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December 30, 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 Scheduling Of Settlement Conference And Assignment Of Settlement Judge 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/bb

Enclosure

cc: Chief Administrative Law Judge Charles E. Rainey, Jr. *(via email and First Class Mail)*
Administrative Law Judge Elizabeth Barnes *(via email and First Class Mail)*
Administrative Law Judge Joel Cheskis *(via email and First Class Mail)*
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 :
CONSUMER ADVOCATE :
Complainants :**

DOCKET NO. C-2014-2427659

v. :

**RESPOND POWER LLC, :
Respondent :**

**MOTION FOR SCHEDULING OF SETTLEMENT CONFERENCE
AND ASSIGNMENT OF SETTLEMENT JUDGE**

TO: CHIEF ADMINISTRATIVE LAW JUDGE RAINEY:

Respond Power LLC (“Respond Power”), by and through its counsel, Karen O. Moury, and Buchanan Ingersoll & Rooney PC, files this Motion for Scheduling of Settlement Conference and Assignment of Settlement Administrative Law Judge (“ALJ”), pursuant to Section 5.231 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.231, and in connection therewith avers as follows:

I. INTRODUCTION

1. Respond Power submits this request for the scheduling of a settlement conference on a mutually convenient date, in consultation with the parties, by mid-January 2015 and the assignment of an ALJ other than the presiding ALJs to participate in the settlement conferences in this proceeding.

2. By Order dated December 29, 2014, the presiding ALJs Cheskis and Barnes granted a further continuance of the evidentiary hearings and rescheduled them for March 9-13, 2015. In that Order, the presiding ALJs reiterated their earlier reminder that Commission policy promotes settlement and directed the parties to advise them of all future settlement activity.

3. 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. The Joint Complainants furnished a counter-proposal to Respond Power on December 23, 2014. Based on a review of these documents, Respond Power believes that the designation of an ALJ to participate in settlement discussions would aid in these negotiations and offer a greater likelihood of their success or at least a resolution of some issues.

4. To date, two settlement conferences have been held. The first was an in-person meeting on September 10, 2014 in Harrisburg, in which counsel for the Joint Complainants, I&E, OSBA and Respond Power participated, along with the President, Chief Executive Officer, General Counsel and In-House Counsel for Respond Power. The second was a conference call on November 12, 2014, which involved the same participants and entailed a walk-through of Respond Power’s proposed term sheet.

5. Even aside from the Commission’s policy promoting settlements, Respond Power notes the assignment of a settlement ALJ in this proceeding is appropriate due to the unprecedented nature of the Joint Complaint, the complexity and uniqueness of the issues, the participation of hundreds of consumer witnesses, the use of third party verification recordings and the likelihood of weeks of evidentiary hearings and months of highly contested litigation if settlement is not achieved. Respond Power has a strong interest in avoiding the expenditure of

significant resources for preparation and participation in protracted administrative proceedings, particularly when those resources could be better utilized to achieve a settlement that would include refunds to customers, which the Commission may not otherwise be authorized to direct.

6. Therefore, Respond Power seeks to maximize the potential for effective settlement discussions and the success of those negotiations in reaching a full settlement of the Joint Complaint and I&E's Formal Complaint. Based on a review of the settlement documents that have been exchanged to date, Respond Power believes that the assignment of a settlement ALJ to participate in these discussions offers the highest likelihood of success.

7. In an effort to resolve these matters without a protracted administrative proceeding, Respond Power requests the designation of a settlement ALJ and further requests that a settlement conference be scheduled, on a mutually convenient date established in consultation with the parties, by mid-January 2015.

8. After the close of business on December 29, 2014, Respond Power inquired of the parties as to their positions on this Motion. As of the filing of this Motion, I&E has indicated that it does not object to this Motion and Respond Power's counsel has discussed it with the Office of Consumer Advocate. However, the Joint Complainants and OSBA have not yet indicated their positions on the Motion.

II. BACKGROUND

9. 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.

10. On June 20, 2014, the Joint Complainants filed a Joint Complaint ("Joint 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.

11. On July 10, 2014, Respond Power filed an Answer and New Matter to the Joint 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.

12. 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.

13. On August 19, 2014, the presiding ALJs 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.

14. On August 21, 2014, I&E filed a Formal Complaint against Respond Power, setting forth similar allegations to those raised in the Joint 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 Joint Complaint.

15. 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.

16. 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.

17. 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.

18. On December 19, 2014, Respond Power filed a second Motion for Continuance, which was granted by the ALJs by Order dated December 29, 2014. In that Order, the ALJs reiterated their earlier reminder that Commission policy promotes settlement and again directed the parties to advise them of all future settlement activity. In addition, the ALJs emphasized that no further requests for continuance would be granted.

19. The evidentiary hearings are scheduled for March 9-13, 2015. Key milestone dates between now and the dates of the evidentiary hearings include: a) the identification of consumer witnesses who Respond Power intends to cross examine by February 2, 2015; b) the distribution of hearing exhibits by Respond Power by February 17, 2015; and c) the filing by Respond Power of any Motions to Strike testimony by February 23, 2015.

III. ARGUMENT

20. Section 5.231(a) of the Commission's regulations, provides that "[i]t is the policy of the Commission to encourage settlements. 52 Pa. Code § 5.231(a).

21. Section 5.231(b) of the Commission's regulations permits parties to request the scheduling of settlement conferences. 52 Pa. Code § 5.231(b).

22. Section 5.231(c) of the Commission's regulations authorizes parties to "request that the presiding officer participate in the settlement conferences or than an additional presiding officer or mediator be designated to participate in the settlement conferences." 52 Pa. Code § 5.231(c).

23. On October 24, 2014, Respond Power provided a proposed term sheet to the Joint Complainants, I&E and OSBA. The Joint Complainants furnished a counter-proposal to Respond Power on December 23, 2014. Based on a review of these documents, Respond Power believes that the designation of an ALJ to participate in settlement discussions would aid in these negotiations and offer a greater likelihood of their success or at least a resolution of some issues.

24. To date, two settlement conferences have been held. The first was an in-person meeting on September 10, 2014 in Harrisburg, in which counsel for the Joint Complainants, I&E, OSBA and Respond Power participated, along with the President, Chief Executive Officer, General Counsel and In-House Counsel for Respond Power. The second was a conference call

on November 12, 2014, which involved the same participants and entailed a walk-through of Respond Power's proposed term sheet.

25. Even aside from the Commission's policy promoting settlements, Respond Power notes the assignment of a settlement ALJ in this proceeding is appropriate due to the unprecedented nature of the Joint Complaint, the complexity and uniqueness of the issues, the participation of hundreds of consumer witnesses, the use of third party verification recordings and the likelihood of weeks of evidentiary hearings and months of highly contested litigation if settlement is not achieved.

26. Respond Power has a strong interest in avoiding the expenditure of significant resources for preparation and participation in protracted administrative proceedings, particularly when those resources could be better utilized to achieve a settlement that would include refunds to customers, which the Commission may not otherwise be authorized to direct.

27. Therefore, Respond Power seeks to maximize the potential for effective settlement discussions and the success of those negotiations in reaching a full settlement of the Joint Complaint and I&E's Formal Complaint. Based on a review of the settlement documents that have been exchanged to date, Respond Power believes that the assignment of a settlement ALJ to participate in these discussions offers the highest likelihood of success.

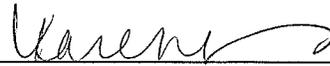
28. In an effort to resolve these matters without a protracted administrative proceeding, Respond Power requests the designation of a settlement ALJ and further requests that a settlement conference be scheduled, on a mutually convenient date established in consultation with the parties, by mid-January.

IV. CONCLUSION

WHEREFORE, Respond Power LLC respectfully requests that the Commission grant this Motion for Assignment of Settlement Judge and schedule a settlement conference by mid-January 2015.

Respectfully submitted,

Dated: December 30, 2014



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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

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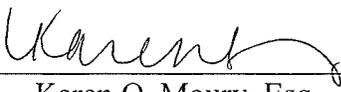
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Dated this 30th day of December, 2014.



Karen O. Moury, Esq.