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September 4, 2020

**VIA EMAIL ONLY**

**Advice Letter 153-E  
(U 933-E)**

California Public Utilities Commission  
Energy Division, Tariff Unit  
505 Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94102-3298

**Subject: Liberty Utilities (CalPeco Electric) LLC (U-933 E) – Request for Approval of 2021 Energy Services Agreement with Sierra Pacific Power Company, dba NV Energy**

Liberty Utilities (CalPeco Electric) LLC (U 933-E) (“Liberty CalPeco”) submits this **Tier 2** Advice Letter to request approval of its 2021 Energy Services Agreement (“ESA”) with Sierra Pacific Power Company, dba NV Energy (“NVE”), pursuant to Decision (D.) 19-04-040, Ordering Paragraph No.7. On August 21, 2020, Liberty CalPeco executed a new ESA with NVE (the “2021 ESA”) for the sale and delivery of capacity and energy to Liberty CalPeco commencing on December 30, 2020 (the 2021 ESA is attached as Attachment A). Liberty CalPeco requests the Commission approve this Advice Letter with an effective date of no later than November 23, 2020. The November 23, 2020 deadline is critical insofar as the 2021 ESA provisions require a final and non-appealable Commission approval by December 23, 2020.

**Background**

Liberty CalPeco has been purchasing and receiving capacity and energy from NVE, its sole provider, pursuant to a 2016 ESA which expires on December 30, 2020. On January 31, 2018, Liberty CalPeco, in order to seek more favorable terms and conditions and pursue its own accelerated renewable goals, sent an early termination notice of the 2016 ESA to NVE, with a requested effective date of May 1, 2019.

In July, 2018, Liberty CalPeco filed for 145 MWs of Network Integration Transmission Service under NV Energy’s Open Access Transmission Tariff (“OATT”) to serve CalPeco and, on August, 1, 2018, Liberty CalPeco filed its 2018 Integrated Resource Plan (“IRP”) in Rulemaking (R.) 16-02-007, describing the reasons for seeking a new ESA:

1. Evolution of Energy Management Approach

Since the acquisition of Liberty CalPeco by Algonquin Power and Utilities Corporation (“APUC”) from NV Energy in 2011, Liberty CalPeco has provided energy supply to its customers through a mix

of an all requirements energy service agreement with NV Energy and a portfolio of utility-owned renewable solar generation resources. The most recent energy service agreement with NV Energy allowed Liberty CalPeco to procure up to 60 MW of renewable energy for purposes of increasing the supply of low-cost, local, renewable energy, to meet the long-term requirements of Liberty CalPeco's customers. Liberty CalPeco has successfully achieved this goal through the development and acquisition of the Luning and Turquoise solar generation projects.

Looking forward, Liberty CalPeco has concluded that, to meet the long-term expectations of its customers, it is necessary to change the approach taken for managing energy procurement for its customers. Liberty CalPeco is not part of the CAISO market, and the existing NV Energy transmission system does not currently, nor is it expected to, have the capacity to transfer energy into the Liberty CalPeco service territory directly from California. As a result, Liberty CalPeco is required to operate in the NVE BAA, which is a bilateral transaction market. Furthermore, this market will be undergoing significant change because of legislative and regulatory change in Nevada.

It is strategically important for Liberty CalPeco to take direct control of and develop the capabilities to actively participate in this market to ensure alignment with its customer expectations and regulatory requirements.

In the near term, Liberty CalPeco will issue a solicitation for a short-term, all-requirements energy services agreement to replace the existing NV Energy agreement as a bridge until Liberty CalPeco can secure utility-owned non-GHG emitting renewable generation through a competitive process, which will enable it to achieve its ambitious 100% renewables goal. This solicitation will be structured to provide the flexibility needed for Liberty CalPeco's long-term goal of rapidly increasing the portfolio of renewable energy resources supplied to its customers.

## 2. Solicitations for Additional Renewable Generation and Energy Storage Resources

Liberty CalPeco will be issuing solicitations for the acquisition of additional renewable generation supply for its customers. These solicitations will be for up to 150 MWs of additional generating capacity, with specific focus on low-cost solar and wind resources

to take advantage of all federal tax incentives available to these types of generation resources.

These solicitations will consider both energy storage co-located with new or existing renewable generation and stand-alone energy storage located within the Liberty CalPeco service territory. Liberty CalPeco expects energy-storage proposals within its service territory to range from largescale applications to small, residential-based energy storage resources.<sup>1</sup>

Liberty CalPeco issued a solicitation in November, 2018 for a short-term, all-requirements ESA to replace the existing 2016 ESA with NVE. Liberty CalPeco then began negotiations with potential third-party suppliers, with the intent to sign and seek Commission approval of one or more new ESAs prior to the termination of the 2016 NVE ESA on May 1, 2019.

Liberty CalPeco's solicitation and negotiations were based on the presumption that the NVE data in their Open Access Same-Time Information System ("OASIS") regarding available transmission capacity was correct. However, in January, 2019, NVE informed Liberty CalPeco of an OASIS calculation error, which, after it was corrected, showed that 11 MW of Import Transmission Capacity was available for Liberty CalPeco, far less than previously published.

On May 1, 2019, the Commission issued D.19-04-040, approving "Liberty CalPeco's request to file any contracts entered into to replace the full requirements contract Liberty CalPeco had with NV Energy via a Tier 2 advice letter."<sup>2</sup> It is under that authority that this advice letter is filed given that this agreement is the result of the procurement process authorized in D.19-04-040.

In August, 2019, finding no other realistic alternatives in light of the significant transmission constraints, Liberty CalPeco reopened negotiations with NVE to rescind the early termination of the 2016 ESA and to begin work on a new cost-based ESA. In August, 2020, Liberty CalPeco and NVE successfully concluded their negotiations and reached agreement on the 2021 ESA, which would commence on December 30, 2020 and terminate no later than December 29, 2025.<sup>3</sup> The 2021 ESA is a significant improvement over the existing 2016 ESA, as summarized below:

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<sup>1</sup> Liberty Utilities (CalPeco Electric) 2018 IRP, pp. 7-8.

<sup>2</sup> D.19-04-040, p. 73 and Ordering Paragraph No. 7.

<sup>3</sup> 2021 ESA, section 3. (Attachment A)

## Final Outcome – Comparison to Current Agreement

Commercial Term	Current Agreement	2021 Agreement
Term	5 year with optional termination at year 3	5 year with optional termination at year 3
Demand Rate	\$9.37/kW-month	\$8.20/kW-month
Contract Demand Ratchet	Yes	No
Contract Demand	Higher than Actuals	Based on historical 5 year average
Distribution Charge	\$19,240/month	\$18,164/month
Renewable Energy Development	Capped at 60MW	No cap, output cannot exceed CalPeco's load, excess will either be curtailed or purchased by NVE
ELCC% Credit (April to October) Demand credit received for the output of projects at NV Energy's monthly peak	33%	Solar (Luning and Turquoise) 2021 – 33% 2022 – 25% 2023 – 25% 2024 – 100% of storage 2025 - 100% of storage
Projects within CalPeco Territory (BTM, Microgrid, other)	Not Contemplated	Once projects are installed, Contract demand will be reduced to reflect project benefit.
Auditing and Dispute Rights	Very limited, no dispute mechanism	3 year auditing rights, with Mediation and dispute mechanisms

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Liberty CalPeco believes that the cost-based 2021 ESA should result in material customer benefits in terms of the reduced distribution charge and demand charge rate, the removal of the demand ratchet so that charges better reflect actual demand, and the additional flexibility to add renewables development and in-system projects that should reduce demand over time and allow Liberty CalPeco to manage demand and integrate renewables production. These improvements should position Liberty CalPeco to enhance its clean energy portfolio over the term of the agreement. As reflected in its recently filed Integrated Resource Plan, Liberty CalPeco expects that as long as the significant transmission constraints remain in the norther portion of NVE's balancing authority area, the company will need to engage with NVE for capacity and energy supplies not covered by Liberty CalPeco's own resources.

### **Public Safety**

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities to ensure the safety, health, and comfort of the public. As described in the 2021 ESA, NVE intends to provide capacity and energy to Liberty CalPeco consistent with "Good Utility Practice," defined in the 2021 ESA as:

[A]ny of the practices, methods and acts engaged in or approved by a significant portion of the electric generation industry in the United States during the relevant time period, or any of the

practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decisions were made, could reasonably have been expected to accomplish the desired result at a commercially reasonable cost consistent with good business practices, reliability, *safety* and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others. (Emphasis added.)<sup>4</sup>

While there are no direct safety implications resulting from the implementation and operation of the 2021 ESA for Liberty CalPeco and its customers, the 2021 ESA requires that NVE's operations pursuant to the 2021 ESA are performed safely and reliability, helping to ensure that Liberty CalPeco can provide its customers with safe and reliable service.

### **Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)**

California Public Utilities Code Sections 8340 and 8341 require the Commission to consider emissions associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers. Since the maximum term of the 2021 ESA is less than five years,<sup>5</sup> the Commission is not required to review the 2021 ESA for EPS compliance.

As Liberty CalPeco has previously described, Liberty CalPeco currently has no other realistic alternatives to the 2021 ESA for the capacity and energy needed for reliable operations, and so, if the Commission determines that the 2021 ESA is not exempt from EPS compliance review on the basis of the agreement term, then Liberty CalPeco requests that the Commission authorize a reliability exemption from the EPS requirements on the grounds that Liberty CalPeco currently has no other options for the delivery of capacity and energy needed to ensure Liberty CalPeco's system reliability after December 30, 2020.<sup>6</sup>

### **Renewables Portfolio Standard Compliance**

The 2021 ESA includes Commission standard terms and conditions for contracts providing Renewables Portfolio Standard ("RPS") products. While Liberty CalPeco is permitted under law to meet its RPS goals through unbundled RECs, the company is pursuing bundled renewable energy and attributes for a portion of its RPS obligations. The 2021 ESA provides a portion of that supply, augmenting Liberty CalPeco's own renewable projects. To the extent additional RECs are required to achieve full RPS compliance, the company can secure those from the market.

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<sup>4</sup> 2021 ESA, section 24.1 (NV Energy Warranties), subsection (2). (Attachment A)

<sup>5</sup> 2021 ESA, section 3 (the term of the 2021 ESA commences on December 30, 2020 and terminates no later than December 29, 2025). (Attachment A)

<sup>6</sup> D.07-01-039, p.22: "[W]e allow for case-by-case exemptions to the EPS if the LSE can demonstrate that a long-term unspecified contract . . . is necessary to address system reliability concerns."

### **Effective Date**

Liberty CalPeco requests that this Tier 2 advice filing become effective no later than November 23, 2020, as the 2021 ESA provides that it may be terminated by either party unless Liberty CalPeco has obtained a final, non-appealable Commission decision approving the 2021 ESA before December 23, 2020.<sup>7</sup>

### **Response or Protests**

Anyone may respond to or protest this advice letter. A response supports the filing and may contain information that proves useful to the Commission in evaluating the advice letter. A protest objects to the advice letter in whole or in part and must set forth the specific grounds on which it is based. A protest must state the facts constituting the grounds for the protest, the effect that approval of the advice letter might have on the protestant, and the reasons the protestant believes the advice letter, or a part of it, is not justified. A protest shall provide citations or proofs where available to allow staff to properly consider the protest. A response or protest must be made in writing or by electronic mail and must be received by the Energy Division within 20 days of the date this advice letter is filed.

### **All responses and protests should be sent to:**

California Public Utilities Commission  
Energy Division, Tariff Unit  
505 Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94102-3298  
Facsimile: (415) 703-2200  
Email: [edtariffunit@cpuc.ca.gov](mailto:edtariffunit@cpuc.ca.gov)

On the same date the response or protest is submitted to the Energy Division, the respondent or protestant shall send a copy by mail (or e-mail) to Liberty CalPeco, addressed to:

Liberty Utilities (CalPeco Electric) LLC  
Attn.: Advice Letter Protests  
933 Eloise Avenue  
South Lake Tahoe, CA 96150  
Email: [Dan.Marsh@libertyutilities.com](mailto:Dan.Marsh@libertyutilities.com)

If you have not received a reply to your protest within 10 business days, contact Dan Marsh at (530) 721-2435.

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<sup>7</sup> 2021 ESA, section 26.2. (Attachment A)

**Notice**

In accordance with General Order 96-B, Section 4.3, a copy of this advice letter is being sent electronically and via U.S. mail on September 4, 2020, to parties shown on the attached list.

**Conclusion**

The 2021 ESA provides significant benefits to Liberty CalPeco and its customers by reducing costs and enabling Liberty CalPeco to develop new renewable projects inside and outside of its service territory. Liberty CalPeco believes the 2021 ESA is fair and reasonable and, therefore, respectfully recommends the Commission approve this Advice Letter with an effective date of no later than November 23, 2020.

If additional information is required, please do not hesitate to contact me.

Sincerely,

*/s/ Dan Marsh*

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Dan Marsh  
Manager, Rates and Regulatory Affairs  
Liberty Utilities (CalPeco Electric) LLC

Enclosure: 2021 NV Energy ESA

cc: Liberty CalPeco Advice Letter Service List

ENCLOSURE

EXECUTED 2021 NV ENERGY SERVICES AGREEMENT



**SERVICE AGREEMENT**

**BETWEEN**

**SIERRA PACIFIC POWER COMPANY**

**AND**

**LIBERTY UTILITIES (CALPECO ELECTRIC) LLC**

**Dated August 21, 2020**

## SERVICE AGREEMENT

Between

**SIERRA PACIFIC POWER COMPANY**

and

**LIBERTY UTILITIES (CALPECO ELECTRIC) LLC**

This Service Agreement, dated August 21, 2020 (“**Effective Date**”), is between Sierra Pacific Power Company, a Nevada corporation d/b/a NV Energy acting in its merchant function capacity (“**NV Energy**”) and Liberty Utilities (CalPeco Electric) LLC, a California limited liability company d/b/a Liberty Utilities (“**Liberty**”) (each of NV Energy and Liberty, a “**Party**” and, collectively, the “**Parties**”). The Parties, in consideration of the mutual benefits from the covenants set forth herein, hereby agree to the sale, delivery, purchase and receipt of capacity and energy pursuant to the terms and conditions that follow:

1. **Buyer.** Liberty.
2. **Seller.** NV Energy.
3. **Delivery Term.** The Delivery Term commences at 12:01 A.M. Pacific time on December 30, 2020 and continues through 12:01 A.M. Pacific time on December 29, 2025 (“**Delivery Term**”) unless terminated earlier in accordance with the provisions of this Agreement.
  - 3.1 This Agreement terminates automatically at the end of the Delivery Term.
  - 3.2 Termination:
    - (1) Either Party may terminate this Agreement effective 12:01 A.M. Pacific time on December 31, 2023 by providing written notice no later than December 31, 2022.
    - (2) NV Energy may terminate this Agreement with one hundred eighty (180) days written notice to Liberty if the Federal Energy Regulatory Commission (“**FERC**”), the Public Utilities Commission of Nevada (“**PUCN**”), the California Public Utility Commission (“**CPUC**”) or another duly constituted regulatory, administrative or judicial body takes any action or fails to take any action relating to this Agreement that NV Energy, in its sole

discretion, but always acting reasonably, determines to have a material adverse impact on NV Energy, its shareholders or its customers.

(3) A Party may terminate this Agreement pursuant to Section 19.2.

3.3 NV Energy's obligation to deliver capacity and energy to Liberty and Liberty's obligation to receive and purchase capacity and energy from NV Energy shall cease upon termination. Liberty's obligation to pay NV Energy for capacity and energy delivered to Liberty prior to termination shall survive until such obligation is discharged in accordance with the provisions of this Agreement. NV Energy's obligations under (i) Section 11.3 to pay Liberty for Excess Supply generated prior to termination, (ii) Section 6.4 to transfer Renewable Energy Credits ("**RECs**") associated with the renewable energy delivered by NV Energy to Liberty prior to termination, (iii) Section 6.5 to provide supporting documentation for Liberty's California Renewable Portfolio Standard ("**RPS**") filings, and (iv) Section 4.5 to provide documentation for Liberty's use in demonstrating compliance with the CPUC's Resource Adequacy requirements, shall each survive until such obligation is discharged in accordance with the provisions of this Agreement.

4. **Type of Service.** Subject to the exemptions in Section 4.6 or as otherwise set forth herein, during the Delivery Term, NV Energy shall supply, and Liberty shall purchase, Liberty's full requirements for capacity and energy, including the renewable energy and RECs described in Section 6, and all necessary ancillary services (the "**Product**") for the service area as described in Exhibit A to this Agreement (the "**Territory**").

4.1 NV Energy will designate the requirements for capacity and energy for the Territory as Network Load; Network Load shall have the meaning ascribed to the term in the Nevada Power Company and Sierra Pacific Power Company Open Access Transmission Tariff (the "**OATT**").

4.2 NV Energy will use its Network Integrated Transmission Service Agreement to deliver capacity and energy under this Agreement.

4.3 NV Energy will self-provide or procure the ancillary services necessary for the delivery of capacity and energy under this Agreement and Liberty shall obtain the benefit of such ancillary services as part of its payment of the Monthly Charges, as set forth in Exhibit D.

- 4.4 NV Energy will make commercially reasonable efforts to maintain reserves, which shall be based upon the Contract Demand set forth in Exhibit C to this Agreement and the reserve criteria applicable to NV Energy's retail loads in the State of Nevada, for the capacity and energy supplied by NV Energy pursuant to this Agreement. The reserve criteria shall be consistent in all material respects with NV Energy's then current Energy Supply Plan as approved by the PUCN.
- 4.5 NV Energy shall provide documentation to Liberty for Liberty's use in demonstrating to the CPUC its compliance with the CPUC's Resource Adequacy requirements. For the purposes of this Agreement, "**Resource Adequacy**" means the capacity procurement obligations of Liberty pursuant to decisions issued by the CPUC such as in Dockets R.16-02-007, R.15-02-020, R.17-09-020, R.19-11-009, and any successor or similar CPUC proceedings.
- 4.6 During the Delivery Term, Liberty shall not procure any or all of the requirements for capacity and energy for the Territory from any source other than NV Energy; provided, that Liberty shall have the right to (i) produce capacity and energy at the Kings Beach Generation Facility; (ii) produce and deliver to NV Energy capacity and energy from the Liberty Renewable Projects as permitted under Section 7 of this Agreement; (iii) purchase capacity and energy up to 20,000 kWac from renewable facilities owned by Liberty and located in Liberty's service area, (as set forth in Exhibit A) and interconnected to Liberty's distribution system; (iv) purchase capacity and energy from any Qualifying Facility located in Liberty's service territory; (v) modify Liberty's capacity and energy requirements within its distribution system as permitted under section 8 of this Agreement; (vi) procure from sources other than NV Energy that portion of capacity or energy that NV Energy fails to deliver hereunder, whether or not such failure is excused under the terms of this Agreement; and (vii) after receiving notice from NV Energy that it will not be able to deliver (or, if applicable, that NV Energy anticipates being unable to deliver) capacity or energy hereunder, procure from sources other than NV Energy that portion of capacity or energy that NV Energy is unable (or, if applicable, anticipates being unable) to deliver hereunder, whether or not such anticipated failure is excused under the terms of this Agreement. If Liberty procures energy or capacity pursuant to clauses (iii), (iv) or (vi) above, Liberty shall provide prompt notice to NV Energy of all such arrangements and otherwise keep NV Energy informed of the

current status of such arrangements, and terminate all such deliveries of capacity or energy as soon as commercially practicable after NV Energy notifies Liberty of NV Energy's ability to resume full deliveries of capacity or energy hereunder; provided that for purposes of any notice delivered to NV Energy pursuant to this sentence, such notice shall include the volume, delivery points, and term of all such arrangements, but exclude price and counterparty information applicable to such arrangements. Without limiting the foregoing, upon notification from NV Energy of its ability to resume fully delivering capacity or energy hereunder, the Parties shall cooperate to facilitate an orderly and prudent transition to the resumption of delivery of capacity and energy by NV Energy as soon as commercially practicable following such notification.

NV Energy and Liberty agree that damages may not be an adequate remedy in connection with the breach of the provisions of this Section 4.6. Accordingly, notwithstanding anything in this Agreement to the contrary, the Parties agree that injunction, specific performance or other equitable relief shall be available to NV Energy for any breach or anticipated breach of this Section 4.6.

For purposes of this Agreement, "**Qualifying Facility**" means an electric energy generating facility that: (a) complies with the "qualifying cogeneration facility" or "qualifying small power production facility" definition and other requirements established by the Public Utilities Regulatory Policies Act of 1978 ("**PURPA**") and any FERC rules, as amended from time to time implementing PURPA; and (b) has filed with FERC, if necessary, (i) an application for FERC certification, pursuant to 18 CFR Part 292, Section 292.207(b)(1), which FERC has granted, or (ii) a notice of self-certification pursuant to 18 CFR Part 292, Section 292.207(a).

## 5. Delivery Points.

- 5.1 The capacity and energy shall be delivered to Liberty at the Delivery Points set forth in Exhibit B to this Agreement ("**Delivery Points**").
- 5.2 Pursuant to that certain Interconnection Agreement dated October 8, 2009, as may be amended from time to time (the "**Interconnection Agreement**"), each Delivery Point shall be equipped with metering equipment that records the real and reactive power flows at the Delivery Points in intervals of one

hour or less and with communications equipment suitable for accessing the meter data at any time. [

**6. Renewable Energy from NV Energy Resources.** NV Energy shall use commercially reasonable efforts both on a monthly and annual basis during the Delivery Term to deliver the Renewable Percentage (as defined below in Section 6.1) of the Product that will be renewable energy from the NVE Pool, as defined in Section 6.2.

6.1 The “**Renewable Percentage**” for each calendar year of the Delivery Term shall be the percentage of the Product to be provided from the NVE Pool. The Renewable Percentage will be the percentage stated in the table below for the total expected Receipt Point Capacity of the Liberty Renewable Projects that Liberty elects to pursue as identified in the Liberty Project Notice provided pursuant to Section 7.1, provided that the table below shall be revised using linear interpolation between the two nearest listed values in the table to provide the Renewable Percentage if the Liberty Project Notice designates a total expected Receipt Point Capacity not presently included in the table; provided further, however, if Liberty does not provide the Liberty Project Notice by the date specified in Section 7.1, the Renewable Percentage shall be the values in the table below for the column “No Projects (0 MW)”. Once established by receipt of the Liberty Project Notice, the Renewable Percentage for each calendar year shall be fixed for the Delivery Term and may only be changed by mutual written agreement of the Parties.

Renewable Percentage		
Year	Additional Projects	No Additional Projects
2021	5.0%	5.0%
2022	5.0%	5.0%
2023	16.0% (6 months)	16.0%
2024	0%	20.0%
2025	0%	24.0%

6.2 NV Energy shall provide renewable energy from a pool of projects (“**NVE Pool**” individually “NVE Renewable Project”) under contract to NV Energy which have been certified by the California Energy Commission (“**CEC**”) as eligible to meet the requirements for the California RPS program overseen by the CPUC (“**CEC Certification**”). Exhibit H provides the definition of each of the NVE Pool contracts to be updated as projects are available to serve this requirement.

- 6.3 If, subsequent to the Effective Date, any NVE Renewable Project no longer meets the requirements for CEC Certification, such NVE Renewable Project shall be removed from the NVE Pool. In the event that NV Energy is unable to provide the Renewable Percentage from the NVE Pool in any calendar year, NV Energy's obligation to provide renewable energy shall be reduced to the renewable energy delivered from the NVE Pool for that year and NV Energy shall have no liability for the failure to deliver the Renewable Percentage including no liability for any penalties, fines or assessments of any kind imposed by the CPUC on Liberty as a consequence thereof. If the renewable energy delivered from the NVE Pool is less than the Renewable Percentage in any calendar year, NV Energy shall, for the invoice for the final month of such calendar year, recalculate the monthly invoices for the calendar year using the actual renewable percentage delivered in each month, and provide a credit to Liberty in an amount equal to the positive difference, if any, between the invoices previously paid by Liberty for the calendar year and the recalculated invoice amounts.
- 6.4 No later than 90 days after the end of each calendar year of the Delivery Term, or in the case of an early termination pursuant to Section 3.2 within 90 days of such termination, NV Energy shall transfer to Liberty RECs for the quantity of renewable energy provided by NV Energy for the prior calendar year. The RECs transferred shall be of NV Energy's choice from RECs generated by the NVE Pool during such calendar year. NV Energy shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all Western Renewable Energy Generating Information System certificates associated with all RECs corresponding to all MWh of energy NV Energy delivers to Liberty under this Agreement are properly issued to Liberty.
- 6.5 NV Energy shall provide to Liberty, for its use in Liberty's RPS filings with the CPUC or the CEC, any supporting documentation the CPUC or CEC reasonably and consistent with applicable statutes requires Liberty to provide to demonstrate Liberty's compliance with its RPS requirements.
- 7. Liberty Renewable Projects.** Liberty shall be permitted to deliver capacity and energy from solar photovoltaic arrays with associated storage capabilities charged by the renewable resource as set out in Exhibit I. Such projects shall be those identified pursuant to Section 7.8 and interconnected to NV Energy's transmission or distribution system



(the “**Liberty Renewable Projects**”). Under no circumstance, shall the output of Liberty Renewable Projects exceed Liberty’s load for any given hour. Should Liberty Renewable Project output exceed Liberty’s load in any given hour, NV Energy may call for curtailment of output in excess of load during those conditions if NV Energy does not elect to accept and purchase the excess energy.

- 7.1 No later than March 1, 2022, Liberty shall provide written notice of its intent to proceed with any Liberty Renewable Project, and Liberty shall designate the Receipt Point Capacity of such project(s) (“**Liberty Project Notice**”). If, in the Liberty Project Notice, Liberty states that it does not intend to proceed with Project C of Exhibit I, or if Liberty fails to provide the Liberty Project Notice by March 1, 2022, the provisions of Section 7 related to Project C and any related provisions of this Agreement related to Project C shall no longer be of any force or effect.
- 7.2 The interconnection point for each Liberty Renewable Project shall be a “**Receipt Point**”. Liberty shall deliver energy from the Liberty Renewable Projects to NV Energy at each Receipt Point. NV Energy shall designate the Liberty Renewable Projects as Network Resources (as that term is defined in the OATT) and include the energy delivered at the Receipt Points from the Liberty Renewable Projects in serving Liberty’s requirements.
- 7.3 “**Project A**” is the 50MWac Luning Solar Facility located in Mineral County, Nevada and was in commercial operation as of Feb 1, 2017, as detailed in Exhibit I.
- 7.4 “**Project B**” is the 10 MWac Turquoise Solar facility located in Washoe County, Nevada and was in commercial operation as of November 14, 2019, as detailed in Exhibit I.
- 7.5 “**Project C**” is a proposed solar photovoltaic array with no more than 70 MW of nameplate capacity in storage, to be located in the NV Energy North System and an expected commercial operation date as of December 31, 2023, as detailed in Exhibit I, as may be amended by Liberty as development details are resolved. The Parties shall develop an operations and dispatch protocol which may be modified from time to time by mutual agreement that will apply to Project C.
- 7.6 “**Co-Development of Renewable Projects**” are the potential renewable projects for which the Parties agree to work in good faith to explore potential joint renewable generation development. In the event an agreement is reached by both



Parties to Co-Develop a renewable generation project, Liberty will no longer pursue Project C under this Agreement.

- 7.7 **“Receipt Point Capacity”** for a Liberty Renewable Project means the maximum amount of energy that can be delivered at the Receipt Point from that project in one hour.
- 7.8 Exhibit I provides a detailed description of the existing and proposed Liberty Renewable Projects. With respect to the Liberty Renewable Projects, the Parties recognize that:
- (1) Each Liberty Renewable Project is (or may be) owned by a special purpose subsidiary (each, a “Project Company”) of a tax equity limited liability company, which itself is (or will be) controlled by Liberty as the managing member thereof, and which will be wholly owned by Liberty after Liberty exercises its option to acquire all of the interests in such tax equity limited liability company held by the tax equity investor(s).
  - (2) With respect to the sale, delivery and transfer of capacity and energy by a Project Company to NV Energy at the applicable Receipt Point, Liberty has and does act as the Project Company's agent and, as such, each such Project Company is bound by the provisions of this Service Agreement that relate to the delivery and sale of such capacity and energy to NV Energy. Title and risk of loss to the energy and capacity from the Liberty Renewable Projects shall pass from such Project Company to NV Energy at the applicable Receipt Points. NV Energy's sole financial obligation in respect of the delivery and transfer of energy and capacity from a Project Company is and remains the financial settlement through netting against amounts otherwise payable by Liberty under this Service Agreement.
  - (3) NV Energy has no responsibility nor liability for any arrangements between Liberty and the applicable Project Company.
  - (4) Liberty confirms that the foregoing does not relieve it of any of its obligations under this Agreement.
- 7.9 Within ten (10) Business Days of achieving commercial operation for each Liberty Renewable Project, Liberty shall provide to NV Energy certification from an Independent Engineer of the actual

commercial operation date and the actual Receipt Point Capacity (“**Certified Receipt Point Capacity**”). “**Business Day**” means any day other than Saturday, Sunday and any day that is a holiday observed by NV Energy.

- 7.10 “**Independent Engineer**” means a person proposed by Liberty and acceptable to Liberty and NV Energy in their reasonable judgment who (a) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made in Nevada, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Liberty and is not an employee of its members or Affiliates, other than with the prior written consent of NV Energy, for services previously or currently being rendered to Liberty or its members or Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Liberty Renewable Projects, or of a manufacturer or supplier of any equipment installed in the Liberty Renewable Projects.
- 7.11 Liberty shall be responsible for obtaining all interconnections with the Transmission Provider and making all applications necessary for the Liberty Renewable Projects to be able to deliver energy to the Receipt Point. Liberty shall ensure that the Liberty Renewable Projects comply with all applicable generator interconnection rules.
- 7.12 Standby service provided by NV Energy for the Liberty Renewable Projects will be provided under NV Energy’s retail tariffs for standby service (currently Schedule LSR or SSR, as applicable).
8. **Contract Demand.** The “**Contract Demand**” for each calendar month of the Delivery Term shall be as set forth in Exhibit C to this Agreement. Contract Demand may be updated should Liberty provide NV Energy with notification and documentation of a demand revision from resource or load changes contemplated in Section 4.6 or the commercial operation of Liberty Renewable Projects contemplated in Section 7. Should such changes occur or projects become operational, the Contract Demand in Exhibit C will be revised upon acceptance, not to be unreasonable withheld, of demand change documentation provided to NV Energy by Liberty, and the parties agree to act in good faith to ensure the Contract Demand accurately reflects Liberty’s load . Unless otherwise set forth

in Exhibit C, neither Party shall have the right to modify Exhibit C without the express written approval of the other Party.

9. **Billing Demand.** The “**Billing Demand**” for each calendar month shall be the greater of (a) the Coincident Demand for the calendar month less the Coincident Supply for the calendar month or (b) the Net Contract Demand for the calendar month.
- 9.1 The “**Coincident Demand**” for the calendar month shall be the Territory Demand for the hour and day of the calendar month that the Transmission Provider’s Monthly Transmission System Peak occurs.
- 9.2 The “**Transmission Provider’s Monthly Transmission System Peak**” shall be as defined in the OATT.
- 9.3 The “**Territory Demand**” for an hour shall be the sum of the Adjusted Energy for all Delivery Points for that hour. The “**Daily Territory Demand**” for a day shall be the sum of the Territory Demand for that day.
- 9.4 The “**Adjusted Energy**” for a Delivery Point for an hour shall be the energy delivered in that hour for that Delivery Point times the loss adjustment factor applicable to that Delivery Point set forth in Exhibit B.
- 9.5 The “**Coincident Supply**” for the calendar month shall be the Liberty Supply for the hour and day of the calendar month that the Transmission Provider’s Monthly Transmission System Peak occurs.
- 9.6 The “**Liberty Supply**” for an hour shall be the sum of the energy delivered from the Liberty Renewable Projects at all Receipt Points for that hour, provided, however, that the Liberty Supply for an hour shall not exceed the sum of the Certified Receipt Point Capacity for each of the Liberty Renewable Projects. The “**Daily Liberty Supply**” for a day shall be the sum of the Liberty Supply for all hours of that day.
- 9.7 The “**Net Contract Demand**” shall be (1) for the calendar months listed in the table below, the Contract Demand for the calendar month less the lower of (a) the Coincident Supply for the calendar month or (b) The applicable Effective Load Carrying Capacity (“ELCC”) per table below of the sum of the Certified Receipt Point Capacity for each of the Liberty Renewable Projects and (2) for all other months, the Contract Demand for the

calendar month. However, that for any month that the Net Contract Demand is less than zero, the Net Contract Demand shall equal zero. For purposes of calculating Net Contract Demand the Certified Receipt Point Capacity for a Liberty Renewable Project shall be zero until the first full month after the commercial operation date of the Liberty Renewable Project.

Scenario	Effective Load Carrying Capacity (ELCC) % by year				
	2021	2022	2023	2024	2025
<b>Project A + Project B Only</b>					
Project A + Project B (applied From April to October)	33%	25%	25%	20%	20%
<b>Project A + Project B + Project C</b>					
Project A + B (applied from April to October)	33%	25%	25%	15%	15%
Storage portion of Project C (applied from April to October)	0%	0%	0%	100%	100%

**10. Rates.** The Demand Rate, the Transmission Rate, and the Energy Rate shall be as set forth in Exhibit D to this Agreement. These rates will be adjusted in accordance with the provisions of Section 12, Section 21, Section 23 and Exhibit D.

10.1 If the Billing Demand for any calendar month exceeds the Contract Demand for that calendar month, the difference shall be “**Excess Demand**.” NV Energy shall have the right to recover its incremental costs, if any, for the Excess Demand through the Energy Charge Adjustment as determined pursuant to Exhibit D.

10.2 Except as provided in Section 12, Section 21, Section 23 and Exhibit D, neither Party shall seek, nor shall they support any third person in seeking, to revise the rates, terms or conditions of service, or challenge the validity, of this Agreement, or whether it is just and reasonable, through any means, including without limitation to the FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, as such law may be amended or superseded, or any other provisions thereof, except with prior written agreement of the Parties. Except as set forth in Section 12, Section 21, Section 23, and Exhibit D, or except with the prior written agreement between the Parties, the standard of review for (a) any modification to this Agreement requested by a Party that is not agreed to by both Parties will be the “public interest” standard under the *Mobile Sierra* doctrine of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and Federal

Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County, 554 U.S. 527, 128 S.Ct. 2733, 171 L.Ed.2d. 607 (2008) and NRG Power Marketing, LLC v. Maine Pub. Util. Comm'n, 558 U.S. 165 (2010), and (b) any modification to this Agreement requested by any party (other than a Party to this Agreement) or initiated by the FERC will be the most stringent standard permissible under applicable law.

11. **Monthly Charges.** The “**Monthly Charges**” under this Agreement shall be the sum of the Demand Charge, the Transmission Charge, the Energy Charge, the Energy Charge Adjustment and the Distribution Charge, for each calendar month.
- 11.1 The “**Demand Charge**” shall be the Billing Demand (kW) times the Demand Rate.
- 11.2 The “**Transmission Charge**” shall be the Transmission Demand times the Transmission Rate. The “**Transmission Demand**” shall be the Coincident Demand plus the energy delivered to the Territory from the Kings Beach Generation Facility during the hour of the Coincident Demand.
- 11.3 The “**Energy Charge**” shall be the Monthly Energy (kWh) times the Energy Rate established and adjusted pursuant to Exhibit D hereof. The “**Monthly Energy**” shall be the sum of the Net Territory Demand for all days of the calendar month. The “**Net Territory Demand**” for a day shall be the Daily Territory Demand less the Daily Liberty Supply, provided, however, that for any day that the Daily Liberty Supply exceeds the Daily Territory Demand (“**Excess Supply**”), shall equal zero. Within 60 days of the Commercial Operation of Project C, NV Energy and Liberty agree to work in good faith to agree on price or market of excess energy, if no agreement is met, Excess Supply shall equal zero.
- 11.4 The Energy Charge Adjustment (as defined in paragraph D.4 of Exhibit D) shall be determined pursuant to Exhibit D.
- 11.5 The “**Distribution Charge**” shall be \$ 18,164.00 per calendar month, plus, for any hour during the calendar month that NV Energy delivers energy at the Brockway 4202 or Brockway 5100 Delivery Points, an additional amount equal to \$0.00956 times the energy delivered (in kWh) by NV Energy at the Brockway 4202 and Brockway 5100 Delivery Points.

- 12. Taxes.** Except as provided in Section 21, NV Energy shall be responsible for the payment of all taxes, fees, levies, penalties, licenses or charges imposed by any governmental authority on or with respect to the capacity and energy ("**Taxes**") that arise prior to the Delivery Points. Liberty shall be responsible for and pay or cause to be paid all Taxes that arise at or after the Delivery Points. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes upon being presented evidence of such payment. All Taxes that are the responsibility of NV Energy under this Section 12 shall be recoverable by NV Energy through the charges payable by Liberty under this Agreement and such Taxes shall be incorporated into such charges including without limitation by adjustment of the rates and charges payable by Liberty under this Agreement; provided, however, that any Taxes that did not exist on the Effective Date, but are subsequently imposed on NV Energy, shall be deemed a change in law and regulation and addressed pursuant to the provisions of Section 23. For the avoidance of doubt, changes, if any, in the rates and/or amounts of specific Taxes that existed on the Effective Date shall not constitute a change in law or regulation under this Agreement.
- 13. Uncontrollable Forces and Interruptions of Service.** No Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement is due to an Uncontrollable Force. "**Uncontrollable Force**" shall include any event or circumstance, which prevents a Party from performing its obligations, that (i) is not is not reasonably anticipated as of the date hereof, (ii) is not within the reasonable control of the claiming Party and (iii) cannot be avoided or overcome by the exercise of due diligence. Uncontrollable Force may include, but is not restricted to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or inaction (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action), or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority (as long as the affected Party has diligently pursued the authorizations or approvals).
- 13.1 No Party shall be relieved of liability for its failure to perform its obligations under this Agreement by reason of Uncontrollable Force to the extent that such failure is due to (i) causes arising from its own negligence or willful acts, (ii) its lack of sufficient monetary resources, or (iii) removable or remediable causes that it fails to remove or remedy within a commercially reasonable time period. Nothing contained in this Section 13.1 shall be



construed to require a Party to settle a strike or labor dispute in which it is involved on terms that it considers, in its sole discretion, to be unreasonable. Nothing contained in this Section 13.1 is intended or shall be construed to abate, postpone or in any respect diminish Liberty's obligations to make any payments due NV Energy pursuant to this Agreement.

13.2 Any Party rendered unable to fulfill any of its obligations by reason of Uncontrollable Force shall give prompt notice of such fact to the other Party and shall exercise due diligence to remove such inability within a commercially reasonable period of time; provided, however, that the failure to provide prompt notice shall not prevent a Party from being entitled to claim relief for failure to perform its obligations under this Agreement by reason of Uncontrollable Force. Each notice provided pursuant to this Section 13.2 shall include an estimate of the amount of time that will be required to remove the inability to perform its obligations under this Agreement.

13.3 NV Energy shall be excused from performance and shall have no liability under this Agreement for:

(1) any failure to supply capacity, energy, or both under this Agreement and for any reduction or interruption of such capacity, energy, or both where any such failure, reduction or interruption arises as a result of outages to transmission or distribution facilities required to supply capacity and energy to Liberty at one or more Delivery Points including without limitation any outages for repair or maintenance of such transmission or distribution facilities or any curtailment of any kind ordered by the Transmission Provider or balancing authority ("**Interruption of Service**"); provided that such failure is not the result of the gross negligence or willful misconduct of NV Energy in its merchant energy function; or

(2) any nondiscriminatory curtailment by NV Energy of capacity and energy deliveries to Liberty (i) resulting from the operation of automatic under-frequency load-shedding devices or (ii) resulting from a Stage 3 Energy Emergency Alert, as defined in NV Energy's System Electric Emergency Operating Plan ("**SEEOP**"). Curtailments of capacity and energy as a result of a Stage 3 Energy Emergency Alert shall be in accordance with NV Energy's then current and approved SEEOP;

provided, however, that any such curtailment shall not be excused if it is the result of the gross negligence or willful misconduct of NV Energy.

**14. Title and Risk of Loss.**

14.1 Title and risk of loss to the capacity and energy delivered by NV Energy under this Agreement shall pass from NV Energy to Liberty at the Delivery Points. Subject to Section 14.2, NV Energy assumes all responsibility with respect to the capacity and energy prior to its delivery to Liberty at the Delivery Points. Liberty assumes all responsibility with respect to all capacity and energy delivered by NV Energy at and after its delivery to Liberty at the Delivery Points.

14.2 Liberty assumes all responsibility with respect to the capacity and energy supplied from the Liberty Renewable Projects prior to its delivery to NV Energy at the Receipt Points. Title and risk of loss to the capacity and energy from the Liberty Renewable Projects shall pass from Liberty to NV Energy at the Receipt Points. NV Energy assumes all responsibility with respect to the capacity and energy supplied from the Liberty Renewable Projects from the Receipt Points and prior to its delivery to Liberty at the Delivery Points.

14.3 NV Energy agrees to indemnify Liberty and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("**Claims**"), from any and all persons, arising from or out of claims of personal injury (including death) or property damage from said capacity and energy which attach before risk of loss passes from NV Energy to Liberty. Liberty agrees to indemnify NV Energy and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding personal injury (including death) or property damage from said capacity and energy which attach before risk of loss passes from Liberty to NV Energy for the Liberty Renewable Projects and after risk of loss passes from NV Energy to Liberty.

**15. Access to Metering Data.** Liberty hereby authorizes NV Energy's transmission function to release to NV Energy's merchant function any metering data reasonably required by NV Energy's merchant function for operating and billing pursuant to this Agreement.

**16. Invoice and Payment.** The accounting and billing period for charges payable pursuant to this Agreement shall be one (1) calendar month. On or before the tenth (10<sup>th</sup>) day of each month, NV Energy shall submit



- an invoice to Liberty for charges payable during the immediately preceding calendar month. NV Energy's invoice shall be due and payable by Liberty no later than the twentieth (20<sup>th</sup>) day after Liberty's receipt of such invoice.
- 16.1 Liberty's payments shall be in U.S. dollars by wire transfer to the accounts set forth for that purpose on Exhibit E.
- 16.2 The amounts, if any, that have not been paid by Liberty on or before the due date shall be payable with interest calculated daily, at a rate equal to the applicable FERC approved interest rate, for the period beginning on the day after the due date and ending on the date of the payment.
- 17. Billing Disputes.** If (i) NV Energy fails to issue an invoice for some or all of the charges payable by Liberty during a month or (ii) NV Energy finds one or more errors in an invoice, NV Energy shall have the right to issue an invoice or a revised invoice for the charges; provided, however, the invoice or revised invoice must be issued within two (2) years of the date on which the original invoice should have been or was issued, whichever is applicable. NV Energy's invoice or revised invoice shall include an explanation of the charges or the revised charges, whichever is applicable. An invoice or revised invoice shall be due and payable by Liberty on or before the twentieth (20<sup>th</sup>) day after Liberty's receipt of such invoice.
- 17.1 Liberty may dispute any of the charges on an invoice by providing written notice of the dispute to NV Energy within two (2) years of the latter of the date of the original invoice, or the date of the last revised invoice if one or more revised invoices were issued, for a billing period. Liberty's notice shall specify the amount in dispute and state the basis for the dispute. If Liberty disputes any of the charges on an invoice, the Parties shall promptly meet and endeavor to resolve the dispute. If the Parties cannot resolve the dispute in this manner within sixty (60) days (or such longer period of time mutually agreed upon by the Parties in writing) of Liberty's notice to NV Energy of a dispute, either Party may proceed under the provisions of Section 27.9 to resolve the dispute.
- 17.2 Liberty shall be obligated to pay the entire amount of an invoice when due even if Liberty disputes some or all of the charges. If a dispute is ultimately resolved in Liberty's favor, NV Energy shall promptly refund any amounts owed to Liberty with interest calculated daily, at a rate equal to the applicable FERC approved interest rate.

**18. Credit Support.** NV Energy shall not be obligated to provide any guarantees, post any collateral, or provide any credit assurance.

18.1 Notwithstanding anything in this Agreement to the contrary, the provisions of this Agreement except for Section 26, which became effective as of the Effective Date, shall only become effective if the Guarantee is executed, valid and in full force and effect as of the first day of the Delivery Term. For purposes of this Agreement, “**Guarantee**” means the Guarantee of Liberty Utilities Co. (“**Liberty Parent**”), pursuant to which Liberty Parent shall guarantee, subject to the terms thereof, the timely payment of the obligations of Liberty for Monthly Charges that may become due and owing by Liberty pursuant to this Agreement. The Guarantee shall be substantially in the form set forth to Exhibit F to this Agreement.

18.2 Should the creditworthiness, financial responsibility, or performance viability of Liberty Parent become unsatisfactory to NV Energy in its commercially reasonably exercised discretion, NV Energy may require Liberty to provide credit support as determined by NV Energy in its sole discretion, in the form of the posting of (i) a letter of credit, or (ii) other collateral or security acceptable to NV Energy, in either instance in the amount of seven million U.S. dollars (US\$7,000,000.00) (“Adequate Assurance”) to NV Energy within three (3) Business Days of NV Energy’s written demand for assurances; provided that upon Liberty timely posting of Adequate Assurance in the total amount of seven million U.S. dollars (US\$7,000,000.00), the Liberty Parent Guarantee shall be terminated. If Liberty posts a letter of credit, the letter of credit shall be in the form set forth in Exhibit G to this Agreement.

**19. Events of Default and Remedies.**

19.1 For purposes of this Agreement, an “**Event of Default**” shall consist of any of the following:

- (1) The failure of NV Energy to deliver Product in accordance with the provisions of this Agreement if such failure is not cured within five (5) Business Days of NV Energy’s receipt of written notice thereof from Liberty unless such failure is due to Uncontrollable Force, Interruption of Service or other circumstances for which NV Energy is excused from performance under this Agreement;

- (2) The failure of NV Energy to provide clear and good title to the Product as required in Section 24.1 if such failure is not cured within five (5) Business Days of NV Energy's receipt of written notice thereof from Liberty;
- (3) The failure of Liberty to provide clear and good title to the energy from the Liberty Renewable Projects as required in Section 24.2 if such failure is not cured within five (5) Business Days of Liberty's receipt of written notice thereof from NV Energy;
- (4) Any representation or warranty of a Party made pursuant to Section 25 that is false or misleading in any material respect when made or when deemed made or repeated and which misrepresentation can reasonably be expected to result in a material adverse effect on the ability of that Party to fulfill its obligations under this Agreement or the ability of the other Party to receive its benefits under this Agreement and further provided such failure is not cured within five (5) Business Days of its receipt of written notice thereof from the non-defaulting Party;
- (5) The failure of a Party to make payment when due if not remedied within five (5) Business Days of receipt of notice from the Party to which the money is owed;
- (6) Any involuntary case or other proceeding is commenced against a Party (i) seeking reorganization, readjustment, arrangement, composition or similar relief with respect to it or its debts under any bankruptcy or other similar law, (ii) seeking a decree or order of a court having jurisdiction for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or a substantial part of the undertaking or property of such Party, or (iii) seeking the winding-up, dissolution or liquidation of its affairs, and such involuntary case has not been discharged or dismissed within sixty (60) days;
- (7) The failure of Liberty to provide adequate financial assurances to NV Energy as may be required pursuant to Section 18 if such failure is not remedied within two (2) Business Days of receipt of written notice from NV Energy;

- (8) A Party institutes proceedings for its winding-up, liquidation or dissolution, or takes any actions to become a voluntary bankrupt, or consents to the filing of any bankruptcy proceeding against it, or files any proposal, notice of intention to make a proposal, petition or answer or consent seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy or other similar law or consents to the filing of any such petition, or to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or any material property of such Party, or makes any assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due or commits any other act of bankruptcy, or any action is taken by such Party in furtherance of any of the foregoing; and
- (9) If a receiver, manager, receiver and manager, trustee, custodian or other similar official is appointed in respect of any Party or any material part of its property and such appointment is not being contested diligently and in good faith by such Party or has not been discharged or dismissed within ten (10) Business Days.
- 19.2 If an Event of Default occurs, the non-defaulting Party shall have the right to terminate this Agreement by written notice, which shall include the date of the intended termination, to the defaulting Party. The non-defaulting Party may exercise any rights or remedies available to it at law or in equity, subject to the limitations set out in this Agreement. If the termination is due to an Event of Default by Liberty, and Liberty has posted a letter of credit, NV Energy shall have the right to offset any outstanding amounts due from Liberty to NV Energy under this Agreement by drawing on the letter of credit.
- 19.3 With respect to any circumstances under this Agreement in which one Party is or may be liable to the other Party (a “**Harmed Party**”) for damages, it is agreed that the Harmed Party shall exercise commercially reasonable efforts, as determined in light of the facts and circumstances prevailing at the time such efforts are or should have been taken, to mitigate or reduce the amount of damages which such Harmed Party would sustain (and for which the other Party is or would be responsible) under the terms of this Agreement.

- 19.4 To the fullest extent permitted by law and notwithstanding any other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement whether or not such damages were reasonably anticipated as of the Effective Date. With respect to a Party, the limitation on damages under this Section 19.4 shall not apply with respect to claims brought by a third party.
- 20. No Resale.** Liberty shall not sell or otherwise transfer any of the capacity and/or energy provided pursuant to this Agreement to any party other than: (i) end-use customers located in the Territory; (ii) end-use customers located in the NV Energy service territory for the load served by Liberty pursuant to that certain Borderline Customer Agreement between Liberty and NV Energy dated October 8, 2009, as amended from time to time (“**Borderline Customer Agreement**”); (iii) Pacific Gas and Electric Company (“**PG&E**”) for the load served by Liberty pursuant to that certain Electric Service Agreement between Liberty and PG&E dated December 8, 2010, as amended from time to time (the “**PG&E Agreement**”); and (iv) Truckee-Donner Public Utility District (“**TDPUD**”) for the load served by Liberty pursuant to that certain Fringe Agreement for Electric Service Between Liberty and TDPUD, dated April 7, 2010, as amended from time to time (“**TDPUD Fringe Agreement**”). NV Energy and Liberty agree that damages may not be an adequate remedy in connection with the breach of the provisions of this Section 20. Accordingly, notwithstanding anything in this Agreement to the contrary, the Parties agree that injunction, specific performance or other equitable relief shall be available to NV Energy for any breach or anticipated breach of this Section 20.
- 21. Cap-and-Trade.**

21.1 Definitions. As used in Section 21 the following terms have the meanings set forth below.

- (1) “**Allowance**” means a tradable compliance instrument representing one metric ton of CO<sub>2</sub> that may be used to satisfy a Compliance Obligation under the California Cap-and-Trade Regulation. Allowance does not include compliance instruments created through Offset Projects.

- (2) “**Auction Settlement Price**” means the price announced by the auction administrator at the conclusion of a quarterly auction conducted by CARB or its delegate (as defined in 17 Cal. Code Reg. § 95802(a)).
- (3) “**Cap-and-Trade Regulation**” means regulations promulgated by CARB to implement the carbon allowance cap-and-trade program mandated by the California Global Warming Solutions Act of 2006, specifically 17 Cal. Code Regs. §§ 95800- 96022, as may be amended from time to time..
- (4) “**CARB**” means the California Air Resources Board.
- (5) “**CITSS Account**” means a Compliance Instrument Tracking System Service Holding Account administered by the Western Climate Initiative.
- (6) “**Compliance Obligation**” means annual metric tons of CO<sub>2</sub> with a Compliance Obligation as filed annually by Liberty and in compliance with 17 Cal. Code Regs. § 95111(b)(5).
- (7) “**Compliance Year**” means a calendar year for which NV Energy has a Compliance Obligation under the California Cap-and-Trade Regulation.
- (8) “**Compliance Year Requirement**” means the quantity of Allowances NV Energy is obligated to retire to satisfy its Compliance Obligation following each Compliance Year.
- (9) “**Liberty Load**” means the energy supplied to Liberty from NV Energy resources pursuant to this Agreement.
- (10) “**Offset Project**” has the meaning ascribed to that term in 17 Cal. Code Reg. §. 95802(a).
- (11) “**Procurement**” means the purchase of Allowances from quarterly cap-and-trade auctions and the price containment reserve auctions held by CARB (or its delegate). Procurement may also include the purchase of Allowances from another entity registered in the Compliance Instrument Tracking System Service.



- (12) **“Third Party Verifier”** means the entity that verifies a greenhouse gas emissions report under the CARB Mandatory Reporting Regulation.
- (13) **“Verification Year”** means the calendar year immediately following a Compliance Year when entities subject to the CARB Mandatory Reporting Regulation must report and have their greenhouse gas emissions verified. For example, 2017 is the Verification Year for the 2016 Compliance Year.

21.2 Maintenance of Allowances to Cover NV Energy Cap and Trade Compliance Obligations.

- (1) NV Energy and Liberty shall each maintain a CITSS Account in their respective names.
- (2) By each June 15 of each calendar year during the Delivery Term, NV Energy shall notify Liberty of: (a) its forecast of Allowances required to meet the Compliance Obligation for the applicable Compliance Year; and (b) the quantity of Allowances, if any, that Liberty is to transfer into the NV Energy CITSS Account to satisfy the Compliance Year Requirement for the applicable Compliance Year.
- (3) By each September 15 of the Delivery Term, Liberty shall transfer into the NV Energy CITSS Account the quantity of Allowances that NV Energy has specified in its notice pursuant to Section 21.2(2)(b) for such Compliance Year.
- (4) Between June 15 and October 1 of each Verification Year, NV Energy may notify Liberty of any difference from the quantity of Allowances NV Energy specified in its notice to Liberty as provided for in Section 21.2(2)(b) and NV Energy's actual Compliance Year Requirement associated with the Liberty Load. In the event that NV Energy provides notice pursuant to this Section 21.2(4) that the Allowance Requirement is greater than the quantity of Allowances NV Energy specified in its notice pursuant to Section 21.2(2)(b), Liberty shall, within thirty (30) days after receiving such a notice pursuant to this Section 21.2(4), transfer into the NV Energy CITSS Account the additional amount of Allowances NV Energy has specified in such Section 21.2(4) notice

as necessary for it to satisfy the revised Compliance Year Requirement.

- (5) NV Energy shall not transfer any of those Allowances Liberty has transferred into the NV Energy CITSS Account for purposes of meeting the Compliance Year Requirement (and as such may be revised in accordance with Section 21.2(4)) out of the NV Energy CITSS Account except after reconciliation in accordance with Section 21.3(4).

### 21.3 Reconciliation of Allowances.

- (1) In the event that CARB or a Third Party Verifier subsequently determines the Compliance Year Requirement is larger than the amount of Allowances NV Energy forecast and provided Liberty notice of in accordance with Section 21.2(2), NV Energy will then within thirty (30) Business Days of it having knowledge of such a larger Compliance Year Requirement notify Liberty of: (a) the number of additional Allowances required to meet NV Energy's Compliance Year Requirement associated with the Liberty Load; and (b) the number of additional Allowances, if any, that Liberty shall transfer into the NV Energy CITSS Account in response to NV Energy's notice and request for additional Allowances as provided for in this Section 21.3(1).
- (2) In the event that NV Energy provides Liberty a notice in accordance with Section 21.3(1) requesting additional Allowances, Liberty shall transfer the additional amount of Allowances NV Energy specifies in such notice under Section 21.3(1) into the NV Energy CITSS Account. Liberty shall notify NV Energy of the transfer by the later of October 1 of that year or within thirty (30) Business Days after Liberty receives a notice in accordance with Section 21.3(1) requesting additional Allowances.
- (3) In the event that the Allowances Liberty transfers into the NV Energy CITSS Account exceed the total number of Allowances that NV Energy is obligated to retire to satisfy the Compliance Year Requirement, NV Energy shall timely inform Liberty of the quantity of such excessive Allowances. At Liberty's option, NV Energy



shall either transfer within fifteen (15) Business Days any unused Allowances into the Liberty CITSS Account or retain the Allowances within the NV Energy CITSS Account, to the extent allowed by CARB. NV Energy shall use any such retained excessive Allowances for purposes of satisfying a subsequent Compliance Year Requirement.

- (4) Nothing in this Section 21.3 shall be interpreted to preclude the fair exchange of Allowances between the Parties or allow either Party to exert control over Allowances in the other entity's CITSS Account in accordance with 17 Cal. Code Reg. § 95921.
- (5) Nothing in this Section 21.3 shall permit the Parties to engage in communications concerning auction participation prohibited by 17 Cal. Code Reg. § 95912(g).

#### 21.4 Default of Allowances.

- (1) Should Liberty fail to transfer into the NV Energy CITSS Account the number of Allowances required by a deadline specified under Section 21, NV Energy may take all actions as it may deem necessary, consistent with Good Utility Practice, in order to avoid any violation of the Cap-and-Trade Regulation, including Procurement of Allowances and use of other Allowances already in its possession to satisfy NV Energy's Compliance Obligation associated with serving the Liberty Load; provided that NV Energy shall first provide Liberty notice of its failure to transfer Allowances by the required deadline and Liberty shall have a cure period of fifteen (15) Business Days to transfer the required amount of Allowances into the NV Energy CITSS Account.
- (2) If NV Energy secures Allowances pursuant to Section 21.4(1) for purposes of meeting its Compliance Obligation, Liberty shall reimburse NV Energy, within ten (10) days after receiving an invoice from NV Energy, all of the following: (1) NV Energy's actual cost to purchase the necessary Allowances; and (2) the actual transaction costs, if any, incurred by NV Energy to procure the necessary Allowances. If in accordance with Section 21.4(1), NV Energy has used other Allowances

that are already in its possession and which had not been transferred by Liberty to make up any shortfall caused by Liberty's failure to timely transfer Allowances as required by Section 21, Liberty shall reimburse NV Energy for these Allowances in an amount based on the Auction Settlement Price at the most recent quarterly Allowance auction.

21.5 Change of Law.

- (1) It is the Parties' intent that Liberty should bear all compliance, filing, administrative and other costs related to the certification, transfer and assignment of allowances associated with the emission of CO<sub>2</sub> and other greenhouse gases associated with the generation of energy delivered by NV Energy pursuant to this Agreement and compliance with governmentally imposed requirements to limit or otherwise to control those emissions.
- (2) The United States Environmental Protection Agency ("EPA") has proposed regulations under section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), that will, if adopted and final, require Nevada and other states to develop and implement a program to control and to limit the emissions of CO<sub>2</sub> from NV Energy's fossil-fuel-fired electricity generation units ("EGUs") or result in the imposition of a federal program if Nevada or any other jurisdiction fails to develop a program consistent with the EPA regulation. *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830 (June 18, 2014). The Parties shall follow the procedures established under Section 23 upon the adoption of regulations or the submission of a State Implementation Plan ("SIP") by Nevada or any other jurisdiction with authority over the NV EGUs supplying energy under this agreement and any action by EPA with respect to said program to assure that the provisions and procedures of Section 21 are modified to implement the Parties' intent, as expressed in Section 21.5(1).

**22. No Dedication of Facilities.** Nothing in this Agreement shall be construed as constituting the dedication of NV Energy's electric system or any portion thereof to the public, to Liberty, or to customers of

Liberty, or the dedication of Liberty's electric system, any Liberty Renewable Project, or any portion thereof to the public, to NV Energy, to customers of NV Energy, or to any customers in the Territory.

- 23. Change in Law or Regulation.** If a Party becomes aware that any regulatory authority or other duly constituted authorities having jurisdiction over the Parties promulgated a change in law or applicable regulation that materially affects the performance of either Party's obligations under this Agreement (a "**Change in Law**"), such Party shall promptly provide written notice to the other Party of the change. Upon receipt of notice, the Parties shall make commercially reasonable efforts to amend this Agreement to preserve the benefits and bargains initially struck in this Agreement. If the Parties cannot reach agreement on an amendment prior to the later of (i) the effective date of the change in law or applicable regulation or (ii) the date that is thirty (30) days after the date of notice from one Party to the other as contemplated above, either Party may terminate this Agreement after thirty (30) day's notice to the other Party without liability to the other Party except for any liability that has accrued prior to the date of termination. Without prejudice to the foregoing, if, in order to comply with its obligations under this Agreement, NV Energy incurs any costs or expects to incur any costs due to a change in law or regulation, such costs shall be recoverable by NV Energy through the charges payable by Liberty under this Agreement and such costs shall be incorporated into such charges including without limitation by adjustment of the rates and charges payable by Liberty under this Agreement.
- 23.1 A change in the regulations of the FERC or the PUCN that has the effect of causing NV Energy to be unable to recover all of its costs, including but not limited to any incremental costs that NV Energy may obtain the right to recover pursuant to Section 23, for the capacity and energy delivered or expected to be delivered to Liberty pursuant to this Agreement shall constitute a change in law or applicable regulation.
- 23.2 A change in the regulations of the CPUC that has the effect of causing Liberty to be unable to recover all of its costs, including but not limited to any incremental costs that NV Energy may obtain the right to recover pursuant to Section 23, for capacity and energy delivered or expected to be delivered by NV Energy pursuant to this Agreement shall constitute a change in law or applicable regulation.
- 23.3 The promulgation of new legislation or regulations, or changes to existing legislation or regulations, that result in any incremental costs, for the Product delivered or expected to be delivered to

Liberty pursuant to this Agreement, attributable to carbon, greenhouse gases, or climate changes shall constitute a change in law or applicable regulation, as provided under Section 21.5.

## 24. Warranties.

### 24.1 NV Energy Warranties.

(1) NV Energy warrants that it will transfer to Liberty good title to the capacity and energy and RECs delivered to Liberty under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Points. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 24.1, NV ENERGY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CAPACITY AND ENERGY SUPPLIED OR TO BE MADE AVAILABLE UNDER THIS AGREEMENT.

(2) NV Energy warrants that it will make commercially reasonable efforts consistent with Good Utility Practice to provide a continuous supply of capacity and energy to Liberty consistent with the provisions of this Agreement and at a level of service substantially similar to the level of service that it provides to its customers in Nevada.

**“Good Utility Practice”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric generation industry in the United States during the relevant time period, or any of the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decisions were made, could reasonably have been expected to accomplish the desired result at a commercially reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others.

(3) NV Energy further warrants that it will make commercially reasonable efforts consistent with Good

Utility Practice and its then current approved Energy Supply Plan to acquire the fuel, if any, required for its generating facilities and to purchase the energy and capacity, if any, required to supplement its generation.

- (4) With respect to each renewable resource identified in the NVE Pool, which are referred to collectively as a “Project” for the purposes of this Section 24.1(4), NV Energy, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Liberty qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if NV Energy has used commercially reasonable efforts to comply with such change in law. [STC 6].
- (5) Transfer of Renewable Energy Credits (“RECs”). NV Energy and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Liberty conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if NV Energy has used commercially reasonable efforts to comply with such change in law. [STC REC-1].
- (6) Tracking of RECs in WREGIS. NV Energy warrants that all necessary steps to allow the renewable energy credits transferred to Liberty to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

24.2 Liberty Warranties.

- (1) Liberty warrants that it will transfer to NV Energy good title to the capacity and energy and RECs delivered to NV Energy under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Receipt Points. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 24.2, LIBERTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CAPACITY AND ENERGY SUPPLIED OR TO BE MADE AVAILABLE UNDER THIS AGREEMENT.

**25. Additional Representations and Warranties.**

25.1 Each Party represents and warrants to the other Party that:

- (1) it possesses the necessary corporate (or, if applicable, limited liability company), governmental and legal authority, right and power to enter into and agree to this Agreement and to perform each and every duty imposed, and that the Parties' agreement to buy and sell capacity and energy under this Agreement represents a contract;
- (2) each of its representatives executing this Agreement is authorized to act on its behalf;
- (3) entering into this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law applicable to it, or any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with the terms of this Agreement;
- (4) in the case of Liberty, it is solvent; and
- (5) in the case of NV Energy, it is solvent.



25.2 On each delivery of capacity and energy and RECs under this Agreement the representation and warranty set out in Section 25.1(4) shall be deemed repeated unless written notice to the contrary is given by Liberty to NV Energy before delivery.

**26. Regulatory Approval.** Except for this Section 26, which became effective as of the Effective Date, the effectiveness of all of the other provisions of this Agreement is conditioned upon and shall be subject to the timely receipt of the following regulatory approvals:

26.1 FERC. After providing Liberty a reasonable opportunity to review and comment to NV Energy, NV Energy shall submit this Agreement to the FERC no later than September 30, 2020. If the FERC does not accept this Agreement for filing without modification or conditions that are materially adverse to either Party ("**FERC Approval**") by December 15, 2020, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2020, after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.1 shall be deemed to have been waived. In addition, either Party may terminate this Agreement with written notice to the other Party if the FERC issues an order modifying this Agreement in a manner materially adverse to the terminating-Party, approving this Agreement with conditions which are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the FERC order.

26.2 California Public Utilities Commission. Liberty shall submit this Agreement for the approval of the CPUC within thirty (30) days of the Effective Date. If Liberty does not obtain CPUC Approval by December 23, 2020, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2020; provided after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.2 shall be deemed to have been waived. Should the CPUC in its review of the Agreement seek to impose conditions or require other changes as a prerequisite for final approval, then the parties shall within 10 business days of a final order of the CPUC, meet and confer regarding potential revisions to accommodate the CPUC requirements. If, however, there is no commercially reasonable way to address such CPUC conditions, then either Party may terminate this Agreement with written notice to the other Party if the CPUC issues an order approving, but modifying this Agreement in a manner materially adverse to the terminating-Party, approving this Agreement with conditions

that are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the CPUC order.

**“CPUC Approval”** means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms: (a) approves this Agreement in its entirety, including payments to be made by the Liberty, subject to CPUC review of the Liberty’s administration of the Agreement; and (b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Liberty’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law. [STC 1]

- 26.3 Public Utilities Commission of Nevada. NV Energy may, in its sole discretion, submit this Agreement for an order granting final approval by the PUCN (**“PUCN Approval”**). If NV Energy does not seek PUCN Approval by July 19, 2020, this Section 26.3 shall be of no force and effect and the requirement under this Agreement to obtain PUCN Approval shall be deemed waived. If PUCN Approval is timely sought by NV Energy and not received by December 31, 2020, either Party may terminate this Agreement with written notice to the other Party delivered within 30 days after the PUCN Approval, after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.3 shall be deemed to have been waived. In addition, if NV Energy timely seeks PUCN Approval, and: (i) the PUCN issues an order requiring modifications to this Agreement which are materially adverse to a Party; (ii) approving this Agreement with conditions that are materially adverse to a Party; or (iii) rejecting this Agreement, then the parties shall within 10 days of such an order meet and confer regarding potential revisions to accommodate the PUCN requirements. If, however, there is no commercially reasonable way to address such PUCN conditions, then either Party may terminate this Agreement with written notice to the other Party; such notice shall be delivered within thirty (30) days of the date of the PUCN order; provided the failure to timely provide such notice shall constitute a waiver to terminate the Agreement pursuant to this Section 26.3.



26.4 If either Party terminates this Agreement pursuant to Section 26, the Parties shall execute, before December 31, 2020, an amendment to their current Second Amended Service Agreement, dated December 17, 2015, as amended (“**Existing PPA**”), which shall extend the term of the Existing PPA by an additional four (4) months but not modify any of the Existing PPA’s other substantive terms or conditions.

The provisions of this Agreement other than Section 26 will not become effective until FERC Approval, CPUC Approval, and PUCN Approval have been obtained or waived and/or until each of the deadlines for issuing a written notice of termination set forth in Section 26 has expired without the issuance of such notice.

## **27. Miscellaneous.**

27.1 Survival. Upon termination of this Agreement, any charges or other amounts due and owing under this Agreement shall be paid (including without limitation as provided in Section 3.3) and any corrections, or adjustments to payments shall be determined as soon as practicable. All indemnity obligations shall survive termination of this Agreement in accordance with their respective terms. Upon the effective date of termination of this Agreement, each Party’s obligations provided for in this Agreement will survive termination and remain in effect solely for the purpose of complying with the provisions of Section 27.

27.2 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.

27.3 Third Party Beneficiaries. Nothing in this Agreement shall be construed to create rights in or grant remedies to any third party as a beneficiary to this Agreement.

27.4 Notices. All formal notices, demands or requests provided pursuant to this Agreement shall be in writing and shall be delivered in person or sent to the address shown on Exhibit E by either facsimile or overnight delivery (with record of receipt), or to those other persons or addresses as may be designated in writing by the Party to receive a notice, demand or request as described above. Operating communications and other communications of a routine nature shall be delivered by email or by telephone with email confirmation to the address shown on

Exhibit E, as such information may be updated from time to time by the Parties.

- 27.5 Compliance with Law. The obligations of the Parties under this Agreement shall be subject to and the parties shall comply with laws, rules and regulations of duly constituted authorities having jurisdiction over the Parties.
- 27.6 Waivers. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing, usage of trade or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by Law.
- 27.7 Assignment. This Agreement may be assigned by either Party only with the written consent of the other Party; provided, that either Party may assign this Agreement without the consent of the other Party to any affiliate with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement or to a party that acquires substantially all of the assets of such Party.

Any attempted assignment that violates this Section 27.7 is void and ineffective. No assignment of a Party's rights or obligations under this Agreement, nor any consent thereto, shall relieve such Party of its obligations and liabilities under this Agreement (except in the case of an assignment to a party acquiring substantially all of the assets of the assigning Party), nor shall any such assignment expand any obligations of the non-assigning Party. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

- 27.8 Other Agreements. Nothing in the Agreement is intended to modify, supersede or otherwise alter any other agreements between the Parties. However, to the extent a conflict exists between the provisions of this Agreement and any other agreement between the Parties the provisions of this Agreement shall prevail.

27.9 Dispute Resolution, Governing Law and Venue.

- (1) Dispute Resolution. Other than for a billing dispute subject to Section 17, in the event of a dispute arising under this Agreement, within thirty (30) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, or such longer period as the Parties may mutually agree, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.
  
- (2) Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]
  
- (3) Venue. Each Party hereto irrevocably submits to the exclusive jurisdiction of the federal and state courts (subject to the following) located in the State of Nevada, waives any objection which it may have to the laying of venue of any proceedings brought in any such court, and waives any claim that such proceedings have been brought in an inconvenient forum; and agrees that any and all claims, controversies or disputes arising from or relating to this Agreement will be submitted in the federal courts of Nevada located in Reno for resolution; provided, however, that in the event jurisdiction may not be had in federal court, then the Parties agree to submit any and all such disputes, claims or controversies to state district courts of Nevada located in Reno, provided further, however, that if litigation is brought by a third party in another jurisdiction that requires that this Agreement be construed in that

litigation, nothing herein shall require that a separate proceeding be brought in Nevada.

- 27.10 California Public Utilities Commission Renewable Portfolio Standard Required Terms and Conditions. The Parties agree that in the event there is a conflict between the terms of this Agreement and the CPUC's standard terms and conditions required to be in contracts to purchase energy eligible to satisfy a utility's renewable portfolio standard procurement requirements, which are identified throughout this Agreement as "[STCs]", the CPUC's standard renewable portfolio standard terms and conditions shall control.
- 27.11 Amendments. This Agreement may not be amended, modified or changed in any respect except by a writing executed by the Parties with the same formalities as this Agreement.
- 27.12 Transmission Provider. The Parties acknowledge that as of the Effective Date, the NV Energy and the Transmission Provider are the same legal entity, and further acknowledge that in accordance with FERC regulations relating to open-access transmission, NV Energy's transmission function employees are required to function independently of NV Energy's marketing function employees. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its progeny, and the associated implementing regulations. Moreover, the Parties acknowledge that Transmission Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Liberty will enter into an interconnection agreement with the Transmission Provider for each of the Liberty Renewable Projects. References to the "Transmission Provider" relate to NV Energy in its capacity as the owner/operator of the transmission system, and references to "NV Energy" relate to Sierra Pacific Power Company outside of and separate from its capacity as the owner/operator of the transmission system. This Agreement is not binding upon the Transmission Provider. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement, any interconnection agreement for the Liberty Renewable Projects, nor any other agreement between Liberty on the one hand and the Transmission Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation under this Agreement. This

Agreement shall not be construed to create any rights and/or obligations between Liberty and the Transmission Provider. Liberty acknowledges that NV Energy, is acting in its merchant capacity function, has no responsibility for or control over the Transmission Provider, and is not liable for any breach of agreement or duty by the Transmission Provider; provided that nothing in this Agreement waives any rights or remedies Liberty has against the Transmission Provider under any other agreement and nothing in this Agreement exempts or excuses from performance any obligations the Transmission Provider owes Liberty.

- 27.13 Forward Contracts. The Parties acknowledge and agree that this Agreement and all transactions under this Agreement are forward contracts and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code.
- 27.14 Severability. If any of the provisions of this Agreement, or the application of such provisions, are held invalid by any court, regulatory agency, or other regulatory body having jurisdiction, all of the other provisions of this Agreement shall remain in force and effect unless a court, regulatory agency or other regulatory body having jurisdiction holds that the provisions are not separable from all of the other provisions of this Agreement.
- 27.15 Relationship of Parties. Nothing in this Agreement shall be construed to create an association, joint venture, trust, partnership, or agency relationship between the Parties or to impose a trust or partnership covenant, obligation, or liability on or with regard to any of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.
- 27.16 Complete Agreement. This Agreement and the Exhibits attached hereto shall constitute the full and complete agreement between the Parties with respect to the transactions under this Agreement commencing as of the Effective Date and continuing until the end of the Delivery Term and supersedes all prior agreements and representations by the Parties with respect to such subject matter whether written or oral.
- 27.17 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.


[Signatures on following page.]

Sierra Pacific Power Company  
Rate Schedule FERC No. \_\_\_\_

EXECUTION VERSION

IN WITNESS WHEREOF, the Parties have entered into this Service Agreement as of the date first written above.

LIBERTY UTILITIES (CALPECO  
ELECTRIC) LLC

By:   
Name: Gregory S. Sorensen  
Title: President

SIERRA PACIFIC POWER CO.  
d/b/a NV ENERGY

By:   
Name: Doug Cannon  
Title: President & CEO

By:   
Name: Chris Alario  
Title: Secretary



Sierra Pacific Power Company  
Rate Schedule FERC No. \_\_\_\_

## EXHIBIT A TERRITORY

**A.1 Territory:** The Territory shall include Parcel 1 and Parcel 2, as described below and as such parcels may be amended. Customers within the Territory shall include (i) customers in Parcel 1 and Parcel 2, (ii) any Nevada retail electric customer served by Liberty pursuant to the Borderline Customer Agreement, and (iii) the PG&E load served through the PG&E Agreement as of the Effective Date.

### Parcel 1

The boundary line of the area is defined as beginning at the Southwest corner of Section 34, T20N, and R13E. Thence Easterly along the Northern boundary of T19N to the Northeast corner of Section 1, T19N, R14E; thence Southerly to the Southeast corner of Section 1, T19N, R14E; thence Easterly to the Southwest corner of Section 34, T20N, R15E; thence Northerly to the Northwest corner of Section 3, T20N, R15E; thence in an Easterly direction to the Southwest corner of Section 34, T21N, R15E; thence Northerly to the Northwest corner of Section 22, T21N, R15E; thence Easterly to the Southeast corner of the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 13, T21N, R15E; thence Northerly to the Northeast corner of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 12, T21N, R15E; thence Easterly to the center point of Section 8, T21N, R16E; thence in a Northerly direction to the Plumas-Sierra County line; thence Easterly to the Northeast corner of Section 4, T21N, R17E; thence Southerly to the Southeast corner of Section 33, T21N, R17E; thence Easterly to the Southeast corner of Section 36, T21N, R17E; thence in a Northerly direction to the Northeast corner of Section 36, T21N, R17E; thence Easterly to the California-Nevada State line.

(That portion of boundary line described above contiguous to territory served by Plumas-Sierra Rural Electric Cooperative as certified to them in Metes & Bounds Description by CPUC Decision #47989.)

Thence Southerly along the California-Nevada State line to its intersection with the North line of T7N. Thence Westerly along said North line of T7N (as described in Mono County Ordinance No. 188, CPUC Decision #39846) to the Alpine-Mono County line. Thence continuing along the North line of T7N to the summit of the Sierra Nevada Mountains. Thence Northwesterly along the summit of the Sierra Nevada Mountains to the Alpine-El Dorado County line. (Alpine County Ordinance No. 146.) Thence continuing along the summit of the Sierra Nevada Mountains across the counties of El Dorado and Placer to a point on the Placer-Nevada County line. (El Dorado County Ordinance No. 99, Placer County Ordinance No. 41.) Thence Easterly along the said Placer-Nevada County line to a point on the Easterly line of Section 16, T17N, R15E, said point being approximately 575 feet North of the Southeast corner of Section 16, T17N, R15E. Thence North to the boundary line between T17N and T18N. Thence Westerly along the said boundary line to the boundary line between R14E and R15E. Thence North four miles to the Southeast corner of Section 13, T18N, R14E. Thence West 6 miles to the boundary line between R13E and R14E. Thence North 2 miles along the said boundary line to intersect the common boundary between Sierra and Nevada Counties. Thence Westerly along the said



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Sierra-Nevada County line to its intersection with the Westerly line of Section 3, T18N, R13E. Thence Northerly along the West lines of Section 3, T18N, R13E and Sections 34, 27, 22, 15, 10 and 3, T19N, R13E to the Southwest corner of Section 34, T20N, R13E to the point of beginning (CPUC Decision No. 74631). Excluding there from that area in Nevada and Placer Counties served by the Truckee Donner Public Utility District and described as follows:

Beginning at the Northeast corner of Section 32, T18N, R1 7E, MDB&M; thence Southerly approximately 4 miles along the East line of the following Sections: Section 32, T18N, R1 7E, Sections 5, 8 and 17, T1 7N, R1 7E, to the intersection of said East line of Section 17, T1 7N, R1 7E, with the Placer- Nevada County line; thence Westerly 4 miles more or less along said County line to its intersection with the East line of Section 15, T1 7N, R16E; thence Southerly approximately 305 feet along the East section line of said Section 15 to the Southeast corner of Section 15, T1 7N, R16E; thence Westerly along the South section line of said Section 15 for approximately 1 mile, to the Southwest corner of Section 15; thence Northerly for approximately 305 feet along the West section line of Section line of Section 15, T1 7N, R16E, to its intersection with the Placer-Nevada County line; thence Westerly along said County line for approximately 6 miles to its intersection with the West section line of Section 15, T1 7N, R15E; thence Northerly 4 miles more or less along the West line of the following sections: Sections 15, 10 and 3, T1 7N, R15E, Section 34, T18N, R15E, to the Northwest corner of said Section 34; thence Easterly 11 miles more or less along the North line of the following sections: Sections 34, 35 and 36, T18N, R15E, Sections 31, 32, 33, 34, 35 and 36, T18N, R16E and Sections 31 and 32, T18N, R1 7E, MDB&M, to the point of beginning. (CPUC Decision #72862.)

#### Parcel 2

That area bounded by the following described line, as excluded from the area certificated to Plumas-Sierra Rural Electric Cooperative by CPUC Decision #47989.

Beginning at the Northwest corner of the NE  $\frac{1}{4}$  of Section 34, T23N, R13E; thence in an Easterly direction to Northeast corner of Section 36, T23N, R13E; thence Northerly to the Northwest corner of Section 30, T23N, R14E; thence Easterly to the Northeast corner of Section 30, T23N, R14E; thence Southerly to the Southeast corner of Section 6, T22N, R14E; thence Westerly to the Southwest corner of Section 6, T22N, R14E; thence Southerly to the Southeast corner of Section 12, T22N, R13E; thence Westerly to the Southwest corner of the SE  $\frac{1}{4}$  of Section 10, T22N, R13E; thence Northerly to the Northwest corner of the NE  $\frac{1}{4}$  of Section 34, T23N, R13E, to the point of beginning.

Above described area is a part of the area certificated to the Sierra Pacific Power Company by CPUC Decision #20700, Plumas County Ordinance No. 180.

## EXHIBIT B DELIVERY POINTS

The Delivery Points contained in this Exhibit B will be updated, as necessary, to reflect any changes in Delivery Points during the Delivery Term.

**B.1 Delivery Points:** The following Delivery Points shall be applicable to the Agreement:

Delivery Point (Line)	Location	Meter Number	Nominal Voltage (kV)	Loss Adjustment Factor
Silver Lake 257A (Bordertown)	Pole 232181	211328	24.9	1.0332
Silver Lake 257B (Bordertown)	Pole 219597	AA020211 690	24.9	1.0332
Farad/Washoe 201	Pole New	183654	24.9	1.0332
Cal 204 Dog Valley Rd	Pole 91561	183277	24.9	1.0332
Cal Sub 204	Pole 284915	183223	24.9	1.0332
Cal 204 Trelease Ln	Pole 186237	211332	24.9	1.0332
Brockway 5100	Pole 115527	183237	14.4	1.0332
Brockway 4202	Pole 281453	183238	14.4	1.0332
Roundhill 2101	Pole 109508	183369	14.4	1.0332
Kings Beach 5105	In Sub	183239	14.4	1.0332
Kings Beach 5205	In Sub	183240	14.4	1.0332
Kingsbury 2800A	Pole 123122	183246	14.4	1.0332
Stateline 2200	Pole 131416	183241	14.4	1.0332
Stateline 2300A	Pole 275570	183249	14.4	1.0332
Stateline 2300B	Pole 131632	183388	14.4	1.0332
Muller 1296	Pole 256014	183257	12.47	1.0332
Topaz 1261	Pole 160716	183648	12.47	1.0332

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Delivery Point (Line)	Location	Meter Number	Nominal Voltage (kV)	Loss Adjustment Factor
Truckee 7202	Pole 203811	183250	14.4	1.0332
Truckee 7203	Pole 59301	183251	14.4	1.0332
Glenshire 7400 - Strand	Pole 5190	183252	14.4	1.0332
621 Truckee-North Truckee	621L Switch	183230	60	1.0068
619 Line@Russell Valley	Pole 232433	211329	60	1.0068
619 Line @ Prosser	In Sub	211326	60	1.0068
619 Line@ Marble	619L Switch	183231	60	1.0068
619 Line @ Stampede Sub	In Sub	208429	60	1.0068
619Line@ Cemetery	Pole 206927	183228	60	1.0068
619 Line@ Hobart	Pole 269794	183229	60	1.0068
619 Line@ Sierra Brooks	In Sub	183227	60	1.0068
132 Line@ Martis	Pole 240656	183232	120	1.0068
650 Truckee-Kings Beach	In Sub	183222	60	1.0068
609 Truckee-Squaw Valley	In Sub	183221	60	1.0068
608 Truckee-Glenshire	In Sub	183220	60	1.0068
634Stateline-Buckeye	In Sub	183225	60	1.0068
111 Meyers-Buckeye	In Sub	183224	120	1.0068
160 Roundhill-Stateline	In Sub	183226	120	1.0068
619 Line@ Loyalton (1)	In Sub	204365	60	1.0068
Stampede Hydros (1)	WAPA's	161541	60	1.0068

(1) The Loyalton facility is a biomass generating plant operated by ARP-Loyalton Cogen LLC. The Stampede Hydros are hydro units operated by the Western Area Power Administration. When these units are not generating and they need station service, they receive that service from Liberty as retail customers.

**B.2 Loss Adjustment Factors for Delivery Points.** Loss Adjustment Factors shall be determined using the loss factors and methodologies contained in Schedule 10 (“Loss Compensation Service”) and Attachment M (“Distribution Loss Factor”) of the OATT. Loss Adjustment Factors will be revised whenever the loss factors in either Schedule 10 or Attachment M of the OATT are revised.

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## **EXHIBIT C CONTRACT DEMAND**

**C.1** Unless otherwise adjusted in accordance with the provisions of Section 8, the Contract Demand for each month shall be:

<b>Month</b>	<b>Contract Demand</b>
January	110,779
February	110,733
March	91,917
April	56,233
May	54,652
June	59,366
July	65,298
August	59,308
September	58,893
October	57,175
November	90,302
December	138,968

## EXHIBIT D

### RATES AND CHARGES

- D.1 Demand Rate.** The monthly Demand Rate shall be \$8.20 per kW. The Demand Rate shall otherwise be fixed during the Delivery Term, unless modified pursuant to Section D.6 of this Exhibit D.
- D.2 Transmission Rate.** The monthly Transmission Rate shall be the sum of the FERC approved Transmission Rate for Network Integration Transmission Service (“NITS”) and for Scheduling, System Control, and Dispatch Service (“Scheduling Service”) pursuant to Schedule 1 and Schedule 7 of the Open Access Transmission Tariff, as it may change from time to time. If the OATT rate adjustments are implemented subject to refund, the adjustment to Transmission Rate shall also be subject to refund.
- D.3 Energy Rate.** On or before the thirtieth (30<sup>th</sup>) day prior to the commencement of each calendar quarter of the Delivery Term, NV Energy shall provide Liberty with written notice of the Energy Rate to be used during that quarter. The Energy Rate shall be developed using NV Energy's best estimate of the cost of fuel and purchased power for the quarter and consistent with the calculation methodology described in Section D.5 of this Exhibit D.
- D.4 Energy Charge Adjustment.** Beginning with the invoice for the second calendar month of the Delivery Term, an Energy Charge Adjustment will be included to provide a true-up of the Energy Charge from the previous calendar month to the actual costs for the previous calendar month.

The “**Energy Charge Adjustment**” will be equal to (i) the Monthly Energy times the difference between the True-up Rate, as defined below, and the Energy Rate plus (ii) the incremental costs, if any, attributable to Excess Demand.

The “**True-up Rate**” shall be calculated using actual costs for the calendar month and the calculation methodology described in Section D.5 of this Exhibit D.

If the Energy Charge Adjustment is positive, NV Energy shall include the amount of the Energy Charge Adjustment as a charge on the invoice; if the Energy Charge Adjustment is negative, NV Energy will include a credit on the invoice in the amount of the Energy Charge Adjustment.

Within forty-five (45) days after the end of the Delivery Term, NV Energy will calculate a final Energy Charge Adjustment for the final calendar month of the Delivery Term. If the final Energy Charge Adjustment is positive, NV Energy will submit an invoice to Liberty, and Liberty shall pay NV Energy the amount of the final Energy Charge Adjustment within twenty (20) days of Liberty’s receipt of the invoice; if the final Energy Charge Adjustment is negative, NV Energy will submit a credit note to Liberty and pay Liberty the amount of the final Energy Charge Adjustment within twenty (20) days of its delivery of the credit note.

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**D.5 Energy Rate Calculations.** The Energy Rate and the True-up Rate will be determined using the following methodology, where "Rate" is the Energy Rate or True-up Rate, as applicable:

$$Rate = (1 - RP) * \frac{Net\ F\&PP}{Net\ System\ MWh} + RP * Renewable\ Rate$$

where:

**“Net F&PP Cost”** is the total net system fuel and purchased power cost for NV Energy, excluding (i) the cost for any purchased power contracts from coal-fired resources and (ii) the cost for the North Valmy units. Net fuel and purchased power costs shall include costs in FERC accounts 501, 547, 555, and 565, less revenues received from non-requirements sales for resale in FERC account 447.

**“North Valmy”** is the coal-fired generating station located in Valmy, Nevada.

**“Renewable Cost”** is the total cost for renewable energy purchased by NV Energy.

**“Net System MWh”** is the total system energy produced and purchased by NV Energy, excluding (i) the energy for any purchased power contracts from coal-fired resources and (ii) the energy for the North Valmy units, less energy for non-requirements sales for resale.

**“Renewable MWh”** is the total renewable energy purchased by NV Energy.

**“RP”** is the Renewable Percentage for the applicable calendar year.

**“Renewable Rate”** shall be the weighted average cost per MWh of the renewable energy delivered to NV Energy from the NVE Pool.

**D.6 Additional Rate Adjustments.** NV Energy is entitled to adjust one or more of the rates in this Agreement if NV Energy incurs or is expected to incur any costs (i) that are not reflected in the then current rates and charges or captured by the adjustment mechanisms of Sections D.1 through D.5, and (ii) that are attributable to the capacity and energy that will be provided to Liberty pursuant to this Agreement, including without limitation costs arising from the circumstances set out in Section 12, Section 21 or Section 23 of this Agreement.

If the Demand Rate, the Transmission Rate, the Energy Rate or the Distribution Charge are or is adjusted in accordance with the provisions of Section 12, Section 21, Section 23 or this Exhibit D, the adjusted rate(s) and/or charges shall be applicable to this Agreement.

NV Energy shall have the right to make any filing with FERC or any other duly constituted regulatory, administrative or judicial body with respect to any rate adjustment provided for in this Agreement. Liberty shall have the right to protest any such filing by NV Energy to the extent the adjustment to which such filing relates is not permitted, in scope or

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amount, by this Agreement, and to participate fully in any such proceeding in which such modifications may be considered. Liberty shall not otherwise protest any such proceeding.



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## EXHIBIT E CONTACT INFORMATION

### **NV Energy:**

#### a) Notices

Address: Sierra Pacific Power Company d/b/a NV Energy  
Attn: Vice President, General Counsel & Corporate Secretary  
Mailing: P.O. Box 98910, M/S 2  
Las Vegas, Nevada 89151  
  
Physical: 6226 West Sahara Avenue, M/S 2  
Las Vegas, Nevada 89146  
Phone: (702) 402-5670  
Fax: (702) 402-2069  
Email: [bbarkhuff@nvenergy.com](mailto:bbarkhuff@nvenergy.com)

#### b) Wire Transfers

ABA Routing Number: 121000248  
Bank Name: Wells Fargo Bank  
City: San Francisco  
Account Name: Sierra Pacific Power Company  
Text:  
Bank Contact:  
Company Contact:

Elvira Cozzens  
phone: (702) 402-5448

#### c) Contract Representative

Address: Manager, Energy Supply Contract Management  
Sierra Pacific Power Company d/b/a NV Energy  
  
Mailing: P.O. Box 98910, M/S 26A  
Las Vegas, Nevada 89151  
  
Physical: 7155 S. Lindell Rd., M/S B13RE  
Las Vegas, Nevada 89118  
  
Phone: (702) 402-6085  
Fax: (702) 402-0812  
Email: [ContractManagement@nvenergy.com](mailto:ContractManagement@nvenergy.com)

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**Liberty:**

a) Notices

Address: Liberty Utilities (CalPeco Electric) LLC  
Attn: Vice President

Mailing: P.O. Box 107  
Tahoe Vista, California 96148

Physical: 701 National Ave.  
Tahoe Vista, California 96148

Phone: (530) 543-5264

Fax: (530) 546-1715

Email: [Travis.Johnson@libertyutilities.com](mailto:Travis.Johnson@libertyutilities.com)

with a copy to:

Algonquin Power & Utilities Corp.  
Attn: Chief Legal Counsel  
354 Davis Road  
Oakville, Ontario L6J 2X1 with

an additional copy to:

Andrew B. Brown  
Ellison Schneider Harris & Donlan, LLP  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816  
Email: [ABB@ESLawfirm.com](mailto:ABB@ESLawfirm.com)

b) Wire Transfers

[Information for this section to be provided by Liberty prior to first day of the Delivery Term]

c) Contract Representative

[Information for this section to be provided by Liberty prior to the first day of the Delivery Term]

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## EXHIBIT F FORM OF GUARANTEE

### GUARANTEE of LIBERTY UTILITIES CO.

This GUARANTEE executed as of this \_\_\_\_ day of \_\_\_, 2020 (the “Effective Date”) is made by Liberty Utilities Co., a corporation organized under the laws of Delaware (the “Guarantor”), for the benefit of Sierra Pacific Power Company d/b/a NV Energy, a corporation created under the laws of the Nevada (the “Guaranteed Party”) (with the Guarantor and the Guaranteed Party referred to as the “Parties”).

WHEREAS the Guaranteed Party and Liberty Utilities (CalPeco Electric) LLC, a California limited liability company (the “Company”) have entered into a Service Agreement for the purpose of providing Company with energy and capacity (the “Agreement”);

WHEREAS the Company is a subsidiary of the Guarantor and it is in the interests of the Guarantor that the Guaranteed Party enter into the Agreement with the Company and therefore the Guarantor has agreed to guarantee the financial obligations of the Company under the Agreement in accordance with and subject to the terms and conditions of this Guarantee with effect from the date of the Agreement and the Guarantor is prepared to issue this Guarantee to the Guaranteed Party, which would not otherwise enter into the Agreement;

NOW, THEREFORE, to induce the Guaranteed Party to enter into the Agreement and in consideration of the Guaranteed Party entering into the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor agrees as follows:

1. **Guarantee.** Subject to the terms of this Guarantee, and in consideration of Guaranteed Party entering into the Agreement, the Guarantor irrevocably and unconditionally guarantees to the Guaranteed Party the prompt and complete payment when due of all amounts to be paid by the Company to the Guaranteed Party under the Agreement and any replacements therefore, extensions or renewals thereof or amendments thereto (collectively or individually, the “**Obligations**”). For greater certainty, the Guarantor’s obligations and liability under this Guarantee (i) shall be limited to payment obligations only and the Guarantor shall have no obligation to perform under the Agreement, including, without limitation, to sell, buy, deliver, receive, supply or transport gas, electricity or any other commodity and (ii) extend only to Guarantor and do not obligate or commit any direct or indirect subsidiary or affiliate of Guarantor or any other person or entity or any assets thereof. If the Company fails to pay any Obligations for any reason, then the Guarantor shall pay or cause to be paid such Obligations within three (3) days of the Guaranteed Party’s demand therefore and without the Guaranteed Party having to make prior demand on the Company, provided any relevant grace periods under the terms of the Agreement shall have lapsed. All payments made under this

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Guarantee shall be made without set-off or counterclaim except to the extent that the Company or any affiliate of the Guarantor would have been entitled to similar rights and defenses in respect to such Obligations under the Agreement.

2. **Guarantee Limit.** Notwithstanding any other provision of this Guarantee, the obligations and liabilities of the Guarantor hereunder shall not exceed in the aggregate US\$7,000,000.00 (SEVEN MILLION US DOLLARS) (the “**Guarantee Limit**”). Guarantor’s liability hereunder shall be further limited to direct, actual, monetary damages arising from nonpayment under the Agreement; in no event shall Guarantor be subject to consequential, special, exemplary, equitable, punitive, multiple, lost profits, tort or any other damages. The foregoing notwithstanding, Guarantor shall be responsible to reimburse Guaranteed Party for Guaranteed Party’s reasonable attorney’s fees and costs incurred in enforcing its rights under this Guarantee in good faith, provided, that, Guarantor shall not be responsible to make such reimbursement if such enforcement action is not successful.
  
3. **Guarantor's Obligations Not Modified.** The Guarantor’s obligations under this Guarantee shall not be released or discharged notwithstanding:
  - (a) a waiver by the Guaranteed Party of the Company’s performance of any Obligations or a waiver of the Company’s default under the Agreement except to the extent, if at all, any such waiver constitutes a valid defense to the Company under the Agreement;
  - (b) the extension of time for payment of any Obligations or the amendment, extension or renewal of the Agreement or any Obligations;
  - (c) any delay or failure by the Guaranteed Party to enforce or exercise any right or remedy under the Agreement or waiver by the Guaranteed Party of any such right or remedy;
  - (d) any transfer, assignment or mortgaging by the Company or the Guaranteed Party of any interest in the Agreement or this Guarantee;
  - (e) the release or discharge of the Company from the observance of any Obligations other than by performance or by consent of or release by the Guaranteed Party;
  - (f) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets and liabilities, or the voluntary or involuntary receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, composition or other similar proceeding affecting the Company;
  - (g) any merger, amalgamation, arrangement, consolidation or other reorganization to which the Company, Guarantor or any related entity is a party, or any direct or indirect sale or disposition of Guarantor's or the Company's assets or Guarantor's direct or indirect ownership of the Company;
  - (h) the release, acceptance or disposal of any collateral held by the Guaranteed Party as security for any of the Obligations; or
  - (i) the lack of authority of Guarantor, invalidity, unenforceability or illegality, in whole or in part, of the Agreement or other documents held by the

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- Guaranteed Party creating, representing or evidencing the Obligations.
- (j) if any payment of Obligations under the Agreement is rescinded for any reason, the Guarantor shall remain liable as if such payment had not been made.
4. **Amendments to the Agreement.** The Guarantor is aware of the terms of the Agreement and agrees that the Agreement may be amended, replaced, renewed or extended by the Guaranteed Party and the Company without notice to or the consent of the Guarantor and that the Guarantor's obligations hereunder shall continue in force with respect to the Agreement as so amended, provided that, for greater certainty, the Guarantee Limit set out in Section 2 may not be increased nor the Term set out in Section 10 be extended without the prior written agreement of the Guarantor.
5. **Waivers by Guarantor.** The Guarantor waives demand or presentment for payment to the Company or the making of any protest, notice of the amount of the Obligations outstanding at any time, notice of nonpayment or failure to perform on the part of the Company, notice of any amendment, modification or waiver of or under the Agreement, dishonor, acceptance and all other notices or demands not specifically required under this Guarantee.
6. **No Requirement to Exhaust Remedies.** The Guaranteed Party shall not be required to make demand on or file suit against the Company or any other party to attempt to collect payment or enforce performance of any Obligations from the Company or any other party, to foreclose against any security now or hereafter existing for the Obligations or to exercise or exhaust any other right or remedy to which the Guaranteed Party may be entitled prior to enforcing this Guarantee.
7. **Subrogation.** The Guarantor agrees not to exercise any rights that it may acquire by way of subrogation or indemnity in respect of this Guarantee until all of the Obligations have been paid in full, other than the right to assert rights and defenses that the Company may be entitled to under the Agreement as provided for in Section 9 of this Guarantee. Subject to the foregoing, upon payment of all Obligations related to the Agreement, the Guarantor shall be subrogated to the rights of the Guaranteed Party against the Company and the Guaranteed Party agrees to take, at the Guarantor's expense, such steps as the Guarantor may reasonably request to implement such subrogation.
8. **Representations and Warranties.** The Guarantor hereby represents and warrants, and so long as this Guarantee remains in effect shall be deemed continuously to represent and warrant that:
- (a) it is a corporation organized, validly existing and in good standing under the laws of the State of Delaware;
- (b) the execution, delivery and performance by the Guarantor of this Guarantee are within its powers, have been duly authorized by all necessary action and do not violate the Guarantor's constituting documents or any law, order or contractual restriction binding on the

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Guarantor;

- (c) no consents of or filings with any governmental authority or any other person are required for the execution, delivery, performance or enforceability of this Guarantee, except those that have been duly obtained or made; and
  - (d) this Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights in general and general principles of equity).
9. **Setoff and Counterclaim.** The Guarantor shall be entitled to assert all rights and defenses that the Company may be entitled to under the Agreement, including, but not limited to, any setoff or counterclaims that the Company or any other affiliate of the Guarantor is or may be entitled to.
10. **Termination.** This Guarantee shall terminate on the earlier of either the effective time of termination or expiration of the Agreement or any outstanding Obligations thereunder or the posting by Company of Adequate Assurance pursuant to Section 18.2 of the Agreement to Guaranteed Party in the amount of US\$7,000,000.00 (SEVEN MILLION US DOLLARS); such termination shall not affect, in any manner, rights arising under this Guarantee with respect to Obligations which shall have been created, incurred, contracted or assumed under the Agreement prior to the applicable termination time, (the "**Term**").
11. **Notice.** All notices called for in this Guarantee shall be in writing and shall be considered as having been given if delivered by hand against receipt, by registered or certified mail, or by email. The date of delivery of any such notice shall be the earlier of (i) the date of actual receipt, or (ii) four (4) Business Days after such notice is sent by registered or certified mail, or (iii) the date such notice is sent by email if sent before or during the Guaranteed Party's regular business hours or (iv) the following Business Day if such notice is sent by email after the Guaranteed Party's regular business hours. Notice shall be sent to the Guarantor and Guaranteed Party as follows (or such other address that the Guarantor or Guaranteed Party may provide, in writing, from time to time):

Liberty Utilities Co. 345 Davis Rd, Suite 100  
Oakville, ON L6J 2X1  
Attention: Treasury Department  
Email: credit\_dept@algonquinpower.com  
Phone: 905-465-4500

Sierra Pacific Power Company d/b/a NV Energy 6226 W.  
Sahara Ave. Las Vegas, NV 89146  
Attention: Jenny Venter Mailstop 9A

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Email: [jventer@nvenergy.com](mailto:jventer@nvenergy.com)  
Phone: 702-402-5109

**12. Miscellaneous.**

- (a) No provision of this Guarantee may be amended or waived except by a written instrument executed by Guarantor and the Guaranteed Party. Notwithstanding the foregoing, from time-to-time the Guarantee Limit specified in Section 2 may be increased and/or the Term specified in Section 10 may be extended, by written instrument executed by the Guarantor only.
- (b) Neither the Guarantor nor the Guaranteed Party may assign its rights, interests or obligations hereunder without the prior written consent of the Company and the Guaranteed Party or the Guarantor, as the case may be, with such consent not to be unreasonably withheld, and any purported assignment absent such consent is void. Notwithstanding the foregoing, the Guaranteed Party may assign its right, interest or obligations hereunder to any resulting or successor entity due to reorganization, incorporation, or reconstitution into or as, another entity. The Guaranteed Party shall give written notice to the Guarantor of such assignment. Notwithstanding the foregoing, the Guarantor may assign its right, interest or obligations hereunder to any resulting or successor entity due to reorganization, incorporation, or reconstitution into or as, another entity, provided that such resulting entity shall have a credit rating equal to or higher than the Guarantor on the date of such assignment. The Guarantor shall give written notice to the Company and the Guaranteed Party of such assignment. Upon assignment pursuant to the terms and conditions of this clause, this Guarantee shall bind and benefit the successors and assigns of the Guarantor or the Guaranteed Party, as the case may be.
- (c) This Guarantee shall be governed by, and construed in accordance with, the laws of the State of New York. Guarantor irrevocably submits to the state and federal courts in the State of New York, New York in the Borough of Manhattan as the exclusive venue for the enforcement of this Guarantee or the settlement of any dispute under the this Guarantee.
- (d) Business Day shall be any day, other than Saturday or Sunday, excluding Federal Banking Holidays in the United States of America.
- (e) It is intended that all provisions of this Guarantee shall be fully binding and effective between the Parties, but in the event that any particular provision or provisions or a part of one is found to be void, voidable or unenforceable for any reason whatever, then the particular provision or provisions, or part thereof shall be deemed severed from the remainder of



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this Guarantee and all other provisions shall remain in full force.

- (f) Descriptive headings are inserted solely for convenience of reference, do not form part of this Guarantee, and are not to be used as an aid in the interpretation of this Guarantee.

**IN WITNESS WHEREOF, Liberty Utilities Co. has executed this Guarantee as of the Effective Date.**

LIBERTY UTILITIES CO.

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**Name:**

**Title:**

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**Name:**

**Title:**

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**EXHIBIT G**  
**FORM OF LETTER OF CREDIT**

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name of Issuing Bank]  
[Address of Issuing Bank]  
[City, State of Issuing Bank]

Letter Of Credit No. [\_\_\_\_\_]   
Irrevocable Standby Letter Of Credit

Date of Issue: [\_\_\_\_\_] , 20\_\_

Stated Expiration Date: [\_\_\_\_\_]

Applicant:

\$\_[\_\_\_\_\_]   
[Name and address]   
[\_\_\_\_\_]   
[\_\_\_\_\_]

Stated Amount: USD

Beneficiary:

[Name and address]   
[\_\_\_\_\_]   
[\_\_\_\_\_]

Credit Available With: [\_\_\_\_\_]

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Ladies and Gentlemen:

At the request and for the account of [\_\_\_\_\_] (the “Applicant”), we hereby establish in favor of Sierra Pacific Power Company (“Beneficiary”) for the aggregate amount not to exceed [\_\_\_\_\_] million United States Dollars (\$[\_\_\_\_\_] ), in connection with the Services Agreement dated as of [\_\_\_\_\_] (as amended, restated, amended and restated or otherwise modified, the “Agreement”), by and between the Applicant and Beneficiary this Irrevocable Standby Letter of Credit no. [\_\_\_\_\_] (this “Letter of Credit”) expiring on July 26, 2026 (the “Stated Expiration Date”).

We irrevocably authorize you to draw on this Letter of Credit, in accordance with the terms and conditions hereinafter set forth, in any amount up to the full Available Amount (as defined below) available against presentation of a dated drawing request drawn on [***Name of Issuing Bank***] manually signed by a purported authorized representative of a Beneficiary completed in the form of Annex 1 hereto (a “Drawing Request”). Partial drawings and multiple drawings are allowed under this Letter of Credit. Each Drawing Request honored by us shall immediately reduce the amount available to be drawn hereunder by the amount of the payment made in satisfaction of such Drawing Request (each, an “Automatic Reduction”).

On any given date, the Stated Amount (as set forth on the first page of this Letter of Credit) minus any Automatic Reductions plus any amounts increased pursuant to the terms and conditions hereto shall be the aggregate amount available hereunder (the “Available Amount”).

Drawing Requests and all communications with respect to this Letter of Credit shall be in writing, addressed or presented in person to us at: [***Address of Issuing Bank***], Attn: [\_\_\_\_\_] , referencing this Letter of Credit No. [\_\_\_\_\_] . In addition, presentation of a Drawing Request may also be made by facsimile transmission to [***Fax number of Issuing Bank***], or such other facsimile number identified by us in a written notice to you. To the extent a Drawing Request is made by facsimile transmission, you must (i) provide telephone notification to us at [***Telephone number of Issuing Bank***] prior to or simultaneously with the sending of such facsimile transmission and (ii) send the original of such Drawing Request to us by overnight courier, at the same address provided above; provided, however, that our receipt of such telephone notice or original documents shall not be a condition to payment hereunder. Presentation of the original of this Letter of Credit shall only be required for any drawing of the entire Available Amount.

If a Drawing Request is presented in compliance with the terms of this Letter of Credit to us at such address or facsimile number by 11:00 a.m., New York City time, on any Business Day (as defined below), payment will be made not later than the close of business, New York City time, on such Business Day and if such Drawing Request is so presented to us after 11:00 a.m., New York City time, on any Business Day, payment will be made on the following Business Day not later than the close of business, New York City time on such following Business Day. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as specified in the Drawing Request.

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As used in this Letter of Credit, "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by Law to remain closed in the State of New York.

This Letter of Credit shall expire on the earliest to occur of (1) our receipt of written confirmation from a Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit; (2) the close of business, New York time, on the date (the "Early Expiration Date") specified in a notice of early expiration in the form of Annex 2 hereto sent by us to the Beneficiary and the Applicant by courier, mail delivery or delivery in person or facsimile transmission and stating that this Letter of Credit shall terminate on such date, which date shall be no less than thirty (30) days after the date of such notice, with the Beneficiary remaining authorized to draw on us prior to such Early Expiration Date in accordance with the terms hereof; or (3) the Stated Expiration Date. It is a condition of this letter of credit that it shall be deemed automatically extended without an amendment for periods of one (1) year each beginning on the present expiry date hereof and upon each anniversary of such date, unless at least thirty (30) days prior to any such expiry date we have sent you written notice (the "Notice of Non-Renewal") by certified mail or overnight courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored. To the extent a Notice of Non-Renewal has been provided to the Beneficiary and Applicant in accordance herewith, the Beneficiary are authorized to draw on us up to, in the aggregate, the full Available Amount of this Letter of Credit, by presentation to us, in the manner and at the address specified in the third preceding paragraph, of a Drawing Request completed in the form of Annex 1 hereto and sent and purportedly signed by a Beneficiary's authorized representative.

This Letter of Credit is effective immediately.

In the event that a Drawing Request fails to comply with the terms of this Letter of Credit, we shall provide the Beneficiary prompt notice of same stating the reasons therefor and shall upon receipt of a Beneficiary's instructions, hold any nonconforming Drawing Request and other documents at your disposal or return any non-conforming Drawing Request and other documents to the Beneficiary at the addresses set forth above by delivery in person or facsimile transmission. Upon being notified that the drawing was not effected in compliance with this Letter of Credit, a Beneficiary may attempt to correct such non-complying Drawing Request in accordance with the terms of this Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for Drawing Requests and certificates. The foregoing notwithstanding, this Letter of Credit is subject to the rules of the "International Standby Practices 1998, International Chamber of Commerce, Publication No. 590" published by the Institute of International Banking Law and Practice ("ISP 98") and, as to matters not governed by ISP 98, shall be governed by and construed in accordance with the Laws of the State of New York.

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This Letter of Credit is transferable, only in its entirety and not in part, upon presentation to us, at our presentation office specified herein, of a signed transfer certificate in the form of Annex 3 accompanied by this original Letter of Credit and all amendments, if any, in which a Beneficiary irrevocably transfers to its successor or assign all of its rights hereunder, whereupon we will either issue a substitute letter of credit to such successor or assign or endorse such transfer on the reverse of this Letter of Credit. Transfers to designated foreign nationals are not permitted as being contrary to the U.S. Treasury Department or Foreign Assets Controls Regulations.

Any voluntary reduction hereunder shall be in the form of Annex 4 hereto.

All banking charges are for the account of the Applicant. All transfer fees are for the account of the Beneficiary.

All Drawing Requests under this Letter of Credit must bear the clause: “Drawn under [*Name of Issuing Bank*], Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_].”

This Letter of Credit shall not be amended except with the written concurrence of [*Name of Issuing Bank*], the Applicant and the Beneficiary.

We hereby engage with you that a Drawing Request drawn strictly in compliance with the terms of this Letter of Credit and any amendments thereto shall be honored.

We irrevocably agree with you that any legal action or proceeding with respect to this Letter of Credit shall be brought in the courts of the State of New York in the County of New York or of the United States of America in the Southern District of New York. You and we irrevocably submit to the nonexclusive jurisdiction of such courts solely for the purposes of this Letter of Credit. You and we hereby waive to the fullest extent permitted by Law any objection either of us may now or hereafter have to the laying of venue in any such action or proceeding in any such court.

[*Name of Issuing Bank*]

Authorized signature

Sierra Pacific Power Company  
Rate Schedule FERC No. \_\_\_\_

ANNEX 1  
[Letterhead of a Beneficiary]

Drawn under [insert name of Issuing Bank],  
Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_]

DRAWING REQUEST  
[Date]

[name and address of Issuing Bank]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of a Beneficiary hereby draws on [insert name of Issuing Bank], Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) dated [\_\_\_\_\_] issued by you in favor of us. Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

In connection with this drawing, we hereby certify that:

A) This drawing in the amount of US\$\_\_\_\_\_ is being made pursuant to the Letter of Credit;

[Use one or more of the following forms of paragraph B, as applicable, and include in this Drawing Request]

B-1) Beneficiary is authorized to make a drawing under this Letter of Credit in accordance with the terms of the Agreement applicable to Beneficiary.

or

B-2) The Letter of Credit will expire within thirty (30) days of the date of this Drawing Request pursuant to a Notice of Non-Renewal and the Applicant has failed to provide a replacement letter of credit from an acceptable credit provider and satisfying the requirements of the Agreement applicable to Beneficiary;

or

B-3) [insert name of Issuing Bank] has delivered an Early Expiration Notice and such Early Expiration Notice has not been rescinded and the Applicant has not replaced the Letter of Credit;

; and

C) You are directed to make payment of the requested drawing to:

Sierra Pacific Power Company  
Rate Schedule FERC No. \_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed and delivered this request  
on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary]

By:

\_\_\_\_\_  
Name:

Title:



Sierra Pacific Power Company  
Rate Schedule FERC No. \_\_\_\_

ANNEX 2  
NOTICE OF EARLY EXPIRATION  
[Date]

[Beneficiary name and address]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) dated [\_\_\_\_\_] issued by [Issuing Bank] in favor of [\_\_\_\_\_] (the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

This constitutes our notice to you pursuant to the Letter of Credit that the Letter of Credit shall terminate on \_\_\_\_\_, \_\_\_\_\_ [*insert a date which is thirty (30) or more days after the date of this notice of early expiration*] (the “Early Expiration Date”).

Pursuant to the terms of the Letter of Credit, the Beneficiary is authorized to draw (pursuant to one or more drawings), prior to the Early Expiration Date, on the Letter of Credit in an aggregate amount that does not exceed the then Available Amount (as defined in the Letter of Credit).

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[ISSUING BANK]

By:

\_\_\_\_\_  
Name:

Title:

cc:

[Applicant name and address]

Sierra Pacific Power Company  
Rate Schedule FERC No. \_\_\_\_

ANNEX 3

REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

[Name of Issuing Bank],  
\_\_\_\_\_

Date:

[Address]  
[City, State]

Attn: Trade Services Department

Re: [Name of Issuing Bank], Irrevocable Standby Letter of Credit No. [\_\_\_\_\_]

For value received, the undersigned beneficiary hereby irrevocably transfers to:

NAME OF TRANSFEREE  
\_\_\_\_\_

ADDRESS OF TRANSFEREE  
\_\_\_\_\_  
\_\_\_\_\_

CITY, STATE/COUNTRY ZIP  
\_\_\_\_\_

(hereinafter, the “transferee”) all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary hereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such Letter of Credit and all amendments, if any, is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

In payment of your transfer commission in amount equal to a minimum of \$[\_\_\_\_\_] and maximum of \$[\_\_\_\_\_].

**Select one of the following:**

\_\_\_\_ we enclose a cashier’s/certified check

\_\_\_\_ we have wired funds to you through \_\_\_\_\_  
bank

Sierra Pacific Power Company  
Rate Schedule FERC No. \_\_\_\_

\_\_\_\_ we authorize you to debit our account # \_\_\_\_\_ with you, and in addition thereto, we agree to pay you on demand any expenses which may be incurred by you in connection with this transfer

We certify that this transfer request is not in violation of any federal or state laws and further confirm our understanding that the execution of this transfer request by you is subject to compliance with all legal requirements and related procedures implemented by your bank under applicable laws of the United States of America [and the jurisdiction of Issuing Bank].

Very truly yours,

[BENEFICIARY NAME]

\_\_\_\_\_

Authorized Signature

The signature(s) of \_\_\_\_\_ with title(s) as stated conforms to those on file with us; are authorized for the execution of such instrument; and the beneficiary has been approved under our bank's Customer Identification Program. Further, pursuant to Section 326 of the USA Patriot Act and the applicable regulations promulgated thereunder, we represent and warrant that the undersigned bank: (i) is subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. section 5318(h); (ii) is regulated by a Federal functional regulator [as such term is defined in 31 C.F.R. section 103.120(a)(2)]; and (iii) has a Customer Identification Program that fully complies with the requirements of the regulations.

\_\_\_\_\_  
(Signature of Authenticating Bank)

\_\_\_\_\_  
(Name of Bank)

\_\_\_\_\_  
(Printed Name/Title)

\_\_\_\_\_  
(Date)

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary name]

By:

\_\_\_\_\_  
Name:

Title:

cc:

[insert name and address of Transferee]

[insert name and address of Applicant]

Sierra Pacific Power Company  
Rate Schedule FERC No. \_\_\_\_

ANNEX 4  
VOLUNTARY REDUCTION REQUEST CERTIFICATE  
[Date]

[insert name of Issuing Bank]  
[insert address of Issuing Bank]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) dated [\_\_\_\_\_] issued by you in favor of [\_\_\_\_\_] (the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

The undersigned, a duly authorized representative of the Beneficiary, having been so directed by [\_\_\_\_\_] (the “Applicant”), hereby requests that the Stated Amount (as such term is defined in the Letter of Credit) of the Letter of Credit be reduced by U.S.\$[\_\_\_\_\_] to U.S.\$[\_\_\_\_\_].

We hereby certify that the undersigned is a duly authorized representative of the Beneficiary.

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary name]

By:

\_\_\_\_\_  
Name:

Title:

cc:

[Applicant name and address]

## **EXHIBIT H**

### **NVEPOOL**

The NVE Pool shall consist of the following renewable energy contracts:

- H.1** "**Steamboat 2**" means NV Energy's power purchase agreement for the Steamboat 2 geothermal project (CEC RPS identification number 60676A and WREGIS identification number W1213 with an expected contract expiration of 12 December, 2022).
- H.2** "**Steamboat 3**" means NV Energy's power purchase agreement for the Steamboat 3 geothermal project (CEC RPS identification number 60675A and WREGIS identification number W1214 with an expected contract expiration of 18 December, 2022).
- H.3** "**Galena 3**" means NV Energy's power purchase agreement for the Galena 3 geothermal project (CEC RPS identification number 60674A and WREGIS identification number W1215 with an expected contract expiration of 31 December, 2028).
- H.4** "**Beowawe**" means NV Energy's power purchase agreement for the Beowawe geothermal project (CEC RPS identification number 60677A and WREGIS identification number W1220 with an expected contract expiration of 31 December, 2025).
- H.5** "**Burdette**" means NV Energy's power purchase agreement for the Richard Burdette geothermal project (CEC RPS identification number 60664A and WREGIS identification number W1216 with an expected contract expiration of 31 December, 2026).

## **EXHIBIT I**

### **LIBERTY RENEWABLE PROJECTS**

#### **1.1 Project A Description.**

- I. Name of Facility: Luning Solar Facility
2. Location: Mineral County
3. Receipt Point
  - (a) Location: Table Mountain Substation
  - (b) Meter Number: 183633
  - (c) Recorder ID: 750249
  - (d) Nominal Voltage: 120 kV
2. Owner: Liberty Utilities (CalPeco Electric) LLC
3. Operator: Invenergy
4. Equipment:
  - (a) Type of Facility: Solar Photovoltaic
  - (b) Total Nameplate Capacity 64,500kW DC
  - (c) Receipt Point Capacity: 50,000kW AC
  - (d) Additional Technology Specific Information:
    - (i) Jinko Modules,
    - (ii) SMA Inverters - SMA SC2500-EV
    - (iii) Sunlink Viasol Single Axis Tracker JKM315P-72-V / JKM320P-72-V
  - (e) Number of generating units: 10
  - (f) Nameplate of each generating unit: 2,500 kW DC

## 1.2 Project B Description.

1. Name of Facility: Turquoise Solar Facility
2. Location: 2.5 miles north of Luning, NV
3. Receipt Points
  - (a) Location: Pah Rah Substation
  - (b) Meter Numbers: 183633
  - (c) Recorder ID: 793167
  - (d) Nominal Voltage: 120kV
1. Owner: Liberty Utilities (CalPeco Electric) LLC
2. Operator: SOLV
3. Equipment:
  - (a) Type of Facility: Solar Photovoltaic
  - (b) Total Nameplate Capacity: 12,000 kW DC
  - (c) Receipt Point Capacity: 40,400 kW AC or as specified in the Liberty Project Notice
  - (d) Additional Technology Specific Information:
    - (i) First Solar Series 4 Modules
    - (ii) 3 Schneider Conext SmartGen CS2200 Inverters, 2200kVA  
2 SMA SC2500 EU-US Inverters, 2250kVA
    - (iii) Array Technologies tracking System
  - (e) Number of generating units: 5
  - (f) Nameplate of each generating unit: 2,500 kW DC



### 1.3 Project C Description

4. Name of Facility: TBD
5. Location: North System - Nevada
6. Receipt Points
  - (a) Location: TBD
  - (b) Meter Numbers: TBD
  - (c) Nominal Voltage: 120kV
4. Owner: Liberty Utilities (CalPeco Electric) LLC
5. Operator: Liberty Utilities
6. Dispatcher: NV Energy
7. Equipment:
  - (a) Type of Facility: Solar Photovoltaic with Battery Energy Storage System
  - (b) Total Nameplate Capacity: 80,000 kW DC Solar 70,000kW (4 hr) Storage capability
  - (c) Receipt Point Capacity:
  - (d) Additional Technology Specific Information:
    - (i) Solar modules TBD
    - (ii) Tracking System - TBD
    - (iii) Inverters – TBD
    - (iv) Battery System - TBD
  - (e) Number of generating units: TBD

Nameplate of each generating unit: TBD

Liberty Utilities (CalPeco Electric) LLC  
Advice Letter Filing Service List  
General Order 96-B, Section 4.3

**VIA EMAIL**

gbinge@ktminc.com;  
emello@sppc.com;  
epoole@adplaw.com;  
cem@newsdata.com;  
rmccann@umich.edu;  
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rmp@cpuc.ca.gov;  
jaime.gannon@cpuc.ca.gov;  
mas@cpuc.ca.gov;  
txb@cpuc.ca.gov;  
efr@cpuc.ca.gov;  
tlg@cpuc.ca.gov;  
dao@cpuc.ca.gov;  
ljt@cpuc.ca.gov;  
mmg@cpuc.ca.gov;  
kjl@cpuc.ca.gov;  
denise.tyrrell@cpuc.ca.gov;  
fadi.daye@cpuc.ca.gov;  
winnie.ho@cpuc.ca.gov;  
usrb@cpuc.ca.gov;  
Rob.Oglesby@energy.ca.gov;  
stevegreenwald@dwt.com;  
vidhyaprabhakaran@dwt.com;  
judypau@dwt.com;  
dwtcpucdockets@dwt.com;  
patrickferguson@dwt.com;  
travis.ritchie@sierraclub.org;  
dan.marsh@libertyutilities.com;  
sharon.yang@libertyutilities.com;  
ginge@kinectenergy.com



# ADVICE LETTER SUMMARY

## ENERGY UTILITY



MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.: Liberty Utilities (CalPeco Electric) LLC (U-933 E)

Utility type:

- ELC       GAS       WATER  
 PLC       HEAT

Contact Person: Daniel W Marsh  
 Phone #: 530-721-2435  
 E-mail: Dan.Marsh@libertyutilities.com  
 E-mail Disposition Notice to: Dan.Marsh@libertyutilities.com

EXPLANATION OF UTILITY TYPE  
 ELC = Electric      GAS = Gas      WATER = Water  
 PLC = Pipeline      HEAT = Heat

(Date Submitted / Received Stamp by CPUC)

Advice Letter (AL) #: 153-E

Tier Designation: 2

Subject of AL: Liberty Utilities (CalPeco Electric) LLC (U-933 E) – Request for Approval of 2021 Energy Services Agreement with Sierra Pacific Power Company, dba NV Energy

Keywords (choose from CPUC listing): Procurement, Contracts

AL Type:  Monthly  Quarterly  Annual  One-Time  Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #: D.19-04-040

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: N/A

Summarize differences between the AL and the prior withdrawn or rejected AL: N/A

Confidential treatment requested?  Yes  No

If yes, specification of confidential information:

Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information:

Resolution required?  Yes  No

Requested effective date: 11/23/20

No. of tariff sheets: 0

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed<sup>1</sup>: N/A

Pending advice letters that revise the same tariff sheets: N/A

<sup>1</sup>Discuss in AL if more space is needed.

**Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this submittal, unless otherwise authorized by the Commission, and shall be sent to:**

CPUC, Energy Division  
Attention: Tariff Unit  
505 Van Ness Avenue  
San Francisco, CA 94102  
Email: [EDTariffUnit@cpuc.ca.gov](mailto:EDTariffUnit@cpuc.ca.gov)

Name: Dan Marsh  
Title: Manager, Rates and Regulatory Affairs  
Utility Name: Liberty Utilities (CalPeco Electric) LLC  
Address: 9750 Washburn Road  
City: Downey State: California  
Telephone (xxx) xxx-xxxx: 530-721-2435  
Facsimile (xxx) xxx-xxxx:  
Email: Dan.Marsh@libertyutilities.com

Name:  
Title:  
Utility Name:  
Address:  
City: State: California  
Telephone (xxx) xxx-xxxx:  
Facsimile (xxx) xxx-xxxx:  
Email:

## ENERGY Advice Letter Keywords

Affiliate	Direct Access	Preliminary Statement
Agreements	Disconnect Service	Procurement
Agriculture	ECAC / Energy Cost Adjustment	Qualifying Facility
Avoided Cost	EOR / Enhanced Oil Recovery	Rebates
Balancing Account	Energy Charge	Refunds
Baseline	Energy Efficiency	Reliability
Bilingual	Establish Service	Re-MAT/Bio-MAT
Billings	Expand Service Area	Revenue Allocation
Bioenergy	Forms	Rule 21
Brokerage Fees	Franchise Fee / User Tax	Rules
CARE	G.O. 131-D	Section 851
CPUC Reimbursement Fee	GRC / General Rate Case	Self Generation
Capacity	Hazardous Waste	Service Area Map
Cogeneration	Increase Rates	Service Outage
Compliance	Interruptible Service	Solar
Conditions of Service	Interutility Transportation	Standby Service
Connection	LIEE / Low-Income Energy Efficiency	Storage
Conservation	LIRA / Low-Income Ratepayer Assistance	Street Lights
Consolidate Tariffs	Late Payment Charge	Surcharges
Contracts	Line Extensions	Tariffs
Core	Memorandum Account	Taxes
Credit	Metered Energy Efficiency	Text Changes
Curtable Service	Metering	Transformer
Customer Charge	Mobile Home Parks	Transition Cost
Customer Owned Generation	Name Change	Transmission Lines
Decrease Rates	Non-Core	Transportation Electrification
Demand Charge	Non-firm Service Contracts	Transportation Rates
Demand Side Fund	Nuclear	Undergrounding
Demand Side Management	Oil Pipelines	Voltage Discount
Demand Side Response	PBR / Performance Based Ratemaking	Wind Power
Deposits	Portfolio	Withdrawal of Service
Depreciation	Power Lines	