

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Joseph Nadav
v.
Respond Power, LLC

Public Meeting November 13, 2014
2429159-ALJ
Docket No. C-2014-2429159

MOTION OF VICE CHAIRMAN JOHN F. COLEMAN, JR.

Before us is a formal complaint brought by Joseph Nadav against Respond Power, LLC, (“Respond”) a licensed electric generation supplier (“EGS”). In his complaint, Mr. Nadav alleges that Respond charged his business an excessive rate for the supply of electricity for a period of time earlier this year, and that his rate be recalculated and a refund provided.

Respond filed an Answer and Preliminary Objections to the Complaint. It maintains that its variable rate reflected the wholesale cost of energy at the time in question, and asked the Commission to dismiss the complaint for lack of jurisdiction over EGS rates and for legal insufficiency.

The presiding Administrative Law Judge (“ALJ”) granted the Preliminary Objections, finding that the Commission lacked jurisdiction over EGS rates, and that the complaint was legally insufficient for failing to identify a violation of the supply contract, or a provision of the Public Utility Code, associated regulations or a Commission order. I agree with these findings of the ALJ, and the decision to dismiss the complaint.

However, I disagree with one statement made in the text of the decision. The ALJ stated that because the Commission lacks the authority to regulate rates, it also lacks the authority to order a refund or credit to be provided to the Complainant. I do not agree with this characterization of our authority to order refunds or credits.

The Commission has interpreted Section 2807(d)(1) of the Public Utility Code, 66 Pa.C.S. § 2807(d)(1), to find that a refund is an appropriate remedy when a customer’s supplier has been changed without the customer’s affirmative consent. The Commission’s regulations require an EGS to provide a full refund to customers of all generation charges resulting from an unauthorized switch. 52 Pa. Code § 57.178. This regulation was approved by the Independent Regulatory Review Commission, has been in effect since 1998, and enjoys the presumption of reasonableness. Accordingly, while I agree that the Commission lacks the authority to regulate EGS rates, it is well settled that EGSs may be required to provide refunds to retail customers in appropriate circumstances.

THEREFORE, I MOVE THAT:

1. The Commission adopt the Initial Decision, as modified by this Motion.
2. That the Office of Special Assistants prepares an Opinion and Order consistent with this Motion.

DATE: November 13, 2014


JOHN F. COLEMAN, JR.
VICE CHAIRMAN