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November 17, 2016

Via Electronic Filing

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

Re: Respond Power LLC v. Pennsylvania Electric Company
Docket Nos. C-2016-_____

Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2017 through May 31, 2019, Docket Nos. P-2015-2511333; P-2015-2511351; P-2015-2511355; P-2015-2511356

Petition of Respond Power LLC for Issuance of Ex Parte Emergency Order,
Docket No. P-2016-2572934

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Formal Complaint of Respond Power LLC with regard to the above-referenced matters. Copies to be served in accordance with the attached Certificate of Service.

Per the request of the Secretary's Bureau, this Formal Complaint against Pennsylvania Electric Company replaces and supersedes the Formal Complaint against Pennsylvania Electric Company and West Penn Power Company, which Respond Power LLC served on the parties on November 16, 2016. At a separate docket, Respond Power LLC is filing a Formal Complaint against West Penn Power Company.

Sincerely,



Karen O. Moury
KOM/lww
Enclosure

cc: Hon. David A. Salapa w/enc.
Certificate of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Formal Complaint of Respond Power LLC upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54

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Dated: November 17, 2016

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Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Respond Power LLC	:	
	:	
v.	:	Docket Nos.: C-2016-
	:	
Pennsylvania Electric Company	:	
	:	
Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2017 through May 31, 2019	:	Docket Nos.: P-2015-2511333 P-2015-2511351 P-2015-2511355 P-2015-2511356
	:	
Petition of Respond Power LLC for Issuance of Ex Parte Emergency Order	:	Docket No. P-2016-2572934
	:	

NOTICE TO PLEAD

To: Tori Giesler, Esq.
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You are hereby notified to file a written response to the enclosed Formal Complaint of Respond Power LLC within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,



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717.237.6036
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Dated: November 17, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	

FORMAL COMPLAINT OF RESPOND POWER LLC

Pursuant to 66 Pa. C.S. § 701 and 52 Pa. Code §§ 5.21-5.22, Respond Power LLC (“Respond Power”) submits this Formal Complaint (“Complaint”) against Pennsylvania Electric Company (“Penelec” or “Company”) Tariff Electric Pa. P.U.C. No. S-1 filed on October 28, 2016 with an effective date of August 1, 2016 (the “Supplier Tariff”). The Supplier Tariff of Penelec contains modifications to the Purchase of Receivables (“POR”) Program to include the implementation of a Clawback Charge in Section 12.9 (g).

This Complaint challenges the retroactive application of the Clawback Charge contained in the Supplier Tariff to Respond Power, a licensed electric generation supplier (“EGS”), for the period of August 31, 2015 through August 31, 2016 (“September 2016 Clawback Charge”), and also for all months during the period of August 31, 2016 through August 31, 2017 (“September 2017 Clawback Charge”) in which Respond Power does not receive notifications from Penelec regarding the factors upon which the charge is based, including write-off amounts and the identification of non-paying Respond Power customers. Retroactive application of the Clawback

Charge would violate Respond Power's fundamental principles of due process and result in the imposition of unjust and reasonable charges because the Clawback Charge had not yet been approved and was not in effect during most of the time period over which its calculation is based.

Moreover, absent access to the information upon which the Clawback Charge was based while it was accruing, Respond Power had no opportunity to avoid or minimize the Clawback Charge. As a matter of basic equity, it is critical that Respond Power receive this information from the Company before any Clawback Charge is applied so that it can make business decisions to manage the impact of the charge, including whether to return non-paying customers to default service.

Additionally, the self-help remedy threatened by Penelec of withholding POR payments - for electric generation services already provided to customers - to offset the Clawback Charge that they have assessed against Respond Power is not authorized by the Supplier Tariff. Although undisputed balances are subject to late payment fees, billing disputes are to be dealt with promptly in accordance with the dispute resolution procedures contained in the Supplier Tariff. Here, despite Respond Power's challenges to the application of the Clawback Charge, Penelec has refused to discuss the Clawback Charge, provide requested supporting calculations or extend the payment date to permit utilization of the dispute resolution procedures.

Respond Power respectfully requests that the Pennsylvania Public Utility Commission ("Commission") sustain this Complaint based upon: (i) the violation of Respond Power's constitutional due process rights; (ii) the retroactive application of a tariff that would result in the imposition of unjust and unreasonable charges, particularly given Respond Power's inability to mitigate or avoid the charges; (iii) the failure of Penelec to have a valid tariff on file and approved by the Commission when the Clawback Charge was assessed in September 2016; (iv) the Company's threats to impose self-help remedies that are not authorized by the Supplier Tariff; and

(v) the provisions in the Supplier Tariff that require it to engage in an informal dispute resolution process. In support of this Formal Complaint, Respond Power respectfully represents the following:

I. THE PARTIES

1. Respond Power is an EGS licensed by the Commission to supply electricity or electric generation services to the public within the Commonwealth of Pennsylvania. *License Application of Respond Power LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power*, Docket No. A-2010-2163898 (Order entered August 19, 2010).

2. The names and address of Respond Power's attorneys are:

Karen O. Moury, Esquire
Sarah C. Stoner, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, Eighth Floor
Harrisburg, PA 17101
Phone: (717) 237-6000
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3. Penelec is a regulated electric distribution company and default service provider ("DSP") that provides electric distribution services and default generation services in its territory in the Commonwealth of Pennsylvania. Penelec is a subsidiary of FirstEnergy Corp and maintains a principal place of business at 2800 Pottsville Pike, P.O. Box 16001, Reading, Pennsylvania 19612-6001.

II. BACKGROUND AND APPLICABLE LEGAL REQUIREMENTS

4. Section 2807(e) of the Public Utility Code ("Code") requires DSPs to acquire electric energy through a "prudent mix" of resources that are designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these results

through competitive processes that include auctions, requests for proposals and/or bilateral agreements. 66 Pa. C.S. §§ 2807(e)(3.1) and 2807(e)(3.4).

5. Section 54.185 of the Commission's regulations requires DSPs to file a default service program no later than twelve months prior to the conclusion of the currently effective default service program or Commission-approved generation rate cap for that particular service territory, unless the Commission authorizes another filing date. 52 Pa. Code § 54.185.

6. Under Section 54.185(e) of the Commission's regulations, the DSP must include: (i) a procurement plan identifying the DSP's electric generation supply acquisition strategy for the future period of service; (ii) an implementation plan identifying the schedules and technical requirements of competitive bid solicitations and spot market energy purchases; (iii) a rate design plan recovering all reasonable costs of default service, including a schedule of rates, rules and conditions of default service; (iv) documentation that the program is consistent with the legal and technical requirements of the regional transmission operator; (v) contingency plans to ensure the reliable provision of default service when a wholesale generation supplier fails to meet its contractual obligations; (vi) copies of agreements or forms to be used in the procurement of electric generation supply for default service customers; and (vii) a schedule identifying generation contracts of greater than two years between the DSP, when it is the incumbent electric distribution company, and retail customers in that service territory. 52 Pa. Code § 54.185(e).

7. The Commission's regulations do not authorize DSPs to make changes to their Supplier Tariffs in their default service plan.

8. The Commission's regulations do not authorize DSPs to include POR programs in their default service plans. Although some POR programs have been established through DSPs, others have been created through separate filings.

9. The Commission's regulations do not authorize DSPs to include Clawback Charges applicable to EGSs in their default service plans.

10. The Commission's regulations do not authorize DSPs to include proposed Supplier Tariff changes with retroactive elements applicable to EGSs in their default service plans.

11. In its role as a DSP, Penelec filed its 2017-2019 Default Service Program pursuant to Section 54.185 of the Commission's regulations on November 3, 2015. *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of a Default Service Program for the Period Beginning July 1, 2017 through May 31, 2019*, Docket Nos. P-2015-2511333; P-2015-2511351; P-2015-2511355; and P-2015-2511356 (Recommended Decision served April 29, 2016; Final Order entered May 19, 2016) ("2017-2019 Default Service Program").

12. Buried within the massive filing to establish its 2017-2019 Default Service Program, which included direct testimony from three different witnesses, hundreds of pages of supporting exhibits and proposals regarding all four of the FirstEnergy companies, Penelec included a brand new proposed Clawback Charge. By that proposal, Penelec sought to impose upon EGSs serving customers in the Company's service territory a charge related to uncollectible accounts expense. The calculation of an EGS' specific Clawback Charge would be based on a Company derived formula using competitively sensitive data that would only be known to Penelec. Through the Clawback Charge, the Company proposed to fundamentally alter the POR program so that it would no longer be without recourse for participating EGSs. While the Company would continue to purchase all accounts receivables from EGSs at no discount, it proposed to implement the Clawback Charge to recover some uncollectible amounts from EGSs.

13. The Company served a copy of the proposed 2017-2019 Default Service Program on licensed EGSs, including Respond Power.

14. Due to the purpose of the filing under the Commission's regulations and the description of the filing as establishing the Penelec's 2017-2019 Default Service Program, Respond Power was not placed on notice of the inclusion of a proposed retroactive modifications to the POR program. As a result, Respond Power did not intervene in the proceeding.

15. A Joint Petition for Settlement ("Settlement") was filed by the parties in the proceeding on April 1, 2016, which addressed the Company's 2017-2019 Default Service Program and contained a modified Clawback Charge. The Settlement was not served on Respond Power.

16. A Recommended Decision of the Administrative Law Judge ("ALJ") approving the Settlement was issued on April 29, 2016. The Recommended Decision was not served on Respond Power.

17. By operation of law, the Commission entered a Final Order on May 19, 2016 ("May 19, 2016 Order"), adopting the ALJ's Recommended Decision and approving the Settlement. The Final Order was not served on Respond Power.

18. On September 30, 2016, via electronic mail ("e-mail"), Penelec sent an invoice to Respond Power in the amount of \$305,890.63. In the e-mail transmitting the invoice, the Company explained that the 2017-2019 Default Service Program was the basis for the September 2016 Clawback Charge.

19. Also, in that e-mail transmission, the Company indicated that the invoice was due to be paid by October 27, 2016 and that a failure to remit payment by that due date would result in Penelec withholding POR payments. As no support for the calculations was presented at that time, Respond Power made a request for such information. A portion of that data was furnished on October 14, 2016. However, the monthly breakdown requested at that time has not yet been provided.

20. By letter sent via e-mail on October 21, 2016 and delivered via overnight mail on October 25, 2016, Respond Power informed Penelec of its opposition to the imposition of a Clawback Charge because it was based on revenues, write-offs and prices for the period from August 31, 2015 through August 31, 2016 and was not approved by the Commission until May 19, 2016.

21. Respond Power further requested an extension of time for payment of the Clawback Charge to give the parties an opportunity to discuss an amicable resolution of this matter. Respond Power also again requested a monthly breakdown of the Clawback Charge, along with an identification of non-paying customers. Respond Power further noted its intention to initiate legal proceedings on October 26, 2016 seeking injunctive relief against the Company if these requests were not granted.

22. Respond Power received no response from Penelec to its October 21, 2016 letter. It has still not received the requested additional information.

23. On October 26, 2016, Respond Power filed a Petition for Issuance of *Ex Parte* Emergency Order (“Emergency Petition”) with the Commission, serving it on Penelec by first class mail and electronic mail. Specifically, Respond Power petitioned the Commission for issuance of an Emergency Order directing Penelec to: (a) cease and desist from carrying out its threat to unilaterally withhold POR payments on or after October 27, 2016; (b) extend the due date for payment of the disputed POR Clawback Charge by three months until January 27, 2017; and (c) engage in a dispute resolution process with Respond Power.

24. On October 27, 2016, the Commission issued an Emergency Order granting in part Respond Power’s Emergency Petition. By the Emergency Order, the Commission directed Penelec to cease and desist from implementing Clawback Charges on Respond Power until the Company has filed the appropriate tariff and obtained the Commission’s approval thereof, or November 27,

2016, whichever occurs later. The Emergency Order permitted Penelec to file an Answer to the Emergency Petition within 5 days of the date of the Emergency Order and noted that the Emergency Petition and any Answer thereto would be assigned to the Office of Administrative Law Judge. The Emergency Order further provided that the presiding administrative law judge may extend the end date of the cease and desist period.

25. On October 28, 2016, Penelec filed a Supplier Tariff containing the Clawback Charge.

26. On November 1, 2016, Penelec filed an Answer to the Emergency Petition. The Answer was served on Respond Power by first class mail and was received on November 8, 2016.

27. The Commission ratified the Emergency Order on November 9, 2016 and directed the scheduling of a hearing by the Office of Administrative Law Judge by November 18, 2016. A hearing was scheduled for November 17, 2016.¹

28. By Secretarial Letter dated November 10, 2016, the Commission approved the Supplier Tariff, finding that it was in compliance with the Commission's May 19, 2016 Order. The Commission noted, however, that its approval was "without prejudice to any formal complaints timely filed against tariff revisions."

29. Complaints against existing tariffs and challenging the application of a tariff to an entity can be filed at any time. *See* 66 Pa. C.S. §§ 701 and 1309.

30. In approving the Settlement, the Commission acknowledged that the implementation of the Clawback Charge on a two-year pilot basis may lead to unintended consequences in the form of unreasonable assessments on EGSs. However, the Commission found that the terms of the

¹ Due to the Company agreeing to refrain from assessing the disputed Clawback Charge against Respond Power during the pendency of this Complaint proceeding, Respond Power filed a Petition for Leave to Withdraw the Emergency Order Petition on November 17, 2016, and the hearing was cancelled.

Settlement adequately addressed those concerns by reserving the rights of all parties to propose modifications to or termination of the Clawback Charge and by recognizing that the Settlement is not intended to apply to other proceedings or to waive any parties' rights regarding those issues in future proceedings. Recommended Decision at 31.

31. Consistent with the Commission's May 19, 2016 Order approving the Settlement and for the reasons set forth herein, Respond Power has not waived its rights to challenge the application of the Clawback Charge. *See also Borough of Lansdale v. PP&L, Inc.*, 426 F. Supp. 2d 264 (2006) (an entity that was not a party to a proceeding is not barred from raising an issue of fact or law in a subsequent proceeding).

32. As an administrative body, the Commission is bound by the due process provisions of constitutional law and by fundamental fairness. *See Popowsky v. Pa. PUC*, 805 A.2d 637 (Pa. Cmwlth. 2002). Due process is required in administrative proceedings, particularly when administrative action affects substantial property rights. *See ARIPPA v. Pa. PUC*, 792 A.2d 636 (Pa. Cmwlth. 2002). *See also Barasch v. Pa PUC*, 546 A.2d 1296 (1987) (case remanded to the Commission for procedural due process to public advocates and electric power companies before approving purchased power contract with one electric power company).

33. Rates charged by regulated public utilities include all terms and conditions of service established by tariffs and are required to be just and reasonable. *See* 66 Pa. C.S. §§ 102 (definition of "rate"), 1301, 1302 and 1303.

34. The Commission has repeatedly taken steps to ensure that regulated companies do not engage in "self-help" remedies to resolve financial disputes with other service providers. *See, e.g., Buffalo-Lake Erie Wireless Systems Co., LLC Petition for Emergency Order*, Docket No. P-200902150008 (Order entered January 14, 2010); *Core Communications, Inc. v. Verizon Pennsylvania, Inc.*, Docket No. P-2011-2253650 (Order entered September 23, 2011).

III. ALLEGATIONS OF VIOLATIONS

35. Paragraphs 1-35 are incorporated herein by reference.

36. This Complaint challenges the application to Respond Power of the September 2016 Clawback Charge contained in the Supplier Tariff. It further challenges the application to Respond Power of the September 2017 Clawback Charge for all months during the period of August 31, 2016 through August 31, 2017 in which Respond Power does not receive notifications from Penelec regarding write-off amounts and the identification of non-paying customers – the two factors upon which the charges are based.

A. Respond Power has been denied notice and an opportunity to be heard.

37. On November 3, 2015, Penelec filed its 2017-2019 Default Service Program, consistent with the Commission’s regulations, to show how it **would be** – in the future – acquiring “electric generation supply at the least cost to customers over time for default service customers.”²

38. By their very nature, default service plans are forward-looking.³

39. Buried within that massive filing establishing the forward-looking 2017-2019 Default Service Program was a proposed change to the Supplier Tariff that would permit Penelec to retroactively impose a Clawback Charge on EGSs participating in the POR Program.

40. Through that proposal, the Company sought to impose on certain EGSs a Clawback Charge intended to recover the costs of that EGS’s uncollectible expenses and proposed to limit its application to EGSs participating in the POR program, which generally includes all EGSs serving residential customers in the Company’s service territory. Thus, even though the POR program had previously been without recourse, meaning that the Company fully purchased the EGSs’ accounts receivables without discount or other future remedies, the Company sought to modify their prior

² 52 Pa. Code § 54.186(1).

³ 52 Pa. Code § 54.188.

Commission-approved program. Under the Company's proposal to assess the Clawback Charge in September 2016 using historical data dating back to August 31, 2015, this modification was proposed to be implemented before Commission approval of the new program.

41. Although the 2017-2019 Default Service Program was served on EGSs, nothing about the description, nature, purpose or caption of the filing placed Respond Power on notice that it contained a proposal to retroactively change the POR program to a non-recourse program to one that allowed the Company to get recourse from some EGSs. Indeed, Respond Power was unaware of the proposal of Penelec to retroactively change the POR program. Therefore, Respond Power did not intervene in the proceeding.

42. Unlike some other EGSs who routinely participate in DSP proceedings, Respond Power has insufficient interest in the procurement of default service supply to justify expending the resources that would be necessary to litigate such issues.

43. Had Respond Power been aware that Penelec was proposing to retroactively change the POR program, it would have taken the necessary steps to protect its rights and raise legal and practical implications of such changes.

44. Since Respond Power did not have notice of the Company's proposal to retroactively change the POR program to assess a Clawback Charge to EGSs and was not served with the subsequent filings or Commission directives, it did not have notice or an opportunity to be heard on the practical or legal issues raised by this charge.

45. Even if Respond Power had been served with the subsequent filings and Commission directives in the DSP proceeding, it would have had no reason to consider the possibility that a forward-looking plan to establish the Company's 2017-2019 Default Service Program would contain a change to the POR program that would be retroactively applied and would be based on data that accrued prior to Commission approval of the charge.

46. To ensure that Respond Power's due process rights were adequately protected, Penelec had an obligation to serve a stand-alone proposed Supplier Tariff filing or provide specific notice of the inclusion of proposed changes to its POR program and a proposed retroactive charge in its Supplier Tariff, dating back to August 2015, within its 2017-2019 Default Service Program.

47. Moreover, the Commission's approval of the modification of the POR program that is currently in effect required that all affected parties be given notice and an opportunity to be heard under Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g). When the modification was approved, the Company was still operating under the DSP for the period beginning June 1, 2015 and ending May 31, 2017.⁴ Under the 2015-2017 Default Service Program in effect during that time, EGSs were not subject to a Clawback Charge in connection with POR. Before deciding whether to modify the 2015-2017 Default Service Program, it was incumbent upon the Commission to adopt such proposal as a tentative order, affording affected parties notice and an opportunity to be heard. The failure of the Commission to do so has resulted in Respond Power being denied the due process rights to which it is entitled under Code Section 703(g).

B. Retroactive application of the Clawback Charge to Respond Power would result in the imposition of unjust and unreasonable charges.

48. The Company's POR program previously established by its Supplier Tariff offered EGSs the opportunity to have the Company fully purchase their accounts receivables from customers without recourse. In fact, an EGS using the Company's consolidated billing is required to participate in the POR program.

49. Application of the Clawback Charge to Respond Power would retroactively alter the terms and conditions of the POR program in which it participated in 2015 and 2016.

⁴ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket No. P-2013-2391368, P-2013-2391372, P-2013-2391375 and P-2013-2391378 (Order entered July 24, 2014) ("2015-2017 Default Service Program").

50. Respond Power was not aware during the period from August 31, 2015 through August 31, 2016, while the contested September 2016 Clawback Charge was accruing, that it may be later subjected to a retroactive charge.

51. When the 2017-2019 Default Service Program was filed on November 3, 2015, more than two months of data upon which the proposed Clawback Charge would be based had already accrued.

52. While the 2017-2019 Default Service Program was being litigated, more than six months of additional data upon which the proposed Clawback Charge would be based continued to accrue.

53. By the time the Commission approved the Clawback Charge on May 19, 2016, nearly nine months of data had accrued that would later be used to calculate Respond Power's September 2016 invoice. As a result, three-quarters of the September 2016 Clawback Charge assessed against Respond Power was based on data that was accumulated before the Commission even approved the charge.

54. Further, the Clawback Charge was not included in the Company's Supplier Tariff until October 28, 2016, with an effective date of August 1, 2016. Even if it is appropriate to make a tariff effective nearly three months before filing, the tariff was not in effect for eleven of the twelve months upon which the Clawback Charge assessed against Respond Power in September 2016 was based.

55. Therefore, the application of the Clawback Charge to Respond Power results in the imposition of unjust and unreasonable charges because the calculation is based on historical data accrued during a period when the Clawback Charge and the tariff containing such charge had not been approved by the Commission. It is unlawful to permit the Company to retroactively impose

the Clawback Charge on Respond Power. *See Popowsky v. Pa. PUC*, 868 A.2d 606 (Pa. Cmwlth. 2004) (retroactive ratemaking is impermissible).

C. Respond Power had no ability to avoid or minimize the September 2016 Clawback Charge.

56. While the September 2016 Clawback Charge was accruing, it had not yet been approved by the Commission, and Respond Power had no access to the information, including write-off amounts on a total and per customer basis, upon which the Clawback Charge would be based.

57. Although Respond Power is now aware that a potential September 2017 Clawback Charge may be currently accruing, it continues to have no access, despite submitting a request to Penelec, to the information upon which the calculation will be based.

58. Importantly, the data utilized by the Company to determine whether to impose the Clawback Charge includes competitively sensitive information (i.e. the uncollectible expenses related to Respond Power and other EGSs) is only available to the Company. Respond Power has no ability to independently acquire this information. Because the Company has always purchased the receivables of these Respond Power customer accounts and had the responsibility for pursuing uncollectible amounts related to these customers, Respond Power has no information at its disposal regarding uncollectible amounts related to its customers.

59. Absent access to the information upon which the Clawback Charge is based, Respond Power had no opportunity to avoid or minimize the Clawback Charge prior to the assessment of the September 2016 Clawback Charge and has no opportunity to avoid or minimize any Clawback Charge that may currently be accruing for the September 2017 assessment.

60. As a matter of fundamental fairness and equity, it is critical that Respond Power receive this information so that it can make decisions to mitigate or avoid the charges, such as by returning non-paying customers to default service.

D. Penelec did not have a valid tariff on file when it invoiced Respond Power in September 2016.

61. The Company did not have a valid tariff on file as required by Code Section 1302, 66 Pa. C.S. § 1302, when it invoiced Respond Power with the 2016 September Clawback Charge and therefore was not authorized to make this assessment. *See* Emergency Order entered October 27, 2016; and Ratification Order entered November 9, 2016.

62. The Supplier Tariff containing the Clawback Charge was not filed until October 28, 2016. Although the Supplier Tariff contained an effective date of August 1, 2016, the Commission should reject the Company's attempt to apply the Clawback Charge in the Supplier Tariff to Respond Power for purposes of the September 2016 Clawback Charge.

63. As the Supplier Tariff was not filed prior to the 2016 Clawback Charge being assessed, the Company has lost any opportunity to now assess Respond Power.

E. The invoice appears to contain errors and therefore violates the Supplier Tariff.

64. Respond Power has not received requested supporting calculations and a monthly breakdown of the charges from Penelec.

65. In attempting to replicate the charges on the invoice, Respond Power has been unable to verify that the September 2016 Clawback Charge has been accurately calculated per the Supplier Tariff.

66. Since Respond Power has been unable to replicate the amounts on the invoices, it believes and therefore avers that Penelec has made computational errors and imposed charges that violate the Supplier Tariff.

F. The self-help remedies that Penelec threatened to impose, of withholding POR payments from Respond Power, are not authorized by the Supplier Tariff.

67. The Supplier Tariff does not authorize Penelec and West Penn to impose self-help remedies of withholding POR payments from Respond Power, particularly when the application of the Clawback Charge has been disputed.

68. Section 12.9(g) of Penelec's Supplier Tariff provides that the Clawback Charge will be billed to the EGS in accordance with Section 12.2 of the Supplier Tariff. Section 12.2.2 provides that if "disputes arise regarding an EGS bill, the EGS must pay the undisputed portion of disputed bills under investigation."⁵ When EGSs make late payments, Section 12.2.4 authorizes the addition of a late fee of 2% per month on the unpaid balance. Section 12.2.5 permits Penelec to reduce reimbursements to the EGS for amounts collected by the Company by the amount owed to the Company, if the EGS is in default for any reason other than a billing dispute.

69. Although Section 12.9(b) provides that POR payments will be subject to the Clawback Charge, it does not authorize Penelec to withhold the Clawback Charge from the POR payments. Rather, this language clarifies that the POR program is no longer without recourse, which the prior tariff provided.

70. As to disputes that arise regarding the implementation of the provisions of the POR program, Section 12.9(e) of Penelec's Supplier Tariff requires the parties to attempt to resolve them through the dispute resolution procedures described in Section 18 of the Supplier Tariff. Under Section 18 of Penelec's Supplier Tariff, Penelec and the EGS are required to use good faith and commercially reasonable efforts to informally resolve all disputes. If the designated

⁵ <https://www.firstenergycorp.com/content/dam/customer/Customer%20Choice/Files/PA/tariffs/Penelec-Supplier-Tariff-S-1.pdf> (last accessed November 16, 2016). Sections 12 and 18 of Penelec's Supplier Tariff, as appear on the website are included in Appendix A, attached to this Complaint. At the time this tariff was last accessed on the website, it did not contain the changes filed on October 28, 2016, which are included in Appendix B, attached to the Complaint.

representatives of Penelec and the EGS are unable to resolve the dispute, the matter may be referred by mutual agreement for mediation or submitted to arbitration. Section 18 does not restrict the rights of any part to file a complaint with the Commission.

71. The Company has refused to provide supporting calculations and data that Respond Power has requested to verify the computation of the Clawback Charge and has declined to engage in an informal dispute resolution process, in violation of the Supplier Tariff.

72. Rather than engaging in a dispute resolution process with Respond Power, Penelec has improperly sought to impose a self-help remedy that is not authorized by the Supplier Tariff by threatening to withhold POR payments for electric generation services that have already been provided to retail customers by Respond Power.

73. By threatening to withhold POR payments as an offset for the Clawback Charge, the Company has deprived Respond Power of an opportunity to engage in the dispute resolution process afforded by the Supplier Tariff before having its cash flow severely disrupted.

74. The impacts of imposing this self-help remedy on Respond Power are significant and irreparable. Particularly in a competitive environment with minimal profit margins, it would be necessary for Respond Power to take extreme measures to avoid a return of these customers to default service. If that occurs, it would lose the substantial costs that it has incurred to acquire these customers, and it is unlikely that the losses could be recouped or that the customers could be reacquired. At a minimum, it would be necessary for Respond Power to use resources earmarked for other purposes to cover this charge, which would irreparably harm its position in the competitive market with respect to the expansion of operations, customer services and the future pricing of its product.

IV. REQUESTED RELIEF

Based on the foregoing, Respond Power respectfully requests that the Commission grant the following relief:

1. Sustain this Complaint;
2. Prohibit Penelec from applying the September 2016 Clawback Charge in the Supplier Tariff to Respond Power;
3. Prohibit Penelec from applying the September 2017 Clawback Charge in the Supplier Tariff to Respond Power for any months during which Respond Power does not have access to the information, including amounts of write-offs and an identification of non-paying customers, upon which the charge is based;
4. Refer this Complaint to the Mediation Unit of the Office of Administrative Law Judge; and
5. Grant such other relief as may be deemed to be in the public interest.

Respectfully submitted,



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November 17, 2016

Attorneys for Respond Power LLC

Appendix A

12. PAYMENT AND BILLING

12.1 Customer Billing by the Company. All EGS charges to Customers, if billed by the Company, shall be billed in accordance with the EDC Tariff and the following provisions:

- (a) **Company Billing for EGS.** The Company will offer Rate Ready, Bill Ready and Dual Billing Capability to EGSs. The Rate Ready option will be limited to a flat rate per kWh and a percentage off Price to Compare pricing options. Nothing in this Tariff shall require the Company to manually bill more Customers within a rate class than it bills manually for its distribution service Customers. Notwithstanding the preceding sentence, if the Company's billing system has the capability to bill additional price plans offered by the EGS, the EGS may request the Company to consider doing all or some of the billing for the EGS's Customers based on the Customers' preferences. In those situations where the Company's billing system is unable to calculate the EGS charges under the pricing format being used by the EGS, the Company will provide the EGS with sufficient meter data on a timely basis. The EGS can then calculate the Customers' EGS charges and other billing information and present this information to the Company for its inclusion in the Customers' bills. The EGS will be responsible to the Company for any incremental costs associated with including such EGS charges and other billing information in the Customers' bills.
- (b) **Billing Files.** Where the EGS has requested the Company to act as the EGS's billing agent the Company shall electronically transmit files of billing detail daily to the EGS. Such files shall include the Customer account number, rate codes, usage information, demand and energy charges, sales tax, and other EGS charges.
- (c) **Budget Billing.** The Company will offer a budget billing option to all residential Customers when the Company provides Rate Ready Consolidated EDC Billing. Budget billing will be available for the Customer's total charges including EGS charges. The budget bill amount will be calculated consistent with the Company's retail tariff customers taking default service. EGSs will be paid the actual monthly charges, not the budget bill amount. However, the Company's billing system is incapable of aging receivables for more than one supplier per Customer.
- (d) **Sales Tax Exemption.** With respect to Customers receiving one bill from the Company, the EGS for whom the Company is billing must provide the applicable sales tax exemption percentage to the Company. If the percentage provided by the EGS for billing the EGS's charges is different from the percentage billed by the Company, the supplier must notify their Customer to select the Dual Billing option. The EGS is responsible for holding appropriate exemption certificates and is liable for the collection and remittance of sales tax on the EGS's charges.

- (e) **Company Reimbursement to EGS for Payments from Customers not included in Section 12.9 Purchase of Receivables Program.** Where the Company acts as the billing agent for the EGS, the Company shall reimburse the EGS for all energy charges, late fees, sales taxes, and other charges collected from Customers on behalf of the EGS on a daily basis.

The EGS assumes all risks of non-payment by a Customer and the Company is obligated to remit to the EGS only the difference between (a) amounts received from Customers taking service from the EGS and (b) any amounts owed to the Company by or with respect to such Customer. Any amount remitted by a Customer in excess of the total due and owing the Company and EGS will be held in the Customer's account with the Company for distribution in the following billing cycle(s) or, at the Customer's request, will be refunded to the Customer. In the event that any Customer checks are returned dishonored by a bank, the corresponding debits will be applied in inverse order to the order set forth above for the application of remittances. The Company will correct any misapplied payments or transactions. The Company will also provide the EGS an electronic file consisting of Customer payments and any returned checks and/or Customer adjustments.

Suppliers serving both industrial and commercial/residential Customers on Consolidated EDC Billing must provide a separate DUNs number for industrial Customers and a separate DUNs number for commercial/residential Customers.

- (f) **EGS Billing Data.** The EGS shall provide all necessary data in its possession for the timely generation of bills. A failure of the EGS to provide necessary data to the Company in a timely fashion may delay generation of a bill for the month to which the data pertains. In such instances, the EGS is responsible for all fines and violations, if any, arising as a consequence of the Company's inability to render a timely bill.

12.2 EGS Payment of Obligations to the Company. An EGS shall pay all Coordination Services Charges or any other charge it incurs hereunder in accordance with the following provisions:

- 12.2.1 Billing Procedure.** Each month, the Company shall submit an invoice to the EGS for all Coordination Service Charges provided under this Tariff. The invoice may be transmitted to the EGS by any reasonable method requested by the EGS. An EGS shall make payment for charges incurred on or before the due date shown on the bill. The due date shall be determined by the Company and shall not be less than fifteen (15) banking days from the date of transmittal of the bill.

12.2.2 Manner of Payment. The EGS shall make payments of funds payable to the Company by wire transfer to a bank designated in Rule 12.2.3. The Company may require that an EGS that has not met Creditworthiness tender payment by means of a certified, cashier's, tellers, or bank check, or by wire transfer, or other immediately available funds. If disputes arise regarding an EGS bill, the EGS must pay the undisputed portion of disputed bills under investigation.

12.2.3 Wire Transfer. Payment to the Company by the EGS must be made by electronic wire transfer or such other means as will cause payment to be available for the use by the Company on the due date. All payments shall be wire transferred to:

Bank:	JP Morgan Chase
ABA No.:	021000021
Account Name:	FirstEnergy Service Company
Account No.:	323396364

12.2.4 Late Fee for Unpaid Balances. If payment is made to the Company after the due date shown on the bill, a late fee will be added to the unpaid balance until the entire bill is paid. This late fee will be two percent (2%) per month on the unpaid balance.

12.2.5 EGS Default. In the event the EGS fails, for any reason other than a billing dispute as described below, to make payment to the Company on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Company notifies the EGS to cure such failure, a default by the EGS shall be deemed to exist. In the event of a billing dispute between the Company and the EGS, the Company will continue to provide service pursuant to the Coordination Agreement and the Tariff as long as the EGS continues to make all payments not in dispute. A billing dispute shall be dealt with promptly in accordance with the dispute resolution procedures set forth below in Rule 18.

12.2.5.1 EGS Offset. In the event an EGS is deemed to be delinquent under 12.2.5, the Company, may at its sole discretion, reduce the reimbursement to the EGS for amounts collected by the Company by the amount owed to the Company.

- 12.3 Billing for Supplier Obligations to Other Parties.** The Company will assume no responsibility for billing between an EGS and PJM or any party other than the Company.
- 12.4 Guarantee of Payments.** Before the Company will render service or continue to render service, the Company will require an applicant for Coordination Service or an EGS currently receiving such service that has Bad Credit to provide a cash deposit, letter of credit, or other guarantee, satisfactory to the Company. The Company will hold the deposit as security for the payment of final bills and compliance with the Company's Rules and Regulations. In addition, the Company may require an EGS to post a deposit at any time if the Company determines that the EGS no longer has Creditworthiness. An EGS shall have the right to submit to the Commission for resolution any reasonable credit dispute regarding such deposit, letter of credit, or other guarantee sought by the Company if the EGS believes such a requirement is inappropriately based or assessed.
- 12.5 Amount of Deposits.** The deposit shall be equal to the value of Coordination Services Charges the Company projects the EGS will incur during the next two (2) billing periods based on that EGS's forecasted load obligation.
- 12.6 Return of Deposits.** Upon discontinuance or termination of service, deposits will be returned with accrued interest upon payment of all service charges and guarantees or with deduction of unpaid accounts.
- 12.7 Interest on Deposits.** The Company will allow simple interest on cash deposits calculated at the lower of the Interest Index or six (6) percent. Deposits shall cease to bear interest upon discontinuance of service (or, if earlier, when the Company closes the account).
- 12.8 Credit Information.** In addition to information required otherwise hereunder, an EGS shall be required to provide to the Company such credit information as the Company requires.

(C)

12.9 Purchase of EGS Receivables (“POR”) Program. The Company will purchase the account receivables, associated with EGS sales of retail electricity supply comprised of electric energy, capacity, transmission and ancillary services. The program will be applicable to residential and commercial Customers on Consolidated EDC Billing under the following rate schedules: Residential Service RS, General Service GS-Volunteer Fire Company and Non-Profit Ambulance Service, Rescue Squad and Senior Center Service, General Service GS-Small, General Service GS-Medium, Municipal Service, Borderline Service, Street Lighting Service, Ornamental Street Lighting Service and Outdoor Lighting Service. The POR will be “non-recourse”, provided that the Company is able to bill EGSs for all fees as provided in Section 12.9(f). To the extent the Company has to provide any consumer protections other than those provided for under Chapter 14 of the Public Utility Code and Chapters 55 and 56 of the Commission’s regulations, 52 Pa. Code §§ 55.1 and 56.1 et. seq., the costs will be borne by the EGSs. The Company will purchase only those receivables that are associated with basic electric supply services and not receivables associated with charges for other products or services.

Suppliers serving both industrial and commercial/residential Customers on Consolidated EDC Billing would need a separate DUNs number for industrial Customers and a separate DUNs number for commercial/residential Customers. EGSs will not deny service to residential customers whose accounts are included in the POR program for credit-related reasons and will not ask residential customers for deposits separate from any deposit required by the Company pursuant to Chapter 14 and Commission regulations.

- (a) **Eligibility:** The POR program will be available only for EGSs who employ the Company’s Consolidated EDC Billing option. Participation in the Company’s POR program will be mandatory for any EGS that does employ the Consolidated EDC Billing option.
- (b) **Timing of Payments:** Payments to EGSs will be made based on the current amount that is billed and owed by the Customers and will be paid 40 days after invoicing the Customer. The POR payments to EGSs will not be discounted.

(C) Change

- (c) **Termination of Service:** The Company will have the ability to terminate service to a Customer for the Customer's non-payment of EGS Basic Electric Supply charges incurred after January 1, 2011 in the same manner and to the same extent that the Company could terminate service to such a Customer for non-payment of EDC charges. Residential Customers termination will be subject to the consumer protections included in Chapter 14 of the Public Utility Code, Chapters 55 and 56 of the Commission's regulations, 52 Pa. Code §§ 55.1 and 56.1 et. seq., and/or other applicable regulations as may change from time to time. The POR is only available as long as the Company is able to terminate service to Customers under Chapter 14 of the Public Utility Code and Chapters 55 and 56 of the Commission's regulations, 52 Pa. Code §§ 55.1 and 56.1 et. seq., and/or other applicable regulations as may change from time to time.
- (d) **Customer Complaints:** The Company will manage bill disputes related to purchased EGS receivables in the same manner as bill disputes related to Default Service, except that the Company will be permitted to suspend payment of the portion of an EGS receivable that is the subject of the formal or informal dispute proceeding before the Commission or an allegation made to the Company by a Customer: (i) that the Customer was placed on EGS service without Customer permission; or (ii) that the Customer's EGS rate is incorrect.
- (e) **Dispute Resolution:** To the extent concerns arise regarding the implementation of the provisions of the POR program, the parties shall attempt to resolve such disputes according to the dispute resolution procedures described in Section 18 of this Tariff. Parties also have the right to resolve such disagreements through the PaPUC's dispute resolution process.
- (f) **Administrative Fees:** Administrative costs incurred by the Company associated with consumer protections over and above those provided by Chapter 14 of the Public Utility Code and Chapters 55 and 56 of the Commission's regulations, 52 Pa. Code §§ 55.1 and 56.1 et. seq. as currently enacted, will be recovered from EGSs. Details of these costs and the charges derived there from shall be provided to EGSs at least 60 days in advance of the charge being implemented. Each EGS serving the residential and commercial load will receive a monthly bill with their share of the costs; any costs will be amortized over a twelve month period. The bill will be based on each EGS's load weighted share of the total shopping load for the month.

18. ALTERNATIVE DISPUTE RESOLUTION

18.1 Informal Resolution of Disputes. The Company and EGS shall use good faith and commercially reasonable efforts to informally resolve all disputes arising out of the implementation of this Tariff and/or the conduct of Coordination Activities hereunder. The EGS's point of contact for all information, operations, questions, and problems regarding Coordination Activities shall be the Company's Supplier Support Group.

18.2 Internal Dispute Resolution Procedures. Any dispute between the Company and an EGS under this Tariff or Coordination Agreement shall be referred to a designated senior representative of each of the parties for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days (or such other period as the parties may agree upon) such dispute, by mutual agreement, may be referred to mediation or may be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below.

18.3 External Arbitration Procedures. If the amount in dispute is \$500,000 or less, the arbitration initiated under the Tariff or any Coordination Agreement shall be conducted before a single neutral arbitrator appointed by the parties. If the parties fail to agree upon a single arbitrator within twenty (20) days of the referral of the dispute to arbitration the parties shall request the American Arbitration Association to appoint a single neutral arbitrator. If the amount in dispute exceeds \$500,000, each party shall choose one neutral arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days of their selection, select a third arbitrator to chair the arbitration panel. In any case, the arbitrators chosen shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association.

18.4 Arbitration Decisions. Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of their appointment and shall notify the parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the Tariff and any individual Coordination Agreement and shall have no power to modify or change any provisions in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court of competent jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in 42 Pa. C.S.A. § 7341. The final decision of the arbitrator must also be filed with FERC and PaPUC, if it affects their respective jurisdictional rates, terms and conditions of service or facilities.

18.5 Costs. Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable:

- (a) the cost of the arbitrator chosen by the party to sit on the three member panel and a proportionate share of the cost of the third arbitrator chosen; or
- (b) the proportionate share of the cost of the single arbitrator jointly chosen by the parties.

18.6 Rights Under the Federal Power Act. Nothing in this Section shall restrict the rights of any party to file a complaint with FERC under relevant provisions of the Federal Power Act.

18.7 Rights Under The Pennsylvania Public Utility Code. Nothing in this Section shall restrict the rights of any party to file a complaint with the PaPUC under relevant provisions of the Pennsylvania Public Utility Code.

Appendix B

October 28, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor - 1 North
Harrisburg, PA 17120

**Re: Pennsylvania Electric Company Electric Generation Supplier Coordination Tariff
Supplement No. 7, Electric Pa. P.U.C. No. S-1**

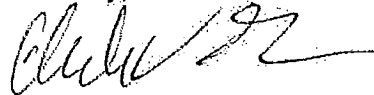
Dear Secretary Chiavetta:

Transmitted herewith for filing with the Pennsylvania Public Utility Commission ("Commission") is an original of Supplement No. 7 to Pennsylvania Electric Company's ("Penelec") Tariff Electric Pa. P.U.C. No. S-1¹ ("Supplement No. 7"). Supplement No. 7 is filed pursuant to the Commission's Final Order approving, without modification, the unopposed Joint Petition for Settlement ("Joint Petition") in the proceeding on Penelec's fourth Default Service Program ("DSP IV").² The Joint Petition was filed on April 1, 2016, and, on April 29, 2016, the presiding Administrative Law Judge had issued a Recommended Decision recommending its adoption and approval.

The Joint Petition included terms relating to various interactions between the Company and electric generation suppliers ("EGSs"), which were described in the Joint Petition and set forth in a supplier tariff appendix that was filed with the Joint Petition (*see* Joint Petition Exhibit F). As stated in the Joint Petition (p. 15, Section II.F.8.c.), the supplier tariff appendix had been reviewed and accepted by the Joint Petitioners.

It has recently come to Penelec's attention that, while the supplier tariff appendix had been filed with the Joint Petition and approved by the DSP IV Final Order, the revisions made by the supplier tariff appendix had not been memorialized in a formal compliance filing asking the Secretary's Bureau to include those provisions in Tariff Electric Pa. P.U.C. No. S-1. Accordingly, Supplement No. 7 is being filed to ensure that Tariff Electric Pa. P.U.C. No. S-1 reflects the revisions made by the Joint Petition to be effective, as approved by the Commission, as of August 1, 2016.³

Sincerely,



Charles V. Fullem
Director of Rates & Regulatory Affairs-PA
610-921-6525

Enclosures

c: Certificate of Service
Paul Diskin, TUS
Marissa Boyle, TUS
David Huff, TUS
All Registered Electric Generation Suppliers
Karen Moury, Eckert Seamans Cherin & Mellott, LLC, Counsel for Respond Power LLC

¹ Tariff Electric Pa. P.U.C., No. S-1 is Penelec's Electric Generation Supplier Coordination Tariff.

² *Petition of Pennsylvania Electric Company for Approval of a Default Service Program for the Period Beginning June 1, 2017, through May 31, 2019*, Docket No. P-2015-2511351 (May 19, 2016) ("DSP IV Final Order")

³ *See DSP IV Final Order*, Ordering Paragraph No. 2.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric	:	Docket No. P-2015-2511333
Company, Pennsylvania Power Company	:	P-2015-2511351
and West Penn Power Company for	:	P-2015-2511355
Approval of their Default Service	:	P-2015-2511356
Programs	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

VIA FIRST CLASS MAIL

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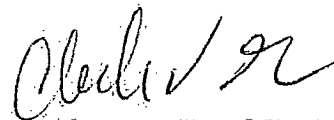
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Dated: October 28, 2016



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Supplement No. 7
Electric Pa P.U.C. No. S-1

PENNSYLVANIA ELECTRIC COMPANY

Electric Generation Supplier Coordination Tariff

Company Office Location

2800 Pottsville Pike
P. O. Box 16001
Reading, Pennsylvania 19612

Issued: October 28, 2016

Effective: August 1, 2016

Steven E. Strah, President

NOTICE

Supplement No. 7 makes changes to existing Rules and Regulations.

LIST OF MODIFICATIONS

Rules and Regulations

Modified Section 12.9, dealing with the Purchase of EGS Receivables (“POR”) Program, and added Section 12.9(g) to: (1) identify participating EGSs that (a) have a receivables write-off percentage exceeding the average for all EGSs, and (b) charge prices exceeding 150% of the price-to-compare; and (2) making associated revisions to the terms on which accounts receivable are purchased from EGSs thus identified. (See Second Revised Page No. 38 and First Revised Page No. 40.)

Added Section 12.9(h) specifying the conditions on which the Company will credit Customer Refunds by EGSs to accounts receivable purchased pursuant to the POR Program. (See First Revised Page No. 40.)

Moved Section 13.3 from Original Page No. 40 to First Revised Page No. 41.

(C)

12.9 Purchase of EGS Receivables (“POR”) Program. The Company will purchase the account receivables, associated with EGS sales of retail electricity supply comprised of electric energy, capacity, transmission and ancillary services. The program will be applicable to residential and commercial Customers on Consolidated EDC Billing under the following rate schedules: Residential Service RS, General Service GS-Volunteer Fire Company and Non-Profit Ambulance Service, Rescue Squad and Senior Center Service, General Service GS-Small, General Service GS-Medium, Municipal Service, Borderline Service, Street Lighting Service, Ornamental Street Lighting Service and Outdoor Lighting Service. Provided that the Company is able to bill EGSs for all fees as provided in Section 12.9(f), the POR will be “non-recourse”, except as provided for under Section 12.9(g). To the extent the Company has to provide any consumer protections other than those provided for under Chapter 14 of the Public Utility Code and Chapters 55 and 56 of the Commission’s regulations, 52 Pa. Code §§ 55.1 and 56.1 et. seq., the costs will be borne by the EGSs. The Company will purchase only those receivables that are associated with basic electric supply services and not receivables associated with charges for other products or services.

Suppliers serving both industrial and commercial/residential Customers on Consolidated EDC Billing would need a separate DUNs number for industrial Customers and a separate DUNs number for commercial/residential Customers. EGSs will not deny service to residential customers whose accounts are included in the POR program for credit-related reasons and will not ask residential customers for deposits separate from any deposit required by the Company pursuant to Chapter 14 and Commission regulations.

(a) **Eligibility:** The POR program will be available only for EGSs who employ the Company’s Consolidated EDC Billing option. Participation in the Company’s POR program will be mandatory for any EGS that does employ the Consolidated EDC Billing option.

(C)

(b) **Timing of Payments:** Payments to EGSs will be made based on the current amount that is billed and owed by the Customers and will be paid 40 days after invoicing the Customer. The POR payments to EGSs will be subject to the Clawback Provision provided for in Section 12.9(g) on a pilot basis through May 31, 2019.

(C) Change

(g) **Clawback Clause:** The Companies will apply a two-prong test to determine the clawback charge. The first test will identify those participating EGSs whose average percentage of write-offs as a percentage of revenues over the twelve-month period ending August 31st each year exceeds 200% of the average percentage of total EGS write-offs as a percentage of revenues per operating company. The second prong of the test will identify, of those EGSs identified in the first test, EGSs whose average price charged over the same twelve-month period exceeds 150% of the average price-to-compare for the prior 12-month period. For those EGSs identified by both prongs of the test, the annual clawback charge assessed beginning September 2016 and annually thereafter, would be the difference between that EGS's actual write-offs and 200% of the average EGS percentage of write-offs per operating company. The Company will bill the EGS for this charge in accordance with Section 12.2.

(h) **Customer Refunds:** A EGS refund will only be credited through the Companies' billing system after an EGS obtains the consent of a residential customer: (a) who is billed as part of the Companies' POR; and (b) to whom the EGS is willing to issue a refund to resolve a PaPUC formal or informal individual customer complaint; and (c) where the customer has an outstanding arrearage, owed to one of the Companies, that is associated with the dispute that is the subject of the informal or formal PaPUC complaint. The EGS will use good faith efforts to remit the refund directly to the EDC to offset any arrearages on the customer's account associated with the disputed amount. If the customer does not agree to have the refund remitted directly to the EDC, the EGS will remit payment to the customer and encourage the customer to address the outstanding arrearage directly with the EDC.

13. WITHDRAWAL BY EGS FROM RETAIL SERVICE

13.1 Notice of Withdrawal to the Company. An EGS shall provide electronic notice to the Company in a form specified by the Company of withdrawal by the EGS from Competitive Retail Electric Service in a manner consistent with the PaPUC's rulings in Docket No. M-00960890F.0013, and any subsequent applicable PaPUC rulings.

13.2 Notice to Customers. An EGS shall provide notice to its Customers of withdrawal by the EGS from Competitive Retail Electric Service in accordance with the PaPUC's rulings in Docket No. M-00960890F.0013 and any subsequent applicable PaPUC rulings.

(C) Change

13.3 Costs for Noncompliance. An EGS that withdraws from retail service and fails to provide at least ninety (90) days written notice of said withdrawal shall reimburse the Company for any of the following costs associated with the withdrawal:

- (a) mailings by the Company to the EGS's Customers to inform them of the withdrawal and their options;
- (b) non-standard/manual bill calculation and production performed by the Company;
- (c) EGS data transfer responsibilities that must be performed by the Company;
- (d) charges or penalties imposed on the Company by PJM or other parties resulting from EGS non-performance; and
- (e) any and all other out-of-pocket expenses incurred by the Company as a result of the withdrawal.

14. EGS'S DISCONTINUANCE OF SERVICE TO PARTICULAR CUSTOMERS

14.1 Notice of Discontinuance to the Company. An EGS shall provide electronic notice to the Company in a form specified by the Company of all intended discontinuance of service to a Customer in a manner consistent with applicable PaPUC rules, regulation or orders.

14.2 Notice to Customers. An EGS shall provide advanced notice to a Customer of withdrawal by the EGS from provision of Competitive Retail Electric Service to such customer in accordance with the PaPUC's rules, regulations or orders.

14.3 Effective Date of Discontinuance. Any discontinuance of Competitive Retail Electric Service to a Customer will be effective only on a Meter Read Date and in accordance with the EGS switching rules in this Tariff and the EDC Tariff.

(C) Change

VERIFICATION

I, Adam Small, state that I am the General Counsel for Respond Power LLC and authorized to make this verification on its behalf. I hereby state that the facts contained herein are true and correct (or are true and correct to the best of my knowledge, information and belief) and that 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.

Date: November 16, 2016



Adam Small
General Counsel
Respond Power LLC