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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. West Penn Power 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

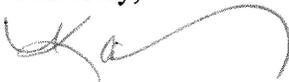
Petition of Respond Power LLC for Issuance of Ex Parte Emergency Order,
Docket No. P-2016-2572934

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 West Penn Power 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 Pennsylvania Electric 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

Via Email and First Class Mail

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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-
	:	
West Penn Power 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,



Karen O. Moury
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Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101
717.237.6036
kmoury@eckertseamans.com

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 West Penn Power Company (“West Penn” or “Company”) Tariff Electric Pa. P.U.C. No. 2S filed on October 28, 2016 with an effective date of August 1, 2016 (the “Supplier Tariff”). The Supplier Tariff of West Penn contains modifications to the Purchase of Receivables (“POR”) Program to include the implementation of a Clawback Charge in Section 12.4.2(l).

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 West Penn 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 West Penn of withholding POR payments -- for electric generation services already provided to customers -- to offset the Clawback Charge that it has 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, West Penn 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 West Penn 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. West Penn 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. West Penn 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, West Penn 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, West Penn included a brand new proposed Clawback Charge. By that proposal, West Penn 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 West Penn. 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 West Penn'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"), West Penn sent an invoice to Respond Power in the amount of \$178,907.06. 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 West Penn 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 West Penn 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 West Penn 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 West Penn by first class mail and electronic mail. Specifically, Respond Power petitioned the Commission for issuance of an Emergency Order directing West Penn 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 West Penn 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 West Penn 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, West Penn filed a Supplier Tariff containing the Clawback Charge.

26. On November 1, 2016, West Penn 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

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.

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 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 West Penn 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, West Penn 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

² 52 Pa. Code § 54.186(1).

³ 52 Pa. Code § 54.188.

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 West Penn 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 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 West Penn 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 West Penn 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, West Penn 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

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").

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.

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 West Penn, 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. West Penn 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 West Penn.

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 West Penn has made computational errors and imposed charges that violate the Supplier Tariff.

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

67. The Supplier Tariff does not authorize West Penn 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 12.4.2 of West Penn's Supplier Tariff provides that the Clawback Charge will be billed to the EGS in accordance with Section 12.7 of the Supplier Tariff. Section 12.7 addresses the payment obligations of registered EGSs to West Penn in accordance with the Electricity Supplier Fees Rider.⁵ Under Section 12.7.3, an EGS is only required to pay the

⁵

https://www.firstenergycorp.com/content/dam/customer/Customer%20Choice/Files/PA/tariffs/WPP_supplier_tariff.pdf (last accessed on November 16, 2016). Sections 12 and 18 of West Penn's Supplier Tariff, as appear on the website, are included in Appendix A, attached to the Complaint. At the time this tariff was last accessed on the website, it did not contain changes filed on October 28, 2016 and November 8, 2016, which are included in Appendix B, attached to the Complaint.

undisputed portion of disputed bills under investigation. When EGSs make late payments, Section 12.7.4 authorizes the addition of a late fee of 2% per month on the unpaid balance.

69. On November 8, 2016, West Penn filed a revised replacement Page No. 39 for its Supplier Tariff. In the cover letter, West Penn noted that the revisions included a correction to the header on Page No. 39, which had previously read “Second Revised Page No. 39,” and should have read “Third Revised Page No. 39.” Also, in that replacement Page No. 39, West Penn included new language in Section 12.7.1, Billing Procedure, which was not in the original DSP filing or in the October 28, 2016 filing. Further, it was not in the Supplier Tariff changes that were included in Exhibit H attached to the Commission-approved Settlement. This language states: “The Company has the right to withhold from the Purchases of Receivables (“POR”) payment an amount equal to any **undisputed** outstanding an unpaid balance in excess of thirty (30) or more days associated with EGS obligations to the Company as provided for in Section 12.7.” (emphasis added).

70. West Penn’s inclusion of language in Section 12.7.1 on November 8, 2016 purporting to claim the right to withhold unpaid EGS balances from POR payments is not consistent with the Commission-approved Settlement and is nothing more than a belated attempt to provide authority for the self-help remedy that it sought to impose on Respond Power in October 2016. This effort demonstrates West Penn’s own view that it did not have such authority under the previous tariff language. Further, even under this new language, it may not withhold disputed balances from POR payments.

71. Section 18 of West Penn’s Supplier Tariff requires West Penn and EGSs to use good faith and commercially reasonable efforts to informally resolve all disputes. If the designated representatives of West Penn 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

72. 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.

73. Rather than engaging in a dispute resolution process with Respond Power, West Penn 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.

74. 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.

75. 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 West Penn from applying the September 2016 Clawback Charge in the Supplier Tariff to Respond Power;
3. Prohibit West Penn 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

11. CONFIDENTIALITY OF INFORMATION

- 11.1 Company Information.** All confidential or proprietary Company information made available by the Company to an EGS in connection with the provision of Coordination Services, including but not limited to load data, and information regarding the business processes of the Company and the computer and communication systems owned or leased by the Company, shall be used only for purposes of receiving Coordination Services and/or providing Competitive Generation Service to Customers in the Company's Pennsylvania service territory. Other than disclosures to EGS representatives for the purpose of enabling an EGS to fulfill its obligations under the EGS Tariff or provide Competitive Generation Service to Customers in the Company's Pennsylvania service territory, an EGS may not disclose confidential or proprietary Company information without the Company's prior authorization and/or consent.
- 11.2 Customer Information.** The Company will provide to the EGS Customer-specific information pursuant to Rule 5. The EGS shall keep all Customer-specific information supplied by the Company confidential unless the EGS has the Customer's authorization to do otherwise.

12. PAYMENT AND BILLING

- 12.1 Billing Services Selection and Change.** To the extent offered by the Registered EGS, the Customer has the option to choose whether the Company will render a consolidated bill (including Company and Registered EGS charges) or whether to have separate bills from the Company and the Registered EGS. The Registered EGS shall notify the Company of the choice of billing service option when notifying the Company of the Customer's enrollment.
- 12.1.1 Billing Services Options.** Registered EGSs will have the opportunity to choose from the following billing service options:
- (a) Dual Billing
 - (b) Company Consolidated Billing - Rate Ready Option
 - (c) Company Consolidated Billing - Bill Ready Option

- 12.1.2 Notification of Billing Service Option Change.** If the Registered EGS changes its billing service option for a Customer after initial Customer enrollment, the Registered EGS must notify the Company of the change at least seven (7) days prior to the Customer's scheduled Meter Read Date. If the Registered EGS fails to notify the Company seven (7) days prior to the Customer's scheduled Meter Read Date, the billing service option change will take effect on the next scheduled Meter Read Date.
- 12.1.3 Change of Billing Service Options Offered.** A Registered EGS who adds or deletes a billing service option that it offered when Competitive Generation Service is initiated pursuant to the EGS Tariff shall provide sixty (60) calendar days notice to its affected Customers and the Company, prior to implementing the addition/deletion.
- 12.2 Meter Reading Information.** The Company is responsible for reading the Customer's meter. Accurate and timely meter read data that will allow a Registered EGS to bill Customers in a timely manner for Competitive Generation Service that is consistent with the load obligation assigned to the Registered EGS by the Company, will be shared electronically between the Registered EGS and the Company
- 12.2.1 Estimated Meter Read.** In the event an actual meter reading cannot be obtained, the Company shall estimate the Customer's consumption for billing purposes for the applicable period in accordance with PUC approved procedures.
- 12.2.2 Meter Read Data.** The Company will normally provide the Registered EGS with actual or estimated meter read data within three (3) days of the Meter Read Date.
- 12.3 Dual Billing.** The Company will calculate its charges, prepare its bill, and render its bill consistent with its EDC Tariff standard billing practices. This billing method is the sole responsibility of the Company and its Customers, and is independent of the Registered EGS billing. The Registered EGS will calculate its charges, prepare its bill, and render its bill consistent with its standard billing practices. The Company has no obligations regarding accuracy of Registered EGS charges or related payment disputes.
- 12.3.1 Customer Billing Complaints.** The Company shall process all complaints and Customer services regarding the bill rendered by the Company in accordance with applicable regulations and performance specifications. The Registered EGS shall process all complaints and Customer services regarding the bill rendered by the Registered EGS in accordance with applicable regulations and performance specifications.

12.4 Company Consolidated Billing. The Company shall render a Company Consolidated Bill as provided below.

12.4.1 Billing Format. If the Registered EGS chooses to have the Company render a consolidated bill, the Registered EGS must provide the applicable billing information to the Company pursuant to the terms and conditions as follows:

12.4.1.1 Rate Ready Option. Under this billing service option the Company will calculate both the Company and Registered EGS charges and render a consolidated bill to the Customer.

- (C)
- (a) A Registered EGS must submit "Standard Rate" program data to the Company at least fourteen (14) days in advance of submitting Customers on a Rate Ready Option. Each EGS will not submit more than two hundred (200) discrete rates for implementation to the Company during each calendar quarter.
 - (b) "Standard Rate" program structures including fixed cents per kWh rates will be available starting from \$0.0500 through \$0.1199 per kWh in \$0.0001 increments, up to four decimal place precision. A standard "percent off" of shopping rates will be available from 1.0% through 50.0% off the "Price to Compare", in 0.5% increments. The term "Price to Compare" shall be consistent with PUC rules and regulations. The Company and Registered EGS may negotiate and mutually agree to utilize more diverse rate structures for the Rate Ready Option. Any rate design(s) other than those specified in this Rule may delay power flow to a Customer billed under Company Consolidated Billing.
 - (c) Unused rate programs will be removed by the Company after one hundred eighty (180) days, provided that the Company will notify the Registered EGS before removing unused rate programs.
 - (d) Customers will be rendered a bill for Registered EGS and Company charges normally within three (3) Business Days of the meter reading.

12.4.1.2 Bill Ready Option. Under this billing service option the Registered EGS receives the usage information from the Company and calculates its Customer charges accordingly. The Registered EGS then sends its charges to the Company to be placed on the same bill as the Company charges.

(C) Change

- (a) The Registered EGS must calculate and send its Customer charges to the Company within three (3) Business Days of receipt of the meter read data. If the Registered EGS fails to transmit its Customer charges to the Company in the required timeframe, the Company will not include the Registered EGS's Customer charges on the bill for that period. The Company will place the previous Month Customer charges on a future consolidated bill provided that the Registered EGS: (i) transmits the previous Month Customer charges in accordance with standard EDI practices; and (ii) sends its previous Month Customer charges to the Company within three (3) Business Days of receipt of future meter read data.
- (b) The Company will not be liable for the Registered EGS's charges or losses, damages or consequential damages associated with the Registered EGS's Customers not being billed for the Registered EGS's charges for that period.
- (c) The Registered EGS is responsible for the bill content transmitted to the Company.

(C)

12.4.2 Purchase of Receivables ("POR") Program. When a Registered EGS elects to use Company Consolidated Billing, the Company will purchase the Registered EGS's Basic Electric Supply receivables. The POR program will be applicable to residential and small commercial Customers served under the following retail rate schedules of the EDC Tariff: Schedules 10, 20, 30, 51, 52, 53, 54, 55, 56, 57, 58, and 71 and pursuant to the terms and conditions as follows:

- (a) All Registered EGS Basic Electric Supply charges for residential and small commercial Customers billed using Company Consolidated Billing will be purchased at 100%, and will become the Company's charges on the day the bill is rendered.
- (b) In the event a Registered EGS converts a Customer from Company Consolidated Billing to Dual Billing, the Registered EGS and Company will each be responsible for its receivables effective as of the start of Dual Billing. EGSs' receivables incurred as a result of a Customer billed under a Dual Billing arrangement will not be included in the POR program.
- (c) Company payments to EGSs will be made based on current charges applicable for the current month of service that is billed to and owed by the Customers, and will be paid to the Registered EGSs forty (40) days after the issued date of the Company Consolidated Bill. The POR payments to EGSs will not be discounted.

(C) Change

- (d) The Company will make payments of funds payable to the Registered EGS via electronic payment to a bank designated by the Registered EGS. Wire transfer of funds will be made per relevant PUC orders unless other terms are mutually agreed upon.
- (e) Purchased receivables will be treated in the same manner as other Company charges pursuant to the EDC Tariff. A Registered EGS offering Company Consolidated Billing to its Customers acknowledges and agrees that the Company is: (i) entitled to receive and retain all payments from the Registered EGS's Customers for purchased receivables; and (ii) authorized to conduct collection activities and, if necessary, terminate its delivery service and the Registered EGS's Competitive Generation Service to Customers whose receivables were purchased and who fail to make payment of amounts due on the Company Consolidated Bill, including the full amount of the purchased receivables. Any Customer service termination shall be consistent with the provisions of Chapter 14 of the Pennsylvania Public Utility Code and Chapter 56 (or a successor chapter) of the PUC's regulations. Any Customer whose service is terminated for failure to pay Company Consolidated Billing charges shall be reconnected to the Registered EGS of record upon payment of arrears that were subject to the termination (plus any applicable reconnection fees or deposits); provided however, that such payment is made no later than ten (10) days after termination of service. Should Customer remit payment of arrears that were subject to the termination (plus any applicable reconnection fees or deposits) more than ten (10) days after the termination of service, the Customer shall be reconnected to Default Service.
- (f) In the event a Customer disputes a Registered EGS's charges and notifies the Company, the Company can withhold the disputed amount from that Registered EGS until such time that the Company is notified that the dispute has been resolved.
- (g) For the Rate Ready Option and Bill Ready Option of Company Consolidated Billing, the Customer's Average Payment Plan billing will be adjusted to reflect the Company's regulated non-Basic Electric Supply charges and the full amount of the Registered EGS charges. (C)
- (h) The Company shall also purchase receivables of Registered EGS Customers based upon an estimated bill.
- (i) The Company shall add to or deduct from any payments due to a Registered EGS amounts that may result from reconciliations, adjustments or recalculations of Average Payment Plans, estimated readings, cancel and rebills, or any applicable billing adjustment.

(C) Change

(C)

- (j) The Company will only purchase Basic Electric Supply charges. Upon request, a Registered EGS shall provide a written certification to the Company that the Registered EGS is providing only Basic Electric Supply to Customers billed under Company Consolidated Billing. If a Registered EGS is providing a Customer with a service or product that does not meet the definition of Basic Electric Supply, the Registered EGS shall be permitted to issue a separate bill for such service or product in accordance with Dual Billing for that Customer if it provides written certification to the Company that the service or product cannot be billed under Company Consolidated Billing.
- (k) Registered EGSs will not deny service to residential Customers whose accounts are included in the Company's purchase of receivables program for credit-related reasons and will not ask for deposits separate from any deposit required by the Company pursuant to PUC regulations and Act 201.

12.4.3 Billing and Payment Data Access. The Company and the Registered EGS shall transmit consumption, billing, and related data to each other using EDI transactions for the purpose of Company Consolidated Billing.

- (a) The Company shall remit Registered EGS revenue and billing data to the Registered EGS by EDI transaction.
- (b) The Registered EGS shall have access to Customer billing and payment information from the Registered EGS for the Registered EGS's presently enrolled Customers at no cost.

12.4.4 Bill Due Dates. Under Company Consolidated Billing, the Registered EGS must adopt the same bill due date as assigned by the Company. Most bill due dates will be in accordance with the Company's published bill schedule.

12.4.4.1 Exceptions to Bill Due Date Provisions. For Customers eligible for, and participating in, the Company's Summary Billing, meter read data is collected on its regular schedule, but the billing date and due date is adjusted to allow multiple accounts to be summarized and due on the same date. Summary Billing is a billing method that lists multiple Customer accounts on one bill statement and is only available for Dual Billing and the Rate Ready Option of Company Consolidated Billing.

(C) Change

12.4.5 Responsibilities in the Event of Registered EGS Default. A Registered EGS in Default using Company Consolidated Billing remains obligated to provide the Company with information necessary to allow the Company to continue Company Consolidated Billing through the conclusion of the billing cycle in which the Default occurred. The Registered EGS in Default is prohibited from issuing bills to Customers at the time of the Default unless specifically authorized by the PUC.

12.5 Billing and Payment Programs. The following programs will continue to be offered by the Company.

12.5.1 Average Payment Plan. The Monthly amount is calculated based on the most recent twelve (12) month history and may adjust with each meter reading.

- (a) The Company will continue to offer residential Customers the Average Payment Plan for its charges in accordance with the EDC Tariff.
- (b) When a Registered EGS of a Customer chooses to use Dual Billing, the Customer's Average Payment Plan will be adjusted to reflect the Company's regulated non-Basic Electric Supply charges only.
- (c) Customers seeking to enroll in, or terminate from, the Average Payment Plan must do so by contacting the Company.

12.6 Taxes. In accordance with PUC procedures, the entity that originates the charge is responsible for, and shall remit and file taxes applicable to its charges.

12.6.1 Company Tax Responsibilities. The Company is responsible for calculation, collection, and remittance of gross receipt taxes, franchise tax on delivery service, and state and local energy taxes assessed on delivery service or other products and services provided by the Company.

12.6.2 Supplier Tax Responsibilities. The Registered EGS is responsible for calculation, collection, and remittance of gross receipts taxes and state and local energy taxes assessed on all products and services provided by the Registered EGS.

(C)

12.6.3 Tax Exemptions. Where Customers are exempt from taxes, it is the responsibility of both the Company and the Registered EGS to each acquire any required Tax Exemption Certificate from the Customer. In the event of a discrepancy between the Company's tax exempt status for the Customer and the tax exempt status submitted by the Registered EGS, the Registered EGS will provide a new correctly completed and executed Tax Exemption Certificate to the Company, indicating Company as seller, should the Customer wish to request a change in the Customer's tax exempt status. Otherwise, the Company will continue to apply the tax exemption of record to both the Company's and the Registered EGS's charges. For Customers utilizing the Rate Ready Option, the Company will apply the tax exempt status that it employs for Company charges, and the Company will provide a copy of the executed Tax Exemption Certificate to the Registered EGS should the Customer change their tax exempt status after initial enrollment; thereby, requiring the Registered EGS to acquire an updated Tax Exemption Certificate from the Customer.

12.7 Registered EGS Payment Obligations to the Company. A Registered EGS shall pay any charges it incurs in accordance with the Electricity Supplier Fees Rider.

12.7.1 Billing Procedure. Each month, the Company shall submit an invoice to the Registered EGS for any charges incurred in accordance with the Electricity Supplier Fees Rider. The invoice may be transmitted to the Registered EGS by any reasonable method requested by the Registered EGS. A Registered 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) days from the date of transmittal of the bill.

12.7.2 Billing Corrections and Estimated Billings. Notwithstanding anything stated herein: (1) bills shall be subject to adjustment for any errors in arithmetic, computation, estimating or other errors for a period of six (6) months from the date of such original monthly billing; and (2) the Company shall be entitled to submit estimated bills (subject to correction) in the event of circumstances that limit the timely availability of necessary data.

12.7.3 Manner of Payment. The Registered EGS may make payment of funds payable to the Company by wire transfer to a bank designated by the Company. The Company may require that a Registered EGS that is not Creditworthy tender payment by means of a certified, cashier's, teller's, or bank check, or by wire transfer, or other immediately available funds. If disputes arise regarding a Registered EGS bill, the Registered EGS must pay the undisputed portion of disputed bills under investigation.

(C) Change

12.7.4 Late Fee for Unpaid Balances. If payment by the Registered EGS 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 2% per month on the unpaid balance. A billing dispute shall be dealt with promptly in accordance with the dispute resolution procedures set forth in Rule 18.

12.7.5 Registered EGS Default. In the event the Registered EGS fails 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 Registered EGS to cure such failure, a Default by the Registered EGS shall be deemed to exist. In the event of a billing dispute between the Company and the Registered EGS, the Company will continue to provide service pursuant to the Individual Coordination Agreement and the EGS Tariff as long as the Registered EGS continues to make all payments. A billing dispute shall be dealt with promptly in accordance with the dispute resolution procedures set forth in Rule 18.

12.7.6 State Tax Indemnification. If the Company becomes liable under the Public Utility Code for Pennsylvania State taxes not paid by a Registered EGS, the non-compliant Registered EGS shall indemnify the Company for the amount of additional state tax liability imposed upon the Company by the Pennsylvania Department of Revenue due to the failure of the Registered EGS to pay or remit to Pennsylvania the tax imposed on its gross receipts.

12.8 Billing for Registered EGS Obligations to Other Parties. The Company will assume no responsibility for billing between a Registered EGS and any energy source or a Scheduling Coordinator and any Coordinated Suppliers.

13. WITHDRAWAL BY REGISTERED EGS FROM RETAIL SERVICE

13.1 Notice of Withdrawal to the Company. A Registered EGS shall provide electronic notice to the Company in a form specified by the Company of withdrawal by the Registered EGS from retail service in a manner consistent with the PUC's rulings in Docket No. M-00960890, and any subsequent applicable PUC rulings.

13.2 Notice to Customers. A Registered EGS shall provide notice to its Customers of withdrawal by the Registered EGS from retail service in accordance with the PUC's rulings in Docket No. M-00960890 and any subsequent applicable PUC rulings.

17. TERMINATION OF INDIVIDUAL COORDINATION AGREEMENT

17.1 Termination. An Individual Coordination Agreement will or may be terminated as follows:

- (a) **Withdrawal of the Registered EGS from Retail Service.** In the event the Registered EGS ceases to participate in or otherwise withdraws the provision of Competitive Generation Service to Customers in the Company's Pennsylvania service territory, the Individual Coordination Agreement between the Registered EGS and the Company shall terminate thirty (30) days following the date on which the Registered EGS has no more active Customers and has provided the notice of withdrawal indicated in Rule 13.1 (whichever occurs later).
- (b) **The Company's Termination Rights Upon Default by a Registered EGS.** In the event of a Default by a Registered EGS, the Company may terminate the Individual Coordination Agreement between the Registered EGS and the Company by providing written notice to the Registered EGS in Default, without prejudice to any remedies at law or in equity available to the party not in Default by reason of the Default.

17.2 Effect of Termination. Termination of Individual Coordination Agreements will have the same effect on a Registered EGS's Customers as the Registered EGS's discontinuance of Competitive Generation Service to such Customers. If a Customer of a terminated EGS has not switched to another Registered EGS prior to termination, said Customer will receive Default Service pending its selection of another Registered EGS.

17.3 Survival of Obligations. Termination of an Individual Coordination Agreement for any reason shall not relieve the Company or a Registered EGS of any obligation accrued or accruing prior to such termination.

18. ALTERNATIVE DISPUTE RESOLUTION

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

- 18.2 Internal Dispute Resolution Procedures.** Any dispute between the Company and a Registered EGS under the EGS Tariff or Individual 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 in accordance with the Code of Conduct in the EDC Tariff, or either party may unilaterally submit the dispute to arbitration to be 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 EGS Tariff or any Individual 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 EGS 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 set forth in 42 Pa. C.S. § 7341. The final decision of the arbitrator must also be filed with the FERC and the PUC, 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) A proportionate share of the cost of the single arbitrator jointly chosen by the parties.
- 18.6 Rights Under the Federal Power Act.** Nothing in Rule 18 shall restrict the rights of any party to file a complaint with the FERC under relevant provisions of the Federal Power Act or to initiate other compliant procedures permitted by the FERC. In addition, nothing contained herein shall be construed as affecting in any way the right of the Company to unilaterally make application to the FERC for a change, under Section 205 of the Federal Power Act, in the charges specified herein that are subject to the jurisdiction of the FERC.
- 18.7 Rights Under the Pennsylvania Public Utility Code.** Nothing in Rule 18 shall restrict the rights of any party to file a complaint with the PUC under relevant provisions of the Pennsylvania Public Utility Code.

19. MISCELLANEOUS

- 19.1 Notices.** Unless otherwise stated herein, any notice contemplated by the EGS Tariff shall be in writing and shall be given to the other party at the addresses stated in the notice section of the Individual Coordination Agreement. If given by electronic transmission (including fax or Internet e-mail), notice shall be deemed given on the date sent and shall be confirmed by a written copy sent by mail. If sent in writing by first class United States mail, notice shall be deemed given on the fifth Business Day following deposit in the United States mail (as noted by the postmark), properly addressed, with postage prepaid. If sent by same-day or overnight delivery service, notice shall be deemed given on the day of delivery. The Company and a Registered EGS may change their representative for receiving notices contemplated by the EGS Tariff by delivering written notice of their new representatives to the other.
- 19.2 No Prejudice of Rights.** The failure by either the Company or the Registered EGS to enforce any of the terms of the EGS Tariff or any Individual Coordination Agreement shall not be deemed a waiver of the right of either to do so.
- 19.3 Gratuities to Employees.** The Company's employees are strictly forbidden to demand or accept any personal compensation, or gifts, for service rendered by them while working for the Company on the Company's time.

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: West Penn Power Company Electric Generation Supplier Coordination Tariff
Supplement No. 9, Electric Pa. P.U.C. No. 2S**

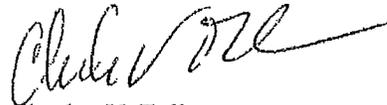
Dear Secretary Chiavetta:

Transmitted herewith for filing with the Pennsylvania Public Utility Commission ("Commission") is an original of Supplement No. 9 to West Penn Power Company's ("West Penn") Tariff Electric Pa. P.U.C. No. 2S¹ ("Supplement No. 9"). Supplement No. 9 is filed pursuant to the Commission's Final Order approving, without modification, the unopposed Joint Petition for Settlement ("Joint Petition") in the proceeding on West Penn'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 H). 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 West Penn'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. 2S. Accordingly, Supplement No. 9 is being filed to ensure that Tariff Electric Pa. P.U.C. No. 2S 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. 2S is West Penn's Electric Generation Supplier Coordination Tariff.

² *Petition of West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2017, through May 31, 2019*, Docket No. P-2015-2511356 (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

The Honorable David A. Salapa
Administrative Law Judge
Pennsylvania Public Utility Commission
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Dated: October 28, 2016



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WEST PENN POWER COMPANY

ELECTRIC GENERATION SUPPLIER COORDINATION TARIFF

800 Cabin Hill Drive
Greensburg, PA 15601

Issued: October 28, 2016

Effective: August 1, 2016

Issued By: Steven E. Strah, President

LIST OF MODIFICATIONS

Rules and Regulations

Modified Section 12.4.2(c), dealing with the Purchase of EGS Receivables ("POR") Program, and added Section 12.4.2(l) 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 Third Revised Page No. 35 and Second Revised Page No. 37).

Added Section 4.2(m) specifying the conditions on which the Company will credit Customer Refunds by EGSs to accounts receivable purchased pursuant to the POR Program. (See Second Revised Page No. 37).

Moved Sections 12.4.3 and 12.4.4 from First Revised Page No. 37 to First Revised Page No. 38.

Moved Section 12.6 from Original Page No. 38 to Second Revised Page No. 39.

Moved Section 12.7.3 from First Revised Page No. 39 to First Revised Page No. 40.

Added Section 12.7.5.1 to address the Company's actions in the event an EGS fails to make payment to the Company (See First Revised Page No. 40).

Moved Section 13 from Original Page No. 40 to First Revised Page No. 41.

- (a) The Registered EGS must calculate and send its Customer charges to the Company within three (3) Business Days of receipt of the meter read data. If the Registered EGS fails to transmit its Customer charges to the Company in the required timeframe, the Company will not include the Registered EGS's Customer charges on the bill for that period. The Company will place the previous Month Customer charges on a future consolidated bill provided that the Registered EGS: (i) transmits the previous Month Customer charges in accordance with standard EDI practices; and (ii) sends its previous Month Customer charges to the Company within three (3) Business Days of receipt of future meter read data.
- (b) The Company will not be liable for the Registered EGS's charges or losses, damages or consequential damages associated with the Registered EGS's Customers not being billed for the Registered EGS's charges for that period.
- (c) The Registered EGS is responsible for the bill content transmitted to the Company.

12.4.2 Purchase of Receivables ("POR") Program. When a Registered EGS elects to use Company Consolidated Billing, the Company will purchase the Registered EGS's Basic Electric Supply receivables. The POR program will be applicable to residential and small commercial Customers served under the following retail rate schedules of the EDC Tariff: Schedules 10, 20, 30, 51, 52, 53, 54, 55, 56, 57, 58, and 71 and pursuant to the terms and conditions as follows:

- (a) All Registered EGS Basic Electric Supply charges for residential and small commercial Customers billed using Company Consolidated Billing will be purchased at 100%, and will become the Company's charges on the day the bill is rendered.
- (b) In the event a Registered EGS converts a Customer from Company Consolidated Billing to Dual Billing, the Registered EGS and Company will each be responsible for its receivables effective as of the start of Dual Billing. EGSs' receivables incurred as a result of a Customer billed under a Dual Billing arrangement will not be included in the POR program.
- (c) Company payments to EGSs will be made based on current charges applicable for the current month of service that is billed to and owed by the Customers, and will be paid to the Registered EGSs forty (40) days after the issued date of the Company Consolidated Bill. The POR payments to EGSs will be subject to the Clawback Provision provided for in Section 12.4.2(l) on a pilot basis through May 31, 2019.

(C) Change

- (j) The Company will only purchase Basic Electric Supply charges. Upon request, a Registered EGS shall provide a written certification to the Company that the Registered EGS is providing only Basic Electric Supply to Customers billed under Company Consolidated Billing. If a Registered EGS is providing a Customer with a service or product that does not meet the definition of Basic Electric Supply, the Registered EGS shall be permitted to issue a separate bill for such service or product in accordance with Dual Billing for that Customer if it provides written certification to the Company that the service or product cannot be billed under Company Consolidated Billing.
- (k) Registered EGSs will not deny service to residential Customers whose accounts are included in the Company's purchase of receivables program for credit-related reasons and will not ask for deposits separate from any deposit required by the Company pursuant to PUC regulations and Act 201.
- (l) 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 12.7. (C)
- (m) 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. (C)

(C) Change

(C)

12.4.3 Billing and Payment Data Access. The Company and the Registered EGS shall transmit consumption, billing, and related data to each other using EDI transactions for the purpose of Company Consolidated Billing.

- (a) The Company shall remit Registered EGS revenue and billing data to the Registered EGS by EDI transaction.
- (b) The Registered EGS shall have access to Customer billing and payment information from the Registered EGS for the Registered EGS's presently enrolled Customers at no cost.

12.4.4 Bill Due Dates. Under Company Consolidated Billing, the Registered EGS must adopt the same bill due date as assigned by the Company. Most bill due dates will be in accordance with the Company's published bill schedule.

12.4.4.1 Exceptions to Bill Due Date Provisions. For Customers eligible for, and participating in, the Company's Summary Billing, meter read data is collected on its regular schedule, but the billing date and due date is adjusted to allow multiple accounts to be summarized and due on the same date. Summary Billing is a billing method that lists multiple Customer accounts on one bill statement and is only available for Dual Billing and the Rate Ready Option of Company Consolidated Billing.

12.4.5 Responsibilities in the Event of Registered EGS Default. A Registered EGS in Default using Company Consolidated Billing remains obligated to provide the Company with information necessary to allow the Company to continue Company Consolidated Billing through the conclusion of the billing cycle in which the Default occurred. The Registered EGS in Default is prohibited from issuing bills to Customers at the time of the Default unless specifically authorized by the PUC.

12.5 Billing and Payment Programs. The following programs will continue to be offered by the Company.

12.5.1 Average Payment Plan. The Monthly amount is calculated based on the most recent twelve (12) month history and may adjust with each meter reading.

- (a) The Company will continue to offer residential Customers the Average Payment Plan for its charges in accordance with the EDC Tariff.
- (b) When a Registered EGS of a Customer chooses to use Dual Billing, the Customer's Average Payment Plan will be adjusted to reflect the Company's regulated non-Basic Electric Supply charges only.
- (c) Customers seeking to enroll in, or terminate from, the Average Payment Plan must do so by contacting the Company.

(C) Change

12.6 Taxes. In accordance with PUC procedures, the entity that originates the charge is responsible for, and shall remit and file taxes applicable to its charges. (C)

12.6.1 Company Tax Responsibilities. The Company is responsible for calculation, collection, and remittance of gross receipt taxes, franchise tax on delivery service, and state and local energy taxes assessed on delivery service or other products and services provided by the Company.

12.6.2 Supplier Tax Responsibilities. The Registered EGS is responsible for calculation, collection, and remittance of gross receipts taxes and state and local energy taxes assessed on all products and services provided by the Registered EGS.

12.6.3 Tax Exemptions. Where Customers are exempt from taxes, it is the responsibility of both the Company and the Registered EGS to each acquire any required Tax Exemption Certificate from the Customer. In the event of a discrepancy between the Company's tax exempt status for the Customer and the tax exempt status submitted by the Registered EGS, the Registered EGS will provide a new correctly completed and executed Tax Exemption Certificate to the Company, indicating Company as seller, should the Customer wish to request a change in the Customer's tax exempt status. Otherwise, the Company will continue to apply the tax exemption of record to both the Company's and the Registered EGS's charges. For Customers utilizing the Rate Ready Option, the Company will apply the tax exempt status that it employs for Company charges, and the Company will provide a copy of the executed Tax Exemption Certificate to the Registered EGS should the Customer change their tax exempt status after initial enrollment; thereby, requiring the Registered EGS to acquire an updated Tax Exemption Certificate from the Customer.

12.7 Registered EGS Payment Obligations to the Company. A Registered EGS shall pay any charges it incurs in accordance with the Electricity Supplier Fees Rider.

12.7.1 Billing Procedure. Each month, the Company shall submit an invoice to the Registered EGS for any charges incurred in accordance with the Electricity Supplier Fees Rider. The invoice may be transmitted to the Registered EGS by any reasonable method requested by the Registered EGS. A Registered 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) days from the date of transmittal of the bill.

12.7.2 Billing Corrections and Estimated Billings. Notwithstanding anything stated herein: (1) bills shall be subject to adjustment for any errors in arithmetic, computation, estimating or other errors for a period of six (6) months from the date of such original monthly billing; and (2) the Company shall be entitled to submit estimated bills (subject to correction) in the event of circumstances that limit the timely availability of necessary data.

(C) Change

(C)

12.7.3 Manner of Payment. The Registered EGS may make payment of funds payable to the Company by wire transfer to a bank designated by the Company. The Company may require that a Registered EGS that is not Creditworthy tender payment by means of a certified, cashier's, teller's, or bank check, or by wire transfer, or other immediately available funds. If disputes arise regarding a Registered EGS bill, the Registered EGS must pay the undisputed portion of disputed bills under investigation.

12.7.4 Late Fee for Unpaid Balances. If payment by the Registered EGS 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 2% per month on the unpaid balance. A billing dispute shall be dealt with promptly in accordance with the dispute resolution procedures set forth in Rule 18.

12.7.5 Registered EGS Default. In the event the Registered EGS fails 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 Registered EGS to cure such failure, a Default by the Registered EGS shall be deemed to exist. In the event of a billing dispute between the Company and the Registered EGS, the Company will continue to provide service pursuant to the Individual Coordination Agreement and the EGS Tariff as long as the Registered EGS continues to make all payments. A billing dispute shall be dealt with promptly in accordance with the dispute resolution procedures set forth in Rule 18.

(C)

12.7.5.1 EGS Offset. In the event an EGS is deemed to be delinquent under 12.7.5, 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.

12.7.6 State Tax Indemnification. If the Company becomes liable under the Public Utility Code for Pennsylvania State taxes not paid by a Registered EGS, the non-compliant Registered EGS shall indemnify the Company for the amount of additional state tax liability imposed upon the Company by the Pennsylvania Department of Revenue due to the failure of the Registered EGS to pay or remit to Pennsylvania the tax imposed on its gross receipts.

12.8 Billing for Registered EGS Obligations to Other Parties. The Company will assume no responsibility for billing between a Registered EGS and any energy source or a Scheduling Coordinator and any Coordinated Suppliers.

(C) Change

(C)

13. WITHDRAWAL BY REGISTERED EGS FROM RETAIL SERVICE

- 13.1 Notice of Withdrawal to the Company.** A Registered EGS shall provide electronic notice to the Company in a form specified by the Company of withdrawal by the Registered EGS from retail service in a manner consistent with the PUC's rulings in Docket No. M-00960890, and any subsequent applicable PUC rulings.
- 13.2 Notice to Customers.** A Registered EGS shall provide notice to its Customers of withdrawal by the Registered EGS from retail service in accordance with the PUC's rulings in Docket No. M-00960890 and any subsequent applicable PUC rulings.
- 13.3 Costs for Noncompliance.** A Registered 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; and charges or penalties imposed on the Company by the PJM OI or other third parties resulting from the EGS withdrawing early; and
 - (d) Any and all other out-of-pocket expenses incurred by the Company as a result of the withdrawal.

14. REGISTERED EGS DISCONTINUANCE OF SERVICE TO CUSTOMERS

- 14.1 Notice of Discontinuance to the Company.** A Registered EGS shall provide electronic notice to the Company in a form specified by the Company of all intended discontinuances of service to Customers in a manner consistent with applicable PUC rules, as said rules apply to all Customer classes.
- 14.2 Notice to Customers.** A Registered EGS shall provide a minimum of thirty (30) days advance notice to any Customer it intends to stop serving of such intended discontinuance in a manner consistent with the PUC's rulings in Docket No. M-00960890 and any subsequent applicable PUC rulings. The application of this Rule will, however, be limited to the classes of Customers to which the referenced PUC rulings will apply. With respect to all other classes of Customers, it will be the Registered EGS's responsibility to provide notice to a Customer of its intention to discontinue service in accordance with the Registered EGS's contractual obligations with the Customer.
- 14.3 Effective Date of Discontinuance.** Any discontinuance will be effective on a Meter Read Date and in accordance with the EGS Tariff and the EDC Tariff,

(C) Change

November 8, 2016

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

**Re: Docket No. P-2015-2511356 – Correction to West Penn Power Company
Electric Generation Supplier Coordination Tariff Supplement No. 9, Electric
Pa. P.U.C. No. 2S.**

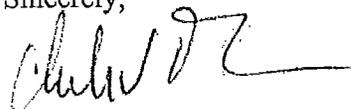
Dear Secretary Chiavetta:

Transmitted herewith for filing with the Pennsylvania Public Utility Commission (“Commission”) is a revised replacement Page No. 39 to Supplement No. 9 to West Penn Power Company’s Tariff Electric Pa. P.U.C. No. 2S, which bears the issue date of October 28, 2016. The Tariff supplement is proposed to be effective August 1, 2016.

The revisions include a correction to the header on Page No. 39 which corrects the previously issued page that read “Second Revised Page No. 39 Superseding First Revised Page No. 39”, as requested by the Commission via electronic mail on November 2, 2016.

If you have any questions regarding the enclosed documents, please contact me at (610)-921-6525.

Sincerely,



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

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

Enclosure

**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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Administrative Law Judge
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Dated: November 8, 2016



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12.6 Taxes. In accordance with PUC procedures, the entity that originates the charge is responsible for, and shall remit and file taxes applicable to its charges. (C)

12.6.1 Company Tax Responsibilities. The Company is responsible for calculation, collection, and remittance of gross receipt taxes, franchise tax on delivery service, and state and local energy taxes assessed on delivery service or other products and services provided by the Company.

12.6.2 Supplier Tax Responsibilities. The Registered EGS is responsible for calculation, collection, and remittance of gross receipts taxes and state and local energy taxes assessed on all products and services provided by the Registered EGS.

12.6.3 Tax Exemptions. Where Customers are exempt from taxes, it is the responsibility of both the Company and the Registered EGS to each acquire any required Tax Exemption Certificate from the Customer. In the event of a discrepancy between the Company's tax exempt status for the Customer and the tax exempt status submitted by the Registered EGS, the Registered EGS will provide a new correctly completed and executed Tax Exemption Certificate to the Company, indicating Company as seller, should the Customer wish to request a change in the Customer's tax exempt status. Otherwise, the Company will continue to apply the tax exemption of record to both the Company's and the Registered EGS's charges. For Customers utilizing the Rate Ready Option, the Company will apply the tax exempt status that it employs for Company charges, and the Company will provide a copy of the executed Tax Exemption Certificate to the Registered EGS should the Customer change their tax exempt status after initial enrollment; thereby, requiring the Registered EGS to acquire an updated Tax Exemption Certificate from the Customer.

12.7 Registered EGS Payment Obligations to the Company. A Registered EGS shall pay any charges it incurs in accordance with the Electricity Supplier Fees Rider.

12.7.1 Billing Procedure. Each month, the Company shall submit an invoice to the Registered EGS for any charges incurred in accordance with the Electricity Supplier Fees Rider. The invoice shall also include for each EGS that participates in the Customer Referral Program the applicable costs of the program. An executed Customer Referral Program Agreement will specify the terms and costs, up to \$30 per customer, to be included in the invoice to the EGS associated with the Customer Referral Program with those costs to be updated and communicated to each participating EGS on an annual basis. The invoice may be transmitted to the Registered EGS by any reasonable method requested by the Registered EGS. A Registered 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) days from the date of transmittal of the bill. The Company has the right to withhold from the Purchases of Receivables ("POR") payment an amount equal to any undisputed outstanding and unpaid balance in excess of thirty (30) or more days associated with EGS obligations to the Company as provided for in Section 12.7.

12.7.2 Billing Corrections and Estimated Billings. Notwithstanding anything stated herein: (1) bills shall be subject to adjustment for any errors in arithmetic, computation, estimating or other errors for a period of six (6) months from the date of such original monthly billing; and (2) the Company shall be entitled to submit estimated bills (subject to correction) in the event of circumstances that limit the timely availability of necessary data.

(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