

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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January 8, 2015

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Commonwealth of Pennsylvania, by Attorney General
KATHLEEN G. KANE, Through the Bureau of Consumer
Protection,

And

TANYA J. McCLOSKEY, Acting Consumer Advocate,
Complainants

v.

Respond Power, LLC,

Respondent

Docket No. C-2014-2427659

Secretary Chiavetta:

Enclosed please find the Motion of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate to Compel Responses to Set V-4 through V-13, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

Handwritten signature of Candis A. Tunilo in cursive.

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. #89891

Enclosures

cc: Honorable Elizabeth Barnes, ALJ
Honorable Joel Cheskis, ALJ
Certificate of Service

*185196

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by	:	
Attorney General KATHLEEN G. 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 OF JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA
AND THE OFFICE OF CONSUMER ADVOCATE
TO COMPEL RESPONSES TO SET V-4 THROUGH V-13

Pursuant to 52 Pa. Code § 5.342(g), the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (OAG) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively Joint Complainants) respectfully move the Administrative Law Judges (ALJs) to enter an Order compelling Respondent Respond Power, LLC (Respond Power or the Company) to provide the full and complete answers/responses to Joint Complainants' Fifth Set of Interrogatories and Requests for Production of Documents (Joint Complainants' Set V), questions 4 through 13 within 5 days. In support of this Motion, Joint Complainants aver as follows:

I. BACKGROUND

On June 20, 2014, the OAG and the OCA filed a Joint Complaint at the Pennsylvania Public Utility Commission (Commission) against Respond Power asserting violations of Pennsylvania law and Commission orders and regulations. The Joint Complaint includes nine separate counts, as follows: I) misleading and deceptive claims of affiliation with electric distribution companies; II) misleading and deceptive promises of savings; III) failing to disclose material terms; IV) deceptive and misleading welcome letter and inserts; V) slamming; VI) lack of good faith handling of complaints; VII) failing to provide accurate pricing information; VIII) prices nonconforming to disclosure statement; and IX) failure to comply with the Telemarketer Registration Act. Specifically related to this Motion, in Count VIII, Joint Complainants allege that Respond Power's prices charged to its customers did not conform to its Disclosure Statement.

On July 10, 2014, Respond Power filed Preliminary Objections to the Joint Complaint. In its Preliminary Objections, Respond Power asserted, *inter alia*, that Count VIII of the Joint Complaint should be dismissed on the basis of lack of Commission jurisdiction and legal insufficiency of pleading. In support of this Preliminary Objection, the Company alleged that the Commission lacks jurisdiction to regulate EGS prices. On July 21, 2014, the Joint Complainants filed an Answer to Preliminary Objections. By Order dated August 20, 2014, the ALJs found that the Commission lacks jurisdiction to adjudicate Count VIII of the Joint Complaint. On September 8, 2014, Joint Complainants filed a Petition for Interlocutory Review and Answer to Material Questions with the Commission. Joint Complainants sought for the Commission to answer, *inter alia*, the following question in the affirmative: Does the Commission have the authority and jurisdiction to determine whether the prices charged to customers by an EGS

conform to the EGS disclosure statement regarding pricing. On September 18, 2014, the Joint Complainants filed a Brief in Support of their Material Questions, and Respond Power filed a Brief in Opposition. The Commission's Order is pending.¹

Throughout the proceeding, the parties have been actively engaged in discovery. On December 17, 2014, Joint Complainants served Joint Complainants' Set V upon Respond Power. On December 29, 2014, Respond Power filed Objections to Joint Complainants' Set V numbers 4 through 13 as requesting information that is not relevant and will not lead to admissible evidence. For the reasons set forth below, Joint Complainants respectfully request that Your Honors overrule the Objections and grant this Motion to Compel Responses to Set V-4 through V-13.

II. LEGAL STANDARD

The Commonwealth Court of Pennsylvania has stated that “[d]iscovery itself is designed to promote free sharing of information so as to narrow the issues and limit unfair surprise. It is a tool which serves each litigant and promotes judicial economy.” See Pittsburgh Bd. of Public

¹ On September 8, 2014, Joint Complainants also filed Petitions for Interlocutory Review and Answers to Material Questions in three other cases. See Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. Blue Pilot Energy, LLC, Docket No. C-2014-2427655; Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, Docket No. C-2014-2427656; Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. IDT Energy, Inc., Docket No. C-2014-2427657.

In the Blue Pilot and IDT Petitions, Joint Complainants also asked whether the Commission has the authority and jurisdiction to determine whether the prices charged to customers by an EGS conform to the EGS disclosure statement regarding pricing. The Commission has issued Orders in the Blue Pilot and IDT proceedings, in which it answered this question in the affirmative. Although the Commission's Order in the Respond Power proceeding is pending, the Commission has indicated that it intends for the Orders in the four proceedings to be consistent with each other. See Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. Blue Pilot Energy, LLC, Docket No. C-2014-2427655, Motion of Vice Chairman John F. Coleman, Jr. (November 13, 2014).

Educ. v. M.J.N. by N.J., 105 Pa Cmwlth. Ct. 397, 403, 524 A.2d 1385, 1388 (Pa. Commw. Ct. 1987).

Under the Commission's regulations, the scope of discovery is broad. Section 5.321 outlines the scope of discovery as follows:

- (c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c).

II. MOTION TO COMPEL

On December 17, 2014, Joint Complainants served Set V upon Respond Power. Joint Complainants' Set V consists of thirteen Interrogatories/Requests for Production of Documents. A copy of Joint Complainants' Set V is attached hereto as Exhibit A. Responses to Set V were due on January 6, 2015, pursuant to 52 Pa. Code Sections 5.342(d) and 5.349(d). On December 29, 2014, Respond Power filed objections to Joint Complainants' Set V, numbers 4 through 13. The Company did not attempt to resolve its objections with Joint Complainants before filing its Objections. A copy of Respond Power's Objections to Joint Complainants' Set V is attached hereto as Exhibit B.

Joint Complainants' Set V-4 provides:

- 4. Please state all generation prices charged to Respondent's customers in December 2013, January 2014, February 2014, and March 2014.

Joint Complainants' Set V-5 provides:

5. If not included in your response to the question in paragraph 4 above, identify the billing cycles applicable to all prices stated.

Joint Complainants' Set V-6 provides:

6. Please state whether you receive notification of Respondent's running charges with PJM weekly or monthly and whether Respondent settles its running charges with PJM weekly or monthly.

Joint Complainants' Set V-7 provides:

7. Please produce any and all documents setting forth methods used to reflect electric power market information into the establishment of the price for Respondent's residential consumers for December 2013, January 2014, February 2014 and March 2014. Please include the following information:
 - a. Any and all formula(s) used to calculate the price;
 - b. The load profile(s) used for Respondent's residential consumers. If different load profiles are used for different months or seasons, different EDC service areas, or residential consumers of different size, provide all such load profiles used for the months of December 2013, January 2014 and February 2014;
 - c. The specific type of market price information (*e.g.*, reported four-week forward contract prices for on-peak and off-peak at the PJM West hub) used to develop the residential generation price and the source(s) of that information;
 - d. Any and all electronic spreadsheets used to develop the residential generation price applicable to Respondent's residential consumers;
 - e. All on-peak and off-peak energy prices relied upon to develop the prices charged to Respondent's residential consumers for billing cycles that include at least seven (7) days in January 2014 and for all billing cycles in February 2014. This information should be disaggregated by billing cycle used for Respondent's residential consumers; and
 - f. Respondent's total residential kWh sales for December 2013, January 2014, February 2014, and March 2014.

Joint Complainants' Set V-8 provides:

8. Please produce any and all documents indicating whether you develop different generation prices for each of the billing cycles within the month or whether the same price is applicable to multiple billing cycles. If the same price is applicable to multiple billing cycles, please indicate the frequency with which the generation price is changed.

Joint Complainants' Set V-9 provides:

9. Please produce any and all documents indicating all cost components used to develop the generation price (*e.g.*, AEPS credits, ancillary services) and

Respondent's average cost of acquiring those components for December 2013, January 2014, February 2014, and March 2014.

Joint Complainants' Set V-10 provides:

10. Please provide a sample calculation of one of the prices charged to Respondent's residential consumers that reflects a time period that includes the last three (3) weeks in January 2014.

Joint Complainants' Set V-11 provides:

11. Please provide a sample calculation at monthly usage of 750 kWh of a price charged to Respondent's residential consumers that reflect a time period that includes at least 21 days in February 2014.

Joint Complainants' Set V-12 provides:

12. Please produce any and all documents setting forth all such notifications of Respondent's running charges with PJM for December 2013, January 2014, February 2014, and March 2014.

Joint Complainants' Set V-13 provides:

13. Please provide Respondent's Pennsylvania prices and revenues, by month, from January 1, 2013 to present, broken down by EDC service territory and customer class.

In its Objections, Respond Power asserts that the information requested is not reasonably calculated to lead to the discovery of admissible evidence, because the Commission does not have jurisdiction to regulate or establish the prices charged by electric generation suppliers (EGSs). See Exhibit B at 3. In support of its Objections, Respond Power cites to the Commission's Order in the Blue Pilot proceeding. Id; See also Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. Blue Pilot Energy, LLC, Docket No. C-2014-2427655, Opinion and Order (Dec. 11, 2014) (Blue Pilot Order).

Respond Power acknowledges that in the Blue Pilot Order, the Commission determined that it has the jurisdiction to determine whether an EGS has billed its customers in accordance with its disclosure statement. Exhibit B at 3. Specifically, in that Order, the Commission held:

The Commission ... [has] subject matter jurisdiction to regulate certain aspects of the services provided by EGSs. The Commission's subject matter jurisdiction over EGSs is set forth in Section 2807 and 2809 of the Public Utility Code, 66 Pa. C.S. §§ 2807, 2809.

Under Code Section 2809, 66 Pa. C. S. § 2809, EGSs are required to abide by the Commission's Regulations. For EGSs serving residential customers, this includes abiding by the Commission's Chapter 54 Regulations on bill format, disclosure statements, marketing and sales activities, and contract expiration notices. In addition, EGSs serving residential customers also are required to comply with the standards and billing practices in Chapter 56 of the Commission's Regulations.

In this case, the OAG/OCA Formal Complaint alleges that the prices charged by Blue Pilot do not conform to the variable rate pricing provisions in Blue Pilot's Disclosure Statement. We conclude that the Commission has jurisdiction and authority over this issue under Section 54.4(a) and 54.5(a) of our Regulations, 52 Pa. Code §§ 54.4(a), 54.5(a). These Regulations require, *inter alia*, that an EGS's billed price reflect its disclosure statement. Therefore, the Commission can determine whether Blue Pilot has billed customers in accordance with its Disclosure Statement.

Blue Pilot Order at 19-20. (Internal footnotes omitted). See also Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. IDT Energy, Inc., Docket No. C-2014-2427657, Opinion and Order (Dec. 18, 2014) (IDT Order).

Joint Complainants submit that their Set V, numbers 4 through 13, seek information directly relevant to the issue of whether Respond Power charged prices that conformed to the Company's Disclosure Statement.² See Joint Complaint at Count VIII (prices nonconforming to

² Additionally, Set V-13 requests information about Respond Power's revenues from January 1, 2013 to the present, which is relevant to Joint Complainants' request for a civil penalty. See Joint Complaint at 21, ¶ C. Information regarding the Company's revenues for this period will assist Joint Complainants in determining a proper amount of civil penalty to request the ALJs and Commission impose and is therefore, likely to lead to admissible evidence in this matter.

disclosure statement). Respond Power's Disclosure Statement states as follows regarding variable pricing:

Electric

Variable Rate. Your price may vary from month to month. **This rate is set by Respond Power and reflects their Generation Charge as reflected by the PJM Day-Ahead Market, Installed capacity (the cost of reserve or standby power), electricity lost on the transmission system ("losses"), estimated state taxes, and any other costs that Respond Power incurs to deliver your electricity to your electric Utility's Transmission System (where they receive the electricity). For their services, Respond Power adds a profit margin to the electricity** and Respond Power's goal each and every month is to deliver your power at a price that is less than what you would have paid had your [sic] purchased your power from your local utility company, however, due to market fluctuations and conditions, Respond Power cannot always guarantee that every month you will see savings. Commodity charges exclude Pennsylvania sales tax, if applicable. You may contact Respond Power for our current Variable Rate.

See Joint Complaint at ¶ 76 and Exh. B. (Emphasis added). Respond Power, in its Disclosure Statement, identified specific factors it would use to calculate the price that it would charge its customers on variable rates. As such, information relating to the prices that Respond Power charged its customers on variable rate plans and information relating to the factors identified in Respond Power's Disclosure Statement that the Company would use to calculate customers' variable prices are relevant to the allegations in Count VIII of the Joint Complaint that Respond Power did not charge rates that conformed to its Disclosure Statement. Further, such information is likely to lead to admissible evidence in this matter, as the requests are tied directly to allegations in the Joint Complaint.

In its Objections, Respond Power also asserts that Joint Complainants' Set V numbers 4 through 13 seek information that is designed to permit the Joint Complainants to argue that the Commission should set a price that would have been appropriate for Respond Power to charge its customers. See Exhibit B at 4. Joint Complainants submit that it is not appropriate to object to

discovery requests based on what the requesting party may argue as to the significance of the information. Rather, the information must be provided if the requests are within the permissible scope of discovery. As explained above, the information is relevant to the allegations in Count VIII of the Joint Complaint that Respond Power did not bill its customers in accordance with its Disclosure Statement, and are likely to lead to admissible evidence in this matter.

In its Objections, Respond Power also asserts that in considering whether an EGS billed its customers in accordance with its disclosure statement, the Commission's review is restricted to determinations that do not require it to engage in ratemaking, and the Commission can only review issues such as "whether the disclosure statement permitted variable prices or established a specific ceiling that was exceeded." See Exhibit B at 4. Joint Complainants submit that the plain language of the Commission's regulations do not support the Company's narrow interpretation. See 52 Pa. Code §§ 54.4(a)³ and 54.5(a)⁴. The allegations in Count VIII of the Joint Complaint, if proven, support the finding of violations of Sections 54.4(a) and 54.5(a) of the Commission's regulations. See e.g. Joint Complaint at ¶ 90. The language in these regulations is in no way limited if the EGS charges a variable rate or establishes a ceiling on its variable rate, but instead, requires a determination based on the language in an EGS's disclosure statement regarding how it will calculate a customer's variable rate and how the EGS actually calculated the customer's variable rate. Joint Complainants submit that Respond Power's asserted restrictions on the Commission's review pursuant to Sections 54.4(a) and 54.5(a) of the Commission's regulations are not consistent with the plain language of the regulations and

³ Section 54.4(a) states: "EGS prices billed must reflect the marketed prices and the agreed upon prices in the disclosure statement." 52 Pa. Code § 54.4(a).

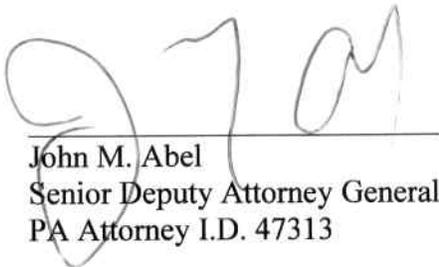
⁴ Section 54.5(a) states: "The agreed upon prices in the disclosure statement must reflect the marketed prices and the billed prices." 52 Pa. Code § 54.5(a).

would provide for an absurd result in this matter. As such, Respond Power's assertion should be rejected.

Respond Power's Disclosure Statement states that prices will be calculated using certain enumerated factors. Joint Complainants allege that Respond Power's prices charged were not calculated using the factors enumerated in the Disclosure Statement. Joint Complainants' Set V numbers 4 through 13 are designed to obtain information related to such allegations, which the Commission has held it has the authority and the jurisdiction to hear and rule upon. See Blue Pilot Order; IDT Order. As such, it is clear that Joint Complainants' Set V numbers 4 through 13 are within the permissible scope of discovery. Joint Complainants respectfully request the ALJs to overrule Respond Power's Objections and direct Respond Power to provide full and complete responses to Joint Complainants' Set V-4 through V-13 within 5 days of the date of the order.

III. CONCLUSION

For the foregoing reasons, the information sought in Joint Complainants' Set V numbers 4 through 13 is relevant, reasonable, and sought in good faith. The Joint Complainants respectfully request that the Administrative Law Judges enter an order directing Respond Power to provide full and complete answers/responses to Joint Complainants' Set V-4 through V-13 within five days.



John M. Abel
Senior Deputy Attorney General
PA Attorney I.D. 47313

Nicole R. (Beck) DiTomo
Deputy Attorney General
PA Attorney I.D. 315325

Bureau of Consumer Protection
Office of Attorney General
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jabel@attorneygeneral.gov
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Counsel for:

Kathleen G. Kane, Attorney General
Bureau of Consumer Protection

Date: January 8, 2015

200527

Respectfully submitted,



Candis A. Tunilo
PA Attorney I.D. 89891

Kristine E. Robinson
PA Attorney I.D. 316479
Assistant Consumer Advocates

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Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate

Exhibit A

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 17, 2014

Karen O. Moury, Esq.
Buchanan Ingersoll & Rooney PC
409 N. Second Street
Harrisburg, PA 17101-1357

RE: Commonwealth of Pennsylvania, by Attorney General
KATHLEEN G. KANE, Through the Bureau of Consumer
Protection,
And
TANYA J. McCLOSKEY, Acting Consumer Advocate,
Complainants

v.

Respond Power, LLC,
Respondent

Docket No. C-2014-2427659

Dear Ms. Moury:

Enclosed please find Interrogatories and Requests for Production of Documents of the Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate directed to Respond Power, Set V. Kindly provide responses within 20 days pursuant to the Commission's rules.

Kindly produce your responses as they become available and provide copies of all responses to:

John M. Abel,
Senior Deputy Attorney General
Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, PA 17120

Candis A. Tunilo
Assistant Consumer Advocate
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101

We also request that you send a copy of the answers directly to our consultant, as listed below:

Barbara R. Alexander
83 Wedgewood Drive
Winthrop, Maine 04364
Telephone: 207-395-4143
E-Mail: barbalex@ctel.net

Steven L. Estomin
Exeter Associates, Inc.
Suite 300
10480 Little Patuxent Parkway
Columbia, MD. 21044
Telephone: 410-992-7500
E-mail: sestomin@exeterassociates.com

If you have any questions, please call us. By copy of this letter, copies of these interrogatories have been served upon all parties. A certificate of service showing service of these interrogatories on all parties has been filed with Secretary Chiavetta of the Pennsylvania Public Utility Commission as required by 52 Pa. Code §5.341(b).

Sincerely,



Kristine E. Robinson
Assistant Consumer Advocate
PA Attorney I.D. # 316479

Enclosures

cc: All parties of record
Rosemary Chiavetta, Secretary (Certificate of Service)

190891

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COMMONWEALTH OF PENNSYLVANIA, by	:	
Attorney General KATHLEEN G. KANE,	:	
Through the Bureau of Consumer Protection	:	
	:	
And	:	Docket No. C-2014- 2427659
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate	:	
	:	
Complainants	:	
v.	:	
	:	
RESPOND POWER, LLC	:	
Respondent	:	

**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF
JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA AND THE
OFFICE OF CONSUMER ADVOCATE DIRECTED TO RESPOND POWER, LLC
SET V**

The Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (Attorney General) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively referred to as Joint Complainants), pursuant to 52 Pa. Code §§ 5.341, 5.342 and 5.349, hereby propound the following interrogatories and requests for production of documents upon Respond Power, LLC (Respondent or Respond Power). In accordance with 52 Pa. Code §§ 5.342(d) and 5.349(d), the interrogatories are to be answered in writing under oath and documents are to be furnished and served in-hand upon the undersigned within the time period prescribed by the Commission for this docket.

INSTRUCTIONS

1. These data requests shall be construed as a continuing request. The Respondent is obliged to change, supplement and correct all answers to data requests to conform to available information; including such information as first becomes available to the Respondent after the answers hereto are filed.
2. If after exercising due diligence to secure the information requested by any one of the following data requests, the Respondent cannot answer or provide the information requested, so state and answer to the extent possible specifying Respondent's inability to answer the remainder, providing whatever information or knowledge Respondent has concerning the unanswered portion and detailing what attempts Respondent made to secure the unknown information.
3. Restate the data request immediately preceding each response.
4. Identify the name, title, and business address of each person(s) providing each response.
5. Provide the date on which the response was created.
6. Divulge all information that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The term "Respond Power, LLC" or "Respond Power," "Company," or "you," as used herein includes Respond Power, LLC, its attorneys, agents, employees, contractors, or other representatives, to the extent that the Respondent has the right to compel the action requested herein.
7. Provide verification by the responsible witness that all facts contained in the response are true and correct to the best of the witness' knowledge, information and belief.
8. As used herein, but only to the extent not protected by 52 Pa. Code Section 5.323, the word "document" or "workpaper" includes, but is not limited to, the original and all copies in whatever form, stored or contained in or on whatever media or medium including computerized

memory, magnetic, electronic, or optical media, regardless of origin and whether or not including additional writing thereon or attached thereto, and may consist of:

- a) notations of any sort concerning conversations, telephone calls, meetings or other communications;
 - b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;
 - c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.
9. If Respondent claims any information requested herein is protected pursuant to 52 Pa. Code Section 5.323 or pursuant to any other rule of discovery, provide a general description of the information sought to be protected and the exact nature of the protection claimed.
10. The singular of any word used here in shall be deemed to include the plural of such word, and the plural shall include the singular.

DEFINITIONS

1. In answering these data requests, assume that all words used have their ordinary meanings in normal English usage, except as provided below or where context requires other interpretation.
2. "Person" refers to any individual, organization, association, partnership, corporation, trust, foundation, or any other entity, however styled.
3. "Identify" or "identity" when used in reference to any individual means to state his/her full name, age, present or last known home address, his/her present or last known employment

position, including responsibilities, business affiliation and locations, and his/her position, responsibilities, business affiliation and location at the time in question.

4. "Identify" or "identity" when used in reference to a documents means to state the name, title, or caption of the document, the date of its making or execution, the identity of the person or persons who made or executed it, the type of document, number of papers, a brief description of its contents and subject matter (or if the above information is not available, some other means of identifying it), and its present location and custodian. If any such document was, but is no longer, in your possession or subject to your control or existence, state whether it (1) is missing or lost; (2) has been destroyed; (3) has been transferred, voluntarily or involuntarily, to others; or (4) has been disposed of otherwise. In each instance, explain the circumstances surrounding the authorization for such disposition and state the date or approximate date thereof. When used in respect to a communication, it means to identify the parties to the communication, the means of communication, and the date and time thereof.

5. "Document" or "documents" means all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, summaries, pamphlets, books, inter-office and intra-office communication, notation of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, fax, work sheets, all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, records) and any electronic, mechanical or electric records or representations of any kind (including, without limitation, tapes,

cassettes, discs, records, and computer memories) now in the possession, custody or control of the Respondent, his agents, employees, attorneys and all other persons action on their behalf.

6. "Communication" means any transmission or exchange of information or meaning between two or more persons in any form.

7. "Commission" or "PUC" shall refer to the Pennsylvania Public Utility Commission.

8. "You" or "Your" shall refer to Respond Power, LLC, and all other names under which Respond Power, LLC does business or trades, any subsidiaries, agents, employees, representatives, attorneys and all other persons acting on their behalf.

INTERROGATORIES & REQUESTS FOR PRODUCTION

SET V

1. Regarding the Company's response to OAG/OCA Set IV-1:
 - a. Please provide the date of enrollment of Charles Moretti.
 - b. Was Mr. Moretti offered any promotional or short term savings or discounts from the Price to Compare in effect at the time of his enrollment?
2. Regarding the Company's response to OAG/OCA Set IV-1, please provide a detailed explanation of the Company's basis for the refund provided to Derrick Reed.
3. Regarding the Company's response to OAG/OCA Set IV-1:
 - a. Were agents allowed to sign themselves up during the time period of Debon Richard's employment or enrollment with Respond Power?
 - b. If so, what commission was paid to the Company's salespeople for self-enrollment?

- c. If so, what were the Company protocols to which the salesperson had to adhere in order to enroll himself or herself with Respond Power.
 - d. When, if at all, did Mr. Richards leave the employ of Respond Power?
 - e. Has any refund been provided to Mr. Richards to date? If so, how much? If so, please provide a detailed explanation of the Company's basis for the refund.
4. Please state all generation prices charged to Respondent's customers in December 2013, January 2014, February 2014, and March 2014.
5. If not included in your response to the question in paragraph 4 above, identify the billing cycles applicable to all prices stated.
6. Please state whether you receive notification of Respondent's running charges with PJM weekly or monthly and whether Respondent settles its running charges with PJM weekly or monthly.
7. Please produce any and all documents setting forth methods used to reflect electric power market information into the establishment of the price for Respondent's residential consumers for December 2013, January 2014, February 2014 and March 2014. Please include the following information:
 - a) Any and all formula(s) used to calculate the price;
 - b) The load profile(s) used for Respondent's residential consumers. If different load profiles are used for different months or seasons, different EDC service areas, or residential consumers of different size, provide all such load profiles used for the months of December 2013, January 2014 and February 2014;

- c) The specific type of market price information (*e.g.*, reported four-week forward contract prices for on-peak and off-peak at the PJM West hub) used to develop the residential generation price and the source(s) of that information;
 - d) Any and all electronic spreadsheets used to develop the residential generation price applicable to Respondent's residential consumers;
 - e) All on-peak and off-peak energy prices relied upon to develop the prices charged to Respondent's residential consumers for billing cycles that include at least seven (7) days in January 2014 and for all billing cycles in February 2014. This information should be disaggregated by billing cycle used for Respondent's residential consumers; and
 - f) Respondent's total residential kWh sales for December 2013, January 2014, February 2014, and March 2014.
8. Please produce any and all documents indicating whether you develop different generation prices for each of the billing cycles within the month or whether the same price is applicable to multiple billing cycles. If the same price is applicable to multiple billing cycles, please indicate the frequency with which the generation price is changed.
9. Please produce any and all documents indicating all cost components used to develop the generation price (*e.g.*, AEPS credits, ancillary services) and Respondent's average cost of acquiring those components for December 2013, January 2014, February 2014, and March 2014.
10. Please provide a sample calculation of one of the prices charged to Respondent's residential consumers that reflects a time period that includes the last three (3) weeks in January 2014.

11. Please provide a sample calculation at monthly usage of 750 kWh of a price charged to Respondent's residential consumers that reflect a time period that includes at least 21 days in February 2014.
12. Please produce any and all documents setting forth all such notifications of Respondent's running charges with PJM for December 2013, January 2014, February 2014, and March 2014.
13. Please provide Respondent's Pennsylvania prices and revenues, by month, from January 1, 2013 to present, broken down by EDC service territory and customer class.

198725

CERTIFICATE OF SERVICE

Commonwealth of Pennsylvania, by	:	
Attorney General KATHLEEN G. 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	:	
	:	
PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	
INVESTIGATION AND ENFORCEMENT,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2014-2438640
	:	
RESPOND POWER, LLC,	:	
Respondent	:	

I hereby certify that I have this day served a true copy of the foregoing document, the Interrogatories and Requests for Production of Documents of the Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate directed to Respond Power, Set V, in the manner and upon the persons listed below:

Dated this 17th day of December 2014.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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Exhibit B

Karen O. Moury

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December 29, 2014

VIA E-MAIL AND FIRST CLASS MAIL

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Harrisburg, PA 17120

Candis A. Tunilo
Christy M. Appleby
Kristine E. Robinson
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101

Re: Commonwealth of Pennsylvania, et al. v. Respond Power LLC
Docket No. C-2014-2427659

Dear Counsel:

Enclosed please find the Objections of Respond Power LLC To Joint Complainants' Interrogatories And Requests For Production, Set V, 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: Rosemary Chiavetta, Secretary (*letter and certificate of service only via e filing*)
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	:	

**OBJECTIONS OF RESPOND POWER LLC
TO JOINT COMPLAINANTS'
INTERROGATORIES AND REQUESTS FOR PRODUCTION – SET V**

Pursuant to 66 Pa.C.S. § 333(d) and 52 Pa. Code § 5.342, Respond Power LLC (“Respond Power”) hereby objects to specified Interrogatories and Requests for Production – Set V (“Interrogatories”) propounded by the Commonwealth of Pennsylvania and the Office of Consumer Advocate (“Joint Complainants”) on December 17, 2014. The basis for the objections to Interrogatories – Set V - Nos. 4 through 13 is fully described below.

Set V - Interrogatory No. 4:

Please state all generation prices charged to Respondent’s customers in December 2013, January 2014, February 2014, and March 2014.

Set V – Interrogatory No. 5:

If not included in your response to the question in paragraph 4 above, identify the billing cycles applicable to all prices stated.

Set V – Interrogatory No. 6:

Please state whether you receive notification of Respondent's running charges with PJM weekly or monthly and whether Respondent settles its running charges with PJM weekly or monthly.

Set V – Interrogatory No. 7:

Please produce any and all documents setting forth methods used to reflect electric power market information into the establishment of the price for Respondent's residential consumers for December 2013, January 2014, February 2014 and March 2014. Please include the following information:

- a) Any and all formula(s) used to calculate the price;
- b) The load profile(s) used for Respondent's residential consumers. If different load profiles are used for different months or seasons, different EDC service areas, or residential consumers of different size, provide all such load profiles used for the months of December 2013, January 2014 and February 2014;
- c) The specific type of market price information (e.g., reported four-week forward contract prices for on-peak and off-peak at the PJM West hub) used to develop the residential generation price and the source(s) of that information;
- d) Any and all electronic spreadsheets used to develop the residential generation price applicable to Respondent's residential consumers;
- e) All on-peak and off-peak energy prices relied upon to develop the prices charged to Respondent's residential consumers for billing cycles that include at least seven (7) days in January 2014 and for all billing cycles in February 2014. This information should be disaggregated by billing cycle used for Respondent's residential consumers; and
- f) Respondent's total residential kWh sales for December 2013, January 2014, February 2014, and March 2014.

Set V – Interrogatory No. 8:

Please produce any and all documents indicating whether you develop different generation prices for each of the billing cycles within the month or whether the same price is applicable to multiple billing cycles. If the same price is applicable to multiple billing cycles, please indicate the frequency with which the generation price is changed.

Set V – Interrogatory No. 9:

Please produce any and all documents indicating all cost components used to develop the generation price (e.g., AEPS credits, ancillary services) and Respondent's average cost of acquiring those components for December 2013, January 2014, February 2014, and March 2014.

Set V – Interrogatory No. 10:

Please provide a sample calculation of one of the prices charged to Respondent's residential consumers that reflects a time period that includes the last three (3) weeks in January 2014.

Set V – Interrogatory No. 11:

Please provide a sample calculation at monthly usage of 750 kWh of a price charged to Respondent’s residential consumers that reflect a time period that includes at least 21 days in February 2014.

Set V – Interrogatory No. 12:

Please produce any and all documents setting forth all such notifications of Respondent’s running charges with PJM for December 2013, January 2014, February 2014, and March 2014.

Set V – Interrogatory No. 13:

Please provide Respondent’s Pennsylvania prices and revenues, by month, from January 1, 2013 to present, broken down by EDC service territory and customer class.

Objection: Respond Power objects to Interrogatories - Set V - Nos. 4 through 13 on the basis the Commission does not have jurisdiction to regulate or establish the prices charged by electric generation suppliers (“EGSs”). Therefore, Interrogatories - Set V – Nos. 4 through 13 seek information that would not be admissible at hearing and that is not reasonably calculated to lead to the discovery of admissible evidence. As such, they exceed the bounds of permissible discovery under the Commission’s regulations. 52 Pa. Code § 5.321(c).

In *Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Order adopted November 13, 2014) (“*Blue Pilot Order*”), the Commission emphasized that it “does not have traditional ratemaking authority over competitive suppliers and does not regulate competitive supply rates” and that it “does not have subject matter jurisdiction to interpret the terms and conditions of a contract between an EGS and a customer to determine whether a breach of the contract has occurred.” *Blue Pilot Order* at 18-19. See also *John R. Evans, Small Business Advocate v. FirstEnergy Solutions Corporation*, Docket No. P-2014-2421556 (Motion adopted November 13, 2014). While the Commission went on to note in the *Blue Pilot Order* that it has jurisdiction to determine whether an EGS has billed its customers in

accordance with its disclosure statement, that jurisdiction clearly does not extend to determining the price an EGS should have charged in the context of a variable price contract that was based on a variety of factors, including wholesale market conditions.

Simply stated, under the statute and case law, the Commission may not place itself in the shoes of Respond Power and establish a price that “should” have been charged to customers on variable price contracts. At most, in considering whether an EGS billed its customers in accordance with its disclosure statement, the Commission is limited to determinations that do not require it to engage in ratemaking. For instance, this inquiry could entail nothing more than reviewing issues such as whether the disclosure statement permitted variable prices or established a specific ceiling that was exceeded.

The Interrogatories seek pricing information designed to permit the Joint Complainants to argue that the Commission should set a price that would have been appropriate for Respond Power to charge its customers. Since the Commission does not have jurisdiction to regulate, limit or set the prices charged by EGSs in a competitive market, the Interrogatories seek information that is not admissible and that is not reasonably calculated to lead to the discovery of admissible evidence.

December 29, 2014

BUCHANAN INGERSOLL & ROONEY PC

By: 

Karen O. Moury
409 North Second Street, Suite 500
Harrisburg, PA 17101
Telephone: (717) 237-4820
Facsimile: (717) 233-0852

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

John M. Abel
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Harrisburg, PA 17101

Adam D. Young
Michael L. Swindler
Wayne T. Scott
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17105-3265

Dated this 29th day of December, 2014.



Karen O. Moury, Esq.

CERTIFICATE OF SERVICE

Commonwealth of Pennsylvania, by	:	
Attorney General KATHLEEN G. 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	:	

I hereby certify that I have this day served a true copy of the foregoing document, the Motion of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate to Compel Responses to Set V-4 through V-13, in the manner and upon the persons listed below:

Dated this 8th day of January 2015.

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