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July 9, 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

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Exceptions of Respond Power LLC with regard to the above-referenced matter. 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 Reply Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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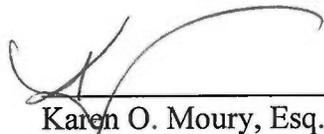
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Dated: July 9, 2018

  
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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

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**REPLY EXCEPTIONS OF RESPOND POWER LLC**

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Date: July 9, 2018

Counsel for Respond Power LLC

## I. INTRODUCTION

Respond Power LLC (“Respond Power”) submits these Reply Exceptions responding to Exception No. 2 filed by the Office of Consumer Advocate (“OCA”) to the Recommended Decision (“RD”) of Administrative Law Judge Mary D. Long regarding one provision of the Joint Stipulation Regarding Purchase of Receivables (“POR”) Clawback (“Joint Stipulation No. 2”). Joint Stipulation No. 2, which was executed by 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 and the Retail Energy Supply Association (“RESA”), was admitted into the evidentiary record on April 10, 2018.

Under Joint Stipulation No. 2, the Companies’ POR clawback pilot that was put into effect as part of the Companies’ prior default service proceeding would continue for a four-year period. In the simplest terms, the clawback pilot enables the Companies to assess charges against electric generation suppliers (“EGSs”) when customers fail to pay for generation supply bills and the unpaid amounts are subsequently written-off. The provision of Joint Stipulation No. 2 that is in dispute appears in Paragraph 3 and would result in the Companies providing arrears reports to EGSs when the EGSs’ customers do not fully pay their supply charges. Access to this information would enable by EGSs, including Respond Power, to take measures to avoid assessment of the clawback charges, including a negotiation of different terms or cancellation of the contracts.

The RD appropriately approved Joint Stipulation No. 2, with a slight modification to make it clear that the arrears report would provide information to an EGS only about the specific EGSs’ customers (which is consistent with Respond Power’s intent in executing Joint Stipulation No. 2). In recommending such approval, the RD correctly noted that “EGSs should have the ability to renegotiate more affordable agreements with their payment-troubled customers or return them to

default service.”<sup>1</sup> The RD further reasoned that EGS access to information about non-paying customers “not only benefits the EGS by enhancing its ability to avoid assessment of the clawback charge but may also benefit the Companies and its ratepayers by reducing uncollectible expenses.”<sup>2</sup>

Citing Section 54.8 of the Commission’s regulations,<sup>3</sup> OCA’s Exception No. 2 argues that customer’s historical billing data constitutes “private customer” information that may not be released absent the customers’ full, knowing consent.<sup>4</sup> This Exception should be denied.

As the RD properly concluded, “OCA advocates an overly broad reading of Section 54.8,” and nothing in this regulation addresses the exchange of customer information contemplated by the Joint Stipulation.<sup>5</sup> Section 54.8 precludes electric distribution companies (“EDCs”) and EGSs from releasing private customer information to a **third party** unless the customer has been notified of the intent and has been given a convenience method of notifying the entity of the customer’s desire to restrict the release of the private information. As explained by the RD, customers whose arrears information would be provided to the EGS are already customers of the EGS, and that in this sense, the EGS is not a third party. Notably, as further recognized by the RD, due to the existing relationship, the EGS already has access to the customers’ private information, including historical billing data.<sup>6</sup>

In excepting to the RD’s recommended approval of Joint Stipulation No. 2, including the provision that would allow EGSs to obtain arrears reports for their customers from the Companies, OCA has not specifically addressed the rationale of the RD or explained why OCA believes that is in error, other than to reiterate points made by its witness, which the RD appropriately rejected.

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<sup>1</sup> RD at 45.

<sup>2</sup> *Id.*

<sup>3</sup> 52 Pa. Code § 54.8.

<sup>4</sup> OCA Exceptions at 5-6.

<sup>5</sup> RD at 43.

<sup>6</sup> *Id.*

Specifically, OCA has not offered any reason why an EGS may not obtain information regarding the payment patterns of its own customers, when those customers have entered into contracts with the EGSs and the customers' usage information is already exchanged between the Companies and the EGSs. While OCA points to the fact that the EGS is not responsible for collection activities, it completely overlooks the reality that EGSs are subject to the imposition of charges under the clawback pilot as a result of their customers not paying their supply bills.

Respond Power urges the Commission to adopt the RD in its entirety with respect to approval, with modification, of Joint Stipulation No. 2. To the extent that the Commission rejects Joint Stipulation No. 2, as modified by the RD, it should 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.<sup>7</sup>

## **II. REPLY TO OCA EXCEPTION NO. 2**

Under Joint Stipulation No. 2, the Companies' POR clawback pilot that was put into effect as part of the Companies' prior default service proceeding would continue for a four-year period. Specifically, 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

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<sup>7</sup> See Respond Power St. 1 at 8-9, 12-17; RESA St. 1 at 13-18; RESA St. and 1-R at 12-14. Respond Power fully incorporates herein its Main Brief filed on May 2, 2018 and its Reply Brief filed on May 15, 2018.

- 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.

In recommending approval of Joint Stipulation No. 2, with a modification to make it clear that the customer arrears report would only provide information about the EGS's own customers, the RD correctly noted that "EGSs should have the ability to renegotiate more affordable agreements with their payment-troubled customers or return them to default service."<sup>8</sup> The RD further reasoned that EGS access to information about non-paying customers "not only benefits the EGS by enhancing its ability to avoid assessment of the clawback charge but may also benefit the Companies and its ratepayers by reducing uncollectible expenses."<sup>9</sup>

In Exception No. 2 filed on June 28, 2018, OCA argues that the RD erred in allowing EGSs to be provided payment information regarding their own supply customers.<sup>10</sup> Citing to Section 54.8 of the Commission's regulations,<sup>11</sup> OCA contends that "EGSs are not entitled to receive or permitted to access such customer information without customers' full, knowing consent."<sup>12</sup> Arguing that there has been no showing that customer consent has been or will be obtained by the Companies, OCA claims that the release of EGS-specific arrears reports to EGSs would violate this regulation. OCA also maintains that when an EGS is participating in a purchase of receivables program, it has no responsibility for collecting unpaid supplier charges and therefore has no right to receive information about its customers who are not paying their bills.<sup>13</sup>

As the RD properly concluded, "OCA advocates an overly broad reading of Section 54.8," and nothing in this regulation addresses the exchange of customer information contemplated by

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<sup>8</sup> RD at 45.

<sup>9</sup> *Id.*

<sup>10</sup> OCA Exceptions at 5-7.

<sup>11</sup> 52 Pa. Code § 54.8.

<sup>12</sup> OCA Exceptions at 5-6.

<sup>13</sup> OCA Exceptions at 6-7.

the Joint Stipulation.<sup>14</sup> Section 54.8 precludes electric distribution companies (“EDCs”) and EGSs from releasing private customer information to a third party unless the customer has been notified of the intent and has been given a convenience method of notifying the entity of the customer’s desire to restrict the release of the private information. As the RD further explained, customers whose arrears information would be provided to the EGS are already customers of the EGS, and that in this sense, the EGS is not a third party. Notably, as recognized by the RD, due to the existing relationship, the EGS already has access to the customers’ private information, including historical billing data.<sup>15</sup>

Approval of Joint Stipulation No. 2, as modified by the RD, is essential to ensure that EGSs obtain information about their own customers’ payment patterns. Access to this information would be appropriate under any circumstances, given the contractual relationship between EGSs and their customers. Such access is critical when the Companies are seeking to continue a clawback pilot that allows them to assess charges against EGSs when their customers do not pay their supply bills.

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

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<sup>14</sup> RD at 43.

<sup>15</sup> *Id.*

knowledge that they are at risk for imposition of clawback charges and no opportunity to avoid or minimize the assessment of such charges.<sup>16</sup>

The EGS-specific customer arrears report would show unpaid aged EGS account balances and would 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.<sup>17</sup>

In excepting to the RD's recommended approval of the Joint Stipulation, including the provision that would allow EGSs to obtain arrears reports for their customers from the Companies, OCA has not specifically addressed the rationale of the RD or explained why OCA believes that is in error, other than to reiterate points made by its witness, which the RD appropriately rejected. Specifically, OCA has not offered any reason why an EGS may not obtain information regarding the payment patterns of its own customers, when those customers have entered into contracts with the EGSs and customer usage information is already being exchanged between the EDCs and EGSs. While OCA points to the fact that the EGS is not responsible for collection activities, it completely overlooks the reality that EGSs would be subject to the imposition of charges under the clawback pilot as a result of their customers not paying their supply bills. OCA also fails to address the prior case law referenced by the RD, in which the Commission has made a distinction

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<sup>16</sup> Respond Power Main Brief at 9-11, 14-15; Respond Power Reply Brief at 2-3.

<sup>17</sup> Respond Power Main Brief at 9-11, 14-15; Respond Power Reply Brief at 2-3.

between release of information to third parties and the exchange of information between EDCs and EGSs.<sup>18</sup>

In summary, OCA's argument in Exception No. 2 overlooks the important fact that the Companies would be providing information to Respond Power about its own supply customers. Licensed by the Commission as an EGS, Respond Power is required to comply with the Commission's regulatory requirements governing the release of confidential customer information to third parties.<sup>19</sup> Moreover, the Commission has already concluded that a customer's privacy is not compromised when a utility shares non-payment information with the non-billing party regarding the non-billing party's charges.<sup>20</sup> Indeed, the Companies have noted that this information is already available to EGSs for their active customers – through a process that Respond Power has described as being overly burdensome, which further supports the Companies' compilation of arrears reports as set forth in Joint Stipulation No. 2.<sup>21</sup> No rational reason exists for denying Respond Power access to the arrearage reports for its supply customers that the Companies are willing to provide. The clawback mechanism exposes Respond Power to the risk of uncollectible expense associated with serving residential and small commercial customers. Having this information about its own supply customers would enable Respond Power to more effectively manage this risk.

OCA's Exception No. 2 should be denied, and the Commission should adopt the portion of the Recommended Decision that approves Joint Stipulation No. 2 as modified. To the extent that the Commission rejects Joint Stipulation No. 2, as modified by the RD, it should disapprove the clawback mechanism proposed by the Companies. It is imperative that EGSs be aware that

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<sup>18</sup> RD at 43-44.

<sup>19</sup> 52 Pa. Code §§ 54.8 and 54.43(d).

<sup>20</sup> See Secretarial Letter dated February 5, 1999 re: EDI – Providing Customer Payment Information, Docket No. M-00960890F.0015.

<sup>21</sup> Respond Power Main Brief at 10-11.

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.<sup>22</sup>

### III. CONCLUSION

WHEREFORE, Respond Power LLC respectfully requests that the Commission adopt the Recommended Decision to the extent that it approves Joint Stipulation No. 2 as modified.

Respectfully submitted,



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Date: July 9, 2018

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<sup>22</sup> See Respond Power St. 1 at 8-9, 12-17; RESA St. 1 at 13-18; RESA St. and 1-R at 12-14.