

ALJ/UNC/JSJ/jt2 **PROPOSED DECISION** Agenda ID #17278 (Rev. 1)

Ratesetting

6/13/2019 Item #3

Decision PROPOSED DECISION OF ALJs SEMCER and JUNGREIS

(Mailed 3/8/2019)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Liberty Utilities (CalPeco Electric) LLC (U933E) for Authority to Recover Costs Recorded in its Catastrophic Event Memorandum Account.

Application 17-10-018

DECISION AUTHORIZING LIBERTY UTILITIES (CALPECO ELECTRIC) TO RECOVER COSTS RECORDED IN THE CATASTROPHIC EVENT MEMORANDUM ACCOUNT RELATED TO 2017 WINTER STORMS

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DECISION AUTHORIZING LIBERTY UTILITIES (CALPECO ELECTRIC) TO RECOVER COSTS RECORDED IN THE CATASTROPHIC EVENT MEMORANDUM ACCOUNT RELATED TO 2017 WINTER STORMS**Summary**

This decision grants Liberty Utilities the authority it requests to recover the incremental expenses and capital expenditures, excluding carrying costs, it incurred in 2017 to address catastrophic winter storms. This decision provides for a total Catastrophic Event Memorandum Account California-allocated revenue requirement of \$3,524,696.31 to be recovered over a one-year period beginning within 60 days of issuance of this decision.

This proceeding is closed.

1. Background

During January-February 2017, there were severe snow storms in several counties in and around the Lake Tahoe area that damaged the equipment and facilities of Liberty Utilities (Liberty). The storms caused widespread customer outages, requiring Liberty to supplement its work crews, and requiring Liberty to procure new maintenance and capital equipment. Liberty undertook this catastrophic-event work in counties for which the Governor had issued state of emergency declarations.

Liberty tracked its catastrophic-event work in a Catastrophic Event Memorandum Account (CEMA). Later, Liberty filed an Application seeking recovery of storm-related costs recorded in its CEMA. Liberty now seeks recovery of \$4.578 million in total incremental costs, including \$3.238 million in operations and maintenance expenses, \$1.340 million in capital expenditures, and

carrying charges: it proposes a revenue requirement of \$3.599 million associated with its CEMA-eligible costs.¹

The Office of Ratepayer Advocates (subsequently renamed during the course of this proceeding as The Public Advocates Office (Cal Advocates)) timely filed a Protest. Cal Advocates asserted that Liberty's Application incorrectly accounted for CEMA costs. Cal Advocates also asserted that certain costs were not appropriate for CEMA recovery.

A self-identified ad-hoc group of large electrical customers known here as the A-3 Customer Coalition (A-3) filed to become a Party to the proceeding (its name denotes that its members take electrical service through Liberty's Tariff Schedule A-3). Liberty's Application proposed amortizing the revenue requirement over a one-year period with an average impact to customer bills of 4.54 percent,² spread across customer classes based upon the share of distribution revenues for each customer class, with recovery to occur through an adjustment to the current CEMA surcharge that is already included in Liberty's tariffs. A-3, in addition to asserting that Liberty's Application's CEMA costs were too high, also asserted that the Application's proposed rate recovery allocation was unfair.

2. Procedural History

On October 25, 2017, Liberty filed its Application seeking approval and reimbursement of alleged operations and maintenance expenses and costs and

¹ The cost figures cited here are from Liberty's Opening Brief, and are reduced from the figures set forth in its Application, which had asserted the following CEMA recovery figures: \$4.846 million in total incremental costs, including \$3.379 million in operations and maintenance expenses and \$1.467 million in capital expenditures, with a proposed revenue requirement of \$3.802 million.

² The amount of 4.5 percent is based upon the original revenue requirement of \$3.802 million.

capital-related expenditures booked into its CEMA due to the 2017 winter storms. Liberty sought to amortize the incurred costs in rates over a one-year period.

On November 30, 2017, Cal Advocates filed a Protest.

On January 18, 2018, A-3 filed a Motion to become a party, which was granted by Administrative Law Judge (ALJ) Ruling on January 19, 2018.

On February 13, 2018, a Prehearing Conference (PHC) was held. All parties appeared. During the PHC, the scope, schedule, and other procedural matters were discussed.

On March 14, 2018, the assigned Commissioner's Scoping Memo was filed, setting forth the issues and the schedule for the proceeding. The parties thereafter engaged in discovery.

On August 17, 2018, by ALJ Ruling, the schedule was modified.

On October 12, 2018, Liberty and A-3 filed a Joint Notice of Proposed Settlement.

On October 29, 2018, an evidentiary hearing was conducted.

On November 1, 2018, Liberty and A-3 filed a Joint Motion for Adoption of Settlement Agreement (Joint Motion).

On November 28, 2018, the parties filed Opening Briefs, and on December 12, 2018, the parties filed Reply Briefs.

On December 12, 2018, the case was submitted.

3. Governing Law

In order to obtain approval for its CEMA request, a utility such as Liberty must be compliant in having properly and timely established a CEMA for these events in accordance with Public Utilities (Pub. Util.) Code § 454.9 and

Resolution E-3238. Furthermore, to receive CEMA recovery, Liberty must comply with its effective tariff.³

Pub. Util. § 454.9 reads in full as follows:

- (a) The commission shall authorize public utilities to establish catastrophic event memorandum accounts and to record in those accounts the costs of the following:
 - (1) Restoring utility services to customers.
 - (2) Repairing, replacing, or restoring damaged utility facilities.
 - (3) Complying with governmental agency orders in connection with events declared disasters by competent state or federal authorities.
- (b) The costs, including capital costs, recorded in the accounts set forth in subdivision (a) shall be recoverable in rates following a request by the affected utility, a commission finding of their reasonableness, and approval by the commission. The commission shall hold expedited proceedings in response to utility applications to recover costs associated with catastrophic events.

Resolution E-3238's Ordering Paragraphs read in pertinent part as follows:

1. Each regulated public utility... is authorized to establish a [CEMA] and to record therein its costs of: (a) restoring utility services to its customers; (b) repairing, replacing or restoring damaged utility facilities; (c) complying with governmental agency orders in connection with events declared disasters by competent state or federal authorities... Each... shall file to become effective on thirty days' notice an advice letter with proposed tariff sheets reflecting its establishment...
2. Should a declared disaster occur, each affected utility... shall, if possible, inform the Executive Director by letter within 30 days after

³ See D.07-07-041 at 13.

the catastrophic event if it has starting booking costs in the [CEMA]...

3. The costs recorded in a utility's [CEMA] may be recovered in rates only after a request by the affected utility, a showing of reasonableness, and approval of the Commission...

Under the statute and the Resolution, a regulated utility may recover reasonable costs incurred to address a catastrophic event, provided that the costs are incremental to existing allowances in rates. More specifically, Resolution E-3238 orders that a CEMA could record costs for: "(a) restoring utility services to its customers; (b) repairing, replacing, or restoring damaged utility facilities; and (c) complying with governmental agency orders in connection with events declared disasters by competent state or federal authority."

Resolution E-3238 also explains that:

While costs incurred for repairs may well be significant, they may not necessarily all be properly recoverable from ratepayers. Recovery may be limited by consideration of the extent to which losses are covered by insurance, the level of loss already built into existing rates, and possibly other factors relevant to the particular utility and event. Before authorizing recovery from customers of any costs, the Commission will examine how they relate to the overall costs currently authorized for these types of repairs. (Res. E-3238 at 2-3.)

In applying the incrementality requirement, the Commission has determined as follows:

In addition to confirming that the funds for which [a utility] seeks recovery were spent on the stated repairs, a proper review requires us to determine whether, at a minimum ... the costs for which recovery is sought are reasonable and incremental to normal ... facility repair activity, including whether the costs were or should

have been included among the risks contemplated to be borne by the utility in current rates.⁴

Here, we examine Liberty's compliance with these requirements for CEMA recovery.

3.1. Standard of Determination

Determination of the issues of law and fact in this proceeding are made in accordance with the Commission's Rules. The standard for the Commission's determinations in a contested ratesetting matter such as this is a preponderance of the evidence. (*See, generally, Decision (D.) 08-12-058 at 17-19.*)

4. Scope of the Issues

As stated in the Scoping Memo, the following issues are within the scope of this proceeding:

- I. Should the Commission approve Liberty's request for a CEMA recovery?
 - A. Did Liberty properly and timely establish a CEMA for these events in accordance with Pub. Util. Code § 454.9 and Resolution E-3238?
 - B. Were the costs for which Liberty seeks recovery proximately caused by an officially declared disaster in accordance with Pub. Util. Code § 454.9 and Resolution E-3238?
 - C. Did Liberty appropriately book in its CEMA the Operations and Maintenance (O&M) expenses and the capital-related expenditures for service restoration in accordance with Pub. Util. Code § 454.9 and Resolution E-3238?

⁴ D.01-02-075, at 19-20, *reh'g denied* D.01-11-033.

- D. Were Liberty's accounting method(s) used for booking in its CEMA the O&M expenses and the capital-related expenditures for service restoration reasonable, justified, and consistent with the law?
 - E. Is Liberty's proposed revenue requirement associated with its CEMA-eligible costs incremental, reasonable, justified, and recoverable within the law?
 - F. Is Liberty's proposed cost allocation methodology across customer classes based on the share of distribution revenues for each customer class through a CEMA revenue requirement surcharge over a one-year period reasonable, justified, and consistent with the law?
 - G. Should the Commission approve Liberty's proposed cost recovery through adjustment of its current CEMA surcharge, and subject to the Liberty proposal to file an advice letter to terminate the CEMA surcharge at such time as the revenue requirement is fully collected?
- II. Are there any safety concerns associated with Liberty's request for approval of a CEMA recovery?

5. Admittance of Testimony and Exhibits into the Record

In this proceeding, testimony and exhibits were admitted on the record at the October 29, 2018 Evidentiary Hearing. Also, on November 2, 2018, Liberty moved for admission of an exhibit into the record; on January 11, 2019, that Motion was granted by ALJ Ruling.⁵ The testimony and exhibits comprising the record in this matter are sufficient evidence to support this Decision.

⁵ Exhibit LIB-04.

6. Compliance with Rules 2.1 and 3.2⁶

The Application must be procedurally and substantively compliant with Rule 2.1 regarding the statement of relief sought, reference to statutory authority, information regarding the applicant, and sufficient additional procedural information. Also, as a ratemaking proceeding, the Application must be procedurally and substantively compliant with Rule 3.2 regarding applicant information in order to obtain authority to increase rates. Here, Liberty's Application is procedurally and substantively compliant with these Rules, and therefore the merits of the underlying Application may be considered.

7. Evaluation of CEMA Application**7.1. Liberty's Request for CEMA Recovery is Approved**

As discussed in the following sections, Liberty has met the requirements of Pub. Util. Code § 454.9 and Resolution E-3238 by a preponderance of the evidence and is granted recovery of CEMA costs incurred as a result of the January 2017 storms, excluding carrying costs. Liberty is granted recovery of \$3,524,696.31 through an adjustment of its existing CEMA surcharge for a period of one-year. Liberty may recover costs according to the parameters adopted herein.

7.1.1. Liberty Properly and Timely Established a CEMA for the 2017 Winter Storms

Liberty's Application supported its position that it had properly and timely established a CEMA for these catastrophic events. Liberty sent a letter to

⁶ California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rules.

the Commission on January 26, 2017⁷ providing CEMA notice relative to these emergency events and provided cost estimates as required.

While Cal Advocates questions the appropriateness and methodology of Liberty's CEMA cost accounting, it does not appear to dispute the sufficiency of Liberty's adherence to the CEMA process in accordance with Pub. Util. Code § 454.9 and Resolution E-3238. Therefore, we find Liberty in general compliance with requirements for establishing this CEMA because it acted pursuant to declared catastrophic events and was timely in its notification.

7.1.2. The Costs for which Liberty Seeks Recovery Were Proximately Caused by an Officially Declared Disaster

On January 23, 2017, Governor Brown signed a Declaration of a State of Emergency related to the 2017 winter storms.⁸ As a result, Liberty asserts that it undertook repairs necessary to restore service as a result of an officially declared disaster.

A general description of the catastrophic events, as presented in Liberty's Application, is as follows:

Beginning on January 3, 2017, a series of powerful and record-breaking winter storms struck Liberty CalPeco's service territory, resulting in significant damage to Liberty CalPeco's facilities and causing widespread and prolonged customer outages throughout its service territory. The prolific snowfall was a result of a series of atmospheric rivers, which carried vast amounts of moisture into central and northern California in January and February.

⁷ Application, Appendix A

⁸ Application, Appendix B.

The snowfall in the Lake Tahoe area set all-time records, with precipitation in the North Sierra Region for the 2016-2017 winter being almost double the average. On several days during the storms, Liberty CalPeco's service territory received over four feet of snow. The record snowfall led to many downed trees, avalanches, and mud slides, which took out Liberty CalPeco's lines and led to extended outages. During some periods, the threat of avalanches and impassible roads due to snow accumulation delayed restoration efforts.

During the first week of storms, Liberty CalPeco's system sustained outages on 15 of its circuits - affecting over 17,000 customers - due to falling trees and downed wires. Outages caused by falling trees and downed wires continued during the following weeks of the storms, impacting thousands of customers. The loss of three power sources into North Lake Tahoe caused by mud slides and falling trees during the second week of the storms impacted 22,000 customers.

To restore service and repair damaged facilities as quickly as possible under extreme conditions, Liberty CalPeco supplemented its three field crews working around the clock during the storms with 12 additional crews, consisting of both contractor and NV Energy crews, to remediate potentially hazardous situations, respond to outages, clear vegetation, and repair and replace damaged facilities. In addition to field crews, Liberty CalPeco's procurement and customer service employees worked extremely long hours throughout the storm restoration efforts to procure equipment and materials and communicate with customers and emergency personnel about the progress of restoration efforts and to respond to customer calls. Following the restoration of power after the conclusion of these events, crews continued the work required to permanently repair damaged facilities.

Liberty CalPeco prioritized its restoration efforts in accordance with its Emergency Management Plan, which prioritizes transmission and substations, followed by circuits, primary taps, secondary lines, and finally individual services. When planning restoration efforts, Liberty CalPeco also followed its objectives in the following order: (1) protect the life, safety and health of employees and the public;

(2) protect the property and assets of the Company and Public; (3) protect the environment; and (4) provide for the expeditious restoration of service and return to normal operations. During the restoration efforts, Liberty CalPeco replaced 13,286 feet of overhead line, 10 transformers, and 9 poles, in addition to various other pieces of related equipment. (Application at 2-4.)

Cal Advocates asserts that it cannot verify that the costs are incremental, reasonable and justified in part because of the accounting methodology used by Liberty (discussed in Section 7.1.4 below). That assertion would also imply an argument as to whether the costs are directly related to the 2017 winter storms.

Liberty provided evidence that the costs are proximately caused by the 2017 winter storms through a statement that its accounting department set up “specific work orders to record both capital and expense costs related to the storm-related repairs.”⁹ Furthermore, Liberty states “Only those costs associated with the event are charged to the work order.”¹⁰ In Rebuttal Testimony, Liberty provided copies of specific invoices showing storm-related work¹¹ and described at length the break-down and coding of such costs during evidentiary hearings. Cal-Advocates did not provide any compelling evidence to the contrary.

Without as yet addressing the issue of the appropriateness and methodology of Liberty’s CEMA cost accounting, the Commission finds that

⁹ Exhibit LIB-02 at 1.

¹⁰ *Ibid.*

¹¹ Exhibit LIB-03 at Appendix A.

Liberty's incurred costs and expenditures were related to the 2017 winter storms.¹²

7.1.3. The Costs for which Liberty Seeks Recovery were Appropriately Booked

Pub. Util. Code § 454.9 and Resolution E-3238 required Liberty to appropriately book its CEMA-related costs. As identified by E-3238, these recorded expenses and expenditures must be for "restoring utility services to its customers" and "repairing, replacing, or restoring damaged utility facilities." In utility parlance, these are often referred to as operations and maintenance (O&M) expenses and capital-related expenditures for service restoration. Liberty contends that it began appropriately booking costs into its CEMA.¹³

In its initial application, Liberty sought recovery of \$3,378,747.42 in incremental O&M expenses and \$1,466,756.42 in incremental capital-related expenditures to respond to the 2017 winter storms, for a total of \$4,845,503.84, and consistent with those costs, Liberty sought a revenue requirement of \$3,802,066.48.

Over the course of the proceeding, in response to testimony submitted by Cal Advocates and A-3, Liberty revised its figures to reflect the removal of \$140,240 in straight-time labor costs from its O&M expenses, \$102,296 in straight-time labor from its capital additions, and \$26,576 in capital additions that were not considered used and useful, along with small miscellaneous

¹² This determination is made as to the final expenses and expenditures Liberty presented in its Opening Brief, which varies from the expenses and expenditures proposed in the Application.

¹³ LIB-02 beginning at 1.

adjustments, resulting in a final CEMA cost booking total of \$4,577,949.58.¹⁴

Liberty also adjusted its federal tax rate downward from 34 percent to 21 percent, reflecting the Tax Cuts and Jobs Act of 2017. This resulted in Liberty revising its requested revenue requirement downward to \$3,598,929.18, inclusive of carrying charges (discussed further below).

Here is Liberty's Opening Brief's updated recitation of its CEMA-related costs:

Liberty Utilities (CalPeco Electric) LLC
Recorded CEMA O&M Expenses and Capital Expenditures

O&M Expenses

	Internal Labor	Inventory	Employee Reimbursibles	Contracting Expenses	Total
Jan-17	715,887.00	31,283.28	17,880.80	120,386.35	885,437.43
Feb-17	119,550.70	-	2,654.40	1,689,172.30	1,811,377.40
Mar-17	122,405.92	-	-	289,512.79	411,918.71
Apr-17	-	-	-	35,883.88	35,883.88
May-17	-	-	-	-	-
Jun-17	-	-	-	-	-
Jul-17	-	70.50	-	-	70.50
Aug-17	-	-	-	-	-
Sep-17	-	-	-	-	-
Oct-17	-	-	-	93,730.42	93,730.42
Total	957,843.62	31,353.78	20,535.20	2,228,685.74	3,238,418.34

Capital Expenditures

	Total Capital
Jul-17	298,842.73
Aug-17	57,698.00
Sep-17	50,235.00
Oct-17	932,755.51
	1,339,531.24

Cal Advocates, in asserting that Liberty's accounting methodology is not reasonable, argues that Liberty did not appropriately book its costs, specifically pointing to the timing of expenses and the lack of specific invoices showing

¹⁴ Liberty Opening Brief at 9-10.

incremental expenses. As discussed in more detail in Section 7.1.4, below, Liberty, during evidentiary hearings and in briefs, explained why certain expenses were booked in months outside of those in which expenses were occurred. Liberty also provided specific invoices detailing CEMA expenses corresponding to those booked and showing the breakdown between O&M and capital expenditures. Therefore, an affirmative finding is warranted. The costs for which Liberty seeks recovery in the instant application are appropriately booked. Further discussion on the timing and specifics of booked costs (accounting methodology) follows.

7.1.4. Liberty's Accounting Methodology is Reasonable, Justified, and Consistent with the Law

Cal Advocates recommends a total revenue requirement of \$1.925 million, reflecting a disallowance of \$1.655 million in O&M expenses and \$666,026 in capital expenditures (including carrying costs), in addition to other disallowances that were accepted by Liberty (*see* previous section).¹⁵ In support of its recommendation for disallowances, Cal Advocates asserts that Liberty's data has been "unreliable and its revised Table A [Exhibit LIB-04] does not substantiate its request."¹⁶ Cal Advocates' principle concern surrounds the accounting methodologies and supporting documentation set forth by Liberty, especially as it relates to O&M expenses.

Cal Advocates principally argues that Liberty has not substantiated its requests because the CEMA O&M contracting expenses exceeded total company

¹⁵ Cal Advocates Opening Brief at 4.

¹⁶ Cal Advocates Opening Brief at 1.

O&M contracting expenses for February 2017. Furthermore, Cal Advocates asserts that \$1,504,184 should not be allocated for February 2017 based on the date Liberty received the invoices. Finally, Cal Advocates argues, Liberty's adjusted accounting removing accruals (*see* LIB-04) results in a negative total O&M for April; therefore, CEMA costs cannot be positive for that month.

Responding to Cal Advocates assertions, Liberty stated that in its original supplied accounting (Original Table A), Liberty excluded monthly accruals. Its Revised Table A includes monthly accruals for contracting expenses and shows total company expenses for the month of February that are greater than CEMA costs.¹⁷ Furthermore, Liberty explains that costs may be accrued "later in a different month from when services are rendered, especially in times of great stress, such as during the January 2017 snow storms."¹⁸ Regarding negative total company expenses in April, Liberty points to its testimony at evidentiary hearings, where it discussed that inclusion of monthly accruals may result in negative numbers, but this does not mean core charges were negative.¹⁹

Cal Advocates also argues that the Commission should disallow recovery of \$605,672 in capital expenses recorded in October 2017 because Liberty "incorrectly recorded \$1,023,498 for October 2017 when actual CEMA capital expenditure for October 2017 was \$417,826, using Liberty's jobs place in service dates."²⁰ Liberty responds that Cal Advocates has chosen an arbitrary date (October 2017) and erroneously believes that all costs should have been closed by

¹⁷ Liberty Utilities Reply Brief at 3-4.

¹⁸ Reporter's Transcript (RT) at 53:7-54:2.

¹⁹ RT at 61:10-27

²⁰ Cal Advocates Opening Brief at 5.

this time. Liberty asserts that the \$605,672 in capital expenses were storm related, and that Liberty submitted its CEMA application when capital jobs were still in the process of being closed to plant-in-service.²¹ Liberty continues that the jobs were completed in the field before October 2017, and the equipment replaced in those jobs was energized and considered “used and useful” by Liberty’s engineering staff before October 2017.²²

Finally, Liberty states that, in the case of the capital costs at issue, an invoice “fell through the cracks”; therefore, Liberty could not book the costs until it became aware of such costs. By the time Liberty became aware of the costs, Liberty could not backdate these to get them accrued into the months of January, February or March because the books were already closed for those months.²³ Liberty argues that a delay in booking should not render costs ineligible for CEMA recovery.²⁴ Liberty asserts that it used Generally Accepted Accounting Principles, it created specific work orders for storm-related costs, and it established and followed incremental cost criteria.

Although it is challenging to follow Liberty’s accounting methodologies and easily track through expenditures related to the 2017 storms, Cal Advocates’ arguments to disallow O&M and capital expenditures based on timing and accruals are without merit. Furthermore, Cal Advocates has failed to show how Liberty’s accounting methodologies are inconsistent with the law. Conversely, Liberty has adequately and thoroughly explained all accounting anomalies

²¹ Liberty Reply Brief at 6.

²² *Ibid.*

²³ Liberty Opening Brief at 11.

²⁴ Liberty Reply Brief at 6.

through a description of the effect of monthly accruals and the impact of real-world events on booking costs in busy conditions following a severe storm.

Liberty's exclusion of accruals in its Original Table A and the resulting impact on total company O&M costs are reasonable, as are the impacts on total O&M costs of inclusion of accruals in LIB-04. Liberty's exclusion of costs due to a missing invoice and inclusion of such costs at a later date because previous months' books were closed is reasonable and justified given real-world events. The Commission must consider individual circumstances, and concludes here that to disallow expenses solely due to justifiable delay in booking would be inconsistent with the intent of recovery of CEMA-related costs.

Therefore, the Commission finds that Liberty's accounting methodologies are reasonable, justified, and consistent with the law. Liberty is advised, however, that in future CEMA requests, it should provide a thorough and detailed explanation of how it employs various accounting methodologies, such as the addition of certain costs to its asserted accrual-basis accounting system, and a roadmap for following CEMA expenses from invoice to booking. Further, given the challenges in following Liberty's accounting methodologies, Liberty is advised that should it be found at a later date that any of the recovered costs were not incremental, those costs will be subject to a refund.

7.1.5. A \$3,524,696.31 Revenue Requirement is Reasonable, Incremental, Justified, and Recoverable

As identified by Pub. Util. Code § 454.9, CEMA expenses must be reasonable, which in Commission parlance has come to mean that these costs

must be incremental and justified.²⁵ Liberty asserts that it established and followed appropriate incremental cost criteria relating to restoring services and repairing or replacing damaged facilities. It also asserts that these costs were not already provided for through its rates -- and that "If the costs would have been incurred irrespective of the January 2017 snow storms, the costs were not considered incremental."²⁶ In its Reply Brief, A-3 iterates that, as part of the Settlement Agreement, discussed in more detail below, it agrees that Liberty's recorded CEMA costs, as adjusted, were incremental, and Liberty should recover the costs incurred in its CEMA.²⁷

Cal Advocates, however, asserts that Liberty has failed to meet the standard of proof to demonstrate that its CEMA request is incremental; therefore, Cal Advocates cannot verify that the costs incurred are indeed proximately related to the 2017 winter storms.²⁸ Cal Advocates states that the invoices provided for February and March 2017 do not substantiate Liberty's O&M CEMA requests. Liberty provided Cal Advocates with a list of 475 invoices for that time period along with a copy of the invoices themselves; however, Cal Advocates argues that the costs in the invoices include O&M, capital, and balancing account costs, not O&M contracting expenses. More specifically, Cal Advocates states that it could not ascertain O&M contracting expenses for February or March 2017, nor could it match invoices to any particular month.

²⁵ See, generally, D.16-04-004.

²⁶ Liberty Opening Brief at 7, citing to Exhibit LIB-02 at 2.

²⁷ A-3 Reply Brief at 2.

²⁸ See, generally, Exhibit ORA-01; see also, generally, Cal Advocates Opening Brief.

Cal Advocates argues that Liberty's data is unreliable, and that therefore its alleged storm-related expenses cannot be verified.²⁹

Liberty responds that it complied with the ALJ order to provide contracting invoices. Furthermore, Liberty states that "Charges and transactions may not necessarily have a one-to-one relationship to invoices, and, for this reason, appropriate personnel review invoices during the normal course of business in order to assign multiple charge codes."³⁰ Liberty asserts that it has provided invoices, been responsive to Cal Advocates' requests regarding accounting, and has removed those expenses that were not appropriate to the CEMA. Therefore, Liberty requests that the Commission reject Cal Advocates' recommended disallowances because Cal Advocates failed to provide any basis for its position other than to argue mere booking timing discrepancies.³¹

We have reviewed the evidence and make the following findings. First, Liberty provided a detailed explanation of the work completed, including pictures of storm damage. Second, Liberty provided copies of invoices for costs related to the 2017 storms, along with a division of those costs between O&M and capital expenditures. Third, Liberty provided a detailed explanation of the breakdown of the invoices and explained how the services rendered related to the 2017 storms.³² Finally, as discussed above, Liberty has accurately and adequately explained its accounting of CEMA expenses in relationship to overall company expenses, thus showing the incremental nature of the CEMA costs.

²⁹ Cal Advocates Opening Brief at 14-15.

³⁰ Liberty Reply Brief at 4-5.

³¹ *Id.* at 5.

³² RT beginning at 15:3.

Cal Advocates argued that the evidentiary record does not support the incremental and justified nature of Liberty's CEMA bookings; however, Cal Advocates has failed to demonstrate that the evidentiary record is insufficient. Therefore, Cal Advocates' argument is rejected.

The evidentiary standard in this case is a preponderance of the evidence. Liberty has met that standard. Liberty has shown that its proposed revenue requirement (excluding carrying costs), including the proposed cost recovery across customer classes as set forth in Section 7.1.5.2, is reasonable, incremental, justified, and recoverable under governing law. Therefore, Liberty Utilities' CEMA-related expenditures are approved (excluding carrying costs, as discussed below).

7.1.5.1. Liberty's Carrying Charges are Denied

Liberty requests recovery of carrying charges in the amount of \$74,232.87, despite its tariff lacking a provision for the recovery of such carrying charges. Liberty argues that the Commission has approved recovery of carrying charges in other CEMA cases. Liberty further argues that all of its other balancing and memorandum accounts include carrying charges, in accordance with utility general practice.³³

Cal Advocates points out that Liberty acknowledged that it did not have an applicable tariff in place for carrying charges.³⁴ Cal Advocates is correct in that Liberty's tariff contains no such provision for the recovery of carrying charges. While no party disputes that Liberty has incurred the carrying charges

³³ RT at 40:27 - 41:15.

³⁴ RT at 10:15-19.

claimed, the Commission denies \$74,232.87 in carrying charges associated with the 2017 winter storms in accordance with Liberty's existing tariff. In the future, if Liberty wishes to recover carrying charges, it should seek modification of its tariff through the appropriate process to include such a provision.

7.1.5.2. Liberty-A-3 Settlement is Not Reasonable and Not in the Public Interest

Liberty and A-3's Joint Motion concerns a proposal for settlement of the allocation of Liberty's CEMA cost recovery. In the settlement, A-3 agreed to withdraw its opposition to the asserted CEMA costs, and Liberty agreed to a cost recovery allocation that differed from the cost recovery allocation found in the Application. Cal Advocates did not take a position regarding the settlement.

Rule 12.1(d) 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." Here, the nature of the settlement is not inherently inconsistent with the law, but it must be reviewed to determine whether it is reasonable in light of the record and in the public interest.

In Exhibit LIB-02, submitted along with its Application, Liberty sought to obtain its CEMA cost recovery allocation by proposing certain distribution revenue-based percentages across its residential, commercial/industrial, and lighting customer classes and their sub-classes. Liberty provided Tables to delineate how those subclasses would fare with rate increases set forth in percentages by class and by projected total dollars of increased revenue by

subclass so as to generate its then-requested revenue recovery of \$3,802,066.48 in a one-year period.³⁵

However, later in the proceeding, Liberty reduced its rate recovery request from \$3,802,066.48 to \$3,598,929.18. In its Opening Brief (and, identically found in the Joint Motion), Liberty again produced a Table identifying customer classes (although this time the Table failed to specify the particular impact on the “CARE Domestic Service” Residential subclass).³⁶

The Opening Brief / Joint Motion Table is of a different format, only enabling an understanding of the relative allocation of 100 percent of the rate increase across (all but one of the) subclasses, and without a set of percentage increases per class or of the absolute amount of the \$3,598,929.18 revenue increase that would be generated by the proposed rate increases per subclass. The Table also delineates the Liberty proposal’s subclass relative percentage position, the A-3 proposal’s subclass relative position, and the “Settling Parties’ Agreement” subclass relative percentage position. Because the Opening Brief / Joint Motion Table is in a different format from the Table found in Exhibit LIB-02, it makes analysis difficult to understand (regardless that it notes that the subclasses’ relative percentage allocations were derived from an afore-cited Exhibit LIB-02 Table).³⁷

³⁵ Exhibit LIB-02 at 7-8, Tables 3 and 4.

³⁶ Opening Brief at 15.

³⁷ Joint Motion at 4, footnote 6, referencing Exhibit LIB-02, Table 3.

The Joint Motion asserts that there is an “absence of clear Commission precedent on how costs of this sort of catastrophic event should be allocated.”^{38,39}

The Joint Motion then explains as follows:

Liberty proposed to allocate the costs based on each customer class’s share of distribution revenues, and cited Energy Division’s disposition of [Liberty] Advice Letter 65-E and 65-E-A as precedent for this allocation approach. A-3 based its proposed allocation on the concept, and the Commission’s policy, that rates should be based on cost-causation... [following discussion of storm damage] A-3 recommended an allocation based on the relative marginal customer cost used to develop rates in Liberty’s last general rate case... The Settlement Agreement resolves this dispute by allocating 50% of the adopted CEMA revenue requirement based on Liberty’s proposed allocation and 50% of the adopted CEMA revenue requirement based A-3’s proposed allocation...

As noted, Rule 12.1(d) factors that the Commission must consider in determining whether to approve a settlement (in addition to lawfulness) are whether the settlement is reasonable in light of the whole record and in the public interest. Here, the contesting parties deviated from the Commission’s generally used methodology of basing allocation on class share of distribution revenue and instead struck a compromise to also base allocation on cost-causation -- i.e., whether some classes should bear a lesser or greater burden due to their respective means of receiving electricity. Simply stated, A-3

³⁸ Joint Motion at 3.

³⁹ The parties are correct that there is no absolute formulation for revenue recovery of CEMA costs that is applied universally to all California public utilities pursuant to Commission CEMA decisions. However, utilities typically either have a Distributed Revenue Adjustment Mechanism in place and seek authorization for revenue recovery through that means, or simply seek authorization for revenue recovery through allocation to customer distribution rates, as Liberty initially sought here.

sought a reduced burden of the CEMA-related revenue recovery allocation due to the assertion that their class customers substantially received their electricity through undergrounded lines, while the other classes substantially received their electricity through overhead lines, and it was these overhead lines that were damaged in the storms and led to the bulk of the CEMA costs.⁴⁰

The first question to consider under the Rule 12.1(d) rubric is reasonableness in light of the whole record. Exhibit A3-01 was received into evidence (without objection or cross-examination). That Exhibit -- which is testimony of a Colorado consultant from an energy services and consulting firm -- reads in part as follows:

Q. Did the storms cause damage to all of Liberty's power lines?

A. No. Underground lines were not damaged and only about half of Liberty's 42 circuits required repairs.

Q. Did the damaged lines serve all Liberty customers?

A. No, the outages only affected a subset of Liberty customers. Liberty services approximately 49,000 electric customers while the outages only affected approximately 24,000 customers.

Q. Have you prepared a more appropriate allocation of CEMA cost?

A. Yes. I developed a cost allocation based on the relative marginal customer cost Liberty used to develop rates in its most recent rate case. While marginal customer costs are not a perfect allocator for the CEMA costs, it has two advantages over the distribution revenue allocator proposed by Liberty. First, the marginal customer cost allocator does not include an electrical consumption component

⁴⁰ There is no apparent direct evidence that A-3 receives its electricity through undergrounded distribution power lines, but this is a reasonable inference to draw from the Joint Motion's assertion that "In A-3's view...[the Liberty allocation proposal would require] many customers who are served through underground lines to bear a disproportionate share of the costs." (Joint Motion at 3.)

which skews the allocation of the CEMA cost to high usage customers despite the fact that customer usage has nothing to do with CEMA cost causation. Second, the marginal customer cost allocator recognizes that increases in the miles of overhead lines built to serve customers increases the potential for storm related repair costs.⁴¹

A-3's consultant did not identify with greater particularity which customer classes or subclasses are served by the approximately half of the Liberty circuits that were damaged, and observed that "Based on Liberty's responses to A3CC data requests... it does not appear that a direct assignment of CEMA costs is possible."⁴² It is clear that the A-3 proposal does not provide an effective means to allocate costs to those customers who received their electricity through the damaged circuits. Instead, the A-3 proposal primarily carves out a revenue recovery reduction for those customers who receive electricity through undergrounded lines. Whether or not its intention is fair, it is incomplete, as it does not distinguish between overhead line customers whose lines were damaged from those overhead line customers whose lines were not damaged.

Moreover, A-3's allocation proposal is an incomplete analysis of the construction of various customer rates. It seeks to base allocation on the marginal cost determination in Liberty's last general rate case. As A-3's consultant elsewhere acknowledged, "marginal cost... reflects the theoretical cost of adding another customer to Liberty's system."⁴³ Whether or not this description is complete, it does not directly reflect allocation by consumption.

⁴¹ Exhibit A3-01 (Prepared Testimony of C. Drew Clayton) at 9.

⁴² Exhibit A3-01 at 12.

⁴³ Exhibit A3-01 at 11.

The A-3 proposal also fails to address the fact that different customer classes already receive electricity at different rates based in part on consumption. Table 3 of Exhibit LIB-02 demonstrates that not all Liberty customers have the same rates, with rate variation (with proposed CEMA cost adjustments already included) from \$.209/KWh to \$2.070/KWh: given that ten-fold spread in rates, the A-3 proposal fails to capture the significant intentionality of the Liberty general rate case customer rate scheme. That customer rate scheme reflects the Commission's careful consideration of the public interest.

Therefore, in light of the whole record, and in light of the public interest, and in keeping with the Commission's generally-applied analysis of CEMA cost allocation through each customer's share of distribution revenues, the Liberty proposal for revenue recovery is wholly adopted, without the compromise reflected in the settlement put forth in the Joint Motion. Allocation through each customer's share of distribution revenues is a straight-forward utility revenue recovery mechanism and it is reasonable, just, and efficient. For these reasons, the Joint Motion is denied.

7.1.6. Cost Recovery is Approved through a CEMA Surcharge Adjustment; Advice Letter Filing

Liberty proposes recovering CEMA costs associated with the 2017 winter storms through an adjustment to its current CEMA surcharge, which is already included in its tariffs. Liberty's proposed surcharge rates are designed to collect the total CEMA revenue requirement over a one-year period. Liberty proposed that actual collections through the proposed surcharge will be monitored.

Within sixty (60) days of issuance of this decision, Liberty must file a Tier 1 advice letter to modify its CEMA surcharge to recover \$3,524,696.31 in approved revenue requirement associated with the 2017 winter storms, to be recovered in a

one-year period. Liberty must monitor the actual collections received through the surcharge. Liberty must file a Tier 1 advice letter to cease inclusion of this CEMA collection surcharge once the full amount of CEMA costs approved in this application is collected from ratepayers, subject to over-collection or under-collection being added to Liberty's Base Revenue Requirement Balancing Account at the end of the one-year period.

7.2. Approval of Application 17-10-018 Allows for the Provision of Safe and Reliable Electric Service

The actions taken by Liberty to address the 2017 winter storms promote the public safety by addressing emergency situations as they arise. Approval of CEMA-eligible costs allows Liberty to provide safe and reliable electric service as required by Pub. Util. Code § 451. This decision does not raise any additional safety considerations beyond those already addressed by Liberty in responding to emergency events and seeking recovery of costs through the CEMA.

8. Comments on Proposed Decision

The proposed decision (PD) of ALJs Semcer and Jungreis 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 on March 28, 2019 by Cal Advocates and by A-3, and reply comments were filed on April 2, 2019 by Liberty. All comments were taken into consideration. The PD is modified to deny \$74,232.87 in carrying costs.

In its comments, Cal Advocates argued that Liberty failed to meet its burden in proving that its CEMA costs were appropriately booked and incremental. Cal Advocates cited generally to its testimony, filings, and briefing, but did not cite to the record in detail. While it contends that the CEMA requests

were “based solely on Liberty’s unsupported assertions... without any documentary support,” the record does contain substantial Liberty documentary support for its CEMA requests (in its own comments, Cal Advocates acknowledges receiving 475 invoices from Liberty).⁴⁴

Cal Advocates also argued that carrying charges are inappropriate due to the absence in the Liberty tariff of an express term providing for carrying charges. Liberty argues that application of the rules of statutory construction results in appropriate approval of carrying costs. The Commission is persuaded that, while no party denies that Liberty accrued carrying charges, it is appropriate to follow Liberty’s tariff as written, which is silent on the inclusion of carrying costs in CEMA cost recovery.

In its comments, A-3 argued that upon the rejection of a settlement, Rule 12.4 requires that the Commission must embark upon one of three further paths. However, A-3 has failed to correctly understand Rule 12.4, which reads in pertinent part as follows:

The Commission may reject a proposed settlement whenever it determines that the settlement is not in the public interest. Upon rejection of the settlement, the Commission **may** take various steps, **including** the following... (Emphasis added.)

A correct reading of Rule 12.4 does not require the Commission to take the steps that A-3 contends it must. Further, although A-3 argues that the record is not whole because it did not participate in the evidentiary hearing, A-3 flatly

⁴⁴ While the Commission is sympathetic to logistical difficulties, Cal Advocates’ assertion that “[Cal Advocates does not] have sufficient staff to undertake the type of full audit that would be required” does not relieve Cal Advocates of its burden as a protestant in producing evidence and argument that Liberty’s application is inadequate when, as here, Liberty has met its burden in demonstrating by a preponderance of evidence that its application is in fact adequate.

ignores that the timing of things was entirely within its own control: the evidentiary hearing was conducted on October 29, 2018, and A-3 and Liberty filed their Joint Motion for Adoption of Settlement Agreement on November 1, 2018. A-3 was fully entitled to participate in the evidentiary hearing had it so chosen.

Lastly, A-3 cites to a Commission Rulemaking⁴⁵ that it contends supports the revenue allocation set forth in the Joint Motion. However, that Rulemaking was not cited in the Joint Motion. Further, that Rulemaking is pursuant to residential rate structures, and does not contain a Commission position regarding CEMA revenue allocation let alone a mention of CEMAs, which is the subject at issue here. The Commission is first and foremost bound to do what is in the public interest, as it has expressly done here.

9. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Melissa Semcer and Jason Jungreis are the assigned ALJs in this proceeding.

Findings of Fact

1. During January-February 2017, there were severe snow storms in several counties in and around the Lake Tahoe area that damaged the equipment and facilities of Liberty. The storms caused widespread customer outages, requiring Liberty to supplement its work crews, and requiring Liberty to procure new maintenance and capital equipment.

2. Liberty's work and expenses to procure new maintenance and capital equipment pursuant to the storms were necessary and reasonable.

⁴⁵ A-3 cited to this as Rulemaking 12-06-013, but it should properly be cited as D.15-07-001.

3. Liberty's work took place in counties for which the Governor had issued state of emergency declarations.

4. Liberty's CEMA \$4,577,949.58 cost bookings total reflect the work Liberty actually performed and expenses Liberty actually incurred.

5. Liberty requests recovery of carrying charges in the amount of \$74,232.87. Liberty's tariff contains no such provision for the recovery of carrying charges; therefore, recovery of carrying charges is denied.

6. The Liberty-A3 settlement was not reasonable and was not in the public interest.

7. The actions taken by Liberty to address the 2017 winter storms promote the public safety by addressing emergency situations as they arise.

8. All issues of Application 17-10-018 are resolved.

Conclusions of Law

1. The Governor's state of emergency declarations constitute disaster declarations by a competent state official for purposes of Pub. Util. Code § 454.9 and Resolution E-3238.

2. Liberty properly and timely established a CEMA for these catastrophic events in accordance with Pub. Util. Code § 454.9 and Resolution E-3238, and on January 26, 2017, Liberty properly and timely sent a letter to the Commission providing notice relative to these emergency events and appropriately providing cost estimates as required.

3. Liberty appropriately booked its CEMA-related costs so as to meet the requirements of Pub. Util. Code § 454.9 and Resolution E-3238.

4. A \$3,524,696.31 revenue requirement is reasonable, incremental, justified, and recoverable in accordance with the requirements of Pub. Util. Code § 454.9, Resolution E-3238 and Liberty's applicable tariff.

5. Approval of CEMA-incurred costs allows Liberty to provide safe and reliable electric service as required by Pub. Util. Code § 451, and therefore is a benefit to ratepayers.

6. The Commission should deny the Joint Motion for Adoption of Settlement Agreement, filed November 1, 2018.

7. Within sixty (60) days of issuance of this decision, Liberty should file a Tier 1 advice letter to modify its CEMA surcharge to recover \$3,524,696.31 in approved revenue requirement associated with the 2017 winter storms, excluding related carrying charges, to be recovered in a one-year period. Liberty should monitor the actual revenue collection received through the surcharge.

8. Liberty should file a Tier 1 advice letter to cease inclusion of this CEMA collection surcharge once the full amount of CEMA costs approved in this application have been collected from ratepayers, subject to over-collection or under-collection being added to Liberty's Base Revenue Requirement Balancing Account at the end of the one-year period.

9. Approval of CEMA-eligible costs allows Liberty to provide safe and reliable electric service as required by Pub. Util. Code § 451.

10. Motions made in this proceeding that have not been expressly ruled upon are deemed denied.

11. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Liberty Utilities (Liberty) is authorized to recover revenue requirement associated with the 2017 storm-related costs that Liberty booked into its

Catastrophic Event Memorandum Account, excluding carrying charges, totaling \$3,524,696.31. Should it be found at a later date that any of the recovered costs approved herein were not incremental, these costs will be subject to a refund.

2. Liberty Utilities (Liberty) is authorized, within sixty (60) days of issuance of this decision, to file a Tier 1 advice letter to modify its Catastrophic Event Memorandum Account (CEMA) surcharge to recover \$3,524,696.31 in approved revenue requirement associated with the 2017 winter storms, to be recovered in a one-year period. Liberty must monitor the actual revenue collection received through the surcharge. Liberty must file a Tier 1 advice letter to cease inclusion of this CEMA collection surcharge once the full amount of CEMA costs approved in this application have been collected from ratepayers, subject to over-collection or under-collection being added to Liberty's Base Revenue Requirement Balancing Account at the end of the one-year period.

3. The November 1, 2018 Joint Motion for Adoption of Settlement Agreement is denied.

4. Application 17-10-018 is closed.

This order is effective today.

Dated _____, at Sacramento, California.