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November 2, 2021

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Petition Challenging the Alternative Compliance Payment Determination to Liberty  
Power Holdings, LLC for the 2020/2021 AEPS Compliance Year  
Docket Nos. P-2021-XXXXXXX and A-110175

Dear Secretary Chiavetta:

On behalf of Liberty Power Holdings, LLC enclosed for electronic filing please find its Petition to Stay Further Action Regarding the Alternative Compliance Payment Determination to Liberty Power Holdings, LLC for the 2020/2021 AEPS Compliance Year in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service. **Please note this is being served via email only.** If you would like a hard copy, please do not hesitate to contact me.

Sincerely,



Deanne M. O'Dell, Esq.

DMO/lww  
Enclosure

cc: Cert. of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of Liberty Power's Petition to Stay Further Action upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email Only**

Richard Kanaskie, Esq.  
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Darren D. Gill, Deputy Director  
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PA Public Utility Commission  
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Harrisburg, PA 17105-3265  
[dgill@pa.gov](mailto:dgill@pa.gov)

Dated: November 2, 2021



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Deanne M. O'Dell, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition Challenging The Alternative Compliance Payment Determination To Liberty Power Holdings, LLC For The 2020/2021 AEPS Compliance Year :  
: Docket No. P-2021-\_\_\_\_\_  
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**PETITION TO STAY FURTHER ACTION REGARDING THE  
ALTERNATIVE COMPLIANCE PAYMENT DETERMINATION TO  
LIBERTY POWER HOLDINGS, LLC  
FOR THE 2020/2021 AEPS COMPLIANCE YEAR**

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Liberty Power Holdings, LLC (“Liberty Power”) submits this Petition to Stay, pursuant to 52 Pa. Code § 5.572(a) to request a stay of any further collections proceedings before the Commission regarding the demanded alternative compliance payment for the 2020/2021 Alternative Energy Portfolio Standards (“AEPS”) compliance year as set forth in the Secretarial Letter dated October 20, 2021 filed at Docket No. A-110175. As explained more fully below, efforts to collect monetary judgments from LPH are exclusively within the jurisdiction of the bankruptcy court. As such, the Commission lacks the authority to pursue further enforcement action by referring this matter to the Office of Administrative Law Judge (“OALJ”) for further proceedings pursuant to 52 Pa. Code §75.65(c). Rather efforts to collect must be brought before the bankruptcy court where decision regarding payment of such obligations are to be determined. Thus, Liberty Power petitions to stay any further enforcement action against Liberty Power through the Commission’s processes until (i) the Commission obtains relief from the Bankruptcy Court from the automatic stay; and/or, (ii) the Commission’s claims are accepted as part of the Reorganization by the Bankruptcy Court.

## **I. BACKGROUND OF BANKRUPTCY PROCEEDING**

1. Liberty Power is licensed by the Commission to provide electric generation supplier services to the public in in all electric distribution company service territories within the Commonwealth of Pennsylvania. *See* PUC Docket No. A-110175.
2. On April 21, 2021, Liberty Power filed a voluntary petition for 11 U.S.C., Chapter 11 reorganization in the United States Bankruptcy Court for the Southern District of Florida (“Bankruptcy Court”), case number 21-13797-SMG.
3. On April 23, 2021, Liberty Power filed with this Commission a Suggestion of Bankruptcy at docket number M-2019-2568471. On May 13, 2021, Liberty Power filed with this Commission further information about its Pennsylvania operations pursuant to 52 Pa. Code § 54.34 at docket number A-110175.
4. On July 16, 2021, consistent with the requirements of the bankruptcy proceeding, Liberty Power issued a notice to its customers informing them of its intent to sale all or substantially all of its assets to another legal entity. Included with the letter was the approved Notice of Debtors’ Intent to Assume and Assign contracts as approved by the bankruptcy court.
5. Upon the sale of all its assets, Liberty Power intends to cease all operations.

## **II. AEPS ENFORCEMENT ACTION**

6. By Compliance Notice Letter dated October 20, 2021, the Commission informed Liberty Power that an alternative energy compliance payment of \$2,706,535.52 is being imposed based on Liberty Power’s alleged failure to comply with the requirements for the 2020/2021 AEPS compliance year (from June 1, 2020 to May 31, 2021).
7. The Compliance Letter states that the alternative compliance payments will be paid into a special fund of the PA Sustainable Energy Board and will be used solely for projects that

will increase the amount of electric energy generated from alternative energy resources for compliance purposes. *See*, 73 P.S. §§1648.3(g) and 52 Pa. Code §§75.65(e) & (f).

8. The Compliance Notice Letter informed Liberty Power that it had fifteen days from the date the letter to file a petition with the Commission challenging the determination.
9. Pursuant to 52 Pa. Code § 54.34(c), any notice to contest the Commission's determination will be referred to the OALJ for further proceedings as may be necessary.

### **III. COMMISSION LACKS JURISDICTION TO PURSUE FURTHER COLLECTION ACTIONS THROUGH ITS PROCESSES**

10. The above-referenced bankruptcy filing prevents the Commission from undertaking any further enforcement proceedings before the Commission (such as a referral to the OALJ) to collect the demanded alternative compliance payments. 11 U.S.C. § 362(a). *See also* 11 U.S.C. § 362(b).
11. All or part of the sums sought by the compliance determination relate to pre-petition debt. There can be no payment of pre-petition debt until after a plan of reorganization has been accepted by a majority of creditors, approved by the federal bankruptcy court and all creditor claims within a particular class have been settled. To the extent a post-petition payment is not made, it could become an administrative claim which might be subject to a different payment treatment according to the plan of reorganization.
12. Liberty Power submits that the Commission lacks jurisdiction to pursue collection of the demanded alternative compliance payment since there is an active bankruptcy proceeding which is charged with approving arrangements for the repayment of debts and determining the amounts to be paid to all Liberty Power's creditors. As such, any payment to the Commission would need to be determined and approved as part of the bankruptcy proceeding.

13. Further enforcement of the compliance determination is subject to the automatic stay of the bankruptcy code, which halts actions by creditors to collect debts from a debtor who has declared bankruptcy. In this proceeding, the Commission seeks to collect from Liberty Power an alternative compliance payment for the purposes of: (a) protecting a pecuniary governmental interest (as opposed to protecting the public safety and health), *see In re Nortel*, 669 F.3d 128, 139 (3d Cir. 2011); and, (b) adjudicating private rights, *Id.* at 140. *See also Stewart v. Holland Acquisitions, Inc.*, No. 2:15-cv-01094, 2021 U.S. Dist. LEXIS 50951 (W.D. Pa. Mar. 18, 2021).

**WHEREFORE**, the Liberty Power requests that the Commission grant this Petition to stay any further enforcement action against Liberty Power through the Commission's processes until (i) the Commission obtains relief from the Bankruptcy Court from the automatic stay; and/or, (ii) the Commission's claims are accepted as part of the Reorganization by the Bankruptcy Court.

Respectfully submitted,



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Dated: November 2, 2021

Attorney for  
Liberty Power Holdings, LLC

**VERIFICATION**

I, Deanne M. O'Dell, hereby state that I am an attorney representing Liberty Power Holdings, LLC and the facts set forth in the foregoing Petition to Stay are true and correct (or are true and correct to the best of my knowledge, information and belief). I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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Deanne M. O'Dell, Esquire  
Attorney for  
Liberty Power Holdings, LLC

Dated: November 2, 2021