

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Rulemaking Regarding Whether, or Subject to What  
Conditions, the Suspension of Direct Access May Be  
Lifted Consistent with Assembly Bill 1X and  
Decision 01-09-060.

R.07-05-025  
(Filed May 24, 2007)

**RESPONSE TO MOTION TO  
ADDRESS NON-BYPASSABLE CHARGES OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION**

Tim LoCascio  
Manager, Regulatory Affairs  
Liberty Power Corp.  
1901 W. Cypress Creek, Suite 600  
Fort Lauderdale, FL 33309  
Telephone: (954) 598-7063  
Facsimile: (954) 771-6644  
e-mail: [tlocascio@libertypowercorp.com](mailto:tlocascio@libertypowercorp.com)

On Behalf of:  
**RETAIL ENERGY SUPPLY ASSOCIATION**

October 8, 2010

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Rulemaking Regarding Whether, or Subject to What  
Conditions, the Suspension of Direct Access May Be  
Lifted Consistent with Assembly Bill 1X and  
Decision 01-09-060.

R.07-05-025  
(Filed May 24, 2007)

**RESPONSE TO MOTION TO  
ADDRESS NON-BYPASSABLE CHARGES OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION**

Pursuant to Section 11.1(e) of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the Retail Energy Supply Association (“RESA”)<sup>1</sup> submits its response in support of the Motion filed on September 23, 2010 by a large coalition of parties (“Joint Motion”) requesting an expedited phase to review the appropriateness of, and if necessary, modify the methodology used to calculate non - bypassable charges (“NBCs”).<sup>2</sup> RESA strongly supports<sup>3</sup> the Joint Motion and

---

<sup>1</sup> RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than regulated utility structure. We are devoted to working with all stakeholders to promote vibrant and sustainable competitive retail energy markets for all consumers.

<sup>2</sup> *Motion of Direct Access Customer Coalition, California State University, Alliance for Retail Energy Markets, City and County of San Francisco, Marin Energy Authority, San Joaquin Valley Power Authority, California Municipal Utilities Association, Energy Producers and Users Coalition, California Large Energy Consumers Association, and California Manufacturers & Technology Association To Create A Separate Expedited Phase In This Proceeding To Review And Address The Flaws In The Methodology To Determine Non-Bypassable Departing Load Charges*, September 23, 2010, R.07-05-025.

<sup>3</sup> RESA’s members include ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; Gexa Energy; PPL EnergyPlus; Reliant Energy Northeast LLC; Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

respectfully requests that the Commission take quick action to approve its recommendations. RESA submitted a formal Motion for party status in this proceeding on October 6, 2010.

**I. SUPPORT FOR MOTION**

RESA strongly concurs with the Joint Motion that: (1) the current methodology for determining NBCs has become “unbalanced and unfair, and does not result in bundled customer indifference to departing load;”<sup>4</sup> and (2) significant flaws exist in the calculation of the NBCs that unfairly burden direct access and other non-utility customers.<sup>5</sup> One particularly anti-competitive aspect of the current methodology is that non-utility customers are now forced to pay twice for electricity procured to meet California’s Renewable Portfolio Standard (“RPS”).<sup>6</sup>

In short, the current structure of NBCs penalizes customers that exercise their right to choose electric supply from an electric service provider (“ESP”) by forcing direct access customers to pay for the same costs twice, *e.g.*, once to the utility through the NBC and again to the customer’s chosen retail supplier. RESA believes California retail customers should be provided nondiscriminatory and open access to electric supply service, and utility cost recovery structures should not provide an unfair advantage to utility-provided service.

---

<sup>4</sup> Joint Motion, p. 5.

<sup>5</sup> *Ibid*, pp. 6-7.

<sup>6</sup> *Ibid*, p. 7.

To remedy this inequitable situation, RESA strongly supports the Joint Motion’s request for a Commission ruling creating a separate expedited phase in this proceeding to consider modifications to the methodology used to calculate NBCs.<sup>7</sup>

In fact, RESA’s experience in retail markets across the United States demonstrates that utility cost structures, specifically the designation of which charges are bypassable and which are non-bypassable, play a pivotal role in determining whether retail competition succeeds or fails in a particular state. The Commission has said as much in the past, stating: “We understand that the concerns raised regarding the various non-bypassable charges involve important issues that could significantly impact the success or failure of DA in the longer term.”<sup>8</sup>

California’s NBCs were developed under very different market conditions and warrant reconsideration to ensure that the newly re-opened retail market is given a fair opportunity to develop in order to provide customers with viable competitive options in addition to utility-provided generation services. Direct access customers should not be discriminated against and should not be forced to pay for the same costs twice. Therefore, timing is crucial and quick action by this Commission is essential.

## **II. CONCLUSION**

For the reasons stated above, RESA urges the Commission to adopt the Joint Motion’s recommendations and move quickly to initiate the expedited phase of this proceeding to modify the calculation of NBCs.

---

<sup>7</sup> *Ibid*, pp. 8-11.

<sup>8</sup> *Assigned Commissioner and Administrative Law Judge Ruling Clarifying Scope and Scheduling Further Proceedings*, June 15, 2010, R.07-05-025, p. 10.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tim LoCascio". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tim LoCascio  
Liberty Power Corp.

On Behalf of:  
**RETAIL ENERGY SUPPLY ASSOCIATION**

October 8, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of *Response to Motion On Non-Bypassable Charges Of The Retail Energy Supply Association* on all parties of record in **R.07-05-025** by serving an electronic copy on their e-mail addresses of record and, for those parties without an e-mail address of record, by mailing a properly addressed copy by first-class mail with postage prepaid to each party on the Commission's official service list for this proceeding.

This Certificate of Service is executed on October 8, 2010 at Redwood City, California.

/s/ Susan J. Mara

SUSAN J. MARA

## CERTIFICATE OF SERVICE – R.07-05-025

abb@eslawfirm.com  
AdviceTariffManager@sce.com  
ako@cpuc.ca.gov  
amber.wyatt@sce.com  
AndersonR@conedsolutions.com  
atowbridge@daycartermurphy.com  
ayk@cpuc.ca.gov  
barmackm@calpine.com  
bcragg@goodinmacbride.com  
bernardo@braunlegal.com  
bfs@cpuc.ca.gov  
bhines@svlg.org  
bk7@pge.com  
blairj@mid.org  
blaising@braunlegal.com  
brbarkovich@earthlink.net  
californiadockets@pacificorp.com  
case.admin@sce.com  
cassandra.sweet@dowjones.com  
ccasselmann@pilotpowergroup.com  
cem@newsdata.com  
cem@newsdata.com  
CFPena@SempraUtilities.com  
chh@cpuc.ca.gov  
chilen@nvenergy.com  
cjlw5@pge.com  
clamasbabbini@comverge.com  
clu@cpuc.ca.gov  
cmkehrein@ems-ca.com  
colin.cushnie@sce.com  
crmd@pge.com  
crv@cpuc.ca.gov  
david.oliver@navigantconsulting.com  
dbp@cpuc.ca.gov  
dbr@cpuc.ca.gov  
dcurrie@rrienergy.com  
ddavie@wellhead.com  
ddickey@tenaska.com  
debeberger@cox.net  
debra.gallo@swgas.com  
dgrandy@caonsitegen.com  
dhaval.dagli@sce.com  
dhuard@manatt.com  
Diane.Fellman@nrgenergy.com  
dorth@krcd.org  
douglass@energyattorney.com  
douglass@energyattorney.com  
ds1957@att.com  
dvidaver@energy.state.ca.us  
edd@cpuc.ca.gov  
ek@a-klaw.com  
erasmussen@marinenergyauthority.org  
eric.a.artman@gmail.com  
etoppi@ces-ltd.com  
ewdlaw@sbcglobal.net  
gbawa@cityofpasadena.net  
gblack@cwclaw.com  
GDixon@SempraUtilities.com

jennifer.shigekawa@sce.com  
JerryL@abag.ca.gov  
jjg@eslawfirm.com  
jkarp@winston.com  
jkern@bluestarenergy.com  
jleslie@luce.com  
jmcMahon@8760energy.com  
jmcMahon@8760energy.com  
john.holtz@greenmountain.com  
joseph.donovan@constellation.com  
joshdavidson@dwt.com  
joyw@mid.org  
jpacheco@water.ca.gov  
jscancarelli@crowell.com  
jspence@water.ca.gov  
judypau@dwt.com  
julie.martin@bp.com  
jw2@cpuc.ca.gov  
kar@cpuc.ca.gov  
karen@kclindh.com  
Kcj5@pge.com  
kdw@cpuc.ca.gov  
keith.mccrea@sablau.com  
kellie.smith@sen.ca.gov  
ken@in-houseenergy.com  
kenneth.swain@navigantconsulting.com  
kerry.hattevik@nexteraenergy.com  
KFoley@SempraUtilities.com  
khassan@semprautilities.com  
kho@cpuc.ca.gov  
kjsimonsen@ems-ca.com  
kjuedes@urmgroup.com  
KKloberdanz@SempraUtilities.com  
kkm@cpuc.ca.gov  
klatt@energyattorney.com  
kmills@cfbf.com  
kowalewskia@calpine.com  
kpp@cpuc.ca.gov  
lex@consumercal.org  
liddell@energyattorney.com  
lisa\_weinzimer@platts.com  
lisazycherman@dwt.com  
lmarshal@energy.state.ca.us  
lmh@eslawfirm.com  
lmi@cpuc.ca.gov  
los@cpuc.ca.gov  
lpettis@calstate.edu  
lw@house@innerecite.com  
lwt@cpuc.ca.gov  
makens@water.ca.gov  
marcie.milner@shell.com  
martinhomec@gmail.com  
martinhomec@gmail.com  
mary.lynch@constellation.com  
mary.tucker@sanjoseca.gov  
mary@solutionsforutilities.com  
mbyron@gwfpower.com  
mcox@calplg.com

mrw@mrwassoc.com  
mshames@ucan.org  
mtierney-lloyd@enernoc.com  
mwofford@water.ca.gov  
myuffee@mwe.com  
nes@a-klaw.com  
norman.furuta@navy.mil  
ntreadway@defgllc.com  
nwhang@manatt.com  
omv@cpuc.ca.gov  
pasteer@sbcglobal.net  
perdue@montaguederose.com  
phanschen@mofo.com  
phil@auclairconsulting.com  
philm@scdenergy.com  
pk@utilitycostmanagement.com  
plook@rrienergy.com  
pucservice@manatt.com  
pvh1@pge.com  
ralfl241a@cs.com  
ralphdennis@insightbb.com  
rasmith@sfwater.org  
RegRelCpucCases@pge.com  
rfg2@pge.com  
rhh@cpuc.ca.gov  
rkmoore@gswater.com  
rob@teamryno.com  
rogerv@mid.org  
ron.perry@commercialenergy.net  
rpistoc@smud.org  
rschmidt@bartlells.com  
rshilling@krcd.org  
Saeed.Farrokhpay@ferc.gov  
sas@a-klaw.com  
sberlin@mccarthy.com  
sbeserra@sbcglobal.net  
scarter@nrdc.org  
scr@cpuc.ca.gov  
sdhilton@stoel.com  
sean.beatty@mirant.com  
Service@spurr.org  
shannonrmaloney@msn.com  
SJP@cpuc.ca.gov  
sliu@bear.com  
SNelson@SempraUtilities.com  
SRahon@SempraUtilities.com  
srantala@energymarketers.com  
ssmyers@att.net  
stevegreenwald@dwt.com  
steven.huhman@morganstanley.com  
steven@iepa.com  
sue.mara@rtoadvisors.com  
sww9@pge.com  
szaminski@starwood.com  
tam.hunt@gmail.com  
tburke@sfwater.org  
tcarlson@rrienergy.com  
tciardella@nvenergy.com

george.waidelich@safeway.com  
gifford.jung@powerex.com  
gmorris@emf.net  
gohara@calplg.com  
grehal@water.ca.gov  
hgolub@nixonpeabody.com  
HKingerski@mxenergy.com  
igoodman@commerceenergy.com  
iibarguren@tyrenergy.com  
iryna.kwasny@doj.ca.gov  
james.schichtl@sce.com  
janet.combs@sce.com  
jarmstrong@goodinmacbride.com  
jcasadont@bluestarenergy.com  
jderosa@ces-ltd.com  
jeanne.sole@sfgov.org  
jeff.malone@calpeak.com  
jeffgray@dwt.com

mday@goodinmacbride.com  
mday@goodinmacbride.com  
mdjoseph@adamsbroadwell.com  
mflorio@turn.org  
michael.hindus@pillsburylaw.com  
michael.mcdonald@ieee.org  
michaelboyd@sbcglobal.net  
michelle.mishoe@pacificorp.com  
mike.montoya@sce.com  
mike@alpinenaturalgas.com  
millsr@water.ca.gov  
mjaske@energy.state.ca.us  
mjd@cpuc.ca.gov  
mkuchera@bluestarenergy.com  
MMcclenahan@SempraUtilities.com  
mnelson@mccarthy.com  
mramirez@sfwater.org  
mrh2@pge.com

TCorr@SempraUtilities.com  
tdillard@sppc.com  
thomas.r.del.monte@gmail.com  
todd.edmister@bingham.com  
TRoberts@SempraUtilities.com  
trp@cpuc.ca.gov  
tsolomon@winston.com  
twertz@tyrenergy.com  
wamer@kirkwood.com  
wbooth@booth-law.com  
WDSmith@SempraUtilities.com  
westgas@aol.com  
wetstone@alamedamp.com  
WKeilani@SempraUtilities.com  
wmc@a-klaw.com  
wtr@cpuc.ca.gov  
zdavis@advantageiq.com