



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

October 17, 2014

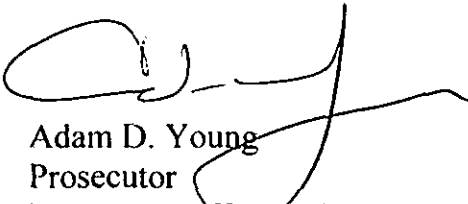
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation  
and Enforcement v. Respond Power LLC  
Docket No. C-2014-2438640

Dear Secretary Chiavetta:

Enclosed for filing please find the original copy of the Answer of the Bureau of Investigation and Enforcement, of the Pennsylvania Public Utility Commission to the Preliminary Objections of Respond Power, LLC. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,



Adam D. Young  
Prosecutor  
PA Attorney ID-No. 91822

Counsel for the Bureau of  
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service  
ALJ Cheskis  
ALJ Barnes

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Pennsylvania Public Utility  
Commission, Bureau of  
Investigation and Enforcement**

**Docket No. C-2014-2438640**

v.

**Respond Power LLC**

**ANSWER OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT  
TO THE PRELIMINARY OBJECTIONS OF RESPOND POWER, LLC**

NOW COMES, the Bureau of Investigation and Enforcement (I&E or Complainant) of the Pennsylvania Public Utility Commission (Commission), Complainant in the above-docketed matter, by and through its prosecuting attorneys, and files this Answer to the Preliminary Objections of Respond Power, LLC (Respond Power, Company or Respondent), pursuant to 52 Pa. Code § 5.101(f). In support thereof, I&E avers as follows:

**I. INTRODUCTION**

On August 21, 2014, I&E filed a Formal Complaint against Respondent at Docket No. C-2014-2438640, alleging that Respondent violated numerous Commission regulations and seeking appropriate relief, including that the Commission: (1) find Respondent to be in violation of the Public Utility Code and Commission Regulations for each of the 639 counts set forth in the Formal Complaint; (2) impose a civil penalty upon Respondent in the amount of Six Hundred and Thirty-Nine Thousand Dollars

(\$639,000.00)<sup>1</sup>; (3) rescind the authority of Respondent to do business as an electric generation supplier (EGS) in Pennsylvania; (4) direct Respondent to provide a refund to each customer consisting of the difference between the amount the customer was billed and the guaranteed discounted rate the customer was entitled to receive; and (5) order such other remedy as the Commission may deem to be appropriate.

On September 30, 2014, Respondent, through counsel, filed Respondent Respond Power, LLC's Preliminary Objections, at the above docket.<sup>2</sup> In Respondent's Preliminary Objections, Respond Power seeks the following: (1) dismissal of Counts 7-15 for lack of Commission jurisdiction and legal insufficiency; (2) dismissal of Counts 16-62 for lack of Commission jurisdiction; (3) dismissal of Counts 63-492 for lack of Commission jurisdiction and legal insufficiency; (4) dismissal of Counts 492-524 for legal insufficiency; (5) dismissal of Counts 524-568 for lack of Commission jurisdiction; and (6) dismissal of Paragraph 45 for lack of Commission jurisdiction. Respond Power's Preliminary Objections are without merit, as the Commission possesses jurisdiction to rule on I&E's alleged violations, and I&E's averments of violations are legally sufficient.

As set forth in detail below, Respondent's Preliminary Objections should be dismissed, as the Commission does not lack the jurisdiction to enforce its own regulations, some of which require a determination of whether Pennsylvania's Consumer Protection Law has been violated. In this case the Commission isn't enforcing the provisions of the Consumer Protection Law, rather it is determining if a violation of that

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<sup>1</sup> This proposed civil penalty was calculated by multiplying the number of violations (639 counts) by \$1,000 per violation, the maximum sum permitted to be assessed per violation pursuant to 66 Pa. C.S. § 3301.

<sup>2</sup> On September 30, 2014, Respondent, through counsel, also separately filed its Answer to I&E's Formal Complaint, to which I&E shall separately respond.

law has occurred, which then results in a violation of Commission regulations.

Furthermore, the Commission is well within its authority to issue customer refunds.

## II. LEGAL STANDARD

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §§ 5.101 (a)(1)-(7). The grounds for preliminary objections are limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

In deciding whether to grant or deny a preliminary objection, there must be a presumption that all facts averred in the complaint are true and, correspondingly, it must be determined whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *See Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *See also Equitable Small Transp. Interveners v. Equitable Gas Co.*, 1994 Pa PUC LEXIS 69, \*3.

Furthermore, any inferences fairly deducible from the facts must be accepted for purposes of the disposition of the preliminary objections. *See Commonwealth v. Bell Telephone Co.*, 551 A.2d 602 (Pa. Commw. Ct. 1988). The Commission shall deny a preliminary objection,

in favor of the non-moving party, if there are any doubts that must be resolved. Boyd v. Ward, 802 A.2d 705, 707 (Pa. Commw. Ct. 2002); Weber v. PPL Electric Utilities Corp., Docket No. C-2008-2052894, Order at 4 (March 23, 2009). Also, preliminary objections must be denied, where factual or legal issues remain to be examined. See P. J. S. v. Pa. State Ethics Comm'n, 669 A.2d 1105 (Pa. Commw. Ct. 1996).

Preliminary objections alleging "legal insufficiency of pleading," serve judicial economy by avoiding a hearing where no factual dispute exists. Drake v. Pennsylvania Electric Co., Docket No. C-2014-2413771, Order at 5 (May 7, 2014). The Commission will find a complaint legally sufficient if it provides the following:

...an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.

Drake, Order at 6; 52 Pa. Code § 5.22(a)(5).

The purpose of a preliminary objection raising specificity is to ensure that the ability of an adverse party to answer and defend will not be unduly impaired by a complainant's vagueness in stating grounds for the action. Stilp v. Commonwealth, 910 A.2d 775 (Pa. Commw. Ct. 2006), *affd*, 974 A.2d 491 (Pa. 2009). When a respondent files a preliminary objection alleging "insufficient specificity of a pleading," an answer is not required until further directed by the presiding officer or the Commission. 52 Pa. Code § 5.101(e)(1).

Such preliminary objection requires consideration of the following questions:

[W]hether the complaint is sufficiently clear to enable the defendant to prepare his defense, or whether the plaintiff's complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that the defendant may know without question upon what grounds to make his or her defense.

Rambo v. Greene, 906 A.2d 1232, 1269 (Pa. Super. Ct. 2006).

With regard to preliminary objections asserting lack of jurisdiction, it is well settled that the Commission has the power and authority granted to it by the General Assembly contained in the Public Utility Code to enforce the Public Utility Code, its Orders and regulations. See 66 Pa. C.S. § 501. *See also* Lasko v. Windstream Pennsylvania, LLC, 2011 Pa. PUC LEXIS 696, \*9. One can file a formal complaint with the Commission alleging violation of a statute that the Commission has jurisdiction to administer. *Id.* at \*7. This is exactly what The Bureau of Investigation and Enforcement has done in this proceeding.

### III. ANSWER

1. *Admitted.* By way of further answer, while it is admitted that this is Respond Power's position, I&E asserts that this position is without merit.

2. *Admitted.*

3. *Denied.* Complainant is without sufficient knowledge or information upon which to form a belief as to the averment set forth herein. Strict proof is demanded thereof.

4. *Denied.* Respond Power's disclosure statement is a document, the terms of which speak for themselves. However, I&E submits that this document is not completely clear in its terms, Respondent failed to charge its customers in accordance with its disclosure agreement, and Respondent's sales representatives guaranteed savings in contravention of the terms of the disclosure agreement.

5. *Denied.* Paragraphs 1-12, generally, are introductory/background in nature. To the extent that factual allegations are made in these introductory paragraphs, they are

denied, and strict proof is demanded thereof. Documents referenced in these introductory paragraphs shall speak for themselves. By way of further answer, the Commission did not approve Respondent's Disclosure Statement in the Order approving Respond Power's EGS license application. See License Application of Respond Power LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power, Docket No. A-2010-2163898, Order (Aug. 19, 2010) (Licensing Order). In fact, there is no mention of Respond Power's Disclosure Statement in the Licensing Order.

6. Denied. Paragraphs 1-12, generally, are introductory/background in nature. To the extent that factual allegations are made in these introductory paragraphs, they are denied, and strict proof is demanded thereof. Documents referenced in these introductory paragraphs shall speak for themselves.

7. Denied. By way of further answer, the incidents that gave rise to this Formal Complaint far exceed one whistleblower and a polar vortex. The allegations in the Formal Complaint stem from, among other things, systemic issues regarding Respondent's misleading and deceptive sales practices, slamming of customers, failure to disclose the material terms of variable pricing in plain and understandable language, and failure to adequately address and respond to customer complaints.

8. Denied. Paragraphs 1-12, generally, are introductory/background in nature. To the extent that factual allegations are made in these introductory paragraphs, they are denied, and strict proof is demanded thereof. Documents referenced in these introductory paragraphs shall speak for themselves. Moreover, Respond Power's reliance

on Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products, Docket No. M-2014-2406134, Order (adopted Feb. 20, 2014/entered March 4, 2014) (March 4 Order Seeking Comments) is also misplaced.

This was an Order seeking comments from interested parties and information from EGSs, not an Order entered to provide guidance on specific issues in the marketplace. Of note, the Commission has not acted on the Comments submitted by interested parties to the March 4 Order Seeking Comments.

9. Denied. Paragraphs 1-12, generally, are introductory/background in nature. To the extent that factual allegations are made in these introductory paragraphs, they are denied, and strict proof is demanded thereof. Documents referenced in these introductory paragraphs shall speak for themselves. By way of further answer, the allegation in this paragraph is based upon information solely in Respond Power's control. Complainant lacks sufficient information or knowledge so as to form a belief as to the veracity of the allegation contained herein.

10. Denied. Paragraphs 1-12, generally, are introductory/background in nature. To the extent that factual allegations are made in these introductory paragraphs, they are denied, and strict proof is demanded thereof. Documents referenced in these introductory paragraphs shall speak for themselves. By way of further answer, the allegation in this paragraph is based upon information solely in Respond Power's control. Complainant lacks sufficient information or knowledge so as to form a belief as to the veracity of the allegation contained herein. Strict proof is demanded thereof.



11. Denied. Paragraphs 1-12, generally, are introductory/background in nature. To the extent that factual allegations are made in these introductory paragraphs, they are denied, and strict proof is demanded thereof. Documents referenced in these introductory paragraphs shall speak for themselves. By way of further answer, the allegation in this paragraph is based upon information solely in Respond Power's control. Complainant lacks sufficient information or knowledge so as to form a belief as to the veracity of the allegation contained herein. Strict proof is demanded thereof.

12. Denied. Paragraphs 1-12, generally, are introductory/background in nature. To the extent that factual allegations are made in these introductory paragraphs, they are denied, and strict proof is demanded thereof. Documents referenced in these introductory paragraphs shall speak for themselves. By way of further answer, it is denied that any redundant provisions of the Commission's regulations were cited.

13-17. These paragraphs state conclusions of law to which no response is required. By way of further response, Complainant incorporates Section II above herein.

**A. Paragraphs 30 and 37 (comprising of Counts 7-15) of the Formal Complaint are legally sufficient.**

18. Paragraph 18 does not require a response.

19. Denied.

20. Denied. By way of further answer, Respondent confuses the concept of "enforcing the provisions of the Consumer Protection Law" with the concept of finding a violation of the Consumer Protection Law as a precursor to finding (and subsequently enforcing) Commission regulations. Several provisions of Chapters 54, 56, and 111 of

the Commission's regulations require compliance with Pennsylvania's Unfair Trade Practices and Consumer Protection Law. If the Consumer protection s law is found to be violated, so too is the Commission regulation citing to the consumer protection law. At that point, the Commission can enforce the violation of the *Commission* regulations. This concept is not a novel one, as the Commonwealth Court addressed this exact situation in *Harrisburg Taxicab & Baggage Co. v. Pa. PUC*, 786 A.2d 288 (Pa.Cmwlt.,2001)( The PUC's decision to incorporate DOT regulations in an area where the two agencies possess overlapping authority is in no way inappropriate. Rather such harmonization is salutary.)

Respondent is in a service industry consisting of consumers, marketing, sales, and other appurtenances. The Commission is vested with the authority of ensuring safe and legal service, including marketing and sales practices. As the actions of Respondent, in violating the consumer protection law, relate to the service provided by an EGS, regulatory overlap with consumer protection naturally exists. Nevertheless, the Commission is still *only enforcing its own regulations* against Respondent. By way of example, 52 Pa. Code § 54.42 discusses EGS license suspension and revocation. Consistent with due process, the Commission may suspend or revoke (and/or impose fines) on the licensee for "a violation of Pennsylvania consumer protection law." It is evident and clear that it is the Commission that shall find such a violation of the consumer protection law, and after such finding, shall enforce under §54.42 a sanction against the EGS. This is not to be confused with "enforcing the provisions of the

Consumer Protection Law.” On the contrary, it is enforcing the provisions of the Commission’s regulations. Therefore, this preliminary objection should be denied.

21. Denied. This averment states a conclusion of law. By way of further answer, Complainant incorporates herein its answer in Paragraph 20 above.

22. Denied. This averment states a conclusion of law. By way of further answer, Complainant incorporates herein its answer in Paragraph 20 above.

23. Denied. 52 Pa. Code § 54.43 speaks for itself. By way of further answer, contrary to Respondent’s assertions, this regulatory section does, in fact, set forth standards to which EGS’ must adhere. Section 54.43 is even titled, “*Standards of conduct and disclosure for licenses.*” Moreover, the opening sentence states, “To protect consumers of this Commonwealth, licensees shall adhere to the following principles in the provision of electric generation service” and goes on to list seven (7) standards to which EGS’ shall adhere. Subsection (f) states that EGS’ are responsible for any fraudulent, deceptive, or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives. Additionally, paragraphs 30 and 37 of the Formal Complaint are based on violations of 3 different regulatory sections for 3 different customers, totaling 9 counts. Respondent makes no objections to 52 Pa. Code §§111.8 or 111.9. Therefore, to the extent that Respondent is asking for dismissal of 9 counts, Respondent’s objections are to only 3 of these counts. For the foregoing reasons, however, this objection should be denied.

24. Denied. For the reasons set forth in Paragraphs 19-23 herein, Respondent’s preliminary objections should be denied.

**B. Paragraphs 31 and 38 (comprising of Counts 16-62) of the Formal Complaint are legally sufficient.**

25. Paragraph 25 does not require a response.

26. Denied. As explained in Paragraph 20 above, and incorporated in full herein, Respondent confuses the concept of “enforcing the provisions of the Consumer Protection Law” with the concept of finding a violation of the Consumer Protection Law as a precursor to finding (and subsequently enforcing) Commission regulations. Several provisions of Chapters 54, 56, and 111 of the Commission’s regulations require EGS’ to comply with Pennsylvania’s Unfair Trade Practices and Consumer Protection Law, or otherwise “Pennsylvania consumer protection law.” The Commission is vested with the authority to review the provisions of Pennsylvania’s consumer protection law to determine if an EGS has violated its provisions. If a violation is found to have occurred, then the Commission will enforce its own regulations which reference compliance with the consumer protection law. This is the Commission enforcing its own regulations, *not* enforcing the consumer protection law. The sanctions that may be imposed by the Commission are the applicable provisions of Titles 52 and 66. The Commission isn’t imposing any sanctions or penalties enumerated in the consumer protection law, it is simply finding whether a violation of the consumer protection law has occurred, and enforcing *its own* regulations.

27. Denied. For the reasons set forth in Paragraphs 20 and 26 above, and fully incorporated herein, the Commission has the authority to review Respondent’s actions to

determine whether it violated Pennsylvania consumer protection law, before enforcing its own regulations referencing compliance with such law.

**C. Paragraphs 32 and 39 (comprising Counts 63-492)  
of the Complaint are legally sufficient**

28. Paragraph 28 does not require a response.

29. Denied. By way of further response, The Commission is not regulating or establishing Respondent's prices, rather, it is determining whether Respondent billed in accordance with its marketed prices, promises of savings by sales representatives, and agreed upon prices in the disclosure statement. Consistent with Paragraph 5 above, and incorporated fully herein, it is denied that the Commission approved Respond Power's disclosure statement; rather the disclosure statement was reviewed for regulatory compliance by BCS. Whether that disclosure statement is consistent with the marketed prices and promised savings is an issue of fact. The gist of the relevant portions of the Formal Complaint is that the information in the disclosure statement is not consistent with what the customers were told at the time of signing up.

30. Admitted in part, Denied in part. It is admitted that the Commission does not have the authority to regulate the prices of EGS'. It is denied that the Commission is attempting to regulate Respondent's prices. Rather, I&E alleges in its formal complaint that Respondent's disclosure statement states that Respondent's prices would be based upon PJM's Day-Ahead Market, and alleges that, not only were the prices charged well in excess of that, they were well in excess of the price to compare. It is not the prices that Complainant takes issue with, it is the fact that Respond Power "guaranteed a savings" of

up to 10% over the price to compare, and did not deliver on that promise. Moreover, the disclosure statement's variable rate section describing how the price will be computed is contradictory to the promise of savings. If the prices are based upon PJM's Day-Ahead Market, there is no way a guarantee of savings on the price to compare can be made. While the disclosure statement states that it cannot guarantee a savings every month, the sales representatives were guaranteeing savings at the time customers were signing up. Complainant alleges that charging prices not conforming to the disclosure statement, in conjunction with misleading and deceptive sales practices promising "real savings" of up to 10% off the EDC price to compare, constitutes a violation of the Commission's regulations.

The counts in Paragraph 39 of the Formal Complaint allege that Respondent engaged in unfair, fraudulent, deceptive or otherwise unlawful marketing acts by failing to disclose material terms and conditions of service including the material terms and conditions of price variability, the limits on variability, and billing amounts inconsistent with advertised prices, marketed prices, or the agreed upon prices in the disclosure statement. 52 Pa. Code § 54.4(a) states that, "EGS prices billed must reflect the marketed prices and the agreed upon prices in the disclosure statement." *See also* 52 Pa. Code § 54.7(a). Complainant simply alleges that Respond Power did not do this, and therefore violated the Commission's regulations. Such an allegation is not establishing or regulating Respondent's prices. The Commission certainly can determine what Respondent's price "should have been" according to its disclosure statement, and compare that to what the customers were told the price would be at the time of

enrollment. After all, Respondent's customers were expected to do the very same when they signed up with Respond Power. The Commission can then determine whether Respondent actually charged according to its disclosure statement and marketed prices, and agreed upon prices, otherwise, Sections 54.4(a) and 54.7(a) would be superfluous. Therefore this Preliminary Objection should be denied.

31. *Denied as a conclusion of law to which no response is necessary.*

32. *Denied. This averment states a conclusion of law to which no response is necessary.*

33. *Denied. This averment states a conclusion of law to which no response is necessary.*

34. *Denied. This averment states a conclusion of law to which no response is necessary. The Commission's Variable Price Order speaks for itself. By way of further response, the Commission emphasized that it is important for consumers to carefully review the terms and conditions of their contracts to determine if they are at risk for large rate increases at any given time. That is precisely why Complainant stated in its Formal Complaint that, among other things, Respondent's disclosure statement is vague, inadequate, and does not disclose sufficient material pricing terms so as to adequately inform a customer of the terms, conditions, or limits of variable pricing. Moreover, the disclosure statement's variable pricing section conflicts with what customers are told at the time of enrollment. It is practically impossible for spot market pricing to guarantee a savings of up to 10% on the price to compare.*

Customers are being guaranteed savings, and Respondent's disclosure statement essentially indicates that their bill might quadruple under certain market conditions. But customers are not being told this at the time of enrollment. Instead, customers hear a guarantee from a sales representative of up to 10% savings on the price to compare, and assume that will be the benefit of the contract.

35. Denied. The allegations are legally sufficient and do state a claim upon which relief can be granted. The allegations against Respondent alleging inadequacy of Respondent's Disclosure Statement are specific to this case and, taken together with all other well-pleaded facts, including Respondent's misleading and deceptive sales tactics and promises of guaranteed savings, state a legally sufficient claim upon which relief can be granted.

36. Denied. This averment states a conclusions of law to which no response is required. By way of further response, however, as stated in Paragraph 5 above, and incorporated fully herein, it is denied that the Commission approved Respondent's disclosure statement in the Order approving Respond Power's EGS License application. See License Application of Respond Power LLC for Approval to Offer, Render, Furnish, or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power, Docket No. A-2010-2163898, Order (Aug. 19, 2010)(Licensing Order). Additionally, any alleged approval by the Commission's Bureau of Consumer Services (BCS) was for regulatory compliance, but is not binding on the Commission.

Respondent's reliance on Hoke v. Ambit Northeast, LLC d/b/a Ambit Energy, Docket No. C-2013-2357863 (Initial Decision November 21, 2013) (Final Order entered



January 16, 2014) is entirely misplaced. First, the facts in Hoke are specific to that case, but more importantly, the Administrative Law Judge (ALJ) made no conclusions of fact or conclusions of law regarding prior approval of the disclosure statement. Rather, the ALJ mentioned in dicta that the disclosure statement was approved by BCS without the benefit of testimony to that effect. Additionally, the ALJ also referred the disclosure statement to BCS and the Office of Competitive Market Oversight (OCMO) for additional review. Regardless, it is not the review of the disclosure statement at issue in this case, it is the accuracy of such statement as it compares to the marketed prices and guarantees of real savings over the price to compare.

37. Denied as a conclusion of law to which no response is necessary. By way of further response, Complainant believes the phrase “if applicable” in 52 Pa. Code §54.5(c)(2) refers back to the variable pricing statement. Meaning that if an EGS offers variable pricing, then the variable pricing statement must include the enumerated items in subsections (i) and (ii). Once again, it must be recognized that the issue is that the disclosure statement doesn’t contain accurate information regarding pricing when compared to what sales representatives are offering customers.

38. Denied. This averment states a conclusion of law to which no response is necessary.

39. Denied. Complainant lacks sufficient knowledge to form a belief as to the veracity of the averment set forth herein. To the extent a response is required, this averment is denied.

40. Denied. Complainant lacks sufficient knowledge to form a belief as to the veracity of the averment set forth herein. To the extent a response is required, this averment is denied.

41. Denied. The Commission's Orders speak for themselves.

42. Denied. For the reasons set forth in Paragraphs 29-41, and fully incorporated herein, Respondent's preliminary objections should be denied.

43. Denied. For the reasons set forth in Paragraphs 20 and 26 above, and fully incorporated herein, the Commission does have authority to look at Respondent's actions to see if it violated Pennsylvania consumer protection law, before enforcing its own regulations referencing compliance with such law.

**D. Paragraphs 33 and 40 (comprising Counts 492-524) of the Formal Complaint are legally sufficient.**

44. Paragraph 44 does not require a response.

45. Denied. This averment states a conclusion of law to which no response is required. By way of further answer, the allegations in Paragraphs 33 and 40 are legally sufficient and do state a claim upon which relief can be granted.

46. Denied. This averment states a conclusion of law to which no response is required. To the extent that an answer is necessary, neither Paragraphs 33 nor 40 purports that anything in Chapter 56 of the Commission's regulations applies to prices that are charged to consumers. Rather, these Paragraphs allege that Respondent inadequately handled and resolved customer disputes, and inadequately staffed call centers to handle customer complaints in a timely fashion. Many consumers complain of

being on hold in excess of an hour, being disconnected, or receiving an automated message that the call center was closed.

**E. Paragraphs 34 and 41 (comprising Counts 524-568) of the Complaint are legally sufficient.**

47. Paragraph 47 does not require a response.

48. Denied. For the reasons set forth in Paragraphs 20 and 26 above, and fully incorporated herein, the Commission has the authority to examine Respondent's actions to determine whether it violated Pennsylvania consumer protection law, before enforcing its own regulations referencing compliance with such law.

49. Denied. For the reasons set forth in Paragraphs 20 and 26 above, and fully incorporated herein, the Commission has the authority to examine Respondent's actions to determine whether it violated Pennsylvania consumer protection law, before enforcing its own regulations referencing compliance with such law. This preliminary objection should be denied.

**F. Paragraph 45 of the Complaint is legally sufficient.**

50. Paragraph 50 does not require a response.

51. Denied. By way of further response, the Commission certainly has the authority to order EGS' to issue customer refunds, or any number of other remedies it deems fit. When an EGS engages in fraudulent, misleading, deceptive and/or outright illegal behavior, equitable remedies making the consumer whole are well within the Commission's authority. At the very least, it is not free and clear from doubt that the

Commission lacks the jurisdiction to issue refunds to customers that were misled.

Therefore, this preliminary objection should be denied.

52. Denied. The equitable remedy of giving customers a refund is in no way tied to the regulation of an EGS' pricing. It is directly tied to the EGS' deceptive and misleading sales tactics. It is absurd to argue that the Commission cannot make whole a consumer that was duped by deceptive, fraudulent, or misleading sales pitches by an EGS' employees, agents, or representatives.

If consumers are deceived into believing that they should switch to Respond Power because they are guaranteed a savings of up to 10% on the price to compare, and the consumers switch companies with the result being that they pay upwards of four times the price to compare had they not switched, it is not only reasonable, but incumbent upon the Commission to make the consumers whole by demanding that the EGS put the consumers back into the position they were in prior to the deceptive act. Section 2809(e) of the Public Utility Code allows the Commission to forebear applying certain provisions of the Public Utility Code to EGS', but does not limit the Commission's authority.

The requested relief of customer refunds is entirely lawful and appropriate if Respond Power violated 52 Pa. Code § 54.4(a). The intent of the regulation is to require EGSs to bill prices that adhere to the terms and conditions of the marketed prices and disclosure statement. When EGSs breach the terms and conditions of their own disclosure statements and bill prices that were not agreed to by the customer, the Commission must be able to direct EGSs to provide refunds in accordance with Section 2809(e) of the Code, which obligates the Commission to ensure that Chapter 56 standards

and billing practices are maintained. Therefore, Section 2809(e) of the Code provides a strong and necessary implication that the Commission has jurisdiction and authority to direct EGSs to issue refunds to customers who were overbilled. See Feingold v. Bell, 383 A.2d 791 (Pa. 1977) (Holding that since the Commission is a creature of statute, it has only those powers, which are expressly conferred upon it by the legislature, and those powers *which arise by necessary implication*). To hold otherwise is contrary to public interest and renders the language of Section 54.4(a) of the Commission's regulations to be meaningless if the Commission is unable to enforce it.

Moreover, Section 2809(b) mandates that the Commission issue a license to EGS upon qualified application, if the applicant is found to be fit, willing and able to perform properly the service proposed and to conform to the provisions of this title and the lawful orders and regulations of the commission including the Commission's regulations regarding standards and billing practices. Under 52 Pa Code §54.42, the Commission may suspend or revoke the license, and/or impose fines for any of the enumerated actions. Implied within the broad grant of authority to issue, suspend and revoke EGS licenses there is certainly the authority to mandate any number of remedial measures, including refunds, to bring an EGS into compliance and/or to make whole customers that were wronged by the fraudulent, misleading, or illegal actions of an EGS.

53. Denied. By way of further response, the Initial Decision of ALJ Salapa in Blue Pilot speaks for itself, however, that case was based upon the particular facts of that case. More to the point, the consumer in that case only alleged that the rate charged under the variable rate contract was increased to a level that was not satisfactory to the

consumer (500%). No allegations were raised about departures from the consumer's contract with Blue Pilot nor were any violations of the Public Utility Code alleged. It should be reiterated that "regulating rates" or "prices" of an EGS is in no way tied to the issuing of customer refunds. If a consumer is defrauded into switching suppliers, thereby putting himself in a worse position than he was in, the principles of equity demand that the Commission make the consumer whole.

54. Denied. By way of further answer, the price to compare is a perfectly reasonable baseline upon which to base the amount for a customer refund. Many of the consumers were enticed to switch from their EDC (price to compare provider) to Respond Power by way of deceptive and misleading sales tactics. Had they not switched, they would have paid the price to compare. Thus, ordering that Respond Power refund the difference to consumers that were duped is a perfectly reasonable, and certainly legally sufficient, request.

55. Denied. For the reasons set forth in Paragraphs 51-54, and fully incorporated herein, this preliminary objection should be denied.

WHEREFORE, the reasons stated above, the Bureau of Investigation and Enforcement respectfully requests that the Commission dismiss Respondent's Preliminary Objections and sustain I&E's Complaint.

Respectfully submitted,

---

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Dated: October 17, 2014

RECEIVED  
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PA PUC  
SECRETARY'S BUREAU

## 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).

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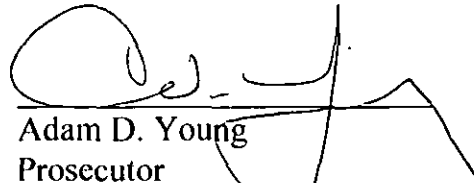
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