

Karen O. Moury  
717.237.6036  
kmoury@eckertseamans.com

February 5, 2018

**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 No. C-2016-2576287

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

Respond Power LLC v. Pennsylvania Electric Company  
Docket No. C-2017-2631326

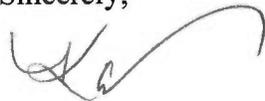
Respond Power LLC v. West Penn Power Company  
Docket No. C-2017-2631331

---

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Respond Power LLC's Petition to Reopen 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, LLC's Petition to Reopen on 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

Thomas P. Gadsden, Esq.  
Anthony C. DeCusatis, Esq.  
Brooke E. McGlinn, Esq.  
Morgan Lewis & Bockius, LLP  
1701 Market St.  
Philadelphia, PA 19103-2921  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
[adecusatis@morganlewis.com](mailto:adecusatis@morganlewis.com)  
[bmclinn@morganlewis.com](mailto:bmclinn@morganlewis.com)

Tori Giesler, Esq.  
FirstEnergy Service Company  
2800 Pottsville Pike  
PO Box 16001  
Reading, PA 19612-6001  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Aron J. Beatty, Esq.  
Haylee E. Dunn, Esq.  
Office of Consumer Advocate  
555 Walnut St., 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[ABeatty@paoca.org](mailto:ABeatty@paoca.org)

Daniel Asmus, Esq.  
Office of Small Business Advocate  
1102 Commerce Building  
300 N. Second St.  
Harrisburg, PA 17101  
[dasmus@pa.gov](mailto:dasmus@pa.gov)

Patrick Cicero, Esq.  
Elizabeth R. Marx, Esq.  
Kadeem Morris, Esq.  
Pennsylvania Utility Law Project  
118 Locust St.  
Harrisburg, PA 17101  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

Susan E. Bruce, Esq.  
Charis Mincavage, Esq.  
Alessandra L. Hylander, Esq.  
Matthew L. Garber, Esq.  
McNees Wallace & Nurick LLC  
1 00 Pine Street  
P.O. Box 1166  
Harrisburg, P A 17108  
[sbruce@mcneeslaw.com](mailto:sbruce@mcneeslaw.com)  
[cmincavage@mcneeslaw.com](mailto:cmincavage@mcneeslaw.com)  
[ahylander@mcneeslaw.com](mailto:ahylander@mcneeslaw.com)  
[mgarber@mcneeslaw.com](mailto:mgarber@mcneeslaw.com)

Allison C. Kaster, Esq.  
PA Public Utility Commission  
Bureau of Investigation & Enforcement  
PO Box 3265  
Harrisburg, PA 17101-3265  
[akaster@pa.gov](mailto:akaster@pa.gov)

Mr. Robert D. Knecht  
Industrial Economics Incorporated  
2067 Massachusetts Avenue  
Cambridge, MA 02140  
[rdk@indecon.com](mailto:rdk@indecon.com)

Dated: February 5, 2018



---

Karen O. Moury, Esq.

**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	:	
Respond Power, LLC	:	
	:	
v.	:	C-2017-2631326
	:	
West Penn Power Company	:	
Respond Power, LLC	:	
	:	
v.	:	C-2017-2631331
	:	
Pennsylvania Electric Company	:	

---

**RESPOND POWER, LLC’S PETITION TO REOPEN**

---

Pursuant to 52 Pa. Code §§ 5.431 and 5.571, Respond Power, LLC (“Respond Power”) files this Petition to Reopen. Near the close of the evidentiary hearing on February 1, 2018, Ms. Kimberlie L. Bortz testified during redirect examination on behalf of Pennsylvania Electric Company and West Penn Power Company (collectively “the Companies”) that an electric generation supplier (“EGS”) may request through the Supplier Services Website a list of all non-

paying customers and that this information will be provided on an Excel spreadsheet via electronic mail. Upon submitting such a request on February 2, 2018, Respond Power was informed by a representative of the Companies that no such list is available. Therefore, Respond Power requests that Administrative Law Judge (“ALJ”) grant this Petition to Reopen so that Respond Power, as the complainant with the burden of proof, may offer supplemental testimony and exhibits that are responsive to Ms. Bortz’ redirect testimony. Alternatively, Respond Power requests admission of the communications between the Companies and Respond Power, which are included in Attachment A accompanying this Petition. In further support hereof, Respond Power avers as follows:

1. This consolidated proceeding involves complaints filed by Respond Power against the Companies concerning the assessment of clawback charges in connection with the Companies’ Purchase of Receivables (“POR”) programs. Imposition of the clawback charge involves two components, including the prices charged by EGSs and the amount of write-offs attributable to an EGS’s customers who are not paying their bills to the Companies.

2. An evidentiary hearing was held on February 1, 2018. During that hearing, the ALJ admitted into the record the Direct Testimony (Respond Power St. 1), Supplemental Direct Testimony (Respond Power St. 1-Supp) and Rebuttal Testimony (Respond Power St. 1-R) of Adam Small on behalf of Respond Power, together with RP Exhibits AS-1 through AS-20. Additionally, Mr. Small offered oral rejoinder testimony, during which RP Exhibit AS-21 was admitted into the record. Mr. Small was subjected to cross-examination by the Companies’ counsel.

3. Also, during the evidentiary hearing on February 1, 2018, the ALJ admitted into the record the Direct Testimony (Penelec/West Penn St. 1) and Surrebuttal Testimony

(Penelec/West Penn St. 1-SR) of Kimberlie L. Bortz on behalf of the Companies, together with Exhibits KLB-1 through KLB-8 and Exhibits KLB-1SR through KLB-4SR. Ms. Bortz was subjected to cross examination by Respond Power's counsel, during which Respond Power Cross Examination Exhibit 1 was admitted. Ms. Bortz then offered testimony through redirect examination.

4. During her redirect examination, Ms. Bortz described three ways in which an EGS may request information regarding the payment status of their customers, as follows: (i) a specific account inquiry; (ii) a batch list of specified accounts; or (iii) a request for a list of all non-paying customers.<sup>1</sup> Prior to that time, she had not explained the third method – *i.e.* a request for a list of all non-paying customers.<sup>2</sup> She also indicated that the EGS would receive an Excel spreadsheet via electronic mail containing this information.

5. As shown through Mr. Small's Rebuttal Testimony and his testimony during the evidentiary hearings on February 1, 2018, Respond Power was previously aware only that information could be requested by specific account number or more recently through a batch list of accounts. Mr. Small has explained that requesting information in this manner would be overly burdensome.<sup>3</sup>

6. Based on Ms. Bortz' redirect testimony concerning the ability of EGSs to request a list of all non-paying customers, Respond Power submitted a request to the Companies' Supplier Services Website on February 2, 2018 requesting a list of customers who had not paid their bills

---

<sup>1</sup> As the transcript is not yet available, Counsel for Respond Power is relying on her own notes taken during the hearing. In an effort to avoid changes to the procedural schedule, Respond Power did not wish to await production of the transcript before raising this issue.

<sup>2</sup> Penelec/West Penn St. 1 at 28; Penelec/West Penn St. 1 at 12-13; RP Ex. AS-19.

<sup>3</sup> Respond Power St. 1-R at 22. Again, Respond Power is relying on Counsel's notes concerning Mr. Small's testimony acknowledging that information is available through a batch list of accounts. However, the cross examination did not raise the third method later identified by Ms. Bortz of requesting a list of all non-paying customers.

for December 2017. In response to this request, a representative of the Companies indicated that no such a list is available. These communications are attached to this Petition as Attachment A.

7. In challenging application of the clawback charge this proceeding, Respond Power has alleged that the charge is unjust and unreasonable, in part, due to the fact that the Companies do not inform EGSs when their customers are not paying their bills. Mr. Small has explained that the lack of knowledge about non-paying customers makes it impossible to avoid the clawback charge except by limiting prices to levels chosen by the Companies. The absence of this information also prevents an EGS from reaching out to non-paying customers through collection efforts or with offers of different terms and conditions.<sup>4</sup>

8. In defense of the complaints filed by Respond Power, the Companies have criticized Respond Power for not requesting the information regarding its non-paying customers, suggesting that Respond Power does have the means to identify them.<sup>5</sup> While Respond Power has addressed those criticisms through responsive testimony, it did not challenge or seek to refute Ms. Bortz' claim during February 1, 2018 because it had no reason or basis upon which to do so. As the record now stands, it appears that Respond Power has failed to avail itself of an opportunity to request a list of non-paying customers.

9. However, based on Respond Power's discovery on February 2, 2018 when it made the request for such a list and was advised by the Companies' representative that no such list is available, as shown by the communications included in Attachment A, Respond Power now has a basis upon which to challenge and refute Ms. Bortz' testimony during redirect examination.

---

<sup>4</sup> Respond Power St. 1 at 18; Respond Power St. 1R at 22-23.

<sup>5</sup> Penelec/West Penn St. 1 at 28; Penelec/West Penn St. 1 at 12-13.

10. Had Respond Power been aware during the evidentiary hearing on February 1, 2018 that the Companies do not make lists of non-paying customers available, it would have sought to provide responsive testimony during the hearing or determine another manner in which to challenge Ms. Bortz' claim.

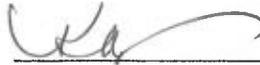
11. Having now submitted a request to the Companies for a list of non-paying customers, and being advised that no such list exists, it is essential that Respond Power – as the complainant with the burden of proof – have an opportunity to refute or challenge Ms. Bortz' redirect testimony.

12. If the record is reopened to permit Respond Power to refute Ms. Bortz' claim, Respond Power will offer brief responsive testimony, such as in the nature of supplemental rejoinder testimony, and move for the admission into the record of the communications contained in Attachment A.

13. Alternatively, Respond Power requests that the communications included in Attachment A be marked for the record as RP Exhibit AS-22 and be admitted into the evidentiary record of this proceeding.

WHEREFORE, Respond Power, LLC respectfully requests that Administrative Law Judge David A. Salapa grant this Petition to Reopen for the purpose of permitting Respond Power to respond to the testimony offered by Ms. Bortz during redirect examination on February 1, 2018 regarding the ability of an EGS to request a list of non-paying customers from the Companies and to receive an Excel spreadsheet via electronic mail.

Respectfully submitted,



---

Karen O. Moury  
PA Attorney I.D. # 36879  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Fl.  
Harrisburg, PA 17101  
717.237.6036  
[kmoury@eckertseamans.com](mailto:kmoury@eckertseamans.com)

Dated: February 5, 2018

Counsel for Respond Power, LLC

# ATTACHMENT A

**From:** David Sobel [<mailto:dsobel@respondpower.com>]  
**Sent:** Friday, February 02, 2018 12:58 PM  
**To:** Adam Small <[asmall@majorenergy.com](mailto:asmall@majorenergy.com)>  
**Subject:** FW: Billing Inquiries - Budget; POR; Collective, Write offs Supplier Services Contact Us Info <<#51301-2107960-2213879#>>

-David Sobel-

**From:** [SupplierSupport@firstenergycorp.com](mailto:SupplierSupport@firstenergycorp.com) [<mailto:SupplierSupport@firstenergycorp.com>]  
**Sent:** Friday, February 2, 2018 12:47 PM  
**To:** [dsobel@respondpower.com](mailto:dsobel@respondpower.com)  
**Subject:** RE: Billing Inquiries - Budget; POR; Collective, Write offs Supplier Services Contact Us Info <<#51301-2107960-2213879#>>

Hello David,

There isn't a list available for that information.

Please refer to request number 2107960 in any future correspondence.

Thank you,

Janee Rue

Customer Choice - Supplier Support

[suppliersupport@firstenergycorp.com](mailto:suppliersupport@firstenergycorp.com)

P (330) 761-4348

F (330) 315-8664

--- Original Message ---

From: "David Sobel" <[dsobel@respondpower.com](mailto:dsobel@respondpower.com)>

Received: 2/2/18 12:22:16 PM EST

To: "[SupplierSupport@firstenergycorp.com](mailto:SupplierSupport@firstenergycorp.com)" <[SupplierSupport@firstenergycorp.com](mailto:SupplierSupport@firstenergycorp.com)>

Subject: Billing Inquiries - Budget; POR; Collective, Write offs Supplier Services Contact Us Info

<pre>

Form Name: Supplier Contact Us

Submit Date: 02/02/2018 12:20:14

Supplier Name: RESPOND POWER LLC

BP Number: 0801743096

State: Pennsylvania

Operating Company: Penelec

Request Type: Billing Inquiries - Budget; POR; Collective, Write offs

Requestor's Name: David Sobel

Phone Number: (845)480-7430

Extension: null

Email: [dsobel@respondpower.com](mailto:dsobel@respondpower.com)

Confirm Email: [dsobel@respondpower.com](mailto:dsobel@respondpower.com)

Customer Number (if applicable):

Comments: Hi, can you please send us a list of all of our customers that did not pay their December '17 bill yet?

Thank you

</pre>

----- Please do not remove your unique tracking number! -----

<<#51301-2107960-2213879#>>

---

**The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately, and delete the original message.**

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee you should not disseminate, distribute, or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing, or taking any action in reliance on the contents of this information is strictly prohibited.

**From:** David Sobel [<mailto:dsobel@respondpower.com>]  
**Sent:** Friday, February 02, 2018 12:57 PM  
**To:** Adam Small <[asmall@majorenergy.com](mailto:asmall@majorenergy.com)>  
**Subject:** FW: Billing Inquiries - Budget; POR; Collective, Write offs Supplier Services Contact Us Info <<#51301-2107943-2213861#>>

-David Sobel-

**From:** [SupplierSupport@firstenergycorp.com](mailto:SupplierSupport@firstenergycorp.com) [<mailto:SupplierSupport@firstenergycorp.com>]  
**Sent:** Friday, February 2, 2018 12:47 PM  
**To:** [dsobel@respondpower.com](mailto:dsobel@respondpower.com)  
**Subject:** RE: Billing Inquiries - Budget; POR; Collective, Write offs Supplier Services Contact Us Info <<#51301-2107943-2213861#>>

Hello David,

There isn't a list available for that information.

Please refer to request number 2107943 in any future correspondence.

Thank you,

Janee Rue

Customer Choice - Supplier Support

[suppliersupport@firstenergycorp.com](mailto:suppliersupport@firstenergycorp.com)

P (330) 761-4348

F (330) 315-8664

--- Original Message ---

From: "David Sobel" <[dsobel@respondpower.com](mailto:dsobel@respondpower.com)>

Received: 2/2/18 12:17:40 PM EST

To: "SupplierSupport@firstenergycorp.com" <[SupplierSupport@firstenergycorp.com](mailto:SupplierSupport@firstenergycorp.com)>

Subject: Billing Inquiries - Budget; POR; Collective, Write offs Supplier Services Contact Us Info

<pre>

Form Name: Supplier Contact Us

Submit Date: 02/02/2018 12:16:20

Supplier Name: RESPOND POWER LLC

BP Number: 0801743096

State: Pennsylvania

Operating Company: West Penn Power

Request Type: Billing Inquiries - Budget; POR; Collective, Write offs

Requestor's Name: David Sobel

Phone Number: (845)480-7430

Extension: null

Email: [dsobel@respondpower.com](mailto:dsobel@respondpower.com)

Confirm Email: [dsobel@respondpower.com](mailto:dsobel@respondpower.com)

Customer Number (if applicable):

Comments: Hi, can you please send us a list of all of our customers that did not pay their December '17 bill yet?

Thank you

</pre>

----- Please do not remove your unique tracking number! -----

<<#51301-2107943-2213861#>>

---

**The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately, and delete the original message.**

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee you should not disseminate, distribute, or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing, or taking any action in reliance on the contents of this information is strictly prohibited.

**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: February 5, 2018



Adam Small  
General Counsel  
Respond Power LLC