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TABLE OF EXHIBITS

Exhibit No.	Description
RP Ex. AS-1	Clawback Charge Invoices
RP Ex. AS-2	Companies' Responses to Respond Power Set I, Nos. 1 and 4, Attachment A
RP Ex. AS-3	Companies' Response to Respond Power Set 1, No. 8
RP Ex. AS-4	Companies' Confidential Response to Respond Power, Set II, No. 4, Confidential Attachment A (<i>Response and Attachment Excluded</i>)
RP Ex. AS-5	Companies' Responses to Respond Power Set I, No. 7 and Set II, No. 1
RP Ex. AS-6	Companies' Response to Respond Power Set II, No. 2
RP Ex. AS-7	Companies' Responses to Respond Power Set I, Nos. 2 and 3, Confidential Attachment A, and Respond Power Set I, Nos. 5 and 6, Confidential Attachment A (<i>Attachments Excluded</i>)
RP Ex. AS-8	Companies' Response to Respond Power Set II, No. 5

1 **I. INTRODUCTION AND BACKGROUND**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND TITLE.**

3 A. My name is Adam Small and my business address is 100 Dutch Hill Road – Suite 310,
4 Orangeburg, New York 10962. I am General Counsel for Respond Power, LLC (“Respond
5 Power”).

6 **Q. HOW LONG HAVE YOU BEEN IN YOUR CURRENT POSITION WITH**
7 **RESPOND POWER?**

8 A. I have been working as General Counsel for Respond Power since January 2011. My
9 responsibilities include handling regulatory compliance, contracts with vendors and
10 customers, administrative and personnel operations and coordination with outside counsel
11 on matters that require industry expertise.

12 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
13 **HISTORY.**

14 A. Prior to my employment with Respond Power, I worked as an associate in a law firm
15 handling immigration proceedings and other legal matters. Before that, I was on the tax
16 staff of Ernst & Young. I graduated from the St. John’s University School of Law in 2007
17 and earned a Bachelor of Science degree in Accounting in 2004 from the University of
18 Maryland – Robert H. Smith School of Business.

19 **Q. HAVE YOU SUBMITTED TESTIMONY IN ANY PRIOR PROCEEDINGS AT**
20 **THE PENNSYLVANIA PUBLIC UTILITY COMMISSION (“COMMISSION”)?**

21 A. Yes. On July 21, 2015, I submitted written rebuttal testimony on behalf of Respond Power
22 in the matter of *Commonwealth of Pennsylvania, et al. v. Respond Power, LLC*, Docket
23 No. C-2014-2427659 and *Pa. P.U.C. v. Respond Power, LLC*, Docket No. C-2014-
24 2438640, which is commonly referred to as “Polar Vortex” litigation and was fully

1 resolved by a comprehensive settlement approved by the Commission in August 2016. I
2 have also provided oral testimony during consumer complaint cases.

3 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

4 A. My testimony is submitted on behalf of Respond Power.

5 **Q. PLEASE DESCRIBE RESPOND POWER.**

6 A. Respond Power is an electric generation supplier (“EGS”) licensed by the Commission to
7 supply electricity or electric generation services to the public within the Commonwealth of
8 Pennsylvania.¹ Since receiving its EGS license, Respond Power has served a significant
9 number of residential and small commercial customers in various electric distribution
10 company (“EDC”) service territories throughout Pennsylvania.

11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

12 A. The purpose of my testimony is to support the complaints filed by Respond Power against
13 Pennsylvania Electric Company (“Penelec”) and West Penn Power Company (“West
14 Penn”) (collectively referred to as “the Companies”). Respond Power has served
15 residential and small commercial customers in the service territories of Penelec and West
16 Penn under the Companies’ Purchase of Receivables (“POR”) programs. On September
17 27, 2016, Respond Power was assessed POR clawback charges by the Companies in the
18 amount of \$484,797.69. Respond Power filed the pending complaints on November 17,
19 2016.

¹ *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).*

1 **Q. PLEASE SUMMARIZE WHAT YOU ARE SEEKING FROM THE COMMISSION**
2 **IN THIS PROCEEDING.**

3 Respond Power is seeking to have the Commission conclude that it would be unjust,
4 unreasonable and unlawful for the Companies to collect the POR clawback charges from
5 Respond Power that were assessed on September 27, 2016.

6 **II. BACKGROUND**

7 **Q. WHAT IS A PURCHASE OF RECEIVABLES (“POR”) PROGRAM?**

8 A. A “purchase of receivables” or “POR” program sets forth the parameters under which the
9 EDC bills and collects the charges (receivables) due to a participating EGS that is providing
10 the end-user customer with generation service and where the customer has opted to receive
11 a single consolidated bill from the EDC for both energy and wires services. Since customer
12 service functions, including credit, collections and termination of service continue to be
13 performed by EDCs today, a POR plan permits the EDC to continue to operate in the same
14 manner without any incremental or decremental responsibilities with regard to credit or
15 billing. For the customer, he or she sees no changes from the billing and collections
16 standpoint. Typically, POR programs involve residential and small commercial customers
17 (aka “mass market customers”) because utilities have several inherent advantages in billing
18 and collections that make it difficult for EGSs to offer products and services to these
19 classes.²

20 **Q. WHAT ARE THE ADVANTAGES OF A POR PROGRAM?**

21 A. POR programs maximize the utilization of the existing rate-based utility resources, *i.e.* the
22 billing and collections systems, avoiding the need for EGSs to undertake duplicative costs

² See generally *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271 (Order entered August 11, 2009 at 27-30).

1 associated with these functions. POR programs also optimize overall call center expenses.
2 From a customer perspective, the biggest advantage of a POR program is simplicity. Each
3 month, customers receive just one bill from their local utility and only need to make one
4 payment for both delivery and commodity services. By creating a greater opportunity for
5 more EGSs to serve mass market customers, POR programs lead to a greater variety of
6 competitive offers from which consumers may choose.

7 **Q. DOES THE COMMISSION SUPPORT POR PROGRAMS?**

8 A. Yes, in 2007, the Commission determined that the public interest is served by POR
9 programs and specifically indicated that EDCs should consider proposing POR programs
10 similar to the one implemented by Duquesne Light Company (“Duquesne”) effective
11 January 1, 2008.³ Following that declaration, the Commission – through numerous
12 proceedings involving the various EDCs – approved POR programs.⁴

13 **Q. WHY IS IT APPROPRIATE TO PLACE THE RISK OF COLLECTION ON THE**
14 **EDCS?**

15 A. The reason it is appropriate to place the risk of collection on the EDCs is that because in
16 Pennsylvania today, only the EDCs can terminate a customer for non-payment. The EDCs
17 have well-established, ratepayer funded systems in place to exercise this ability within the
18 requirements of the law. EGSs are not able to terminate service to a customer for any
19 reason.

³ *Default Service and Retail Electric Markets*, Docket No. M-000720009 (Final Policy Statement entered May 10, 2007); 52 Pa. Code § 69.1813.

⁴ The Commission has also approved POR programs for the natural gas distribution companies. *See Investigation of Pennsylvania's Retail Natural Gas Supply Market*, Docket No. I-2013-2381742, 2014 Pa. PUC LEXIS, at *74 (Order entered August 21, 2014).

1 **Q. HOW DO EDCS RECOVER THE COSTS OF UNCOLLECTIBLE EXPENSE?**

2 A. EDCs recover the costs of uncollectible accounts through other ratepayers in their
3 distribution rates. When the amount of such recovery is not sufficient, EDCs have the
4 ability to recover the costs of uncollectible expense through the structure of the POR
5 program.

6 **Q. CAN A POR PROGRAM INCLUDE A MECHANISM TO ADDRESS**
7 **UNCOLLECTIBLE EXPENSE?**

8 A. Yes. Because the EGS is paid for the charges assessed to its customers and the risk of
9 uncollectible expense for these customers is taken over by the EDC, POR programs may
10 include a “discount” to the payment that is made by the EDC to the EGS. The purpose of
11 this discount is to reflect any incremental uncollectible expense that the EDC experiences
12 over and above the amount for which it is already being compensated in its regulated
13 distribution rates. Distribution rates as approved by the Commission in a rate case already
14 include an amount intended to cover the uncollectible expense associated with their
15 existing generation/default service revenues. If the amount approved in the rate case does
16 not recover the amount of uncollectible expense associated with EGS customers who are
17 billed through the POR program, then the difference can be collected through a discount to
18 the amount paid by the utilities to the EGS.

19 **Q. DO SOME OF THE EDCS RELY ON A DISCOUNTED POR PROGRAM TO**
20 **ADDRESS UNCOLLECTIBLES?**

21 A. Yes. PPL Electric Utilities Corporation (“PPL”) discounts its POR program by the same
22 uncollectible accounts factor approved in its rate case.⁵ Also, the POR program

⁵ *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2010-2161694 (Order entered December 21, 2010); PPL Tariff Electric Pa. P.U.C. No. 1S, Sections 12.9, 12.9.1 and 12.9.2.

1 implemented by Duquesne includes a mechanism whereby it can adjust the discount
2 applied for an individual EGS under certain conditions.⁶

3 **Q. WHEN DID THE COMPANIES FIRST IMPLEMENT THEIR POR PROGRAMS?**

4 A. West Penn has explained that its first POR program, which purchased EGS receivables
5 with full recourse for uncollectible accounts, was adopted in the settlement of its
6 restructuring program. West Penn further noted that it revised its POR program to align it
7 with those of its affiliates pursuant to the terms of the settlement of the proceeding for
8 merger of Allegheny Energy, Inc. and FirstEnergy Corp.⁷ Penelec first agreed to
9 implement a POR program in 2009 in the context of its default service proceeding for the
10 period to be effective January 1, 2011.⁸

11 **Q. UNTIL RECENTLY, HAS EITHER POR PROGRAM BEEN SUBSTANTIALLY**
12 **CHANGED SINCE 2011?**

13 A. No. Until the default service proceeding leading to the changes which are the subject of
14 this complaint,⁹ the structure of both POR programs has remained largely unchanged since

⁶ Duquesne Light Company, Supplement No. 24 to Electric – Pa. P.U.C. No. 3S, Page No. 30 B, Section 12.1.7.2. I note that Duquesne proposed this discount in its default service plan for the period January 1, 2008 through December 31, 2010 and it was approved by the Commission on June 21, 2007. As such, it was not placed into effect until after Commission approval and did not modify the terms of the existing POR program. *See Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 Through December 31, 2010*, Docket No. P-00072247 (Recommended Decision served May 8, 2007, Appendix A, ¶ 5; Commission Order entered June 21, 2007).

⁷ West Penn New Matter ¶ 76. *See also Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period*, Docket No. P-00072342 (Order entered July 25, 2008, at 56-60). The details of the West Penn no-discount POR program were approved as part of a subsequent tariff filing made November 1, 2010 at Docket No. R-2010-2207938.

⁸ Penelec New Matter ¶ 75. *See also Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053 and P-2009-2093054 (Order entered at November 6, 2009, at 42) (Joint Petition for Settlement dated August 12, 2009 at 27-29).

⁹ *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-2015-

1 2011. In that period of time, two default service proceedings were litigated regarding each
2 of the Companies.¹⁰

3 **Q. PLEASE DESCRIBE THE HISTORICAL POR PROGRAMS OF THE**
4 **COMPANIES.**

5 A. As explained above, Penelec and West Penn have fully purchased the accounts receivables
6 since 2011, without any discount or other future remedies, of EGSs serving residential and
7 small commercial customers in the Companies' service territories. Otherwise stated, these
8 POR programs were "non-recourse," which is a commercial term meaning that once a
9 receivable is sold, the purchaser of the receivable has no recourse with the seller to collect
10 on any amounts the purchaser is unable to successfully recover through customer collection
11 efforts.

12 **Q. HOW LONG HAS RESPOND POWER BEEN PARTICIPATING IN THE**
13 **COMPANIES' POR PROGRAMS?**

14 A. Respond Power has been participating in the Companies' POR programs since 2013.

15 **Q. PRACTICALLY SPEAKING, WHAT DID IT MEAN FOR RESPOND POWER TO**
16 **PARTICIPATE IN THE COMPANIES' PRIOR POR PROGRAMS?**

17 A. By participating in the Companies' non-recourse POR programs, Respond Power collected
18 its entire accounts receivables from the Companies without regard to whether the
19 customers paid the charges that were billed. The Companies have explained the terms of

2511333, P-2015-2511351, P-2015-2511355 and P-2015-2511356 (Order entered May 19, 2016) ("2017-2019 Default Service Plans").

¹⁰ *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-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670, Opinion and Order entered August 16, 2012 ("2013-2015 Default Service Plans"); and, *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-2013-2391368, P-2013-2391372, P-2013-2391375, P-2013-2391378, Opinion and Order entered July 24, 2014 ("2015-2017 Default Service Plans").

1 the prior POR programs as meaning that they pay the face value of the account receivables
2 regardless of what they are actually able to collect from customers, “which eliminates the
3 risk to EGSs of uncollectible expense associated with serving residential and small
4 commercial customers.”¹¹ As a result, Respond Power has undertaken no collection efforts
5 and, in fact, has not even been aware whether or not customers are paying their bills to the
6 Companies.

7 **Q. AT WHAT POINT DID THE COMPANIES PROPOSE TO CHANGE THE POR**
8 **PROGRAMS?**

9 A. As part of their 2017-2019 Default Service Plans, which were filed on November 3, 2015,
10 the Companies proposed to modify the POR programs (that were currently in effect and
11 would remain in effect until May 31, 2017) to include clawback charges that would permit
12 Penelec and West Penn to invoice EGSs for a portion of the accounts receivables that had
13 been previously fully purchased but which were not paid by customers. According to the
14 Companies, the proposal was intended to address increased uncollectible costs associated
15 with EGS receivables which were not being recovered through the uncollectible accounts
16 expense approved in the Companies’ rate case.¹²

17 **Q. DID THE COMPANIES RECEIVE APPROVAL TO IMPLEMENT CLAWBACK**
18 **CHARGES FROM THE COMMISSION?**

19 A. Yes. The original proposal was modified by a Joint Petition for Settlement filed on April
20 1, 2016 and approved by the Commission as a two-year pilot.¹³ In approving the POR

¹¹ 2017-2019 Default Service Plans, ¶ 50.

¹² 2017-2019 Default Service Plans, Companies’ Statement No. 3 (Direct Testimony of Kimberlie L. Bortz) at 12-19.

¹³ 2017-2019 Default Service Plans (Joint Petition for Settlement filed April 1, 2016; Initial Decision served April 29, 2016; Order entered May 19, 2016).

1 clawback charges, the Commission acknowledged that their implementation may lead to
2 unintended consequences in the form of unreasonable assessments on EGSs, but
3 recognized that parties are free to raise such issues in future proceedings.¹⁴ The approved
4 settlement also made clear that if the Companies elected to continue the pilot beyond the
5 two-year period, it was required to make a new filing seeking approval of the continuance.

6 **Q. PLEASE EXPLAIN THE POR CLAWBACK CHARGES IMPLEMENTED BY**
7 **THE COMPANIES.**

8 A. The Companies apply a two-pronged test to determine whether to assess the clawback
9 charges. This test identifies those EGSs participating in the POR whose average
10 percentage of write-offs, as a percentage of revenues over the twelve-month period ending
11 August 31 each year, exceeds 200% of the average percentage of total EGS write-offs as a
12 percentage of revenues per Penelec and West Penn. The second prong of the test identifies
13 EGSs, among those identified in the first prong, whose average price charged over the same
14 twelve-month period exceeds 150% of the average price-to-compare for the prior twelve-
15 month period. For EGSs who meet both prongs of the test, the annual clawback charge is
16 the difference between the EGS's actual write-offs and 200% of the average EGS
17 percentage of write-offs per operating company.¹⁵

18 **Q. WHAT IS THE PRACTICAL EFFECT OF THIS CHANGE?**

19 A. Although the Companies are continuing to fully purchase the EGSs' accounts receivables,
20 the practical effect of this change is that the Companies' POR programs are no longer "non-
21 recourse" since the Companies have the future remedy of imposing clawback charges on

¹⁴ 2017-2019 Default Service Plans (Initial Decision at 29-31).

¹⁵ 2017-2019 Default Service Plans (Joint Petition for Settlement at 18-20).

1 EGSs after fully purchasing the receivables if the customers do not pay their EGS charges.
2 Essentially, the clawback charges have transformed the Companies' POR programs into
3 "with recourse" programs.

4 **Q. IS PARTICIPATION IN THE POR PROGRAM MANDATORY?**

5 A. Yes. Participation by EGSs in the Companies' POR programs is mandatory for any EGS
6 that uses the EDC consolidated billing option, which is the only consolidated billing option
7 that is currently available.¹⁶ For the reasons I explained previously, EGSs wishing to serve
8 mass market customers face barriers to entry regarding billing and collections which can
9 be eased through the presence of POR programs using utility consolidated billing ("UCB").
10 Issuing a separate bill to mass market customers for EGS charges (i.e. "dual bill") is not
11 practical or cost-efficient. Therefore, POR/UCB programs are really the only way for
12 EGSs to gain market entry to mass market customers under the structure in Pennsylvania
13 today.

14 **Q. GIVEN THAT PARTICIPATION IS MANDATORY, IS THERE ANY WAY TO**
15 **AVOID BEING ASSESSED A POR CLAWBACK CHARGE?**

16 A. No. Respond Power is not given any information about its customers who are not paying
17 their bills. Without this information, Respond Power cannot offer these customers a new
18 contract that may be more manageable for them or undertake any other actions with regard
19 to the customer's lack of payment to avoid or minimize the clawback charges that are
20 assessed.

¹⁶ See Appendix A attached to each formal complaint filed by Respond Power against Penelec and West Penn on November 17, 2016 (Section 12.9 of Penelec's Supplier Tariff and Section 12.4.2 of West Penn's Supplier Tariff).

1 **Q. WHEN DID THE COMPANIES FIRST ASSESS THE CLAWBACK CHARGES**
2 **ON RESPOND POWER?**

3 A. The Companies first assessed the clawback charges on Respond Power by sending invoices
4 on September 27, 2016 in the amount of \$178,907.06 due to West Penn and in the amount
5 of \$305,890.63 due to Penelec.¹⁷

6 **Q. WHEN WERE THE CLAWBACK CHARGES DUE?**

7 A. The invoices indicated that the clawback charges were due on October 27, 2016 and that a
8 failure to remit payment by that due date would result in the Companies withholding POR
9 payments.

10 **Q. HAVE THE CLAWBACK CHARGES BEEN PAID?**

11 A. No. The Commission issued an Emergency Order on October 27, 2016 directing the
12 Companies to cease and desist from collecting clawback charges from Respond Power until
13 the Companies had filed the appropriate tariff and obtained the Commission's approval
14 thereof, or November 27, 2016, whichever occurred later. On November 17, 2016,
15 Respond Power filed the pending complaints, formally disputing the charges, which
16 resulted in an agreement by the Companies to refrain from withholding the disputed
17 amounts during the pendency of this proceeding.

18 **III. SUMMARY OF CONCERNS**

19 **Q. PLEASE SUMMARIZE YOUR PRIMARY CONCERNS WITH THE CLAWBACK**
20 **CHARGES ASSESSED BY THE COMPANIES.**

21 A. My primary concerns with the clawback charges assessed by the Companies may be
22 summarized as follows:

¹⁷ The invoices that I received from the Companies are attached as RP Ex. AS-1. The supporting calculations are set forth in RP Ex. AS-2 (Companies' Responses to Respond Power Set I, Nos. 1 and 4, Attachment A).

1 (a) No notice was given to Respond Power by the Companies that they were proposing to
2 change the terms of their POR programs contained in the 2015-2017 Default Service Plans
3 by way of their forward-looking 2017-2019 Default Service Plans;
4

5 (b) No notice and opportunity to be heard was provided by the Commission prior to
6 approval of the 2017-2019 Default Service Plans that modified the then-existing POR
7 programs contained in the 2015-2017 Default Service Plans;
8

9 (c) The clawback charges assessed in September 2016 were based on historical pricing
10 information and write-off data that was accumulating prior to the date when the clawback
11 charges were approved or even initially proposed;
12

13 (d) When the write-off data began accumulating on September 1, 2015, Respond Power
14 was unaware that clawback charges would later be proposed and approved to modify the
15 POR programs that were then in effect for the 2015-2017 default service plan period;
16

17 (e) While the clawback charges were accruing, Respond Power had: (i) no knowledge that
18 its customers were not paying the Companies; (ii) no ability to terminate non-paying
19 customers; (iii) no reason to pursue collection activities (due to the “non-recourse” nature
20 of the POR programs); and (iv) no control over the Companies’ collection efforts;
21

22 (f) The write-offs by the Companies include supply charges that were billed to customers
23 several months or years earlier and do not match the time period for the pricing information
24 upon which the clawback charges are based; and
25

26 (g) The clawback charges effectively impose a limit on EGS prices, which the Commission
27 lacks the statutory authority to do.
28

29 **Q. WHAT DO YOU CONCLUDE FROM THESE CONCERNS?**

30 A. Based on these numerous concerns with the application of the clawback charges to
31 Respond Power, I conclude that the Companies’ application of clawback charges to
32 Respond Power is unjust, unreasonable and unlawful. Further, I recommend that the
33 Commission direct the Companies to cease and desist from collecting any clawback
34 charges from Respond Power until such time as they modify the clawback charges so that
35 their application to Respond Power is just, reasonable and lawful.

1 **IV. DUE PROCESS ISSUES**

2 **Q. PLEASE DESCRIBE YOUR DUE PROCESS CONCERNS WITH THE**
3 **CLAWBACK CHARGES ASSESSED BY THE COMPANIES.**

4 A. As an initial matter, Respond Power was not aware that the Companies' forward-looking
5 2017-2019 Default Service Plans filed on November 3, 2015 contained a proposal to
6 retroactively modify the POR programs that had been largely unchanged since January 1,
7 2011 and were in effect as part of their 2015-2017 Default Service Plans. Because Respond
8 Power was not aware of the Companies' proposal to modify the POR programs contained
9 in the 2015-2017 Default Service Plans, it was deprived of fundamental due process –
10 notice and an opportunity to be heard.

11 **Q. WAS RESPOND POWER SERVED WITH THE COMPANIES' 2017-2019**
12 **DEFAULT SERVICE PLANS?**

13 A. Yes.

14 **Q. WHY DID RESPOND POWER NOT INTERVENE IN THE PROCEEDINGS**
15 **THAT WERE HELD TO REVIEW THE 2017-2019 DEFAULT SERVICE PLANS?**

16 A. Respond Power did not intervene in the proceedings that were held to review the
17 Companies' 2017-2019 Default Service Plans for several reasons. Initially, Respond
18 Power's resources are limited and any additional costs incurred beyond conducting its
19 primary business of supplying electricity will limit the products and services it can offer to
20 consumers. Moreover, as an EDC's default service proceeding is intended to approve the
21 procurement process that will be utilized by the EDCs to procure power for default service,
22 these proceedings can involve substantial litigation and become very complex. For
23 example, the Companies' default plan proceeding to be effective June 1, 2013 included a
24 binding poll, a 162-page Opinion and Order and three subsequent orders addressing

1 petitions for reconsideration and an appeal of staff action.¹⁸ Because intervention in default
2 service proceedings can be very costly, particularly for an EGS like Respond Power who
3 has little or no interest in the procurement of default service supply by the Companies, it is
4 not reasonable to intervene. Moreover, default service plans are forward-looking, meaning
5 that any changes approved would not be effective until the start date of the plan.¹⁹
6 Therefore, no reason existed to consider the possibility that a filing to establish the
7 Companies' 2017-2019 Default Service Plans would contain a retroactive change to a
8 previously-approved POR program or would be based on historical data that had accrued
9 prior to Commission approval of proposed clawback charges and even before the filing of
10 the proposal to implement clawback charges.

11 **Q. HOW DO YOU BELIEVE THE COMPANIES SHOULD HAVE PROVIDED**
12 **NOTICE TO RESPOND POWER ABOUT THE PROPOSED CLAWBACK**
13 **CHARGES?**

14 **A.** I believe that the Companies should have served stand-alone proposed Supplier Tariff
15 filings on EGSs or provided specific notice of their proposed retroactive changes to their
16 then existing POR programs. Less formally, the Companies provide supplier support
17 services to communicate with EGSs which could have served as an additional avenue to
18 inform EGSs about the proposed changes.

¹⁸ 2013-2015 Default Service Plans.

¹⁹ 52 Pa. Code § 54.185 (EDCs are required to file a default service plan at least twelve months prior to the conclusion of the currently effective default service program and set forth their plan for providing default service in that future time period).

1 **Q. DO YOU BELIEVE THAT THE COMMISSION ALSO HAD A LEGAL**
2 **OBLIGATION TO PROVIDE NOTICE TO AFFECTED PARTIES BEFORE**
3 **APPROVING THE 2017-2019 DEFAULT SERVICE PLANS?**

4 A. Yes. Although I am an attorney licensed in New York and not in Pennsylvania,
5 Pennsylvania counsel for Respond Power in this proceeding advises that Section 703(g) or
6 the Public Utility Code permits the Commission to rescind or amend any order made by it
7 only “after notice and opportunity to be heard” to interested parties.²⁰ Because the POR
8 programs have been non-recourse since their January 1, 2011 effective date and the 2017-
9 2019 Default Service Plans modified the POR programs that were in effect from June 1,
10 2015 through May 31, 2017, I believe that the Commission was obligated to provide notice
11 to affected parties before issuing the May 19, 2016 Order.

12 **V. RETROACTIVE NATURE OF CLAWBACK CHARGES**

13 **Q. PLEASE EXPLAIN WHY YOU VIEW THE POR CHANGES AS RETROACTIVE?**

14 A. Although the 2017-2019 Default Service Plans did not go into effect until June 1, 2017,
15 the POR clawback charges were first assessed in September 2016 and were based on
16 historical data from the prior twelve-month period. On this basis, I view the changes to
17 the POR program as being retroactive.

18 **Q. PLEASE DESCRIBE YOUR CONCERNS ABOUT THE RETROACTIVE**
19 **NATURE OF THE CLAWBACK CHARGES.**

20 A. The clawback charges assessed on Respond Power by the Companies in September 2016
21 were based on historical pricing information and write-off data that was accumulating prior
22 to the date when the clawback charge was approved by the Commission. In fact, the
23 historical pricing information and write-off data that forms the basis of the clawback

²⁰ 66 Pa. C.S. § 703(g).

1 charges began accruing prior to the filing of the Companies' proposal to implement
2 clawback charges.

3 **Q. PLEASE FURTHER EXPLAIN.**

4 A. The Companies filed their 2017-2019 Default Service Plans on November 3, 2015. The
5 September 2016 clawback charges assessed against Respond Power were based on pricing
6 data and write-offs for the period from September 1, 2015 through August 31, 2016.
7 Therefore, when the Default Service Plans were filed, more than two months of data upon
8 which the proposed clawback charges would be based had already accrued. Similarly,
9 while the 2017-2019 Default Service Plans were being litigated, more than six months of
10 additional data accrued upon which the proposed clawback charges would be based. By
11 the time the Commission approved the clawback charges on May 19, 2016, nearly nine
12 months of data had accrued that would later be used to calculate Respond Power's
13 September 2016 invoices. Finally, the clawback charges were not included in the
14 Companies' Supplier Tariffs on file with the Commission until October 28, 2016 with a
15 retroactive date of August 1, 2016. Even if it is appropriate to make a tariff effective
16 retroactively to nearly three months before its filing, the tariffs were not in effect until after
17 eleven months of data had accrued upon which the clawback charges assessed to Respond
18 Power were based.

19 **Q. WHAT DO YOU CONCLUDE FROM THIS ACCUMULATION OF DATA**
20 **BEFORE THE CHARGES WERE PROPOSED OR APPROVED?**

21 A. I conclude that it is unjust and unreasonable for clawback charges to be assessed on the
22 basis of data that accrues months before the charges are proposed, approved and included
23 in a tariff. At the time Respond Power was participating in the non-recourse POR programs
24 that were approved as part of the 2015-2017 Default Service Plans (during the twelve-

1 month period from September 1, 2015 through August 31, 2016), no clawback charge even
2 existed. After the twelve-month period expired on August 31, 2016, the terms of the POR
3 programs changed retroactively and Respond Power was faced with a nearly one-half
4 million dollar invoice based on pricing and write-off data for the period from September
5 1, 2015 through August 31, 2016 which included the non-payment by customers of
6 accounts as far back as 2013.

7 **Q. ARE CLAWBACK CHARGES USED IN OTHER CONTEXTS?**

8 A. Yes. Clawback charges are used in the energy industry to incentivize certain behavior. In
9 fact, Respond Power uses clawback charges with its vendors to promote compliance with
10 regulatory requirements. For instance, if Respond Power discovers that a vendor secured
11 an enrollment of a customer that departed from the terms in the contract, Respond Power
12 may “clawback” the fee earned by the vendor for the enrollment.

13 **Q. HOW IS THIS TOOL DIFFERENT FROM THE COMPANIES’ CLAWBACK**
14 **CHARGES?**

15 A. The Companies’ clawback charges that were assessed in September 2016 were not in effect
16 while they were accruing and did not appear in any tariff on file with the Commission until
17 October 28, 2016. Yet, the data that the Companies would subsequently use to calculate
18 the September 2016 clawback charges was accumulating. Since Respond Power was not
19 even aware that clawback charges existed while the data was accruing, it had no
20 opportunity to take steps to avoid the assessment of the charges. As such, the POR
21 clawback is not similar to clawback charges more commonly used in the industry.

1 VI. **STRUCTURE OF CLAWBACK CHARGES**

2 **Q. DOES RESPOND POWER ALSO HAVE CONCERNS ABOUT THE STRUCTURE**
3 **OF THE CLAWBACK CHARGES?**

4 A. Yes. For a clawback charge to have the intended effect of incentivizing certain results, it
5 is imperative for the potential recipient of the charges to be aware of the conduct that is
6 occurring that will trigger the imposition of the charges. Even if Respond Power had been
7 aware of the clawback charges, it had no ability to avoid or minimize the assessment of the
8 charges. While the charges were accruing, Respond Power had no knowledge that its
9 customers were not paying the Companies and had no ability to attempt to address the
10 situation directly with its customers. Had Respond Power known that its customers were
11 not paying their EGS charges, it could have contacted the customers and determined
12 whether different terms of service would enable the customers to pay the bills.

13 **Q. DID RESPOND POWER HAVE ANY ABILITY TO ASSIST OR INFLUENCE THE**
14 **COLLECTION PRACTICES OF THE COMPANIES?**

15 A. No. Respond Power was completely at the discretion of the Companies' collection efforts.
16 It had no control over the Companies' collection efforts or any ability to assist or influence
17 the collection practices of the Companies.

18 **Q. DO YOU HAVE ANY OBSERVATIONS ABOUT THE COMPANIES'**
19 **COLLECTION EFFORTS?**

20 A. In response to discovery, the Companies described the collection steps that are taken for
21 residential (winter and non-winter) and non-residential customers.²¹ It appears that the
22 Companies' collection efforts generally track the requirements in the Commission's
23 regulations relating to notices that must be given prior to terminations of service.²²

²¹ RP Ex. AS-3 (Companies' Response to Respond Power Set I, No. 8).

²² 52 Pa. Code §§ 56.91-56.100.

1 Specifically, I note that telephone attempts are made but are not necessarily successful. In
2 fact, the Companies provided information in response to discovery to describe the attempts
3 that were made with twenty specific customers identified by Respond Power, whose
4 accounts were written off during the time period from September 1, 2015 to August 31,
5 2016. A review of that information shows that the results of the Companies' efforts to
6 contact the customers were largely unsuccessful, including numerous notations indicating
7 that "party hung up," "no answer," "invalid phone #," "no result" or "left message."²³
8 While the Companies may not be required to do anything further under the Commission's
9 regulations, Respond Power would have had the option of including additional outreach to
10 non-paying customers if it was aware that the Companies' collection efforts were not
11 successful and may have been able to negotiate a contract that was more affordable for the
12 customer.

13 **Q. DID RESPOND POWER HAVE ANY ABILITY TO TERMINATE CUSTOMERS'**
14 **SERVICE FOR NON-PAYMENT?**

15 A. No. Only the Companies can terminate customers' service for non-payment. Therefore,
16 even if Respond Power had known that the customers were not paying, it lacked the ability
17 to utilize this effective tool to encourage payment by its customers. However, had Respond
18 Power been aware that the customers were not paying their bills, it could have cancelled
19 the contracts and returned the customers to default service so as to avoid the assessment of
20 the clawback charges. To the extent the Companies' view EGS prices higher than their
21 default service prices as the root cause of uncollectible expense related to EGS charges,
22 then returning these customers to default service would effectively resolve this concern.

²³ RP Ex. AS-4 (Companies' Response to Respond Power Set II, No. 4, Confidential Attachment A).

1 **Q. COULD RESPOND POWER HAVE TAKEN STEPS TO INSULATE ITSELF**
2 **FROM NON-PAYING CUSTOMERS IN THE FIRST PLACE?**

3 A. No. As a condition of participating in the POR program, Respond Power cannot deny
4 service to residential customers for credit-related reasons.²⁴ This condition may make
5 sense in a situation where the EGS is being paid in full for its receivables and the EDC
6 bears the collection risk. However, once a POR program changes to expose the EGS to
7 risk, as it has here, an EGS should have had access to tools that could enable it to effectively
8 manage its uncollectible amounts so as to avoid the imposition of clawback charges. With
9 the ability to credit screen, Respond Power could elect to offer the customer a contract that
10 may be more affordable given the customer's particular circumstances or choose to not
11 enter into a contract with the customer.

12 **Q. DO YOU HAVE ANY COMMENTS ABOUT THE MANNER IN WHICH THE**
13 **COMPANIES APPLY PARTIAL PAYMENTS MADE BY CUSTOMERS?**

14 A. Yes. In response to discovery, the Companies explained how they post partial payments
15 by residential and small commercial customers that are insufficient to pay outstanding
16 charges for distribution and generation service. To the extent that a payment is insufficient
17 to cover both distribution consumption charges and generation consumption charges, the
18 Companies indicated that they post the payments first to distribution line items and then to
19 supplier line items.²⁵ Therefore, to the extent that Respond Power's customers are making
20 partial payments that are not sufficient to cover both the Companies' charges and Respond
21 Power's charges, a higher write-off amount is being attributed to Respond Power.

²⁴ Penelec Electric Pa. P.U.C. No. S-1, Section 12.9; West Penn Electric Pa. P.U.C. No. 2S, Section 12.4.2.

²⁵ RP Ex. No. 5 (Companies' Responses to Set I, No. 7 and Set II, No. 1).

1 **Q. DOES RESPOND POWER HAVE ANY OTHER CONCERNS ABOUT THE**
2 **STRUCTURE OF THE CLAWBACK CHARGES?**

3 A. Yes. The Companies' write-offs include supply charges that were billed to customers
4 several months or years earlier. In response to discovery, the Companies explained the
5 write-off-process, noting that with some exceptions write-offs automatically occur for
6 unpaid amounts approximately 182 days after the final bill due date.²⁶ That 182-day period
7 follows the collection steps, which span several months or even more than one year.²⁷

8 **Q. PLEASE REFER TO SPECIFIC INFORMATION SHOWING THAT THE**
9 **WRITE-OFFS DURING THE PERIOD FROM SEPTEMBER 1, 2015 THROUGH**
10 **AUGUST 31, 2016 INCLUDE UNPAID CHARGES FROM 2013 AND EARLY 2014.**

11 A. In response to discovery, the Companies provided confidential information for each
12 account that was written-off during that time period, including the operating company; the
13 customer account number; the total amount of the write-off; the date on which the account
14 was written off; and the date on which the customer first failed to make a payment that
15 covered the balance due.²⁸ A sampling of these accounts is included below, showing that
16 the write-offs during the period from September 1, 2015 through August 31, 2016 included
17 unpaid charges from 2013 and early 2014.

18 **BEGIN CONFIDENTIAL INFORMATION**

²⁶ RP Ex. AS-6 (Companies' Response to Respond Power Set II, No. 2).
²⁷ See, e.g., RP Ex. AS-4.
²⁸ RP Ex. AS-7 (Companies' Responses to Respond Power Set I, Nos. 2 and 3, Confidential Attachment A, and Respond Power Set I, Nos. 5 and 6, Confidential Attachment A).

1 **Q. DO YOU HAVE OTHER CONCERNS ABOUT THE STRUCTURE OF THE**
2 **CLAWBACK CHARGES?**

3 A. Yes. The way the clawback charges are structured, no credit is given for payments
4 subsequently made by customers on amounts that were previously written-off. According
5 to a discovery response provided by the Companies, “[c]ustomer payments received after
6 August 31, 2016 were not within the clawback calculation period and, therefore, were not
7 applied to an EGS’s pre-August 31, 2016 write-offs.”²⁹ If Respond Power is required to
8 pay the clawback charges, the result is that it will be reimbursing the Companies for charges
9 that were later paid by the customers. Therefore, the Companies are receiving payment
10 twice for those charges – once from Respond Power and once from the individual
11 customers. On a similar note, it appears that the Companies have the potential to recover
12 these amounts through the clawback charges and through uncollectible expenses that are
13 included in base rates.

14 **Q. PLEASE CONTINUE.**

15 A. Another concern that I have about the structure of the clawback charges relates to refunds
16 that are issued by Respond Power to customers as a result of inquiries or the filing of
17 informal or formal complaints. For example, as part of the Polar Vortex litigation that I
18 identified earlier, Respond Power voluntarily refunded approximately \$5 million to
19 customers who were served in January through June of 2014. It appears that assessing
20 clawback charges against Respond Power for any of these customers who received refunds
21 would result in Respond Power essentially being penalized twice – first with the payment
22 to the customer and then with the payment to the Companies.

²⁹ RP Ex. AS-8 (Companies’ Response to Set II, No. 5.)

1 **Q. DID THE COMPANIES IMPLEMENT ANY OTHER PROCESS TO ADDRESS**
2 **THEIR CONCERNS REGARDING EGS UNCOLLECTIBLES?**

3 A. Yes. The Companies identified a concern when consumers receive a payment from an
4 EGS – whether as a courtesy credit, refund, or to settle a complaint – and do not remit that
5 payment to the EDCs even though the customer has an outstanding balance due with the
6 EDCs. To address this concern, the Companies approved plan includes a process whereby
7 EGSs will be able to remit any courtesy credits or payments to the customer directly to the
8 Companies to be used to pay any outstanding bills with the Companies.

9 **Q. WHY IS THIS PLAN RELEVANT?**

10 A. This plan is relevant for two reasons. First, it highlights the larger issue (outside of
11 Respond Power’s control) of customers not paying their bills. When Respond Power issues
12 a refund or other courtesy credit to the customer, it cannot control whether the customer
13 remits that payment to the Companies his/her outstanding amount. Customers are required
14 to pay their bills and their failure to do so – particularly when they receive payments from
15 Respond Power – is an issue that cannot be resolved through the POR clawback charges,
16 as evidenced by the Companies’ creation of this new tool requiring EGSs (rather than
17 customers) to make the payments to the Companies. A second reason why this new process
18 is relevant is that it did not go into effect until June 1, 2017 even though the POR clawback
19 was retroactively applied. Retroactively applying one tool – the POR clawback – to extract
20 payments from EGSs, while prospectively implementing another tool that could serve to
21 minimize future POR clawbacks, is inherently unfair. The different effective dates not
22 only create confusion but fail to allow both tools to work together in the same time period
23 to minimize any impact on the EGS’s uncollectible rate which would then be used to
24 determine whether to impose the POR clawback charge.

1 **Q. PLEASE IDENTIFY ANY OTHER ISSUES YOU HAVE WITH THE STRUCTURE**
2 **OF THE CLAWBACK CHARGES.**

3 A. I also believe the structure of the clawback charges is flawed because the EGSs have no
4 opportunity to demonstrate that the write-off amounts were higher than average due to a
5 particular incident or set of circumstances. For instance, an EGS may experience a large
6 commercial customer default or have a residential versus non-residential customer mix that
7 differs from the average. I note that the Duquesne provision allowing it to discount
8 individual EGS POR purchase prices includes this opportunity and specifically notes that
9 Duquesne may waive the imposition of an additional discount if the increase in the
10 uncollectible rate results primarily from the EGS providing service to “previously poor
11 paying customers.”³⁰ In response to discovery propounded by the Coalition for Affordable
12 Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) in this proceeding,
13 it appears that a large number of customers whose accounts were written-off are
14 “confirmed low-income” customers which could explain the high level of uncollectible
15 amounts.³¹

16 **Q. DO THE COMPANIES HAVE ANY PROVISION IN THE CLAWBACK**
17 **CHARGES TO IDENTIFY WHETHER THE AMOUNTS WRITTEN OFF FOR**
18 **RESPOND POWER CUSTOMERS WERE ACTUALLY BILLED BY RESPOND**
19 **POWER?**

20 A. No. It does not appear that the Companies have any process in place to identify whether
21 the amounts written-off for Respond Power customers were actually billed by Respond
22 Power. To the contrary, it is my understanding that in assessing the clawback charges, the
23 Companies only consider the identity of the EGS at the time of the write-off. Nothing in

³⁰ Duquesne Electric Pa. P.U.C. No. 3S, Section 12.1.7.2.2.

³¹ Companies’ Response to CAUSE-PA Set I., No. 1.

1 the clawback charge provisions require the Companies to consider whether the EGS served
2 the customer during the entire period when the charges were accruing. Customers always
3 retain the option in the competitive market to determine the length of their contracts with
4 EGSs. These contracts may be on a month-to-month basis or span many years. Tools like
5 PaPowerSwitch make it easy for customers to often and regularly change their EGS and
6 many times contracts with mass market customers do not assess any early cancellation fees.
7 As such, it is entirely possible that these customers received service from many different
8 EGSs (or returned to default service for some periods of time) during the time they were
9 not paying their bills.

10VII. **EGS PRICING LIMITS**

11 **Q. WHAT IS RESPOND POWER'S VIEW RELATING TO THE PRONG OF THE**
12 **CLAWBACK CHARGES THAT CONSIDERS EGS PRICING OVER A TWELVE-**
13 **MONTH PERIOD?**

14 A. Initially, Respond Power's view concerning the prong of the clawback charges that
15 considers EGS pricing over a twelve-month period is that it operates to unlawfully limit
16 EGS prices. Again, while I am not an attorney licensed in Pennsylvania, counsel advises
17 that the Commission and the Commonwealth Court in Pennsylvania have concluded that
18 the Commission may not regulate or impose limits on EGS pricing.³² Yet, by approving
19 the clawback charges, the Commission is effectively imposing limits on EGS pricing.
20 Specifically, any EGS whose customers have not paid their bills in prior years is limited to
21 charging those customers no more than 150% of the Companies' prices to compare. On

³² *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. P.U.C.*, 120 A.3d 1087, 1094 (Pa. Commw. Ct. 2015), appeals denied, 136 A.3d 982 and 136 A.3d 983 (Pa. 2016), at 1102; *see also HIKO Energy, LLC v. Pa. P.U.C.*, 163 A.3d 1079, 1082, n.1 (Pa. Commw. Ct. 2017).

1 June 1, 2016, Penelec's residential price to compare was 6.02 cents per kWh and West
2 Penn's residential price to compare was 6.41 cents per kWh.³³ With a price cap of 150%
3 of the Companies' prices to compare, the EGS would be limited to charging customers
4 9.03 cents and 9.615 cents per kWh for Penelec and West Penn customers, respectively.
5 Simply stated, if the Commission is not authorized by the statute to impose limits on EGS
6 prices, its approval of the clawback charges is unlawful and the application of the charges
7 to Respond Power is likewise unlawful.

8 **Q. ARE THERE ANY OTHER PROBLEMS WITH IMPOSING LIMITS ON EGS**
9 **PRICES?**

10 A. Yes. In addition to the concerns about the Commission's lack of statutory authority to
11 impose limits on EGS prices, such a practice appears to facilitate policing of EGS prices
12 by the Companies. The Commission has indicated that EDCs are not gatekeepers and are
13 not responsible for enforcing the Commission's regulations against EGSs.³⁴ Indeed, the
14 Commission has protections in place to monitor marketing practices of EGSs and has
15 utilized them to ensure that EGSs' prices are consistent with the disclosure statements and
16 marketing materials that are provided to customers.³⁵

17 The imposition of price limits also fails to consider the various factors that may
18 result in EGS prices being 150% higher, on average over the course of a particular year,
19 than the Companies' prices to compare. One important factor that this practice overlooks

³³ RP Ex. AS-2.

³⁴ *EDC Customer Account Number Access Mechanism for EGS*, Docket No. M-2013-2355751 (Order entered July 17, 2013, at 38 (Commission declined to put EDCs in gatekeeper role of "policing" EGS actions).

³⁵ *See, e.g., Pa. P.U.C. v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015); and *Commonwealth of PA, et al. v. HIKO Energy, LLC*, Docket No. C-2014-2427652 (Order entered December 3, 2015).

1 is that the Companies' prices to compare are established through a regulated process which
2 is not based on current wholesale market prices.³⁶ As a result, using the Companies price
3 to compare as a benchmark for what is a competitive price in the market is flawed.
4 Additionally, limiting EGS prices to a percentage of the prices to compare fails to recognize
5 that consumers select higher EGS prices for a variety of reasons, including a preference to
6 support a renewable product, a desire to obtain a gift card or reward points or an interest in
7 locking in a fixed rate for a long period of time when the Companies prices are constantly
8 fluctuating. For example, an EGS may have offered an attractive 3-year fixed price in
9 2014 that is no longer competitive with other offers in the market (and is now more than
10 150% higher than the Companies' price to compare) but is valued by the customer for its
11 long-term stability.

12 Enabling the EDCs to take actions intended to curb EGS practices or pricing is
13 antithetical to the purposes of restructuring the historical monopoly structure regarding
14 electricity to incent competitive market development. The competitive market combined
15 with the regulatory powers of the Commission regarding EGSs are the only appropriate
16 tools available to "police" EGS practices. Placing this power in the hands of the EDC
17 which still serves as the "default service provider" and is still well-positioned to exercise
18 market power to the detriment of EGSs attempting to gain a foothold is not consistent with
19 the goals of restructuring or good policy.

³⁶ See *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Order entered February 15, 2013, at 24).

VIII. SUMMARY OF IMPACT

2 **Q. PLEASE SUMMARIZE HOW THE COMPANIES' IMPOSITION OF THE POR**
3 **CLAWBACK CHARGES HAS IMPACTED RESPOND POWER?**

4 A. When the Companies notified Respond Power of the clawback charges, they indicated that
5 Respond Power could either pay the nearly one-half million dollar invoices outright or have
6 them withheld from the next payment from the Companies, to which Respond Power was
7 entitled under the POR program for customers it was serving. For the reasons I previously
8 discussed, these invoices came as a surprise to Respond Power and either payment within
9 30 days or having the amount withheld from the next POR payment would have placed
10 Respond Power in a difficult cash-flow position. Unfortunately, Respond Power was
11 unable to address its concerns with the Companies and was required to obtain Commission
12 intervention to stay the payment. While the Companies agreed to forego collection upon
13 the filing of the pending formal complaints, litigation before the Commission is costly.

14 **Q. DO YOU ALSO HAVE ANY CONCERNS ABOUT THE CONTINUING EFFECT**
15 **ON THE MARKET OF THE POR CLAWBACK CHARGES?**

16 A. Yes. The Commission has recognized the value of POR programs as “an essential element
17 to the creation of a competitive market.”³⁷ For Respond Power, the POR program creates
18 a viable pathway for it to offer its products and services to mass market customers. If
19 clawback charges similar to those implemented by the Companies, over which EGSs have
20 no control or ability to avoid and contain many structural flaws, are sanctioned by the
21 Commission, it would be very difficult for Respond Power to serve mass market customers
22 through the Companies' POR programs. While one may take the view that this effect is

³⁷ *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271 (Order entered August 11, 2009 at 27).

1 just one EGS's experience, continuing down this path could easily discourage other EGSs
2 from serving mass market customers. Such a result deprives customers of the full
3 opportunity to select from a number of competitive options that would be otherwise
4 available. At the same time, this result would transform the Companies' POR program
5 into a mechanism that enables the EDCs to restrict EGS pricing while extracting payments
6 from EGSs to compensate the EDCs for non-paying customers.

7 **IX. CONCLUSION**

8 **Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

9 **A. Yes.**

RP Ex. AS-1
Clawback Charge Invoices



09/27/2016

Contract No. 120014866467

Bill for:
RESPOND POWER LLC
100 DUTCH HILL RD., SUITE 230
ORANGEBURG NY 10962

Invoice No. 90602747

Total due by 10/27/2016

To avoid a possible Late Payment Charge being added to your bill, please pay by the due date.

Item	Description	Qty	Total
1	Customer Referral - Residential September 2016 Clawback Charge	1.000	305,890.63
Subtotal			305,890.63
Total Amount Due			305,890.63

	Written correspondence may be mailed to:	Questions regarding this invoice may be directed to
	Business Services Penelec 5404 Evans Road Erie PA 16509	Accounts Receivable: 1-814-868-8753



Return this part with a check or money order payable to:

PENELEC

Write name, phone, or address changes on back and check here.

Invoice No.	Customer PO No.	Your Check Number/Date	Contract No.
90602747			120014866467

Amount Paid	
-------------	--

Please Pay	305,890.63
Due By	10/27/2016

RESPOND POWER LLC
100 DUTCH HILL RD., SUITE 230
ORANGEBURG NY 10962

PENELEC
PO BOX 3612
AKRON OH 44309-3612

0112001486646700000000905027470000305890630305890637



09/27/2016

120014866525

Bill for:
RESPOND POWER LLC
100 DUTCH HILL RD., SUITE 230
ORANGEBURG NY 10962

Invoice No. 90502908

Total due by 10/27/2016

To avoid a possible Late Payment Charge being added to your bill, please pay by the due date.

Table with columns: Item, Description, Qty, Total. Includes a 'General Information' section with contact details and a 'General Information' section with a logo and correspondence instructions.



Return this part with a check or money order payable to:

WEST PENN POWER

Write name, phone, or address changes on back and check here.

Small square box for check marking

Table with 4 columns: Invoice No., Customer PO No., Your Check Number/Date, Contract No.

Table with 2 columns: Amount Paid, Total

Table with 2 columns: Please Pay, Due By

RESPOND POWER LLC
100 DUTCH HILL RD., SUITE 230
ORANGEBURG NY 10962

WEST PENN POWER
P.O. BOX 3615
AKRON OH 44309-3615

111200148665250000000905029088000178907060178907060

RP Ex. AS-2
Companies' Responses to
Respond Power Set I, Nos. 1 and 4
and
Attachment A

**RESPOND POWER LLC V. PENNSYLVANIA ELECTRIC COMPANY
RESPOND POWER LLC V. WEST PENN POWER COMPANY
Docket Nos. C-2016-2576287, C-2016-2576292**

Respond Power LLC, Set I, No. 1

“With reference to Invoice No. 90502747 dated September 27, 2016 and issued by Penelec to Respond Power in the amount of \$305,890.63, please provide the supporting calculations.”

RESPONSE:

See PN/WPP Response to Respond Power LLC Set I, No. 1, Attachment A.

**RESPOND POWER LLC V. PENNSYLVANIA ELECTRIC COMPANY
RESPOND POWER LLC V. WEST PENN POWER COMPANY
Docket Nos. C-2016-2576287, C-2016-2576292**

Respond Power LLC, Set I, No. 4

“With reference to Invoice No. 90502908 dated September 27, 2016 and issued by West Penn to Respond Power in the amount of \$178,907.06, please provide the supporting calculations.”

RESPONSE:

See PN/WPP Response to Respond Power LLC Interrogatory Set I, No. 1.

DSP IV POR Clawback Charge
 Twelve Months Ended August 31, 2016

Co	EGS	First Prong					Second Prong				Charge		Invoice No.
		Respond Power Revenues	Respond Power Write-Offs	Respond Power Write-Offs as a % of Revenues	EGS Average Write-Off %	200% of EGS Average Write-Off %	Respond Power kWh	Respond Power Average Rate c/kWh	Weighted Average PTC c/kWh	150% of Weighted Average PTC c/kWh	Respond Power Write-Offs Calculated at 200% of EGS Average Write-Off %	Clawback Charge	
		(1)	(2)	(3) = (2)/(1)	(4)	(5) = (4) x 2	(6)	(7) = (6)/(8) x 100	(8)	(9) = (8) x 1.5	(10) = (10) x (5)	(11) = (7) x (10)	
PN	Respond Power, LLC	\$ 2,610,064.93	\$ 386,019.62	14.79%	1.53%	3.07%	21,330,459	12.24	7.11	10.67	\$ 80,128.99	\$ 305,890.62	90502747
WP	Respond Power, LLC	\$ 1,426,341.02	\$ 205,722.27	14.42%	0.94%	1.88%	11,549,345	12.35	7.21	10.81	\$ 26,815.21	\$ 178,907.06	90502808
Total Clawback Charge											\$ 484,797.68		

Supporting Calculation (a)	EGS Revenues (1)	EGS Write-Offs (2)	EGS Average Write-Off % (3) = (2)/(1)
PN	\$ 244,375,708.13	\$ 3,750,204.99	1.53%
WP	\$ 271,860,982.78	\$ 2,559,779.63	0.94%

Supporting Calculation (b)	Quarterly PTC Rates per kWh				Sum of Quarterly Weighted Average	Weighted Average PTC
	9/1/2015	12/3/2015	3/1/2016	6/1/2016		
PN	Residential	0.07341	0.07554	0.06516	0.06858	0.07111
	Commercial	0.07983	0.07763	0.07244		
WP	Residential	0.06917	0.07011	0.06983	0.06830	0.07207
	Commercial	0.07947	0.07547	0.07504		
	Months	3	3	3		
	Weight	0.25	0.25	0.25		
	Quarterly Weighted Average PTC Rates per kWh					
PN	Residential	0.01835	0.01889	0.01629	0.01505	
	Commercial	0.01996	0.01941	0.01811	0.01616	
WP	Residential	0.01729	0.01753	0.01746	0.01603	
	Commercial	0.01967	0.01867	0.01876	0.01835	

RP Ex. AS-3
Companies' Response to
Respond Power Set II, No. 8

**RESPOND POWER LLC V. PENNSYLVANIA ELECTRIC COMPANY
RESPOND POWER LLC V. WEST PENN POWER COMPANY
Docket Nos. C-2016-2576287, C-2016-2576292**

Respond Power LLC, Set I, No. 8

“Please describe the Companies’ collection practices, indicate how long they have been in place and identify any changes that have been made to the Companies’ collection practices from January 1, 2011 through today’s date.”

RESPONSE:

Formal service rules were first adopted by the Pennsylvania Public Utility Commission (“Commission”) in 1978 through its regulations at Chapter 56, which were subsequently amended following the passage of the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, known as Chapter 14 of the Pennsylvania Public Utility Code (“Code”), in 2004. Presently, residential collection practices are regulated by Act 155 of 2014, which became effective on December 22, 2014, and which reauthorized and amended Chapter 14.

See PN/WPP Response to Respond Power LLC Interrogatory Set I, No. 8, Attachment A for a summary of the process changes that occurred following the reauthorization of Chapter 14 in 2014. Apart from the changes shown in this attachment, there have been no other major collection policy changes since 2011 for Penelec or West Penn.

Non-Residential collection practices follow Chapter 55 of the Public Utility Code.

For Penelec and West Penn, customers are eligible for termination when their past due account balance exceeds \$100.00, or if their past due account balance is greater than \$50.00 and their account is over 60 days past due.

If a customer is enrolled in the Pennsylvania Customer Assistance Program, they are eligible for termination when their obligation is greater than \$100.00, or if they are greater than 60 days past due and their obligation amount is equal to or greater than \$25.00.

Shown below are the collection steps based on the customer's account class.

Non-Residential

- 10 Day Disconnection Notice Mailed
- Phone attempt 1
- Phone attempt 2
- Personal Notice of Disconnection if above is not successful
- Disconnection Notification
- End Disconnection process

Residential - Non-Winter

- 10 Day Disconnection Notice Mailed
- Phone attempt 1
- Phone attempt 2
- Personal Notice of Disconnection if above is not successful
- Disconnection Notification
- End Disconnection process

Residential - Winter

- 10 Day Disconnection Notice Mailed
- Phone attempt 1
- Phone attempt 2
- Personal Notice of Disconnection if above is not successful
- 48 HR Disconnection Notification
- End Disconnection process

RP Ex. AS-4

Companies' **CONFIDENTIAL** Response to

Respond Power Set II, No. 4

and

CONFIDENTIAL Attachment A

RP Ex. AS-5
Companies' Responses to
Respond Power Set I, No. 7 and Set II, No. 1

**RESPOND POWER LLC V. PENNSYLVANIA ELECTRIC COMPANY
RESPOND POWER LLC V. WEST PENN POWER COMPANY
Docket Nos. C-2016-2576287, C-2016-2576292**

Respond Power LLC, Set I, No. 7

“When customers make partial payments, which do not cover the amount of the balance due, how do the Companies apply the partial payments? Specifically, please indicate whether the Companies post those partial payments to outstanding charges for distribution, transmission and generation service in proportion to the amounts that are billed. Alternatively, do the Companies post those partial payments first to outstanding charges for distribution service?”

RESPONSE:

Residential and Small Commercial accounts are part of the Companies’ Purchase of Receivables (“POR”) program, meaning retail suppliers are paid by the Companies even if the customer does not pay their balance in full.

If the total payment equals the total balance, all charges will be cleared. If partial payment is received, items will be cleared in order of the list below.

Residential and Small Commercial Payment Posting:

1. Total Due
2. Security Deposit
3. Service Charge
4. Late Payment Charge Arrears
5. Returned Check Fee
6. Reconnect Charge
7. Installment Plan Arrears
8. All Consumption Item Arrears (distribution company and supplier charges, as applicable, by due date)
9. Current Late Payment Charge
10. Current Installment Plans
11. FirstEnergy Current Consumption Items
12. Supplier Current Consumption Items
13. Miscellaneous Charges
14. CAP Arrears
15. PCAP Arrears

**RESPOND POWER LLC V. PENNSYLVANIA ELECTRIC COMPANY
RESPOND POWER LLC V. WEST PENN POWER COMPANY
Docket Nos. C-2016-2576287, C-2016-2576292**

Respond Power LLC, Set II, No. 1

“Reference PN/WPP Response to Respond Power I-7.

- (a) Please confirm that in allocating partial payments, which are payments made by residential and small commercial customers that do not cover their full balance due, the Companies first apply them to the Companies’ distribution charges before they are applied to the supply charges of an electric generation supplier (“EGS”). If this is not confirmed, please explain.
- (b) Please confirm that if a partial payment is sufficient to only pay the first 11 items listed in the response, the current EGS charges would remain unpaid and would be subject to being written-off at a subsequent time. If this is not confirmed, please explain.
- (c) Please explain the posting priority for a partial payment that is sufficient to only pay a portion of the charges identified in item number 8, “All Consumption Arrears (distribution company and supplier charges, as applicable, by due date).” Specifically indicate whether a priority is given to distribution company charges over supplier charges.”

RESPONSE:

- (a) If partial payment is received, such payments are applied in order 2 through 15 below. Payments are posted to items 7, 8, and 10 by oldest due date order and for each due date payments are posted first to distribution line items and then to supplier line items. Item 12 is further addressed in part (b).

Residential and Small Commercial Payment Posting:

1. Total Due
2. Security Deposit
3. Service Charge
4. Late Payment Charge Arrears
5. Returned Check Fee
6. Reconnect Charge
7. Installment Plan Arrears
8. All Consumption Item Arrears (distribution company and supplier charges, as applicable, by due date)
9. Current Late Payment Charge
10. Current Installment Plans
11. FirstEnergy Current Consumption Items
12. Supplier Current Consumption Items
13. Miscellaneous Charges
14. CAP Arrears
15. PCAP Arrears

- (b) A partial payment that is exhausted in clearing items 2 through 11 would move open item number 12 - Supplier Current Consumption Items to item number 8 - All Consumption Item Arrears. Future partial payments would first clear items 2 through 7 and then clear item number 8. Write-offs do not occur until the account is closed.
- (c) Payments are posted to item number 8 by oldest bill due date. For each bill due date, payments are posted first to distribution line items and then to supplier line items.

RP Ex. AS-6
Companies' Response to
Respond Power Set II, No. 2

**RESPOND POWER LLC V. PENNSYLVANIA ELECTRIC COMPANY
RESPOND POWER LLC V. WEST PENN POWER COMPANY
Docket Nos. C-2016-2576287, C-2016-2576292**

Respond Power LLC, Set II, No. 2

“Reference PN/WPP Response to Respond Power I-9.

- (a) Please describe in detail the step-by-step process followed by the Companies in writing off these amounts each month. For instance, please indicate how the Companies determine which unpaid amounts to write off during a particular month by identifying the timeframes and criteria that are used to write-off unpaid amounts.
- (b) Please indicate, on average, during these time period, how long of a period elapsed from the time that charges were unpaid until the amounts were written-off.”

RESPONSE:

- (a) After the final bill for an account has been issued and the final bill is 30 days past due, the unpaid balance is placed with a collection agency used to try to collect final bills prior to write-off. The collection agency attempts to collect the unpaid funds for approximately 150 days. After this period has elapsed, the final bill is recalled, the unpaid balance is written off, and the bill is placed with a primary collection agency to try to recover the amount that was written-off. The steps of this process are executed automatically. There are some exceptions to the write-off period where, for example, a bankruptcy occurs, in which case the write-off would occur when the Company receives notice that the bankruptcy has been filed.
- (b) Write-offs automatically occur for unpaid amounts approximately 182 days after the final bill due date. There are some exceptions to this write-off period, as noted in the response to part (a), above.

RP Ex. AS-7

Companies' Responses to
Respond Power Set I, Nos. 2 and 3
and

CONFIDENTIAL Attachment A

and

Companies Responses to
Respond Power Set I, Nos. 5 and 6
and

CONFIDENTIAL Attachment A

RESPOND POWER LLC V. PENNSYLVANIA ELECTRIC COMPANY
RESPOND POWER LLC V. WEST PENN POWER COMPANY
Docket Nos. C-2016-2576287, C-2016-2576292

Respond Power LLC, Set I, No. 2

“Also with reference to Invoice No. 90502747, please provide the monthly write-offs for the months of September 2015 through August 2016, including the account numbers and the write-off amounts.”

RESPONSE:

See PN/WPP Response to Respond Power LLC Set I, No. 2, CONFIDENTIAL Attachment A.

**RESPOND POWER LLC V. PENNSYLVANIA ELECTRIC COMPANY
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Respond Power LLC, Set I, No. 3

“For the monthly write-off information provided in response to Set I-2 above, please provide the following information for each account number:

- (a) The month and year when the customer first either failed to make a payment or failed to make a payment that was sufficient to cover the balance due.
- (b) The number of months during which the account had an unpaid amount.
- (c) The period of time over which this written-off amount accrued.
- (d) The total amounts billed to the customer and the total amounts paid by the customer for each month they were served by Respond Power.
- (e) A description of the collection efforts that were taken by Penelec, including the dates of the efforts, the results of those efforts and the dates of the customers’ last payments.
- (f) An indication of whether the customer subsequently paid the written-off amount or agreed to pay it through a payment agreement.
- (g) An indication of whether service has been restored.”

RESPONSE:

See PN/WPP Response to Respond Power LLC Set I, No. 2, CONFIDENTIAL Attachment A for the information requested by parts (a)-(c) and (f)-(g). Parts (d) and (e) are considered withdrawn based on the conversation held between counsel on August 11, 2017.

**RESPOND POWER LLC V. PENNSYLVANIA ELECTRIC COMPANY
RESPOND POWER LLC V. WEST PENN POWER COMPANY
Docket Nos. C-2016-2576287, C-2016-2576292**

Respond Power LLC, Set I, No. 5

“Also, with reference to Invoice No. 90502908, please provide the monthly write-offs for the months of September 2015 through August 2016, including the account numbers and the write-off amounts.”

RESPONSE:

See PN/WPP Response to Respond Power LLC Set I, No. 5, CONFIDENTIAL Attachment A.

RESPOND POWER LLC V. PENNSYLVANIA ELECTRIC COMPANY
RESPOND POWER LLC V. WEST PENN POWER COMPANY
Docket Nos. C-2016-2576287, C-2016-2576292

Respond Power LLC, Set I, No. 6

“For the monthly write-off information provided in response to Set I-4 above, please provide the following information for each account number.

- (a) The month and year when the customer first either failed to make a payment or failed to make a payment that was sufficient to cover the balance due.
- (b) The number of months during which the account had an unpaid amount.
- (c) The period of time over which this written-off amount accrued.
- (d) The total amounts billed to the customer and the total amounts paid by the customer for each month they were served by Respond Power.
- (e) A description of the collection efforts that were taken by West Penn, including the dates of the efforts, the results of those efforts and the dates of the customers’ last payments.
- (f) An indication of whether the customer subsequently paid the written-off amount or agreed to pay it through a payment agreement.
- (g) An indication of whether service has been restored.”

RESPONSE:

See PN/WPP Response to Respond Power LLC Set I, No. 5, CONFIDENTIAL Attachment A for the information requested by parts (a)-(c) and (f)-(g). Parts (d) and (e) are considered withdrawn based on the conversation held between counsel on August 11, 2017.