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February 23, 2015

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 and
Pennsylvania Public Utility Commission, Bureau of Investigation v.
Respond Power LLC; Docket No. C-2014-2438640

Dear Secretary Chiavetta:

On behalf of Respond Power, LLC, I have enclosed for electronic filing the Motion to Strike Pre-Served Consumer Direct Testimony in the above-captioned matters.

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: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|--------------------------------------|---|---------------------------|
| Commonwealth of Pennsylvania, et al. | : | |
| | : | |
| v. | : | Docket No. C-2014-2427659 |
| | : | |
| Respond Power LLC | : | |
| | : | |
| Pennsylvania Public Utility | : | |
| Commission, Bureau of Investigation | : | |
| and Enforcement | : | |
| | : | |
| v. | : | Docket No. C-2014-2438640 |
| | : | |
| Respond Power LLC | : | |

**RESPOND POWER LLC’S MOTION TO STRIKE
PRE-SERVED CONSUMER DIRECT TESTIMONY**

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 to Strike Pre-Served Consumer Direct Testimony (“Motion”), pursuant to Section 5.103 of the Commission’s regulations, 52 Pa. Code § 5.103, and the Order Granting Second Continuance dated December 29, 2014. By this Motion to Strike, Respond Power respectfully requests an order striking and ruling inadmissible certain customer witness testimony and exhibits pre-served by the Attorney General and the Office of Consumer Advocate (“Joint Complainants”) and the Bureau of Investigation and Enforcement (I&E), and in support hereof, states as follows.

I. **INTRODUCTION**

1. In accordance with the procedural schedule established for this proceeding, the Joint Complainants served four volumes of “Consumer Direct Testimony” on Respond Power on October 24, 2014 and I&E served one volume of “Consumer Direct Testimony” on November

14, 2014. These pre-served written consumer statements solicited by the Joint Complainants and I&E are responses to surveys or questionnaires sent to hundreds of potential consumer witnesses.

2. By this Motion, Respond Power seeks to strike all or portions of certain pre-served consumer witness statements and attachments or exhibits, on three grounds: a) the failure of nearly all of the statements to comply with the Commission's regulations governing written testimony; b) the inclusion of answers to a leading question in most of the statements about whether sales representatives guaranteed savings; and c) the inclusion of inadmissible hearsay and double hearsay in many of the statements.

3. Generally, the statements fail to take the form required by Section 5.412 of the Commission's regulations, 52 Pa. Code § 5.412. The majority of the responses are hand-written, only a few contain line numbers and many are difficult to decipher. Although the pre-printed questionnaire was prepared in a question and answer format, several statements contain vague recollections, incomplete responses and general meanderings that are not responsive to the questions. Many include or append unmarked attachments consisting of narratives that are not in question and answer form or even indicate the particular question(s) to which they pertain. While Respond Power understands that the consumer witnesses would not be aware of these requirements, this is not akin to a situation where *pro se* complainants appear before the Commission. As the parties sponsoring these consumer witnesses, I&E and the Joint Complainants had an obligation to ensure that the testimony was prepared in a manner that complies with the Commission's regulations.

4. Moreover, many of the statements submitted by the Joint Complainants contain answers to an impermissible leading question. Specifically, Question No. 12.a. asks: "Did the EGS salesperson guarantee savings?" All answers to that question, which literally puts the

desired answer in the mouth of the witness, and the follow up question, No. 12.b., asking the consumer to explain if the answer is yes, should be stricken. Similarly, several of I&E's statements include answers to this same question and follow up, which is Question No. 11.a. and 11.b. For ease of reference throughout the remainder of this Motion, Respond Power will refer to both parts of this question, for both the Joint Complainants and I&E's statements, as "the guaranteed savings question."

5. Finally, several of the statements and exhibits contain inadmissible hearsay that is offered for the truth of the matters asserted and that testimony should be stricken in whole or in part. While the majority of the statements provide accounts of out-of-court declarations made by Respond Power sales representatives, several of them go even further to relate what Respond Power sales representatives allegedly told other individuals, who in turned shared those alleged statements with the consumer witnesses providing testimony. Also, in some instances, the consumer witnesses refer to statements made to them by other entities other than Respond Power, including representatives of public utilities and other government entities.

6. For these reasons, Respond Power moves to strike all or portions of the consumer direct testimony pre-served by the Joint Complainants and I&E.

II. ARGUMENT

A. Applicable Legal Standards

7. Section 5.403(a)(1) of the Commission's regulations authorizes the presiding officer to control the receipt of evidence, including ruling on the admissibility of evidence. 52 Pa. Code § 5.403(a)(1).

8. Section 5.403(b) of the Commission's regulations requires the presiding officers to "actively employ these powers to direct and focus the proceedings consistent with due process." 52 Pa. Code § 5.403(b).

9. Section 5.412(c) of the Commission's regulations provides that "[w]ritten testimony is subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally in the usual manner." 52 Pa. Code § 5.412(c).

10. While the Commission, as an administrative agency having quasi-judicial functions, is not limited by the strict rules relating to the admissibility of evidence, essential principles must be observed. *Pittsburgh and Lake Erie Railroad Company, v. Pennsylvania Public Utility Commission*, 85 A.2d 646, 653 (Pa. Super Ct. 1952); *Bleilevens v. State Civil Service Commission*, 312 A.2d 109, 111 (Pa. Commw. 1973).

B. The Vast Majority Of The Consumer Statements Fail To Comply With The Written Testimony Requirements of the Commission's Regulations.

11. Section 5.412(e) of the Commission's regulations governing written testimony requires that it be prepared in question and answer form and have line numbers in the left-hand margin on each page. 52 Pa. Code § 5.412(e). While this particular regulation does not require written testimony to be typewritten, Section 1.32 of the Commission's regulations requires pleadings, submittals or other documents filed in proceedings to be typewritten and to follow other specifications regarding margins and legibility. 52 Pa. Code § 1.32(a).

12. While Respond Power understands that the consumer witnesses are not necessarily aware of these requirements, this proceeding is not akin to a situation in which *pro se* complainants are coming before the Commission. To the contrary, the complaining parties in

this case are highly sophisticated governmental entities who are accustomed to engaging in litigation before the Commission and other tribunals.¹

13. Particularly given the high stakes of this proceeding, it was incumbent upon the Joint Complainants and I&E to ensure that written testimony submitted in support of their complaints complied with the Commission's regulations. The Joint Complainants and I&E are seeking license revocation and suspension, civil penalties and the issuance of refunds, and it is unacceptable to expect Respond Power to decipher hand-written (often in cursive) statements with no line numbers, along with meandering narratives that are not in question and answer format.

14. All of the statements that do not fully comply with the Commission's regulations should be stricken in their entirety.

15. Even if the presiding officers determine that incomplete hand-written responses to questionnaires without line numbers are acceptable as evidence in this proceeding, the following statements should be stricken in whole or in part due to the inclusion of narratives that are not in question and answer format and/or do not indicate the question number(s) to which they pertain:

- a. *I&E Consumer Witness Andrew Ciocco.*² Attached to Mr. Ciocco's written statement are exhibits marked as Exh. AC-1 and Exh. AC-2, which are not in question and answer format. As these exhibits do not comply with the Commission's regulations requiring that written testimony be presented in a question and answer format, they should be stricken and found inadmissible.

¹ Only four statements contain line numbers as required by the Commission's regulations. See Joint Complainants' Consumer Direct Testimony of Dale Heffelfinger, Volume 1, Page 1; Heidi Scapellato, Volume 2, Page 324; Justin Herp, Volume 3, Page 608; and Leona Johnson, Volume 4, Page 1123.

² I&E Consumer Direct Testimony, Page 72. In a separate part of this Motion, Respond Power also seeks to have these exhibits stricken on the basis that they contain inadmissible hearsay.

- b. *I&E Consumer Witness Kathleen DiMaggio*.³ Ms. DiMaggio's statement includes an unmarked attachment which is not presented in question and answer format and gives no indication as to the question(s) to which it pertains. As this attachment does not comply with the Commission's regulations requiring that written testimony be presented in question and answer format, it should be stricken and found inadmissible.
- c. *Joint Complainants' Witness James O'Reilly*.⁴ Mr. O'Reilly's statement includes an unmarked attachment which is not presented in question and answer format and gives no indication as to the question(s) to which it pertains. As this attachment does not comply with the Commission's regulations requiring that written testimony be presented in question and answer format, it should be stricken and found inadmissible.
- d. *Joint Complainants' Witness Victoria Werkmeister*.⁵ Ms. Werkmeister's statement includes an unmarked attachment which is not presented in question and answer format and gives no indication as to the question(s) to which it pertains. As this attachment does not comply with the Commission's regulations requiring that written testimony be presented in question and answer format, it should be stricken and found inadmissible.
- e. *Joint Complainants' Witness Linda Newton*.⁶ Ms. Newton's statement includes an unmarked attachment which is not presented in question and answer format and

³ I&E Consumer Direct Testimony, Page 123. In a separate part of this Motion, Respond Power also moves to strike this testimony in its entirety due to its reliance on inadmissible hearsay.

⁴ Joint Complainants' Direct Testimony, Volume 1, Page 15.

⁵ Joint Complainants' Direct Testimony, Volume 1, Page 23.

⁶ Joint Complainants' Direct Consumer Testimony, Volume 1, Page 35.

gives no indication as to the question(s) to which it pertains. As this attachment does not comply with the Commission's regulations requiring that written testimony be presented in question and answer format, it should be stricken and found inadmissible.

f. *Joint Complainants' Witness Eileen Bowers.*⁷ Ms. Bowers' statement includes Exh. EB-1, which is not presented in question and answer format and gives no indication as to the question(s) to which it pertains. As this exhibit does not comply with the Commission's regulations requiring that written testimony be presented in question and answer format, it should be stricken and found inadmissible.

g. *Joint Complainants' Witness Paul Hassinger.*⁸ An unmarked attachment is included with Mr. Hassinger's statement, which is not presented in question and answer format and gives no indication as to the question(s) to which it pertains. As this attachment does not comply with the Commission's regulations requiring that written testimony be presented in question and answer format, it should be stricken and found inadmissible.

h. *Joint Complainants' Witness Barbara Grosz.*⁹ Ms. Grosz' entire statement is a narrative, where she simply uses the white space between the pre-printed questions to provide whatever information she wishes. It is not in question and answer format and is not responsive to the questions posed. Further, the information provides no indication as to the questions to which they pertain. As

⁷ Joint Complainants' Direct Consumer Testimony, Volume 3, Page 636.

⁸ Joint Complainants' Direct Consumer Testimony, Volume 4, Page 901. In a separate part of this Motion, Respond Power also moves to strike this entire testimony on the basis that it relies on inadmissible hearsay evidence.

⁹ Joint Complainants' Direct Consumer Testimony, Volume 4, Page 984.

this statement does not comply with the Commission's regulations requiring that written testimony be presented in question and answer format, it should be stricken and found inadmissible.

C. The Guaranteed Savings Question In The Consumer Witness Statements Is Impermissibly Leading And Any Answers To That Question Should Therefore Be Stricken And Ruled Inadmissible.

16. The guaranteed savings question asks each witness: "Did the EGS salesperson guarantee savings? It then asks each witness: "If yes, please explain." As the guaranteed savings question is a leading question improperly directed to a friendly witness on direct examination, any affirmative answers to that question, and any answers to the follow-up question are inadmissible and should be stricken.

17. It is well-settled that a party may not lead its own witness with suggestive questions. See *In Re Rogan Estate*, 404 Pa. 205, 214, 171 A.2d 177, 181 (1961); *Pascone v. Thomas Jefferson Univ.*, 516 A.2d 384, 388 (Pa. Super. Ct. 1986); see also Pa.R.E. 611(c). The prohibition against the use of leading questions on direct examination equally applies to administrative proceedings. See *Harbison v. W.C.A.B. (Donnelley)*, 496 A.2d 1306, 1309 (Pa. Commw. Ct. 1985) (impermissible for counsel to literally place the sought-after answers into the witnesses' mouths). Moreover, answers to inappropriate leading questions are not admissible and may not be used to support the examining parties' case. *Wilson v. A.P. Green Indus., Inc.*, 2002 Pa. Super. 294, 807 A.2d 922, 926 (Pa. Super. Ct. 2002).

18. A leading question has been defined as one that puts the desired answer in the mouth of the witness. *Com. v. Dreibelbis*, 493 Pa. 466, 476, 426 A.2d 1111, 1116 (1981). The guaranteed savings question does exactly that, especially by following up with a second part to explain if the answer was yes. While other questions are more general, asking the consumer to

describe the problem or their interactions with the sales representative, the guaranteed savings question makes it clear to the consumer witness that he or she is expected to answer yes. Despite many consumers suggesting nothing about promised savings in response to the prior more general questions, most of them responded yes to the guaranteed savings question, including consumers who did not even switch or claimed that they did not switch to Respond Power.

19. In this context, each consumer witness knows that the Joint Complainants and I&E are trying to recover money for them from Respond Power based on allegedly misleading statements by Respond Power regarding pricing and savings. Asking the consumers, “Did the EGS salesperson guarantee savings?” clearly suggests that an affirmative answer is both desired and the one most likely to produce a refund for the witness. Had the question been phrased appropriately, consumers would not have been encouraged to answer in the affirmative, but rather would have provided their actual, unprompted recollection of the facts.

20. The Joint Complainants and I&E could have easily elicited relevant testimony without signaling the desired answer. For instance, they could have asked if the EGS salesperson talked about savings. That is no longer possible since the desired answer that the EGS sales person guaranteed savings has already been suggested to each witness.

21. The consumer witnesses had several opportunities prior to the guaranteed savings question to raise allegations of promised savings. For instance, I&E’s questionnaire includes the following questions before asking the guaranteed savings question:

- a. Question 7 – Please describe the sales interaction that you had with Respond Power’s representative when you signed up for the service?
- b. Question 8 – If you signed up, what was your understanding of Respond Power’s prices?

- c. Question 9 – What was your understanding of how Respond Power’s price would be set and how long you would be charged that price?
- d. Question 10 – What was your understanding of how long Respond Power would charge that price?

22. Similarly, the Joint Complainants’ questionnaire contains the following questions before asking the guaranteed savings question:

- a. Question 3 – a. Which electric generation supplier (EGS) did you have a problem with, if any? b. Please describe the problem.
- b. Question 7 – Please describe the sales contacts that you had with the EGS’s representative when you signed up for the service.
- c. Question 9 – If you signed up, what was your understanding of the EGS’s price?
- d. Question 10 – a. Did you understand how the EGS’s price would be set? b. If yes, please explain your understanding.
- e. Question 11 – What was your understanding of how long the EGS would charge that price?

23. If a consumer believed that a Respond Power sales representative guaranteed savings, that is a claim that would have been raised right from the outset in response to questions asking the consumer to describe the problem or explain their understanding of the price or how it would be set. In fact, some of the statements do make such a claim in response to earlier questions. Respond Power should be required to defend such allegations only when they are offered by the consumer without being prompted by the Joint Complainants and I&E by an impermissible leading question.

D. Several Of The Consumer Witness Statements Contain Inadmissible Hearsay Which Should Be Stricken.

24. Pennsylvania Rule of Evidence 801 defines “hearsay” as an out-of-court statement offered to prove the truth of the matter asserted. P.R.E. 801. In many situations, the

consumer statements contain allegations that certain oral representations were made to them by Respond Power's sales representatives and those out-of-court verbal statements are offered to prove the matters asserted. Other more egregious situations involve references to alleged statements made by Respond Power's sales representatives to other individuals. Further, many statements contain comments allegedly made by third parties including representatives of public utilities and governmental entities. In each situation, these statements are offered to prove the truth of the matters asserted. As such, the statements contain constitute inadmissible hearsay under Pennsylvania Rule of Evidence of 801 and should be stricken in whole or in part.

25. Hearsay is not admissible as evidence under Pennsylvania Rule of Evidence 802, except as specifically provided by the rules, a statute or the Pennsylvania Supreme Court. P.R.E. 802.¹⁰ It has long been recognized in Pennsylvania that hearsay rules are not mere "technical rules of evidence" but instead are fundamental rules of law that should be followed by agencies when facts crucial to the issue are sought to be placed on the record. *See, e.g., Loudon v. Viridian Energy*, PA PUC Docket NO. C-2011-2244309 (Initial Decision dated February 2, 2012, Final Order entered March 29, 2012); *Gibson v. W.C.A.B.*, 861 A.2d 938 (Pa. 2004); and *Anthony v. PECO Energy Co.*, PA PUC No. C-2014-2408057 (Order entered July 30, 2014).

26. Even when hearsay is admissible pursuant to an exception, it well-settled that a finding based wholly on hearsay cannot support a legal conclusion by an administrative agency. *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976). The Commission has held that "[a]lthough the Pennsylvania Rules of Evidence are relaxed in an administrative proceeding, crucial findings of fact may not be established solely by hearsay evidence." *Pa. P.U.C., Bureau of Investigation & Enforcement v. Yellow Cab Co. of Pittsburgh*,

¹⁰ While various exceptions set forth in Pennsylvania Rule of Evidence 803 permit hearsay to be admitted into a legal proceeding, Respond Power submits that none of those exceptions is applicable here.

Docket No. 2012-2249031, 2013 WL 5912555 (Pa. P.U.C. Oct. 8, 2013). The Commission has expressly refused to make findings of fact on the basis of hearsay without separate evidence corroborating it. *See, e.g., Jackson v. PECO Energy Co.*, Docket No. F-2013-2351046 (July 5, 2013); *Davis v. Equitable Gas., LLC*, Docket No. C-2011-2252493, 2012 WL 3838095 (April 27, 2012).

27. Even if the presiding officers rule that the statements allegedly made by Respond Power sales representatives to the consumer witnesses are admissible as an exception to the hearsay rule or because of the more relaxed evidentiary rules followed in administrative proceedings, it is essential that statements containing double hearsay be stricken in whole or in part, as follows:

- a. *I&E Consumer Witness Andrew Ciocco*.¹¹ Attached to the verified statement of Mr. Ciocco are Exh. AC-1 and Exh. AC-2, which contain numerous inadmissible hearsay statements and should be stricken in their entirety. Both exhibits include statements made to the witness by a representative of PECO Energy Company and by an employee of the Commission, which Mr. Ciocco is offering to prove the matters being asserted. In large part, after removal of these hearsay statements, the information in the exhibits is duplicative of what is in the testimony, and therefore no useful purpose is served by striking only the offending portions of the exhibits.
- b. *I&E Consumer Witness Eric Weaver*.¹² According to the verified statement signed by Mr. Weaver, which alleges slamming, his wife had interactions with Respond Power in connection with the sales agreement and the third party

¹¹ I&E Consumer Direct Testimony, Page 72.

¹² I&E Consumer Direct Testimony, Page 93.

verification process. As Mr. Weaver is providing an account of Mrs. Weaver's alleged experiences with Respond Power, this statement contains inadmissible hearsay and should be stricken in its entirety.

c. *I&E Consumer Witness Deborah Altman*.¹³ According to the verified statement signed by Ms. Altman, her husband interacted with the Respond Power sales representative during the sales transaction and the third party verification process. As Ms. Altman is providing an account of Mr. Altman's alleged interactions with Respond Power, this testimony contains inadmissible hearsay and should be stricken in its entirety. At a minimum, the answers to Questions 7, 8, 9, 10, 11, 13, 14 and 16 should be stricken since in each instance, Ms. Altman is describing what her husband was told by a Respond Power sales representative and what her husband relayed to her about his experience.

d. *I&E Consumer Witness Kathleen DiMaggio*.¹⁴ According to the verified statement signed by Ms. DiMaggio, this entire transaction related to an account involving her son and all interactions (prior to complaining to Respond Power about the price increase) were between her son and representatives of Respond Power. As her testimony includes statements that Respond Power representatives allegedly made to her son in connection with his account, which were then relayed to her, it contains inadmissible hearsay and should be stricken in its entirety.

¹³ I&E Consumer Direct Testimony, Page 98.

¹⁴ I&E Consumer Direct Testimony, Page 123.

e. *Joint Complainants' Consumer Witness Jeanne Mann.*¹⁵ According to the verified statement signed by Ms. Mann, she was not even home (see response to Question 7) and all of the interactions were between her husband and representatives of Respond Power. Her testimony contains allegations of what Respond Power's sales representatives told her husband, which he then relayed to her. Her statement, along with the exhibits marked as Exh. JM-1 and Exh. JM-3, contain inadmissible hearsay and should be stricken in their entirety. At a minimum, the answers to Questions 3.b., 7, 8, 9, 10, 11, 12, 16 and the above-referenced exhibits should be stricken and found to be inadmissible since they contain information about her husband's interactions with Respond Power's sales representatives as relayed to her about a transaction for which she was not even present. The above-referenced exhibits also contain communications between Mr. and Mrs. Mann and the Better Business Bureau, which are not admissible in this proceeding.

f. *Joint Complainants' Consumer Witness Danielle Groff.*¹⁶ According to the verified statement signed by Ms. Groff, she was not home during the sales transaction (see response to Question 6) and all interactions occurred between her mother and representatives of Respond Power. As the allegations in Ms. Groff's testimony are based on information provided to her by her mother concerning statements allegedly made by Respond Power's sales representatives, the testimony contains inadmissible hearsay and should be stricken in its entirety. At

¹⁵ Joint Complainants' Consumer Direct Testimony, Volume 1, Page 128.

¹⁶ Joint Complainants' Consumer Direct Testimony, Volume 1, Page 152.

a minimum, the answers to Questions 8, 9, 10, 11 and 12, 14, 16 and 17 should be stricken and found inadmissible as hearsay.

- g. *Joint Complainants' Consumer Witness Emma Eckenroth.*¹⁷ Attached to the verified statement signed by Ms. Eckenroth as Exh. EE-1 is what appears to be a form used by the Attorney General, which contains the account of someone other than Ms. Eckenroth about her interactions with Respond Power sales representatives. As such, the exhibit contains inadmissible hearsay and should be stricken in its entirety.
- h. *Joint Complainants' Consumer Witness Lori Williams.*¹⁸ According to the verified statement signed by Ms. Williams, her husband spoke with sales representatives of Respond Power and relayed this information to her. As her testimony contains allegations of statements made to her husband by Respond Power representatives to whom she was not a party, it contains impermissible hearsay and should be stricken its entirety. At a minimum, the answers to Questions 3, 4, 6, 7, 8, 9, 10, 11 and 12 should be stricken and found inadmissible as hearsay.
- i. *Joint Complainants' Consumer Witness Victor Ogir.*¹⁹ An exhibit attached to Mr. Ogir's statement marked as Exh. VO-1 contains an account of conversations that he has held with neighbors and coworkers. As those accounts contain inadmissible hearsay, they should be stricken from the exhibit.

¹⁷ Joint Complainants' Consumer Direct Testimony, Volume 2, Page 359.

¹⁸ Joint Complainants' Consumer Direct Testimony, Volume 2, Page 378.

¹⁹ Joint Complainants' Consumer Direct Testimony, Volume 2, Page 543.

- j. Joint Complainants' Consumer Witness Sylvia Bruinsma.*²⁰ In the verified statement signed by Ms. Bruinsma, she indicated in response to Question 7 that her fiancée had the interactions with Respond Power's sales representatives. Her allegations about what her fiancée was led to believe during a conversation to which she was not a party constitute inadmissible hearsay and her testimony should be stricken in its entirety. At a minimum, the responses to Questions 7, 8, 9, 11, 12, 15.b. should be stricken and ruled inadmissible as hearsay.
- k. Joint Complainants' Consumer Witness Binh Tran.*²¹ In the verified statement signed by Mr. Tran, he indicates in response to Questions 4, 7, 17 and 18 that all of the interactions relating to the sales transaction occurred between a Respond Power sales representatives and his sister. The allegations in his testimony are based on information provided to him by his sister. Therefore, his testimony contains inadmissible hearsay statements and should be stricken in its entirety. At a minimum, answers to Questions 3 through 12 should be stricken and found inadmissible as hearsay.
- l. Joint Complainants' Consumer Witness Paul Hassinger.*²² According to the verified statement (including an attachment) signed by Mr. Hassinger, his wife enrolled the account. Further, the statement notes that it was penned by Mrs. Hassinger and the attachment indicates that it was prepared by Mrs. Hassinger. The allegations in Mr. Hassinger's testimony, including the attachment, regarding conversations between his wife and representatives of Respond Power, as relayed

²⁰ Joint Complainants' Consumer Direct Testimony, Volume 3, Page 610.

²¹ Joint Complainants' Consumer Direct Testimony, Volume 3, Page 806.

²² Joint Complainants' Consumer Direct Testimony, Volume 4, Page 901.

to him, are inadmissible hearsay and the testimony should be stricken in its entirety. At a minimum, the responses to Questions 7-16 should be stricken, along with the related allegations in the attachment, and found inadmissible as hearsay.

*m. Joint Complainants' Consumer Witness Kimberly Munn.*²³ Within an unmarked attachment appended to Ms. Munn's verified statement is a reference to her communications with the Spring City Police Department. Ms. Munn's account of this conversation is inadmissible hearsay and should be stricken.

*n. Joint Complainants' Consumer Witness Jenny Perez.*²⁴ In the verified statement signed by Ms. Perez, she indicates in response to Question 1 that it was her husband, Donald Clark, who interacted with sales representatives of Respond Power. As the allegations in the statement are based on a conversation between Respond Power sales representatives and Ms. Perez' husband, as relayed to her, they constitute inadmissible hearsay and the testimony should be stricken in its entirety.

III. CONCLUSION

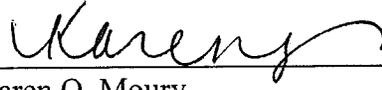
WHEREFORE, on the basis of the foregoing, Respond Power LLC respectfully requests that the Administrative Law Judges grant this Motion to Strike Pre-Served Consumer Direct Testimony.

²³ Joint Complainants' Consumer Direct Testimony, Volume 4, Page 914.

²⁴ Joint Complainants' Consumer Direct Testimony, Volume 4, Page 947.

Respectfully submitted,

Dated: February 23, 2015



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| and Enforcement | : | |
| | : | |
| v. | : | Docket No. C-2014-2438640 |
| | : | |
| 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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Dated this 23rd day of February, 2015.



Karen O. Moury, Esq.