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September 11, 2017

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

VIA ELECTRONIC FILING

**RE: Respond Power LLC v. Pennsylvania Electric Company;
Docket No. C-2016-2576287**

**Respond Power LLC v. West Penn Power Company
Docket No. C-2016-2576292**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Prehearing Memorandum on behalf of the West Penn Power Industrial Intervenors ("WPPII"), the Penelec Industrial Customer Alliance ("PICA") and the Met-Ed Industrial Users Group ("MEIUG"), (collectively, the "Industrials"), in the above-referenced proceedings

As shown by the attached Certificate of Service, all parties to these proceedings are being duly served. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Alessandra L. Hylander

Counsel to the West Penn Power Industrial Intervenors,
the Penelec Industrial Customer Alliance and
the Met-Ed Industrial Users Group

Enclosures

c: Administrative Law Judge David A. Salapa (via e-mail and First-Class Mail)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Intervenors, and the Met-Ed Industrial Users Group

Dated this 11th day of September, 2017, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Respond Power, LLC	:	
	:	
v.	:	C-2016-2576287
	:	
Pennsylvania Electric Company	:	
	:	
Respond Power, LLC	:	
	:	
v.	:	C-2016-2576292
	:	
West Penn Power Company	:	

**PREHEARING MEMORANDUM OF
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE,
THE WEST PENN POWER INDUSTRIAL INTERVENORS AND
THE MET-ED INDUSTRIAL USERS GROUP**

Pursuant to Administrative Law Judge ("ALJ") David A. Salapa's August 11, 2017, Prehearing Conference Order, the Penelec Industrial Customer Alliance ("PICA"), the West Penn Power Industrial Intervenors ("WPPII") and the Met-Ed Industrial Users Group ("MEIUG"), (collectively, "Industrials"), hereby submit this Prehearing Memorandum in the above-captioned proceedings.

I. HISTORY OF THE PROCEEDING

On November 3, 2015, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn Power") (collectively, "Companies") filed their Fourth Default Service Plans pursuant to Section 54.185 of the Commission's regulations, which the Commission

consolidated into a single proceeding.¹ The Industrials were a party to this proceeding, which was eventually resolved via a Settlement. Upon review and recommendation of the assigned ALJ, the Commission entered a Final Order approving the DSP IV Petition without modification on May 19, 2016.

Approximately six months later, on November 17, 2016, Respond Power LLC ("Respond Power") filed Complaints against Penelec and West Penn Power challenging the application of the "clawback charges" contained in Penelec's and West Penn Power's Supplier Tariffs.² Presumably, because the Supplier Tariffs were filed by Penelec and West Penn Power and approved by the Commission in the DSP IV proceeding, Respond Power also filed these Complaints at the consolidated dockets of the Companies' DSP IV proceeding.³

On December 7, 2016, the Industrials filed a Joint Petition to Intervene to Respond Power's Complaints.⁴ A description of the Industrials is set forth in Paragraph 1 of the Industrials' Joint Petition to Intervene.

On December 8, 2016, Penelec and West Penn Power filed Motions for Judgement on the Pleadings and for dismissal of Respond Power's Complaints.

ALJ Salapa issued an Order on January 23, 2017, granting, in part, Penelec's and West Penn Power's Motions for Judgement. The ALJ found that: (1) Respond Power had reasonable notice of the clawback charges; (2) Respond Power chose not to participate in the DSP IV proceeding; and (3) nothing in Penelec's or West Penn Power's tariffs has changed since

¹ *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 Nos. P-2015-2511333, *et al.* (Nov. 3, 2015) (hereinafter, "DSP IV proceeding" or "DSP IV Petition").

² Prior to the filing of the aforementioned Complaints, Respond Power submitted a Petition for Issuance of an *Ex Parte* Emergency Order ("Emergency Order proceeding" or "Emergency Order Petition"). On November 17, 2016, Respond Power filed a Petition for Leave to Withdraw its Emergency Order Petition.

³ The Industrials were not served with a copy of Respond Power's Emergency Order Petition.

⁴ The Industrials also filed their Joint Petition to Intervene in the Companies' DSP IV proceeding, as well as in Respond Power's Emergency Order proceeding.

implementation, so claims of unjust and unreasonable charges are not substantiated. ALJ Salapa directed that a hearing be set only to address computational errors and claim of charges violating Penelec's and West Penn Power's tariffs.

On January 26, 2017, Respond Power filed a Petition for Interlocutory Review and Answer to Material Questions, arguing that the following two material questions should be answered in the affirmative based on long-standing case law: (1) may an entity to whom a utility tariff provision is applied file a complaint with the Commission challenging the application of the tariff; and (2) are Commission-approved tariff provisions subject to a just and reasonable standard?

Briefs in response to Respond Power's Petition for Interlocutory Review and Answer to Material Questions were filed on February 6, 2017. Respond Power filed a Brief in Support, and Penelec and West Penn Power filed Briefs in Opposition.

The PUC entered an Order on July 13, 2017, answering the Material Questions in the affirmative and returning the matter to the Office of Administrative Law Judge ("OALJ") for further proceedings, as necessary. The PUC held that Respond Power is statutorily entitled to an opportunity to meet its burden of proof as the complainant and proponent of a rule or order from the Commission.

A Prehearing Conference has been scheduled in these proceedings for September 13, 2017.

II. SERVICE LIST

For purposes of service in the above-captioned proceedings, please direct all communications to:

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III. ANTICIPATED ISSUES AND SUB-ISSUES

The focus of Respond Power's case against West Penn and Penelec is the application of a clawback charge, an administrative charge/fee imposed on suppliers that participate in these Companies' Purchase of Receivables ("POR") programs. The POR programs and their respective clawback charges were expressly the subject of litigation in the DSP IV proceeding. The clawback charges/POR issues were settled by the parties to the DSP IV proceeding (in which Respond Power did not participate). Respond's Complaints against West Penn and Penelec suggest reopening the DSP IV Settlement. As such, the Industrials intervened in the above-captioned proceedings because of concern about the potential ramifications to the carefully crafted and meticulously approved DSP IV Petition, as well as to ensure that the provisions approved in the Settlement of particular concern and impact on the Industrials are appropriately implemented.

The Industrials anticipate reviewing these issues during this proceeding and also reserve the right to raise issues and to respond to all matters raised by other parties.

IV. PROPOSED WITNESSES

The Industrials are in the process of evaluating whether they will need to sponsor any testimony in these proceedings. In the event that the Industrials decide to sponsor testimony, the Industrials will inform the ALJ and the other parties of any intended witnesses and topics of testimony. The Industrials also intend to participate in these proceedings through the submission of discovery, cross-examination of other parties' witnesses, and the submission of briefs,

exceptions and reply exceptions, if necessary.

V. PROPOSED SCHEDULE AND DISCOVERY RULES

The Industrials will cooperate with the ALJ and the parties at the Prehearing Conference to develop an appropriate procedural schedule and discovery rules in accordance with the Commission's regulations and any directives issued by the ALJ.

VI. POSSIBILITY OF SETTLEMENT

The Industrials are willing to participate in discussions with the other parties to amicably resolve the issues in this proceeding, subject to Commission approval.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By *Alessandra L. Hylander*

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Dated: September 11, 2017