PROPOSED DECISION

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Decision **PROPOSED DECISION OF ALJ FARRAR** **(Mailed on 9/21/2015)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Liberty Utilities (CalPeco Electric) LLC (U 933 E) for Authorization to Recover the Amounts Related to Vegetation Management Recorded in the Vegetation Management Memorandum Account.	Application 14-04-037 (Filed April 30, 2014)

PROPOSED DECISION APPROVING RECOVERY OF COST RECORDED IN THE VEGETATION MANAGEMENT MEMORANDUM ACCOUNT

Summary

Today's decision approves the request by the California Pacific Electric Company, LLC to recover costs and interest in the amount of $2,090,370.86 incurred for vegetation management activities during the period between May 11, 2012, and December 31, 2012, as recorded in its Vegetation Management Memorandum Account. This decision also approves Liberty's ratemaking proposal and closes the proceeding.

1. Background

1.1. Procedural Background

On October 20, 2011, California Pacific Electric Company, LLC (Liberty or CalPeco) submitted a Tier 2 Advice Letter, seeking Commission approval and authorization to establish the Vegetation Management Memorandum Account (VMMA). In its advice letter Liberty states that the expenses it is incurring for vegetation management are materially different from the

vegetation management expenses and associated budget that the Commission approved in Sierra Pacific Power Company's last California General Rate Case (GRC).[1] On May 10, 2012, the Commission adopted Resolution E-4464 granting Liberty the authority to establish the VMMA to "record any expenses associated with all vegetation management activities required by General Orders 95 and 165, and other current and future orders or decision by the Commission, for which the Commission has not already authorized rate recovery."[2] Resolution E-4464 characterized the establishment of the VMMA "as a precautionary measure to ensure that safety is not compromised by [Liberty] not undertaking the necessary vegetation management practices."[3] On May 11, 2012, Liberty filed Tier 1 Advice Letter 17-E establishing the VMMA.[4]

On April 30, 2014 Liberty filed Application (A.) 14-04-037 requesting authorization to recover $2,090,370.86 recorded in the VMMA.[5] According to Liberty, the amounts recorded in the VMMA represent only the costs (and applicable interest) incurred for vegetation management activities during the

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[1] Resolution E-4464, at 1, citing Decision (D.) 09-10-047 (instead of D.09-10-041) as Sierra's 2009 GRC. The Commission approved the transfer of Sierra Pacific Power Company's California distribution facilities to CalPeco effective January 1, 2011 in D. 10-10-017.

[2] Resolution E-4464, at 1.

[3] Resolution E-4464, at 13.

[4] Resolution E-4464 also directed that Liberty revise the VMMA tariff that Advice Letter 11-EA had proposed to incorporate revisions the Commission found necessary. *See* Resolution E-4464-E-A at 14-15.

[5] $2,083,268.93 of the total amount represents the costs Liberty incurred on vegetation management activities during the VMMA Period; the remainder represents interest accrued in accordance with Liberty VMMA tariff projected through March 31, 2015.

period between May 11, 2012 and December 31, 2012.[6] The Office of Ratepayer Advocates (ORA) and the North Tahoe Citizen Action Alliance (NTCAA) filed protests to Liberty's application on May 30, 2014.[7]

By ruling dated July 24, 2014, the parties were directed to meet, confer, and prepare a Joint Prehearing Conference (PHC) Statement that, among other things, identified the issues that had been resolved and those that were still disputed. A PHC was held on August 24, 2014. Immediately prior to the PHC, ORA and Liberty submitted a Joint PHC Statement. The Joint PHC Statement noted that they had resolved all the issues identified in the ORA protest. NTCAA did not meet and confer with the other parties and was not a signatory to the Joint PHC Statement. At the PHC, NTCAA raised the question of whether Liberty actually performed the work identified in its testimony and exhibits. NTCAA subsequently refined this line of inquiry to focus on whether and to what extent Liberty's contractors actually performed the work claimed on portions of Line 625 in Liberty's service territory.

A hearing was held on December 19, 2014, to address the issue raised by NTCAA. Over the course of the hearing, NTCAA questioned whether photographs submitted by Liberty, as evidence of work done in certain areas

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[6] Liberty claims to have incurred $324,431.90 during the period between January 1 and May 10, 2012, in vegetation management-related expenses. Thus, during the first part of 2012 and before the Commission authorized it to record vegetation management costs in the VMMA, Liberty claims to have incurred vegetation management expenses in excess of the rate recovery "budget" authorized for 2012. Liberty asserts that it has not recorded these pre-May 12 expenses in the VMMA.

[7] On claims that additional information was necessary to fully flush out its position, the only issue identified in NTCAA's Protest was whether Liberty's application improperly sought to collect for expenses that were the result of a miscalculation by Sierra before it was purchased by Liberty. *See* NTCAA Protest at 2-3.

along Line 625, were actually taken along Line 625. In addition to claiming that it hadn't seen evidence that the claimed work was done during its inspection of parts of Line 625, NTCAA noted that it had been unable to find the GPS coordinates Liberty claimed were embedded in the photographs of the area. During hearings it became apparent that NTCAA had not received the GPS data that it requested and needed to confirm the location of the work done on Line 625. This information was provided to NTCAA immediately after hearings.

By motion dated December 31, 2014, NTCAA moved to suspend the procedural schedule, post-pone briefing, and allow the submission of additional evidence on claims that the GPS coordinates provided by Liberty indicated that:

> … about 15 photos contained coordinates from Truckee to South Lake Tahoe, about 11 were well to the north of the 625 Line, and another 13 were well to the south of the 625 line, and the balance (9) were off the 625 Line and questionable whether within striking distance of the wires.[8]

After reviewing the NTCAA motions and Liberty's response thereto, Administrative Law Judge (ALJ) Farrar directed that a site visit be held along Line 625. On March 30, 2015, ALJ Farrar and representatives from Liberty and NTCAA inspected the parts of Line 625 where the disputed photographs were allegedly taken.

1.2. Standard of Review

Resolution E-4464 authorized the VMMA and put Liberty on notice that in authorizing the VMMA, the Commission was in no way pre-judging the reasonableness of recovery of the costs booked in the account. As set forth in Resolution E-4464:

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[8] NTCAA Motion to Suspend Procedural Schedule at 2.

> [A]uthorization to establish a memorandum account does not mean that the Commission has decided that the types of costs to be recorded in the account should be recoverable in addition to rates that have been otherwise authorized, e.g., in a general rate case.

In addition to establishing that the VMMA does not guarantee that recovery of costs in the memorandum account from ratepayers will be approved, Resolution E-4464 makes clear that Liberty bears the burden of proving that its actions were both prudent and reasonable. In this regard, Resolution E-4464 states:

> [T]he utility bears the burden when it requests recovery of the recorded costs to show that: the costs have not been recovered through otherwise authorized rates; recovery of the types of costs recorded in the accounts -- in addition to otherwise authorized rates -- is reasonable; the utility acted prudently when it incurred these costs; and the level of costs is reasonable.[9]

2. DISCUSSION

2.1. Parties' Positions

Liberty asserts that it has demonstrated its satisfaction of the Resolution E-4464 requirements above.[10] Liberty's claim is not contradicted by the conclusions in the ORA Report of the Results of Examination for Liberty Utilities (U933S) VMMA (ORA Audit).[11] According to Liberty, the only dispute in this proceeding is NTCAA's claim that Liberty did not conduct vegetation

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[9] Resolution E-4464, at 8.

[10] Liberty Opening Brief, citing Exh.s 1, 2, 3, 4, and 5.

[11] Exhibit 5 at 2.

management activities along parts of Line 625 during the VMMA period that corresponds to the costs Liberty recorded in the VMMA.

In contrast, NTCAA claims the Commission should deny the requested rate recovery for the following four reasons:[12]

1. About half the expenses recorded in the VMMA were ordinary expenses consistent with what former owner Sierra Pacific Power Company (Sierra) historically spent through 2010 and agreed to by Liberty during the process of purchasing the service area.
2. The expenses recorded and actual work done were not in accordance with the recommendations of the System Assessment by ACRT, Inc. (ACRT Assessment) and were not effectively integrated into the Vegetation Management Plan (VMP)
3. Liberty did not act prudently to ensure the performance of the actual work in the field and therefore failed to meet the burden of proof required by Resolution E-4464.
4. Liberty submitted false evidence to impute NTCAA testimony about the lack of stumps from trees claimed to have been removed.[13]

The last three issues identified by NTCAA are interrelated. NTCAA argues that Liberty did not act prudently to ensure the quality and performance of the work done in the field (NTCAA Issue 3). NTCAA bases this claim on allegations that Liberty failed to comply with the recommendations of the ACRT Assessment (NTCAA Issue 2) and NCTAA's eye-witness account, which NTCAA claims Liberty submitted false testimony to rebut (NTCAA Issue 4). We address the issues raised by NTCAA below.

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[12] NTCAA Opening Brief at 1-2.

[13] NCTAA Opening Brief at 1-2.

2.2. Were expenses recorded in the VMMA part of Sierra's normal expenses?

Citing, among other things, the May 5, 2011, Summary Report by ACRT which identifies vegetation maintenance problems that existed before Liberty purchased the asset, NTCAA argues that Liberty knew that substantial vegetation expenditures were required to make-up for inadequate vegetation management by the prior owners. Nonetheless, according to NTCAA, Liberty spent less on vegetation management than was approved in Sierra's GRC.[14] According to NTCAA, Sierra's average spending rate would have seen $2.8 million spent on vegetation management, but Liberty only spent $1.15 million in 2011 and 2012 – $985,000 less prior to recording expenses in the VMMA.[15] Thus, NTCAA appears to argue that Liberty substantially deferred vegetation management costs and inappropriately booked those costs to the VMMA.

NCTAA's argument reflects concerns similar to those raised by the Commission when, after obtaining approval of the transfer of Sierra Pacific's California assets, Liberty sought establishment of the VMMA to ensure sufficient vegetation management funding. As noted in Resolution E-4464:

> CalPeco [Liberty] should have done due diligence in analyzing and comparing Sierra Pacific's actual historic vegetation management costs in California against the allocation factors used for California and Nevada in Sierra Pacific's last GRC decision, when it was deciding to acquire Sierra Pacific's California assets. If Sierra Pacific's actual costs

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[14] While D.12-11-030 was the first GRC for Liberty as an independent company, it was not the first GRC for Sierra.

[15] NCTAA Opening Brief at 3.

> in California had been higher than the allocated amount, CalPeco should have used an allocation based on actual historical costs to estimate its operating costs going forward.

Indeed, it was only after Liberty provided additional documentation showing that its VMP differed from Sierra's Transmission and Distribution Vegetation Management Program (TDVMP) that the VMMA was approved.[16] To further address this concern, in establishing the VMMA the Commission made clear both that no costs recorded in the VMMA should be recoverable in addition to rates that have been otherwise authorized in the prior general rate case, and that Liberty bears the burden of showing that recovery of the types of costs (*i.e.* those costs beyond Sierra's TDVMP) recorded in the account is reasonable.[17]

Based on the proceeding record, we find NTCAA's concerns about Liberty's diminished expenditures, though understandable, to be without merit. As an initial matter we note that claims that Liberty was spending less on vegetation management than Sierra should (and may) have been raised in Liberty's last GRC. Thus, the only part of NTCAA's claim that is relevant here is

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[16] Among other things, Liberty argued "that since its service territory is located entirely within the State of California in both Local Responsibility and State Responsibility Areas for fire resource protection, its VMP is specifically designed to meet certain state requirements including those set forth in Public Resources Code (PRC) 4292. Under PRC 4292, CalFire requires certain clearances around poles and towers in State Responsibility Areas. According to CalPeco, Sierra's TDVMP does not address the requirement for pole clearing as mandated in State Responsibility Areas for fire resource protection. CalPeco, in contrast, has incorporated this aspect of vegetation management into its VMP to adhere to the State requirement. CalPeco estimates that its system contains approximately 4,000 poles requiring vegetation control. CalPeco states Sierra routinely managed approximately 2,300 poles. CalPeco projects that the cost to extend vegetation management programs to these additional poles will be around $180,000 annually." *See* Resolution E-4465, at 5.

[17] Resolution E-4464, Ordering Paragraph 3, at 15.

the suggestion that Liberty included vegetation management cost in its VMMA that should have been included in Sierra's TDVMP.

Rather than the legalistic procedural arguments Liberty responds with, we need only look to the record to address NTCAA's concern.[18] First and foremost, the testimony of Liberty's witness Kendrick Wittman asserts that Liberty actually spent more annually on vegetation management than Sierra.[19] While NTCAA makes a contrary inference, it opted not to question this witness and never directly challenged this testimony. Second, consistent with claims it made when it sought permission to establish the VMMA,[20] Liberty notes that it "proactively identified the credible risk of a potentially catastrophic fire caused by a power line-related fire within its service territory, evaluated possible alternatives to mitigate that risk, and accordingly developed an enhanced vegetation management program with the goal of best mitigating that risk."[21] While NTCAA questioned whether much of the claimed work was actually done (a point we address below), it did not question Liberty's claim that it acted to proactively identify and reduce the credible risk of a potentially catastrophic fire caused by a power line.[22]

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[18] Liberty's response to this claim is three-fold: First, Liberty makes the procedural argument that "the statistics that the NTCAA Brief references in Footnotes 3, 4, and 5 are not in the record and Liberty has been thus deprived of the opportunity to rebut or otherwise challenge the statistics." Second, Liberty asserts that NTCAA's argument has no "basis and is irrelevant." Finally, Liberty argues that Resolution E-4464 does not require a comparison of its expenditures to those of Sierra. *See* Liberty Reply Brief at 8.

[19] Exhibit 3, at 3.

[20] *See* footnote 17 above.

[21] Liberty VMMA Application at 7.

[22] *See* also Exhibit 1 at 2-7.

Therefore, consistent with the evidence of record, we find that the costs Liberty booked in its VMMA were other than those provided for in Sierra's TDVMP, and have not otherwise been recovered through rates.

2.3. Did Liberty act to prudently ensure the performance of the work done?

2.3.1. Consistency with the ACRT System Assessment.

NTCAA asserts that the expenses recorded and work actually performed by Liberty were not in accord with the recommendations of the System Assessment by ACRT, Inc. (ACRT Assessment), and were not effectively integrated into the VMP, and therefore were not reasonable.[23] Specifically, after claiming that the ACRT Assessment identified a lack of a clearworkload definition and auditing process as Liberty's biggest problem, NTCAA claims Liberty acknowledged that it did not have a standard practice or method of verifying work that's been done.[24] We find NTCAA's arguments in this regard unpersuasive.

As an initial matter, we question NTCAA's intimation that a finding of reasonableness pursuant to Resolution E-4464 hinges on compliance with the ACRT Assessment and VMP. The fact is, the ACRT Assessment was commissioned by Liberty, Resolution E-4464 establishes its own criteria for reasonableness and makes no reference to studies or plans such as the ACRT Assessment or VMA, and NTCAA makes no attempt to establish a connection between the ACRT Assessment and Resolution E-4464. In addition, NTCAA

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[23] NTCAA Opening Brief at 1.

[24] NTCAA Opening Brief at 7, citing Transcript, at 42, lns 21-28.

appears to overstate its case. The whole of the testimony proffered in this proceeding establishes that Liberty's current methodology was not used to verify that the work at issue was done, and that Liberty was then using a different method to verify that the work at issue was done.[25] Finally, NTCAA's claim is contradicted by ORA's examination of Liberty's vegetation management expenses. ORA's examination covered Liberty's vegetation management expenses during the entire period at issue (May 11, 2012 to December 31, 2012). ORA's examination included, among other things, verification of the general ledger integrity and a review of selected photos that identify the work performed.[26] ORA's examination found no exceptions in Liberty's VMMA for the recorded transactions and recommended no adjustments to the costs Liberty recorded.[27]

2.3.2. The veracity of Liberty's rebuttal evidence.

NTCAA's inspection of Liberty's Line 625 calls into question whether Liberty actually performed the work claimed.[28] In rebuttal, Liberty notes that NTCAA's inspection was undertaken without the benefit of Liberty's site map, and provides photographs allegedly showing the work done along various points of Line 625.

Both at the December 19, 2014, hearing and in subsequent motions, NTCAA questioned whether the photographs submitted by Liberty were actually taken along Line 625. After receiving GPS data for the photographs

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[25] Transcript, at 43, lns 1-28.

[26] *See* Exh. 6 at 1, 2.

[27] *See* Exh. 6 at 2.

[28] Exh. 6 at 3, 4.

from Liberty, NTCAA stated that its preliminary analysis of the photographs submitted by Liberty showed "… about 15 photos contained coordinates from Truckee to South Lake Tahoe, about 11 were well to the north of the 625 Line, and another 13 were well to the south of the 625 line, and the balance (9) were off the 625 Line and questionable whether within striking distance of the wires."[29] In response to these allegations on March 30, 2015, ALJ Farrar and the parties inspected Line 625. This inspection confirmed that each photo provided by Liberty was a true and correct representation of work done along Liberty's Line 625. In light of this inspection we find nothing to support NTCAA's claims that Liberty failed to perform the work as claimed and submitted false evidence to rebut NTCAA's contentions.

2.3.3. Conclusion

Based on the record evidence we find that the amount and type of costs Liberty booked to its VMMA are reasonable and have not otherwise been recovered through rates. Moreover, there is no credible evidence that suggests Liberty failed to supervise the work performed, failed to perform the work claimed, submitted false testimony related to the work performed, or otherwise acted imprudently when it incurred these costs. Having satisfied the requirements of Resolution E-4464, Liberty should be authorized to recover the full amount recorded in the VMMA.

3. Liberty's proposed ratemaking treatment

Liberty proposes to recover the amounts recorded in the VMMA, based on the following principles: (i) the VMMA amortization period shall start on

[29] NTCAA Motion to Suspend Procedural Schedule, at 2.

October 1, 2014, and conclude December 31, 2015; (ii) interest shall continue to accrue to any unamortized amount remaining in the VMMA in accordance with the VMMA tariff and until the amount in the VMMA is reduced to zero; (iii) the rate design and rate allocation for the recovery of amounts recorded in the VMMA shall be based on the rate design and rate allocation which the Commission authorized for Liberty to recover vegetation management expenses during each of the calendar years 2013, 2014, and 2015; and (iv) the incremental vegetation management costs that Liberty shall be authorized to recover through rates shall be included in the separate line item which now appears on its customer's bills, under the description "Vegetation Management Charge."[30]

No party opposed Liberty's ratemaking proposal. However, Liberty's initial proposal was based on the assumption that a decision would issue less than five months after the application was filed. Based on this assumption, Liberty's amortization period was intended to allow all costs related to implementation of its VMP to be recovered concurrently by the end of 2015. Subsequently, in Rebuttal testimony, Liberty adjusted the schedule it proposed such that the VMMA amortization period would start on April 15, 2015 and conclude December 31, 2016, a 21-month period. This 21-month amortization period should be adopted. Additionally, we will deny Liberty's request to have the authorized costs recorded in the VMMA be accounted for as regulatory assets as the request appears for the first time in its Opening Brief.[31]

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[30] Exh. 3 at 4.

[31] Liberty Opening Brief at 3.

4. Conclusion

For the reasons set forth above Liberty should be allowed full recovery of the amounts recorded in its VMMA and its ratemaking proposal should be adopted as modified herein.

5. Comments on Proposed Decision

The Proposed Decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by Liberty on October 12, 2015.

6. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Darwin E. Farrar is the assigned ALJ in this proceeding.

Findings of Fact

1. On October 20, 2011, Liberty submitted a Tier 2 Advice Letter, seeking Commission approval and authorization to establish the Vegetation Management Memorandum Account.
2. A hearing was held on December 19, 2014.
3. The costs Liberty booked in its VMMA were other than those provided for in Sierra's TDVMP.
4. The costs Liberty booked in its VMMA have not otherwise been recovered through rates.
5. The ACRT Assessment was commissioned by Liberty.
6. NTCAA fails to establish a connection between the ACRT Assessment and Resolution E-4464.
7. Liberty's current verification methodology was not used to verify that the work at issue was done.

8. At the time costs were booked to the VMMA, Liberty was using a different method to verify that the work at issue was done.

9. ORA's examination of the VMMA found no exceptions for the recorded transactions and recommended no adjustments to the costs Liberty recorded.

10. NTCAA's claim that Liberty failed to perform the work claimed is without merit.

11. NTCAA's claim that Liberty submitted false evidence to rebut NTCAA's contentions is without merit.

12. No party opposed Liberty's ratemaking proposal.

13. Liberty's adjusted ratemaking proposal is reasonable.

Conclusions of Law

1. Resolution E-4464 authorized Liberty to establish the VMMA.

2. Resolution E-4464 put Liberty on notice that in authorizing the VMMA, the Commission was in no way pre-judging the reasonableness of recovery of the costs booked in the account.

3. Liberty bears the burden when it requests recovery of the recorded costs to show that the costs have not been recovered through otherwise authorized rates.

4. Liberty bears the burden to show that recovery of the types of costs recorded in the VMMA -- in addition to otherwise authorized rates -- is reasonable.

5. Liberty bears the burden when it requests recovery of the recorded costs to show that it acted prudently when it incurred costs recorded in the VMMA.

6. Liberty bears the burden to show that the level of costs is reasonable when it requests recovery of costs recorded in the VMMA.

7. Claims that Liberty was spending less on vegetation management than Sierra should have been raised in Liberty's last GRC.

8. Resolution E-4464 makes no reference to, and therefore does not require compliance with, studies or plans such as the ACRT Assessment or VMA.

9. Liberty has met the burden of proof imposed by Resolution E-4464.

10. Liberty should be authorized to recover the full amount recorded in its VMMA.

11. Liberty's adjusted ratemaking proposal should be adopted.

O R D E R

IT IS ORDERED that:

1. Liberty Utilities is authorized to recover all costs and interest recorded in the Vegetation Management Memorandum Account for vegetation management activities during the period between May 11, 2012, and December 31, 2012.

2. Liberty Utilities' adjusted proposal to recover the amounts recorded in the Vegetation Management Memorandum Account is adopted as follows:

   a. The Vegetation Management Memorandum Account amortization period shall start on November 1, 2015, or the first of the month following the issuance of the final decision, whichever comes later, and conclude on the last day of the month, 21 months after the start of the amortization period;

   b. Interest shall continue to accrue to any unamortized amount remaining in the Vegetation Management Memorandum Account (VMMA) in accordance with the VMMA tariff and until the amount in the VMMA is reduced to zero;

   c. The rate design and rate allocation for the recovery of amounts recorded in the Vegetation Management Memorandum Account shall be based on the rate design and rate allocation which the Commission authorized for

Liberty to recover vegetation management expenses during each of the calendar years 2013, 2014, and 2015;

d. The incremental vegetation management costs that Liberty shall be authorized to recover through rates shall be included in the separate line item which now appears on its customer's bills, under the description "Vegetation Management Charge"; and

e. The authorized costs accounted for in the Vegetation Management Memorandum Account shall not be accounted for as a regulator asset.

3. All motions not otherwise addressed in this proceeding are deemed denied.

4. Application 14-04-037 is closed.

This order is effective today.

Dated _____, at Sacramento, California.