**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, *et al.* :

:

v. : C-2014-2427659

:

Respond Power LLC :

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement : C-2014-2438640

:

v. :

:

Respond Power LLC :

**PROCEDURAL ORDER #5**

On June 20, 2014, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (OAG), and Tanya J. McCloskey, Acting Consumer Advocate (OCA) (collectively referred to as “the Joint Complainants”) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against Respond Power LLC (Respond or “the Company”), at Docket Number C-2014-2427659. The Joint Complainants averred that they had received numerous contacts and complaints from consumers related to variable rates charged by Respond, including approximately twenty formal complaints filed by consumers at the Commission. As a result, the Joint Complainants averred nine separate counts against Respond, including, but not limited to, making misleading and deceptive claims, making misleading and deceptive promises of savings, slamming and failing to provide accurate pricing information. The Joint Complainants made several requests for relief, including providing restitution and prohibiting deceptive practices in the future.

On August 21, 2014, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a formal Complaint against Respond containing 639 counts of 1) slamming, 2) misleading and deceptive claims of affiliation with electric distribution companies, 3) misleading and deceptive promises of savings, 4) failure to disclose material pricing terms in Respond Power’s Disclosure Agreement/Prices not conforming to Disclosure Agreement, 5) lack of good faith in handling customer complaints/cancellations, 6) inaccurate/incomplete/fraudulent sales agreements and 7) incorrect billing.

Subsequently, the procedural history of these complaints has been quite extensive. Various pleadings have been filed in these matters, including Answers with New Matter, Answers to the New Matter, Preliminary Objections and Answers to the Preliminary Objections. Orders granting in part and denying in part Preliminary Objections were issued. A Petition for Interlocutory Review of a Material Question was filed with the Commission. On October 28, 2014, an Order granting a Petition to Consolidate the formal Complaint filed by I&E against Respond with the formal Complaint filed against Respond by the Joint Complainants was granted. Of note, hearings were held March 9-13, 2015 wherein the pre-served, written testimony of over 100 consumers was admitted into the record subject to cross-examination and timely objections or via stipulation.

A Further Prehearing Conference was held on January 27, 2015. During that Conference, the following procedural schedule was agreed to for the admission of expert testimony and hearings:

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| --- | --- |
| Complainant Direct Testimony | May 8, 2015 |
| Respond Rebuttal Testimony | July 1, 2015 |
| All party Surrebuttal Testimony | July 31, 2015 |
| Hearings | August 10-12, 2015 |

Procedural Order #4 was issued on January 29, 2015 memorializing that schedule.

On April 30, 2015, counsel for Respond submitted a letter requesting a modification to the procedural schedule to allow for additional time between the filing of Direct Testimony by the Joint Complainants and I&E and the filing of Rebuttal Testimony by Respond Power. Respond indicated that the additional time is important due to the fact that this is a consolidated proceeding where Direct Testimony will be offered by both the Joint Complainants and I&E, as well as possibly the Office of Small Business Advocate. Respond also noted in its letter in support of its request the high stakes of this proceeding, including the requested suspension or revocation of Respond’s license, the issuance of refunds to consumers and the imposition of civil penalties. Respond proposed the following modifications:

|  |  |
| --- | --- |
| Complainant Direct Testimony | May 18, 2015 |
| Respond Rebuttal Testimony | July 21, 2015 |
| All party Surrebuttal Testimony | August 19, 2015 |
| Hearings | August 26-28, 2015 |

Respond Power stated that the other parties have all indicated that they do not oppose the proposed modification.

Respond’s proposed modifications will be accepted. As Respond indicated in its letter, this is a consolidated proceeding. As a result, it is anticipated that Respond will be filing Rebuttal Testimony in response to at least two pieces of Direct Testimony. Additionally, the overall delay in the hearings of approximately two weeks will not substantially delay the overall case. Respond has also indicated that no party opposes the proposed modifications. Therefore, additional time to file Rebuttal Testimony is not unreasonable and Respond’s proposed modifications will be adopted.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the remaining schedule for this proceeding will be modified as follows:

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| --- | --- |
| Complainant Direct Testimony | May 18, 2015 |
| Respond Rebuttal Testimony | July 21, 2015 |
| All party Surrebuttal Testimony | August 19, 2015 |
| Hearings | August 26-28, 2015 |

1. That all hearings will be held in a Hearing Room in the Commonwealth Keystone Building in Harrisburg.

Date: May 1, 2015

Elizabeth Barnes

Administrative Law Judge

Joel H. Cheskis

Administrative Law Judge

**C-2014-2427659 - ATTORNEY GENERAL PA & OFFICE OF CONSUMER ADVOCATE v. RESPOND POWER LLC**

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