

**Buchanan Ingersoll & Rooney PC**

**Karen O. Moury**

717 237 4820  
karen.moury@bipc.com

409 North Second Street  
Suite 500  
Harrisburg, PA 17101-1357  
T 717 237 4800  
F 717 233 0852  
www.buchananingersoll.com

August 26, 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, enclosed for electronic filing is the Petition for Approval of Settlement, 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: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**PETITION FOR APPROVAL OF SETTLEMENT**

---

**I. INTRODUCTION**

1. The Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”), and Respond Power LLC (collectively, “Petitioners”) hereby join in this Petition for Approval of Settlement (“Settlement”), which resolves all issues among the Petitioners in Docket No. C-2014-2438640.

2. The Petitioners respectfully request that Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (“ALJs”) recommend and the Pennsylvania Public Utility Commission (“Commission”) approve all terms and conditions of the Settlement without modification on an expedited basis. The Settlement provides for customer refunds, a civil penalty, and injunctive relief in full satisfaction of the Formal Complaint

filed with the Commission by I&E against Respond Power LLC (“Respond Power” or “Company”) on June 20, 2014 at Docket No. C-2014-2438640 (“Formal Complaint”).

In support of this Settlement, the Petitioners state the following:

3. The parties to this Settlement are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respond Power LLC, which maintains a principal place of business at 100 Dutch Mill Road, Suite 310, Orangeburg, New York 10962.

4. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate utilities within this Commonwealth pursuant to the Public Utility Code (“Code”), 66 Pa.C.S. §§ 101, *et seq.*

5. Respond Power is a New York limited liability company licensed to supply electric generation supplier services to residential, small commercial (25Kw and under) and large commercial (over 25Kw) customers in the Allegheny Power, Duquesne Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, PECO Energy Company, PPL Electric Utilities Corporation, and UGI Utilities Inc. service territories in Pennsylvania.

6. Respond Power was licensed by the Commission by Order dated August 19, 2010 at Docket No. A-2010-2163898. License Application of Respond Power LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electrical Generation Services as a Supplier of Retail Electric Power, Docket No. A-2010-2163898 (“Licensing Order”).

7. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

8. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11).

9. The Commission is responsible for regulating the service of electric generation suppliers (“EGSs”), as related to their activities in the marketing and sale of electricity and electric services. 66 Pa.C.S. § 2809(e); 52 Pa. Code Ch. 54, 56, and 111.

10. Respond Power, as an EGS in Pennsylvania, is a public utility as defined by Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, only for the limited purposes as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-10.

11. Respond Power, as a provider of electric generation service for compensation, is subject to the power and authority of the Commission and must observe, obey and comply with the Commission's regulations and orders pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c).

12. Respond Power provides EGS services to residential customers, and as such, must comply with the applicable residential service regulations in Chapters 54 and 56 of the Commission's regulations. *See* 52 Pa. Code Ch. 54 and 56. *See also* Licensing Order at 3 (August 19, 2010). Respond Power must also comply with Chapter 111 of the Commission's regulations. 52 Pa. Code § 111.1 *et seq.*

13. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine for each violation and each day's continuance of such violation(s). Specifically with regard to standards for changing a customer's electric generation supplier, the Commission is empowered to assess fines under the aforementioned Section 3301, pursuant to 52 Pa. Code §§ 57.177(e) and 111.3(c)(2).

14. As a result of negotiations between Respond Power and I&E (hereinafter referred to collectively as “Parties”), the Parties have agreed to resolve their differences as encouraged by the Commission’s policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly authorized Parties executing this Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Agreement as submitted as being in the public interest. Statements in Support of the Settlement Agreement and Stipulations of Fact will be filed by I&E and Respond Power within thirty (30) days of entering this Settlement into the record.

## **II. BACKGROUND**

15. By letter dated November 8, 2013, I&E initiated an informal investigation of Respond Power, consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506 and 52 Pa. Code § 3.113. This investigation centered on allegations of “slamming” (enrolling customers to receive electric generation supply service without proper customer authorization) and related unauthorized marketing practices as alleged in a telephone call to the Commission’s Bureau of Consumer Services (“BCS”) on October 24, 2013.

16. From February 1, 2014 to June 30, 2014, BCS received approximately 1,206 informal complaints against Respond Power. Many of these informal complaints

can be summarized as alleging one or more of the following acts/omissions by Respond Power's employees, agents or representatives:

- A. Slamming (unauthorized transfer of a customer account)
- B. Misleading and Deceptive claims of Affiliation with Electric Distribution Companies
- C. Misleading and Deceptive Promises of Savings
- D. Failure to Disclose Material Pricing Terms in Respond Power's Disclosure Agreement/Prices not Conforming to Disclosure Agreement
- E. Lack of Good Faith in Handling Customer Complaints/Cancellations
- F. Inaccurate/Incomplete/Fraudulent Sales Agreements
- G. Incorrect Billing

17. As a result of its findings, I&E filed a Formal Complaint with the Commission against Respond Power on August 21, 2014 at Docket No. C-2014-2438640.

### **III. SETTLEMENT TERMS AND CONDITIONS**

18. It is understood that this Settlement is the compromise of the allegations in the Formal Complaint, which I&E intended to prove and that Respond Power disputes. Although I&E and Respond Power may disagree with the allegations as to the Company's conduct, both acknowledge the importance to consumers and the retail market of full and accurate information and disclosures to consumers, as well as the assurance of fair and transparent marketing and billing practices. I&E and Respond Power recognize that this is a disputed claim, and given the inherent unpredictability of

the outcome of a contested proceeding, there are benefits to amicably resolving the disputed issues through settlement. The refunds, penalties and injunctive measures described herein are not and should not be considered to be or construed as admissions of liability or wrongdoing on the part of the Company.

It is further understood that the Company specifically denies any wrongdoing or liability in this proceeding. It is the parties' intent that the terms and conditions of this Settlement are not to be used in any further proceeding, including but not limited to, the Commission, the Pennsylvania court system or the federal court system, relating to this or any other matter, as evidence of unlawful behavior, or as an admission of unlawful behavior by the Company.

**A. REFUNDS**

19. Respond Power agrees to issue refunds in the total amount of \$3,000,000.00 to customers served by Respond Power during January, February and March 2014. This total amount of refunds includes \$971,279.45 in voluntary reductions of charges through rebillings performed by Respond Power in February 2014. It also includes voluntary refunds that were previously provided by Respond to customers in the amount of \$248,873.58.

20. Of the \$1,779,846.97 remaining in the Refund Pool for additional refunds, after subtraction of the voluntary rebillings and refunds described in Paragraph 19,



\$313,351.33 will be refunded to former or existing Respond Power customers who filed an informal complaint with the Commission against Respond Power from February 1, 2014 to June 30, 2014. Refunds to these customers shall be issued no later than thirty (30) days from the date of the Order approving this Settlement Agreement, using a distribution method provided by I&E to Respond Power. Refund amounts issued to individual customers using I&E's distribution method will be adjusted to reflect refunds already issued to those customers by Respond Power.

21. Of the \$1,466,495.64 remaining in the Refund Pool, after the subtraction of the refunds to customers who filed informal complaints with the Commission as described in Paragraph 20, Respond Power agrees to make this amount available for refunds to all other customers served by Respond Power during January, February and March 2014.

a. Respond Power shall retain, in consultation with I&E, a third-party Administrator to administer the distribution of refunds referenced in this Paragraph. The first \$50,000 of costs and expenses of the Administrator shall be paid by Respond Power. If the costs and expenses of the Administrator exceed \$50,000, any such costs and expenses shall be deducted from the Refund Pool.

b. Respond Power shall deposit the net Refund Pool amount noted in this Paragraph within five business days after the Administrator is retained.

c. The Administrator will be responsible for sending a letter to each of the customers identified in this Paragraph within 30 days of approval of this

Petition by the Commission, which offers a minimum amount of refund that may be claimed by any customers of Respond Power during the period in question. In order to claim a refund, the customer must mail back the response within 60 days. Refunds will be issued within 90 days of the claim being made by the customer.

d. Funds that remain in the Refund Pool established by this Paragraph will be returned to Respond Power twelve months after the date of the letter sent by the Administrator, except that if customers have claimed less than \$500,000, Respond Power will contribute the difference between total refunds claimed and \$500,000 to the electric distribution companies' ("EDCs") hardship funds and allocated by the ratio of the Company's customers in the EDC's territory to the total amount of Company customers in Pennsylvania as of January 1, 2014.

e. I&E shall have the ability to monitor and audit the Refund Pool and processes and agreed upon actions of Respond Power to confirm compliance with the terms hereof.

22. No customer shall be paid any funds from the Refund Pool without executing a "Release of Claims" pursuant to which the customer agrees, in exchange for payment of the funds, to release, acquit, and forever discharge the Company and all of its current and former officers, shareholders, and employees from any and all claims arising from or related to the conduct alleged in the Formal Complaint. Further, as part of this settlement agreement, I&E releases the Company and all of its current and former officers,

shareholders, and employees from any and all claims arising from or related to the conduct alleged in I&E's Formal Complaint.

**B. CIVIL PENALTY**

23. Respond Power shall pay a civil penalty in the amount of one hundred twenty five thousand dollars (\$125,000.00) to the General Fund to resolve all allegations in I&E's Formal Complaint. Said payment shall be made by check payable to the "Commonwealth of Pennsylvania" and presented to the Commission within thirty (30) days after the Commission has entered a final Order approving the Settlement Agreement. No portion of this payment shall be recovered from the Pennsylvania generation customers of Respond Power.

**C. LICENSE REVOCATION AND SUSPENSION**

24. In consideration for the concessions made in this Settlement, I&E withdraws any relief seeking to suspend or revoke Respond Power's license to operate as an EGS in Pennsylvania. In addition, I&E will actively promote full license retention in the corresponding proceeding initiated by the Office of Attorney General and the Office of Consumer Advocate at Docket No. C-2014-2427659.

#### IV. INJUNCTIVE RELIEF

25. **Modifications to Business Practices:** In addition to complying with all Commission regulations, Orders and policies, Respond Power shall implement the following modifications to its business practices:

A. **Product Offering:**

i. Respond Power will offer only fixed price contracts for a period of two years beginning September 1, 2015. This restriction will not apply to Respond Power's contracts with existing customers. After the expiration of that two-year period, Respond Power will be free to offer variable price contracts in a manner that is consistent with the Commission's regulations which are in effect at that time. The Company specifically commits to complying with the Commission's regulations at 52 Pa. Code § 54.10 if the Company moves customers whose fixed-rate contracts have expired and have not responded to the options notice to a month-to-month contract. Respond Power acknowledges that this would require 30 days' advanced notice before the monthly price can be charged.

ii. Respond Power agrees that it will not charge Pennsylvania customers cancellation or termination fees for the Company's variable rate products.

**B. Marketing:**

i. Respond Power shall comply with all Pennsylvania laws, including the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (hereinafter “Consumer Protection Law”) and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (hereinafter “TRA”), and other applicable laws, as well as Commission regulations, Orders and policies.

ii. Respond Power commits that the Company, its agents, employees and representatives shall not make misrepresentations to consumers.

iii. Respond Power, its agents, employees and representatives shall not make representations, either directly or by implication, about savings that consumers may realize by switching to Respond Power except when referencing an explicit, affirmative guaranteed savings program. An example of an explicit, affirmative guaranteed savings program is 10% off the applicable Price to Compare (“PTC”) each month for 12 months.

iv. Respond Power, its agents, employees and representatives shall refrain from using terms in their marketing campaigns, whether for fixed or variable products (should the Company offer variable rates pursuant to Paragraph IV(A)(i) above), such as “risk free,” “competitive,” “guaranteed,” or any other terminology that represents, explicitly or by implication, that the price offered will be lower than the electric distribution company’s (EDC’s) PTC except when referencing an explicit,

affirmative guaranteed savings program. An example of an explicit, affirmative guaranteed savings program is 10% off the applicable PTC each month for 12 months.

v. Respond Power its agents, employees and representatives shall refrain from using terms in their variable rate marketing campaigns, such as “trial period” or “introductory rate,” without a clear and conspicuous disclosure of the material terms and conditions thereof, including and without limitation to, a full description of the price that will be charged after the expiration of that introductory or trial period, the circumstances under which the consumer can cancel, and the consequences of cancellation.

vi. Respond Power, its agents, employees and representatives shall not make representations, either directly or by implication, about “special programs” for which a Pennsylvania consumer qualifies, unless Respond Power provides documentation to the consumer explaining in detail the “special program,” including but not limited to the parameters of the program, term of the program and eligibility requirements for acceptance into the program.

vii. Respond Power, its agents, employees and representatives shall not make representations, either directly or by implication, about PTC increasing or the PTC being a variable rate. Further, Respond Power, its agents, employees and representatives shall not make any representations whatsoever about how a consumer’s utility purchases electricity. However, nothing herein shall prohibit Respond Power, its agents, employees and representatives from making truthful statements about the current

level of the electric distribution company's PTC or future PTC if that information is publicly available, and how frequently it changes or when it will next change.

viii. Respond Power specifically commits to complying with 52 Pa. Code § 57.175 and shall not enter into a sales agreement or change the commodity provider for any consumer that is not personally accepted by the EDC Customer of Record or by a person purporting to be authorized to act on behalf of the Customer of Record. Respond Power Third Party Verifications ("TPVs") shall require affirmative representation by the person consenting to the change that the person is either the EDC Customer of Record or has been authorized by the Customer of Record to act on behalf of the Customer of Record; otherwise, Respond Power shall not proceed with the switch.

ix. Every communication by a Respond Power representative with a potential customer shall begin with the sales representative stating:

My name is [Sales Representative's Name]. I am calling on behalf of Respond Power, LLC. Respond Power can provide you with your electricity. I do not work for or represent your electric utility.

x. Further, the Respond Power salesperson shall explain that if the consumer switches to Respond Power, his or her electric bill will contain Respond Power's charges for generation as well as delivery charges from his or her electric utility.

xi. If Respond Power offers variable rate products to consumers in the Commonwealth after the time period set forth in Paragraph IV(A)(i), above, Respond Power salespeople must state the following during all variable rate sales contacts:

After \_\_\_ month(s) [if Introductory Price period is applicable], the price you pay under this variable rate contract can change every month. This is not a fixed rate contract. Variable means the price can go up or down. There is no limit on how high the price can go.

xii. During any sales contact or on any advertising, if Respond Power makes a representation to the consumer that they may cancel their contract at any time, Respond Power must also state that cancellations will be handled promptly, but it may take several days to switch suppliers pursuant to Commission regulations.

xiii. Regarding all telephone sales, Respond Power shall deposit with the United States Postal Service (or such other mail delivery service the Company may employ) the Disclosure Statement and Welcome documents the same day as the sales contact. These documents shall contain a detailed description of the product, which shall match the oral description given in the telemarketing solicitation. This description may be satisfied with the appropriate use of the Schumer box.

xiv. Respond Power shall retain records in accordance with the Commission's requirements, including but not limited to confirmations of mailing, which shall include the date that the contract, Disclosure Statement and Welcome documents were deposited with U.S.P.S. (or other delivery service the Company may employ) and the customer name and address stated on the envelope containing the documents.

xv. Regarding online enrollments, within 180 days after approval of the settlement, Respond Power shall revise its website to clearly and conspicuously display its Disclosure Statement and all contract terms and conditions as one or multiple unavoidable separate screens, which require the consumer to scroll to the end of the



document and click a button indicating he or she has reviewed the documents and agrees to the terms and conditions, during the electronic customer enrollment process. Respond Power shall require new customers to click a screen button acknowledging that they have reviewed the terms and conditions, and Respond Power shall also make a live chat feature available for customers to ask questions about the terms and conditions. Respond Power shall offer a screen prompt enabling the consumer to print the terms and conditions.

xvi. In all advertising to consumers, Respond Power shall include a clear and conspicuous display of Respond Power's brand identification information and clear and conspicuous notice that Respond Power is independent of the consumer's electric utility, but not formally name the electric utility. Further, Respond Power shall include clear and conspicuous language that the consumer is not required to switch to an alternate EGS, but if the consumer chooses to switch, he or she will continue to receive one bill from his or her electric utility and the bill will reflect Respond Power's generation charges.

xvii. If the Company offers variable rate products pursuant to Paragraph IV(A)(i) above, in all advertising of variable rate products to consumers and in all Welcome documents to consumers that have enrolled in variable rate products with Respond Power, the Company shall provide a statement of the average price per kWh, as required by 52 Pa. Code § 54.7(b)(2). The Company shall use 24 months of price data to calculate the average price per kWh. The Company shall also provide a statement of the total impact of the Company's average price under the program for the levels of monthly

usage of 500 kWh, 1,000 kWh and 2,000 kWh. The information would be organized as follows:

Monthly usage	500 kWh	1,000 kWh	2,000 kWh
Respond Power Average rate over the prior 24 months is ____ cents per kWh	\$	\$	\$

This information shall also be conveyed to the consumer during the sales contact.

**C. Third Party Verifications:**

i. For TPVs, whether live or through an Interactive Voice Response (“IVR”) process, the Company representative shall provide the following explanation, in a slow and audible manner, to consumers prior to beginning the TPV process:

You are going to hear a series of questions to confirm your understanding of the agreement. If the representative speaks too quickly, please interrupt and tell the representative to speak more slowly (when using a live verifier). If you do not understand a question, please say that you do not understand the question or press \_\_\_\_\_. If you have a question of your own, please ask your question or press \_\_\_\_\_.

ii. Respond Power shall add the following questions to all TPVs whether live or through an IVR system:

- What is your name? (when using a live agent only)
- What is your address? (when using a live agent only)

- Do you understand that Respond Power is not your electric utility?
- Do you understand that you are not required to switch to Respond Power in order to continue receiving electric service?
- Does your name appear on the electric bill?

iii. If the consumer answers that his or her name does not appear on the electric bill, Respond Power shall request that the consumer produce the person whose name appears on the electric bill to verify authorization to switch. If the customer of record is not available, Respond Power shall request that the consumer verify that he or she is authorized by the person whose name is on the bill to consent to changes in electric generation service for the account. If the consumer cannot verify such authorization, the sales solicitation and TPV must immediately end.

iv. If the consumer is the customer of record or authorized by the customer of record to consent to changes in electric generation service and the sales solicitation is for a variable rate product pursuant to Paragraph IV(A)(i) above, Respond Power shall also add the following questions to the TPV:

- Do you understand that you are agreeing to a variable rate that changes on a monthly basis?
- Do you understand that there is no limit on how high the price can go?

- Do you feel comfortable with your selection to switch to a Respond Power variable rate product?

v. Respond Power agrees that all TPVs will be performed outside the presence of the Respond Power sales representative.

vi. Respond Power sales representatives shall not prompt consumers' responses to TPV questions, instruct the consumers as to the manner in which to respond to TPV questions or otherwise participate in the TPV of any sale. If the sales representative interrupts the TPV in this manner, the TPV shall be immediately terminated and the sale shall not be consummated unless a new TPV is initiated and successfully completed.

**D. Disclosure Statement:**

i. No later than 60 days after the Commission's final order in this proceeding, Respond Power shall provide to I&E and the Commission's BCS its current Disclosure Statement and Schumer Box, drafted pursuant to the Commission's regulations at 52 Pa. Code § 54.5.

ii. Respond Power shall provide to I&E and BCS any subsequently amended Disclosure Statements for use in the Commonwealth for the period of five years.

iii. In addition to adhering to the Commission's regulations, Orders and policies regarding the requirements for disclosure statements, terms and conditions, and marketing materials, Respond Power shall:

a. If it offers variable rate products to consumers in the Commonwealth after the time period set forth in Paragraph IV(A)(i), above state the following in its Disclosure Statement provided to customers:

After \_\_\_ month(s) [if Introductory Price period is applicable], the price you pay under this variable rate contract can change every month. This is not a fixed rate contract. Variable means the price can go up or down. There is no limit on how high the price can go.

b. provide to all current customers on variable rate products an updated disclosure statement as provided in the above paragraph.

iv. Under the heading “Cancellation/Early Termination Fees” of the Disclosure Statement, Respond Power shall state the following in at least 12-point bold font:

You may cancel this contract at any time without an early termination fee. All cancellations will be handled promptly, but it may take several days to switch suppliers pursuant to the Commission’s regulations.

v. Should the Company offer variable rate products pursuant to Paragraph IV(A)(i) above, in its variable pricing Disclosure Statement, Respond Power shall describe the basis of the Company’s charges and set forth the attributes that comprise the product and the percentage of each attribute that makes up the price. For example, Respond Power could state, if demonstrably true for a program with such attributes, that XX% of the price in a given month is based on projected wholesale costs and adjustments to “true up” the prior month’s projected wholesale costs and X% of the

price is based on overhead such as the cost of sales, uncollectables, and the Company's profit. Respond Power shall not state or represent to customers in the Company's variable rate programs that the price Respond Power will charge will be "market-based" or set on "market conditions" unless the Company also includes either:

a. the calculation that will be used to set monthly rates under the contract, where each element of that calculation shall be based on a fixed constant, a cost to Respond Power, or a value ascertainable from publicly available information such that the customer can calculate the price and any applicable charges in terms of dollars and cents or cents per kWh; or

b. information to the customer that he or she may view upcoming variable rates on the Respond Power website at least 30 days in advance of when the rates will take effect or call the Respond Power customer service telephone number to obtain the information.

**E. Training:**

i. Respond Power shall implement a new training program specifically tailored to the requirements of the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

ii. No later than 60 days after the Commission's final order in this proceeding, Respond Power shall provide to BCS and I&E a detailed description of the training the company will implement.

iii. After a 30-day review period, the Company will meet with BCS and I&E to review and discuss the training Respond Power plans to implement.

iv. The Company's training materials for its sales representatives and customer service representatives will accurately and comprehensively cover the following:

a. The requirements of the Public Utility Code and the Commission's regulations, Orders and policies regarding marketing and billing practices for EGSs;

b. The requirements of the Consumer Protection Law and the TRA, including both prohibited practices and affirmative requirements;

c. An express warning that deceptive sales practices will not be tolerated by Respond Power's management;

d. An express warning and material description of the remedial steps that will be taken against any sales representatives and customer service representatives that violate any term of this Settlement or otherwise engages in improper sales practices; and

e. A description of the quality assurance, monitoring, auditing and reporting practices Respond Power maintains to identify and prevent improper sales practices.

v. The training, at a minimum, shall include the following:

a. Initial training and subsequent refresher training on at least a quarterly basis for all Respond Power employees, agents and third-party contractors in the modifications listed in this Settlement Agreement and the implementation thereof;

b. Initial training and subsequent refresher training on at least a quarterly basis for all Respond Power employees, agents and third-party contractors in Pennsylvania laws applicable to the company, including but not limited to the Public Utility Code, the Consumer Protection Law and the TRA; and

c. Initial training and subsequent refresher training on at least a quarterly basis for all Respond Power employees, agents and third-party contractors in current Pennsylvania Public Utility Commission regulations, policies and Orders.

vi. Respond Power, itself, shall implement and conduct the training and ensure that its sales agents comply with the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

vii. Individual marketers retained by Respond Power shall be required to successfully complete Respond Power's training program before marketing to



and enrolling customers on behalf of Respond Power. Each trainee shall be required to sign a form acknowledging that he or she has received and understands the information provided in Respond Power's training materials.

viii. Respond Power shall not engage in any telemarketer sales solicitations of Pennsylvania consumers until Respond Power has fully implemented the training program and initial training and testing described in this Settlement.

**F. Door-to-Door Marketing:**

i. In the event that Respond Power engages in door-to-door marketing, Respond Power shall implement a new door-to-door sales training program specifically tailored to the requirements of the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies and other applicable state and federal law.

ii. No later than 90 days after the Commission's final order in this proceeding, Respond Power shall provide to I&E and BCS a detailed description of the door-to-door sales training the Company will implement.

iii. After a 30-day review period, the Company will meet with I&E and BCS to review and discuss the door-to-door sales training Respond Power plans to implement.

iv. The Company's door-to-door training materials for its sales representatives and customer service representatives will accurately and comprehensively cover the following:

a. The requirements of the Public Utility Code and the Commission's regulations, Orders and policies and other applicable state and federal law regarding door-to-door sales practice requirements for EGSs;

b. The requirements of the Consumer Protection Law and the TRA, including both prohibited practices and affirmative requirements with particular emphasis on the following:

1. As soon as possible and prior to describing any products or services offered for sale by Respond Power, an in-person sales representative shall:

i. Produce identification, to be visible at all times thereafter, which prominently displays in the full name of the marketing representative, displays a photograph of the marketing representative and depicts the legitimate trade name and logo of Respond Power; and provides Respond Power's telephone number for inquires, verification and complaints.

ii. Identify the reason for the visit and state that Respond Power is an independent energy marketer, and identify himself or herself as a representative of Respond Power; explain that he or

she does not represent the distribution utility; and explain the purpose of the solicitation.

iii. Offer a business card or other material that lists the agent's name, identification number and title, and the Respond Power's name and contact information, including telephone number.

2. During the sales presentation, the marketing representative must also state that if Customer purchases electricity from Respond Power, that the Customer's utility will continue to deliver their energy and will respond to any leaks or emergencies.

3. The representative will provide the Customer with written information regarding Respond Power's products and services immediately upon request, which shall include Respond Power's name and telephone number for inquiries, verification and complaints. Any written materials, including contracts, sales agreements, and marketing materials, must be provided to the Customer in the same language utilized to solicit the customer.

4. Where it is apparent that the Customer's language skills are insufficient to allow the Customer to understand and respond to the information conveyed by the

marketing representative or where the Customer or another third party informs the marketing representative of this circumstance, the marketing representative shall terminate contact with the Customer in accordance with 52 Pa. Code § 111.9(e). The marketing representative shall leave the premises of a Customer when requested to do so by the Customer or the owner or occupant of the premises.

c. An express warning that deceptive or intimidating sales practices will not be tolerated by Respond Power's management;

d. An express warning and material description of the remedial steps that will be taken against any sales representatives and customer service representatives that violate any term of this Settlement or otherwise engages in improper sales practices; and

e. A detailed description of the quality assurance, monitoring, auditing and reporting practices Respond Power maintains to identify and prevent improper door-to-door sales practices.

f. The training, at a minimum, shall include the following:

1. Initial training and subsequent refresher training on at least a quarterly basis for all Respond Power door-to-

door salespeople in the modifications listed in this Settlement Agreement and the implementation thereof;

2. Initial training and subsequent refresher training on at least a quarterly basis for all Respond Power door-to-door salespeople in Pennsylvania and federal door-to-door marketing laws applicable to the Company, including but not limited to the Public Utility Code, the Consumer Protection Law and the TRA; and

3. Initial training and subsequent refresher training on at least a quarterly basis for all Respond Power door-to-door salespeople in current Pennsylvania Public Utility Commission regulations, policies and Orders.

g. Respond Power, itself, shall implement and conduct the training and ensure that its door-to-door sales agents comply with the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

h. Individual door-to-door salespeople retained by Respond Power shall be required to successfully complete Respond Power's training programs before marketing to and enrolling customers on behalf of Respond Power. Each trainee shall be required to sign a form acknowledging that he or she has received

and understands the information provided in Respond Power's training materials.

i. Respond Power shall not engage in any door-to-door sales solicitations of Pennsylvania consumers until Respond Power has fully implemented the training program and initial training and testing described in this Settlement.

**F. Compliance Monitoring:**

i. Respond Power shall increase internal quality control efforts to include at least the following:

a. Respond Power shall record all communications between customers and Respond Power's customer service representatives.

b. Respond Power shall require its telemarketers to record all communications with consumers that result in a sale.

c. Respond Power shall maintain such recordings in accordance with the Commission's requirements.

d. Respond Power shall implement a provision in its contracts with telemarketers that no commissions shall be paid for any enrollment unless a recording of the entire sales presentation to that consumer is supplied to Respond Power within three days of the sale.

e. Respond Power shall, on a weekly basis, review a statistically valid sample of calls recorded pursuant the prior paragraph from each of Respond Power's agents and third-party contractors in order to evaluate the sales practices employed and ensure that the sales practices comply with this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

f. The sample in subsection (e) above shall include no fewer than three sales for each sales representative conducting sales solicitations for Respond Power.

g. Whenever such sample in subsection (e) above reveals one or more non-compliant sales calls by an agent, third-party contractor or sales representative, Respond Power shall investigate whether any of the consumers enrolled by the agent, third-party contractor or sales representative were subjected to sales practices that violated this Settlement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies.

h. Such investigation in subsection (g) above, at a minimum, shall include a review of the sales calls and call notes for the ten consumers enrolled before the call in question and the ten consumers enrolled after the call in question. If Respond Power

identifies additional non-compliant sales calls, Respond Power shall implement remedial steps as described in Paragraphs IV(F) (ii) and(iii) below.

i. Additionally, Respond Power shall offer to any consumer subjected to the non-compliant sales practices a refund equal to the difference between the price charged by Respond Power and the consumer's applicable Price to Compare for the period in which the consumer was a customer as a result of the non-compliant sales practice. Such refund shall be paid to the consumer within ten days.

ii. Any substantiated consumer complaint about a Respond Power sales representative or other information indicating that a Respond Power sales representative has violated any term of this Settlement or otherwise engaged in improper sales practices shall trigger an investigation by Respond Power into whether any of the other Respond Power customers enrolled by that sales representative were subjected to sales practices that violated the terms of this Settlement or were otherwise improper. Such investigation shall, at a minimum, include examination of customer enrollment records, sales service call notes for the ten consumers enrolled by the sales representative immediate prior to and subsequent to the enrollment that triggered the investigation.

iii. In the event Respond Power determines that a sales representative has violated any terms of this Settlement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies or



otherwise engaged in improper sales practices, Respond Power shall take prompt remedial actions, which at a minimum shall include:

a. For the first violation, provide additional training and re-training;

b. For two violations in a twelve-month period, suspend the sales representative for a period of no fewer than 30 days; and

c. For any violations in excess of two within a twelve-month period, permanently disqualify the sales representative from marketing Respond Power's services to Pennsylvania consumers.

d. The Respond Power marketing contractor which employs the sales representative shall forfeit an amount equal to twice the total marketing contractor's sales commissions applicable to the non-compliant sales. All sales commissions claimed by the marketing contractor shall be subject to forfeiture for a period of six months in the event violations are found by Respond Power.

iv. Respond Power shall not engage in any telemarketer sales solicitations of Pennsylvania consumers until Respond Power has fully implemented the compliance monitoring program described in this Settlement, including any changes to contracts with marketers necessary to carry out the compliance monitoring program provisions.

**G. Reporting:**

i. Within 30 days of implementation of the training and compliance monitoring described above and quarterly thereafter for a period of five years, Respond Power shall provide to BCS and I&E:

a. An explanation of all internal audits and investigations performed during the reporting period, including a detailed description of the amount of calls reviewed pursuant to Paragraph IV(F) (i) (e) and (f) of this Settlement and a description of the audit(s) or investigation(s) performed as well as the results thereof and

b. A report of all customer complaints and disputes received by Respond Power during the reporting period.

**H. Customer Service:**

i. Respond Power shall employ regulatory personnel whose duties include, at a minimum:

a. Compliance with the Chapter 56 of the Commission's regulations, including but not limited to, prompt investigation of all customer complaints, providing the customer with information necessary to make an informed judgment and issue a report to the customer within 30 days;

b. Resolution of customer complaints fairly and expeditiously; and

c. Training customer service representatives in accurately recording the reason for a customer's call in a customer contact log and ensuring compliance with the training described in this Settlement.

ii. Respond Power shall at all times maintain a staff of customer service representatives necessary to at least:

a. Within normal business hours, provide consumers with reasonably timely access to a "live" customer service representative, whether the consumer seeks such access via telephone and/or e-mail. Reasonably timely access shall mean that hold times for consumers calling the Company shall be no more than 10 minutes, and consumer emails shall be answered within 24 hours unless sent on weekends or holidays in which case shall be responded to within 24 hours of the first business day following the weekend or holiday;

b. Provide a timely response to any voice mail messages left on its customer service toll-free number outside of normal business hours, but in no event, later than 24 after the message was left, unless the message is left on a weekend or holiday in which case shall be responded to within 24 hours of the first business day following the weekend of holiday;

c. Provide for the check of its voice mail message system at the beginning of each day's normal business hours.

d. Use reasonable measures to prevent its voice mail customer service message system from becoming "full" such that consumers cannot leave a voice mail message.

e. Respond to all inquiries made by letter within five business days of receipt of said letter.

iv. Respond Power shall develop and implement an action plan for handling periods of high call volumes. Such action plan will, at a minimum:

a. Provide for the answering of overflow calls to Respond Power's system by additional customer service staff or temp services;

b. Provide a detailed description for use by all such staff or temp services answering calls regarding inputting of the nature of customer calls;

c. Provide clear and consistent information to all such staff or temp services answering calls to convey to customers with the same or similar issues; and

d. Provide clear and consistent information to all such staff or temp services answering calls regarding relief that will be provided by Respond Power to convey to customers.

v. If Respond Power experiences a period of high call volumes in which it could not and did not comply with the provisions of this Settlement, Respond Power shall within 30 days provide to BCS and I&E a report of the occurrence, an explanation of underlying reasons for the occurrence and a description of all remedial measures implemented by Respond Power.

#### **V. THIS SETTLEMENT IS IN THE PUBLIC INTEREST**

26. This Settlement was achieved by the Petitioners after extensive investigation into Respond Power's marketing and billing practices, including formal and informal discovery and service on the ALJs and parties of the direct testimony of consumers.

27. The agreed-upon provisions regarding refunds and comprehensive injunctive relief in the Settlement will provide reasonable relief for Respond Power's current and former customers affected by the Company's conduct as alleged in the Formal Complaint.

28. Additional support for this Settlement will be set forth in the Supporting Statements and Stipulation of Facts, which will be filed within 30 days of this Settlement being entered into the record.

## **VI. ADDITIONAL TERMS AND CONDITIONS**

29. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Settlement, then either Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this entire Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties and the ALJs within five business days after the entry of an Order modifying the Settlement.

30. This Settlement is proposed by the Petitioners to settle all issues among them in the instant proceeding. If the Commission does not approve the Settlement, the Petitioners reserve their respective rights to conduct further hearings, including further cross-examination, submit additional direct, rebuttal and surrebuttal testimony, as contemplated by the litigation schedules adopted in this proceeding, and briefing regarding contested issues. This Settlement is made without any admission against, or prejudice to, any position which any Petitioner may adopt in the event of any subsequent litigation of this proceeding or in any other proceeding.

31. If Respond Power reaches a settlement at Docket No. Docket No. C-2014-2427659, I&E will not oppose it, provided that it does not adversely change the material terms of this Settlement.

32. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The Settlement is presented without prejudice to any position which any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the Settlement. This Settlement does not preclude the parties from taking other positions in other proceedings involving the marketing and billing practices of Electric Generation Suppliers or Natural Gas Suppliers or other aspects of the competitive market.

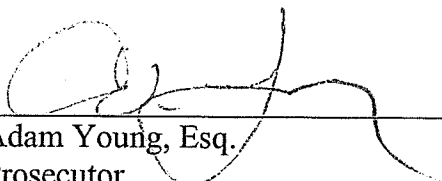
33. If the ALJs adopt this Settlement without modification in their Initial Decision, the Petitioners waive their rights to file exceptions to the issues addressed by the Settlement.

**VII. CONCLUSION.**

**WHEREFORE**, the Petitioners, by their respective counsel, respectfully request:

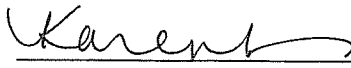
1. That the ALJs, on an expedited basis, recommend that the Commission approve this Settlement, including all the terms and conditions thereof, without modification;
2. That the Commission approve, on an expedited basis, the Settlement without modification; and
3. That the Formal Complaint of I&E be marked satisfied.

Respectfully submitted,



---

Adam Young, Esq.  
Prosecutor  
Bureau of Investigation and Enforcement  
Pa. Public Utility Commission  
400 North St.  
Harrisburg, PA 17120



---

Karen O. Moury, Esq.  
Buchanan, Ingersoll & Rooney  
409 North Second St.  
Harrisburg, PA 17102  
  
Counsel for Respond Power LLC

Dated: August 25, 2015



**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	:	

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  
Nicole R. DiTomo  
Bureau of Consumer Protection  
Office of Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
[jabel@attorneygeneral.gov](mailto:jabel@attorneygeneral.gov)  
[nditomo@attorneygeneral.gov](mailto:nditomo@attorneygeneral.gov)

Sharon E. Webb  
Office of Small Business Advocate  
300 N. Second Street, Suite 202  
Harrisburg, PA 17101  
[swebb@pa.gov](mailto:swebb@pa.gov)


Steve Estomin  
Exeter Associates, Inc.  
10480 Little Patuxent Parkway  
Suite 300  
Columbia, Maryland 21044  
[sestomin@exeterassociates.com](mailto:sestomin@exeterassociates.com)

Candis A. Tunilo  
Christy M. Appleby  
Kristine E. Robinson  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101  
[ctunilo@paoca.org](mailto:ctunilo@paoca.org)  
[cappleby@paoca.org](mailto:cappleby@paoca.org)  
[krobinson@paoca.org](mailto:krobinson@paoca.org)

Adam D. Young  
Michael L. Swindler  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
PO Box 3265  
Harrisburg, PA 17105-3265  
[adyoung@pa.gov](mailto:adyoung@pa.gov)  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

Barbara R. Alexander  
83 Wedgewood Drive  
Winthrop, Maine 04364  
[barbalexand@gmail.com](mailto:barbalexand@gmail.com)

Dated this 26th day of August, 2015.



---

Karen O. Moury, Esq.