

Karen O. Moury
717 237 4820
karen.moury@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

October 22, 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 for Continuance of Respond Power, LLC 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**

COMMONWEALTH OF PENNSYLVANIA,	:	
BY ATTORNEY GENERAL KATHLEEN	:	
KANE, THROUGH THE BUREAU OF	:	
CONSUMER PROTECTION	:	
	:	
and	:	
	:	
TANYA J. McCLOSKEY, ACTING	:	DOCKET NO. C-2014-2427659
CONSUMER ADVOCATE	:	
Complainants	:	
	:	
v.	:	
	:	
RESPOND POWER, LLC,	:	
Respondent	:	

MOTION FOR CONTINUANCE

TO ADMINISTRATIVE LAW JUDGES BARNES AND CHESKIS:

Respond Power LLC (“Respond Power”), by and through its counsel, Karen O. Moury, and Buchanan Ingersoll & Rooney PC, files this Motion for Continuance, pursuant to Section 1.15 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 1.15, and in connection therewith avers as follows:

I. INTRODUCTION

1. Respond Power submits this request for a continuance of the evidentiary hearings scheduled for November 10 and 12, 2014 for the purposes of (i) ensuring that it has sufficient time to retrieve and review enrollment documents and call recordings and to prepare for the cross-examination of the approximately 200 consumer witnesses recently identified by the Joint Complainants, as compared to the 93 consumer witnesses estimated at the time of the prehearing

conference; (ii) providing ample time for the parties to engage in meaningful settlement discussions, which will not be possible prior to November 10, 2014 given the need to review the testimony of the consumer witnesses, retrieve documents associated with their enrollments and prepare for cross-examination of those witnesses; and (iii) giving the parties adequate opportunity to ensure the efficient handling of logistics associated with the evidentiary hearings, including the scheduling of consumer witnesses and the use of exhibits and call recordings.

2. The Joint Complainants have indicated that they do not oppose this request for a continuance, provided that any additional time is used to engage in meaningful settlement discussions. Respond Power fully concurs with that condition of making this request.

3. Respond Power respectfully requests that evidentiary hearings scheduled for November 10 and 12, 2014 be continued and rescheduled on five to seven hearing dates in the late January to early February 2015 timeframe.

II. BACKGROUND

4. Respond Power is an electric generation supplier (“EGS”) licensed by the Commission since August 19, 2010 at Docket No. A-2010-2163898 to supply electricity or electric generation services to the public within the Commonwealth of Pennsylvania.

5. On June 20, 2014, the Attorney General and the Acting Consumer Advocate (“Joint Complainants”) filed a Joint Complaint (“Complaint”) against Respond Power, asserting nine causes of action, as follows: Count I – Misleading and Deceptive Claims of Affiliation with Electric Distribution Companies; Count II – Misleading and Deceptive Promises of Savings; Count III – Failing to Disclose Material Terms; Count IV – Deceptive and Misleading Welcome Letters and Inserts; Count V – Slamming; Count VI – Lack of Good Faith Handling of Complaints; Count VII – Failing to Provide Accurate Pricing Information; Count VIII – Prices

Nonconforming to Disclosure Statement; and Count IX – Failure to Comply with the Telemarketer Registration Act.

6. On July 10, 2014, Respond Power filed an Answer and New Matter to the Complaint, and also filed Preliminary Objections moving for the dismissal of Counts III, IV, VII, VIII and IX with prejudice on various grounds including lack of Commission jurisdiction, insufficient specificity of pleading and legal insufficiency of pleading.

7. On July 10, 2014, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention, and on August 1, 2014, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Intervention. OSBA and I&E are collectively referred to in this Motion as Intervenors.

8. On August 19, 2014, Administrative Law Judges (“ALJs”) Barnes and Cheskis issued an Order Granting in Part and Denying in Part Preliminary Objections (“PO Order”). By the PO Order, the ALJs struck Count VIII in its entirety and struck Counts III, IV and IX to the extent they alleged violations of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*, and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* A Petition for Interlocutory Review filed by the Joint Complainants on September 8, 2014 is pending before the Commission.

9. On August 21, 2014, I&E filed a Formal Complaint against Respond Power, setting forth similar allegations to those raised in the Complaint in this proceeding. Respond Power filed an Answer and Preliminary Objections to I&E’s Formal Complaint on September 30, 2014. I&E filed an Answer to the Preliminary Objections on October 17, 2014. The Preliminary Objections are currently pending a ruling by the Commission. It is Respond

Power's understanding that I&E intends to file a Petition to Consolidate its Formal Complaint with this Complaint.

10. On August 25, 2014, the ALJs convened a prehearing conference. At that conference, the ALJs directed the parties to develop a proposed schedule setting forth dates (i) by when the Joint Complainants would serve written direct testimony or affidavits of their consumer witnesses; (ii) for evidentiary hearings wherein written testimony or affidavits from the consumers would be admitted into the record subject to cross examination and/or objections; and (iii) for a further prehearing memorandum conference to schedule remaining deadlines and evidentiary hearings.

11. The parties jointly proposed to the ALJs that the Joint Complainants would provide the testimony of the consumer witnesses by October 24, 2014 and evidentiary hearings would be held on November 10 and 12, 2014. The ALJs issued Procedural Order #2 on September 3, 2014 incorporating these dates.

12. Respond Power now seeks a continuance of the evidentiary hearings scheduled for November 10 and 12, 2014 and requests that these hearings be rescheduled for five to seven hearing days in the late January to early February 2015 timeframe.

III. ARGUMENT

13. Requests for continuance may be granted by the presiding officer "for good cause" under Section 1.15 of the Commission's regulations, 52 Pa. Code § 1.15.

14. The Commission has held that good cause exists where the movant has acted diligently in preparing its case but requires additional time to prepare and present its case adequately. *See, e.g., Pa. P.U.C., Bureau of Transportation and Safety v. USA Express Moving & storage, Inc.*, No. A-00117215C0701, 2010 WL 1458129 (Pa. P.U.C. Apr. 8, 2010); *Petition*

of UGI Utilities, Inc. – Gas Div. for an Extension of Time, No. P-00072269, 2007 WL 1307904 (Pa. P.U.C. Apr. 24, 2007).

15. In the Joint Complainants' prehearing memorandum, they estimated that they would be providing written testimony or affidavits for 93 consumer witnesses. The Joint Complainants also reserved the right to call additional witnesses.

16. On October 16, 2014, the Joint Complainants served Set IV Discovery Requests on Respond Power seeking the production of all documents, including but not limited to, contracts, correspondence, customer service representatives notes and memos, and sales and dispute audio recordings relating to approximately 200 consumers. The Joint Complainants have advised Respond Power that they expect to provide written testimony or affidavits from these 200 consumers on October 24, 2014. This is more than twice the number of consumers that were originally estimated by the Joint Complainants for written testimony or affidavits.

17. The Joint Complainants have further indicated that on October 24, 2014, they will be serving four volumes of consumer witness testimony, comprising approximately 1,150 pages on Respond Power. Respond Power believes that this testimony will contain handwritten information that in some instances may be difficult to decipher.

18. As Respond Power has begun retrieving the documents and recordings for the 200 customers identified in the Set IV Discovery Requests, it estimates that this process will take at least 200 hours for the two Respond Power employees who are assigned to these tasks. Given that these employee have other duties, it will not be possible to produce all of the documents and recordings requested by the interrogatories, which are also necessary for Respond Power to prepare for cross-examination of these consumer witnesses, far enough in advance of November 10, 2014 to be useful to the Joint Complainants or Respond Power.

19. It is highly unlikely that the two days currently set aside for the evidentiary hearings will be sufficient to allow for the cross-examination of 200 consumer witnesses. As a result, the Joint Complainants have asked Respond Power to identify by October 30, 2014 which consumer witnesses it wishes to have available on November 10 and 12, 2014 so that logistics for their participation may be timely handled. Doing nothing else between October 24, 2014 and October 30, 2014, it would be virtually impossible for Respond Power to review all of the testimony, retrieve and review all of the enrollment documents and call recordings, identify which consumers it wishes to have available for the evidentiary hearings on November 10 and November 12, 2014, and effectively prepare to cross-examine the consumer witnesses at that time. Moreover, Respond Power believes that it would be more efficient to schedule all hearing dates involving consumer witnesses consecutively or reasonably close together.

20. Respond Power further notes that although one settlement meeting has been held with the Joint Complainants and that it is currently working on a proposed term sheet to share with the Joint Complainants and Intervenors for purposes of advancing those settlement discussions, it is unlikely that any meaningful discussions can occur prior to November 10, 2014, given the need to respond to Set IV Discovery Requests and prepare for the evidentiary hearings.

21. Additionally, Respond Power is aware that I&E plans to file a Petition to Consolidate its Complaint with the Joint Complaint. While Respond Power does not oppose the Petition to Consolidate, Respond Power notes that a continuance of the hearings scheduled for November 10 and 12, 2014 would enable the parties to more effectively coordinate issues that may be affected by such consolidation.

22. Respond Power also submits that having additional time before holding evidentiary hearings would be beneficial to the parties and the ALJs from the standpoint of

efficiently addressing logistics associated with the scheduling of consumer witnesses and the introduction of exhibits, including enrollment documents and call recordings. As currently scheduled, hearing exhibits would need to be sent to the consumer witnesses on or around November 3, 2014 to ensure that they have them in hand before the commencement of hearings.

23. Respond Power has diligently responded to interrogatories and produced documents requested by the Joint Complainants, engaged in settlement discussions and actively prepared for the evidentiary hearings. However, for good cause, as described fully herein, Respond Power requests a continuance of the hearing now scheduled for November 10 and 12, 2014 and requests that Your Honors grant this request so that hearings may be rescheduled for five to seven hearing dates in late January or early February 2015.

24. Respond Power has consulted with Joint Complainants and the Intervenors, and is authorized to represent that they have no opposition to this Motion for Continuance.

WHEREFORE, Respond Power LLC respectfully requests that Your Honors grant this unopposed Motion for Continuance.

Respectfully submitted,

Dated: October 22, 2014



Karen O. Moury
PA Attorney I.D. # 36879
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
(717) 237-4820

Attorneys for Respond Power LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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 Email 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

John M. Abel
Nicole R. Beck
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120

Sharon E. Webb
Office of Small Business Advocate
300 N. Second Street, Suite 202
Harrisburg, PA 17101

Steve Estomin
Exeter Associates, Inc.
10480 Little Patuxent Parkway
Suite 300
Columbia, Maryland 21044

Candis A. Tunilo
Christy M. Appleby
Kristine E. Robinson
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101

Adam D. Young
Michael L. Swindler
Wayne T. Scott
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17105-3265

Barbara R. Alexander
83 Wedgewood Drive
Winthrop, Maine 04364

Dated this 22nd day of October, 2014.



Karen O. Moury, Esq.