

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

Order Instituting Rulemaking to Continue  
Implementation and Administration, and Consider  
Further Development, of California Renewables  
Portfolio Standard Program.

Rulemaking 15-02-020  
(Filed February 26, 2015)

**RESPONSE OF THE INDEPENDENT ENERGY PRODUCERS  
ASSOCIATION TO THE MOTION OF LIBERTY HOLDINGS LLC  
FOR A WAIVER OF THE RENEWABLE PORTFOLIO  
STANDARD COMPLIANCE PERIOD 1 PROCUREMENT  
QUANTITY REQUIREMENTS**

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On January 19, 2018, Liberty Power Holdings LLC (Liberty Power) filed a Motion requesting a waiver of the renewables portfolio standard (RPS) Compliance Period 1 procurement quantity requirement (PQR), or, in the alternative, to defer its RPS Compliance Period 1 PQR shortfall until a subsequent RPS compliance period. Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, the Independent Energy Producers Association (IEP) responds to the Motion of Liberty Power Holdings LLC.

Liberty Power claims that its waiver request is justified under the RPS statute and D. 14-12-023. Liberty notes that PU Code Section 399.15(b)(5)(B) provides that a waiver will be granted if "Permitting, interconnection, or other circumstances delay procured eligible renewable energy resource projects, or **there is an insufficient supply of eligible renewable energy resources available to the seller.**"<sup>1</sup> [Emphasis in original] In light of D. 14-12-023,

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<sup>1</sup> Motion, at p. 5.

Liberty Power also asserts that conditions beyond its control warrant a waiver.<sup>2</sup> Moreover, Liberty Power asserts it took all reasonable actions under its control to achieve compliance.<sup>3</sup> Finally, Liberty Power claims that the unavailability of viable portfolio content category (“PCC”) 2 products is justification for granting a waiver.<sup>4</sup>

The Motion should not be granted for a number of reasons. First, Liberty Power argues that the unavailability of PCC2 products was beyond its control and, thus, represents a condition for which a waiver should be granted. As a practical matter, the unavailability of PCC2 products is not relevant to meeting a retail seller's PQR. The RPS statute imposes an obligation on all retail sellers to meet a specified percentage of its retail sales with energy from eligible renewable producers. In setting this obligation, the statute defines three RPS “products” based on specific operational characteristics. These three products have come to be described as PCC1 (energy bundled with environmental attributes subject to delivery requirements), PCC2 (“firmed and shaped”), and PCC3 (unbundled environmental attributes).

Second, with regards to a retail seller's PQR, the statute prescribes a minimum amount of PCC1 products and a maximum number of PCC3 products. The statute establishes no requirement for PCC2 products, i.e. PCC2 products are available for use by retail sellers at their discretion to fulfill their PQR obligations. If PCC2 products are not available at a time, place, and cost acceptable to the retail seller, then the retail seller must look elsewhere to obtain the suitable mix of RPS-eligible products to ensure its RPS compliance. If it fails to meet its RPS compliance due to factors other than those prescribed in statute, the retail seller is out of compliance. Importantly, the unavailability of PCC2 products at the cost preferred by a retail

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<sup>2</sup> Motion, at p. 6.

<sup>3</sup> Motion, at p. 8.

<sup>4</sup> Motion, at p. 2.

seller such as Liberty Power is not a condition specified in the statute for which a waiver would be granted.

Third, in implementing its chosen procurement strategy, Liberty Power assumed that PCC2 products would be significantly less expensive than PCC1 products.<sup>5</sup> Accordingly, Liberty Power focused its procurement efforts on PCC2 products to the exclusion of other RPS-eligible products which were available at a market price and which would be needed if the PCC2 products were unavailable. The evidence indicates that Liberty Power did not procure an appropriate margin of procurement above the minimum procurement level (e.g. for PCC1 products) necessary to comply with the RPS as directed by statute.<sup>6</sup> The evidence does not indicate that Liberty Power prudently managed its RPS portfolio in light of the known market risks and its clear obligations specified in statute and various Commission decisions.<sup>7</sup>

Liberty Power's primary rationale for relying on questionable negotiations for PCC2 products was to lower its cost of RPS compliance. This was a choice made by Liberty Power as it managed its portfolio. This was not a choice outside its control. As noted by Liberty Power, its procurement strategy was intent on buying and actively pursuing the purchase of a limited subset of PCC2 products, namely fixed price PCC2 products. In spite of the evidence that Liberty Power would not be able to obtain a fixed price PCC2 product at a price Liberty Power was willing to pay, Liberty Power chose to decline the purchase of the fixed price PCC2 at the higher price and it declined to procure replacement PCC1 products at the market-price.<sup>8</sup> Effectively, Liberty Power's decision to do nothing at that time in light of known market

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<sup>5</sup> Motion, at p. 6.

<sup>6</sup> PU Code Section 399.15(b)(5)(B)(iii).

<sup>7</sup> PU Code Section 399.15(b)(5)(B)(i).

<sup>8</sup> Motion, at p. 9.

circumstances was the sole cause of Liberty Power's failure to meet its PQR compliance obligation.

In summary, Liberty Power's procurement strategy failed to prudently hedge against negative outcomes. While history has shown this to have been an imprudent decision, it is not grounds for a waiver of the PQR. While the Commission is empowered to waive enforcement of the PQR imposed on jurisdictional retail sellers in specified circumstances,<sup>9</sup> the Commission should not waive a PQR requirement for a retail seller unless the retail seller demonstrates that it has taken all reasonable actions under its control, as set forth in statute, to achieve full compliance.<sup>10</sup> Liberty Power has not met these statutory requirements. Granting the Motion will simply expand the conditions under which retail sellers in the future seek waivers, including the condition that their un-hedged procurement plans did not work out as they had hoped in spite of the availability of alternative RPS products in the marketplace that would enable PQR compliance in a timely manner. IEP urges the Commission to deny the Motion.

Respectfully submitted February 26, 2018 at San Francisco, California.



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<sup>9</sup> PU Code Section 399.15(b)(5).

<sup>10</sup> PU Code Section 399.15(b)(7).