



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED

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March 28, 2024

Agenda ID #22471
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 22-10-022:

This is the proposed decision of Administrative Law Judge Minh LeQuang. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's May 9, 2024 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure (Rules).

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Chief Administrative Law Judge

MLC:nd3

Attachment

Decision PROPOSED DECISION OF ALJ LeQUANG (Mailed 3/28/2024)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Liberty Utilities (CalPeco Electric) LLC
(U933E) for Authorization to Recover
Costs Recorded in Various
Memorandum Accounts.

Application 22-10-022

**DECISION ADDRESSING RECOVERY OF COSTS
RECORDED IN VARIOUS MEMORANDUM ACCOUNTS**

Summary

This decision approves an uncontested partial settlement agreement among Liberty Utilities (CalPeco Electric) LLC (Liberty), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and A-3 Customer Coalition resolving Liberty's request to recover \$42.532 million in costs related to six memorandum accounts that are subject to this application. Under the partial settlement agreement, Liberty may recover \$38.399 million in revenue requirement over five years in the following accounts:

- \$11.879 million in the Catastrophic Events Memorandum Account;
- \$13.546 million in the Wildfire Mitigation Plan Memorandum Account;
- \$1.301 million in the Fire Risk Mitigation Memorandum Account;

- \$9.711 million in the Wildfire Expense Memorandum Account;
- \$607 thousand in the Fire Hazard Prevention Memorandum Account; and
- \$1.354 million in the COVID-19 Pandemic Protections Memorandum Account (CPPMA).

The partial settlement agreement satisfies the requirements of Rule 12.1(d) of the California Public Utilities Commission's Rules of Practice and Procedure because it is reasonable in light of the whole record in this proceeding, consistent with the law, and in the public interest.

The only issue that was not resolved in the partial settlement agreement was how to allocate the costs among the different customer classes for all of the memorandum accounts at issue except the CPPMA. We adopt the proposal of Liberty and Cal Advocates to distribute the costs based on a flat rate of \$0.01318/kilowatt-hour applicable to all customer classes. A review of Liberty and Cal Advocates' proposal shows that changing the amortization from three years to five years benefits ratepayers because it spreads the total cost for each customer class over a longer period of time thereby reducing bill shock.

This proceeding is closed.

1. Procedural Background

Liberty Utilities (CalPeco Electric) LLC (Liberty) filed Application (A.) 22-10-022 on October 31, 2022 (Application), requesting authorization to recover costs recorded in six memorandum accounts including catastrophic event, wildfire expense, wildfire mitigation, and COVID-19.¹ Liberty requested

¹ Application at 1.

an incremental revenue requirement increase of \$42.532 million to be recovered through a 36-month surcharge to all customer classes.²

On December 5, 2022, A-3 Customer Coalition (A-3 CC) filed a response to the application.

On January 5, 2023, the assigned Administrative Law Judge (ALJ) set the prehearing conference (PHC) date; directed Liberty, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and A-3 CC (collectively, the Parties) to meet and confer on the scope of issues; and directed the Parties to file a report on the meet and confer meeting.

On January 17, 2023, Liberty and A-3 CC filed a joint report (Joint Report No. 1) as directed by the assigned ALJ.

The PHC was held on January 19, 2023, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary.

Cal Advocates made an oral motion for party status at the PHC, which was granted.

On February 13, 2023, Liberty filed proof of compliance with Rule 3.2(e) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules) to notify customers of the proposed rate changes associated with the application. On February 13, 2023, the assigned Commissioner issued the Scoping Memo and Ruling (Scoping Memo). On May 15, 2023, the assigned ALJ issued a ruling granting Liberty's motion for an extension of time to submit the Independent Auditor's report pursuant to the assigned Commissioner's Scoping Memo.

² Application at 2.

On August 28, 2023, the assigned ALJ issued a ruling notifying the Parties that the status conference and hearing have been taken off calendar; ordering motions for testimonies and evidence; and ordering comments regarding the admission of the Independent Auditor's report.

On October 3, 2023, the assigned ALJ issued a ruling granting the Parties' joint motion for admission of testimonies and exhibits into the evidentiary record.

On October 6, 2023, the assigned ALJ issued a ruling granting the request of Liberty and Cal Advocates for an extension of the briefing schedule. On October 23, 2023, the assigned ALJ issued a ruling granting the Parties' request for a second extension of the briefing schedule.

On November 14, 2023, the Parties filed a joint motion for approval of the partial settlement agreement.

On November 14, 2023, Liberty, Cal Advocates, and A-3 CC filed Opening Briefs. On December 14, 2023, Liberty and Cal Advocates filed Reply Briefs.

On January 11, 2024, the Parties filed a joint report (Joint Report No. 2) as directed by the assigned ALJ.

On January 12, 2024, the Parties filed an amended joint motion for approval (Amended Joint Settlement Motion) of the Partial Settlement Agreement (Partial Settlement Agreement).

On February 22, 2024, the Parties filed a joint report (Joint Report No. 3) as directed by the assigned ALJ.

The following evidence was received into the evidentiary record:

- Exhibit Liberty-01: Application of Liberty filed on November 2, 2022;
- Exhibit Liberty-02: Prepared Testimony in Support of Liberty filed on November 2, 2022;

- Exhibit Liberty-03: KPMG Memorandum Account Review filed on January 25, 2023;
- Exhibit Liberty-04: Rebuttal Testimony in Support of Liberty filed on August 14, 2023;
- Exhibit Cal Advocates-01: Report on the Results of Examination for Liberty's Various Memorandum Accounts filed on July 15, 2023;
- Exhibit Cal Advocates-02: Workpapers on Report on the Results of Examination for Liberty's Various Memorandum Accounts filed on July 15, 2023;
- Exhibit A3-CC-01: Prepared Testimony of Geoffrey B. Inge on Behalf of A-3 CC filed on July 15, 2023; and
- Joint Report Nos. 1-3 filed on January 17, 2023; January 11, 2024; and February 22, 2024.

2. Submission Date

This matter was submitted on December 14, 2023, upon the filing of Reply Briefs.

3. Application Overview

In A.22-10-022, Liberty initially requested recovery of \$42.532 million in revenue requirement for costs associated with wildfire mitigation and catastrophic events. All of the amounts requested, \$42.532 million, are recorded in six memorandum accounts subject to the Partial Settlement Agreement.³

These six memorandum accounts are:

(1) Catastrophic Events Memorandum Account

Pursuant to Resolution (Res.) E-3238 (Resolution), Liberty was authorized to establish the Catastrophic Events Memorandum Account (CEMA) to record recovery for costs to clean up and restore service after catastrophic events. After the Resolution's adoption, the Legislature

³ Amended Joint Settlement Motion at 2.

passed a statute, Public Utilities (Pub. Util.) Code Section 454.9(a), allowing recovery of costs associated with repair and service restoration following an officially declared disaster. Liberty's CEMA events for which it seeks recovery in this application are the following officially declared disasters in 2017 through 2021:⁴

- Tree Mortality/Drought;
- 2021 Tamarack Fire;
- 2021 Caldor Fire;
- 2021 Winter Storms; and
- 2017 Winter Storms.

(2) Wildfire Mitigation Plan Memorandum Account

Pursuant to Decision (D.) 19-05-040, Liberty was authorized to establish the Wildfire Mitigation Plan Memorandum Account (WMPMA) to record costs incurred from implementation of Liberty's Wildfire Mitigation Plan which included vegetation management.

(3) Fire Risk Mitigation Memorandum Account

Pursuant to Section 38 of California Senate Bill 901 (Stats. 2018, Ch. 626), Liberty was authorized to establish the Fire Risk Mitigation Memorandum Account (FRMMA) to record costs incurred for fire risk mitigation that are not otherwise in Liberty's authorized revenue requirement.

(4) Wildfire Expense Memorandum Account

Pursuant to D.20-11-034, Liberty was authorized to establish the Wildfire Expense Memorandum Account (WEMA) to record costs from incremental and unreimbursed wildfire liability related costs.

⁴ Application at 4.

(5) Fire Hazard Prevention Memorandum Account

Pursuant to D.09-08-029, Liberty was authorized to establish the Fire Hazard Prevention Memorandum Account (FHPMA) to record costs incurred related to fire hazard prevention which includes vegetation management and high-speed wind areas.

(6) COVID-19 Pandemic Protections Memorandum Account

Pursuant to Res. M-4842, Liberty was authorized to establish the CPPMA to record incremental costs incurred in response to the COVID-19 pandemic.

In its application, Liberty proposes to recover the revenue requirement for each account detailed above over a three-year period from the earliest feasible date following a decision.

4. Partial Settlement Agreement

4.1. Description of the Partial Settlement Agreement

The Partial Settlement Agreement states that the Parties have agreed to the amount of costs that are recoverable in the CEMA, WMPMA, FRMMA, WEMA, FHPMA, and CPPMA.⁵ The Parties agree that costs totaling \$38.399 million over a five-year recovery period are reasonable.⁶

The only remaining issue to be resolved is how to allocate the costs among different customer classes for all memorandum accounts except for the CPPMA,⁷ which is discussed in Section 2 Cost Allocation below.

Below in Table 1 is Liberty's revenue request in its application, Cal Advocates' recommendation in its testimony, the settlement amounts and the

⁵ Amended Joint Settlement Motion at 3.

⁶ Amended Joint Settlement Motion at 4.

⁷ *Id.*

difference between Liberty's request in its application and the settlement amounts.⁸ The dollar amounts are in millions.

Table 1

Account	Liberty's Request in Application	Cal Advocates' Recommendation in Testimony	Settlement Amounts	Difference between Liberty's Request and Settlement Amounts (Column 2 minus Column 4)
Total	\$42.532	\$27.187	\$38.399	\$4.133
Amortization	3-year	5-year	5-year	

As shown above, the Partial Settlement Agreement has a significant impact on Liberty's cost recovery request, lowering it by \$4.133 million. The new total revenue requirement is \$38.399 million.

The Partial Settlement Agreement also extends the amortization period from three years to five years. Below in Table 2 is the bill impact on each customer class under the three-year and five-year amortizations.⁹

Table 2

Customer Class	Current Average Bill	5-Yr Amortization Average Bill	\$ Increase	% Increase (5yr)	3-Yr Amortization Average Bill	\$ Increase	% Increase (3yr)
Residential (Permanent)	\$188.47	\$197.21	\$8.74	4.6%	\$203.04	\$14.57	7.7%
Residential (Non-Permanent)	\$161.95	\$168.60	\$6.65	4.1%	\$173.04	\$11.09	6.8%
Residential (CARE)	\$140.42	\$148.20	\$7.78	5.5%	\$153.39	\$12.96	9.2%
A1	\$537.26	\$557.60	\$20.34	3.8%	\$571.16	\$33.89	6.3%
A2	\$7,670.66	\$7,959.22	\$288.56	3.8%	\$8,151.59	\$480.93	6.3%
A3	\$45,015.02	\$46,448.90	\$1,433.88	3.2%	\$47,404.83	\$2,389.81	5.3%

⁸ Amended Joint Settlement Motion at 5.

⁹ Joint Report No. 3 at 2.

Customer Class	Current Average Bill	5-Yr Amortization Average Bill	\$ Increase	% Increase (5yr)	3-Yr Amortization Average Bill	\$ Increase	% Increase (3yr)
PA	\$1,554.10	\$1,635.58	\$81.48	5.2%	\$1,689.90	\$135.80	8.7%
SL	\$47.86	\$48.97	\$1.11	2.3%	\$49.71	\$1.85	3.9%
OL	\$37.01	\$38.12	\$1.11	3.0%	\$38.86	\$1.85	5.0%

As shown above, each customer class would see their bill increase by a lower percentage under the five-year amortization versus the three-year amortization. Therefore, Liberty and Cal Advocates' proposal to extend the amortization to five years is a better result for ratepayers as it spreads the total cost for each customer class over a longer period of time thereby reducing bill shock.

4.2. Standard of Review

The Partial Settlement Agreement is evaluated under the criteria set forth in Rule 12.1(d), which states, "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest." In ratemaking applications, the burden of proof is on the applicant utility.¹⁰ The Commission has a strong public policy of favoring settlements of disputes if they are fair and reasonable in light of the whole record.¹¹

To consider the Partial Settlement Agreement to be in the public interest, the Commission must be convinced that the Parties had a sound and thorough understanding of the application and all of the underlying assumptions and data included in the evidentiary record.

¹⁰ *Re Southern California Edison Company* (1983) 11 CPUC 2d 474, 475.

¹¹ D.10-06-038 at 38.

4.3. Partial Settlement Agreement Is Reasonable in Light of the Whole Record

Rule 12.1(d) requires a settlement to be reasonable in light of the whole record.

As stated in the Amended Joint Settlement Motion and reflected in the background section of this decision, the Parties thoroughly analyzed facts and relevant Commission decisions pertinent to this proceeding. The Partial Settlement Agreement represents a reasonable compromise of the dollar amount recommended for recovery. The proposed costs contained in the Partial Settlement Agreement strike a balance between the Parties' positions and are well within the range of cost recovery initially sought by Liberty. In addition, the Partial Settlement Agreement contains a five-year amortization which lowers the yearly increase in rates for all customer classes thereby providing a more gradual increase in rates as opposed to Liberty's three-year amortization in its application.

The parties, Cal Advocates and A-3 CC are experienced in addressing the issues presented in this proceeding, and Cal Advocates has a well-documented history of vigorous representation of consumer and ratepayer interests. We find that the Partial Settlement Agreement is reasonable in light of the whole record.

4.4. Partial Settlement Agreement Is Consistent with Law

Rule 12.1(d) requires a settlement to be consistent with applicable law. The applicable law includes state and federal law and Commission decisions. We find that the Partial Settlement Agreement is consistent with law and our prior decisions. The proceeding record identifies the authorizing authorities for

each account.¹² The activities for which costs are recorded support critical work aimed at addressing and mitigating the impacts of multiple catastrophic events.

4.5. Partial Settlement Agreement Is In the Public Interest

Rule 12.1(d) requires a settlement to be in the public interest. We agree with the Parties that approval of the Partial Settlement Agreement is in the public interest. We evaluate the Partial Settlement Agreement as a whole, and we conclude that it serves the public interest by expeditiously resolving issues that would otherwise be litigated.

1. Cost Allocation

Cost allocation is the process to determine how to equitably divide a set amount of costs among several broadly defined classes of ratepayers. In this case, the Commission has to decide how to allocate the costs associated with five memorandum accounts, except for CPPMA, among the customer classes. The Commission will select the option that ensures the most fair and reasonable distribution of the costs among the customer classes.

Liberty and Cal Advocates propose to distribute the costs based on a flat rate of \$0.01318/kilowatt-hour applicable to all customer classes. Liberty contends that its proposal is the most equitable and efficient method for recovering these previously recorded wildfire mitigation costs.¹³ Liberty asserts that cost allocation based on usage capacity results in larger users incurring more distribution costs as compared to small users.¹⁴ Liberty asserts that A-3 CC's proposal if adopted would result in a greater burden in terms of higher

¹² Application at 4-10.

¹³ Liberty Opening Brief at 3.

¹⁴ *Id.*

allocation percentage and cost recovery rates for the residential customer class whereas the burden faced by the commercial customer class (represented by A-3 CC) would be substantially less.¹⁵

Alternatively, A-3 CC proposes using the cost allocation schedule agreed to in Liberty's most recent GRC (A.21-05-017) and approved by the Commission in D.23-04-043. A-3 CC contends that Liberty and Cal Advocates' proposal is not related to wildfire and that in A.21-05-017 the Commission approved an all-party settlement that included an allocation of wildfire costs.¹⁶ The cost allocation in that settlement did not rely upon customer usage and the settlement was deemed reasonable by the Commission.¹⁷ A-3 CC asserts that the cost allocation settlement approved in D.23-04-043 should be used in this case.

Below in Table 3 are the cost allocation proposals of Liberty and A-3 CC.¹⁸

Table 3

Line No.	Customer Class	Liberty Cost Recovery Rates (\$/kilowatt-hour)	A-3 CC Cost Recovery Rates (\$/kilowatt-hour)
1.	Residential	\$0.02412	\$0.02809
2.	Outdoor Lights	\$0.02412	\$0.18605
3.	Streetlights	\$0.02412	\$0.17019
4.	A-1	\$0.02412	\$0.02036
5.	A-2	\$0.02412	\$0.01609
6.	A-3	\$0.02412	\$0.01712
7.	PA	\$0.02412	\$0.01232

¹⁵ *Id.*

¹⁶ A-3 CC Opening Brief at 2.

¹⁷ A-3 CC Opening Brief at 3.

¹⁸ Exhibit A-3-CC-01 at 5.

As shown above, under Liberty's Cost Recovery rates, residential customers and A-3 would be charged the same cost recovery rates. In contrast, under A-3's Cost Recovery Rates, the commercial class (A-3) represented by A-3 CC would be charged a lower recovery rate than the residential customers.

After reviewing the proposals from Liberty and Cal Advocates and from A-3 CC, the Commission agrees with Liberty and Cal Advocates that the most equitable and reasonable way to distribute the costs is to use a flat rate that applies to all customer classes. A comparison of the proposals reveals that the residential customer class would bear a lower share of the distribution costs under Liberty and Cal Advocates' proposal than under A-3 CC's proposal. Since all customer classes benefit from wildfire mitigation, it is fair and reasonable for all customer classes to pay for the costs of wildfire mitigation according to their usage. Since residential customer class usage is less than commercial class usage, it is not fair and reasonable for the residential customer class to have to bear a higher percentage of the costs. Therefore, the Commission adopts Liberty and Cal Advocates' proposal to allocate the cost using a flat rate of \$0.01318/kilowatt-hour for all customer classes.

2. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. At the time of issuance of this decision, there were 60 written public comments on the Commission's Docket Card.

The majority of comments requested that the Commission deny Liberty's application to recover costs. Several comments centered on the residents' poor economic situation and that any increase in electricity rates would exacerbate their situation. A few comments blamed the rate increase on Liberty's outdated infrastructure and poor financial management.

3. Conclusion

The Commission grants the Amended Joint Settlement Motion and approves the Partial Settlement Agreement among the Parties resolving the six memorandum accounts at issue in this proceeding. The Commission finds that the Partial Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest. The Partial Settlement Agreement allows recovery of reasonable costs to further important Commission objectives, is a compromise of Parties' litigation positions, and expeditiously resolves issues that would otherwise be litigated.

Furthermore, the Commission approves Liberty and Cal Advocates' proposal to distribute the costs based on a flat rate of \$0.01318/kilowatt-hour applicable to all customer classes.

4. Procedural Matters

This decision affirms all rulings made by the ALJ and assigned Commissioner in this proceeding. All motions not ruled on are deemed denied.

5. Comments on Proposed Decision

The proposed decision of ALJ Minh LeQuang in this matter was mailed to the Parties in accordance with Pub. Util. Code Section 311 and comments were allowed under Rule 14.3. Opening comments were filed on _____, by _____, and reply comments were filed on _____, by _____.

6. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Minh LeQuang is the assigned ALJ in this proceeding.

Findings of Fact

1. On October 31, 2022, Liberty filed A.22-10-022 for recovery of recorded costs related to wildfire mitigation and catastrophic events as well as other recorded costs.
2. On January 12, 2024, the Parties filed an Amended Joint Settlement Motion for approval of the Partial Settlement Agreement that resolves all disputes regarding Liberty's recovery of costs incurred in the CEMA, WMPMA, FRMMA, WEMA, FHPMA and CPPMA.
3. No opposition to the Amended Joint Settlement Motion or the Partial Settlement Agreement has been filed.
4. The Partial Settlement Agreement provides for a revenue requirement of \$38.399 million with a five-year amortization.
5. The Partial Settlement Agreement reflects a compromise of the positions of the Parties to it, including a \$4.133 million reduction in Liberty's requested revenue requirement.

Conclusions of Law

1. The Partial Settlement Agreement is an uncontested matter under the Commission's Rules of Practice and Procedure.
2. The Partial Settlement Agreement is reasonable in light of the whole record.
3. The Partial Settlement Agreement is consistent with law.
4. The Partial Settlement Agreement is in the public interest.

5. The Amended Joint Settlement Motion should be granted, and the Partial Settlement Agreement should be approved without modification.

6. A cost allocation based on a flat rate of \$0.01318/kilowatt-hour for all customer classes is fair and reasonable.

7. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The January 12, 2024, Amended Joint Settlement Motion of Liberty Utilities (CalPeco Electric) LLC, the Public Advocates Office at the California Public Utilities Commission and A-3 Customer Coalition for approval of the Partial Settlement Agreement is granted, and the January 12, 2024, Partial Settlement Agreement attached as Appendix 1 to this decision is approved.

2. Consistent with the Partial Settlement Agreement attached as Appendix 1 to this decision, Liberty Utilities (CalPeco Electric) LLC is authorized to recover \$38.399 million in revenue requirement with a five-year amortization period.

3. Liberty Utilities (CalPeco Electric) LLC shall allocate the recovery of costs approved by this decision based upon a flat rate of \$0.01318/kilowatt-hour for all customer classes.

4. Liberty Utilities (CalPeco Electric) LLC (Liberty) shall implement the recovery in revenue requirement approved by this decision by performing the following:

- (a) Liberty shall open a new balancing account, the Memo Account Recovery Balancing Account (MARBA);
- (b) Liberty shall transfer the authorized amounts from each memorandum account to the MARBA and track the surcharges collected from customers in the account;

- (c) At the end of each year during the recovery period, Liberty shall file a Tier 1 Advice Letter declaring the MARBA balance and any expected under-collection or over-collection;
 - (d) At the end of the recovery period, Liberty shall transfer any under-collection or over-collection to its Base Revenue Requirement Balancing account for future recovery or refund; and
 - (e) Liberty shall file a final Tier 1 Advice Letter declaring its final balance, final under-collection or over-collection, and close the MARBA.
5. Application 22-10-022 is closed.

This order is effective today.

Dated _____, at Sacramento, California.

APPENDIX 1