

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY

ENERGY UTILITY

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

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

Utility type:

- ELC GAS
 PLC HEAT WATER

Contact Person for questions and approval letters:

Dan Marsh

Phone #: 562-299-5104

E-mail: Dan.Marsh@libertyutilities.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas
 PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 99-E-A

Subject of AL: 2018 Affiliate Transaction Compliance Plan

Tier Designation: 1 2 3

Keywords (choose from CPUC listing): Affiliate Compliance

AL filing type: Monthly Quarterly Annual One-Time Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution

D.97-12-088, D.98-08-035, D.98-12-075, D.99-09-002, and D.02-02-046

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL

AL-99-E

Summarize differences between the AL and the prior withdrawn or rejected AL: Attached Compliance Plan in this version.

Resolution Required? Yes No

Requested effective date: June 30, 2018

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: N/A

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

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

CPUC, Energy Division Utility Info (including e-mail)

Attention: Tariff Unit

505 Van Ness Ave.,

San Francisco, CA 94102

edtariffunit@cpuc.ca.gov

Liberty Utilities (CalPeco Electric) LLC

Attention: Advice Letter Protests

933 Eloise Avenue

South Lake Tahoe, CA 96150

Email: Dan.Marsh@libertyutilities.com



Liberty Utilities (CalPeco Electric) LLC
933 Eloise Avenue
South Lake Tahoe, CA 96150
Tel: 800-782-2506
Fax: 530-544-4811

VIA EMAIL AND FEDERAL EXPRESS

July 18, 2018

**Advice Letter No. 99E-A
(U 933-E)**

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

Subject: 2018 Affiliate Transaction Compliance Plan - Amended

Purpose

Liberty Utilities (CalPeco Electric) LLC (U 933 E) (“Liberty CalPeco”) hereby submits its 2018 Affiliate Transaction Compliance Plan (“Compliance Plan”) in accordance with the California Public Utilities Commission’s (“Commission”) Decision (D.) 97-12-088, as amended by D.98-08-035, D.98-12-075, D.99-09-002, and D.02-02-046. The attached Compliance Plan presents the most current information for Liberty CalPeco regarding its affiliate transaction compliance efforts. This amended filing includes the Liberty CalPeco 2018 Compliance Plan as attached.

Background

The Commission’s affiliate transaction rules for electric utilities (“Affiliate Rules”) were initially adopted in D.97-12-088, and modified by D.98-08-035, D.98-12-075, D.99-09-002, and D.02-02-046. Liberty CalPeco is an “electric utility” under the Affiliate Rules and, pursuant to Rule II.B, the Affiliate “Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses electricity, or the provision of services that relate to the use of electricity,” unless otherwise exempted from the Affiliate Rules.

Section VI.A of Appendix A of D.97-12-088 requires Liberty CalPeco to file a Compliance Plan by Advice Letter no later than June 30, 2018. Consequently attached is Liberty CalPeco’s 2018 Affiliate Transactions Compliance Plan.

Compliance Plan

This Compliance Plan is responsive to Rule VI.A and describes the manner in which Liberty CalPeco currently has programs and procedures in place to best ensure compliance with the Affiliate Rules by itself and its affiliates. Liberty CalPeco believes that the compliance actions set forth in the attached revised Compliance Plan are consistent and comply fully with the Affiliate Rules. Liberty CalPeco remains committed to upholding both the letter and spirit of the Rules, and respectfully requests that the Commission approve its 2018 Compliance Plan.

Effective Date

In accordance with General Order 96-B, General Rule 7.6.1 and Energy Industry Rule 5.1, Liberty CalPeco submits this Tier 1 Advice Letter with an effective date of June 30, 2018.

Notice

In accordance with General Order 96-B, Section 4.4, a copy of this Advice Letter has been served electronically to the entities shown on the service lists for GO 96-B and R.97-04-011, I.97-04-012, and R.98-04-009, copies of which are attached. The Compliance Plan referenced herein is being provided to the Energy Division Staff only. Other entities may request a copy of the Compliance Plan by sending an email to: Greg.Campbell@libertyutilities.com.

Protests

Anyone wishing to protest this Advice Letter may do so by letter sent via U.S. mail, by facsimile or by email, any of which must be received no later than August 7, 2018, which is 20 days after the date of this Advice Letter. There are no restrictions on who may submit a protest, but the protest shall set forth the grounds upon which it is based and shall be submitted expeditiously. Protests should be mailed to:

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

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

Energy Division Tariff Unit
California Public Utilities Commission
July 18, 2018
Page 4

The protest should be sent via email and U.S. Mail (and by facsimile, if possible) to Liberty Utilities (CalPeco Electric) LLC at the address shown below on the same date it is mailed or delivered to the Commission:

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Respectfully submitted,

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC

 /s/ Daniel W. Marsh
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Attachments:

cc: Liberty CalPeco General Order 96-B Service List
CPUC Service Lists R.97-04-011/I.97-04-012 and R.98-04-009 (Advice Letter Only)
Energy Division (Advice Letter and Compliance Plan)

EXHIBIT 1

Advice Letter 99-E-A

**Water, Sewer, Electric, and Natural Gas Retail Distribution Utilities
and Certain Associated Entities that Liberty Utilities Co.
Currently Owns and Operates in the United States**

Liberty Utilities Co.

Liberty Energy Utilities (New Hampshire) Corp.
Liberty Utilities Service Corp.
Liberty Utilities (Midstates Natural Gas) Corp. (IA/IL/MO natural gas utility)
Liberty Utilities (CalPeco Electric) LLC (CA electric utility)
Liberty Utilities (Peach State Natural Gas) Corp. (GA natural gas utility)

Liberty Utilities (Granite State Electric) Corp. (NH electric utility)
Liberty Utilities (EnergyNorth Natural Gas) Corp. (NH natural gas utility)

Liberty Utilities (New England Natural Gas Company) Corp. (MA natural gas utility)
Liberty Utilities (Luning Holdings) LLC
Luning Energy LLC (Luning Solar Project)

Western Water Holdings LLC

Liberty Utilities (Pine Bluff Water) Inc. (AR water utility)
Liberty Utilities (White Hall Water) Corp. (AR water utility—unregulated)
Liberty Utilities (White Hall Sewer) Corp. (AR sewer utility—unregulated)

Liberty Utilities (Park Water) Corp. (CA water utility)

Liberty Utilities (Woodson-Hensley Water) Corp. (AR water utility)

Liberty Utilities (Central) Co.
The Empire District Electric Company (AR/KS/MO/OK electric utility) (MO water utility)

Liberty Utilities (Apple Valley Ranchos Water) Corp. (CA water utility)

The Empire District Gas Company (MO natural gas utility)

Liberty Utilities (Sub) Corp.

Empire District Industries Inc. (unregulated fiber optics company)

Liberty Utilities (Litchfield Park Water & Sewer) Corp. (AZ water/sewer utility)

Liberty Utilities (Rio Rico Water & Sewer) Corp. (AZ water/sewer utility)

Liberty Utilities (Bella Vista Water) Corp. (AZ water utility)

Liberty Utilities (Gold Canyon Sewer) Corp. (AZ sewer utility)

Liberty Utilities (Black Mountain Sewer) Corp. (AZ sewer utility)

Liberty Utilities (Entrada Del Oro Sewer) Corp. (AZ sewer utility)

Liberty Utilities (Woodmark Sewer) (TX sewer utility)

Liberty Utilities (Tall Timbers Sewer) Corp. (TX sewer utility)

Liberty Utilities (Silverleaf Water) LLC (TX water/sewer utility)

Liberty Utilities (Seaside Water) LLC (TX water utility—unregulated)

Liberty Utilities (Fox River Water) LLC (IL water utility—unregulated)

Liberty Utilities (Missouri Water) LLC (MO water utility)

Advice Letter Filing Service List
General Order 96-B, Section 4.3

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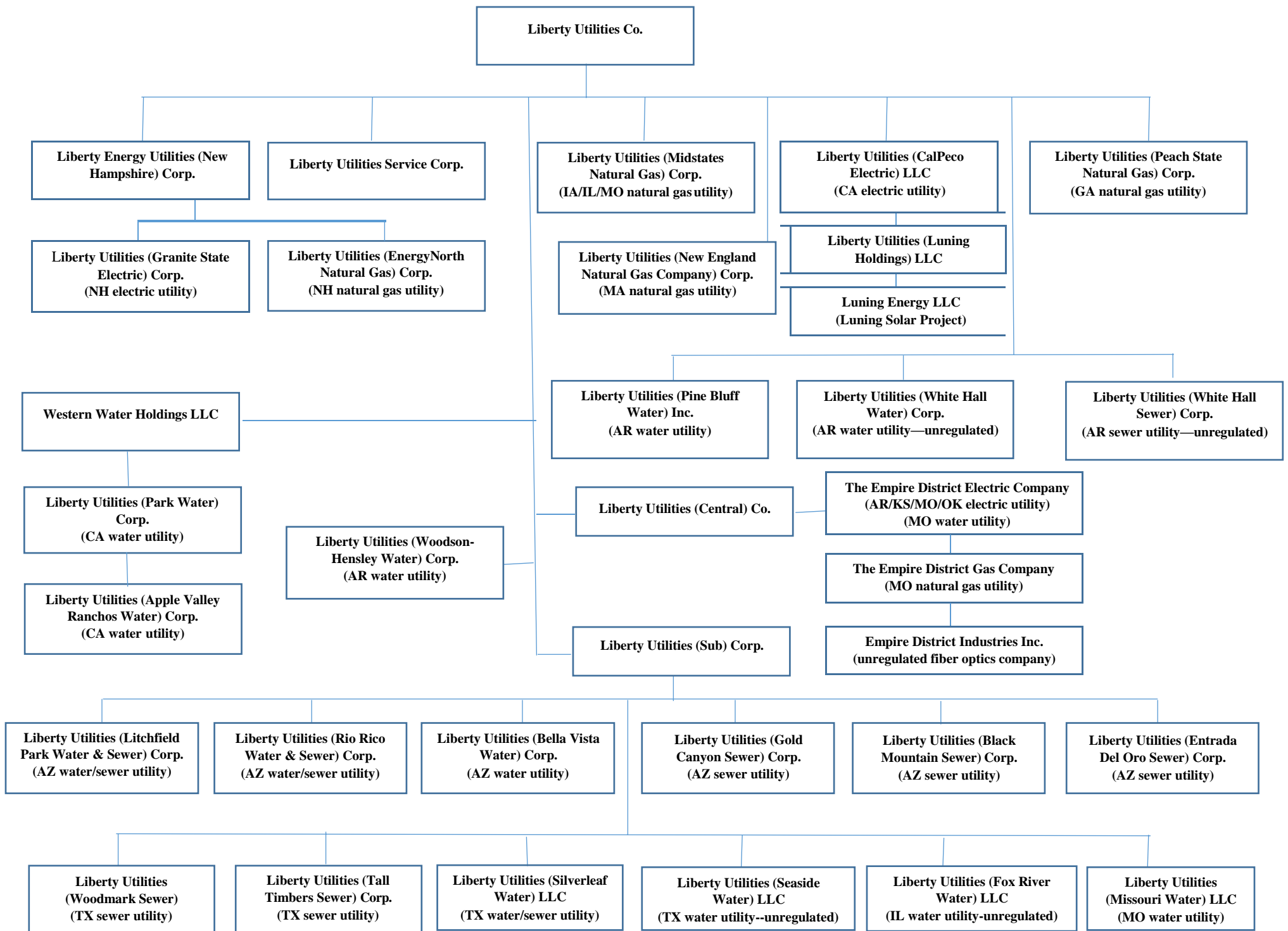
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Liberty Utilities (CalPeco Electric) LLC (U 933 E)
2018 Affiliate Transaction Compliance Plan

TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
A. CORPORATE STRUCTURE AND OVERVIEW.....	1
B. NO AFFILIATE CONDUCTS BUSINESS WITHIN THE LIBERTY CALPECO SERVICE TERRITORY.....	2
C. LIBERTY UTILITIES SERVICE CORP.	3
D. UTILITY COST ALLOCATION, ACCOUNTING, AND RATEMAKING	4
E. APUC CODE OF BUSINESS CONDUCT AND ETHICS	5
F. ONGOING EMPLOYEE NOTIFICATION AND EDUCATION.....	6
PROCEDURES AND MECHANISMS TO PROMOTE COMPLIANCE WITH THE AFFILIATE RULES	7
I. DEFINITIONS	7
II. APPLICABILITY OF RULES	9
III. NONDISCRIMINATION	12
III.A. No Preferential Treatment Regarding Services Provided By the Utility	14
III.B. Affiliate Transactions	15
III.C. Tying of Services Provided by a Utility Prohibited	19
III.D. No Assignments of Customers	20
III.E. Business Development and Customer Relations.....	20
III.F. Affiliate Discount Reports.....	21
IV. DISCLOSURE AND INFORMATION.....	23
IV.A. Customer Information	23
IV.B. Non-Customer Specific Non-Public Information.....	24
IV.C. Service Provider Information	25
IV.D. Supplier Information	26
IV.E. Affiliate-Related Advice or Assistance.....	27
IV.F. Record Keeping.....	27
IV.G. Maintenance of Affiliate Contracts and Related Bids.....	28
IV.H. FERC Reporting Requirements.....	29
V. SEPARATION	29
V.A. Corporate Entities.....	29
V.B. Books and Records:.....	29
V.D. Joint Purchases	31
V.E. Corporate Support	32

V.F.	Corporate Identification and Advertising.....	35
V.G.	Employees	41
V.H.	Transfer of Goods and Services	46
VI.	REGULATORY OVERSIGHT	48
VI.A.	Compliance Plans	48
VI.B.	New Affiliate Compliance Plans	49
VI.C.	Affiliate Audit	51
VI.D.	Witness Availability	51
VII.	UTILITY PRODUCTS AND SERVICES.....	51
VII.A.	General Rule	51
VII.B.	Definitions	51
VII.C.	Utility Products and Services	52
VII.D.	Conditions Precedent to Offering New Products and Services	54
VII.E.	Requirement to File an Advice Letter	55
VII.F.	Existing Offerings	57
VII.G.	Section 851 Application	59
VII.H.	Periodic Reporting of Nontariffed Products and Services	59
VII.I.	Offering of Nontariffed Products and Services to Affiliates.....	60
VIII.	COMPLAINT PROCEDURES AND REMEDIES	60
VIII.A.	The Commission Shall Strictly Enforce These Rules	60
VIII.B.	Standing	60
VIII.C.	Procedure	61
VIII.D.	Remedies	65

Attachments:

- A. Algonquin Power & Utilities Corp. Code of Business Conduct and Ethics, Whistleblower Policy, Insider Trading Policy, Disclosure Policy, Acceptable Use and Information Security Policy, and Employee Acknowledgement
- B. Liberty Utilities (CalPeco Electric) LLC Affiliated Transaction Rules Policies and Procedures
- C. List of Liberty Utilities (CalPeco Electric) LLC Rule II.B. Affiliates
- D. Officer and Director Verifications

E. List of Shared Officers and Directors Between Liberty Utilities (CalPeco Electric) LLC and Its Affiliates

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC (U 933 E)

2018 AFFILIATE TRANSACTION COMPLIANCE PLAN

IMPLEMENTING D.97-12-088 AS MODIFIED BY D.98-08-

035, D.98-12-075, D.99-09-002, AND D.02-02-046

INTRODUCTION

In compliance with Rule VI.A of the California Public Utilities Commission’s (“CPUC”) Affiliate Transaction Rules (“Affiliate Rules”) adopted in D.97-12-088, as amended by subsequent CPUC decisions and orders,¹ Liberty Utilities (CalPeco Electric) LLC (“Liberty CalPeco”) hereby submits a compliance plan apprising the CPUC of the current status of its compliance efforts with the Affiliate Rules and associated programs. .

The Compliance Plan includes policies, procedures and mechanisms for implementation and compliance with the Affiliate Rules, which when taken as a whole, represent a comprehensive approach to compliance.

The Introduction to this Compliance Plan provides necessary background on Liberty CalPeco and summarizes the compliance mechanisms and guidelines central to and appropriate for Liberty CalPeco’s affiliate compliance efforts. Thereafter, the Compliance Plan presents a rule-by-rule discussion of the procedures and mechanisms that Liberty CalPeco has developed and intends to implement to best ensure compliance with the Affiliate Rules.²

A. CORPORATE STRUCTURE AND OVERVIEW

Liberty Utilities Co. is the immediate parent company of Liberty CalPeco. Algonquin Power & Utilities Corp. (“APUC”) is the ultimate parent of Liberty Utilities Co. APUC’s principal office

¹ D.97-12-088 was amended in D.98-08-035 when the Affiliate Transaction Rules were modified. D.98-12-075 added enforcement provisions to the Affiliate Transaction Rules. D.99-09-002 modified Rule I.G and II.A to limit application of the Affiliate Rules to California electric utilities and natural gas local distribution companies.

² The actual text of the Affiliate Rules are presented in italicized text for purposes of best distinguishing the Affiliate Rules from Liberty CalPeco’s “Procedures and Mechanisms to Promote Compliance” which are set forth in standard font.

is located at 354 Davis Road, Oakville, Ontario, L6J 2X1. APUC's operations are organized across two primary North American business units consisting of the Liberty Utilities Group, which owns and operates a portfolio of regulated electric, natural gas, water distribution and wastewater collection utility systems, and transmission operations and the Liberty Power Group, which owns and operates a diversified portfolio of non-regulated renewable and thermal electric generation assets.

The Liberty Utilities Group operates a diversified portfolio of regulated utility systems throughout the United States serving approximately 763,000 customers; Exhibit 1 to the Advice Letter identifies each of the legal entities through which water, sewer, electric, and natural gas services are provided in the United States. The Liberty Utilities Group's regulated electrical distribution utility systems and related generation assets are located in the States of California, New Hampshire, Missouri, Kansas, Oklahoma, and Arkansas. The electric utility systems in total serve approximately 265,000 electric connections and operate a fleet of generation assets with a net capacity of approximately 1.4 GW. The Liberty Utilities Group's regulated natural gas distribution utility systems are located in the States of Georgia, Illinois, Iowa, Massachusetts, New Hampshire and Missouri serving approximately 337,000 natural gas connections. The Liberty Utilities Group's regulated water distribution and wastewater collection utility systems are located in the States of Arizona, Arkansas, California, Illinois, Missouri, and Texas which together serve approximately 161,000 connections. The Liberty Power Group, through Algonquin Power Co. ("APCo") and its subsidiaries, owns or has interests in hydroelectric, wind, solar, and thermal facilities with a combined generating capacity of approximately 1.6 GW. Approximately 88% of the electrical output from the hydroelectric, wind, and solar generating facilities is sold pursuant to long term contractual arrangements which as of March 31, 2018 had a production-weighted average remaining contract life of approximately 15 years.

In March 2018, APUC created a new joint venture, Abengoa-Algonquin Global Energy Solutions ("AAGES"), with Seville, Spain-based Abengoa, S.A (MCE: ABG) ("Abengoa"). Through the recently formed AAGES joint venture, the company is pursuing the development and construction of global clean energy and water infrastructure assets.

B. NO AFFILIATE CONDUCTS BUSINESS WITHIN THE LIBERTY CALPECO SERVICE TERRITORY

Liberty CalPeco became the public utility responsible for providing service to the approximate 50,000 electric consumers within its service territory as of January 1, 2011. Through December 2017, no affiliate of Liberty CalPeco has conducted, or tried to conduct, any business within the Liberty CalPeco service territory.

In 2017, three entities within APCo have engaged in the operation of non-regulated power generating facilities within California (Algonquin Power Sanger LLC, Algonquin SKIC 10 Solar, LLC, and Algonquin SKIC 20 Solar, LLC. Liberty CalPeco engaged in no transactions with any of these unregulated California generation affiliates. No employee of these unregulated generation entities performed any service for Liberty CalPeco. Additionally, no person providing electric service to the customers of Liberty CalPeco performed any services for any APCo entity.

It need also be stressed that while these generating affiliates conduct business within the State of California, they most importantly operate in essentially different electric markets than Liberty CalPeco. The APCo California generating entities conduct their business exclusively within the balancing authority operated by the California Independent System Operator (“CAISO”). The service territory of Liberty CalPeco is not located within the CAISO balancing authority. Rather, the service territory of Liberty CalPeco is located entirely within the NV Energy Balancing Authority. Accordingly, 100% of the power Liberty CalPeco uses to serve its customers has either been, and will continue to be, generated within or delivered through the NV Energy Balancing Authority. During 2017, no affiliate of Liberty CalPeco sold energy within the NV Energy Balancing Authority.³

C. LIBERTY UTILITIES SERVICE CORP.

Consistent with common utility practice and as explained in Liberty CalPeco’s currently pending Application 15-11-009 (“Service Corp Exemption Application”), Liberty Utilities Co. created Liberty Utilities Service Corp. (“Service Corp”) to function as the corporate entity which functions as the employer of the employees in the United States who provide services to the

³ The Commission has approved Liberty CalPeco’s request to enter into a purchase and sale agreement to acquire, own, and operate the Luning Solar Project which is located in Nevada. *See* Decision 16-01-021, (“Luning Approval Decision”). An affiliate of Liberty CalPeco is a joint owner of the Luning Solar Project during its initial years of operation (starting in February 2017) and throughout the period in which Liberty CalPeco will technically obtain the solar power from the Luning Solar Project through a power purchase agreement. In the Luning Approval Decision, the Commission approved these affiliate transactions, but also imposed certain conditions and restrictions. *See* Luning Approval Decision, at 43–44 (Ordering Paragraph 1). *See also, infra*, at 18–19, 49. Liberty CalPeco has made a request to the Commission for similar regulatory treatment for the Turquoise Solar Project (Application.16-12-009).

utility companies within Liberty Utilities Co. as well as providing some shared services within the APUC family of businesses. Accordingly, in 2017, Liberty CalPeco had no employees; rather, designated employees of Service Corp perform the functions which enable Liberty CalPeco to provide electric utility service to its customers. In February of 2018, pursuant to Commission Decision 17-09-022 (Application 15-11-009), Liberty CalPeco and its parent company, Liberty Utilities Co., returned to the utility the employees and positions that were previously transferred to Service Corp. Service Corp. continues to provide some shared services to Liberty CalPeco.

The regulated utility companies within Liberty Utilities Co. are each subject to cost allocation and other affiliate transaction rules and regulations administered by their respective state utility commissions. Responsibility for the utility's compliance with these ratemaking and affiliate-related rules resides with the regulatory compliance group within each operating utility.

Accordingly, Liberty CalPeco's accounting and regulatory group has direct responsibility for its affiliate compliance program. Individuals within this group report directly to the President of Liberty CalPeco, and indirectly to the Director of Regulatory Operations for Liberty Utilities (Canada) Corp.⁴ In addition, the lawyers within the APUC family of business and a newly formed Compliance Department perform an advisory role to best ensure compliance with affiliate transaction requirements.

D. UTILITY COST ALLOCATION, ACCOUNTING, AND RATEMAKING

To prevent cross-subsidization between its regulated operations in California and its regulated and unregulated affiliates, Liberty CalPeco has recorded, and has requested rate recovery for, only those expenses which are directly associated with the provision of electric service to its

⁴ Liberty Utilities (Canada) Corp. is a service entity which provides tax, legal, accounting, and regulatory compliance shared services to entities within APCo and Liberty Utilities Co.

customers. This is reflected in the current and prior Liberty CalPeco general rate case applications to the Commission.⁵

In these proceedings, Liberty CalPeco requested rate recovery that included expenses performed by individuals employed by Service Corp and by certain other affiliates. The costs for which Liberty CalPeco sought rate recovery were attributable to services these individuals performed for the purpose of enabling Liberty CalPeco to provide electric service to its customers. Any costs for which Liberty CalPeco requested such rate recovery were allocated to Liberty CalPeco in a manner consistent with the APUC Corporate Cost Allocation Manual and Commission requirements.

Liberty CalPeco will continue to allocate the costs associated with such intra-company provision of services in accordance with the APUC Corporate Cost Allocation Manual and Commission requirements.

E. APUC CODE OF BUSINESS CONDUCT AND ETHICS

APUC has adopted a “Code of Business Conduct and Ethics” (“APUC Code of Conduct”). All employees in the APUC family of companies — including employees of Service Corp, any employee providing assistance to Liberty CalPeco in the provision of electric service, and any affiliates transacting business in California — are obligated to comply with the APUC Code of Conduct.

Employees are annually required to review the APUC Code of Conduct. It contains the Whistleblower Policy, Insider Trading Policy, and Disclosure Policy. All of these policies are provided in Attachment A to this Plan. Employees of any APUC company are required annually to execute an acknowledgment confirming that they understand they have the responsibility to read and comply with each of these policies and any subsequent revisions.

⁵ See A.12-02-014 and D.12-11-030 (adopting all-party settlement); A.15-08-008 (motion to approve settlement currently pending).

The APUC Code of Conduct, among other matters, addresses the commitment by the APUC corporate family to ethics and compliance with the law. The APUC Code of Conduct instructs employees to comply, both in letter and in spirit, with all applicable laws and regulations.

The APUC Board of Directors has designated APUC's Chief Financial Officer to serve as the Ethics officer responsible for the day-to-day implementation and administration of the APUC Code of Conduct. Violations of the APUC Code of Conduct regarding accounting, internal accounting controls or audit matters, or violations involving the compliance officer are required to be reported to the Chair of the Audit Committee of APUC. APUC also maintains a Whistleblower Policy pursuant to which anonymous reports can be made.

F. ONGOING EMPLOYEE NOTIFICATION AND EDUCATION

Training on the Affiliate Rules is provided annually to CalPeco employees as well as training on affiliate requirements is provided to shared services employees in Canada.

Liberty CalPeco has adopted a formal document delineating the rules, policies, and procedures necessary to best assure compliance with the Affiliate Rules ("Liberty CalPeco Affiliate Transaction Rules Policies and Procedures") a copy of which is attached hereto as Attachment B. This policy has been disseminated to all employees dedicated to providing services to Liberty CalPeco.

**PROCEDURES AND MECHANISMS TO
PROMOTE COMPLIANCE WITH THE AFFILIATE RULES⁶**

I. DEFINITIONS

Unless the context otherwise requires, the following definitions govern the construction of these Rules:

I.A. *“Affiliate” means any person, corporation, utility, partnership, or other entity 5 percent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly, either by a utility or any of its subsidiaries, or by that utility's controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity's company creates a rebuttable presumption of control.*

For purposes of this Rule, “affiliate” shall include the utility’s parent or holding company, or any company which directly or indirectly owns, controls, or holds the power to vote 10% or more of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the provision of products or services as set out in Rule II B. However, in its compliance plan filed pursuant to Rule VI, the utility shall demonstrate both the specific mechanisms and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Examples include but are not limited to specific mechanisms and

⁶ The Commission’s Rules, which are italicized for ease of reference, are followed by Liberty CalPeco’s Procedures and Mechanisms for Ensuring Compliance, which are not italicized.

procedures to assure the Commission that the utility will not use the holding company or another utility affiliate not covered by these Rules, or a consultant or contractor as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these Rules in contravention of these Rules, (2) provide services to its affiliates covered by these Rules in contravention of these Rules or (3) to transfer employees to its affiliates covered by these Rules in contravention of these Rules. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules.

Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules.

- I.B.** *“Commission” means the California Public Utilities Commission or its succeeding state regulatory body.*
- I.C.** *“Customer” means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code that is the ultimate consumer of goods and services.*
- I.D.** *“Customer Information” means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.*
- I.E.** *“FERC” means the Federal Energy Regulatory Commission.*

I.F. *“Fully Loaded Cost” means the direct cost of good or service plus all applicable indirect charges and overheads.*

I.G. *“Utility” means any public utility subject to the jurisdiction of the Commission as an Electric Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222.*

Procedures and Mechanisms to Promote Compliance

Rule I.A through Rule I.G require no compliance action.

II. APPLICABILITY OF RULES

II.A. *These Rules shall apply to California public utility gas corporations and California public utility electrical corporations, subject to regulation by the California Public Utilities Commission.*

II.B. *For purposes of a combined gas and electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, unless specifically exempted below. For purposes of an electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses electricity or the provision of services that relate to the use of electricity. For purposes of a gas utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or the provision of services that relate to the use of gas.*

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco is an “electric utility” for purposes of the Affiliate Rules. Rule II.B provides that the Affiliate Rules apply only to transactions between Liberty CalPeco as an electric utility and “affiliates engaging in the provision of a product that uses electricity or the provision of services that relate to the use of electricity.”

Liberty CalPeco accordingly classifies as “Rule II.B Affiliates” those affiliates that engage in the generating, marketing and/or selling of electricity. Any Liberty CalPeco affiliate which was a Rule II.B Affiliate for any period through the date of filing is identified in Attachment C to the Compliance Plan. The listing provides the Rule II.B Affiliate’s name, a brief description of the affiliate’s business, and states whether it conducts business within California. It is important to note as evidenced on Attachment C that many of the Rule II.B Affiliates of Liberty CalPeco conduct business exclusively in Canada.

II.C. These Rules apply to transactions between a Commission-regulated utility and another affiliated utility, unless specifically modified by the Commission in addressing a separate application to merge or otherwise conduct joint ventures related to regulated services.

Procedures and Mechanisms to Promote Compliance

Rule II.C requires no additional compliance action.

II.D. These Rules do not apply to the exchange of operating information, including the disclosure of customer information to its FERC-regulated affiliate to the extent such information is required by the affiliate to schedule and confirm nominations for the interstate transportation of natural gas, between a utility and its FERC-regulated affiliate, to the extent that the affiliate operates an interstate natural gas pipeline.

Procedures and Mechanisms to Promote Compliance

No additional compliance action is required. No affiliate of Liberty CalPeco operates an interstate natural gas pipeline regulated by the FERC.

II.E. Existing Rules: Existing Commission rules for each utility and its parent holding company shall continue to apply except to the extent they conflict with these Rules. In such cases, these Rules shall supersede prior rules and guidelines, provided that nothing herein shall preclude (1) the Commission from adopting other utility-specific guidelines; or (2) a utility or its parent holding company from adopting other utility-specific guidelines, with advance Commission approval.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco continues to comply with any existing Affiliate Rule that has not been superseded. If any of the Affiliate Rules are modified or superseded, Liberty CalPeco shall respond accordingly and with the intent to remain in compliance.

***II.F.** Civil Relief: These Rules shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.*

Procedures and Mechanisms to Promote Compliance

Rule II.F requires no compliance action.

***II.G.** Exemption (Advice Letter): A Commission-jurisdictional utility may be exempted from these Rules if it files an advice letter with the Commission requesting exemption. The utility shall file the advice letter within 30 days after the effective date of this decision adopting these Rules and shall service it on all parties to this proceeding. In the advice letter filing, the utility shall:*

***II.G.1.** Attest that no affiliate of the utility provides services as defined by Rule II B above; and*

***II.G.2.** Attest that if an affiliate is subsequently created which provides services as defined by Rule II B above, then the utility shall:*

***II.G.2.a.** Notify the Commission, at least 30 days before the affiliate begins to provide services as defined by Rule II B above, that such an affiliate has been created; notification shall be accomplished by means of a letter to the Executive Director, served on all parties to this proceeding; and Agree in this notice to comply with the Rules in their entirety.*

***II.G.2.b.** Agree in this notice to comply with the Rules in their entirety.*

II.H. *Limited Exemption (Application): A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity servicing its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof.*

II.I. *These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.*

Procedures and Mechanisms to Promote Compliance

Rules II.G, II.H, and II.I require no compliance action, but *see* discussion of “multi-state utility” status and implications *infra*, at 42–44.

III. NONDISCRIMINATION

Liberty CalPeco construes the purpose of the multiple provisions in Rule III (Nondiscrimination) and Rule IV (Disclosure and Information) as intending to best ensure that the utility not interact with its unregulated affiliates in a manner which provides the unregulated affiliate any competitive advantage over the unregulated affiliate’s competitors and/or which causes the utility’s customers to essentially subsidize the unregulated affiliate. Stated differently, Rules III and IV are each populated with provisions designed to deny the utility affiliate any competitive advantage based on the affiliate’s corporate relationship with the utility and to protect the utility’s customers from any economic or other detriment associated with the operations of the utility’s unregulated affiliates.

The compelling theory underlying Rules III and IV is that: (i) in providing utility services to its customers, the utility should not discriminate between its affiliates and non-affiliates; (ii) in

procuring the goods and services necessary to serve its customers, the utility should similarly not favor affiliate vendors over non-affiliate suppliers; and (iii) that in all interactions with its affiliates, the utility should take no action harming its customers. In other words, the “competitive market,” and not the unregulated affiliate’s relationship with the utility, should decide the winners and losers in the affiliate’s line of business; and any commercial success (or failure) by the unregulated affiliate should be based entirely on the commercial merits of its product or services and at no expense or other possible detriment to the customers of the utility.

Accordingly, for the most part, the provisions of Rules III and IV are inapposite to Liberty CalPeco. As stressed before, no Rule II.B Affiliate currently engages in business within the Liberty CalPeco service territory with the exception of the provision of energy by Luning Energy, LLC, a transaction that was thoroughly vetted by the Commission in Docket 16-01-021 and by the Federal Energy Regulatory Commission. Liberty CalPeco thus has no opportunity to (i) provide its affiliate utility service on terms more favorable than it offers third parties and as required by approved tariffs; or (ii) procure goods or services from an affiliate on terms less attractive than the market offers. Thus the discriminatory and anticompetitive practices that the provisions in Rules III and IV are designed to police are essentially not germane.

The Commission has recognized that at least certain prohibitions against particular anticompetitive or discriminatory types of conduct typically do not arise in the relationship between a California regulated utility and its utility affiliates outside of California who are subject to the jurisdiction of their state’s regulatory commission. In particular, Rule I.H of the Water Company Affiliate Rules⁷ provides:

A California utility’s affiliates that operate entirely outside of California are exempt from Rule III.B and Rule III.C of these Rules, for transactions between the utility and such affiliates, if the affiliates’ operations do not substantially affect the utility’s operations and the operating costs inside California.

⁷ The Affiliate Transaction Rules Applicable to Class A and B Water Utilities were adopted by D.10-10-019, as modified by D.11-10-034.

Liberty CalPeco recognizes that Water Affiliate Rule I.H does not exempt its relationships with its out-of-state utility affiliates from any provisions of Rules III or IV. Nonetheless, it should be noted that the operations of none of the out-of-state utility affiliates of Liberty CalPeco “substantially affect [Liberty CalPeco’s] operations and the operating costs inside California.” This economic fact underscores the lack of relevance of the anticompetitive and anti-discrimination provisions in Rules III and IV to the business of Liberty CalPeco.

Accordingly as will be set forth in the individual discussions below, the response in the Liberty CalPeco Compliance Plan to many provisions in Rules III and IV is simply that Liberty CalPeco as a normal practice neither provides nor procures goods or services from its Rule II.B. affiliates; and that Liberty CalPeco neither receives nor distributes information to any affiliate conducting business within its service territory, with the exception of centralized service companies such as Service Corp. Moreover, Liberty CalPeco has not provided, and shall not provide, preferential treatment to its affiliates; and in all events, Liberty CalPeco will view its affiliates with respect to the flow of products, revenues, and information in a manner consistent with its unaffiliated companies and/or customers.

III.A. No Preferential Treatment Regarding Services Provided By the Utility

Unless otherwise authorized by the Commission or the FERC, or permitted by these Rules, a utility shall not:

- III.A.1.*** *Represent that as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers; or*

- III.A.2.*** *Provide its affiliates, or customers of its affiliates, any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility.*

Procedures and Mechanisms to Promote Compliance

For the reasons set forth immediately above, Rule III.A is not germane.

III.B. Affiliate Transactions

Transactions between a utility and its affiliates shall be limited to tariffed products and services, the sale of goods, property, products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process, to the provision of information made generally available by the utility to all market participants, to Commission-approved resource procurement by the utility, or as provided for in Sections V. D. and V. E. (joint purchases and corporate support) and Section VII (new products and services) below, provided the transactions provided for in Section VII comply with all of the other adopted rules.

Procedures and Mechanisms to Promote Compliance

Tariffed products and services. Liberty CalPeco provides services to its customers consistent with its tariffs and in a nondiscriminatory fashion. No affiliate currently conducts business within the Liberty CalPeco service territory. Accordingly, Liberty CalPeco does not provide electric service to any of its affiliates and thus, for the most part, this portion of the Affiliate Rules currently is not germane

1. Open competitive bidding process. Liberty CalPeco has conducted two solicitations relating to energy procurement. The first process culminated with the Commission's approval of Liberty CalPeco's request to enter a purchase and sale agreement to acquire, own, and operate the Luning Solar Project in the Luning Approval Decision.⁸

No affiliate of Liberty CalPeco was a respondent in the solicitation.⁹ Liberty CalPeco has conducted a second solicitation for a third party developer to construct

⁸ See *supra*, at 4, n.8.

⁹ Based on their relevant expertise, individuals from Liberty CalPeco's affiliates provided shared services to Liberty CalPeco with respect to the Luning Solar Project and continue to provide shared services on the Turquoise Project. These individuals helped negotiate the commercial and financing agreements, solicit

and sell the Turquoise solar project. Liberty CalPeco received several responses to this solicitation and is in negotiations presently. No affiliate of Liberty CalPeco was a respondent to the solicitation.

2. Shared services. See discussion under Rules V.D (Joint Purchases) and V.E (Corporate Support).

3. Energy Procurement. In addition to the commercial arrangements which will enable Liberty CalPeco to purchase, own, and operate 50 MW of solar generation from the Luning Solar Project¹⁰ and 10 MW of solar generation from the Turquoise Solar Project¹¹, Liberty CalPeco has entered into two services agreements with NV Energy through which Liberty CalPeco has obtained essentially its “full electric requirements” to serve the electric needs of its customers. In 2010, the Commission approved the initial NV Energy Services Agreement.¹²

In 2015, the Commission approved the current NV Energy Services Agreement, which has a term starting in January 2016 and expiring in December 2020.¹³ Liberty CalPeco was assisted in its negotiations of the current NV Energy Services Agreement by Service Corp employees whose primary responsibility is procurement for Liberty CalPeco’s Rule II.B Affiliate Liberty Utilities (Granite State Electric) Corp. The time these individuals spent assisting on the current NV Energy Services Agreement negotiations was directly billed to Liberty CalPeco.

and select the Luning Project’s unaffiliated tax equity partner, and also sponsor testimony relating to the Luning Solar Project and tax equity financing in the CPUC proceedings culminating with the issuance of the Luning Approval Decision.

¹⁰ See *supra*, at 4, n.8 and *infra* at 18–19, 49.

¹¹ See Final Decision D1712008 on December 19, 2017 regarding Application 16-12-009.

¹² See D.10-10-017.

¹³ See D.15-12-021. The Commission did impose certain conditions on its approval, *see id.* at 48–49 (Ordering Paragraph 1). These conditions have been fulfilled. See Liberty CalPeco Advice Letter 51-E, at 1 (December 22, 2015).

III.B.1. Provision of Supply, Capacity, Services or Information

Except as provided for in Sections V. D, V. E, and VII, provided the transactions provided for in Section VII comply with all of the other adopted Rules, a utility shall provide access to utility information, services, and unused capacity or supply on the same terms for all similarly situated market participants. If a utility provides supply, capacity, services, or information to its affiliate(s), it shall contemporaneously make the offering available to all similarly situated market participants, which include all competitors serving the same market as the utility's affiliates.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco maintains that its policies are designed to best assure compliance with the Affiliate Rules and sufficiently fulfilled the objectives of Rule III.B.1. Liberty CalPeco intends to retain these existing policies and practices as an integral component of its Compliance Plan going forward.

With particular respect to Rule III.B.1, it need again be stressed that Liberty CalPeco did not procure any energy, capacity, or transmission services from any affiliate with the exception of the Luning transaction; and it did not provide supply, capacity, services, or other information to any Rule II.B. affiliate (other than for the purpose the affiliate providing a shared service to assist Liberty CalPeco to provide service to its customers). No affiliate engaged in, or offered to conduct any, business in Liberty CalPeco's service territory.

Liberty CalPeco obtained through the Luning Approval Decision the authority to enter a purchase and sale agreement to acquire, own, operate, and obtain solar generation from the Luning Solar Project. The Luning Solar Project was developed and constructed by an unaffiliated third party in Nevada and outside of the Liberty CalPeco service territory. It commenced commercial operation in February 2017. The transactions by which Liberty CalPeco obtains solar generation from the Luning Solar Project involved certain commercial arrangements between Liberty CalPeco and certain entities which will be Rule II.B Affiliates once created and operational.

In the Luning Approval Decision, the Commission approved these commercial arrangements and also imposed various reporting requirements on, and approved certain ratemaking protocols for, Liberty CalPeco with respect to the further development, construction, and operation and rate recovery for, the Luning Solar Project.¹⁴ Liberty CalPeco shall comply with the requirements of the Luning Approval Decision.

III.B.2. Offering of Discounts

Except when made generally available by the utility through an open, competitive bidding process, if a utility offers a discount or waives all or any part of any other charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the utility shall contemporaneously make such discount or waiver available to similarly situated market participants. The utilities should not use the “similarly situated” qualification to create such a unique discount arrangement with their affiliates such that no competitor could be considered similarly situated. All competitors serving the same market as the utility’s affiliates should be offered the same discount as the discount received by the affiliates. A utility shall document the cost differential underlying the discount to its affiliates in the affiliate discount report described in Rule III F 7 below.

Procedures and Mechanisms to Promote Compliance

As explained previously, Liberty CalPeco does not currently provide any utility services to any of its affiliates and is accordingly in compliance with Rule III.B.2.

III.B.3. Tariff Discretion

If a tariff provision allows for discretion in its application, a utility shall apply that tariff provision in the same manner to its affiliates and other market participants and their respective customers.

¹⁴ See Luning Approval Decision, at 43–44 (Ordering Paragraph 1). See also *supra* at 4, n.8 and *infra* at 49.

III.B.4. No Tariff Discretion

If a utility has no discretion in the application of a tariff provision, the utility shall strictly enforce that tariff provision.

III.B.5. Processing Requests for Services Provided by the Utility

A utility shall process requests for similar services provided by the utility in the same manner and within the same time for its affiliates and for all other market participants and their respective customers.

Procedures and Mechanisms to Promote Compliance

As explained previously, Liberty CalPeco does not currently provide any utility services to any of its affiliates and thus it offers no discounts, rebates, tariff deviations, or fee waivers to any affiliate.

Nonetheless, Liberty CalPeco appreciates that the Affiliate Rules are intended to ensure that Liberty CalPeco implements its tariffs in a nondiscriminatory fashion. Accordingly, to the extent the situation may ever arise, Liberty CalPeco shall apply the provisions in its tariffs in the same manner to its affiliates as it does to all other market participants and their respective customers.

III.C. Tying of Services Provided by a Utility Prohibited

A utility shall not condition or otherwise tie the provision of any services provided by the utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any services provided by the utility, to the taking of any goods or services from its affiliates.

Procedures and Mechanisms to Promote Compliance

As explained previously, Liberty CalPeco does not currently provide any utility services to any of its affiliates, and thus it offers no discounts, rebates, tariff deviations, or fee waivers to its affiliates. Liberty CalPeco, accordingly, does not condition or otherwise tie the provision of any service it provides or the availability of any discount, charge, fee, rebate, or waiver to the taking of any affiliate's goods or services.

III.D. No Assignments of Customers

A utility shall not assign customers to which it currently provides services to any of its affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.

Procedures and Mechanisms to Promote Compliance

As explained previously, no affiliate currently conducts, and no affiliate is intending to engage in, business within the Liberty CalPeco service territory. Thus, there is no possibility that Liberty CalPeco shall assign any customer to any of its covered affiliates.

III.E. Business Development and Customer Relations

Except as otherwise provided by these Rules, a utility shall not:

- III.E.1.*** *provide leads to its affiliates;*
- III.E.2.*** *solicit business on behalf of its affiliates;*
- III.E.3.*** *acquire information on behalf of or to provide to its affiliates;*
- III.E.4.*** *share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;*
- III.E.5.*** *request authorization from its customers to pass on customer information exclusively to its affiliates;*
- III.E.6.*** *give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or*

III.E.7. *give any appearance that the affiliate speaks on behalf of the utility.*

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco believes that the objective of the various prohibitions delineated in Rule III.E are to best ensure that the utility does not provide “leads” or other non-public information to unregulated Rule II.B Affiliates and thereby disadvantage the affiliate’s competitors in the marketplace. As explained previously, no affiliate (a Rule II.B Affiliate or otherwise) currently conducts business within the Liberty CalPeco service territory, with the exception of centralized service companies that provide services to Liberty CalPeco. Thus, the risk of misuse of information which this Affiliate Rule is designed to prohibit currently is not present.

Nonetheless, to the extent any of the affiliate relationship situations which Rule III.E is intended to police will ever arise, Liberty CalPeco shall comply with its requirements. In particular, Liberty CalPeco has a policy that no one performing services on its behalf: (i) provide any leads to affiliates; and/or (ii) solicit business on behalf of affiliates. Liberty CalPeco to the extent necessary, provides training on these subjects and issue periodic communications to the individuals performing services for it and to its affiliates directing them to comply with these rules. As permitted by the Affiliate Rules and as described previously, Liberty CalPeco does provide information to certain of its affiliates for purposes of enabling such affiliate to provide permitted shared services in order to assist Liberty CalPeco in providing electric service to its customers.

III.F. Affiliate Discount Reports

If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with products or services provided by the utility, the utility shall, within 24 hours of the time at which the product or service provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:

III.F.1. *the name of the affiliate involved in the transaction;*

III.F.2. *the rate charged;*

III.F.3. *the maximum rate;*

- III.F.4. the time period for which the discount or waiver applies;*
- III.F.5. the quantities involved in the transaction;*
- III.F.6. the delivery points involved in the transaction;*
- III.F.7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and*
- III.F.8. procedures by which a nonaffiliated entity may request a comparable offer.*

A utility that provides an affiliate a discounted rate, rebate, or other waiver of a charge or fee associated with services provided by the utility shall maintain, for each billing period, the following information:

- III.F.9. the name of the entity being provided services provided by the utility in the transaction;*
- III.F.10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);*
- III.F.11. the duration of the discount or waiver;*
- III.F.12. the maximum rate;*
- III.F.13. the rate or fee actually charged during the billing period; and*
- III.F.14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.*

All records maintained pursuant to this provision shall also conform to FERC rules where applicable.

Procedures and Mechanisms to Promote Compliance

As set forth previously, no affiliate currently conducts business in Liberty CalPeco's service area and, accordingly, Liberty CalPeco neither offers to provide nor provides any affiliate any utility services. Accordingly, the risk that this Affiliate Rule seeks to address (*i.e.*, Liberty CalPeco offering an affiliate a discriminatory discount and thus an unwarranted competitive advantage) currently is not present.

Nonetheless in the event that Liberty CalPeco were ever to offer an affiliate a discount, rebate, or waives all or any part of a fee as part of the provision of a utility service, Liberty CalPeco shall maintain the records required by Rule III.F and shall post the required information on Liberty CalPeco's internet web site within one calendar day.

IV. DISCLOSURE AND INFORMATION

IV.A. Customer Information

A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly nondiscriminatory basis, and only with prior affirmative customer written consent.

Procedures and Mechanisms to Promote Compliance

Employees of Service Corp and other Liberty CalPeco affiliates providing services to Liberty CalPeco have access to customer information on an as needed basis for the specific purpose to provide Liberty CalPeco shared services. Information relating to the customers of Liberty CalPeco is not otherwise accessible to any affiliate. To the extent Liberty CalPeco needs to provide customer information to third parties in connection with providing the customer electric utility service, Liberty CalPeco requires authorization by written paper or electronic customer consent for the release of any customer specific information¹⁵ unless allowed by an order of the Commission or allowed by a legal process.

Liberty CalPeco will obtain customer written consent and maintain this information as required by the Commission's rules.

No customer of Liberty CalPeco currently engages in any direct access transaction. To the extent a customer were to make a request to engage in a direct access transaction, Liberty CalPeco would process the request in compliance with the California Public Utilities Code and Liberty CalPeco Electric Service Rule 22, as set forth in Advice Letter Number 28-E. Liberty

¹⁵ See California Civil Code Section 1633.1 *et seq.* (authorizing the use of electronic transactions/signatures to satisfy laws requiring records to be in writing).

CalPeco shall comply with the provisions of Section C of Rule 22, Direct Access Service, which delineate the procedures that Liberty CalPeco will implement in providing customer specific information necessary to process requests for a customer to participate in direct access.

IV.B. Non-Customer Specific Non-Public Information

A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or operations or about the utility's gas-related goods or services and electricity-related goods or service, available to the utility's affiliate only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection. Unless otherwise provided by these Rules, a utility continues to be bound by all Commission-adopted pricing and reporting guidelines for such transactions. A utility is also permitted to exchange proprietary information on an exclusive basis with its affiliates, provided the utility follows all Commission-adopted pricing and reporting guidelines for such transactions, and it is necessary to exchange this information in the provision of the corporate support services permitted by Rule V.E. below. The affiliate's use of such proprietary information is limited to use in conjunction with the permitted corporate support services, and is not permitted for any other use. Nothing in this Rule precludes the exchange of information pursuant to D.97-10-031.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco shares non-customer specific, non-public information with an affiliate only in connection with such affiliate providing shared services to Liberty CalPeco in connection with, and for the singular purpose of, Liberty CalPeco providing electric service to its customers. In such a limited context, the risk that this Rule IV.B is intended to police (*i.e.*, that Liberty CalPeco will provide a Rule II.B Affiliate conducting an electricity-related business within the Liberty CalPeco service territory a competitive advantage over an unaffiliated third party competitors) does not exist.

Thus there is no need, and it would harm the customers of Liberty CalPeco, for Liberty CalPeco to, as contemplated by Rule IV.B, to make such customer “information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection.” As explained before, no affiliate currently engages in any business within the Liberty CalPeco service territory.

In any event, with respect to any customer-related information that Liberty CalPeco makes available to an affiliate: (i) such information is necessary for the affiliate to provide shared services enabling Liberty CalPeco serve its customers (*i.e.*, assistance in energy procurement or corporate oversight or governance); (ii) the affiliate uses such information only for such limited purpose; and (iii) the disclosure of the information to the affiliate creates no possible opportunity for the affiliate to obtain an unfair competitive advantage.

IV.C. Service Provider Information

IV.C.1. *Except upon request by a customer or as otherwise authorized by the Commission, or another governmental body, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities. A utility shall submit lists approved by other governmental bodies in the first semi-annual advice letter filing, referenced in Rule IV.C.2 following such approval, but may provide customers with such lists pending action on the advice letter.*

IV.C.2. *If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to*

disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). Then list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.

Procedures and Mechanisms to Promote Compliance

As stated previously, no affiliate of Liberty CalPeco offers to, or provides, gas-related, electricity related, or other utility-related goods and services within Liberty CalPeco's service area. Thus the risk that this Affiliate Rule seeks to address (*i.e.*, that the utility will influence its customer to obtain gas-related, electricity related, or other utility-related goods and services from the utility's affiliate) is not present with respect to Liberty CalPeco.

IV.D. Supplier Information

A utility may provide non-public information and data which has been received from unaffiliated suppliers to its affiliates or non-affiliated entities only if the utility first obtains written affirmative authorization to do so from the supplier. A utility shall not actively solicit the release of such information exclusively to its own affiliate in an effort to keep such information from other unaffiliated entities.

Procedures and Mechanisms to Promote Compliance

To the extent that an affiliate were to request information relating to a supplier of Liberty CalPeco, absent having written authorization to provide additional information, Liberty CalPeco would provide its affiliate only public information.

IV.E. *Affiliate-Related Advice or Assistance*

Except as otherwise provided in these Rules, a utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco will comply with Rule IV.E's requirements.

IV.F. *Record Keeping*

A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. The utility shall make such records available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.

If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 requests for confidentiality within 24 hours of service.

Procedures and Mechanisms to Promote Compliance

As stated previously, Liberty CalPeco does not currently provide electric services — tariffed or non-tariffed — to any affiliate. No affiliate of Liberty CalPeco is currently conducting business within the Liberty CalPeco service territory. Accordingly, the requirements of Rule III.F relating to waivers of tariff or contract provisions and discounts are not germane.

With respect to any shared services an affiliate provides Liberty CalPeco, it will comply with Rule III.F.

It should be noted that the billing records are processed in aggregate, on a monthly billing cycle. Thus Liberty CalPeco is billed monthly by its affiliates that provide it shared services.

All requests from third parties for affiliate transaction information are to be made to Manager, Rates and Regulatory Affairs, who will, for all reasonable requests arrange for retrieval and presentation of public information within the time required. All requests pursuant to this Rule should be submitted in writing to:

Daniel W. Marsh
Manager, Rates and Regulatory Affairs
Liberty Utilities (CalPeco Electric) LLC
933 Eloise Avenue
South Lake Tahoe, CA 96150

IV.G. Maintenance of Affiliate Contracts and Related Bids

A utility shall maintain a record of all contracts and related bids for the provision of work, products or services between the utility and its affiliates for no less than a period of three years, and longer if this Commission or another government agency so requires.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco has not received any bids to provide work or products from any of its affiliates. Liberty CalPeco has written services agreements with certain affiliates to ensure transparency regarding those transactions. Liberty CalPeco has filed all such agreements with the Commission.

As explained previously, employees of certain affiliates perform corporate support functions on behalf of Liberty CalPeco and in connection with Liberty CalPeco's provision of service to its customers. Any cost associated with its affiliates' performance of such function is allocated in a manner consistent with the APUC Corporate Cost Allocation Manual and Commission requirements.

Liberty CalPeco will comply with Rule IV.G's requirements with respect to retention of any necessary documents.

IV.H. FERC Reporting Requirements

To the extent that reporting rules imposed by the FERC require more detailed information or more expeditious reporting, nothing in these Rules shall be construed as modifying the FERC rules.

Procedures and Mechanisms to Promote Compliance

No additional compliance action is required.

V. SEPARATION

V.A. Corporate Entities

A utility and its affiliates shall be separate corporate entities.

Procedures and Mechanisms for Ensuring Compliance

Liberty CalPeco and its affiliates are separate corporate entities.

V.B. Books and Records:

A utility and its affiliates shall keep separate books and records.

V.B.1. *Utility books and records shall be kept in accordance with the applicable Uniform System of Accounts (“USOA”) and Generally Accepted Accounting Procedures (“GAAP”).*

V.B.2. *The books and records of a utility’s parent holding company and affiliates shall be open for examination by the Commission and its staff consistent with the provisions of Public Utilities Code Sections 314.*

Procedures and Mechanisms to Promote Compliance

The Liberty CalPeco accounting books and records are maintained separately from the accounting books and records of any affiliate. Liberty CalPeco follows and will continue to follow USOA and GAAP standards. The accounting books and records of Liberty CalPeco and

its affiliates are open for examination by the CPUC with respect to any transaction between Liberty CalPeco and any such affiliate pursuant to Public Utilities Code Section 314(b) and D.12-06-005¹⁶ and D.10-10-017.¹⁷

V.C. *Sharing of Plant, Facilities, Equipment or Costs*

A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Section V.E. of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. This provision does not preclude a utility from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions (e.g., joint billing services pursuant to D.97-05-039).

Facilities Separation:

Liberty CalPeco does not share its office space, office equipment, services and systems with its affiliates.

Information Technology:

With the objective to best ensure compliance with the Affiliate Rules relating to utility and affiliate separation, the information systems within APUC have imposed restrictions on access to information. Thus only those persons whose responsibilities require that they have access to information associated with an affiliate are allowed access to the information; an employee whose responsibilities do not require access to information associated with an affiliate has no ability to access the affiliate's information. Information Technology representatives of Liberty

¹⁶ See D.12-06-005, mimeo at 17 (Ordering Paragraph 3, subsection ii).

¹⁷ See D.10-10-017, mimeo at 2, 46, 63 (Ordering Paragraph 1, subsection 1(c)).

CalPeco and APUC already have ITGCs (IT General Controls) in place that requires user-access reviews by system owners to ensure appropriate access is assigned to the appropriate staff, and are in the process of completing a formal policy delineating access control.

V.D. *Joint Purchases*

To the extent not precluded by any other Rule, the utilities and their affiliates may make joint purchases of goods and services, but not those associated with the traditional utility merchant function. For purpose of these Rules, to the extent that a utility is engaged in the marketing of the commodity of electricity or natural gas to customers, as opposed to the marketing of transmission and distribution services, it is engaging in merchant functions. Examples of permissible joint purchases include joint purchases of office supplies and telephone services. Examples of joint purchases not permitted include gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing. The utility must insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco construes a “joint purchase” which is the focus of Rule V.D, as involving a purchase by two entities combining to make one purchase of electric-related products or services. Conversely, Liberty CalPeco does not construe a joint purchase as the situation in which there is one purchaser (*i.e.*, Liberty CalPeco) and an employee of an affiliate provides a shared service to assist the unilateral utility purchaser. Stated differently, unless there are two or more actual purchasers acting in concert, there is no joint procurement within the meaning of the Affiliate Rules.

Liberty CalPeco’s definition of joint purchase is consistent with the objectives of Rule IV.D to preclude joint procurement activities from allowing the unregulated affiliate to be subsidized by, or otherwise obtain a competitive advantage attributable to its corporate relationship with, a

regulated utility. Under such an interpretation of joint procurement, Liberty CalPeco does not engage in joint purchases with any of its affiliates.

Each utility within the Liberty Utilities Co. family separately procures items directly related to the provision of utility services on its own. Certain general administrative and “back office” items and services (*i.e.*, insurance and certain technology-related items) are purchased by upstream affiliates for use by numerous affiliates. Any such permissible purchases made by an upstream affiliate for the benefit of Liberty CalPeco comply with the requirements of Rule V.D.

V.E. Corporate Support

As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliate’s joint corporate oversight, governance, support systems and personnel, as further specified below. Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.

As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

Procedures and Mechanisms to Promote Compliance

As described throughout this Compliance Plan, Service Corp and other affiliates of Liberty CalPeco provide permitted shared services to Liberty CalPeco. Common services that are currently shared with affiliates are to the extent possible direct-charged to affiliates via an individual inter-company invoice at month-end. Additionally in those instances in which shared services provided by an affiliate are specific only to Liberty CalPeco the associated expenses are direct-charged to Liberty CalPeco as circumstances warrant.

As stated previously, any costs for which Liberty CalPeco has requested rate recovery for the provision by affiliates of such services have been and will continue to be allocated to Liberty CalPeco in a manner consistent with the APUC Corporate Cost Allocation Manual and Commission requirements. The recovery in rates of these costs is subject to scrutiny by the Office of Ratepayer Advocates and ultimately approval by the Commission in Liberty CalPeco's general rate cases.

Liberty Utilities Co., Service Corp, Liberty Utilities (Canada) Corp., Liberty Park Water, Liberty Apple Valley and APUC provide Liberty CalPeco shared services in the following functional areas: Audit Services, Controller and Corporate Taxes, Compliance, Corporate Relations, Corporate Security, Finance, Legal, Human Resources, Information Technology, Investor Relations, Risk Analysis & Management, Treasury, Regulatory, Environmental, and Health and Safety.¹⁸ In addition, the services provided include financing, strategic management services, financial controls, corporate governance, and administration and management services such as

¹⁸ The Commission acknowledged in D.98-08-035 that the list of permissible shared services presented in Rule V.E is not exhaustive and thus the above does not represent an exhaustive list of all shared services that Liberty CalPeco may receive from its above affiliates.

consultation on management and administration on aspects of the electric utility business, including economic and strategic analysis.

Rule V.E on its face would prohibit Liberty CalPeco from obtaining the assistance of any employee of any affiliate with respect to “employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.” In the particular context of Liberty CalPeco (*i.e.*, no affiliate engages in any business within the service territory of Liberty CalPeco) several of these apparent prohibitions should be deemed inapplicable. If construed strictly and literally, the prohibition would offer no protection for, or any benefit to, the customers of Liberty CalPeco, but would serve to decrease efficiency and increase costs.

For instance, the bar against an affiliate providing assistance with respect to “employee recruiting” serves no beneficial purpose and should be deemed inapplicable. The risk this Rule is designed to monitor (*i.e.*, an employee recruit attractive to Liberty CalPeco being “lured away” to the employ of an unregulated affiliate) is simply not present. Moreover, if read literally, this prohibition would prohibit employees of any Liberty CalPeco affiliate from access to any postings that Liberty CalPeco makes regarding job openings.

Similarly, there is no apparent reason for the Affiliate Rules to bar Liberty CalPeco from obtaining engineering support as a shared service and it should also be deemed inapplicable. The Commission adopted the Rule V.E prohibition against engineering in D. 97-12-088. However, the decision is conspicuous for the absence of any direct reasoning explaining the Commission’s reasoning to reject engineering as a permissible shared service.¹⁹ The anomaly of the prohibition against engineering being a permissible shared service is compounded by the fact that the

¹⁹ See D.97-12-088, mimeo at 55–57.

Affiliate Transaction Rules Applicable to Class A and B Water Utilities in Rule V.C authorize “engineering” services to be a shared service.²⁰

The verifications of Todd Wiley as an officer of Liberty CalPeco and of Gregory Sorensen as an officer and director of Liberty Utilities Co. are set forth as Attachment D to the Liberty CalPeco Compliance Plan. These verifications attest to the adequacy of the procedures and mechanisms in place to ensure that Liberty CalPeco and its affiliates follow the Affiliate Rules, and that Liberty CalPeco and its affiliates are not utilizing joint corporate support services as a conduit to circumvent the Affiliate Rules.

V.F. Corporate Identification and Advertising

V.F.1. *A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor allow the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:*

V.F.1.a. the affiliate “is not the same company as [i.e. PG&E, Edison, the Gas Company, etc.], the utility”;

V.F.1.b. the affiliate is not regulated by the California Public Utilities Commission; and

V.F.1.c. “you do not have to buy [the affiliate’s] products in order to continue to receive quality regulated services from the utility.”

²⁰ The original Affiliate Transaction Rules Applicable to Class A and B Water Utilities adopted in D.10-10-019 prohibited engineering services from being shared among a utility, its parent company, and separate affiliates; however, the Commission granted the request to have engineering services be designated a permissible shared service in D.11-10-034. See D.11-10-034, mimeo at 13–14.

The application of the name/logo disclaimer is limited to the use of the name or logo in California.

Procedures and Mechanisms to Promote Compliance

Liberty Utilities Co. directly or indirectly owns regulated utilities in eleven states besides California. *See* Advice Letter, Exhibit 1. The members of the Liberty Utilities Co. family of operating utilities each include “Liberty Utilities” as part of their corporate name. Additionally, the Liberty Utilities Co. family of utilities also shares a common logo.

Nonetheless, as none of the other members of the Liberty Utilities Co. family of utilities offers to conduct business or currently conducts business in the Liberty CalPeco service territory, the risk this Affiliate Rule is designed to address (*i.e.*, a customer resident within the Liberty CalPeco service territory obtaining a product or service from an affiliate of Liberty CalPeco believing the affiliate to be the same company as Liberty CalPeco) does not exist. Moreover, the benefits of, possible need for, and even ability of Liberty CalPeco to comply with the requirements of Rule V.F are unclear, uncertain, and, in some respects, impossible.

Foremost, Liberty Park Water and Liberty Apple Valley are the lone two affiliates who conduct business within California and use the Liberty Utilities name or logo (and they first became affiliates in 2016). As neither is engaged in the electric business, the relationship between Liberty CalPeco and each water utility is not subject to Rule II.B and thus Rule V.F should be deemed inapplicable on that basis.

Additionally, any affiliate of Liberty CalPeco which provides services to third parties and has “Liberty Utilities” within its name is owned by Liberty Utilities Co. and is a public utility. Accordingly the businesses of the “Liberty Utilities”- named affiliates are restricted to the provision of *regulated* water, sewer, natural gas or electric service. As such the regulated utilities which share the Liberty Utilities name and logo are restricted by law to engage in their respective business only within their respective service territories. The franchised utility service territory of none of the Liberty CalPeco’s affiliates overlap with the California service territory in which Liberty CalPeco has the obligation to provide utility service.

Moreover, no unregulated affiliate of Liberty CalPeco currently provides or offers to provide any service to customers within the Liberty CalPeco service territory. To the extent any such unregulated affiliate were in the future to offer to provide services or sell products within the Liberty CalPeco service territory, such affiliate would not have the words “Liberty Utilities” within its name and would not use the “Liberty Utilities” logo — the use of the term “Liberty Utilities” is reserved entirely for the Liberty Utilities Co. family of regulated companies.

Further, any such arbitrary imposition of these rules would require Liberty CalPeco to make statements contrary to the facts. As both Liberty Park Water and Liberty Apple Valley are regulated by this Commission, Liberty CalPeco cannot, as Rule V.F.1.b. would require, represent that “the affiliate is not regulated by the California Public Utilities Commission.”

Second, Liberty CalPeco is not aware that any of its customers is resident within the service territory of either Liberty Park Water or Liberty Apple Valley.²¹ If this assumption is correct, any customer of Liberty CalPeco is *per se* ineligible to receive water service from either water utility affiliate. Thus no purpose would be served (and on the contrary unnecessary confusion engendered) by obligating Liberty CalPeco to advise, as Rule V.F.1.c. would require, its customers that they “do not have to buy products [offered by either Liberty Park Water or Liberty Apple Valley] in order to continue to receive quality regulated services from the utility.”

Thus as of the present time, Rule V.F.1 should be deemed inapplicable to the use of the Liberty Utilities name and logo by any member of the Liberty Utilities Co. group.

Nonetheless, in the event that a Rule II.B Affiliate not subject to the jurisdiction of this Commission were to offer electric-related services or products to customers located within the Liberty CalPeco service territory and use the name Liberty Utilities and/or the Liberty Utilities

²¹ Numerous service accounts of Liberty CalPeco represent second homes for customers with a primary residence outside of the Liberty CalPeco service territory. Thus it is theoretically possible that a customer of Liberty Park Water or Apple Valley could own a second home within the Liberty CalPeco service territory. In any event, Liberty CalPeco does not believe that this theoretical possibility that it and either Liberty Park Water or Liberty Apple Valley share a customer warrant the implementation of any special rules or procedures.

logo, Liberty CalPeco shall comply with the following disclaimer rules in accordance with D.02-02-046:

Liberty CalPeco will use the following disclaimer with respect to the Rule II.B non-regulated affiliate:

[The Rule II.B non-regulated affiliate] is not the same company as Liberty CalPeco and [the Rule II.B non-regulated affiliate] is not regulated by the California Public Utilities Commission.

The Rule II.B non-regulated affiliate will use the following disclaimer with respect to Liberty CalPeco:

[The Rule II.B non-regulated affiliate] is not the same company as Liberty CalPeco and the California Public Utilities Commission does not regulate the terms of [the Rule II.B non-regulated affiliate] products and services.

V.F.2. A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco has not represented, and shall not represent that, as a result of the affiliate's affiliation with Liberty CalPeco, such affiliate will receive any different treatment than other service providers.

As stated previously, no affiliate of Liberty CalPeco currently conducts business within the service territory of Liberty CalPeco. Thus, and in any event, in providing public utility service, Liberty CalPeco shall not provide preferential treatment to its affiliates or its affiliates' customers.

V.F.3. A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication

unless it provides access to all other unaffiliated service providers on the same terms and conditions.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco does not offer or provide advertising space in its billing envelopes or in any other form of customer written communication.

V.F.4. *A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, but are not limited to the following:*

V.F.4.a. A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (“RFPs”) to existing or potential customers. At a customer’s unsolicited request, a utility may participate, on a nondiscriminatory basis, in non-sales meetings with its affiliates or any other market participant to discuss technical or operational subjects regarding the utility’s provision of transportation service to the customer;

V.F.4.b. Except as otherwise provided for by these Rules, a utility shall not participate in any joint activity with its affiliates. The term “joint activities” includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco has not participated in, and shall not participate, as proscribed by Rules V.F.4.a or V.F.4.b, in joint advertising or joint marketing with its affiliates.

V.F.4.c. A utility shall not participate with its affiliates in trade shows, conferences, or other information or marketing events held in California.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco construes the purpose of Rule V.F.4.c as protecting against an unregulated affiliate from unfairly leveraging its corporate affiliation with a utility to obtain an otherwise unwarranted competitive advantage. Thus Liberty CalPeco construes the restrictions in Rule V.F.4 as prohibiting a utility and any unregulated affiliate from participating in the same events. It does not construe the Rule as prohibiting *regulated* utility affiliates from each participating in and/or attending a trade show, conference, or other information or marketing events within California.

In particular, Gregory Sorensen now serves as the President of Liberty Utilities Western Region with management responsibilities for CalPeco, Liberty Park Water, and Liberty Apple Valley, each a public utility regulated by the Commission. Liberty CalPeco does not construe Rule V.F.4.c as prohibiting Mr. Sorensen from participating in a Commission proceeding (*i.e.*, supplier diversity) in which each utility is participating.

Additionally, Liberty CalPeco believes that a literal interpretation of Rule V.F.4.c would contravene the State's and the Commission's appropriate recognition that water and energy utilities should cooperate to best advance State energy and water policies.

V.F.5. A utility shall not share or subsidize costs, fees, or payments with its affiliates associated with research and development activities or investment in advanced technology research.

Procedures and Mechanisms for to Promote Compliance

Liberty CalPeco will comply with Rule V.F.5's requirements.

V.G. Employees

V.G.1. *Except as permitted in Rule V.E (corporate support), a utility and its affiliates shall not jointly employ the same employees. This Rule prohibiting joint employees also applies to Board Directors and corporate officers, except for the following circumstances: In instances when this Rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both) to the extent consistent with Rule V E (corporate support). Where the utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California. In the case of shared directors and officers, a corporate officer from the utility and holding company shall describe and verify in the utility's compliance plan required by Rule VI the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules. In its compliance plan, the utility shall list all shared directors and officers between the utility and affiliates. No later than 30 days following a change to this list, the utility shall notify the Commission's Energy Division and the parties on the service list of R.97-04-011 / I.97-04-012 of any change to this list.*

Procedures and Mechanisms to Promote Compliance

The term “multi-state utility” in Rule II.H and in this Rule V.G.1 with respect to Liberty CalPeco is ambiguous. Liberty CalPeco has affiliates within Liberty Utilities Co. that provide regulated water, sewer, electricity, and natural gas services in eleven states. See Advice Letter, Exhibit 1. Each such regulated affiliate is “subject to the jurisdiction of [a] state regulatory” commission. However, Liberty CalPeco provides electric service only to customers within its service territory within California. As such, Liberty CalPeco is subject to state regulatory jurisdiction only by

this Commission. Accordingly, it appears that Liberty CalPeco does not technically qualify as a “multi-state utility” as defined in the context of the Affiliate Rules.

Nonetheless, Liberty CalPeco requests that it should qualify as such a “multi-state utility” with respect to Rule V.G.1:

Where the utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California.

Liberty CalPeco requests that it be deemed a “multi-state utility” and thus be subject to Rule V.G.1 and perhaps others of the Affiliate Rules²² only with respect to “affiliates that operate in California.” Liberty CalPeco makes this request on the basis that the objectives of the Affiliate Rules can be fully and most efficiently achieved by the Commission granting such relief.

Numerous of the preceding statements in this Compliance Plan evidence that the harms and risks the Affiliate Rules are intended to prevent are not at issue with respect to any of out-of-state affiliates of Liberty CalPeco. Such out-of-state affiliates have no opportunity to take competitive advantage of Liberty CalPeco’s public utility relationship with its customers in its California service territory.

As the current businesses of the out-of-state affiliates of Liberty CalPeco can neither adversely impact competition within California nor otherwise affect the state’s electric consumers, no useful purpose is served by requiring Liberty CalPeco to include out-of-state affiliates for purposes of complying with the Affiliate Rules. PacifiCorp advanced a similar position in

²² As stated before, certain of the Rules have no possible relevance with respect to the out-of-state utility affiliates of Liberty CalPeco. *See e.g.*, the preceding discussions of Rule III.B.2 relating to the offering of discounts to affiliates; Rule III.C relating to the tying of the provision of utility services to the procurement of goods or services from the out-of-state affiliates; Rule III.D concerning assignment of the electric customers of Liberty CalPeco to out-of-state affiliates.

See also Rule I.H of the Affiliate Transaction Rules Applicable to Class A and B Water Utilities, which expressly exempts out-of-state utility affiliates from certain of the Affiliate Transaction Rules provided the affiliates’ operations do not substantially affect the utility’s in-state operations and operating costs.

Application 99-03-071 in seeking certain exemptions from the Affiliate Rules with respect to its out-of-state affiliates. The Commission granted PacifiCorp's request based on PacifiCorp's showings of an absence of any need for such Affiliate Rules with respect to out-of-state affiliates, combined with the fact that the manner in which PacifiCorp is structured, from a corporate perspective, satisfies the definition of a "multi-state utility."²³ Liberty CalPeco accordingly requests that in future Compliance Plans, its obligation to provide such shared officer and director information be limited to affiliates operating within California.

Nonetheless, for purposes of this Compliance Plan, Liberty CalPeco is providing in Attachment E a listing of the affiliates for whom its officers also serve as officers or directors. It is also providing in Attachment D a verification from an officer of Liberty CalPeco and a verification from an officer and director of Liberty Utilities Co. attesting that the procedures and mechanisms described in Liberty CalPeco's Affiliate Transaction Compliance Plan, specifically its procedures and mechanisms, are adequate to ensure that Liberty CalPeco is not utilizing shared officers and directors as a conduit to circumvent any of the Affiliate Rules.

V.G.2. *All employee movement between a utility and its affiliates shall be consistent with the following provisions:*

V.G.2.a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC 2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).

V.G.2.b. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This Rule is inapplicable if the affiliate to which the employee transfers goes

²³ See D. 99-10-049, 1999 Cal. PUC LEXIS 707, at *7, *13-*15 (Ordering Paragraphs 1 and 2). In contrast to the Liberty Utilities Co. structure in which each utility is a separate legal entity, PacifiCorp provides public utility service in multiple states with one legal entity and distinguishes its operations in the different states through the use of different "doing business as" names.

out of business during the one-year period. In the event that such employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years. Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of other unaffiliated service providers.

V.G.2.c. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. In the limited case where a rank-and-file (non-executive) employee's position is eliminated as a result of electric industry restructuring, a utility may demonstrate that no fee or a lesser percentage than 15% is appropriate. The Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than December 31, 9998, except for the transfer of employees working at divested plants. In that instance, the Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than within 60 days after the end of the O&M contract with the new plant owners. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e. credited to the Electric Revenue Adjustment Accounts or the Core and Non-core Gas Fixed Cost Accounts, or other ratemaking treatment, as appropriate), on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer of

employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that the transfer is made during the initial implementation period of these rules or pursuant to a § 851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.

V.G.2.d. Any utility employee hired by an affiliate shall not remove or otherwise provide information to the affiliate which the affiliate would otherwise be precluded from having pursuant to these Rules.

V.G.2.e. A utility shall not make temporary or intermittent assignments, or rotations to its energy marketing affiliates. Utility employees not involved in marketing may be used on a temporary basis (less than 30% of an employee's chargeable time in any calendar year) by affiliates not engaged in energy marketing only if:

V.G.2.e.i. All such use is documented, priced and reported in accordance with these Rules and existing Commission reporting requirements, except that when the affiliate obtains the services of a non-executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 10% of direct labor cost, or fair market value. When the affiliate obtains the services of an executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 15% of direct labor cost, or fair market value.

V.G.2.e.ii Utility needs for utility employees always take priority over any affiliate requests;

V.G.2.e.iii. No more than 5% of full time equivalent utility employees may be on loan at a given time;

V.G.2.e.iv. Utility employees agree, in writing, that they will abide by these Affiliate Transaction Rules; and

V.G.2.e.v. Affiliate use of utility employees must be conducted pursuant to a written agreement approved by appropriate utility and affiliate officers.

Procedures and Mechanisms to Promote Compliance

In February of 2018, pursuant to Commission Decision 17-09-022 (Application 15-11-009), Liberty CalPeco and its parent company, Liberty Utilities Co., returned to the utility the employees and positions that were previously transferred to Service Corp. The HR Department at CalPeco will monitor and track any employee transfers and will provide any required reporting pursuant to Rule V.G.

V.H. Transfer of Goods and Services

To the extent that these Rules do not prohibit transfers of goods and services between a utility and its affiliates, and except for as provided by Rule V.G.2.e., all such transfers shall be subject to the following pricing provisions:

V.H.1. *Transfers from the utility to its affiliates of goods and services produced, purchased or developed for sale on the open market by the utility will be priced at fair market value.*

- V.H.2.** *Transfers from an affiliate to the utility of goods and services produced, purchased or developed for sale on the open market by the affiliate shall be priced at no more than fair market value.*
- V.H.3.** *For goods or services for which the price is regulated by a state or federal agency, that price shall be deemed to be the fair market value, except that in cases where more than one state commission regulated the price of goods or services, this Commission's pricing provisions govern.*
- V.H.4.** *Goods and services produced, purchased or developed for sale on the open market by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these Rules or applicable law.*
- V.H.5.** *Transfers from the utility to its affiliates of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded cost plus 5% on fully loaded labor.*
- V.H.6.** *Transfers from an affiliate to the utility of goods and services not produced, purchased or developed for sale by the affiliate will be priced at the lower of fully loaded cost or fair market value.*

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco provides no electric utility services to any of its affiliates.²⁴ Liberty CalPeco interprets the services aspect of Rule V.H not to apply to shared services as separate Affiliate Rules govern the provision of those services. As stated previously, Liberty CalPeco and its

24

affiliates comply with the Affiliate Rules governing the allocation of costs associated with the provision of shared services.²⁵

The other focus of Rule V.H — transfer of goods — is generally not applicable. Liberty CalPeco does not as a common practice engage in transactions involving goods or electric supply with any of its affiliates and thus the relevant provisions of Rule V.H are for the most part inapplicable.

In 2016, there were no transactions with a utility affiliate

As also previously explained, starting in early 2017, Liberty CalPeco began obtaining solar power from the Luning Solar Project through a series of commercial arrangements in which a new Rule II.B Affiliate will also be a participant.²⁶ In approving the affiliate transactions associated with, and integral to, the Luning Solar Project and the Turquoise Solar Project the Commission also imposed certain reporting and other requirements.²⁷ Liberty CalPeco shall comply with affiliate transaction and all other requirements set forth in the Luning and Turquoise Approval Decisions.

VI. REGULATORY OVERSIGHT

VI.A. Compliance Plans

No later than December 31, 1997, each utility shall file a compliance plan demonstrating to the Commission compliance that there are adequate procedures in place that will preclude the sharing of information with its affiliates that is prohibited by these Rules. The utility should file its compliance plan as an advice letter with the Commission's Energy Division and serve it on the parties to this proceeding. The utility's compliance plan shall be in effect between the filing and a Commission determination of the advice letter. A utility shall file a compliance plan annually thereafter by advice letter where

²⁵ See *supra*, at 28–29, 34.

²⁶ See *supra* at 18–19.

²⁷ See Luning Approval Decision, at 43–44 (Ordering Paragraph 1). See also *supra* at 4, n.8, 18.

there is some change in the compliance plan (i.e., when a new affiliate has been created, or the utility has changed the compliance plan for any other reason).

Procedures and Mechanisms for Ensuring Compliance

This Compliance Plan represents Liberty CalPeco's compliance with Rule VI.A. Attachment C to this Compliance Plan provides a listing each entity which was a Rule II.B Affiliate of Liberty CalPeco at any time up to the date of this filing.

VI.B. New Affiliate Compliance Plans

Upon the creation of a new affiliate, the utility shall immediately notify the Commission of the creation of the new affiliate, as well as posting notice on its electronic bulletin board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Energy Division of the Commission, served on the parties to this proceeding. The advice letter shall demonstrate how the utility will implement these Rules with respect to the new affiliate.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco shall comply fully with Rule VI.B with respect to the creation of any new affiliate who is: (i) a public utility and a Rule II.B Affiliate of CalPeco; (ii) a public utility located within California and thus subject to regulation by this Commission; or (iii) an unregulated Rule II.B Affiliate who intends to offer to sell electric-related goods or services within the Liberty CalPeco service territory or anywhere within California.

With respect to the creation of any such new affiliate described in the first paragraph, Liberty CalPeco will timely notify the Commission of its creation. With respect to any such new affiliate, Liberty CalPeco will additionally submit an advice letter within 60 calendar days of the Rule II.B affiliate providing operations or service in California providing the information required by Rule VI.B, including the new affiliate's business description and designate the affiliate contact personnel.

With respect to any new Rule II.B Affiliate which is not encompassed by the criteria set forth in the first paragraph above, Liberty CalPeco commits to advise the Commission to the extent otherwise necessary and required by the Affiliate Rules of the existence of such new Rule II.B Affiliate in its annual Affiliate Transaction Compliance Plan. Liberty CalPeco believes that such an annual updates of Rule II.B Affiliates fully achieves the objectives of this Rule V.B. For instance, the creation of a new Liberty CalPeco affiliate whose business purpose is to participate in the development of a hydroelectric project within a province in eastern Canada raises no immediate issue or risk relating to the cost and quality of the public utility service that Liberty CalPeco provides its customers.

Moreover, imposition of the “immediately notify” rule is first infeasible. For purposes of providing its customers utility service, Liberty CalPeco has no business reason to obtain immediate knowledge of the creation of each new affiliate created to engage in some aspect of the electric business and thus there is currently no corporate mechanism providing Liberty CalPeco the information necessary to enable it to provide such immediate notification. Creating the necessary communication channels to ensure such absolute immediate notification would necessarily increase costs, but provide no perceived benefit or protection to the electric customers of Liberty CalPeco.

Rule VI.B would additionally require the immediate sharing of information between APCo and Liberty CalPeco, which information is purposely not currently shared. From the perspective of promoting the best policies and practices with respect to affiliate transactions, the sharing of information between regulated and unregulated entities within a corporate family should be generally discouraged, and not *per se* required, particularly when no purpose is articulated to justify the otherwise disfavored sharing of information between the regulated and unregulated sectors of an entity.

To the extent that Liberty CalPeco’s above commitment to comply with Rule VI.B requires a waiver or exemption from the Affiliate Rules, Liberty CalPeco requests that such a waiver or exemption be granted for the grounds stated.

VI.C. Affiliate Audit

No later than December 31, 1998, and every year thereafter, the utility shall have audits performed by independent auditors that cover the calendar year which ends on December 31, and that verify that the utility is in compliance with the Rules set forth herein. The utilities shall file the independent auditor's report with the Commission's Energy Division beginning no later than May 1, 1999, and serve it on all parties to this proceeding. The audits shall be at shareholder expense.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco will comply with Rule VI.C's requirements. The 2017 independent auditor's report will be submitted to the Commission's Energy Division shortly after this Plan is filed. The audits shall be at shareholder expense.

VI.D. Witness Availability

Affiliate officers and employees shall be made available to testify before the Commission as necessary or required, without subpoena, consistent with the provisions of Public Utilities Code Section 314.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco and its affiliates will comply with California Public Utilities Code Section 314.

VII. UTILITY PRODUCTS AND SERVICES

VII.A. General Rule

Except as provided for in these Rules, new products and services shall be offered through affiliates.

VII.B. Definitions

The following definitions apply for the purposes of this section (Section Rule VII) of these rules:

VII.B.1. *“Category” refers to a factually similar group of products and services that use the same type of utility assets or capacity. For example, “leases of land under utility transmission lines” or “use of a utility repair shop for third party equipment repair” would each constitute a separate product or service category.*

VII.B.2 *“Existing” products and services are those which a utility is offering on the effective date of these Rules.*

VII.B.3 *“Products” include use of property, both real and intellectual, other than those uses authorized under General Order 69-C.*

VII.B.4 *“Tariff” or “tariffed” refers to rates, terms and conditions of services as approved by this Commission or the Federal Energy Regulatory Commission (FERC), whether by traditional tariff, approved contract or other such approval process as the Commission or the FERC may deem appropriate.*

VII.C. Utility Products and Services

Except as provided in these Rules, a utility shall not offer nontariffed products and services. In no event shall a utility offer natural gas or electricity commodity service on a nontariffed basis. A utility may only offer for sale the following products and services:

VII.C.1. *Existing products and services offered by the utility pursuant to tariff;*

VII.C.2. *Unbundled versions of existing utility products and services, with the unbundled versions being offered on a tariffed basis;*

VII.C.3. *New products and services that are offered on a tariffed basis; and*

VII.C.4. *Products and services which are offered on a nontariffed basis and which meet the following conditions:*

VII.C.4.a. The nontariffed product or service utilizes a portion of a utility asset or capacity;

VII.C.4.b. such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;

VII.C.4.c. the involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services;

VII.C.4.d. the products and services can be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk being incurred by utility ratepayers, and no undue diversion of utility management attention; and

VII.C.4.e. the utility's offering of such nontariffed product or service does not violate any law, regulation, or Commission policy regarding anticompetitive practices.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco as an electric utility will limit its operations within California to the provision of tariffed utility services in its franchised service territory. Liberty CalPeco as an electric utility will not offer any non-tariffed services in California.

Liberty CalPeco is a party to certain arrangements which allow certain entities to hang wires or attach fixtures and other appurtenances on its distribution facilities. Liberty CalPeco records the revenues obtained through these arrangements in its Account 454 and these revenues are thus reflected and credited to the benefit of its electric customers in its rate cases. Liberty CalPeco engages in several, but small, wholesale electric sales which are subject to the jurisdiction of the FERC; revenues from these FERC-jurisdictional sale transactions are recorded in Account 447

and are similarly accounted for in rate cases as credits against Liberty CalPeco's revenue requirement.

In the event an affiliate was to propose to engage in the retail sale of energy or energy-related products or services in California,²⁸ Liberty CalPeco shall:

1. Immediately notify the Commission of such activities and post a notice on its electronic bulletin board; and
2. Within 60 days after the commencement of such activities, submit an advice letter to the Energy Division including a compliance plan that demonstrates the safeguards and other protections Liberty CalPeco will implement to ensure compliance with the Affiliate Rules with respect to any such affiliate.

VII.D. Conditions Precedent to Offering New Products and Services

This Rule does not represent an endorsement by the Commission of any particular nontariffed utility product or service. A utility may offer new nontariffed products and services only if the Commission has adopted and the utility has established:

VII.D.1. *A mechanism or accounting standard for allocating costs to each new product or service to prevent cross-subsidization between services a utility would continue to provide on a tariffed basis and those it would provide on a nontariffed basis;*

VII.D.2. *A reasonable mechanism for treatment of benefits and revenues derived from offering such products and services, except that in the event the Commission has already approved a performance-based ratemaking mechanism for the utility and the utility seeks a different sharing mechanism, the utility should petition to modify the performance-based ratemaking decision if it wishes to alter the*

²⁸ Liberty CalPeco construes this requirement to be only applicable to an affiliate engaged in the mass marketing of retail electric services to specific customer classes and/ or within designated geographic areas. It does not construe these requirements to be applicable to the type of essentially "one-off" retail sales allowed in special and limited circumstances by Public Utilities Code Section 218(b).

sharing mechanism, or clearly justify why this procedure is inappropriate, rather than doing so by application or other vehicle.

VII.D.3. *Periodic reporting requirements regarding pertinent information related to nontariffed products and services; and*

VII.D.4. *Periodic auditing of the costs allocated to and the revenues derived from nontariffed products and services.*

VII.E. Requirement to File an Advice Letter

Prior to offering a new category of nontariffed products or services as set forth in Rule VII.C above, a utility shall file an advice letter in compliance with the following provisions of this paragraph.

VII.E.1. *The advice letter shall:*

VII.E.1.a. *demonstrate compliance with these rules;*

VII.E.1.b. *address the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;*

VII.E.1.c. *demonstrate that the utility has not received competition transition charge (CTC) recovery in the Transition Cost Proceeding, A.96-08-001, or other related CTC Commission proceeding, for the portion of the utility asset dedicated to the non-utility venture; and*

VII.E.1.d. *address the potential impact of the new product or service on competition in the relevant market, including but not limited to the*

degree in which the relevant market is already competitive in nature and the degree to which the new category of products or services is projected to affect that market.

VII.E.1.e. be served on the service list of Rulemaking 97-04-011/Investigation 97-04-012, as well as on any other party appropriately designated by the rules governing the Commission's advice letter process.

VII.E.2. *For categories of nontariffed products or services targeted and offered to less than 1% of the number of customers in the utility's customer base, in the absence of a protest alleging non-compliance with these Rules or any law, regulation, decision, or Commission policy, or allegations of harm, the utility may commence offering the product or service 30 days after submission of the advice letter. For categories of nontariffed products or services targeted and offered to 1% or more of the number of customers in the utility's customer base, the utility may commence offering the product or service after the Commission approves the advice letter through the normal advice letter process.*

VII.E.3. *A protest of an advice letter filed in accordance with this paragraph shall include:*

VII.E.3.a. An explanation of the specific Rules, or any law, regulation, decision, or Commission policy the utility will allegedly violate by offering the proposed product or service, with reasonable factual detail; or

VII.E.3.b. An explanation of the specific harm the protestant will allegedly suffer.

VII.E.4. *If such a protest is filed, the utility may file a motion to dismiss the protest within 5 working days if it believes the protestant has failed to provide the minimum grounds for protest required above. The protestant has 5 working days to respond to the motion.*

VII.E.5. *The intention of the Commission is to make its best reasonable efforts to rule on such a motion to dismiss promptly. Absent a ruling granting a motion to dismiss, the utility shall begin offering that category of products and services only after Commission approval through the normal advice letter process.*

Procedures and Mechanisms to Promote Compliance

As set forth above the only non-tariff services that Liberty CalPeco provides are allowing access to its poles to certain communication providers and selling a limited amount of energy at wholesale. The revenues for these activities are fully disclosed and accounted for in Liberty CalPeco's rate proceedings.

If Liberty CalPeco considers offering a new category of non-tariffed product and services, it will file an advice letter with the provisions described in Rule VII.E.

VII.F. Existing Offerings

Unless and until further Commission order to the contrary as a result of the advice letter filing or otherwise, a utility that is offering tariffed or nontariffed products and services, as of the effective date of this decision, may continue to offer such products and services, provided that the utility complies with the cost allocation and reporting requirements in this rule. No later than January 30, 1998, each utility shall submit an advice letter describing the existing products and services (both tariffed and nontariffed) currently being offered by the utility and the number of the Commission decision or advice letter approving this offering, if any, and requesting authorization or continuing authorization for the utility's continued provision of this product or service in compliance with the criteria set forth in Rule VII. This requirement applies to both existing products and services explicitly approved and not explicitly approved by the Commission.

Procedures and Mechanisms to Promote Compliance

As required by Rule VII.F, Sierra Pacific Power Company (“Sierra Pacific”), the prior utility serving the Liberty CalPeco’s service territory, submitted Advice Letter No. 259-E dated February 2, 1998 describing the existing products and services as of January 30, 1998. Sierra Pacific updated the Compliance Plan by Advice Letter 259-E-A on March 15, 2000, which was approved by the CPUC on April 21, 2004.

VII.G. Section 851 Application

A utility must continue to comply fully with the provisions of Public Utilities Code Section 851 when necessary or useful utility property is sold, leased, assigned, mortgaged, disposed of, or otherwise encumbered as part of a nontariffed product or service offering by the utility. If an application pursuant to Section 851 is submitted, the utility need not file a separate advice letter, but shall include in the application those items which would otherwise appear in the advice letter as required in this Rule.

Procedures and Mechanisms to Promote Compliance

Liberty CalPeco will file Public Utilities Code Section 851 applications in accordance with the statutory requirements and Commission precedents and policies.

VII.H. Periodic Reporting of Nontariffed Products and Services

Any utility offering nontariffed products and services shall file periodic reports with the Commission's Energy Division twice annually for the first two years following the effective date of these Rules, then annually thereafter unless otherwise directed by the Commission. The utility shall serve periodic reports on the service list of this proceeding. The periodic reports shall contain the following information:

VII.H.1. *A description of each existing or new category of nontariffed products and services and the authority under which it is offered;*

VII.H.2. *A description of the types and quantities of products and services contained within each category (so that, for example, "leases for agricultural nurseries at 15 sites" might be listed under the category "leases of land under utility transmission lines," although the utility would not be required to provide the details regarding each individual lease);*

VII.H.3. *The costs allocated to and revenues derived from each category; and*

VII.H.4. *Current information on the proportion of relevant utility assets used to offer each category of product and service.*

Procedures and Mechanisms to Promote Compliance

As set forth above, Liberty CalPeco fully discloses and accounts for in its rate applications filed with this Commission the revenues it receives from its provision of non-tariffed services.²⁹

VII.I. Offering of Nontariffed Products and Services to Affiliates

Nontariffed products and services which are allowed by this Rule may be offered to utility affiliates only in compliance with all other provisions of these Affiliate Rules. Similarly, this Rule does not prohibit affiliate transactions which are otherwise allowed by all other provisions of these Affiliate Rules.

Procedures and Mechanisms to Promote Compliance

No affiliate of Liberty CalPeco is currently offering or is receiving either of the non-tariff services that Liberty CalPeco provides.

VIII. COMPLAINT PROCEDURES AND REMEDIES

VIII.A. The Commission Shall Strictly Enforce These Rules

Each act or failure to act by a utility in violation of these rules may be considered a separate occurrence.

VIII.B. Standing

VIII.B.1. *Any person or corporation as defined in Sections 204, 205, and 206 of the California Public Utilities Code may complain to the Commission or to a utility in writing, setting forth any act or thing done or omitted to be done by*

²⁹ See *supra* at 54, 58.

any utility or affiliate in violation or claimed violation of any rule set forth in this document.

VIII.B.2. *“Whistleblower complaints” will be accepted and the confidentiality of complainant will be maintained until conclusion of an investigation or indefinitely, if so requested by the whistleblower. When a whistleblower requests anonymity, the Commission will continue to pursue the complaint only where it has elected to convert it into a Commission-initiated investigation. Regardless of the complainant’s status, the defendant shall file a timely answer to the complaint.*

VIII.C. Procedure

VIII.C.1. *All complaints shall be filed as formal complaints with the Commission and complainants shall provide a copy to the utility’s designated officer (as described below) on the same day that the complaint is filed.*

Procedures and Mechanisms to Promote Compliance

No specific compliance action is required under Rules VIII.A through VIII.C.1.

VIII.C.2. *Each utility shall designate an Affiliate Compliance Manager who is responsible for compliance with these affiliate rules and the utility’s compliance plan adopted pursuant to these rules. Such officer shall also be responsible for receiving, investigating, and attempting to resolve complaints. The Affiliate Compliance Manager may, however, delegate responsibilities to other officers and employees.*

VIII.C.2.a. *The utility shall investigate and attempt to resolve the complaint. The resolution process shall include a meet-and-confer session with the complainant. A Commission staff member may, upon request by the utility or the complainant, participate in such meet-*

and-confer sessions and shall participate in the case of a whistleblower complaint.

A party filing a complaint may seek a temporary restraining order at the time the formal complaint is filed. The defendant utility and other interested parties may file responses to a request for a temporary restraining order within 10 days of the filing of the request. An assigned commissioner or administrative law judge may shorten the period for responses, where appropriate. An assigned commissioner or administrative law judge, or the Commission shall act on the request for a temporary restraining order within 30 days. The request may be granted when: (1) the moving party is reasonably likely to prevail on the merits, and (2) a temporary restraining order relief is necessary to avoid irreparable injury, will not substantially harm other parties, and is consistent with the public interest.

A notice of temporary restraining order issued by an assigned commissioner or administrative law judge will only stay in effect until the end of the day of the next regularly-scheduled Commission meeting at which the Commission can issue a temporary restraining order or a preliminary injunction. If the Commission declines to issue a temporary restraining order or a preliminary injunction, the notice of temporary restraining order will be immediately lifted. Whether or not a temporary restraining order or a preliminary injunction is issued, the underlying complaint may still move forward.

VIII.C.2.b. The utility shall prepare and preserve a report on each complaint, all relevant dates, companies, customers and employees involved, and if applicable, the resolution reached, the date of the

resolution and any actions taken to prevent further violations from occurring. The report shall be provided to the Commission and all parties within four weeks of the date the complaint was filed. In addition, to providing hard copies, the utility shall also provide electronic copies to the Commission and to any party providing an e-mail address.

VIII.C.2.c. *Each utility shall file annually with the Commission a report detailing the nature and status of all complaints.*

VIII.C.2.d. *The Commission may, notwithstanding any resolution reached by the utility and the complainant, convert a complaint to an investigation and determine whether the utility violated these rules, and impose any appropriate penalties under Section VIII.D or any other remedies provided by the Commission's rules or the Public Utilities Code.*

VIII.C.3. *The utility will inform the Commission's Energy Division and Consumer Services Division of the results of this dispute resolution process. If the dispute is resolved, the utility shall inform the Commission staff of the actions taken to resolve the complaint and the date the complaint was resolved.*

VIII.C.4. *If the utility and the complainant cannot reach a resolution of the complaint, the utility will so inform the Commission's Energy Division. It will also file an answer to the complaint within 30 days of the issuance by the Commission's Docket Office of instructions to answer the original complaint. Within 10 business days of notice of failure to resolve the complaint, Energy Division staff will meet and confer with the utility and the complainant and propose actions to resolve the complaint. Under the circumstances where the complainant and the utility cannot resolve the complaint, the Commission*

shall strive to resolve the complaint within 180 days of the date the instructions to answer are served on the utility.

Procedures and Mechanisms to Promote Compliance

The APUC Legal and Compliance Departments, working jointly with representatives of the management of Liberty CalPeco, are responsible for receiving, investigating, and attempting to resolve complaints arising under or associated with the Affiliate Rules and otherwise with discharging Liberty CalPeco's responsibilities under Rules VIII.C.2.a through Rule VIII.C.4.

VIII.C.5. The Commission shall maintain on its Web site a public log of all new, pending and resolved complaints. The Commission shall update the log at least once every week. The log shall specify, at a minimum, the date the complaint was received, the specific allegations contained in the complaint, the date the complaint was resolved and the manner in which it was resolved, and a description of any similar complaints, including the resolution of such similar complaints.

Procedures and Mechanisms to Promote Compliance

No additional compliance action by Liberty CalPeco is required.

VIII.C.6. Preliminary Discussions

VIII.C.6.a. Prior to filing a formal complaint, a potential complainant may contact the responsible utility officer and/or the Energy Division to inform them of the possible violation of the affiliate rules. If the potential complainant seeks an informal meeting with the utility to discuss the complaint, the utility shall make reasonable efforts to arrange such a meeting. Upon mutual agreement, Energy Division staff and interested parties may attend any such meeting.

VIII.C.6.b. If a potential complainant makes an informal contact with a utility regarding an alleged violation of the affiliate transaction rules, the utility officer in charge of affiliate compliance shall respond in writing to the potential complainant within 15 business days. The response would state whether or not the issues raised by the potential complainant require further investigation. (The potential complainant does not have to rely on the responses in deciding whether to file a formal complaint.)

Procedures and Mechanisms to Promote Compliance

If a potential complainant seeks an informal meeting to discuss the complaint, Liberty CalPeco will make reasonable efforts to arrange such meeting. If informal contact with Liberty CalPeco is made by a potential complainant, Liberty CalPeco will respond in writing within 15 business days.

VIII.D. Remedies

VIII.D.1. When enforcing these rules or any order of the Commission regarding these rules, the Commission may do any or all of the following:

VIII.D.1.a. Order a utility to stop doing something that violates these rules;

VIII.D.1.b. Prospectively limit or restrict the amount, percentage, or value of transactions entered into between the utility and its affiliate(s);

VIII.D.1.c. Assess fines or other penalties;

VIII.D.1.d. Prohibit the utility from allowing its affiliate(s) to utilize the name and logo of the utility, either on a temporary or a permanent basis;

VIII.D.1.e. Apply any other remedy available to the Commission.

VIII.D.2. *Any public utility which violates a provision of these rules is subject to a fine of not less than five hundred dollars (\$500), nor more than \$20,000 for each offense. The remainder of this subsection distills the principles that the Commission has historically relied upon in assessing fines and restates them in a manner that will form the analytical foundation for future decisions in which fines are assessed. Before discussing those principles, reparations are distinguished.*

VIII.D.2.a. Reparations are not fines and conceptually should not be included in setting the amount of a fine. Reparations are refunds of excessive or discriminatory amounts collected by a public utility. PU Code §734. The purpose is to return funds to the victim which were unlawfully collected by the public utility. Accordingly, the statute requires that all reparation amounts are paid to the victims. Unclaimed reparations generally escheat to the state, Code of Civil Procedure §1519.5, unless equitable or other authority directs otherwise, e.g., Public Utilities Code §394.9.

VIII.D.2.b. The purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by this perpetrator or others. For this reason, fines are paid to the State of California, rather than to victims.

Effective deterrence creates an incentive for public utilities to avoid violations. Deterrence is particularly important against violations which could result in public harm, and particularly against those where severe consequences could result. To capture these ideas, the two general factors used by the Commission in setting fines are: (1) severity of the offense and (2) conduct of the utility. These help guide the Commission in setting fines which are proportionate to the violation.

VIII.D.2.b.i. The severity of the offense includes several considerations. Economic harm reflects the amount of expense which was imposed upon the victims, as well as any unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in establishing the fine. In comparison, violations which caused actual physical harm to people or property are generally considered the most severe, with violations that threatened such harm closely following.

The fact that the economic harm may be difficult to quantify does not itself diminish the severity or the need for sanctions. For example, the Commission has recognized that deprivation of choice of service providers, while not necessarily imposing quantifiable economic harm, diminishes the competitive marketplace such that some form of sanction is warranted.

Many potential penalty cases before the Commission do not involve any harm to consumers

but are instead violations of reporting or compliance requirements. In these cases, the harm may not be to consumers but rather to the integrity of the regulatory processes. For example, compliance with Commission directives is required of all California Public Utilities:

“Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the Commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.” Public Utilities Code § 702.

Such compliance is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity.

The number of the violations is a factor in determining the severity. A series of temporally distinct violations can suggest an on-going compliance deficiency which the public utility should have addressed after the first instance. Similarly, a widespread violation which affects a large number of consumers is a more severe offense than one which is limited in scope. For a

“continuing offense,” PU Code § 2108 counts each day as a separate offense.

Procedures and Mechanisms to Promote Compliance

No specific compliance action is required for Rules VIII.D.1 through VIII.D.2.b.i.

VIII.D.2.b.ii. This factor recognizes the important role of the public utility’s conduct in (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation. The public utility is responsible for the acts of all its officers, agents, and employees:

*“In construing and enforcing the provisions of this part relating to penalties, the act, omission, or failure of any officer, agent or employee of any public utility, acting within the scope of his [or her] official duties or employment, shall in every case be the act, omission, or failure of such public utility.”
Public Utilities Code §2109.*

VIII.D.2.b.ii.(1) Prior to a violation occurring, prudent practice requires that all public utilities take reasonable steps to ensure compliance with Commission directives. This includes becoming familiar with applicable laws and regulations, and most critically, the utility regularly reviewing its own operations to ensure full compliance. In evaluating the utility’s

advance efforts to ensure compliance, the Commission will consider the utility's past record of compliance with Commission directives.

VIII.D.2.b.ii.(2) The Commission expects public utilities to monitor diligently their activities. Where utilities have for whatever reason failed to meet this standard, the Commission will continue to hold the utility responsible for its actions. Deliberate as opposed to inadvertent wrong-doing will be considered an aggravating factor. The Commission will also look at the management's conduct during the period in which the violation occurred to ascertain particularly the level and extent of involvement in or tolerance of the offense by management personnel. The Commission will closely scrutinize any attempts by management to attribute wrong-doing to rogue employees. Managers will be considered, absent clear evidence to the contrary, to have condoned day-to-day actions by employees and agents under their supervision.

VIII.D.2.b.ii.(3) When a public utility is aware that a violation has occurred, the Commission expects the public utility to promptly bring it to the attention of the Commission. The

precise timetable that constitutes “prompt” will vary based on the nature of the violation. Violations which physically endanger the public must be immediately corrected and thereafter reported to the Commission staff. Reporting violations should be remedied at the earliest administratively feasible time. Prompt reporting of violations furthers the public interest by allowing for expeditious correction. For this reason, steps taken by a public utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

Procedures and Mechanisms to Promote Compliance

With respect to any question or concern relating to the Affiliate Rules, or Liberty CalPeco’s compliance with the Affiliate Rules, employees have been instructed to raise them with members of the senior management of Liberty CalPeco and/or with lawyers for Liberty Utilities Co. and APUC. The APUC Code of Conduct also provides instructions for the raising of any Whistle Blower concerns or claims.

Liberty CalPeco conducts a formal training on the purpose of and rules for compliance with the Affiliate Rules each year.

VIII.D.2.b.iii. Effective deterrence also requires that the Commission recognize the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines. Some California

utilities are among the largest corporations in the United States and others are extremely modest, one- person operations. What is accounting rounding error to one company is annual revenue to another. The Commission intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

VIII.D.2.b.iv. Setting a fine at a level which effectively deters further unlawful conduct by the subject utility and others requires that the Commission specifically tailor the package of sanctions, including any fine, to the unique facts of the case. The Commission will review facts which tend to mitigate the degree of wrongdoing as well as any facts which exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.

VIII.D.2.b.v. The Commission adjudicates a wide range of cases which involve sanctions, many of which are cases of first impression. As such, the outcomes of cases are not usually directly comparable. In future decisions which impose sanctions the parties and, in turn, the Commission will be expected to explicitly address those previously issued decisions which involve the most reasonably comparable factual

circumstances and explain any substantial differences in outcome.

Procedures and Mechanisms to Promote Compliance

No specific compliance action is required for Rules VIII.D.2.b.iii through VIII.D.2.b.v.