

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

September 8, 2014

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

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,
Respondent

Docket No. C-2014-2427659

Secretary Chiavetta:

Enclosed please find the Joint Petition of the Office of Attorney General and Office of Consumer Advocate for Interlocutory Review and Answer to Material Questions, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Candis A. Tunilo".

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. #89891

Enclosures

cc: Honorable Elizabeth Barnes, ALJ
Honorable Joel Cheskis, ALJ
Certificate of Service

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Pursuant to Section 5.302 of the Pennsylvania Public Utility Commission (Commission) regulations, 52 Pa. Code § 5.302, the Office of Consumer Advocate and the Office of Attorney General (hereinafter Joint Complainants) request that the Commission grant review of and answer the following questions in the affirmative:

- 1) Does the Commission have authority and jurisdiction to determine whether a violation of the Unfair Trade Practices and Consumer Protection Law (CPL) and Telemarketer Registration Act (TRA) has occurred when considering whether the Commission's regulations—which require compliance with these laws—have been violated?
- 2) Does the Commission have the authority and jurisdiction to determine whether the prices charged to customers by an electric generation supplier (EGS) conform to the EGS disclosure statement regarding pricing?

In support of this request, the Joint Complainants submit as follows:

On June 20, 2014, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (BCP) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) filed a Joint Complaint with the Commission pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111, and Pennsylvania law. The Joint Complaint included nine counts and alleges that Respond Power, LLC (Respond) violated Pennsylvania law and Commission regulations and Orders. Specifically, the nine Counts in the Joint Complaint are: (1) misleading and deceptive claims of affiliation with electric distribution companies; (2) misleading and deceptive promises of savings; (3) failing to disclose material terms; (4) deceptive and misleading welcome letter and inserts; (5) slamming; (6) lack of good faith handling of complaints; (7) failing to provide accurate pricing information; (8) prices nonconforming to disclosure statement; and (9) failure to comply with the Telemarketer Registration Act.

On July 10, 2014 Respond filed Preliminary Objections, as well as an Answer and New Matter. Respond's Preliminary Objections argued that five of the nine counts in the Complaint should be dismissed for lack of Commission jurisdiction, insufficient specificity of a pleading and/or legal insufficiency of a pleading. On July 21, 2014, Joint Complainants filed an Answer to Preliminary Objections. The Joint Complainants asserted that Respond's Preliminary Objections are unsupported.

The Joint Complainants argued that it is clear and free from doubt that the Complaint is legally sufficient and sought that the Commission make determinations pursuant to the Commission's powers and jurisdiction. The Joint Complainants requested that Respond's Preliminary Objections be overruled. On July 30, 2014, the Joint Complainants filed an Answer to New Matter.

By Order dated August 20, 2014, Administrative Law Judges (ALJ) Elizabeth Barnes and Joel H. Cheskis granted in part and denied in part Respond's Preliminary Objections.¹ Specifically, the ALJs found: 1) that the Commission lacks jurisdiction to hear complaints under the CPL and TRA even though compliance with these Acts is required by the Commission regulations, and 2) that the Commission lacks jurisdiction to determine if the prices charged to customers conformed to the disclosure statement provided to the customer.

Based on these findings, the ALJs struck Count VIII (Prices Nonconforming to Disclosure Statement) in its entirety and struck in part Count III (Failing to Disclose Material Terms), Count IV (Deceptive and Misleading Welcome Letters and Inserts), and Count IX (Failure to Comply with the Telemarketer Registration Act) to the extent that these Counts consider the CPL or TRA. Joint Complainants seek review of the Order to the extent it granted Preliminary Objections and has limited the scope of the Joint Complaint.

The OCA submits that review of these material questions is necessary to ensure that all legal claims within the Commission's authority and jurisdiction can be properly pursued in the proceeding below. The ALJs' Order has improperly limited the Commission's jurisdiction and authority to consider various claims which will restrict the development of the evidentiary record. If the Joint Complainants are not able to properly pursue their legal claims, significant prejudice and harm to the Joint Complainants and to

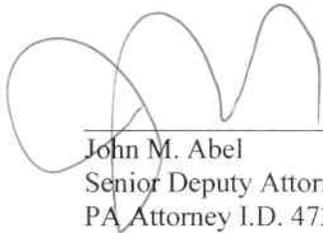
¹ The ALJs issued Orders on Preliminary Objections in four of the Joint Complaints filed by the OCA and BCP at Docket Nos. C-2014-2427655 (Blue Pilot), C-2014-2427659 (Respond Power, LLC), C-2014-2427656 (IDT Energy, Inc.), and C-2014-2427656 (Pa. Gas & Electric). The OCA will be filing a Petition for Interlocutory Review and Answer to Material Questions in each case. The OCA would note that though similar, the four Orders do not reach the same conclusions as to several counts so the material questions vary for each case. The Joint Complainants will address these differences in their Briefs in Support.

the interests of the consumers that they represent will result. It is in the public interest and consumer interest to allow the development of an accurate and complete factual record for Commission review.

Further, resolving these issues now will expedite the conduct of this proceeding and the other proceedings brought by the Joint Complainants. The ALJs' Order may create confusion as to the permissible scope of the proceeding. If the proceeding is improperly limited, it may result in the need to re-litigate matters before the Commission or file an appeal with the Commonwealth Court. Such a process does not promote judicial economy, especially in this instance where the Commission's regulations and case law do not support the ruling of the ALJs.

WHEREFORE, the Joint Complainants respectfully request that the Commission undertake interlocutory review of the August 20 Order, answer the material questions in the affirmative, and direct that all Counts of the Joint Complainants proceed to hearing.

Respectfully Submitted,



John M. Abel
Senior Deputy Attorney General
PA Attorney I.D. 47313

Nicole M. Beck
Deputy Attorney General
PA Attorney I.D. 315325

Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
T: (717) 787-9707
F: (717) 787-1190
jabel@attorneygeneral.gov
nbeck@attorneygeneral.gov

Counsel for:
Kathleen G. Kane, Attorney General
Bureau of Consumer Protection

DATED: September 8, 2014
190366



Candis A. Tunilo
PA Attorney I.D. 89891

Kristine E. Robinson
PA Attorney I.D. 316479
Assistant Consumer Advocates

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048
Facsimile: (717) 783-7152
ctunilo@paoca.org
krobinson@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Joint Petition of the Office of Attorney General and Office of Consumer Advocate for Interlocutory Review and Answer to Material Questions, in the manner and upon the persons listed below:

Dated this 8th day of September 2014.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

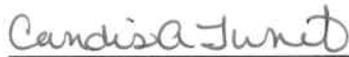
Adam D. Young, Esq.
Michael Swindler, Esq.
Wayne T. Scott, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Scott Foreman-Murray, Esq.
Adam Small, Esq.
Saul Horowitz, CEO
Respond Power, LLC
100 Dutch Hill Road – Suite 310
Orangeburg, NY 10962

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

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



Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891
E-Mail: CTunilo@paoca.org

Kristine E. Robinson
Assistant Consumer Advocate
PA Attorney I.D. # 316479
E-Mail: KRobinson@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
185177