

PIKE COUNTY LIGHT & POWER COMPANY
CONSOLIDATED BILLING
AND
ASSIGNMENT AGREEMENT

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CONSOLIDATED BILLING AND ASSIGNMENT AGREEMENT

COMMON TERMS AND CONDITIONS

This Consolidated Billing and Assignment Agreement (“Agreement”) is made and entered into as of this _____ day of _____ 20__, by and between **Pike County Light & Power Company**, a Pennsylvania corporation having its principal office at One Blue Hill Plaza, Pearl River, New York 10965 (“PIKE”), and _____, a _____ corporation, having an office at _____ (“EGS”), both PIKE and the EGS hereinafter sometimes are referred to collectively as the “Parties” or individually as a “Party”.

WITNESSETH:

WHEREAS, PIKE has implemented a retail access program for electric service, as described in its Schedule for Electric Service P.U.C. No. 8, General Information, Section 23 and Electric Generation Supplier Coordination Tariff, Electric PA. P.U.C. NO. 8-S (together “Tariff”) and has adopted the Orange and Rockland Utilities, Inc., Retail Access Implementation Plan and Operating Procedure (Effective: February 18, 2004) (“Operating Procedure”) for use in PIKE’s electric service territory under which PIKE’s retail customers may purchase electricity from an Electric Generation Supplier (“Electric Generation

Supplier”); and

WHEREAS, by (i) Order issued April 20, 2006, in Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company, Docket No. P-00062205; (ii) Order issued March 23, 2009, in Petition of Pike County Light & Power Company for Expedited Approval of Its Default Service Implementation Plan, Docket No. P-2008-2044561; and (iii) Order issued February 25, 2011, approving the Joint Petition for Approval of Settlement Agreement I/M/O Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan, Docket No. P-2010-2194652 (“Settlement Agreement”), the Pennsylvania Public Utility Commission (“PAPUC”) approved for PIKE to implement its retail choice program in Pennsylvania utilizing protocols implemented by PIKE’s parent company, Orange and Rockland Utilities, Inc., in New York and waiving provisions of the Pennsylvania Code and the PAPUC’s Electronic Data Interchange (“EDI”) rules regarding the exchange of customer information established at Docket No. M-00960890F0015; and

WHEREAS, EGS has been approved by the PAPUC to act as an Electric Generation Supplier in PIKE’s service territory and has met the requirements established by PIKE to be an Electric Generation Supplier authorized to sell electricity to PIKE’s retail customers and has entered into an Operating Agreement with PIKE pursuant to which it will make such electricity sales (the “EGS Operating Agreement”); and

WHEREAS, EGS has requested that PIKE render a consolidated single monthly bill to its retail access customers for both EGS's commodity supply and PIKE's delivery services; and

WHEREAS, PIKE agrees to provide such consolidated billing service on behalf of the EGS subject to the terms and conditions of this Agreement, the EGS Operating Agreement, the Operating Procedure and the Tariff to all customers designated by EGS; and

WHEREAS, EGS desires that PIKE accept assignment of all amounts billed by PIKE on EGS's behalf and make payments to EGS relating to such assignment.

NOW, THEREFORE, in consideration of the premises and mutual promises set forth below, PIKE and EGS, intending to be legally bound, hereby covenant, promise and agree as follows:

ARTICLE I

TARIFF, OPERATING PROCEDURES, AND TERM OF AGREEMENT

1.1 Incorporation By Reference

The terms and conditions of the Tariff, the Operating Agreement, the Operating Procedure, and the orders, rules and regulations of the PAPUC, as applicable, are fully incorporated in this Agreement except as is otherwise expressly provided herein.

1.2 Term

This Agreement shall commence on the date set forth above (“Effective Date”) and will remain in effect until terminated (i) in accordance with its terms, (ii) by mutual agreement of the parties, or (iii) if the Operating Agreement between the Parties is terminated.

ARTICLE II

CONSOLIDATED BILLING ARRANGEMENTS

2.1 Assignment of EGS’s Accounts Receivables

EGS hereby assigns to PIKE its rights in all amounts due from all of its retail access customers on consolidated bills (“Customers”) issued by PIKE on and after the Effective Date of this Agreement and any amounts due from its Customers on consolidated bills issued previously under any prior consolidated billing services agreement with PIKE (“Customers’ Accounts”). EGS hereby grants PIKE a security interest in said Customers’ Accounts and authorizes PIKE to file, on behalf of EGS, all financing statements and other documents necessary to perfect said security interest.

2.2 EGS Obligations

A. EGS will provide PIKE a single rate (\$/kWh) to be charged each Customer for each unit of electricity consumed by that Customer. Rates may

differ from Customer to Customer. The rate provided by EGS will be used by PIKE for billing purposes for the next bill issued to the Customer and every bill thereafter until changed by EGS no later than ten calendar days prior to the Customer's next scheduled meter read date.

B. EGS will submit the monthly billing information to PIKE in an electronic format prescribed by PIKE identifying the name, PIKE account number and unit rate(s) for each Customer.

C. EGS will satisfy all other obligations set forth in the Operating Procedure.

D. EGS hereby assigns to PIKE its rights to require deposits from all of its customers on and after the Effective Date of this Agreement.

2.3 Representations and Warranties

EGS makes the following representations and warranties to PIKE:

A. The information provided in the EGS Operating Agreement is correct as of the Effective Date, and EGS will promptly inform PIKE of any changes in such information.

B. EGS is in compliance with all applicable PAPUC requirements regarding customer choice with regard to PIKE's retail access program including, but not limited to, the requirements set forth in 52 Pa. Admin. Code Chapter 54 (to the extent not otherwise waived by the PAPUC), the New York State EDI protocols, and the Settlement Agreement, and will continue to be in compliance with such requirements and all subsequently adopted applicable

regulatory requirements throughout the term of this Agreement.

C. EGS shall have and maintain in good standing a license from the PAPUC as an authorized EGS.

D. EGS will not, either directly or indirectly, engage in, participate in or encourage or assist others to engage or participate in the practice of transferring customers without authorization, commonly referred to as “slamming.”

E. No third party has any right, title or interest to any Customers’ Accounts (as defined in Section 2.1 above) assigned by EGS hereunder to PIKE, and EGS undertakes that, it shall not grant any interest or permit any third party to assert a claim of right, title or interest on those Accounts or any new Customers’ Accounts opened during the term of this Agreement.

2.4 PIKE Billing Service

A. PIKE will render EGS’s Customers a consolidated bill for both EGS’s electric commodity supply and PIKE’s energy delivery services on a monthly basis. PIKE will calculate the Customer’s EGS charges for billing purposes by multiplying the Customer’s monthly consumption by the rate provided by EGS pursuant to Section 2.2 (A) of this Agreement.

B. The consolidated bill will display the amount and price of the commodity sold by EGS and the EGS’s identity. PIKE’s charges will be reflected in the manner prescribed in the Tariff and, to the extent not otherwise waived by the PAPUC, in compliance with 52 Pa. Admin. Code §54.4.

C. PIKE will perform cycled meter readings in accordance with its business practices. In the event an actual meter reading cannot be obtained, PIKE shall estimate the Customer's consumption for billing purposes in accordance with applicable PAPUC regulations. The consolidated bill will be issued in accordance with the established meter reading cycles for the applicable account. If the meter read date for a particular Customer changes, PIKE will notify EGS of same.

D. PIKE will receive and process Customers' payments. PIKE will perform collection activities on Customers' accounts. PIKE will follow its current credit and collection policies for collections in compliance with the rules and regulations of the PAPUC and any other applicable law. Any Customer payment or portion thereof that is billed by PIKE under this Agreement and received by EGS from Customer shall be held by EGS in trust as the property of PIKE and shall be immediately remitted in full to PIKE within five business days without any deduction or set-off by EGS.

E. PIKE will notify EGS within five business days, if (i) PIKE terminates a Customer for non-payment; or (ii) Customer voluntarily closes its PIKE account.

F. PIKE will treat all information received from EGS as confidential and will not share the information with any third party. In the event that disclosure is required by a governmental body, court or applicable law, PIKE may disclose such information to the extent so required, but shall promptly notify EGS prior to disclosure and shall cooperate (consistent with its legal

obligations) with EGS's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of EGS.

G. Beginning in the second calendar month following commencement of consolidated billing under this Agreement, PIKE will remit payment to EGS, via wire transfer to a bank (or other mutually agreed to depository or payee) designated in writing by EGS, on the 20th calendar day of the month (or the next following business day if the 20th falls on a Saturday, Sunday, or public holiday) of all undisputed EGS charges billed to Customers in the previous calendar month. An amount is deemed disputed if the Customer contacts PIKE questioning the validity of EGS's unit commodity rate or EGS's service to the Customer. A Customer's claim of either inability to pay or inaccurate meter reading shall not constitute a dispute for purposes of PIKE's obligation to pay EGS amounts billed for its commodity supply.

PIKE will notify EGS within 24 hours of its receipt of notification by a Customer of the latter's refusal to pay the EGS charges billed due to an unresolved dispute between EGS and the Customer. PIKE will pay EGS for resolved disputed EGS charges within five business days of PIKE's receipt of payment from the Customer.

H. PIKE may, at its option, reject requests for or discontinue consolidated billing for any Customers' Accounts that are at least 90 calendar days past due, unless the past due amount is subject to a Deferred Payment Agreement and the customer is fulfilling its Deferred Payment Agreement

obligations.

I. PIKE will provide a budget billing option to Customers for the combined EGS and PIKE charges using PIKE's budget billing protocol.

J. PIKE's remittance to EGS in accordance with Section 2.4 (G) shall be net of all amounts owed to PIKE by the EGS for retail access program services and/or other charges in accordance with the applicable provisions of the Tariff or the EGS Operating Agreement.

K. PIKE will provide to EGS customer bill information including the commodity usage, the billed amount, and tax information pursuant to Section 2.4 (L) below, for each of EGS's Customers with the monthly remittance identified in Section 2.4 (G). PIKE shall use EDI standards, to the extent developed, for transmittal of customer information and may transmit data, in addition to the minimum information required, via EDI or by means of an alternative system. EGS shall notify PIKE in writing of any error(s) alleged to be made by PIKE in the billed amount for EGS's customers, including all such errors related to the rate provided by EGS pursuant to Section 2.2 (A) of this Agreement, within 30 days of the posting of such statement on PIKE's electronic bulletin board. In the event EGS fails to notify PIKE in writing of any such error(s) alleged to be made by PIKE within 30 days of receiving such billed information from PIKE, EGS waives any claims to loss, injury or damage resulting from such error and PIKE shall be relieved of all liability resulting from such error, whether based in contract or tort (including negligence or strict liability). PIKE has no responsibilities under this Agreement for errors

made by EGS in the rate information provided to PIKE pursuant to Section 2.2 (A) herein.

L. PIKE is not responsible for the paying or remitting to the applicable taxing authorities, on behalf of EGS, of any federal, state or local taxes as a result of this Agreement. Based on information regarding each Customer's tax status supplied by EGS, PIKE will calculate and identify the sales and use tax associated with EGS's charges and will provide such calculations to EGS at the same time as the remittance payment is made pursuant to Section 2.4 (G) above. EGS will be responsible for submitting to PIKE an EDI 814 change requesting sales tax exemption status for each of its Customers that is exempt from sales and use tax. EGS shall be liable for and pay all such sales and use taxes and shall indemnify, defend, and hold harmless PIKE from and against any and all liability for such taxes, and any interest and penalties thereon.

M. EGS, to the fullest extent allowed by law, shall indemnify, defend and hold harmless and shall reimburse PIKE, from and against any and all damages, losses, liabilities, obligations, judgments, orders, writs, injunctions, decrees, fines, penalties, taxes, costs, suits, charges, expenses (including attorneys' fees), claims, investigations, proceedings, or causes of action (collectively "Damages") which may at any time be imposed on, incurred by, or asserted against PIKE by third parties (including Customers) that are directly or indirectly caused by, arise out of or under, associated with, incident to or in connection with EGS's performance under this Agreement, including, but not limited to any of the following: (i) EGS's acts or omissions regarding Customer

Accounts or billing rates; (ii) any claim, demand, cause of action, litigation, suit, proceeding, hearing or investigation (collectively "Claims") by any person for payments based upon any agreement or understanding alleged to have been made by such person, directly or indirectly, with EGS or any of its representatives, in connection with any of the transactions contemplated by this Agreement; (iii) any Claims with respect to the action or inaction of EGS or its representatives, which is contrary to the requirements of this Agreement; (iv) any inaccuracy in or other breach of any representation or warranty made by EGS in this Agreement; (v) any failure by EGS to perform or comply, in whole or in part, with any covenant, agreement or provision of this Agreement; and (vi) any costs and expenses, including reasonable fees and attorneys' fees associated with all Damages incurred by PIKE in connection with any Claims subject to indemnification rights as provided herein.

N. In the event of termination of this Agreement, PIKE shall have the right to retain all Customer payments associated with bills rendered to EGS's Customers (pursuant to Section 2.4 above) prior to the date of termination, and PIKE shall make the appropriate remittance payments to EGS associated with those bills in accordance with Section 2.4 (G) and (J). To the extent that amounts owed to PIKE by the EGS for retail access program services and/or other charges in accordance with the applicable provisions of the Tariff or the Operating Agreement exceed Customer payments, either upon termination of this Agreement or at any time during the course of the Agreement, PIKE shall invoice EGS for any and all amounts due to PIKE and EGS shall pay such

invoice pursuant to the terms and conditions set forth in the Tariff.

ARTICLE III
MISCELLANEOUS

3.1 Resolution of Disputes

If a dispute arises between the Parties, the dispute resolution process set forth in the Tariff will be followed.

3.2 Notices

Any notice to be provided pursuant to the terms of this Agreement will be deemed given, and any other document to be delivered hereunder will be deemed delivered, if in writing and (i) delivered by hand, (ii) deposited for next-business day delivery (fee prepaid) with a reputable overnight delivery service such as Federal Express, or (iii) mailed by certified mail (return receipt requested) postage prepaid, addressed to the recipient at the address set forth below for that Party (or at such other address as that Party may from time to time designate by giving notice thereof).

Notice to:

Pike County Light & Power Company
c/o Orange and Rockland Utilities, Inc.
Manager - Retail Access
390 W. Route 59
Spring Valley, NY 10977
Telephone #: 845-577-3222
Fax #: 845-577-3602
E-Mail: sweeneys@oru.com

and to:

3.3 Termination of Agreement

PIKE shall have the right to terminate this Agreement on 30 days' written notice to EGS; provided, however, that this Agreement may be terminated: (i) on one day's written notice if the EGS Operating Agreement is terminated for any reason; (ii) on not less than 30 days' written notice if EGS breaches any of the representations and warranties set forth in Section 2.3 above or any of the other provisions of this Agreement and does not cure said breach within the 30-day period; or (iii) on one day's written notice following issuance of an order or ruling by the PAPUC materially impacting any of the terms or conditions herein. In the latter instance, PIKE will offer EGS an alternative consolidated billing arrangement to replace the one provided for in this Agreement, to the extent that the PAPUC requires utilities to provide consolidated billing services. PIKE will render EGS's Customers a consolidated bill for EGS's commodity supply provided to Customers through the date of termination or expiration of this Agreement.

3.4 Force Majeure

Any delay in the performance of any of the duties or obligations of either

Party hereto shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any occurrence beyond the reasonable control of a Party which causes such Party to be delayed in or prevented from performing or carrying out any of its obligations under this Agreement and which, by the exercise of due diligence, that Party is unable to prevent, avoid, mitigate, or overcome, including any of the following: any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, ice, explosion, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, provided that a Force Majeure Event shall not include lack of finances or change in market conditions. The Party so affected shall give prompt written notice to the other Party of such cause and shall take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as possible.

3.5 Amendments

Notwithstanding any provision of this Agreement, PIKE may at any time propose and file with the PAPUC changes to the rates, terms, and conditions of the Tariff. Such amendment or modification will become effective with respect to service pursuant to this Agreement on the date specified by the PAPUC. PIKE will provide EGS with notice of any filings relating to the Electric Generation Supplier Coordination Tariff.

3.6 Assignment

Neither Party shall assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. Any assignment in violation of this Section shall be void.

3.7 Prior Agreements Superseded

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, supersedes any and all previous understandings between the Parties with respect to the subject matter hereof, and binds and inures to the benefit of the Parties, their successors and permitted assigns.

3.8 Waiver and Modification

No modification or waiver of all or any part of this Agreement will be valid unless in writing and signed by the Parties or their agents. Any waiver will be effective only for the particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.

3.9 Applicable Law and Forum

Interpretation and performance of this Agreement will be in accordance with, and will be controlled by, the laws of the Commonwealth of Pennsylvania except its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. Each Party agrees to submit, irrevocably and unconditionally, to the exclusive jurisdiction of a court of the Commonwealth of Pennsylvania or the United States District Court, Eastern District of Pennsylvania over any civil suit, action or proceeding arising out of or relating to this Agreement.

3.10 Severability

If one or more provisions herein are held to be invalid, illegal or unenforceable in any respect it will be given effect to the extent permitted by applicable law, and such invalidity, illegality or unenforceability will not affect the validity of the other provisions of this Agreement.

3.11 Agency

This Agreement is not intended, and will not be construed, to create any association, joint venture, agency relationship or partnership between PIKE and EGS or any other parties or to impose any such obligation or liability upon either Party.

3.12 Not for the Benefit of Third Parties

This Agreement is for the benefit of the Parties hereto and not for the benefit of any third parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, as of the date first above written.

PIKE COUNTY POWER & LIGHT COMPANY.

By _____

Name _____

Title _____

Name of EGS

By _____

Name _____

Title _____