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December 19, 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 30-45 day continuance of the evidentiary hearings scheduled for January 26-January 30, 2015, depending upon the availability of the Administrative Law Judges (“ALJs”) and the parties. The sole purpose for seeking this continuance is that Respond Power has made a concerted effort to avoid devoting resources to hearing preparations that could be more appropriately utilized to achieve a settlement of this matter, including the issuance of refunds to consumers, which the Commission lacks the

statutory authority to direct. Despite Respond Power's efforts, no meaningful settlement discussions have yet been held.

2. On October 24, 2014, Respond Power provided a proposed term sheet to the Office of Attorney General and the Office of Consumer Advocate ("Joint Complainants"), the Bureau of Investigation and Enforcement ("I&E") and the Office of Small Business Advocate ("OSBA").

3. Respond Power scheduled an in-person settlement meeting for November 12, 2014. On November 10, 2014, the Joint Complainants indicated that they did not yet have a counter-proposal ready and questioned whether Respond Power still wished to hold the meeting. At Respond Power's suggestion, the meeting was changed to a conference call. During the conference call, Respond Power walked the parties through its proposed term sheet, explaining its rationale for the various components and answering questions. The Joint Complainants and I&E offered general observations about the proposed term sheet and indicated their intent to provide a counter-offer within a couple of weeks.

4. Respond Power has made several inquiries about a proposed term sheet and was most recently advised by the Joint Complainants that one would be circulated by December 12, 2014. As of this date, Respond Power has yet to receive a proposed term sheet.

5. Respond Power asked the parties via electronic mail on December 17, 2014 whether they opposed this request for a continuance. As of the filing of this Motion, the parties have not indicated their position on it.

6. It is noteworthy that the Joint Complainants did not oppose Respond Power's first Motion for Continuance, and expressly conditioned their lack of opposition on using any additional time to engage in meaningful settlement discussions. Respond Power fully concurred

with that condition and has made every effort to comply with its commitment. Yet, the Joint Complainants have delayed the onset of meaningful settlement discussions to the point that Respond Power would now be required to prepare for evidentiary hearings involving the testimony of over 200 witnesses in less than four weeks, taking into consideration the intervening holidays.

7. Respond Power respectfully requests that evidentiary hearings scheduled for January 26-30, 2015 be continued and rescheduled to the late February/early March timeframe.

II. BACKGROUND

8. 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.

9. On June 20, 2014, the 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.

10. 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.

11. 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.

12. 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.

13. 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. An Order granting in part and denying in part the Preliminary Objections was issued on November 17, 2014. In addition, the ALJs issued an Order dated October 28, 2014 granting I&E’s Petition to Consolidate its Formal Complaint with this Complaint.

14. 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.

15. 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.

16. Respond Power filed a Motion for Continuance on October 22, 2014, which was granted by the ALJs by Order dated October 28, 2014. In that Order, the ALJs reminded the parties that Commission policy promotes settlement and directed the parties to advise them of all future settlement activity.

III. ARGUMENT

17. 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.

18. 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).

19. The purpose for seeking this continuance is that Respond Power has made a concerted effort to avoid devoting resources to hearing preparations that could be more appropriately utilized to achieve a settlement of this matter, including the issuance of refunds to

consumers, which the Commission lacks the statutory authority to direct. Despite Respond Power's efforts, no meaningful settlement discussions have yet been held.

20. On October 24, 2014, Respond Power provided a proposed term sheet to the Joint Complainants, I&E and OSBA.

21. Respond Power scheduled an in-person settlement meeting for November 12, 2014. On November 10, 2014, the Joint Complainants indicated that they did not yet have a counter-proposal and questioned whether Respond Power still wished to hold the meeting. At Respond Power's suggestion, the meeting was changed to a conference call. During the conference call, Respond Power walked the parties through the proposed term sheet, explaining its rationale for the various components and answering questions. The Joint Complainants and I&E offered general observations about the proposed term sheet and indicated their intent to provide a counter-offer within a couple of weeks.

22. Respond Power has made several inquiries to the Joint Complainants about a proposed term sheet and was most recently advised that one would be circulated by December 12, 2014. As of the filing of this Motion, Respond Power has yet to receive a proposed term sheet.

23. Respond Power has diligently attempted to engage in settlement discussions with the parties and through no fault of its own, these efforts have been unsuccessful. As a result of conserving its resources with the objective of using them to achieve a settlement that would include refunds to customers, it has not expended resources to prepare for the evidentiary hearings scheduled for January 26-30, 2015.

24. The preparations for these hearings are particularly intensive due to the need to review hand-written testimony, sort through extraneous attachments to the testimony, review

prior complaints filed by the witnesses, listen to sales and verification recordings and review documentation, including sales agreements and disclosure statements that were provided to the consumers.


25. With less than four weeks remaining before the hearings, taking into consideration the intervening holidays, Respond Power needs additional time to adequately prepare for those hearings if a settlement is not achieved. This need for sufficient time to prepare for these hearings is particularly compelling given the high stakes of this proceeding, where the Joint Complainants and I&E are seeking significant relief including license revocation or suspension, substantial civil penalties, and the issuance of refunds to customers.

26. Therefore, for good cause as described fully herein, Respond Power requests a continuance of the hearing now scheduled for January 26-30, 2015 and requests that Your Honors grant this request so that hearings may be rescheduled to the late February/early March timeframe.

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

Respectfully submitted,

Dated: December 19, 2014



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