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December 28, 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-2016-2576292

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 Respond Power LLC's Reply to New Matter of West Penn Power Company with regard to the above-referenced matters. Copies to be served in accordance with the attached Certificate of Service.

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 Respond Power's Reply to New Matter of West Penn Power upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54

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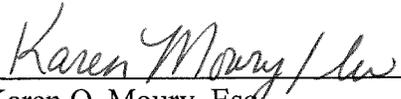
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Dated: December 28, 2016

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Respond Power LLC	:	
	:	
v.	:	Docket No.: C-2016-2576292
	:	
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
	:	

**REPLY OF RESPOND POWER LLC TO NEW MATTER
OF WEST PENN POWER COMPANY**

Pursuant to 52 Pa. Code § 5.63, Respond Power LLC (“Respond Power”) files this Reply to the New Matter of West Penn Power Company (“West Penn” or “Company”). In support hereof, Respond Power avers as follows:

I. INTRODUCTION

By its Complaint, Respond Power challenges the computation of the clawback charge and the application of an existing tariff. As a challenge to an existing tariff, Respond Power’s Complaint does not constitute a collateral attack on the underlying Commission Order that approved the implementation of a clawback charge. Rather, Respond Power, which was not a party to the prior proceeding, is directly challenging the Company’s calculation of the charge and its application to Respond Power. Although Respond Power had notice of the Company’s default service proceeding, it was not aware of the Company’s proposal to make changes to its existing default service program as part of a forward-looking proceeding that was required by the Commission’s regulations to establish a future default service program.

Moreover, as the charge is contained in a Commission-approved tariff, it constitutes a rate for utility service and is subject to the just and reasonable standard set forth in Section 1301 of the Public Utility Code (“Code”), 66 Pa. C.S. § 1301. The inclusion of retroactive components, particularly through a change in the rules after the game has been played, renders the tariff incapable of meeting this standard. In its Answer, the Company refers to a similar mechanism implemented by another electric distribution company (“EDC”), Duquesne Light Company (“Duquesne”), and attaches documents relating to Duquesne’s charge to its Answer as Appendix A. While these materials show that Duquesne implemented a provision in its tariff allowing for a change in the discount rate for an individual electric generation supplier (“EGS”) based on historical uncollectible amounts, they also demonstrate that Duquesne proposed this term in its January 1, 2008 through December 31, 2010 default service proceeding to go into effect at the outset of that default service program on January 1, 2008, with signatories to the settlement of that proceeding being dated in December 2006. Clearly, Duquesne did not change the rules of an existing default service program but rather implemented its tool in a prospective manner.

In approving the clawback charge on a two-year pilot basis as part of a settlement of the Company’s default service proceeding for the time period covering June 1, 2017 through May 31, 2019, the Commission acknowledged that the implementation of the charge 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.

II. REPLY TO NEW MATTER

76. Admitted in part and denied in part. It is admitted that the Company's Purchase of Receivable ("POR") program was adopted in the settlement of the Company's restructuring proceeding and that it was subsequently altered in a future default service proceeding. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief as to whether the establishment of a POR program as part of a default service program is consistent with the practices of other electric distribution companies ("EDCs"), and demands proof thereof, if relevant, at hearing. It is further averred that the Commission's regulations governing default service programs do not direct EDCs to include POR programs as part of their default service plans or authorize EDCs to include proposals in their default service proceedings that contain retroactive components and effectively alter the terms of existing default service programs.

77. Denied. It is denied that Respond Power's accounts receivables were purchased without recourse for amounts not collected from its customers. To the contrary, it is averred that the application of a clawback charge to Respond Power would result in the accounts receivables not being purchased without recourse during the time period for the current default service program.

78. Admitted. It is admitted that the Company served Respond Power with the *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"). By way of further answer, it is averred that the Company's service of this filing on Respond Power did not notify

Respond Power that the Company was proposing changes to its 2015-2017 Default Service Program.

79. Admitted. By way of further answer, it is averred that the Company's transmittal letter did not notify Respond Power that the Company was proposing changes to its 2015-2017 Default Service Program.

80. Admitted. By way of further answer, it is averred that the Notice in the Pennsylvania Bulletin regarding the Company's filing of its proposed 2017-2019 Default Service Program did not notify Respond Power that the Company was proposing changes to its 2015-2017 Default Service Program.

81. Admitted. By way of further answer, it is averred that Paragraph No. 2 of the Company's proposed 2017-2019 Default Service Program does not indicate that the Company was proposing changes to the 2015-2017 Default Service Program that was and is currently in effect or that those proposed changes would be to retroactively impose a clawback charge based on historical write-off data that had already begun to accrue.

82. Admitted. By way of further answer, Paragraph No. 8 of the Company's proposed 2017-2019 Default Service Program does not indicate that the Company was proposing changes to the 2015-2017 Default Service Program that was and is currently in effect or that those proposed changes would be to retroactively impose a clawback charge based on historical write-off data that had already begun to accrue.

83. Admitted in part and denied in part. It is admitted that Section V of the Company's proposed 2017-2019 Default Service Program is entitled "Purchase of Receivables" and that a subsection addresses EGS-related write-offs. Respond Power denies the Company's characterization of the proposal and the approved clawback charge which speak for themselves.

84. Admitted in part and denied in part. It is admitted that Ms. Bortz's testimony described the proposed clawback charge. Respond Power denies the Company's characterization of her testimony, which speaks for itself. By way of further answer, Respond Power avers that Ms. Bortz's testimony does not contain any indication that the clawback charge would be based on unpaid supply charges that accrued prior to August 2015.

85. Admitted in part and denied in part. It is admitted that Ms. Bortz sponsored exhibits relating to the proposed clawback charge. It is denied that the exhibits showed that the Company was proposing to alter the default service program that was and is currently in effect or that the proposed changes would be based on historical write-off data that had already begun to accrue or that the clawback charge would be based on unpaid supply charges that accrued prior to August 2015.

86. Admitted. By way of further answer, Respond Power avers that the Notice of Initial Prehearing Conference did not provide any information indicating that the Company was proposing to alter the default service program that was and is currently in effect.

87. Admitted. By way of further answer, Respond Power avers that the Prehearing Order did not provide any information indicating that the Company was proposing to alter the default service program that was and is currently in effect.

88. Admitted.

89. Admitted.

90. Admitted.

91. Admitted.

92. Admitted in part and denied in part. It is admitted that the clawback provision described in the Joint Petition for Settlement ("Settlement") filed on April 1, 2016 differed from

the Company's initial proposal. Respond Power denies the Company's characterization of those differences, since the initial proposal and the Settlement provision speak for themselves.

93. Admitted.

94. Admitted in part and denied in part. It is admitted that the Settlement contains a condition regarding Commission approval of the terms and conditions without modification. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief as to whether virtually all settlements filed with the Commission contain this condition, and demands proof thereof, if relevant, at hearing.

95. Admitted in part. It is admitted that on April 29, 2016, Judge Salapa issued a Recommended Decision approving the Settlement. The remaining averments of this paragraph contain statements of law to which no response is required.

96. Admitted. It is admitted that Judge Salapa's Recommended Decision contains the language set forth in this paragraph. By way of further answer, it is averred that the Recommended Decision contains additional discussion about the clawback provision, including a recognition that the Settlement reserves the rights of all parties to propose modifications to or termination of the clawback charge and that this provision is not intended to apply to other proceedings. It is further averred that the Recommended Decision does not address issues concerning the proper computation or application of the clawback charge as raised by Respond Power's Complaint.

97. Denied. Respond Power denies the Company's characterization of the conclusions of the Recommended Decision, which speaks for itself.

98. Admitted. By way of further answer, Respond Power avers that the statement of Chairman Gladys Brown referenced in this paragraph contains no reference to the clawback provision. Rather, it is averred that Chairman Brown's statement addresses only her view that the procurement strategy in the Company's default service plan satisfies the "prudent mix"

procurement requirements of Code Section 2807(e), 66 Pa. C.S. § 2807(e). It is further averred that the Commission's Order does not contain any acknowledgment that approval of the Settlement would modify the existing default service program.

99. Admitted in part and denied in part. It is admitted that the Company invoiced Respond Power in the amount of \$178,907 on September 30, 2016. Based upon reasonable investigation, Respond Power is without sufficient information or knowledge to form a belief as to the remaining averments of this paragraph and demands proof thereof, if relevant, at hearing. By way of further answer, Respond Power believes and therefore avers that the Company included write-offs as part of its analyses that represented amounts due and payable for Respond Power's supply charges dating back to 2014 and earlier.

100. The averments of this paragraph contain conclusions of law to which no response is required. By way of further answer, Respond Power avers that its Complaint does not constitute a collateral attack on the Commission's May 19, 2016 Order approving the Company's 2017-2019 Default Service Program because Respond Power did not participate in the default service proceeding and was not on notice that the Company was proposing changes to its 2015-2017 Default Service Program as part of that proceeding.

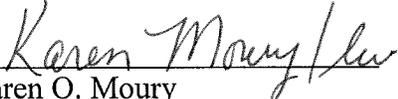
101. The averments of this paragraph contain conclusions of law to which no response is required. By way of further answer, the clawback charge is contained in a Commission-approved tariff and constitutes a rate for utility service. As such it is subject to the just and reasonable standard set forth in Section 1301 of the Public Utility Code, 66 Pa.C.S. § 1301. Yet, due to its retroactive components and its lack of existence during the period it was accruing and its basis on historical write-off data, Respond Power avers that it represents an attempt to change the rules after the game has been played. *See Phone Talk, Inc. v. Bell Telephone Company of*

Pennsylvania, et al., Docket No C-882009 *et al.*, 126 PUR 4th 1991 (Order entered September 12, 1991) at [16]. As such, the charge does not meet the requisite just and reasonable standard.

III. CONCLUSION

Based upon the foregoing, Respond Power LLC respectfully requests that the Commission dismiss the New Matter of West Penn Power Company, sustain the Complaint and grant such other relief as may be deemed appropriate.

Respectfully submitted,


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December 28, 2016

Counsel for Respond Power LLC

VERIFICATION

I, Adam Small, hereby state that: (1) I am General Counsel for Respond Power LLC; (2) I am authorized to verify the facts in this document on behalf of Respond Power, LLC; and, (3) the facts set forth in this document are true and correct to the best of my knowledge, information and belief. 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: December 28, 2016

Adam Small

Adam Small
General Counsel
Respond Power LLC