



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

August 26, 2014

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility  
Commission P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Commonwealth of Pennsylvania, by Attorney General KATHLEEN  
G. KANE, Through the Bureau of Consumer Protection, And TANYA J.  
MCCLOSKEY, Acting Consumer Advocate, Complainants v. RESPOND  
POWER LLC  
Docket No. C-2014-2427659

Dear Secretary Chiavetta:

Enclosed for filing is an original copy of the Objections of the Bureau of  
Investigation and Enforcement of the Pennsylvania Public Utility Commission to  
Interrogatories of Respond Power LLC in the above-referenced proceeding.  
Copies have been served on the parties of record in accordance with the Certificate  
of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Michael L. Swindler".

Michael L. Swindler  
Prosecutor

Enclosure

cc: As per certificate of service



received by the Commission's Bureau of Consumer Services related to allegations similar to those alleged in the OAG/OCA Complaint. On August 6, 2014, Respond filed "Interrogatories of Respond Power Directed to the Bureau of Investigation and Enforcement – Set I." Respond's Interrogatories - Set I consist of 15 Interrogatories. Specifically, I&E objects to Respond Interrogatory Set I, No. 1 because the Interrogatory seeks information that is beyond the scope of permissible discovery.

## II. OBJECTIONS

In proceedings before the Public Utility Commission (Commission), a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant. 52 Pa. Code § 5.321(c). Section 5.321 outlines the scope of discovery as follows:

- (c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c).

Further, Section 5.361 of the Pennsylvania Code specifically limits the scope of discovery in proceedings before the Commission. In particular, Section 5.361 provides the following:

- (a) No discovery or deposition is permitted which:
  - (1) Is sought in bad faith.

- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or participant.
- (3) Relates to a matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a participant or witness.

52 Pa. Code § 5.361(a).

I&E asserts that Respond Interrogatory Set I, No. 1 seeks information that is not permitted because it will not lead to relevant information or admissible evidence regarding the allegations against Respond in the above-docketed proceeding. As such, Respond Interrogatories Set I, No. 1 should be stricken.

**A. I&E Objection to Respond Set I, No. 1**

I&E asserts that Respond Interrogatory Set I, No. 1 seeks information that is not permitted because it will not lead to relevant information of relevant evidence regarding the allegations against Respond in the OAG/OCA proceeding before the Commission at Docket No. C-2014-2427659.

Respond Interrogatory Set I, No. 1 reads as follows:

1. Please identify by (i) names; (ii) addresses; and (iii) telephone numbers each of the customers whose informal complaints referenced in Paragraph 9 of BIE's Notice of Intervention are the subject of an active BIE investigation. In addition, please provide the date on which each of these informal complaints was filed, identify the specific allegations contained in each informal complaint and describe the resolution of each informal complaint.

I&E objects to this request. The customer informal complaints referenced in Paragraph 9 of I&E's Notice of Intervention in the OAG/OCA complaint proceeding and sought by Respond in this discovery request have no relevance to the OAG/OCA Complaint that is the subject of this proceeding. The information requested by Respond does not appear to be reasonably calculated to lead to the discovery of admissible evidence in the above-docketed proceeding.

I&E's investigation of Respond is separate and apart from, and is not connected to the instant OAG/OCA formal complaint proceeding. There is no nexus between the customer informal complaints being investigated by I&E in its independent investigation and any customer complaints that may be related to the OAG/OCA Complaint. As far as the production of relevant evidence regarding the OAG/OCA Complaint, there is absolutely nothing to be gained by demanding and then reviewing the unrelated customer informal complaints of I&E's investigation.

#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that Your Honors: (1) grant I&E's Objection to Respond Interrogatory Set I, No. 1.

Respectfully Submitted,



Adam Young  
PA Attorney ID No. 91822  
Michael L. Swindler  
PA Attorney ID No. 43319  
Prosecutors

Bureau of Investigation and  
Enforcement

Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
Phone: 717-772-8839

Dated: August 26, 2014

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

### Service by Email and First Class Mail:

Honorable Joel H. Cheskis  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105

Karen O. Moury, Esq.  
Buchanan Ingersoll & Rooney, PC  
409 N. Second Street  
Harrisburg, PA 17101-1357

John M. Abel, Esq.  
Nicole Beck, Esq.  
Bureau of Consumer Protection  
Office of Attorney General  
Strawberry Square, 15<sup>th</sup> Floor  
Harrisburg, PA 17120

Honorable Elizabeth H. Barnes  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105

Candis A. Tunilo, Esq.  
Kristine E. Robinson, Esq.  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor Forum Place  
Harrisburg, PA 17101-1923

Sharon E. Webb, Esq.  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101



Michael L. Swindler  
Prosecutor  
PA Attorney ID No. 43319

Bureau of Investigation and  
Enforcement

Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
Phone: 717-772-8839

Dated: August 26, 2014