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September 3, 2014

**VIA E-FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

Re: Commonwealth of Pennsylvania, et al. v. Respond Power LLC  
Docket No. C-2014-2427659

Dear Secretary Chiavetta:

On behalf of Respond Power LLC, I have enclosed for electronic filing the Motion of Respond Power LLC for a Protective Order in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



Karen O. Moury

KOM/tlg  
Enclosure  
cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION OF RESPOND POWER LLC  
FOR A PROTECTIVE ORDER**

TO ADMINISTRATIVE LAW JUDGES ELIZABETH H. BARNES AND JOEL CHESKIS:

Respond Power LLC (“Respond Power”) hereby requests, with the concurrence of the other parties, that Administrative Law Judges Elizabeth H. Barnes and Joel H. Cheskis (“ALJ” or “ALJs”) enter a Protective Order in this proceeding pursuant to the provisions of 52 Pa. Code § 5.365, and in support thereof represents as follows:

1. On June 20, 2014, the Commonwealth of Pennsylvania, through the Attorney General and the Acting Consumer Advocate, filed a Complaint against Respond Power.
2. On July 10, 2014, the Pennsylvania Office of Small Business Advocate filed a Notice of Intervention.
3. On August 1, 2014, the Commission’s Bureau of Investigation and Enforcement filed a Notice of Intervention.

4. The proceeding has been assigned to ALJs Barnes and Cheskis for hearings and issuance of an Initial Decision.

5. The parties to this proceeding have engaged in substantial discovery prior to the prehearing conference and are continuing to engage in discovery.

6. Confidential and proprietary information has been sought in discovery and may be presented in exhibits and testimony in this proceeding. Such information includes commercially-sensitive data that is highly confidential to Respond Power.

7. Proprietary information within the definition of 52 Pa. Code § 5.365 may be requested during the course of this proceeding, which justifies the issuance of a Protective Order. For example, parties may seek information that is customarily treated as sensitive, proprietary, or highly confidential, including but not limited to specific pricing information, highly sensitive contract terms, or other proprietary business information. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

8. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential commercial information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: The extent to which disclosure would cause unfair economic or competitive damage; the extent to which the

information may already be known by others; and the potential value of such information to the party and the party's competitors. 52 Pa. Code §§ 5.365(a)(1) – (3).

9. "Proprietary" or "Confidential" information is defined in Paragraph 3 of the attached proposed Protective Order as "those materials which customarily are treated by that Party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its clients to risk of competitive disadvantage or other business injury." Paragraph 18 of the attached proposed Protective Order protects against overly broad designations of protected information by giving all parties the right to question or challenge the confidential or proprietary nature of the "Confidential" information.

10. Limitation on the disclosure of "Confidential" information will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the parties, the public, and the Commission.

11. The attached suggested Protective Order sought by Respond Power will protect the proprietary nature of competitively valuable information while allowing the parties to use such information for purposes of the instant litigation. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

WHEREFORE, for all the reasons set forth above, Respond Power LLC respectfully requests that Administrative Law Judges Barnes and Cheskis grant this Motion and issue the attached Protective Order.

Respectfully submitted,

September 3, 2014

BUCHANAN INGERSOLL & ROONEY PC

By:   
Karen O. Moury  
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Harrisburg, PA 17101  
Telephone: (717) 237-4820  
Facsimile: (717) 233-0852

*Attorneys for Respond Power LLC*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Commonwealth of Pennsylvania, by Attorney</b>	:	
<b>General KATHLEEN G. KANE, Through the</b>	:	
<b>Bureau of Consumer Protection,</b>	:	
	:	
<b>And</b>	:	
	:	
<b>TANYA J. McCLOSKEY, Acting</b>	:	
<b>Consumer Advocate,</b>	:	<b>Docket No. C-2014-2427659</b>
	:	
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	:	
<b>RESPOND POWER LLC,</b>	:	
	:	
<b>Respondent.</b>	:	

**PROTECTIVE ORDER**

Upon consideration of the Motion for a Protective Order that was filed by Respond Power LLC;

**IT IS ORDERED THAT:**

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding. All persons previously or hereafter granted access to the materials and information identified in Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. That the materials subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are believed by the producing party to be of a proprietary or confidential

nature and which are so designated by being stamped "Confidential." Such materials will be referred to below as "Proprietary Information." When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be appropriately designated as such for the record.

3. That the parties may designate as "Confidential" those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public or which, if disclosed freely, would subject that party or others to risk of competitive disadvantage or other business injury.

4. Proprietary Information produced in this proceeding shall be made available to counsel for the non-producing party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination, argument or for settlement discussions in this proceeding. To the extent required for participation in this proceeding, counsel for a party may afford access to Proprietary Information only to a party's expert(s) and to agents, paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control, subject to the conditions set forth in this Protective Order. However, such expert(s) may not be a "Restricted Person."

5. Proprietary Information shall not be made available to a "Restricted Person." For the purpose of this Protective Order, "Restricted Person" shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of a party to this Protective Order, or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of a party to this Protective Order (including any association of

competitors of a party), or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of a party to this Protective Order if the Proprietary Information concerns any specific, identifiable customer of a party; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of a party to this Protective Order if the Proprietary Information concerns a specific, identifiable customer of the party; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1 percent interest in a business establishes a significant motive for violation

6. Proprietary Information produced in this proceeding shall be made available to the Pennsylvania Public Utility Commission ("Commission") and Commission Staff. For purposes of filing, to the extent that Proprietary Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Proprietary Information shall be permitted only in accordance with this Protective Order.

7. Prior to making Proprietary Information available to any person as provided in Paragraph 4 of this Protective Order, counsel shall deliver a copy of this Protective Order to such

person and shall receive a written acknowledgement from that person in the form attached to this Protective Order and designated as “Appendix A.” A party’s expert(s) shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless and until a Non-Disclosure Certificate has been provided to the producing party. Attorneys and outside experts are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

8. If an expert for a party to this Protective Order, another member of the expert’s firm or the expert’s firm also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (i) identify for the other party to this Protective Order each Restricted Person and each expert or consultant; (ii) make reasonable attempts to segregate those personnel assisting in the expert’s participation in this proceeding from those personnel working on behalf of a Restricted Person; and (iii) if segregation of such personnel is impractical, the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the party or its customers. The parties retain the right to challenge the adequacy of the written assurances that the parties or their customers’ interests will not be jeopardized.

9. If any person who has had access to Proprietary Information subsequently is assigned to perform any duties which would make that person ineligible for such access, that person shall immediately inform the producing party of his or her new duties, shall dispose of any Proprietary Information and any information derived therefrom in his or her possession and shall continue to comply with the requirements of this Protective Order with regard to the Proprietary Information to which that person previously had access.

10. No other persons may have access to the Proprietary Information except as authorized by order of the Commission or the Presiding Administrative Law Judges.

11. Proprietary Information shall not be used except as necessary for the conduct of this proceeding.

12. That none of the parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

13. A producing party shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "Confidential." Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Proprietary Information shall be served in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked "Confidential."

14. The non-producing party will consider and treat the Proprietary Information as within the definition of "confidential information" in Section 102 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.102 and subject to exemptions from disclosure as provided for in Section 708 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.708, until the information is found by a tribunal with jurisdiction to be not confidential or subject to one or more exemptions.

15. Any public reference to Proprietary Information by a party shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information

to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

16. When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

17. Any part of the record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination and argument, and including reference thereto, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this Protective Order or pursuant to an order of the Commission.

18. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information; to question or challenge the admissibility of Proprietary Information; to refuse or object to the production of Proprietary Information on any proper ground, including but not limited to relevance, materiality, or undue burden; to seek an order permitting disclosure of Proprietary Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate. Unresolved challenges shall be decided on petition by the presiding officer or the Commission as provided by 52 Pa. Code § 5.365.

19. That within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally

decided, the non-producing party, upon request, shall either destroy or return to the producing party all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that the non-producing party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the producing party, the non-producing party shall certify in writing to the other party that the Proprietary Information has been destroyed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Elizabeth H. Barnes  
Joel Cheskis

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_ of \_\_\_\_\_ (the retaining party).

The undersigned has read and understands the Protective Order issued in the above captioned proceeding, which Order deals with the treatment of information designated as "Proprietary Information" or "Confidential Information." The undersigned agrees that any Proprietary or Confidential Information shall be used or disclosed only for purposes of preparation for, and conduct of the above captioned proceedings, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
EMPLOYER

DATE: \_\_\_\_\_

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Commonwealth of Pennsylvania, et al.</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C-2014-2427659</b>
	:	
<b>Respond Power LLC</b>	:	

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 § 1.54 (relating to service by a party).

**Via E-Mail and First-Class Mail**

Elizabeth H. Barnes  
Joel H. Cheskis  
Administrative Law Judges  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
Telephone: (717) 787-1399

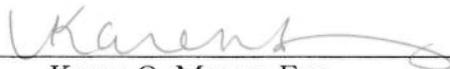
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Office of Small Business Advocate  
300 N. Second Street, Suite 1102  
Harrisburg, PA 17101

Dated this 3<sup>rd</sup> day of September, 2014.

  
\_\_\_\_\_  
Karen O. Moury, Esq.