

**ECKERT
SEAMANS**
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Karen O. Moury
717.237.6036
kmoury@eckertseamans.com

May 2, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company,
Pennsylvania Power Company and West Penn Power Company for Approval of Their
Default Service Program (DSP-V) – Docket Nos. P-2017-2637855; P-2017-2637857;
P-2017-2637858; and P-2017-2637866

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Respond Power LLC's Main Brief 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. Mary D. Long w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Respond Power's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

Tori Giesler, Esq.
Lauren Lepkoski, Esq.
Teresa K. Harrold
FirstEnergy Service Company
2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001
tgiesler@firstenergycorp.com
llepkoski@firstenergycorp.com
tharrold@firstenergycorp.com

Allison C. Kaster, Esq.
Gina L. Miller, Esq.
PA Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17101-3265
akaster@pa.gov
ginmiller@pa.gov

Aron J. Beatty, Esq.
Hayley E. Dunn, Esq.
Christy M. Appleby, Esq.
Office of Consumer Advocate
555 Walnut St., 5th Floor, Forum Place
Harrisburg, PA 17101-1923
ABeatty@paoca.org
hdunn@paoca.org
cappleby@paoca.org

Daniel Asmus, Esq.
Office of Small Business Advocate
300 N. Second Street, Suite 202
Harrisburg, PA 17101
dasmus@pa.gov

Patrick Cicero, Esq.
Kadeem G. Moris, Esq.
Elizabeth R. Marx, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Susan E. Bruce, Esq.
Charis Mincavage, Esq.
Vasiliki Karandrikas, Esq.
Alessandra L. Hylander, Esq.
McNees Wallace & Nurick LLC
1 00 Pine Street
P.O. Box 1166
Harrisburg, P A 17108
sbruce@mwn.com
cmincavage@mwn.com
vkandrikas@mwn.com
ahylander@mcneeslaw.com

Thomas J. Sniscak, Esq.
William E. Lehman, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
welehman@hmslegal.com

Holly Rachel Smith, Esq.
Exelon Business Services Corp.
701 9th Street, NW Mailstop EP2205
Washington, DC 20068
Holly.Smith@exeloncorp.com

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com

Kenneth C Springirth
4720 Cliff Drive
Erie, PA 16511

Charles E. Thomas III, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
Cet3@tntlawfirm.com

Carl R. Shultz, Esq.
Eckert Seamans Cherin & Mellott
213 Market St., 8th Floor
Harrisburg, PA 17101
cshultz@eckertseamans.com

Via Hand Delivery and/ Email

Deanne M. O'Dell, Esq.
Sarah C. Stoner, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com
sstoner@eckertseamans.com

Dated: May 2, 2018



Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	Docket Nos. P-2017-2637855
Pennsylvania Power Company, and West	:	P-2017-2637857
Penn Power Company for Approval of	:	P-2017-2637858
Their Default Service Programs	:	P-2017-2637866

MAIN BRIEF OF RESPOND POWER LLC

Karen O. Moury
I.D. No. 36879
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.237.6036
kmoury@eckertseamans.com

Date: May 2, 2018

Counsel for Respond Power LLC

I. INTRODUCTION

Respond Power LLC (“Respond Power”) respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) approve without modification the Joint Stipulation of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company (collectively “the Companies”), the Bureau of Investigation and Enforcement (“I&E”), Respond Power, LLC (“Respond Power”) and the Retail Energy Supply Association (“RESA”) relating to the purchase of receivables (“POR”) clawback charge, which was admitted into the evidentiary record on April 10, 2018 (“Joint Stipulation Regarding POR Clawback”). The POR clawback charge was the only issue addressed during this proceeding by Respond Power and is the only issue that is discussed in this Main Brief.¹

A. Background

Respond Power is an electric generation supplier (“EGS”) licensed by the Commission to supply electricity or electric generation services to customers within the Commonwealth of Pennsylvania.² Since receiving its EGS license, Respond Power has served a significant number of residential and small commercial customers in various electric distribution company (“EDC”) territories throughout Pennsylvania. Specifically, as related to this proceeding, Respond Power has served residential and small business customers under the POR programs in the Companies’ service territories. Respond Power St. 1 at 2.

A POR program sets forth the parameters under which the EDC bills and collects the charges (receivables) due to a participating EGS that is providing the customer with generation service and where the customer has opted to receive a single consolidated bill from the EDC for

¹ Appendices A, B and C attached hereto contain proposed findings of fact, proposed conclusions of law and proposed ordering paragraphs only relating to the POR clawback charge.

² *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).

both energy and wires services. Since customer service functions, including credit, collections and termination of service continue to be performed by EDCs today, a POR plan permits the EDC to continue to operate in the same manner without any incremental or decremental responsibilities with regard to credit or billing. For the customer, he or she sees no changes from the billing and collections standpoint. Typically, POR programs involve residential and small commercial customers (aka “mass market customers”) because utilities have several inherent advantages in billing and collections that make it difficult for EGSs to offer products and services to these classes.³ Respond Power St. 1 at 3-4. Additionally, participation by EGSs in the Companies’ POR programs is mandatory for any EGS using the Companies’ consolidated billing option, which is the only consolidated billing option that is currently available. Respond Power St. 1 at 7.

As part of the Companies’ default service proceeding for the period commencing on June 1, 2017, the Commission approved a clawback mechanism on a two-year pilot basis.⁴ This POR clawback charge is triggered when two conditions are met: (i) the EGS’s actual write-off percentage exceeds 200% of the average EGS write off percentage during the most recent twelve-month period, and (ii) the EGS’s average price charged exceeds 150% of the relevant EDC’s price to compare over that same twelve month period. When these conditions are met, the Companies assess a penalty against the EGS. This penalty is calculated as the difference between the EGS’s actual write-off amount and 200% of the average EGS write-off amount. Respond Power St. 1 at 5-6.

The Companies imposed clawback charges in September 2016, using historical write-off data and pricing information for the period from September 1, 2015 through August 31, 2016. The

³ See generally *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271 (Order entered August 11, 2009 at 27-30).

⁴ *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-2015-2511333, P-2015-2511351, P-2015-2511355 and P-2015-2511356 (Order entered May 19, 2016) (“*DSP IV Order*”).

Companies' imposition of clawback charges against Respond Power in September 2016 and September 2017 are the subject of separate litigation pending before the Commission.⁵ Respond Power St. 1 at 2, 5-6.

In the present proceeding, the Companies proposed to make the clawback mechanism a permanent part of the POR program. The Companies did not propose any changes to the mechanism and indicated their intent to impose the clawback charges in September 2018. Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R at 13, 19-20.

B. Summary of Argument

The Commission should approve the Joint Stipulation Regarding POR Clawback, which was executed by the Companies, Respond Power, I&E and RESA, and contains the following key terms:

- Four-year extension of the Companies' POR clawback pilot, to begin with charges assessed in September 2018 based on a review of data for the twelve months ending August 31, 2018;
- Companies will continue to use a two-prong test to determine the clawback charge as described in its testimony; and
- Companies will develop an EGS-specific customer arrears report with unpaid aged EGS account balances, which would be provided to EGSs participating the Companies' POR programs on a quarterly basis, beginning no later than October 20, 2018 reflecting EGS arrears for third quarter 2018.

Through approval of the Joint Stipulation Regarding POR Clawback, the Commission could enable the Companies to continue using the clawback mechanism that was first approved by the *DSP IV Order*, while also ensuring that EGSs have access to information regarding customers who are not paying their bills so that have an opportunity to take steps to avoid imposition of the clawback charges in future years.

⁵ *Respond Power LLC v. Pennsylvania Electric Company, et al.*, Docket No. C-2016-2576287, *et al.* (Recommended Decision served April 20, 2018; Exceptions pending).

In response to the Companies' proposal in this proceeding, Respond Power did not oppose the concept of a clawback mechanism. However, Respond Power proposed numerous changes that should be made to the clawback mechanism before it is applied to EGSs. A particular feature of the clawback mechanism that Respond Power has steadfastly opposed is the failure of the Companies to provide notice to Respond Power that its customers were not paying their supply charges. Absent knowledge that its customers were not paying the Companies, Respond Power has had no ability to address the situation directly with its customers. Respond Power St. 1 at 10-11. Had Respond Power been aware that its customers were not paying their supply charges, it could have taken steps designed to avoid the imposition of the clawback charges. Although Respond Power could not have threatened to terminate service as a way of encouraging payment, it could have negotiated different contract terms or cancelled the contracts and returned the customers to default service.

Respond Power has argued that no clawback charges should be imposed until at least September 2020. Respond Power's rationale for a delayed implementation is to ensure that a mechanism is in place to make EGSs aware of their customers' failure to pay their bills so that steps can be taken to avoid the imposition of the clawback charges. Respond Power St. 1 at 8, 16-17.

Notwithstanding Respond Power's opposition to many aspects of the clawback mechanism, it entered into the Joint Stipulation Regarding POR Clawback, under which the Companies have agreed to provide EGS-specific customer arrears reports with unpaid aged supply charge balances on a quarterly basis beginning no later than October 20, 2018. In exchange for this commitment from the Companies, and agreed to by I&E and RESA, Respond Power determined not to pursue its other challenges regarding the clawback mechanism in this

proceeding, including its concerns about the Companies to imposing the charges in September 2018 before the DSP V plan goes into effect on June 1, 2019 using data that is currently accruing.

However, it is Respond Power's understanding that the Office of Consumer Advocate ("OCA") opposes the aspect of the Joint Stipulation Regarding POR Clawback that would result in the Companies providing EGSs with EGS-specific customer arrears reports showing unpaid aged customer account balances. The basis for this opposition is that the Companies should not provide any customer-specific information since the EGSs no longer have any responsibility or right to seek collection of their supplier charges from their customers as a result of the purchase of receivables by the Companies. OCA St. 2R at 3, 9. This opposition overlooks the fact that the clawback mechanism introduces a level of exposure to EGSs participating in the POR program such that the Companies have recourse against them that if their customers fail to pay their supply charges.

Having access to the information about its non-paying customers is the most critical change advocated by Respond Power in this proceeding and would enable it – in the future – to monitor the payment patterns of its supply customers and take appropriate steps to minimize or avoid the imposition of clawback charges. Therefore, if the Commission approves the continuation of the POR clawback mechanism, it is critical that the Commission also approve the Joint Stipulation Regarding POR Clawback, without modification. Through this tool, Respond Power would be in a position to review the data showing which of their supply customers are not paying their bills and make business decisions designed to avoid the imposition of clawback charges, including outreach to those customers and the renegotiation of contracts at terms that may be more affordable to customers. Respond Power could also elect to return those non-paying customers to the Companies for default service. Respond Power St. 1 at 10-11.

To the extent that the Commission rejects the Joint Stipulation Regarding POR Clawback, it should also disapprove the clawback mechanism proposed by the Companies. It is imperative that EGSs be aware that their customers are not paying their bills if they are going to be subject to the imposition of clawback charges. At the very least, the Commission should direct the Companies to make the other changes to the clawback mechanism as advocated by Respond Power and RESA before imposing any charges, including credit screening and other measures that are designed to allow EGSs to avoid or minimize payment of the clawback charges. Respond Power St. 1 at 8-9, 12-17; RESA St. 1 at 13-18; RESA St. and 1-R at 12-14.

II. PROCEDURAL HISTORY

Respond Power served the Direct Testimony of Adam Small on February 22, 2018, which was marked as Respond Power St. 1. This Direct Testimony was admitted in the record during an evidentiary hearing on April 10, 2018. Respond Power also executed the Joint Stipulation Regarding POR Clawback, which was likewise admitted in the record on April 10, 2018.

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

Respond Power takes no position on these issues.

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

A. Introduction

Respond Power urges the Commission to adopt, without modification, the Joint Stipulation Regarding POR Clawback executed by Respond Power, the Companies, RESA and I&E. Under the Joint Stipulation Regarding POR Clawback, the Stipulating Parties agreed:

- to a four-year extension of the Companies' POR clawback pilot, to begin with charges assessed in September 2018 based on a review of data for the twelve months ending August 31, 2018;
- that the Companies would continue to use a two-prong test to determine the clawback charge as described in its testimony; and

- that the Companies would also develop an EGS-specific customer arrears report with unpaid aged EGS account balances, which would be provided to EGSs participating the Companies' POR programs on a quarterly basis, beginning no later than October 20, 2018 reflecting EGS arrears for third quarter 2018.

While Respond Power made significant concessions in executing the Joint Stipulation Regarding POR Clawback, by foregoing the many challenges raised during this proceeding about the timing of implementation and the structure of the clawback mechanism, it did so in exchange for the commitment of the Companies to develop an arrears report showing unpaid aged supply charge balances for the EGS's customers, on a quarterly basis starting in October 2018. The receipt of information from the Companies about the EGS customers who are not paying their supply charges is imperative to a fair and appropriate implementation of a clawback mechanism. Without this data, EGSs have no knowledge that their customers are not paying their bills and therefore no knowledge that they are at risk for imposition of clawback charges and no opportunity to avoid or minimize the assessment of such charges.

B. Purchase of Receivables Program

A POR program sets forth the parameters under which the EDC bills and collects the charges (receivables) due to a participating EGS that is providing the customer with generation service and where the customer has opted to receive a single consolidated bill from the EDC for both energy and wires services. Since customer service functions, including credit, collections and termination of service continue to be performed by EDCs today, a POR plan permits the EDC to continue to operate in the same manner without any incremental or decremental responsibilities with regard to credit or billing. For the customer, he or she sees no changes from the billing and collections standpoint. Typically, POR programs involve residential and small commercial customers (aka "mass market customers") because utilities have several inherent advantages in

billing and collections that make it difficult for EGSs to offer products and services to these classes.⁶ Respond Power St. 1 at 3-4.

POR programs maximize the utilization of the existing rate-based utility resources, *i.e.* the billing and collections systems, avoiding the need for EGSs to undertake duplicative costs associated with these functions. POR programs also optimize overall call center expenses. From a customer perspective, the biggest advantage of a POR program is simplicity. Each month, customers receive just one bill from their local utility and only need to make one payment for both delivery and commodity services. By creating a greater opportunity for more EGSs to serve mass market customers, POR programs lead to a wider variety of competitive offers from which consumers may choose. Respond Power St. 1 at 4.

The reason it is appropriate to place the risk of collection on the EDCs is that because in Pennsylvania today, only the EDCs can terminate a customer for non-payment. The EDCs have well-established, ratepayer funded systems in place to exercise this ability within the requirements of the law. EGSs are not able to terminate service to a customer for any reason. Respond Power St. 1 at 4.

Respond Power has participated in the Companies' POR programs since 2013. By participating in the Companies' non-recourse POR programs, Respond Power has collected its entire accounts receivables from the Companies without regard to whether the customers paid the charges that were billed. The Companies have explained the terms of the prior POR programs as meaning that they pay the face value of the account receivables regardless of what they are actually able to collect from customers, "which eliminates the risk to EGSs of uncollectible expense associated with serving residential and small commercial customers." As a result, Respond Power

⁶ See generally *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271 (Order entered August 11, 2009 at 27-30).

has undertaken no collection efforts and, in fact, has historically not even been aware whether or not customers are paying their bills to the Companies. Respond Power St. 1 at 5.

C. Companies' Proposal

Through this proceeding initiated to obtain approval for the Companies' default service program commencing on June 1, 2019 ("DSP V"), the Companies proposed to continue the POR clawback mechanism that was initially approved by the Commission as a two-year pilot by the *DSP IV Order*. Under the two-year pilot, the Companies assessed clawback charges in September 2016 and September 2017. The proposal in this proceeding was to continue that mechanism in effect, allowing the Companies to assess the clawback charges in September 2018. Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R at 13, 19-20.

D. Respond Power's Position

Through the Direct Testimony of its witness, Adam Small, Respond Power contended that several modifications need to be made to the clawback mechanism before it is applied to EGSs. At the outset, Respond Power noted that the proposed four-year term of the DSP V plan would commence on June 1, 2019 and that from a fairness perspective, any clawback charges should not be assessed until after entry of a Commission order approving the DSP V program, including the clawback mechanism. Further, Respond Power asserted that the earliest the Companies should be permitted to assess clawback charges is September 2020 so that EGSs would be aware of the mechanism, and its parameters when the twelve-month write-off period begins in September 2019. Additionally, noting that the historical write-offs that occur from September 1, 2019 through August 31, 2020 would include unpaid supply charges that existed prior to the effective date of the Companies' supplier tariff in this proceeding, Respond Power maintained that the calculations should exclude any write-offs of such unpaid supply charges. Respond Power St. 1 at 8-9.

Respond Power also proposed several modifications to the clawback mechanism. Specifically, Respond Power recommended that the Companies be directed to make the following changes to the clawback mechanism before charges may be assessed against EGSs: (1) develop a notification process to convey timely information to EGSs about customers' non-payment; (2) give EGSs an opportunity to demonstrate why their write-off amounts may have been higher than average and should be excluded from the clawback calculations; (3) revise the supplier tariffs so that EGSs may do credit screening of potential customers; (4) allocate partial payments made by customers equally to distribution and supply charges; (5) apply credits to EGS write-off amounts when customers later pay their bills; and (6) ensure that EGSs are held accountable only for their unpaid supply charges; and (7) eliminate the prong of the mechanism that effectively limits EGS prices. Respond Power St. 1 at 9-10. Mr. Small explained the rationale for these changes in his testimony. Respond Power St. 1 at 10-17.

On the notification issue, Mr. Small explained that currently, EGSs are not aware that their customers are not paying their bills and therefore have no ability to minimize or avoid imposition of the clawback charges by working with the customer to collect the unpaid amounts or negotiate different contract terms. Although the Companies offer EGSs the ability to request information about non-paying customers, Mr. Small proposed that the Companies be required to develop a mechanism that automatically notifies EGSs when their customers do not pay their supply charges. As he noted, in an industry that relies on electronic data interchange ("EDI") to exchange customer information between EDCs and EGSs, it is not feasible to rely on a manual process that requires an EGS to proactively submit requests about its customers' payment patterns – especially when the EGS has not received any notification about a problem.⁷ He added that in other

⁷ EDI transactions allow for the transfer and exchange of electronic data relating to customer information between the EDC and EGS computer systems by standard message formatting without the need for human

jurisdictions where Respond Power serves customers, the EDCs automatically notify EGSs when their customers do not pay their supply charges or remove them from utility consolidated billing.⁸

Respond Power St. 1 at 10.

As additional justification for needing this notification, Mr. Small explained that Respond Power is completely at the discretion of the Companies' collection efforts. It has no control over those activities or any ability to assist or influence the Companies' collection practices. He observed that although the Companies' collection efforts generally track the requirements in the Commission's regulations relating to notices that must be given prior to termination of service, these to contact customers are often unsuccessful. If Respond Power knew that customers were not paying their bills, it would have the option of including additional outreach to non-paying customers, including the negotiation of a contract that is more affordable for the customer. Respond Power could also make a business decision to return these customers to default service. Respond Power St. 1 at 10-11.

E. Companies' Modified Position

In the Rebuttal Testimony of Kimberlie L. Bortz, the Companies supported the proposal of Respond Power to implement reporting to notify EGSs of their customers in arrears to the extent the clawback provision is approved as part of this proceeding as a permanent provision within the POR programs. Pending development of such a report, the Companies indicated that any EGS may request information regarding non-paying customers from the Companies' Supplier Services website. Ms. Bortz specifically explained that an EGS may submit individual or batch inquiries

intervention. *See Standards for Electronic Data Transfer and Exchange Between Electric Distribution Companies and Electric Generation Suppliers*, Docket No. M-00960890 (Order entered October 15, 1999).

⁸ *See In the Matter of the Electric Discount and Energy Competition Act of 1999 Customer Account Services Proceeding*; Docket Nos. EX99090676 and EX94120585Y (Order adopted June 23, 2004). <http://www.state.nj.us/bpu/pdf/boardorders/6-23-04-2A.pdf>

to the Companies at any time or request a list of its customers showing their outstanding unpaid balances. Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R at 17-18.

F. Joint Stipulation Regarding POR Clawback

In the Joint Stipulation Regarding POR Clawback, which was executed by the Companies, Respond Power, RESA and I&E, the Stipulating Parties agreed to a four-year extension of the Companies' clawback charge pilot, to begin with charges assessed in September 2018 based on a review of data for the twelve months ending August 31, 2018 and ending with charges to be assessed in September 2021. The Stipulating Parties further agreed that the Companies would continue to use the two-prong test to determine the clawback charge, including: 1) an identification of EGSs whose average percentage of write-offs as a percentage of revenues over the twelve-month period ending August 31 each year exceeds 200% of the average percentage of total EGS write-offs as a percentage of revenues per operating company; and 2) an identification of those EGSs identified in the first prong whose average price charged over the same twelve-month period exceeds 150% of the average price-to-compare for the period. For those EGSs identified by both prongs of the test, the annual clawback charge assessed each September would be the difference between that EGS's actual write-offs and 200% of the average percentage of write-offs per operating company.

Importantly, the Stipulating Parties also agreed that the Companies will develop an EGS-specific customer arrears report with unpaid aged EGS account balances. This report, as provided under the Joint Stipulation Regarding POR Clawback, will be provided to EGSs participating in the Companies' POR programs on a quarterly basis, beginning no later than October 20, 2018, reflecting EGS arrears for the third quarter of 2018. This customer-specific arrears report would alert EGSs that customers are not paying their bills and enable EGSs to work with those customers in an effort to avoid the imposition of clawback charges. Making EGSs aware of these factors

would not only allow them to take steps to avoid having clawback charges assessed, they should also have the effect of reducing write-offs. If nothing else, the EGSs would have the option of returning the customer to default service to minimize their liability for the customers' non-payment activities.

G. OCA Opposition to Joint Stipulation Regarding POR Clawback

Based upon OCA's representation at the hearing on April 10, 2018, it is Respond Power's understanding that OCA intends to oppose the Joint Stipulation Regarding POR Clawback. This opposition will presumably be based on the Rebuttal Testimony of Barbara R. Alexander presented on behalf of OCA. Ms. Alexander opined that while it may be appropriate to develop reporting requirements by the Companies to EGSs participating in the POR program on EGS-specific write off or arrears balance trends, such information should not be customer-specific. Her rationale is that the EGS has sold its receivables to the EDC and the EDC is responsible for collecting them. OCA St. 2R at 3, 9.

The point that Ms. Alexander's testimony overlooks is that the clawback mechanism exposes EGSs to the risk of uncollectible expense associated with serving residential and small commercial customers. While a non-recourse POR program, where the utilities pay the face value of the accounts receivables regardless of what they are actually able to collect from customers, shields EGSs from this risk, the clawback mechanism changes that outcome and is the worst of both worlds. EGSs are not responsible for collection efforts as they would be if they were issuing their own bills, but they are held responsible to pay a portion of the write-offs when their customers do not pay their bills without having any knowledge of their customers' payment patterns or control over the collection efforts. Respond Power St. 1 at 4-6, 11. Absent this information, the clawback charge essentially imposes limits on EGS prices. Respond Power St. 1 at 15-16.

H. Approval of Joint Stipulation Regarding POR Clawback

Respond Power urges the Commission to approve the Joint Stipulation Regarding POR Clawback, without modification. Respond Power made many concessions regarding in executing the Joint Stipulation Regarding POR Clawback, in exchange for the Companies' commitment to share information about non-paying customers on a proactive and periodic basis. This notification process is critical to ensure that Respond Power is aware when its customers are not paying their supply bills and that it may consequently be exposed to the imposition of clawback charges. The OCA's opposition based on collection being the responsibility of the Companies wholly overlooks the EGSs' exposure to risks resulting from the customers not paying their bills. It is immaterial who is responsible for the collection efforts when EGSs are held responsible for the non-payment of supply charges by their customers.

To the extent that the Commission rejects the Joint Stipulation Regarding POR Clawback, it should also disapprove the clawback mechanism proposed by the Companies. It is imperative that EGSs be aware that their customers are not paying their bills if they are going to be subject to the imposition of clawback charges. Without that information, it is wholly inappropriate to permit the continuation of the clawback mechanism.

At the very least, the Commission should direct the Companies to make the other changes to the clawback mechanism as advocated by Respond Power and RESA before imposing any charges on EGSs and to delay any implementation until at least after the DSP V program commences on June 1, 2019. Particularly if the Commission determines that EGSs may not obtain information about their customers who are not paying their supply charges, it is critical that EGSs be able to perform credit screening as way of insulating themselves in the first place from non-paying customers. Similarly, to the extent that the EGSs are precluded from receiving information about their customers, they should have an opportunity to demonstrate to the Companies that the

write-offs were higher than average due to a particular incident or set of circumstances and to have them eliminated from the clawback charge calculation. Additionally, changes should be made to the way that partial payments are allocated and how credits for subsequent payments are handled. The Commission should also ensure that EGSs are only being held accountable for the unpaid supply charges that were accrued while they were serving the customers. Moreover, the prong of the clawback mechanism that considers pricing over a twelve-month period operates to unlawfully limit EGS prices⁹ and inappropriately allows the Companies to serve in a gatekeeper role as to the prices being charged by EGSs.¹⁰ Respond Power St. 1 at 8-9, 12-17; RESA St. 1 at 13-18; RESA St. and 1-R at 12-14.

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM

Respond Power takes no position on these issues.

VI. NON-COMMODITY BILLING

Respond Power takes no position on these issues.

VII. CUSTOMER REFERRAL PROGRAM

Respond Power takes no position on these issues.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

Respond Power takes no position on these issues.

IX. NON-MARKET BASED CHARGES

Respond Power takes no position on these issues

X. TIME-OF-USE RATE

Respond Power takes no position on these issues.

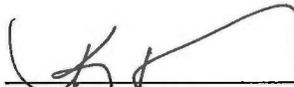
⁹ *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. P.U.C.*, 120 A.3d 1087, 1094 (Pa. Commw. Ct. 2015), *appeals denied*, 136 A.3d 982 and 136 A.3d 983 (Pa. 2016), at 1102; *see also HIKO Energy, LLC v. Pa. P.U.C.* 163 A.3d 1079, 1082, n. 1 (Pa. Commw. Ct. 2017) (Commission may not limit the prices charged by EGSs).

¹⁰ *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).

XI. CONCLUSION

WHEREFORE, Respond Power LLC respectfully requests that the Commission approve, without modification, the Joint Stipulation of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively “the Companies”), the Bureau of Investigation and Enforcement, Respond Power, LLC, and the Retail Energy Supply Association admitted into the record on April 10, 2018 (“Joint Stipulation Regarding POR Clawback”). If this Joint Stipulation Regarding POR Clawback is not approved by the Commission, without modification, the Companies should be directed to make the changes proposed by Respond Power LLC and the Retail Energy Supply Association before the clawback mechanism is implemented.

Respectfully submitted,



Karen O. Moury
I.D. No. 36879
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.237.6036
kmoury@eckertseamans.com

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Appendix A

Proposed Findings of Fact

APPENDIX A – PROPOSED FINDINGS OF FACT

1. Respond Power is an electric generation supplier (“EGS”) licensed by the Commission to supply electricity or electric generation services to the public within the Commonwealth of Pennsylvania. Respond Power St. 1 at 2.
2. As an EGS, Respond Power has served a significant number of residential and small commercial customers in various electric distribution company (“EDC”) service territories throughout Pennsylvania. Respond Power St. 1 at 2.
3. Respond Power has served residential and small business customers under the Purchase of Receivables (“POR”) programs in the service territories of Metropolitan Edison Company, Penelec, Pennsylvania Power Company and West Penn (collectively, “FirstEnergy” or “Companies”). Respond Power St. 1 at 2.
4. A POR program sets forth the parameters under which the EDC bills and collects the charges (receivables) due to a participating EGS that is providing the customer with generation service and where the customer has opted to receive a single consolidated bill from the EDC for both energy and wires services. Respond Power St. 1 at 3.
5. The reason it is appropriate to place the risk of collection on the EDCs is that because in Pennsylvania today, only the EDCs can terminate a customer for non-payment. The EDCs have well-established, ratepayer funded systems in place to exercise this ability within the requirements of the law. EGSs are not able to terminate service to a customer for any reason. Respond Power St. 1 at 4.
6. Respond Power has been participating in the Companies’ POR programs since 2013. Respond Power St. 1 at 5.
7. By participating in the Companies’ non-recourse POR programs, Respond Power collected its entire accounts receivables from the Companies without regard to whether the customers paid the charges that were billed. As a result, Respond Power has undertaken no collection efforts and, in fact, has historically not even been aware whether or not customers are paying their bills to the Companies. Respond Power St. 1 at 5.
8. In the DSP IV settlement, the parties agreed to a two-year pilot program where the Companies would implement a POR penalty charge assessed to any EGS whose actual bad debt experienced under the POR program exceeded a threshold. This POR clawback charge is triggered when two conditions are met: (i) the EGS’ actual write-off percentage exceeds 200% of the average EGS write off percentage, and (ii) the EGS’ average price charged exceeds 150% of the relevant EDC’s price to compare over the defined twelve month period. When these conditions are met, the Companies assesses a penalty against the EGS. This penalty is calculated as the difference between the EGS’ actual write-off amount and 200 percent of the average EGS write-off amount. Respond Power St. 1 at 5-6.
9. Respond Power was assessed POR clawback charges by the Companies in 2016 and 2017. Respond Power St. 1 at 3, 6.

10. Although the Companies are continuing to fully purchase the EGSs' accounts receivables, the practical effect of the clawback mechanism is that the Companies' POR programs are no longer "non-recourse" since the Companies have the future remedy of imposing clawback charges on EGSs after fully purchasing the receivables if the customers do not pay their EGS charges. Essentially, the clawback charges have transformed the Companies' POR programs into "with recourse" programs. Respond Power St. 1 at 6.
11. The POR program is mandatory for EGSs. Respond Power St. 1 at 7.
12. Currently, EGSs are not aware that their customers are not paying their bills and therefore have no ability to minimize or avoid the imposition of the clawback charges by working with the customer to collect the unpaid amounts or negotiate different contract terms. Respond Power St. 1 at 10.
13. Timely information from the Companies about their customer's arrears will enable EGSs to undertake a range of proactive measures to address customer non-payment which could lessen the amount of uncollectible expense for all ratepayers. RESA St. No. 1 at 17; Respond Power St. 1 at 11.
14. Under the Companies' write-off process, generally write-offs automatically occur for unpaid amounts approximately 182 days after the final bill due date. Respond Power St. 1 at 11.
15. The Companies' write-offs during a twelve-month period reflect unpaid supply charges that were billed to customers several months or years earlier. Respond Power St. 1 at 11.
16. EGSs cannot insulated themselves from non-paying customers in the first place. As a condition of participating in the POR program, EGSs may not deny service to residential customers for credit-related reasons. Respond Power St. 1 at 13.
17. Once a POR program changes to expose an EGS to risk, as it does with the clawback mechanism, an EGS needs access to tools that could enable to effectively manage its uncollectible amounts so as to avoid the imposition of clawback charges. Respond Power St. 1 at 13.
18. In the absence of an EGS's ability to obtain information that is needed to avoid the imposition of clawback charges, the clawback mechanism would effectively impose limits on EGS pricing and place the Companies in a gatekeeper role for those prices. Respond Power St. 1 at 15.

Appendix B

Proposed Conclusions of Law

APPENDIX B – PROPOSED CONCLUSIONS OF LAW

1. The party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa.C.S. §332(a).
2. Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, “FirstEnergy” or “Companies”) bear the burden of proof in this proceeding.
3. The Companies must prove by a preponderance of the evidence that their proposed default service plan is lawful, reasonable and prudent. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).
4. The Commission may not regulate or impose limits on EGS pricing. *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).
5. EDCs are not gatekeepers of EGS prices and are not responsible for enforcing the Commission’s regulations against EGSs. *EDC Customer Account Number Access Mechanism for EGS*, Docket No. M-2013-2355751 (Order entered July 17, 2013, at 38).
6. The Commission has protections in place to monitor marketing practices of EGSs and has utilized them to ensure that EGSs’ prices are consistent with the disclosure statements and marketing materials that are provided to customers. *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).

Appendix C

Proposed Ordering Paragraphs

APPENDIX C – PROPOSED ORDERING PARAGRAPHS

THEREFORE, IT IS ORDERED:

1. The Companies' petition is approved subject to the modification that follows:
The Joint Stipulation Regarding POR Clawback is adopted and the Companies are directed to develop an EGS-specific customer arrears report with unpaid aged EGS account balances on a quarterly basis beginning no later than October 20, 2018 reflecting EGS arrears for the third quarter 2018.