

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: Daniel 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) #: 88-E (PUBLIC VERSION)

Subject of AL: **Amendment of the Luning Solar Project Power Purchase Agreement**

Tier Designation: 1 2 3

Keywords (choose from CPUC listing):

AL filing type: Monthly Quarterly Annual One-Time Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution D. 16-01-021

Does AL replace a withdrawn or rejected AL?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

Summarize differences between the AL and the prior withdrawn or rejected AL¹: _____

Resolution Required? Yes No

Requested effective date: March 8, 2018

No. of tariff sheets: n/a

Estimated system annual revenue effect: (%)

Estimated system average rate effect (%):

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

Pending advice letters that revise the same tariff sheets:

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
Attention: Tariff Unit
505 Van Ness Ave.,
San Francisco, CA 94102
edtariffunit@cpuc.ca.gov

Utility Info (including e-mail)
Liberty Utilities (CalPeco Electric) LLC
Attention: Advice Letter Protests
933 Eloise Avenue
South Lake Tahoe, CA 96150
Email: Dan.Marsh@libertyutilities.com

PUBLIC VERSION



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

VIA EMAIL AND MESSENGER

February 8, 2018

**Advice Letter 88-E
(U 933-E)**

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

Subject: Amendment of the Luning Solar Project Power Purchase Agreement

Liberty Utilities (CalPeco Electric) LLC (“Liberty CalPeco”) hereby submits this **Tier 2** Advice Letter to report on certain changes necessary to clarify the terms of the power purchase agreement for the Luning Solar Project (“Luning”, “Luning Project” or the “Project”).

Purpose

This advice letter provides background on limited modifications recently made to the Luning PPA¹ to better harmonize it with Liberty CalPeco’s current full requirements services contract with NV Energy,² and better ensure that the full benefit of federal tax incentives available to the Luning Project are maximized for the benefit of Liberty CalPeco’s customers. The changes will have no financial impact on Liberty CalPeco, its customers, or the Luning Project.

Background

In Decision (“D.”) 16-01-021 (the “Luning Approval Decision”), the Commission approved a Settlement Agreement³ between Liberty CalPeco and the Office of Ratepayer Advocates (“ORA”) with respect to Liberty CalPeco’s purchase, ownership, and operation of the 50 megawatt Luning solar project in Hawthorne, Nevada. The Commission approved of Liberty CalPeco’s request to co-own the Project in its initial years with a tax equity investor, which will allow for the Project to realize the full value of federal tax incentives, decrease the capital costs

¹ See Attachment 1 (Power Purchase Agreement between Liberty CalPeco and Luning Energy LLC (“PPA”));

² In A.15-04-019, Liberty CalPeco sought and received Commission approval of the updated 2016 Energy Services agreement with NV Energy; *See* D.15-12-021 (December 17, 2015) (Granting Conditional Approval of an Energy Services and Power Purchase Agreement between Liberty CalPeco and NV Energy).

³ *See* Settlement Agreement Between the Office of Ratepayer Advocates and Liberty Utilities (CalPeco Electric) LLC, dated August 21, 2015 (the “Settlement Agreement”).

required for Liberty CalPeco to purchase the Project, and will thereby lower the costs for its customers to obtain all of the renewable energy the Project generates.⁴

During the proceeding that culminated in the Luning Approval Decision, Liberty CalPeco provided the Commission with draft versions of most of the material Project contracts, including the PPA. However, when the Luning Approval Decision was issued, Liberty CalPeco had not yet finalized the contractual agreements necessary for it to jointly acquire the Project with its tax equity partner. Accordingly, Ordering Paragraph 1 of the Luning Approval Decision required Liberty CalPeco to submit Tier 2 Advice Letters with: (a) the executed versions of the Project contracts (including the PPA) when available; and (b) a “showing that the material terms of each agreement are consistent with the draft and form agreements, and/or descriptive testimony in the record as provided by Liberty Utilities in support of the Application and Settlement [Agreement].”⁵

Pursuant to the Commission’s order, in its Advice Letter 67-E (dated November 29, 2016), Liberty CalPeco submitted the final forms of the Luning Project contracts and provided a showing that each contract (including the PPA) was consistent with the terms of the Luning Approval Decision. On January 4, 2017, Liberty CalPeco received a disposition letter from Energy Division indicating that Advice Letter 67-E was approved and deemed effective as of December 30, 2016.

The Luning project commenced operations in February 2017. Pursuant to the Luning Approval Decision, Liberty CalPeco will provide further information regarding the first year of Project operations through a Tier 1 advice letter to be filed by March 01, 2018.⁶

Purpose and Need for the Luning PPA Amendment

As detailed in the Luning Approval Decision, Liberty CalPeco is part of the NV Energy Balancing Authority Area, and not a part of the California Independent System Operator Balancing Authority Area.⁷ Liberty CalPeco currently receives all of its energy pursuant to the terms of a full requirements contract with NV Energy (i.e. the 2016 NV Energy Services Agreement).⁸ This Agreement provides that NV Energy will continue to service the full requirements of Liberty CalPeco’s electric load, but also allows Liberty CalPeco to replace some NV Energy supply with RPS-eligible solar energy generated by certain specified projects, which include the Luning Project. In effect, the renewable energy generated by the Luning Project

⁴ See Luning Approval Decision, mimeo at 36. (Liberty CalPeco’s tax equity investment model “decreases the customer’s responsibility for capital investment, protects customers from various construction-related risks, and allow the benefits of the [federal Investment Tax Credit (“ITC”)] to be returned to ratepayers more quickly.”)

⁵ Luning Approval Decision, mimeo at 43-44 (Ordering Paragraph No. 1(d)).

⁶ See Luning Approval Decision, mimeo at 43-44 (Ordering Paragraph No. 1(e)).

⁷ See Luning Approval Decision, mimeo at 4.

⁸ The 2016 NV Energy Services Agreement was approved in Decision 15-12-021.

serves as a “credit” against renewable energy that Liberty CalPeco would otherwise buy from NV Energy.

The Luning Project is owned and operated by a project company that is separate and apart from the utility (i.e. Luning Energy LLC), which allows for the Luning Project to be jointly-owned by Liberty CalPeco and a tax equity investor during the initial tax equity period of approximately five years.⁹

The 2016 NV Energy Services Agreement does not address the fact that the Luning Project is owned by a separate project company. Prior to its amendment, the Luning PPA did not adequately explain that: (a) the Project energy is sold and delivered to NV Energy at the Project’s point of interconnection in order to fulfill Liberty CalPeco’s obligations pursuant to the 2016 NV Energy Services Agreement; and (b) NV Energy then sells and delivers *less* renewable energy to Liberty CalPeco to account for the energy that Luning produces.

To better ensure that the Luning PPA and the 2016 NV Energy Services Agreement were aligned in terms of their treatment of the energy generated by the Luning Project, it became necessary to clarify the contractual relationship between Liberty CalPeco, the Luning Project, and NV Energy. Accordingly, Liberty CalPeco amended the terms of the Luning PPA to further explain the nature of the transaction and the billing arrangements between the parties. The specific terms of the amendment are set forth in Attachment 2.

It is critical to note that, in contrast to traditional power purchase agreements, the price and other terms set forth in the Luning PPA have no connection to the rates Liberty CalPeco charges its utility customers to recover its Project-related costs. As the Luning Approval Decision recognizes, Liberty CalPeco acquired the Project, and is recovering the costs of its acquisition from its retail customers, as if the Project were utility-owned generation and without respect to the terms of the PPA (i.e. the Project’s initial capital costs and ongoing operations and maintenance expenses are the basis on which rates are set).¹⁰ Consequently, the changes required to harmonize the terms of the PPA and the 2016 NV Energy Services Agreement will have absolutely no impact on the rates that Liberty CalPeco will charge its customers for the Luning Project. The terms of the PPA (as amended) also continue to be fully consistent with the Luning Approval Decision, Luning Settlement Agreement, and the testimony and evidence Liberty CalPeco submitted in the Luning docket.

⁹ See Luning Approval Decision, mimeo at 12-14 (describing the tax equity benefits and structure).

¹⁰ See Luning Approval Decision, mimeo at 43.

Request for Confidential Treatment

In support of this Advice Letter, Liberty CalPeco has provided two attachments which contain confidential information: (1) the PPA; and (2) the amendment to the PPA. The Commission has previously granted Liberty CalPeco's requests to maintain the confidentiality of the PPA.¹¹ Pursuant to the Commission's prior decision, Liberty CalPeco is maintaining the confidentiality of the two attachments. A separate Declaration Reaffirming Confidential Treatment for the Luning PPA is attached to this Advice Letter.

Confidential Attachments:

Confidential Attachment A: Power Purchase Agreement between Liberty CalPeco and Luning Energy;¹²

Confidential Attachment B: Second Amendment to Power Purchase Agreement.

Effective Date

Liberty CalPeco requests that this **Tier 2** advice letter be effective as of March 8, 2018.

Protests

Anyone wishing to protest this submission may do so by letter sent via U.S. mail, by facsimile or by email, any of which must be received no later than February 28, 2018, which is 20 days after the date of this submission. The protest shall set forth the grounds upon which it is based and shall be submitted expeditiously. There is no restriction on who may submit a protest.

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

¹¹ See Luning Approval Decision, mimeo at 25, 44 (Ordering Paragraph No. 4).

¹² Confidential Attachment A also includes the First Amendment to the PPA, which is dated February 16, 2017. The parties executed the First Amendment to clarify that the Commercial Operation Date (as defined in the PPA) had occurred.

The protest also should be sent via email and U.S. Mail (and by facsimile, if possible) to Liberty Utilities at the addresses show below on the same date it is mailed or delivered to the Commission.

Liberty Utilities (CalPeco Electric) LLC
Attn.: Advice Letter Protests
933 Eloise Avenue
South Lake Tahoe, CA 96150
Fax: 530-544-4811
Email: Dan.Marsh@libertyutilities.com

With a copy to:

Patrick Ferguson
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
Fax: 415-276-6599
Email: patrickferguson@dwt.com

Notice

In accordance with Ordering Paragraph 1 of D.16-01-021 and General Order 96-B, Section 4.3, a copy of this Advice Letter is being sent electronically to parties shown on the attached lists.

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

Sincerely,



Daniel W. Marsh
Manager, Rates and Regulatory Affairs
Liberty Utilities (CalPeco Electric) LLC

Attachments

cc: Liberty Utilities General Order 96-B Advice Letter Service List
CPUC Service List A.15-04-016

**DECLARATION OF GREGORY SORENSEN REAFFIRMING CONFIDENTIAL
TREATMENT OF THE LUNING SOLAR POWER PURCHASE AGREEMENT**

I, Gregory S. Sorensen, declare:

1. I am the President of Liberty Utilities (CalPeco Electric) LLC (“Liberty CalPeco”). This declaration is based on my personal knowledge of the Power Purchase Agreement (the “PPA”) for the Luning solar project (“Luning” or the “Project”), and my understanding of the Commission’s decisions protecting the confidentiality of market-sensitive information concerning procurement by an investor-owned utility.
2. Based on my knowledge and experience, I make this declaration.
3. On January 22, 2016, the Commission granted Liberty CalPeco and the Office of Ratepayer Advocates’ August 27, 2015 All-Party Motion to File Under Seal (“Motion”). The Motion requested confidential treatment for the PPA, among other documents. Liberty CalPeco’s declaration contained a matrix identifying the data and information for which Liberty CalPeco was seeking confidential treatment and specifying that the material Liberty CalPeco was seeking to protect constitutes the particular type of data and information listed in Appendix 1 of Decision 06-06-066 (“IOU Matrix”) or constitutes information that should be protected under General Order 66-D. The matrix also specified: (1) the category or categories in the IOU Matrix for that type of data or information; (2) that the information was not already public; and (3) that the data cannot be aggregated, redacted, summarized or otherwise protected in a way that allows partial disclosure. By this reference, I am incorporating into this declaration the matrix and all of the explanatory text that is contained in the Motion.

4. The information provided in the Motion in support of confidential treatment of the Luning Project Agreements (including the PPA) remains accurate. The information contained in the PPA continues to be confidential and proprietary pursuant to the Cal. Pub. Util. Code § 583, CPUC General Order 66-D, Cal. Gov. Code § 6254, Cal. Evid. Code §§ 1060 *et seq.*, Cal. Civ. Code § 3426.1, CPUC Decision 06-06-066, and CPUC Decision 08-04-023. Accordingly, I am reaffirming confidential treatment for the Luning Project Agreements.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on February 8, 2018 at Downey, California.


Gregory S. Sorensen

Confidential Attachment A
SUBMITTED UNDER SEAL

Power Purchase Agreement
between Liberty CalPeco and Luning Energy

Confidential Attachment B

SUBMITTED UNDER SEAL

Second Amendment to Power Purchase Agreement

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

VIA EMAIL

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CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

PROCEEDING: A1504016 - LIBERTY UTILITIES (C
FILER: LIBERTY UTILITIES (CALPECO ELECTRIC) LLC
LIST NAME: LIST
LAST CHANGED: MAY 17, 2017

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