain the Luning Expansion Project in other, relevant proceedings, as the Commission previously authorized Liberty to do for the recovery of its Luning Solar Energy Facility and Turquoise Solar Facility costs.[87]

Specifically, Liberty requests that the Commission authorize Liberty to recover its costs associated with the Luning Expansion Project in the following manner:[88]

1. Authorize Liberty to recover its investment in and the costs to operate and maintain the Luning Expansion Project as utility-owned generation assets throughout the entire life of the Project.
2. In accordance with Pub. Util. Code section 399.14, designate [redacted] as the aggregate Maximum Reasonable Cost ("MRC"), as may be adjusted in the future, for Liberty's capital costs of the Luning Expansion Project;
3. Authorize Liberty to request, in a Tier 2 Advice Letter, within 30 days following mechanical completion of the Luning Expansion Project, to place, into rate base, Liberty's actual capital investment in the Luning Expansion Project, up to the designated MRC.
4. Authorize Liberty to recover the Luning Expansion Project Operating Expenses in general rates for the life of the Luning Expansion Project and allow Liberty to seek rate recovery for these costs in the same Tier 2 Advice Letter that Liberty would use to seek authorization to recover its capital investment costs:
    a. Costs to operate and maintain the Luning Expansion Project ("O&M Costs")

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[86] D.17-12-008, at p.13

[87] Chapter 6 (Testimony of Marsh).

[88] Chapter 6 (Testimony of Marsh), pp.1-2.

b. Administrative and general costs associated with the operation of the Luning Expansion Project, including land costs and insurance costs ("A&G Costs"); and

c. Property tax associated with the ownership of the Luning Expansion Project ("Property Tax").

5. Authorize Liberty to record the costs it will incur resulting from the distributions that the Luning Expansion Project Company will make to the Tax Equity Partner during the Tax Equity Period ("Tax Equity Partner Distribution") and the payment Liberty expects to make to purchase the Tax Equity Partner's ownership interest in the Luning Expansion Project Company (one-time "Buy-out Payment") in its Energy Cost Adjustment Clause ("ECAC") account and to recover these costs in accordance with its ECAC tariff.

### A. For Ratemaking Purposes, the Luning Expansion Project Should be Considered Functionally as Utility-Owned Generation

As previously described in Section V.D.2. of this Application, in order to obtain tax equity financing for the Luning Expansion Project and allow Liberty to provide its customers with solar energy at a competitive cost, Liberty seeks to create the Luning Expansion Project Company, which will structurally "own" the Luning Expansion Project during the Tax Equity Period.[89]

As required by the tax equity financing arrangement, Liberty and the Luning Expansion Project Company will execute a hedge ("Luning Hedge") pursuant to which the Luning Expansion Project Company will sell all the energy generated by the Luning Expansion Project to Liberty. Under other circumstances, Liberty would seek to recover the Luning Hedge costs as purchased energy costs through its ECAC and, after Liberty's transition to direct ownership of the Luning Expansion Project following the end of the Tax Equity Period, Liberty would then seek to recover both its ownership and operating costs through its general rates.[90]

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[89] Chapter 6 (Testimony of Marsh), p.2.

[90] Chapter 6 (Testimony of Marsh), p.2.

However, while the Tax Equity Partner holds a structural "ownership" interest in the Luning Expansion Project, it has no responsibility for, and serves no function in, operating or ensuring the safety of the Luning Expansion Project. Liberty will be solely responsible for operating and ensuring the safety of the Luning Expansion Project during its entire 35-year life, including during the Tax Equity Period. Therefore, Liberty requests that the Commission authorize Liberty to treat, for ratemaking purposes, its investment in, and its costs to own, operate, and maintain the Luning Expansion Project, as costs associated with utility-owned generation assets, and recover all those costs in its general rates.[91]

The Commission has already considered and approved the same type of tax equity financing structure and requested ratemaking treatment for Liberty's Luning Solar Energy Facility and Turquoise Solar Facility.[92] The Commission determined, in approving the provisions of the Luning Settlement Agreement which authorized Liberty to implement, as of the first day of commercial operation, general rates/rate base ratemaking to recover its costs associated with Luning generation, that:

> The Agreement adopts Liberty Utilities' request that it be allowed to recover through general rates and rate base accounting its costs the same way during and after the tax equity period to apply consistent ratemaking treatment over the life of the project. The proposed ratemaking reflects traditional cost-of service ratemaking principles applied to all of the costs incurred by Liberty Utilities in connection with the two-step acquisition of the Luning facility and its operations.[93]

As the Commission described,

> The requested treatment is based on the grounds that, from an operational perspective, Liberty Utilities will have possession of the Luning facility and function as if it is the owner-operator, including having all of the operating and safety responsibilities of the 100%

[91] Chapter 6 (Testimony of Marsh), p.3.

[92] D.16-01-021 (Luning Solar Energy Facility) and D.17-12-008 (Turquoise Solar Facility).

[93] D.16-01-021, p.33. For the Turquoise Solar Facility, the Commission determined that the terms of that All-Party Settlement were "very similar to the terms of the prior settlement agreement entered into between Liberty and ORA with respect to the Luning Project, which the Commission approved in D.16-01-021." D.17-12-008, pp.10-11.

> owner of the project as of January 1, 2017. Additionally, Liberty Utilities will purchase and have rights to all of the bundled energy generated by the Luning project, and be responsible for payment of taxes and lease payments owed by the SPDC. Liberty Utilities contends the arrangement is "largely indistinguishable" from UOG. Therefore, the Parties agree that traditional cost-of-service ratemaking principles should apply to both the capital investment and various other costs Liberty Utilities seeks to recover.[94]

Liberty has structured the Luning Expansion Project to be entirely consistent with the same factors that the Commission based its prior approval of the ratemaking treatment for the Luning Solar Energy Facility and Turquoise Solar Facility. Therefore, the Commission should allow Liberty as of the first day of commercial operation of the Luning Expansion Project, to treat its investment in and costs associated with the acquisition, ownership, and operation of the Luning Expansion Project as a utility-owned generation asset for ratemaking purposes.

### B. The Luning Expansion Project Qualifies for Commission Approval Pursuant to Pub. Util. Code Section 399.14

As described above, Liberty requests that the Commission treat the Luning Expansion Project for ratemaking purposes as if it is a utility-owned project. Recognition of the Luning Expansion Project as utility-owned generation would allow the Commission to authorize Liberty to acquire, own and operate the Luning Expansion Project pursuant to Pub. Util. Code section 399.14, in particular, subsection (c), which provides that:

> In approving any application by an electrical corporation for approval to construct, own, and operate an eligible renewable energy resource, the commission shall apply traditional cost-of-service ratemaking. When applying traditional cost-of-service ratemaking, the commission, in the certificate authorizing the new construction, shall specify the maximum cost determined to be reasonable and prudent for the construction of the facility and the cost of initial operation of the facility. Upon a filing by the electrical corporation, the commission may authorize an increase in the maximum cost of construction if it determines that the cost has in fact increased, that the cost increase is determined to be reasonable and prudent, and that the present or future public convenience or necessity require construction of the project at the increased cost.

[94] D.16-01-021, p.20.

As Liberty witness Maruncic describes, the estimated total Project Cost of the Luning Expansion Project is [redacted].[95] Assuming a [redacted] contribution by the Tax Equity Partner, Liberty would make capital investments in the Luning Expansion Project of approximately [redacted], as may be adjusted.[96] On that basis, Liberty currently forecasts a net revenue impact of approximately [redacted] when the Luning Expansion Project is added into rates via the advice letter process. This revenue increase translates to a revenue impact of approximately 4.2% compared to Liberty's currently authorized total revenue requirement. However, the actual revenue impact will depend on Liberty's base revenue requirement at the time the Luning Expansion Project is added into rates.[97]

After the Liberty Expansion Project has been completed and entered commercial operation, if the actual amount of Liberty's aggregate capital contribution for the Luning Expansion Project is below the MRC the Commission designates, Liberty will seek to include only the actual amount of its capital investment into its rate base.[98] However, if the amount of Liberty capital investment required for the Luning Expansion Project ultimately exceeds the MRC, then, pursuant to Pub. Util. Code sections 399.14(c) and 1005.5(b), Liberty will request that it be allowed to increase the authorized MRC and to recover the increased costs in rates, provided that Liberty demonstrates it has satisfied the conditions set forth in Pub. Util. Code section 399.14(c).[99]

In addition, Pub. Util. Code section 399.14(b) requires that the Commission find that the Luning Expansion Project (1) "utilizes a viable technology at reasonable cost;" and (2) "provides comparable or superior value to ratepayers when compared to then recent contracts for generation provided by eligible renewable energy resources." As previously described, the Luning Expansion Project satisfies both conditions. As Liberty witness Hoekstra determined, "Solar and storage resources, in various configurations, provide the least-cost, best-fit new

[95] Chapter 3 (Testimony of Maruncic), pp.5-6;

[96] Chapter 5 (Testimony of Melnyk), p.8.

[97] Chapter 6 (Testimony of Marsh), p.7.

[98] Chapter 6 (Testimony of Marsh), p.4.

[99] Chapter 6 (Testimony of Marsh), p.4.

resource options currently available to serve Liberty's customers."[100] Therefore, "[g]iven the existing limitations on the NV Energy transmission system and the lack of available long-term transmission capacity, the only feasible technology option for supplying additional clean, renewable energy to Liberty in the near term is Solar paired with Storage as in the proposed Luning Expansion Project."[101] As Liberty's witness Hoekstra concludes, "Liberty does not have any alternatives to the Luning Expansion Project that are clearly viable within the development and commercialization timeframe needed to advance progress toward achievement of RPS and GHG Emissions reductions targets, and also to capture the fleeting opportunity to realize the cost and rate benefits of the ITC for Liberty's customers."[102]

### C. Deferral of Rate Recovery for Liberty's Capital Investment until after the Luning Expansion Project is placed into service.

Liberty projects that the Luning Expansion Project will become operational in the third or fourth quarter of 2023. Therefore, Liberty requests that the Commission authorize, in this Application, that Liberty be allowed to request, by a future Tier 2 Advice Letter, the authority to include Liberty's capital investment in the Luning Expansion Project, up to the amount of the authorized MRC, into its rate base 30 days after completion of the Luning Expansion Project.[103] Consistent with the ratemaking treatment the Commission approved for the Luning Solar Energy Facility, the rate base addition would not be effective until after the Luning Expansion Project reaches commercial operation and begins providing energy to Liberty customers.

### D. Cost Recovery for Luning Expansion Project Operating Expenses

During the Tax Equity Period, the Luning Expansion Project Company will have the initial payment responsibility for the Project's Operating Expenses.[104] However, under the tax equity structure, while the Luning Expansion Project Company will incur and book the Luning Expansion Project Operating Expenses, Liberty is ultimately responsible for the Project

[100] Chapter 4 (Testimony of Hoekstra), p.3.

[101] Chapter 4 (Testimony of Hoekstra), p.12.

[102] Chapter 4 (Testimony of Hoekstra), p.13.

[103] Chapter 6 (Testimony of Marsh), p.1.

[104] Chapter 6 (Testimony of Marsh), pp.4-6.

Operating Expenses, which represent a real cost for Liberty of allowing its customers to benefit from the RPS energy the Luning Expansion Project will deliver. Absent the tax equity structure, Liberty would obtain rate recovery for Luning Expansion Project Operating Expenses in general rates. Therefore, Liberty requests that, for ratemaking purposes, the Commission disregard the tax equity structure and authorize Liberty as of the first day of commercial operation to recover the costs it incurs for Luning Expansion Project Operating Expenses as if it were the 100% owner of the Luning Expansion Project.[105]

This ratemaking treatment also would allow Liberty to recover Project Operating Expenses in a consistent manner throughout the Luning Expansion Project's operating life (i.e., once Liberty pays the Buy-Out Payment, Liberty will become the 100 percent owner of the Luning Expansion Project and will recover the Project's Operating Expenses as general rates in its general rate case proceedings). Liberty proposes to use the same ratemaking treatment for the Luning Expansion Project's Operating Expenses as the Commission previously approved for Liberty's recovery of the Turquoise Solar Facility's operating expenses, i.e., using the same Tier 2 Advice Letter that Liberty would use to seek authorization to recover its capital investment costs.[106]

Liberty currently projects that during the first year of operations, the Luning Expansion Project's Operating Expenses will be approximately [redacted], escalating each year thereafter by approximately [redacted] per year.[107]

### E. Cost Recovery for the Tax Equity Partner Expenses

The Tax Equity Partner will receive the following benefits in return for its contribution to the capital costs to purchase the Project: (1) [redacted] of the ITC; (2) some amount of the accelerated depreciation; (3) Tax Equity Partner Distributions; and (4) a one-time Buy-Out Payment.[108]

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[105] Chapter 6 (Testimony of Marsh), p.5.

[106] D.17-12-008. Conclusions of Law, no.2.d; Chapter 6 (Testimony of Marsh), pp.6-7.

[107] Chapter 3 (Testimony of Maruncic), p.6; Chapter 6 (Testimony of Marsh), pp.5-6.

[108] Chapter 5 (Testimony of Melnyk), pp.6-8.

Liberty requests that the Commission authorize it to recover the Tax Equity Partner Distributions and one-time Buy-Out Payment through its ECAC mechanism.[109] The Tax Equity Partner Distribution represents a real cost to Liberty of being able to obtain and deliver RPS generation from the Luning Expansion Project to its customers. The one-time Buy-Out Payment also represents a direct payment by and cost to Liberty and is cost-effective, from the perspective of Liberty's customers, because it relieves Liberty (and ultimately its customers) of the financial responsibility for the Tax Equity Partner Distribution following the end of the Tax Equity Period.[110]

Liberty believes the use of its ECAC account is the most appropriate and equitable ratemaking mechanism for recovering the Tax Equity Partner and one-time Buy-Out Payment costs as these costs do not represent a capital investment by Liberty and so should not be reflected in base rates or earn a return.[111] In authorizing Liberty to recover similar Tax Equity Partner Distribution and Buy-Out Payments for its Luning project, the Commission agreed that "the ECAC treatment for TEP-related expenses are all consistent with reasonable ratemaking mechanisms applied by the Commission to ensure that only actual costs are recovered."[112] Accordingly, Liberty proposes to record its costs associated with the Tax Equity Partner Distribution and the Buy-Out Payment in its ECAC account in the month they are incurred.[113]

### F. No New Ratemaking is Required for the Costs to Deliver Luning Expansion Project Generation to Liberty's Service Territory

Under the NV Energy Services Agreement, Liberty pays NV Energy a price per kilowatt ($/kW) "Transmission Charge" for delivering energy from Nevada supply sources into Liberty's California service territory. The amount of the Transmission Charge is indifferent to whether NV Energy is delivering energy from its own supply portfolio or delivering RPS-energy

[109] Chapter 6 (Testimony of Marsh), pp.2, 6-7.

[110] Chapter 6 (Testimony of Marsh), p.6.

[111] Chapter 6 (Testimony of Marsh), pp.6-7.

[112] D.16-01-021, p.34.

[113] Chapter 6 (Testimony of Marsh), p.6. The Commission authorized Liberty to recover Tax Equity Partner Distributions and Buy-Out payments in the same manner for the Turquoise Solar Facility. D.17-12-008, p.19.

generated to be generated by the Luning Expansion Project.[114] Liberty currently recovers the entirety of its monthly payments to NV Energy, including the Transmission Charge, through its ECAC mechanism. Thus, NV Energy's delivery of RPS-generation from the Luning Expansion Project does not require the introduction of a new ratemaking mechanism since the amount of the Transmission Charge does not vary depending on the source of the generation.[115]

## VII. OWNERSHIP AND OPERATION OF THE LUNING EXPANSION PROJECT IS CONSISTENT WITH AND ADVANCES COMMISSION POLICIES FOR SUPPLY DIVERSITY

Liberty's ownership and operation of the Luning Expansion Project is consistent with Commission policies for encouraging utility-owned generation and the diversification of utility supply sources. While NV Energy has proven to be a generally reliable supplier, there is always some risk in relying on one source for essentially all electric supply. Accordingly, Liberty's ownership of the Luning Expansion Project will provide an important supply diversity benefit.

The Commission has recognized that "one particular benefit of UOG is that it is dedicated to the ratepayers throughout the useful life of the facility."[116] The Commission emphasized that "[a]s we move toward reducing greenhouse gas emissions in the energy sector, renewable UOG will continue to play an important role in meeting California's energy needs with alternative clean energy."[117] By approving Liberty 's purchase of and ratemaking treatment for the Luning Expansion Project, the Commission will continue to provide Liberty's customers with cost-competitive and stable sources of RPS energy for years to come.

Finally, Liberty fully intends, as part of its purchase of the Luning Expansion Project, to advance the state's goal to "aid the interests of women, minority, disabled veteran, and LGBT

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[114] Chapter 6 (Testimony of Marsh), p.7.

[115] Chapter 6 (Testimony of Marsh), p.7.

[116] D.09-06-049, p.16.

[117] D.09-06-049, p.16.

business enterprises"[118] and the Commission's policy for increasing supplier diversity in utility procurements.[119]

## VIII. INFORMATION REQUIRED BY COMMISSION RULES

### A. Identification of Statutory Authority

Liberty files this Application pursuant to Rule 3.1, Section 399.14, and prior decisions, orders, and resolutions of this Commission.[120]

### B. Legal Name and Principal Place of Business; Correspondence or Communication Regarding this Application

Liberty is a California limited liability company. It has its principal place of business at 933 Eloise Avenue, South Lake Tahoe, California 96150.

All correspondence and communications regarding this Application should be addressed or directed as follows:

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[118] Pub. Util. Code §§8281-8286.

[119] General Order 156.

[120] Liberty does not believe the Commission's General Order ("G.O.") 131-D applies to the requests in this Application because Liberty is not proposing to construct an electric generating plant in California. Nonetheless, Liberty provides certain information in this Section VIII required by G.O. 131-D because it could be relevant to the Commission's analysis of the requests Liberty makes in this Application.

### C. Scoping Memo; Categorization; Hearings; Issues to be Considered; and Proposed Schedule

Pursuant to Rule 2.1(c), Liberty proposes the following categorization, need for hearings, issues to be considered, and proposed schedule.

#### 1. Proceeding Category

In accordance with Rules 1.3(f), 2.1(c) and 7.1(e)(2), Liberty requests that this Application be categorized as a "ratesetting" proceeding within the meaning of Rules 1.3(f). In this Application, Liberty requests that the Commission establish mechanisms for it to seek recovery for certain costs it will incur to purchase and operate the Luning Expansion Project. This Application does not raise questions of policy or rules of general applicability or adjudicate any allegations or violations of law.

#### 2. Need for Hearings

Liberty does not believe that approval of this Application will require hearings. Liberty has provided ample information, analysis, and documentation that provide the Commission with a sufficient record upon which to grant the relief requested on an ex parte basis.

However, if the Commission finds that hearings are necessary, Liberty respectfully requests that such hearings be concluded as soon as practicable to enable the Commission to issue a final Commission decision granting Liberty approval to acquire, own and operate the Luning Expansion Project and otherwise approve this Application no later than April 30, 2022.

#### 3. Issues to be Considered

The following issues should be considered in this proceeding:

- Should the Commission approve a Maximum Reasonable Cost for the Luning Expansion Project of [redacted]?
- Should the Commission authorize Liberty to enter into a Joint Venture agreement with the JV Partner to finance the Luning Expansion project and incur associated Joint Venture agreement expenses?

- Should the Commission authorize Liberty to enter into Tax Equity Partnership Agreements with respect to the Luning Expansion Project and incur the associated Tax Equity Partner Expenses?
- Should the Commission authorize Liberty to enter the Luning Hedge and thereby obtain energy from the Luning Expansion Project?
- Should the Commission assess the Luning Expansion Project for ratemaking purposes as utility-owned assets throughout the entire life of the project?
- Should the Commission approve Liberty's proposals to recover through rates its costs to acquire, own, and operate the Luning Expansion Project?

#### 4. Proposed Schedule

Liberty requests that the Commission approve the following proposed schedule:

| Date | Action Item |
|---|---|
| April 9, 2021 | Application file date |
| April 2021 | Daily Calendar Notice of Application |
| May 2021 | Protests Due |
| May 2021 | Reply to Protests Due |
| June 2021 | Prehearing Conference |
| June 2021 | ALJ/AC issues Scoping Memo |
| TBD 2021 | Intervenor Testimony Due |
| TBD 2021 | Concurrent Rebuttal Testimony |
| TBD 2021 | Evidentiary Hearings (if needed) |
| TBD 2021 | Opening Briefs |
| TBD 2021 | Reply Briefs |
| Q1/Q2 2021 | Proposed Decision Issued |
| Q1/Q2 2021 | Comments Due on Proposed Decision |
| Q1/Q2 2021 | Reply Comments on Proposed Decision |
| Q2 2022 | Commission issues Final Decision |

### D. Organization and Qualification to Transact Business

Pursuant to Rule 2.2 and Public Utilities Code section 1004, a copy of the Articles of Organization of Liberty has previously been filed with the Commission as part of A.14-04-037, as Exhibit A. A Certificate of Status for Liberty issued by the California Secretary of State is attached to this Application as **Exhibit A**.

### E. Statement of Proposed Rate Changes

Pursuant to Rule 3.1(h), Liberty states that it is not proposing any change in rates in this proceeding.

### F. Notice and Service of Application

Liberty has given, or will give, proper notice within the time limits prescribed in the Commission's Rules of Practice and Procedure. In addition, Liberty will provide electronic copies of this Application to representatives in the Energy Division and PAO.

### G. Schedule of Certification, Construction, and Land Acquisition

Chapter 2 (Testimony of Maruncic) includes a schedule showing the program for design, material acquisition, construction, testing, and operating dates.

### H. Site Information and Full Description and Map of the Proposed Construction

Pursuant to Rule 3.1(a) and (c), Liberty offers the following information: Chapters 2 and 3 (Testimony of Maruncic) contain maps of the proposed construction as well as timetables identifying the design, construction, completion, and operation dates for each major component of the Luning Expansion Project.

### I. Competing Entities and Cities and Counties Within Which Service Will be Rendered

Rule 3.1(b) requires a list of the names and addresses of all utilities, corporations, persons or other entities with which the proposed construction is likely to compete. The proposed Luning Expansion Project will be operated by Liberty at all times and owned exclusively by Liberty at all times after the Tax Equity Period.

In constructing the Luning Expansion Project, Liberty will not compete with any other entity. Liberty will use the energy generated to serve its customers within its service territory in which it has the exclusive rights to provide retail electric service.

### J. Required Franchises and Health and Safety Permits

Pursuant to Rule 3.1(d), a list of agencies from which approvals for the proposed Luning Expansion Project have been or must be obtained, and the franchises and such health and safety permits that public authorities have required or may require for the proposed Project construction are set forth in Chapter 2 (Testimony of Maruncic).

### K. Statement of Estimated Cost of the Project

Pursuant to Rule 3.1(f) and (l)(3), Liberty offers the following information: The estimated total Project Cost for the Luning Expansion Project is [redacted]. Of the Luning Expansion Project's total Project Cost of [redacted], Liberty intends to contribute approximately [redacted] (i.e., [redacted]), with the Tax Equity Partner contributing the remaining balance of approximately [redacted] (i.e., [redacted]). Therefore, Liberty requests that the Commission set [redacted] as Liberty's Maximum Reasonable Cost for the Luning Expansion Project.

Liberty currently estimates that during the first year of operations, the Luning Expansion Project's Operating Expenses will be approximately [redacted], escalating each year thereafter by approximately [redacted] per year.[121]

### L. Load and Resource Data and Existing Rated and Effective Operating Capacity

Pursuant to Rules 3.1(l)(1) and (2), Liberty states that the nominal output for the Luning Expansion Project solar facility is 60 MW and for the battery storage facility is 240 MWh. The estimated net capacity factor of the Luning Expansion Project is approximately 32.6 percent.[122]

### M. Financial Ability to Render Proposed Service and Finance the Luning Expansion Project

Pursuant to Rule 3.1(g), Chapter 5 (Testimony of Melnyk) addresses the financial ability of Liberty to acquire, own, and operate the Project. Liberty will finance the development,

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[121] Chapter 3 (Testimony of Maruncic), p.6; Chapter 6 (Testimony of Marsh), pp.5-6.

[122] Chapter 2 (Testimony of Maruncic), p.1.

construction, ownership, and operation of the Luning Expansion Project through short-term financing prior to COD using a Joint Venture structure and long-term financing using a tax equity investment structure using capital contributed by a Tax Equity Partner in combination with Liberty's normal means of funding utility operations.

### N. Safety and Reliability Information

The Luning Expansion Project is expected to use approximately 224,000 First Solar PV modules (or silicon cell equivalent), ATI Trackers (or single-axis tracker equivalent), SMA inverters (or equivalent), Tesla battery systems (or equivalent). These technologies are highly efficient, pose minimal technology risk and are considered safe and reliable. Additional information regarding safety and reliability is included in Chapter 2 (Testimony of Maruncic).

### O. Cost Analysis and Financial Impact of Project

A comparison of the costs of the Project with the costs of current and recent alternatives for renewable energy within the NV Energy Balancing Authority is provided in Chapter 4 (Testimony of Hoekstra).

### P. CEQA Compliance

The Commission should find that there is no possibility that construction of the Luning Expansion Project will have a significant effect on the California environment. As prescribed by Pub. Util. Code section 1002(a)(4):

> [E]xcept that in the case of any line, plant, or system or extension thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 . . . or similar state laws in the other state, the commission *shall not* consider influence on the environment unless any emissions or discharges therefrom would have a significant influence on the environment of this state. (emphasis added)

The Luning Expansion Project has already or will obtain all discretionary permits and approvals and environmental reviews required for its construction and operation. Details regarding the permits and environmental review are provided in Chapter 2 (Testimony of Maruncic).

As the Commission determined for the Luning Solar Energy Facility, "the plant had full environmental review and approval by another agency – in this case, the BLM – with jurisdiction over environmental review where the plant will be built." [123] Virtually the same permits, approvals and environmental review by BLM were conducted for the Luning Expansion Project. Therefore, the Commission should find that there is no possibility that the Luning Expansion Project will have a significant effect on the California environment.

## IX. CONFIDENTIALITY

Liberty is submitting this Application and the written Testimony supporting this Application in both public (redacted) and non-public (unredacted and confidential) forms, consistent with Liberty's declaration of confidential treatment included with its concurrently filed Motion for Leave to File Confidential Material Under Seal, in conformance with and the procedures set forth in D.06-06-066, D.08-04-023, D.16-08-024 and D.17-09-023. Confidential treatment and redaction of such information is necessary in this proceeding to protect from inappropriate disclosure of confidential and commercially sensitive information pertaining to Liberty's electric procurement resources and strategies.

April 9, 2021

Respectfully submitted,

/s/

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[123] D.16-01-021, p.32.

## VERIFICATION

I am an officer of the applicant corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 8, 2021 at Downey, California.

Gregory Sorensen
President, West Region
Liberty Utilities

# EXHIBIT A
## Certificate of Status

**Secretary of State**
Certificate of Status

I, SHIRLEY N. WEBER, Ph.D., Secretary of State of the State of California, hereby certify:

| | |
|---|---|
| **Entity Name:** | LIBERTY UTILITIES (CALPECO ELECTRIC) LLC |
| **File Number:** | 200910410277 |
| **Registration Date:** | 04/14/2009 |
| **Entity Type:** | DOMESTIC LIMITED LIABILITY COMPANY |
| **Jurisdiction:** | CALIFORNIA |
| **Status:** | ACTIVE (GOOD STANDING) |

As of April 6, 2021 (Certification Date), the entity is authorized to exercise all of its powers, rights and privileges in California.

This certificate relates to the status of the entity on the Secretary of State's records as of the Certification Date and does not reflect documents that are pending review or other events that may affect status.

No information is available from this office regarding the financial condition, status of licenses, if any, business activities or practices of the entity.

**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of April 7, 2021.

**SHIRLEY N. WEBER, Ph.D.**
**Secretary of State**

**Certificate Verification Number:** Y69DMVY

To verify the issuance of this Certificate, use the Certificate Verification Number above with the Secretary of State Certification Verification Search available at bebizfile.sos.ca.gov/certification/index.