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October 5, 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 Respond Power LLC's Response to Joint Initial Objections, 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

Administrative Law Judges
Elizabeth H. Barnes and Joel H. Cheskis

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

RESPOND POWER LLC'S RESPONSE TO JOINT INITIAL OBJECTIONS

Respond Power LLC ("Respond Power" or "Company"), by and through its counsel, Karen O. Moury and John F. Povilaitis of Buchanan Ingersoll & Rooney PC and David P. Zambito and D. Troy Sellars of Cozen O'Connor, files this Response to the Joint Initial Objections ("Objections") filed by the Commonwealth of Pennsylvania, by Attorney General Kathleen Kane through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Pennsylvania Consumer Advocate, ("Joint Complainants") on September 28, 2015 in the above-captioned matter. In the Objections, the Joint Complainants request that the Honorable Administrative Law Judges Elizabeth H. Barnes and Joel H. Cheskis ("ALJs"): (i) further keep

the evidentiary record open in this matter; (ii) direct Respond Power and the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") to produce additional witnesses; (iii) convene a further on-the-record evidentiary hearing, (iv) afford the Joint Complainants the opportunity to cross-examine Respond Power's and I&E's witnesses regarding the Amended Settlement Agreement ("Settlement") filed in the above-captioned matter on September 18, 2015 by Respond Power and I&E; (v) allow the Joint Complainants to present additional evidence regarding the Joint Complainants' Objections to the Settlement; and, (vi) permit the Joint Complainants to present additional written objections to the Settlement at least 30 days after the close of the record.

Respond Power respectfully submits that the requests of the Joint Complainants are unprecedented in Commission practice and convoluted, and would exceed any process that is legally due to the Joint Complainants. The Joint Complainants' proposal would serve only to delay the ALJs' and the Commission's review of a Settlement that is clearly supported by substantial record evidence and in the public interest.

The Joint Complainants' proposal, if adopted, would discourage parties in future Commission proceedings from entering into non-unanimous settlements because *inter alia*: (i) the value of entering into a settlement (*i.e.*, conservation of time and resources) would be greatly diminished; and, (ii) the settling parties would be required to state, on the record, in evidentiary hearings why they were willing to compromise and such statements could be used against them at a later time (whether in the same case if the settlement is rejected or a subsequent case). As such, the Joint Complainants' proposed process is contrary to the Commission's policy of promoting settlement.

The Joint Complainants bear the burden of proof in this complaint proceeding and have already had a full and fair opportunity to present their evidence on their Joint Complaint. They should not now be allowed a "second bite at the apple" through the further cross-examination of I&E and Respond Power witnesses and the presentation of additional evidence under the guise of contesting the Settlement.

In order to approve a settlement between adverse parties (such as Respond Power and I&E), the Commission demands that the Settlement be supported by substantial record evidence and be in the public interest. *Pa. Public Utility Commission, et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011); *Pa. Public Utility Commission, Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009). The Settlement in this matter either meets this standard or it does not. For the reasons set forth by I&E and Respond Power in their Statements in Support of the Settlement, the Settlement clearly does. Nevertheless, the ALJs appropriately provided the Joint Complainants with an opportunity, through written objections, to explain their position -- based on record evidence -- as to why the standard has not been met. The Joint Complainants however termed their objections as "Initial Objections" and have gone well beyond the appropriate objective of contesting the legal standard of a settlement by proposing an extensive further process that could be used to address areas in which they have failed to meet their burden of proof with regard to their substantive allegations and the remedies available under the Commission's limited jurisdiction in this case.

For the reasons set forth more fully below, the ALJs should reject the Joint Complainants' request for further evidentiary hearings and instead rule on the Settlement on the basis of its terms, the Stipulation of Facts, the Supporting Statements accompanying the

Settlement, and the extensive record developed in this proceeding.[1] To the extent that a unanimous settlement among all parties cannot be achieved before the issuance of a recommended decision in this matter, the ALJs should separately address the Joint Complaint's allegations after review of the parties' respective briefs and in the context of how the Settlement may already address the same allegations.[2]

Respond Power respectfully submits that, in the interests of fairness and in order to protect the respective due process rights of the parties, these consolidated complaint dockets should be addressed in a holistic manner through one initial decision. Following briefing, the ALJs should make findings of fact and conclusions of law regarding the Joint Complainants' allegations based upon substantial record evidence already developed in this proceeding. They should then make a determination -- consistent with the Pennsylvania Public Utility Code and the Commission's limited jurisdiction thereunder -- as to whether the Settlement remedies adequately address any allegations of the Joint Complainants that are actually substantiated (if any). This is the most efficient and fair process where one of the consolidated complaints is fully settled and the other unfortunately is not fully or even partially settled.

I. INTRODUCTION

Through their Objections, the Joint Complainants seek to hold a hearing for the purpose of establishing a further evidentiary record upon which to oppose the Settlement between

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[1] Respond Power recognizes that the ALJs may have questions regarding the Settlement and is fully willing to participate in an on-the-record hearing which is limited to addressing such questions. Respond Power's objection is to the Joint Complainants' attempt to supplement the record through further cross-examination of witnesses and supplemental testimony and exhibits.

[2] Contrary to the Joint Complainants' contention that "[i]t appears that I&E and Respond Power . . . are attempting to circumvent the rights of two named complainants . . . . ," (Objections, p. 7), Respond Power is not trying to deprive the Joint Complainants of any of their procedural rights. The Joint Complainants are free to argue, based on the evidentiary record established in this case, that they have met their burden of proof on allegations set forth in their Complaint that they believe are not adequately addressed by the Settlement.

Respond Power and I&E. They propose to cross-examine unidentified witnesses who would presumably be produced by Respond Power and I&E to address various provisions of the Settlement and also possibly to present witnesses of their own in support of their Objections, despite there being no prior procedural opportunity provided to Respond Power for presentation of its own witness in support of the Settlement. To Respond Power's knowledge, such a hearing designed to litigate the merits of the terms of a settlement would be unprecedented. Moreover, it is entirely unnecessary and inappropriate.

When the Joint Complainants reserved the right at the August 27, 2015 hearing to request a hearing on the Settlement, Respond Power reserved the right to object to such a request if it would be made. By this Response to the Objections, Respond Power formally opposes the Joint Complainants' request for further evidentiary hearings on the Settlement at which the Joint Complainants would be permitted to supplement the record through cross-examination of witnesses and the presentation of additional testimony and exhibits. Respond Power's opposition is based on basic procedural due process principles, considerations relating to settlements, and the lack of any factual issues necessitating further hearing. Any additional arguments in support of or in opposition to the Settlement can be adequately addressed through written filings.

Respond Power proposes that the hearing now scheduled for October 15, 2015 be limited to: (1) the admission, subject to cross-examination, of the supplemental testimony of Ms. Barbara Alexander to address revised rebuttal testimony of Mr. Small concerning voluntary reductions in charges in February 2014; (2) the admission of Wolbrom Cross Examination Exhibits 1 and 2, as a result of Respond Power's stipulation as to authenticity. The remainder of the time set aside on October 15, 2015 should be devoted to the following: (1) a procedural

conference to determine next steps, including briefing dates if a unanimous settlement cannot be achieved; and, (2) an opportunity for Respond Power and I&E to respond to any questions the ALJs may have about the terms of the Settlement, just as has occurred in similar proceedings.[3] Such questions and answers could be placed in the record if the ALJs deem it necessary for a complete record.

II. DISCUSSION

A. The Commission's regulations and past precedent do not support holding a hearing that is designed to litigate the terms of a proposed settlement.

The Joint Complainants seek to hold further evidentiary hearings for the purpose of establishing a record upon which to oppose the Settlement between Respond Power and I&E. They propose to cross-examine unidentified witnesses who would presumably be produced by Respond Power and I&E to address various provisions of the Settlement and to also possibly present evidence of their own in support of their Objections. To Respond Power's knowledge, such a hearing designed to litigate the terms of a settlement would be unprecedented. Moreover, it is entirely unnecessary and inappropriate -- not to mention against the Commission's policy of promoting settlements.

Section 5.232(d) of the Commission's regulations establishes the procedures for settlements. This provision permits parties the opportunity to comment on proposed settlements and provides for the ALJs to issue a ruling approving or disapproving the proposed settlement after determining whether it is in the public interest. 52 Pa. Code § 5.232(d). This approach is

[3] *See Commonwealth of Pennsylvania, et al. v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric,* Docket No. C-2014-2427656 (Initial Decision issued June 30, 2015) ("*PG&E Initial Decision*"). Respond Power would respectfully request that the ALJs identify the subject matter of any questions regarding the Settlement prior to the hearing so that Respond Power may come prepared with the appropriate witnesses. To the extent that the ALJs' questions would raise new issues to which the Joint Complainants did not previously have an opportunity to respond, Respond Power would not oppose the ALJs' affording the Joint Complainants an opportunity to conduct further cross examination of the witnesses provided that the cross-examination is limited to such issues.

consistent with the process that was followed in the other proceedings where the settlements were opposed and written comments were filed. *PG&E Initial Decision*; *Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Joint Petition for Approval of Settlement filed August 4, 2015) ("*IDT Settlement*"). Similarly, the Commission's policy statement, which sets forth factors and standards for evaluating settled proceedings, does not envision a hearing. Rather, the policy statement provides that the "parties to a settlement should include in the settlement agreement a statement in support of settlement explaining how and why the settlement is in the public interest." 52 Pa. Code § 69.1201(b). In providing for the filing of statements in support of the settlement, the policy statement does not recommend or even suggest holding hearings on opposed settlements. Indeed, the Commission's policy statement on opposed rate case settlements specifically prescribes the elements of a *written* opposition to a settlement that may be filed (facts, affidavits, argument and relevant legal analysis). However, this policy statement clearly does not envision full-blown evidentiary hearings, driven by the desires (not rights) of the Joint Complainants, on the merits or terms of a settlement being part of the ALJ's review of a contested settlement. 52 Pa. Code § 69.406(a). The Commission's regulations and policy statements do not contemplate a hearing on proposed settlements or the presentation of witnesses or producing evidence and none is warranted here.

Counsel for Respond Power and I&E negotiated the Settlement. Therefore, counsel can respond to any questions the ALJs have about the terms of the Settlement, just as has occurred in similar proceedings. However, to the extent that the ALJs would have a question for a particular witness on a specific issue that has been designated by the ALJs prior to the hearing, Respond Power is willing to produce such witness for the limited purpose of responding to the question.

It should be noted that prior to issuance of the *PG&E Initial Decision*, no hearing was held despite the filing of objections to the proposed settlement and the fact that no testimony had been made part of the record. By contrast, in this proceeding, seven days of hearings have been held; the testimony of 153 consumer witnesses has been admitted, following cross-examination; the testimony of nine expert witnesses has been admitted, following cross-examination; and numerous exhibits have been admitted. In short, the Settlement may be adjudicated on the basis of the full record that has been developed, the Stipulation of Facts and Supporting Statements that have been furnished, and the Objections that have been filed.

B. Holding a hearing to allow the Joint Complainants to challenge the terms of a proposed settlement would far exceeds any "process" that is "due" and promote an anti-settlement policy.

As the settling parties, Respond Power and I&E have the burden of demonstrating that the Settlement is in the public interest. The Settlement does not advance through witnesses' new facts or expert opinions that opposing parties have a due process right to confront through cross-examination or through the presentation of opposing witnesses.[4] To meet this burden, Respond Power and I&E have submitted extensive Supporting Statements, as required by the Commission's regulations, explaining why the Settlement is in the public interest and relying on the extensive record that has been developed in this proceeding.

The Joint Complainants are advocating for a process than runs contrary to the Commission's policy which promotes settlement -- whether unanimous or non-unanimous, or

[4] It is important to keep in mind that the settling parties have neither presented expert or fact witnesses in support of the settlement nor requested an opportunity to do so. Nor is Respond Power aware of any circumstance where settling parties are required to present such post-settlement evidence into the record. Nevertheless, if witnesses opposing the Settlement are permitted to testify and present evidence into the record, due process would require that Respond Power should first be given the opportunity to present their witnesses as the Company has the burden of proof on the Settlement. Respond Power however does not advocate for such a procedure.

partial or full. Parties would have little incentive to enter into non-unanimous settlements if their terms end up being subjected to subsequent evidentiary hearings. Indeed, settlement positions are not litigation positions and should not be treated as such. The resources that are normally conserved through entering into even partial settlements would need to be devoted to the litigation of their terms. Also, the settling parties who were previously adversarial would be required to take litigation positions that are aligned, which would then prejudice them later if the proposed settlement is rejected or substantially modified and the case is subsequently litigated on its merits.

Proposed settlements are appropriately adjudicated on the basis of the existing record and any written comments filed by the parties. Non-settling parties have no due process rights to further evidentiary hearings where they present evidence and demand the settling parties to produce witnesses for cross-examination. Following the procedures for litigated cases would completely undermine the incentives to enter into settlements with less than all of the parties, particularly when the due process of non-settling parties to challenge a proposed settlement is fully satisfied through the filing of written comments consistent with the Commission's regulations and by ultimately allowing their complaint allegations to be decided.

C. Review of the Settlement should not be confused with litigation of the Joint Complaint.

If a unanimous settlement among all parties is ultimately not achieved, the Joint Complaint will need to be handled as any other matter where a non-unanimous settlement has been proposed as the proper disposition of a case. The parties will file briefs on the merits of the non-settling Parties' issues set forth in the Joint Complaint and the ALJs will issue an initial decision. If the ALJs believe that the allegations of the Joint Complaint have merit, they will

need to consider whether the Settlement terms between Respond Power and I&E sufficiently addresses any violations found by the ALJs. If the ALJs are satisfied with the relief afforded by the Settlement, they could recommend dismissal of the Joint Complaint as being moot or they could recommend sustaining the Joint Complaint without the imposition of any further relief. Alternatively, the ALJs would be free to recommend sustaining the Joint Complaint and proposing additional relief beyond that provided by the Settlement for the Commission's consideration. In short, the ALJs may treat the Settlement as a partial resolution of the issues of this proceeding or as fully addressing all issues raised by this proceeding.[5] However, a full litigation of the terms of the Settlement is completely unnecessary.

While continuing to litigate the Joint Complaint is necessary due to the non-participation of the Joint Complainants in the Settlement, litigating the terms of the Settlement is unnecessary, inappropriate, and a waste of judicial and other resources. The whole point of parties entering into settlements is to conserve resources in the context of what they believe is a fair resolution. Reasons for entering into a settlement obviously vary and are confidential. Settling parties should not be forced to produce witnesses who are subjected to cross-examination by the opposing parties, particularly when an extensive record has been developed in a proceeding and the settling parties have already submitted Stipulations of Fact and Supporting Statements. In this proceeding, I&E submitted the testimony of one witness who has undergone cross-examination by the parties and questioning by the ALJs. Likewise, Respond Power has offered the testimony of four witnesses who have been cross-examined by the parties and questioned by the ALJs. Another round of hearings for unidentified Respond Power and I&E witnesses to be cross-examined on the Settlement is wholly inappropriate.

[5] Respond Power continues to contend, as it did in its Supporting Statement, that the Settlement comprehensively resolves all issues raised by this consolidated proceeding. However, Respond Power includes this discussion in recognition of the fact that the ALJs have not issued their recommended decision yet..

Counsel for Respond Power and I&E negotiated the Settlement. Therefore, counsel – just as occurred prior to issuance of the *PG&E Initial Decision* – can respond to any questions the ALJs have about the Settlement. However, as mentioned above, Respond Power is willing to present a witness to address any specific questions that the ALJs may identify prior to the hearing currently scheduled for October 15, 2015. In short, a full record has been developed upon which the Settlement may be adjudicated and no further evidentiary hearing is necessary except to the limited extent that the ALJs may have a specific question regarding the Settlement.

D. The Objections filed by the Joint Complainants raise no factual issues that require a hearing to determine whether the Settlement is in the public interest.

The Joint Complainants' Objections raise no factual issues that must be resolved or pursued through a hearing in order to determine whether the Settlement is in the public interest, particularly in view of the extensive record that has already been developed in this proceeding. While the issues raised by the Objections can certainly be considered by the ALJs in making this determination, they do not require further hearings. In essence, they do nothing more than raise a whole host of questions that could be raised about any settlement, including those that the Joint Complainants have filed in three other proceedings involving EGSs, two of which have been approved by the ALJs. *See PG&E Initial Decision*; *IDT Settlement*; *Commonwealth of Pennsylvania, et al. v. Hiko Energy, LLC*, Docket No. C-2014-2427652 (Initial Decision issued August 21, 2015) ("*Hiko Initial Decision*").

1. Determining whether the Settlement is legally defective does not require a hearing.

The Joint Complainants' first objection is that the Settlement is legally defective. The Joint Complainants claim that this is so because Respond Power and I&E are attempting to unilaterally settle all issues in the consolidated matter without the input or consent of the statutory parties. This objection raises no factual issues warranting a hearing with cross-examination. In any case, Respond Power engaged in settlement discussions with the Joint Complainants up to within hours of filing the Settlement with I&E and even afforded the Joint Complainants the opportunity to join those efforts. It is up to the ALJs and the Commission to decide if the Settlement addresses all of the allegations raised in the consolidated proceeding. The Joint Complainants will continue to have an opportunity to have their allegations addressed through the normal litigation process, which includes an opportunity for the Joint Complainants to file a main brief.[6]

2. Deciding whether the refund provisions are sufficient and appropriate involves legal and policy determinations.

The second objection raised by the Joint Complainants relates to the refund provisions in Paragraphs 20 and 21 of the Settlement and includes issues about the propriety of treating customers who filed informal complaints differently than customers who did nothing; the selection of customers, calculations and disbursement of refunds; the sufficiency of the refund pool; and the requirement for customers in the additional or "silent" refund pool to send a form into a third party administrator to claim a refund. Again, these objections raise no factual issues necessitating further hearings. Rather, they contain legal and policy arguments, which the ALJs

[6] As discussed below, Respond Power suggests that, because this is a consolidated proceeding, the Joint Complainants can be required by the ALJs to address in their main brief why the Settlement does not adequately address any specific allegation raised in their Joint Complaint.

and Commission are free to consider in evaluating whether the Settlement is in the public interest. These determinations may be made on the basis of the existing record. It is noteworthy that the other existing EGS settlements provided no detail about the calculations of refunds and none is needed here. *See PG&E Initial Decision*; *Hiko Initial Decision*;[7] *IDT Settlement.* To the extent the Joint Complainants wish to advocate for additional refunds, they can do so in the context of litigating and briefing the Joint Complaint.

3. No factual issues are raised about the alternate refund method.

The third objection of the Joint Complainants relates to the alternate refund method established by Paragraph 22 of the Settlement. This alternate method expressly acknowledges that customers who do not claim or receive a refund under the Settlement may directly contact Respond Power to request a refund. The objection concerns the lack of elements necessary to ensure compliance. Again, this objection raises no factual issues requiring further hearings and can be addressed on the basis of the existing record.

4. Whether license retention by Respond Power is appropriate does not require a further hearing.

The Joint Complainants' fourth objection challenges I&E's commitment to promote license retention by Respond Power, claiming that this provision is not designed to ensure compliance with Commission regulations. This objection also raises a legal argument that does not necessitate a hearing. A decision on whether license retention is appropriate may be made on the basis of the existing record. Also, the Joint Complainants may pursue this issue in litigating

[7] Respond Power acknowledges that the refund calculation method was provided for a portion of the refund pool relating to the customers who were guaranteed a certain level of savings; however, no such information was included for the remainder of the refund pool.

the Joint Complaint if they so desire. In any event, the Settlement explicitly provides that I&E's willingness to support license retention is in recognition of the many concessions made by Respond Power, including extensive modifications to business practices, reporting requirements, training of vendors and sales representatives, compliance monitoring efforts and customer service.

5. Issues pertaining to the third-party administrator do not necessitate a further hearing.

The fifth objection raised by the Joint Complainants relates to the third-party administrator for the additional refund pool and the distribution of refunds. The concerns raised by the Joint Complainants include: (1) using a third-party administrator for one refund pool and not for the other will make the process unnecessarily complex; (2) since the Settlement uses a two-step process for the distribution of refunds to customers who did not file informal complaints, the $50,000 contribution committed to by Respond Power will be inadequate; and, (3) Respond Power is authorized to retain the third-party administrator and the Settlement contains no requirement for Respond Power to retain an independent third-party administrator or to do so in a cost-effective manner. Respond Power disagrees that the use of a third-party administrator for one refund pool and not the other will be unnecessarily complex. Respond Power will distribute the funds to the known group of informal complainants and the third party administrator will distribute the funds to the group of customers who now claim refunds. It is very straight-forward. In any event, a hearing is not needed to address this concern since it merely requires a judgment call on the part of the ALJs and the Commission.

As to whether the $50,000 contribution to third-party administrator costs to which Respond Power has committed is sufficient, any testimony at a hearing would be speculative, at

best. A better approach to addressing this objection, if it is believed to be valid, would be to modify the Settlement to include language requiring Respond Power and I&E to revisit this provision if the cost of the third-party administrator exceeds $50,000 by more than a specified amount. Likewise, modifications to the Settlement to require Respond Power to retain an independent third-party administrator and to do so in a cost-effective manner would be acceptable to Respond Power.

6. The proprietary of a reverter provision requires a policy determination.

The sixth objection lodged by the Joint Complainants to the Settlement, which provides for $3 million in refunds to customers of Respond Power in January, February and March 2014 and would result in extensive modifications to Respond Power's business practices, is that Respond Power could regain nearly one-third of the value of the total refund pool if customers do not claim certain minimum amounts. Again, this objection raises no factual issues necessitating a hearing on the Settlement and may be addressed on the basis of the existing record. If customers do not feel aggrieved and therefore do not claim the available refunds, as a matter of policy, it is fair and reasonable for the monies to be returned to Respond Power.

7. Whether the Settlement contains sufficient modifications to Respond Power's door-to-door marketing practices, training and compliance monitoring does not necessitate any further hearings.

The seventh objection relates to door-to-door marketing. The Joint Complainants claim that the Settlement does not require extensive modifications to Respond Power's door-to-door marketing practices, training and compliance monitoring. They also note that it contains no door-to-door marketing ban. No factual issues warranting a further hearing are raised by this

objection. The ALJs and the Commission are free to consider whether the modifications agreed to by Respond Power in this section of the Settlement are sufficient to address the allegations raised in this consolidated proceeding and substantial evidence already exists in the record upon which to base their decision. Respond Power notes that these modifications mirror the provisions in other settlements with EGSs. If the Joint Complainants wish to seek a ban on door-to-door marketing despite the modifications agreed to in the Settlement by Respond Power, they can pursue that position in litigation of the Joint Complaint. This objection is not a reason to hold a hearing on the Settlement or otherwise modify the Settlement prior to approval.

8. The existing record is sufficient to support the injunctive relief contained in the Settlement.

The eighth objection offered by the Joint Complainants is that I&E did not seek injunctive relief in its Complaint, and that the reporting requirements imposed by the Settlement do not include the Joint Complainants in the review of any new document or training materials or ongoing compliance monitoring. Again, no factual issues are raised by this objection supporting the need for a hearing focused on the Settlement. The existing record contains substantial evidence supporting the proposed injunctive relief, which the ALJs and the Commission will consider in evaluating whether the Settlement is sufficient and in the public interest.

It is noteworthy that I&E had originally sought revocation of Respond Power's EGS license, which is the ultimate injunctive relief. I&E was certainly free to accept extensive modifications and restrictions on Respond Power's sales and marketing practices in lieu of license revocation. As to the inclusion of the Joint Complainants in the review of documents, training materials and ongoing compliance monitoring, this was not done since they were not a party to the Settlement.

9. The sufficiency of the contribution to electric distribution companies' hardship funds may be determined on the basis of the existing record.

The Joint Complainants' ninth objection is that the minimum contribution of $25,000 to the electric distribution companies' hardship funds is insufficient. Again, this objection raises no factual issues requiring a hearing on the Settlement, as the existing record contains sufficient information upon which to evaluate this provision containing a voluntary contribution that the Commission could not otherwise require. Moreover, as Respond Power has already noted, this contribution, along with the $125,000 civil penalty agreed to in the Settlement, is in line with the contributions and civil penalties agreed to by other EGSs.

E. The hearing scheduled for October 15, 2015 should be limited in scope to handling litigation matters related to the Joint Complaint, responding to any questions by the ALJs regarding the Settlement, and addressing any remaining procedural issues.

The hearing that is now scheduled for October 15, 2015 should be limited to: (1) the admission, subject to cross-examination, of the supplemental testimony of Ms. Barbara Alexander to address revised rebuttal testimony of Mr. Small concerning voluntary reductions in charges in February 2014; and 2) the admission of Wolbrom Cross Examination Exhibits 1 and 2, as a result of Respond Power's stipulation as to authenticity. The remainder of the time set aside on October 15, 2015 should be devoted to the following: (1) a procedural conference to determine next steps, including briefing dates; and, (2) an opportunity for Respond Power and I&E to respond to any questions the ALJs may have about the Settlement, as has occurred in similar proceedings.

The Joint Complainants' procedural due process rights can be fully protected by allowing them to continue to litigate any issues that they believe are not adequately addressed by the

Settlement. Because the record in this case has been closed with the exception of the limited submission of the supplemental testimony of Ms. Alexander and the admission of the Wolbrom Cross Examination Exhibits, all that is still required by due process is the submission of briefs by the parties. In the interest of administrative efficiency and economy, the ALJs should simply direct the Joint Complainants to address in their main brief their arguments as to why the Settlement does not adequately address all of the issues raised in their Joint Complaint. Respond Power and I&E would then have an opportunity to respond to the Joint Complainants' main brief through reply briefs.

III. CONCLUSION AND REQUEST FOR RELIEF

Respond Power respectfully submits that the process proposed by the Joint Complainants in their Objections for further hearings on the Settlement exceeds any process that is due and runs contrary to the Commission's policy which promotes settlements. The issue of whether the Settlement is in the public interest can, and should, be determined based upon the extensive record evidence that has already been developed in this case. Respond Power acknowledges that the Joint Complainants have a right to continue to litigate their complaint. Such litigation however does not include a "second bite at the apple" to develop the record under the guise of challenging the Settlement between I&E and Respond Power. I&E has settled its complaint with Respond Power, and the only process remaining due in the litigation of the Joint Complainants' complaint is briefing.

WHEREFORE, Respond Power LLC respectfully requests that the Honorable Administrative Law Judges Elizabeth H. Barnes and Joel H. Cheskis issue a procedural order directing that:

(a) A further evidentiary hearing shall convene on October 15, 2015 for the limited purposes of (i) the admission, subject to cross-examination, of the supplemental testimony of Ms. Barbara Alexander to address revised rebuttal testimony of Mr. Adam Small concerning voluntary reductions in charges in February 2014, (ii) the admission of Wolbrom Cross Examination Exhibits 1 and 2, as a result of Respond Power's stipulation as to authenticity, and, (iii) allowing the ALJs to ask questions regarding the terms and conditions of the Settlement;

(b) The ALJs shall inform Respond Power and I&E by October 9, 2015 of the general nature of their questions regarding the Settlement so that they may produce knowledgeable witnesses at the October 15, 2015 further evidentiary hearing;

(c) The Joint Complainants shall be permitted to cross-examine the Respond Power and I&E witnesses at the October 15, 2015 further evidentiary hearing but only to the extent that the questions of the ALJs regarding the Settlement raise new or novel issues of fact;

(d) The evidentiary record shall be closed upon conclusion of the further evidentiary hearing on October 15, 2015;

(e) The parties shall come prepared on October 15, 2015 to participate in a procedural conference and discuss a briefing schedule for bringing to conclusion the litigation of the Joint Complainants' complaint;

(f) The Joint Complainants, as the party with the burden of proof, shall file a main brief and such brief, in addition to addressing the merits of their complaint allegations, shall address

the issue of why the remedies set forth in the Settlement do not adequately address the allegations if all or some of the complaint allegations are substantiated;

(g) Respond Power and any other interested party may file a reply brief in response the Joint Complainants' main brief; and,

(h) The Recommended Decision in this consolidated proceeding shall address approval of the Settlement, the merits of the Joint Complainants' substantive allegations, and the adequacy of the remedies set forth in the Settlement to address the substantiated allegations of the Joint Complainants' complaint (if any).

Respectfully submitted,

Dated: October 5, 2015

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Counsel for Respond Power LLC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Respond Power LLC	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing documents upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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Dated this 5th day of October, 2015.

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