

**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

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”)¹ 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”).² RESA strongly supports³ the Joint Motion and

¹ 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.

² *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.

³ 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;”⁴ and (2) significant flaws exist in the calculation of the NBCs that unfairly burden direct access and other non-utility customers.⁵ 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”).⁶

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.

⁴ Joint Motion, p. 5.

⁵ *Ibid*, pp. 6-7.

⁶ *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.⁷

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.”⁸

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.

⁷ *Ibid*, pp. 8-11.

⁸ *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
jig@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@sablaw.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@innercite.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@bartlewells.com
rshilling@krcd.org
Saeed.Farrokhpay@ferc.gov
sas@a-klaw.com
sberlin@mccarthyllaw.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