**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, *et al.* :

:

v. : C-2014-2427659

:

Respond Power LLC :

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement : C-2014-2438640

:

v. :

:

Respond Power LLC :

**ORDER**

**GRANTING PETITION TO CONSOLIDATE FORMAL COMPLAINTS**

On June 20, 2014, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (OAG), and Tanya J. McCloskey, Acting Consumer Advocate (OCA) (collectively referred to as “the Joint Complainants”) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against Respond Power LLC (Respond or “the Company”), at Docket Number C-2014-2427659. The Joint Complainants averred that they had received numerous contacts and complaints from consumers related to variable rates charged by Respond, including approximately twenty formal complaints filed by consumers at the Commission. The Joint Complainants further averred that Respond used a variety of marketing and advertising mediums to solicit residential customers for its variable rate plan. As a result, the Joint Complainants averred nine separate counts against Respond, including, but not limited to, making misleading and deceptive claims, making misleading and deceptive promises of savings, slamming and failing to provide accurate pricing information. The Joint Complainants made several requests for relief, including providing restitution and prohibiting deceptive practices in the future. The Joint Complainants provided several attachments to their Complaint.

On July 10, 2014, Respond filed an Answer and New Matter in response to the Complaint. In its Answer, Respond admitted or denied the various averments made by the Joint Complainants. In particular, Respond specifically denied that multiple violations of Pennsylvania law have occurred and that consumers were misled or deceived as to the price they would pay for electricity. Respond averred that, on the contrary, consumers knowingly entered into agreements with Respond to purchase electric generation service through variable rate plans under which prices would vary month to month on the basis of wholesale market conditions. In its New Matter, Respond averred, among other things, that the Complaint ignores the market conditions that started in January 2014 that precipitated the variable price increases to which many consumers were exposed resulting in a spike in the volume of informal and formal complaints filed by consumers with the Commission.

On August 21, 2014, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a formal Complaint against Respond containing 639 counts of 1) slamming, 2) misleading and deceptive claims of affiliation with electric distribution companies, 3) misleading and deceptive promises of savings, 4) failure to disclose material pricing terms in Respond Power’s Disclosure Agreement/Prices not conforming to Disclosure Agreement, 5) lack of good faith in handling customer complaints/cancellations, 6) inaccurate/incomplete/fraudulent sales agreements and 7) incorrect billing.

On September 30, 2014, Respond filed an Answer to I&E’s formal Complaint admitting or denying the various averments made. In general, Respond requested that the Commission dismiss I&E’s Complaint.

On October 23, 2014, I&E filed a Petition to Consolidate the Formal Complaints against Respond Power, LLC. In its Petition, I&E averred that both Complaints allege violations of the same provisions of the Public Utility Code and its regulations. I&E further stated that both Complaints contain similar factual allegations including, but not limited to, deceptive and misleading sales tactics, failure to conform to the terms of the disclosure statement, failure to disclose material pricing terms, charging prices not conforming to the disclosure statement, misleading promises of savings and slamming of customer accounts. I&E noted that both Complaints seek substantially the same remedies including imposing a civil penalty, rescinding the authority of Respond to do business as an EGS in Pennsylvania, and directing Respond 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. I&E averred that consolidating the two Complaints will expedite the administrative process, preserve judicial resources, prevent inconsistent outcomes/cumulative penalties against Respond and save Respond from having to defend two similar complaints simultaneously.

I&E concluded that it contacted the other parties to the proceedings and no party objected to consolidation of the two Complaints.

Section 5.81 of the Commission’s rules governs consolidation of proceedings. This Section provides:

**§ 5.81. Consolidation.**

1. The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

52 Pa.Code § 5.81. Because these Complaints contain common questions of law and fact and consolidation will avoid unnecessary delay or cost, they should be consolidated.

As I&E noted in its Petition, both Complaints involve allegations of violations of the same provisions of the Public Utility Code. This includes various provisions in Chapters 54, 56 and 111. Additionally, both Complaints contain similar allegations including allegations of deceptive and misleading sales tactics, failure to conform to the terms of the disclosure statement, failure to disclose material pricing terms, charging prices not conforming to the disclosure statement, misleading promises of savings, and slamming of customer accounts. Finally, both Complaints contain similar requests for relief, including penalties, rescission of authority and refunds. Therefore, the Complaints have common questions of law and fact and the requirements of Section 5.81 regarding consolidation have been satisfied. I&E is correct that consolidation of these two Complaints will preserve judicial resources and provide other benefits such as preventing inconsistent outcomes and cumulative penalties, and save Respond from having to defend two similar complaints simultaneously. Furthermore, I&E’s Petition is unopposed.

As such, I&E’s Petition to consolidate Complaints will be granted.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition to Consolidate the Formal Complaints filed by the Bureau of Investigation and Enforcement on October 23, 2014 in the above-captioned proceedings is hereby granted.
2. That the formal Complaint filed by the Attorney General Kathleen G. Kane through the Bureau of Consumer Protection and the Office of Consumer Advocate against Respond Power LLC on June 20, 2014 at Docket Number C-2014-2427659 and the formal Complaint filed by the Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement on August 21, 2014 at Docket Number C-2014-2438640 are hereby consolidated.

Date: October 28, 2014

Elizabeth Barnes

Administrative Law Judge

Joel H. Cheskis

Administrative Law Judge

**C-2014-2427659 - ATTORNEY GENERAL PA & OFFICE OF CONSUMER ADVOCATE v. RESPOND POWER LLC**

***REVISED 8/26/14***

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