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September 11, 2017

**Via Electronic Filing**

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

Re: Respond Power LLC v. Pennsylvania Electric Company  
Docket Nos. C-2016-2576287

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

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find Respond Power LLC's Prehearing Conference Memorandum 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 Prehearing Conference Memorandum 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: September 11, 2017



Karen O. Moury, Esq.



Power serves customers in the service territories of Penelec and West Penn whose EGS charges are paid by the Companies through a purchase of receivables (“POR”) program.

On October 28, 2016, Penelec filed Tariff Electric Pa. P.U.C. No. S-1 (“Penelec Supplier Tariff”) and West Penn filed Tariff Electric Pa. P.U.C. No. 2S (“West Penn Supplier Tariff”) (collectively referred to as the “Supplier Tariffs”), both with an effective date of August 1, 2016. Penelec’s Supplier Tariff contained modifications to the POR program to include the implementation of a clawback charge in Section 12.9(g) and West Penn’s Supplier Tariff contained modifications to the POR program to include the implementation of a clawback charge in Section 12.4.2(1). These provisions in the Supplier Tariffs permit the Companies to assess charges against EGSs participating in the POR programs, which are based on EGS pricing and the write-offs of amounts not paid to the Companies by EGS customers. By Secretarial Letter entered on November 10, 2016, the Commission approved the Companies’ Supplier Tariffs without prejudice to any formal complaints timely filed against the tariff revisions.

Pursuant to the Supplier Tariffs, the Companies assessed clawback charges on September 30, 2016 against Respond Power in the amount of \$484,797.69 based on write-offs for the period of September 1, 2015 through August 31, 2016. As a basis for these charges, the Companies referenced their 2017-2019 Default Service Plan and the Commission’s order approving such plan.<sup>1</sup> At that time, the Companies established a due date of October 27, 2016 for payment of the invoices and threatened to withhold POR payments if the invoices were not timely paid. Respond Power filed a Petition for Issuance of *Ex Parte* Emergency Order on October 26, 2016, asking the

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<sup>1</sup> *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 (Order entered May 19, 2016) (“May 19, 2016 Order”).

Commission to direct the Companies to cease and desist from unilaterally withholding payments on or after October 27, 2016. The Commission issued an Emergency Order on October 27, 2016, directing the Companies to cease and desist from implementing the clawback charges until they had filed the appropriate tariffs and obtained the Commission's approval thereof, or November 27, 2016, whichever occurred later. The Commission ratified the Emergency Order on November 9, 2016 and a hearing was scheduled on November 17, 2016.

On November 16, 2016, Respond Power filed a Complaint against the Companies challenging the application of the Supplier Tariff provisions establishing clawback charges. At the request of the Commission's Secretary, Respond Power filed separate Complaints against Penelec and West Penn on November 17, 2016. The Complaints were served on the Companies by the Secretary on November 18, 2016.

On December 8, 2016, the Companies filed Answers and New Matter and Motions for Judgment on the Pleadings ("Motions"). Respond Power filed Replies to the New Matter and Answers to the Motions on December 28, 2016. By *Interim Order* dated January 23, 2017, the ALJ granted the Motions, in part, thereby limiting Respond Power to presenting evidence only on the issue of whether the clawback charges were properly calculated pursuant to the Supplier Tariffs. On January 26, 2017, Respond Power filed a Petition for Interlocutory Review with the Commission. By Opinion and Order entered on July 13, 2017, the Commission granted the Petition for Interlocutory Review and found that Respond Power is entitled to an opportunity to challenge the justness and reasonableness of application to Respond Power of the Commission-approved provisions in the Supplier Tariffs.

By Notice dated August 9, 2017, an Initial Prehearing Conference was scheduled for September 13, 2017 at 10:00 a.m. By Prehearing Conference Order dated August 11, 2017,

prehearing conference memoranda are due on September 11, 2017. Respond Power's Prehearing Conference Memorandum is submitted in accordance with that directive.

## **II. SERVICE OF DOCUMENTS**

Respond Power requests that all documents be served on:

Karen O. Moury  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
Telephone: 717.237.6000  
Fax: 717.237.6019

Respond Power agrees to receive electronic service of documents in this proceeding and does not require hard copies to follow. If materials are disseminated electronically, it is requested that copies be sent to kmoury@eckertseamans.com.

## **III. DISCOVERY**

Respond Power has served one round of discovery on the Companies and is preparing a follow-up round of discovery to serve prior to the prehearing conference. Respond Power proposes that the response periods be shortened to ten days for discovery served after November 1, 2017.

## **IV. PROPOSED SCHEDULE**

Respond Power has consulted with the Companies regarding a procedural schedule and proposes the following schedule for consideration by the Administrative Law Judge in this proceeding.

<b>Action Item</b>	<b>Date</b>
Respond Power Direct Testimony	October 18, 2017
Companies' Direct Testimony	November 8, 2017
Respond Power Rebuttal Testimony	November 21, 2017
Companies' Surrebuttal Testimony	December 6, 2017
Oral Rejoinder/Evidentiary Hearings	December 13-14, 2017
Main Briefs	Three weeks from date of receipt of transcript
Reply Briefs	Two weeks from date of submission of Main Briefs

**V. WITNESSES**

Respond Power expects to call the following witness during this proceeding:

Adam Small, General Counsel  
Major Energy Services  
100 Dutch Hill Road – Suite 310  
Orangeburg, New York 10962  
(374)-274-0893  
asmall@majorenergy.com

The subject of Mr. Small’s testimony will be the practical effect of the clawback charges and the impact on Respond Power of the application of the tariff provisions that are the focus of this proceeding. Respond Power reserves the right to call witnesses to address any issues that have been or are later raised during the course of the proceeding and will identify such additional witnesses within a reasonable period of time prior to serving testimony or the commencement of evidentiary hearings.

**VI. PROTECTIVE ORDER**

Respond Power has executed a Stipulated Protective Agreement drafted by the Companies, which establishes procedures for the protection of certain confidential or proprietary information produced or submitted by any party, pending the entry of a Protective Order by the Administrative Law Judge. Respond Power will support the Companies’ Motion for a Protective Order.

**VII. ISSUES**

During the above-captioned proceedings, Respond Power will challenge the application of the clawback charges in the Supplier Tariffs as being unjust and unreasonable on the basis that: 1) the Companies retroactively changed the terms of the 2015-2017 Default Service Plan<sup>2</sup> as part of

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<sup>2</sup> *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) (“July 24, 2014 Order”).

their 2017-2019 Default Service Plan; and 2) the charges are based on historical write-off data that includes uncollectible amounts that accrued over a period of several months or even years before September 1, 2015. In support of its challenges, Respond Power will describe the practical effects of the Companies' clawback charges and the impacts on its operations of being assessed these charges, including Respond Power's lack of notice or knowledge of such charges (and to the non-existence of the charges) during the time when clawback charges were accruing. Respond Power will also raise issues concerning the absence of information about its customers who are not paying their bills to the Companies. Respond Power will further address concerns about the Companies' write-off practices as they affected the amounts of the clawback charges and will raise issues regarding the later payment by customers of amounts that were written off by the Companies. To the extent that Respond Power identifies calculation errors through its review of the Companies' discovery responses, Respond Power will present evidence of same. Respond Power will also cite due process principles and standards relating to the need for Commission-approved tariff provisions to be just and reasonable.

#### **VIII. SETTLEMENT**

Respond Power is willing to engage in settlement discussions with the parties, with the objective of achieving a mutually acceptable resolution of this matter, subject to the Commission's approval.

Respectfully submitted,



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Date: September 11, 2017

Attorneys for Complainant,  
Respond Power, LLC