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July 10, 2014

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

Dear Secretary Chiavetta:

On behalf of Respond Power LLC, I have enclosed for electronic filing the Answer and New Matter of Respond Power LLC to the Joint Complaint of Commonwealth of Pennsylvania, et al. 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/tlg
Enclosure

cc: Chief Administrative Law Judge Charles E. Rainey, Jr. (via First-Class Mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**COMMONWEALTH OF
PENNSYLVANIA, ET AL.,**

v.

RESPOND POWER, LLC,

:
:
:
:
:
:

DOCKET NO. C-2014-2427659

NOTICE TO PLEAD

TO: John M. Abel	Candis A. Tunilo
Nicole R. Beck	Christy M. Appleby
Bureau of Consumer Protection	Office of Consumer Advocate
Office of Attorney General	555 Walnut Street
15 th Floor, Strawberry Square	5 th Floor, Forum Place
Harrisburg, PA 17120	Harrisburg, PA 17101

Pursuant to 52 Pa. Code §§ 5.62(b) and 5.63, you are hereby notified that, if you do not file a written response denying or correcting the enclosed Answer and New Matter of Respond Power, LLC to the Joint Complaint of Commonwealth of Pennsylvania, et al. within **twenty (20) days** from service of this Notice, the facts set forth by Respond Power, LLC in the Answer may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Respond Power, LLC, and where applicable, the Administrative Law Judge presiding over the case.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Karen O. Moury
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101

Dated: July 10, 2014



Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COMMONWEALTH OF PENNSYLVANIA,	:	
BY ATTORNEY GENERAL KATHLEEN	:	
KANE, THROUGH THE BUREAU OF	:	
CONSUMER PROTECTION	:	
and	:	
	:	
TANYA J. McCLOSKEY, ACTING	:	DOCKET NO. C-2014-2427659
CONSUMER ADVOCATE	:	
Complainants	:	
	:	
v.	:	
	:	
RESPOND POWER, LLC,	:	
Respondent	:	

**ANSWER OF RESPOND POWER LLC
TO THE JOINT COMPLAINT OF
ATTORNEY GENERAL
AND ACTING CONSUMER ADVOCATE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Respond Power LLC (“Respond Power”), through its counsel Karen O. Moury and Buchanan Ingersoll & Rooney PC, pursuant to Section 5.61 of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code § 5.61, answers the above-captioned Joint Complaint (“Joint Complaint”) filed by the Attorney General and the Acting Consumer Advocate (“Joint Complainants”), as follows:

PRELIMINARY STATEMENT

1. This paragraph contains speculations based upon Joint Complainants' beliefs to which no response is required. To the extent a response is required, it is denied. It is specifically denied that multiple violations of Pennsylvania law have occurred and that consumers were misled and deceived as to the price they would pay for electricity. On the contrary, it is averred that consumers knowingly entered into agreements with Respond Power to purchase electric generation service through variable rate plans under which prices would vary month to month on the basis of wholesale market conditions.

PARTIES

2. Admitted in part. It is admitted that Tanya J. McCloskey is the Acting Consumer Advocate. Other allegations in this paragraph are conclusions of law to which no response is required. It is averred that the provisions at 71 Pa.C.S. § 309-1 *et seq.* speak for themselves.

3. The allegations of this paragraph are conclusions of law to which no response is required. It is averred that the provisions at 73 P.S. § 201-4 speak for themselves.

4. The allegations in this paragraph are conclusions of law to which no response is required. It is averred that the provisions at 73 P.S. § 201-4 speak for themselves.

5. The allegations in this paragraph are conclusions of law to which no response is required. It is averred that Article IV § 4.1 of the Pennsylvania Constitution and the provisions at 71 P.S. § 732-204 speak for themselves.

6. Admitted. It is admitted that Respond Power is a licensed electric generation supplier ("EGS") authorized to serve residential, small commercial and large commercial customers in Pennsylvania.

7. The allegations of this paragraph are conclusions of law to which no response is required. It is averred the provisions in Section 2809(e) of the Public Utility Code (“Code”), 66 Pa. C.S. § 2809(e), speak for themselves.

8. The allegations of this paragraph are conclusions of law to which no response is required. It is averred that the provisions in Chapters 54 and 56 of the Commission’s regulations, 52 Pa. Code Ch. 54 and 56, and the Commission’s Order at *License Application of Respond Power LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power*, Docket No. A-2010-2163898 (August 19, 2010) (“*Licensing Order*”), speak for themselves.

9. The allegations of this paragraph are conclusions of law to which no response is required. It is averred that the provisions in Chapter 111 of the Commission’s regulations, 52 Pa. Code Ch. 111, speak for themselves.

10. The allegations of this paragraph are conclusions of law to which no response is required. It is averred that the *Licensing Order* speaks for itself.

11. Admitted. It is admitted that Respond Power offers electric generation supply under to residential customers in Pennsylvania under variable rate plans.

12. Admitted. It is admitted that Respond Power uses a variety of marketing and advertising medium to solicit residential customers for its variable rate plan.

13. The allegations of this paragraph are conclusions of law to which no response is required.

14. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the number of citizens over the age of 60 to whom variable prices were charged, and demands proof thereof, if relevant, at hearing. The remaining

allegations of this paragraph including the characterization of variable prices as “high” constitute statements of the Joint Complainants’ belief or opinion to which no response is required.

15. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the volume of calls and correspondence received by the Office of Consumer Advocate (“OCA”) regarding variable rate plans, and demands proof thereof, if relevant, at hearing.

16. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the number of consumer contacts from whom OCA has collected information, and demands proof thereof, if relevant, at hearing.

17. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the volume of contacts to OCA from customers of Respond Power, and demands proof thereof, if relevant, at hearing.

18. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the volume of calls and consumer complaints related to variable rates received by the AG, and demands proof thereof, if relevant, at hearing.

19. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the volume of formal complaints, informal complaints and inquiries made by consumers to the Commission regarding variable rates, and demands proof thereof, if relevant, at hearing.

**COUNT I – MISLEADING AND DECEPTIVE CLAIMS OF AFFILIATION WITH
ELECTRIC DISTRIBUTION COMPANIES**

20. Responses provided in Paragraphs 1 through 19 are incorporated herein by reference.

21. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made by consumers in written correspondence provided to OCA, and demands proof thereof, if relevant, at hearing.

22. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made by consumers in complaints received by the AG, and demands proof thereof, if relevant, at hearing.

23. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations in the formal complaints filed with the Commission and reviewed by OCA, and demands proof thereof, if relevant, at hearing. It is specifically denied that Respond Power's salespeople represented that they were from the electric distribution company ("EDC"). On the contrary, it is averred that Respond Power offers training and provides scripts to ensure that the salespeople do not represent that they are from the EDC. It is further averred that references to the EDC during marketing activities, which are necessary to explain the proposed service (i.e. for clarity on which entity will furnish a bill), has the potential to confuse customers and lead to the filing of complaints. By way of further response, as to formal complaints settled with those complainants, Respond Power is relieved of any responsibility for the specific matters complained of, as provided in Code Section 703(a), 66 Pa.C.S. § 703(a).

24. The allegations in this paragraph are conclusions of law to which no response is required. It is averred that the provisions in Sections 111.8 and 111.9 of the Commission's regulations, 52 Pa. Code §§ 111.8 and 111.9, speak for themselves.

25. The allegations in this paragraph are conclusions of law to which no response is required. It is averred that the provisions in Section 54.43(f) of the Commission's regulations, 52 Pa. Code § 54.43(f), speak for themselves.

26. The allegations in this paragraph are conclusions of law to which no response is required. It is averred that the provisions in Section 111.5(a) of the Commission's regulations, 52 Pa. Code § 111.5(a), speak for themselves.

27. The allegations in this paragraph are conclusions of law to which no response is required. It is averred that the provisions in Section 111.5(e) of the Commission's regulations, 52 Pa. Code § 111.5(e), speak for themselves.

28. The allegations in this paragraph are conclusions of law to which no response is required. It is averred that the provisions in Section 54.43(f) of the Commission's regulations, 52 Pa. Code § 54.43(f), and in Section 111.12(d)(1) of the Commission's regulations, 52 Pa. Code § 111.12(d)(1), speak for themselves. It is further averred that the provisions in Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq., ("Consumer Protection Law") speak for themselves. By way of further answer, Respond Power avers that the Commission does not have jurisdiction to enforce the Consumer Protection Law. *See Pettko v. Pennsylvania American Water Company*, 39 A.3d 473 (2012); *Mid-Atlantic Power Supply Assoc. v. PECO Energy Co.*, Docket No. P-00981615, 1999 Pa. PUC LEXIS 30 (May 19, 1999); *Pa. Pub. Util. Comm'n et al. v. The Bell Telephone Co. of Pa.*, 71 Pa. PUC 338 (1989); *MacLuckie v. Palmco Energy PA, LLC*, Docket No. C-2014-2402558 (Initial Decision dated June 16, 2014).

29. The allegations in this paragraph are conclusions of law to which no response is required. It is averred that the cited provisions of the Consumer Protection Law speak for themselves.

30. Denied. It is specifically denied that Respond Power's employees, agents and/or representatives have engaged in or continue to engage in activities that are fraudulent or deceptive. It is further specifically denied that Respond Power's salespeople have failed to properly identify themselves, failed to clearly state that they are not affiliated with the EDC or claimed to be affiliated with the EDC. On the contrary, it is averred that Respond Power's salespeople have properly identified themselves, have clearly stated that they are not affiliated with the EDC and have not claimed to be affiliated with the EDC. The remaining allegations of this paragraph allege conclusions of law to which no response is required.

31. Denied. It is specifically denied that Respond Power has failed to adequately train and monitor its agents. On the contrary, it is averred that Respond Power has conducted adequate training and monitoring of its agents. The remaining allegations of this paragraph allege conclusions of law to which no response is required. The provisions of Sections 111.4 and 111.5 of the Commission's regulations, 52 Pa. Code §§ 111.4 and 111.5, speak for themselves.

COUNT II – MISLEADING AND DECEPTIVE PROMISES OF SAVINGS

32. Responses provided in Paragraphs 1 through 31 are incorporated herein by reference.

33. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made in consumer complaints received by the AG, and demands proof thereof, if relevant, at hearing.

34. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made by consumers in complaints received by the AG, and demands proof thereof, if relevant, at hearing.

35. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made by consumers in written correspondence received by OCA and demands proof thereof, if relevant, at hearing.

36. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations in the formal complaints filed with the Commission and reviewed by OCA, and demands proof thereof, if relevant, at hearing. It is specifically denied that Respond Power's salespeople promised guaranteed savings over the price to compare ("PTC") as inducement for consumers to switch to Respond Power. On the contrary, it is averred that Respond Power offers training and provides scripts to salespeople to explain that savings cannot be guaranteed. It is further averred that Respond Power's Commission-approved Disclosure Statement expressly states that while Respond Power's goal is to deliver power at a price that is lower than the EDC's PTC, Respond Power cannot guarantee such savings due to market fluctuations and conditions. Jt. Compl., Appendix B. By way of further response, as to formal complaints settled with those complainants, Respond Power is relieved of any responsibility for the specific matters complained of, as provided in Code Section 703(a), 66 Pa.C.S. § 703(a).

37. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of Section 54.43(f) of the Commission's regulations, 52 Pa. Code § 54.43(f), speak for themselves.

38. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of Section 54.43(f) and Section 111.12(d)(1) of the Commission's regulations, 52 Pa. Code § 54.43(f) and 111.12(d)(1), speak for themselves.

39. The allegations in this paragraph are conclusions of law to which no response is required. The cited provisions of the Consumer Protection Law speak for themselves.

40. Denied. It is specifically denied that Respond Power's employees, agents and/or representatives have engaged in or continue to engage in activities that are fraudulent or deceptive. It is specifically denied that Respond Power's salespeople promised savings. On the contrary, Respond Power offers training and provides scripts to salespeople to explain that savings cannot be guaranteed. It is further averred that Respond Power's Commission-approved Disclosure Statement expressly states that while Respond Power's goal is to deliver power at a price that is lower than the EDC's PTC, Respond Power cannot guarantee such savings due to market fluctuations and conditions.¹ Jt. Compl., Appendix B. The remaining allegations of this paragraph allege conclusions of law to which no response is required.

41. Denied. It is specifically denied that Respond Power has failed to adequately train and monitor its agents. On the contrary, it is averred that Respond Power has conducted adequate training and monitoring of its agents. The remaining allegations of this paragraph allege conclusions of law to which no response is required. The provisions of Sections 111.4 and 111.5 of the Commission's regulations, 52 Pa. Code §§ 111.4 and 111.5, speak for themselves.

COUNT III – FAILING TO DISCLOSE MATERIAL TERMS

42. Responses provided in Paragraphs 1 through 41 are incorporated herein by reference.

¹ See Respond Power Answer to Joint Complaint ¶ 43 and Exhibit A attached to Respond Power Answer.

43. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations in the formal complaints filed with the Commission and reviewed by OCA, and demands proof thereof, if relevant, at hearing. It is specifically denied that Respond Power supplied consumers with documents that did not state whether the price was fixed or variable. On the contrary, it is averred that Respond Power provided a Commission-approved Disclosure Statement indicating that the customer would be on a variable rate plan. Jt. Compl., Appendix B. Attached to this Answer as Exhibit A is a copy of the Disclosure Statement submitted with Respond Power's application on February 2, 2010, which was approved by the Commission's Licensing Order.² A review of that Disclosure Statement shows that the variable pricing information is identical to the language contained in Appendix B attached to the Joint Complaint. By way of further response, as to formal complaints settled with those complainants, Respond Power is relieved of any responsibility for the specific matters complained of, as provided in Code Section 703(a), 66 Pa.C.S. § 703(a).

44. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made by consumers in complaints received by the AG, and demands proof thereof, if relevant, at hearing.

45. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about whether customers believed they were on a fixed rate plan, and demands proof thereof, if relevant, at hearing.

² Respond Power's application is not available for review on the Commission's website because it was unpublished in 2012 due to the fact that it contained confidential information. Respond Power requested and received a copy of the complete application from the Commission's Secretary. The proposed Disclosure Statement submitted with the application, which is included in Exhibit A, was provided by the Secretary. A review of the docket entries shows that other items about the application were revised during the licensing approval process, but no changes were made to the Disclosure Statement. See e.g. <http://www.puc.pa.gov/pcdocs/1083210.pdf>.

46. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of Sections 54.5(b) and 111.11 of the Commission's regulations, 52 Pa. Code §§ 54.5(b) and 111.11, speak for themselves.

47. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of Section 111.12(d)(4) of the Commission's regulations, 52 Pa. Code § 111.12(d)(4), speak for themselves.

48. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of Section 54.4(a) of the Commission's regulations, 52 Pa. Code § 54.4(a), speak for themselves.

49. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of Section 54.5(c)(2) of the Commission's regulations, 52 Pa. Code § 54.5(c)(2), speak for themselves. It is specifically denied that the disclosure statement must include limits on price variability. On the contrary, it is averred that the regulations require the inclusion of such limits, *if applicable*. 52 Pa. Code § 54.5(c). Even in enhancing the requirements applicable to disclosure statements with respect to variable prices, specifically in response to the Polar Vortex of 2014, the Commission refrained from requiring limits on price variability. *See Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5*, Docket No. L-2014-2409385 (Order adopted April 3, 2014).

50. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of Section 54.7(a) of the Commission's regulations, 52 Pa. Code § 54.7(a), speak for themselves.

51. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of the Consumer Protection Law speak for themselves.

52. The allegations in this paragraph are conclusions of law to which no response is required.

53. Denied. It is specifically denied that Respond Power has failed to adequately train and monitor its agents. On the contrary, it is averred that Respond Power has conducted adequate training and monitoring of its agents. The remaining allegations of this paragraph allege conclusions of law to which no response is required. The provisions of Sections 111.4 and 111.5 of the Commission's regulations, 52 Pa. Code §§ 111.4 and 111.5, speak for themselves.

COUNT IV – DECEPTIVE AND MISLEADING WELCOME LETTER AND INSERTS

54. Responses provided in Paragraphs 1 through 53 are incorporated herein by reference.

55. Admitted in part and denied in part. It is denied that Respond Power uses the Welcome Letters and Inserts attached to the Joint Complaint as Appendix A. It is admitted that a vendor for Respond Power used the referenced Welcome Letters and Inserts at the point of sale over a few-month period more than two years ago. It is averred that upon learning of the Welcome Letters and Inserts, Respond Power immediately pulled them back and prohibited their continued distribution.

56. The allegations in this paragraph are conclusions of law to which no response is required. It is further averred that the provisions Consumer Protection Law speak for themselves. By way of further answer, Respond Power avers that the Commission does not have jurisdiction to enforce the Consumer Protection Law. *See Pettko, supra; MAPSA, supra; Bell, supra; MacLuckie, supra.*

57. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of the Consumer Protection Law cited in this paragraph speak for themselves.

58. The allegations in this paragraph are conclusions of law to which no response is required.

59. The allegations in this paragraph are conclusions of law to which no response is required.

60. The allegations in this paragraph are conclusions of law to which no response is required.

COUNT V – SLAMMING

61. Responses provided in Paragraphs 1 through 60 are incorporated herein by reference.

62. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made by consumers in complaints received by the AG, and demands proof thereof, if relevant, at hearing.

63. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made by consumers in written correspondence received by OCA and demands proof thereof, if relevant, at hearing.

64. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations in the formal complaints filed with the Commission and reviewed by OCA, and demands proof thereof, if relevant, at hearing. It is specifically denied that Respond Power switched customers without their consent. On the contrary, it is averred that Respond Power enrolled only customers who consented to switch,

which was confirmed by a review of a third party verification recording. It is further averred that consumers often make these types of allegations, which are later unsubstantiated because of a discovery that another member of the household authorized the switch. By way of further response, as to formal complaints settled with those complainants, Respond Power is relieved of any responsibility for the specific matters complained of, as provided in Code Section 703(a), 66 Pa.C.S. § 703(a).

65. The allegations of this paragraph are conclusions of law to which no response is required. The provisions of Code Section 2807(d)(1), 66 Pa. C.S. § 2807(d)(1) and the provisions of Section 54.42(a)(9) of the Commission's regulations, 52 Pa. Code § 54.42(a)(9), speak for themselves.

66. The allegations of this paragraph are conclusions of law to which no response is required.

COUNT VI – LACK OF GOOD FAITH HANDLING OF COMPLAINTS

67. Responses provided in Paragraphs 1 through 66 are incorporated herein by reference.

68. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made by consumers in written correspondence received by OCA and demands proof thereof, if relevant, at hearing.

69. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made by consumers in written correspondence received by OCA and demands proof thereof, if relevant, at hearing.

70. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations in the formal complaints filed with

the Commission and reviewed by OCA, and demands proof thereof, if relevant, at hearing. It is specifically denied that Respond Power violated any Commission regulations or that Respond Power displayed a lack of good faith in handling consumer calls. On the contrary, it is averred that the Commission imposes no standards on EGSs addressing the timeliness of responding to calls. It is further averred that during the time in question, Respond Power received an unprecedented number of calls, mirroring situations faced by other entities during the Polar Vortex crisis, which was well-documented in the media and recognized by the Commission in the *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134, Order adopted on February 20, 2014 (“*Variable Price Order*”). By way of further response, as to formal complaints settled with those complainants, Respond Power is relieved of any responsibility for the specific matters complained of, as provided in Code Section 703(a), 66 Pa.C.S. § 703(a).

71. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made by consumers in complaints received by the AG, and demands proof thereof, if relevant, at hearing.

72. The allegations of this paragraph are conclusions of law to which no response is required. The provisions of Section 56.1 of the Commission’s regulations, 52 Pa. Code § 56.1(a), speak for themselves.

73. The allegations of this paragraph are conclusions of law to which no response is required. The provisions of Sections 56.14(a), 56.151 and 56.152 of the Commission’s regulations, 52 Pa. Code §§ 56.14(a), 56.151 and 56.152, speak for themselves.

74. The allegations of this paragraph are conclusions of law to which no response is required.

COUNT VII – FAILING TO PROVIDE ACCURATE PRICING INFORMATION

75. Responses provided in Paragraphs 1 through 74 are incorporated herein by reference.

76. Admitted. It is averred that this Disclosure Statement was approved by the Commission during the licensing process.

77. The allegations of this paragraph are conclusions of law to which no response is required. The provisions in Section 54.5(c) of the Commission's regulations, 52 Pa. Code § 54.5(c), speak for themselves. It is specifically denied that the Commission regulations require disclosure statements to include limits on price variability. On the contrary, it is averred that the regulations require the inclusion of such limits, *if applicable*. 52 Pa. Code § 54.5(c).

78. The allegations of this paragraph are conclusions of law to which no response is required.

79. The allegations of this paragraph are conclusions of law to which no response is required. The provisions in Section 54.43(1) of the Commission's regulations, 52 Pa. Code § 54.43(1), speak for themselves.

80. The allegations of this paragraph are conclusions of law to which no response is required. The provisions in Section 54.43(1) of the Commission's regulations, 52 Pa. Code § 54.43(1), speak for themselves.

81. The allegations of this paragraph are conclusions of law to which no response is required. The provisions in Sections 54.43(f) and 111.12(d)(1) of the Commission's regulations, 52 Pa. Code §§ 54.43(1) and 111.12(d)(1), speak for themselves.

82. The allegations of this paragraph are conclusions of law to which no response is required.

83. The allegations of this paragraph are conclusions of law to which no response is required.

84. Admitted in part and denied in part. It is admitted that the initial price was not disclosed in the Commission-approved Disclosure Statement. It is specifically denied that the omission of this information is a violation of the Commission's regulations. On the contrary, it is averred that the Commission-approved Disclosure Statement provided that customers could contact Respond Power for the current variable rate and that such an offer is consistent with the nature of a variable price that is based upon market conditions. It is further specifically denied that the Commission-approved Disclosure Statement failed to explain how the price would be calculated by Respond Power. On the contrary, it is averred that the Commission-approved Disclosure Statement explained that the price would be set by Respond Power on the basis of the PJM Day-Ahead Market, Installed capacity, transmission losses, estimated state taxes, any other costs incurred by Respond Power to deliver the electricity to the EDC's transmission system and a profit margin. Jt. Compl., Appendix B.

85. The allegations of this paragraph are conclusions of law to which no response is required.

COUNT VIII – PRICES NONCONFORMING TO DISCLOSURE STATEMENT

86. Responses provided in Paragraphs 1 through 85 are incorporated herein by reference.

87. Admitted.

88. Denied. It is specifically denied that Respond Power's prices did not reflect its costs to serve residential customers. On the contrary, it is averred that Respond Power's prices varied on the bases of day-ahead market conditions and other factors set forth in the Disclosure

Statement. It is further averred that the Commission does not regulate EGS prices. See *Delmarva Power & Light Co. v. Pa. Pub. Util. Comm'n*, 870 A.2d 901 (Pa. 2005) (*Delmarva*); *Tustin v. Respond Power LLC*, Docket No. 2014-2417552 (Order dated June 27, 2014); *Russell v. Respond Power LLC*, Docket No. C-2014-2417551 (Order dated July 3, 2014); *Yaglidereliler Corporation v. Blue Pilot Energy, LLC*, Docket No. C-2014-2413732 (Initial Decision dated June 18, 2014). It is also further averred that the Commission has no rules in place to require EGSs to base their prices on cost of service, which is a ratemaking principle applicable to regulated utility rates. See *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010, 2006 Pa. Commw. LEXIS 438 (2006).

89. Denied. It is specifically denied that the cost to serve the average residential heating customer in January 2014 should not have exceeded approximately \$0.23 per kWh. On the contrary, it is averred that the estimate developed by Dr. Steven L. Estomin and attached to the Joint Complaint as Appendix C is irrelevant to the costs incurred by Respond Power to serve its residential heating customers. It is further averred that the assumptions relied upon by Dr. Estomin in preparing these estimates have no bearing to the actual costs incurred by Respond Power and are immaterial in the setting of prices by Respond Power

90. Denied. It is specifically denied that Respond Power's prices did not conform to the variable rate pricing provision in the Disclosure Statement. On the contrary, it is averred Respond Power set its prices on the bases of the various factors set forth in the Disclosure Statement, including wholesale market prices which were over ten times the prices that Respond Power typically paid for power to serve its retail customers.

**COUNT IX – FAILURE TO COMPLY WITH THE TELEMARKETER
REGISTRATION ACT**

91. Responses provided in Paragraphs 1 through 90 are incorporated herein by reference.

92. Denied. Upon reasonable investigation, Respond Power is without information or knowledge sufficient to form a belief about the allegations made by consumers in complaints received by the AG, and demands proof thereof, if relevant, at hearing.

93. The allegations of this paragraph are conclusions of law to which no response is required. The provisions in Section 111.10(a)(1) of Commission’s regulations, 52 Pa. Code § 111.10(a)(1), speak for themselves. It is averred that the Commission does not have jurisdiction to enforce the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* See *In re Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332 (October 24, 2102) (“*Marketing Order*”).

94. The allegations of this paragraph are conclusions of law to which no response is required. The provisions of the Telemarketer Registration Act cited in this paragraph speak for themselves.

95. The allegations of this paragraph are conclusions of law to which no response is required. The provisions of the Telemarketer Registration Act cited in this paragraph speak for themselves. It is averred that Section 2245(c) of the Telemarketer Registration Act is not applicable to Respond Power due to Section 2245(d), which expressly exempts contractual sales regulated by other laws of the Commonwealth.

96. The allegations of this paragraph are conclusions of law to which no response is required.

97. The allegations of this paragraph are conclusions of law to which no response is required.

98. The allegations of this paragraph are conclusions of law to which no response is required. The provisions in Section 54.43(f) and 111.12(d)(1) of the Commission's regulations, 52 Pa. Code §§ 54.43(f) and 111.12(d)(1), speak for themselves. It is averred that the Commission does not have jurisdiction to enforce the Telemarketer Registration Act or Consumer Protection Law. *Marketing Order, supra*.

99. The allegations of this paragraph are conclusions of law to which no response is required.

RELIEF

100. Responses provided in Paragraphs 1 through 99 are incorporated herein by reference.

101. The allegations of this paragraph are conclusions of law to which no response is required.

102. The allegations of this paragraph are conclusions of law to which no response is required.

103. Denied. It is specifically denied that Respond Power has violated or continues to violate the Code, Commission regulations and orders, the Consumer Protection Law, the Telemarketer Registration Act and the *Licensing Order*. On the contrary, it is averred that Respond Power's sales and marketing practices and variable rate offerings comply with the applicable laws. It is further averred that the Joint Complainants are not entitled to any of the relief sought in their Joint Complaint or any other relief.

NEW MATTER

104. The foregoing paragraphs are incorporated by reference.

105. The Joint Complaint completely ignores the market conditions starting in January 2014 that precipitated the variable price increases to which many customers were exposed, resulting in a spike in the volume of informal and formal complaints filed by consumers with the Commission. *See Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134, Order adopted on February 20, 2014 (*February 20 Variable Rate Order*). (Commission recognized the extreme conditions that occurred during the Polar Vortex, cited the significant price spikes in the wholesale market, noted that customers on variable price contracts may experience very high bills during periods of market volatility and reported on volume of complaints that had been filed).

106. Since receiving its EGS license in 2010, Respond Power has supplied electric generation services under variable rate plans to tens of thousands of residential, small commercial and large commercial customers throughout Pennsylvania.

107. Prior to January 2014, no customers had filed formal complaints against Respond Power concerning variable rate contracts. From the time Respond Power received its license in 2010 until January 2014, only two customers have filed formal complaints with the Commission against Respond Power and both were quickly resolved through settlement agreements.³

108. When the Polar Vortex crisis occurred and Respond Power experienced costs, at various times during the winter months, of more than ten times its typical costs to serve its retail

³ The complaints are docketed at Docket No. F-2012-2291997 (unauthorized switching) and Docket No. F-2014-2399569 (incorrect charges on the bill and misrepresentation as EDC).

customers, Respond Power made the business decision to adjust variable prices consistent with the terms and conditions of its Commission-approved disclosure statement.

109. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2D 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlt. 1992), alloc. Denied, 637 A.2d 293 (Pa. 1993).

110. Respond Power, as an EGS, is not a public utility subject to Commission regulation, except in limited circumstances. *Delmarva Power & Light Co. v. Pa. Pub. Util. Comm'n*, 870 A.2d 901 (Pa. 2005) (*Delmarva*). In *Delmarva*, the Pennsylvania Supreme Court held that the definition of “public utility” at Code Section 102, 66 Pa.C.S. § 102, does not include EGSs except for the limited purposes set forth in Code Section 2809, 66 Pa.C.S. § 2809, regarding licensing requirements, and Code Section 2810, 66 Pa.C.S. § 2810, regarding revenue neutral reconciliation. The Pennsylvania Supreme Court further noted that the Commission could forbear from regulating EGSs, pursuant to Code Section 2809(e), 66 Pa. C.S. § 2809(e), if it determined that the requirements of Code Section 2809, 66 Pa.C.S. § 2809, were unnecessary due to competition among EGSs.

111. Under Code Section 2806(a), 66 Pa.C.S. § 2806(a), the Commission does not regulate generation service. Further, the Commission has recognized that the rates consumers

pay in the retail electric market are governed by the terms of their contract with their supplier. *See February 20 Variable Rate Order*. In addition, the Commission has concluded that it has no statutory authority to limit the prices charged by EGSs. *Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (Order adopted March 6, 2014). In fact, the Commission's regulations require bills of customers purchasing electric generation services from EGSs to include a statement noting that generation prices and charges are set by the EGS chosen by the consumer. 52 Pa. Code §54.5(b)(10).

112. The Commission lacks subject matter jurisdiction over EGS prices and has no authority to order the issuance of a refund. More specifically, the Commission has no jurisdiction over the issue of whether an EGS is charging an unreasonable, unjust or illegal rate for electric generation service. *Tustin v. Respond Power LLC*, Docket No. 2014-2417552 (Order dated June 27, 2014). *See also Russell v. Respond Power LLC*, Docket No. C-2014-2417551 (Order dated July 3, 2014); *MacLuckie v. Palmco Energy PA, LLC*, Docket No. C-2014-2402558 (Initial Decision dated June 16, 2014); and *Yaglidereliler Corporation v. Blue Pilot Energy, LLC*, Docket No. C-2014-2413732 (Initial Decision dated June 18, 2014).

113. The Commission's jurisdiction over prices charged by EGSs is limited to ensuring that the prices billed "reflect the marketed prices and the agreed upon prices in the disclosure statement." 52 Pa. Code § 54.4(a). Similarly, the Commission's regulations mandate that advertised prices "reflect prices in disclosure statements and billed prices." 52 Pa. Code § 54.7. *See Ruhl v. Dominion Retail, Inc.* Docket No. C-2008-2061229, 2009 Pa. PUC LEXIS 122, Initial Decision issued on March 30, 2009, Final Order adopted on September 24, 2009; *Grmusca v. Dominion Retail, Inc.*, Docket No. C-2009-2124359, Order adopted March 25, 2010.

(Commission's jurisdiction is limited to whether EGSs advertised prices match billed prices and whether billed prices reflect marketed prices)

114. The Code does not authorize the Commission to direct issuance of a refund to a customer who has entered into a private contract with an EGS. The Commission's jurisdiction over EGSs is restricted to the activities set forth in Code Section 2809(e), 66 Pa.C.S. § 2809, which do not include the issuance of refunds. *See Ruhl, supra; Dominion Power & Light Co. v. Com. Of PA, and Pa. Publ. Util. Comm'n, PPL EnergyPlus, LLC v. Com. Of PA*, 870 A.2d 901 (Pa. 2005). Furthermore, "[a] private contract is beyond the pale of this Commission to review." *David B. Lytle v. T.W. Phillips Gas & Oil Company*, 2002 Pa. PUC LEXIS 44.

115. The Commission has no jurisdiction to enforce the provisions of the Consumer Protection Law and cannot find that an entity has violated the Consumer Protection Law. *See Mid-Atlantic Power Supply Assoc. v. PECO Energy Co.*, Docket No. P-00981615, 1999 Pa. PUC LEXIS 30 (Order entered May 19, 1999); *Pa. Pub. Util. Comm'n., et al. v. The Bell Telephone Co. of Pa.*, 71 Pa. PUC 338, 341 (1989); *MacLuckie v. Palmco Energy PA, LLC*, Docket No. C-2014-2402558 (Initial Decision dated June 16, 2014) *See also Pettko v. Pennsylvania American Water Company*, 39 A.3d 473 (2012).

116. Likewise, the Commission has no jurisdiction to enforce the provisions of the Telemarketer Registration Act. *See In re Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332 (October 24, 2102). Moreover, the Telemarketer Registration Act contains a specific provision exempting contractual sales that are regulated under other laws of the Commonwealth. 73 P.S. § 2245(d). As the disclosure of contractual terms and conditions by EGSs is regulated by the Commission, provisions in the Telemarketer Registration Act governing contractual sales are inapplicable to Respond Power.

117. Neither the AG nor the OCA may represent individual consumers in matters before the Commission or seek restitution on their behalf.

118. Complaints that were filed with the Commission and satisfied by Respond Power may not be re-litigated in this proceeding. 66 Pa. C.S. § 703(a).

WHEREFORE, Respond Power LLC hereby requests that the Joint Complaint be dismissed with prejudice, and that the Commission grant Respond Power such other relief as is just and reasonable under the circumstances.

Respectfully submitted,



Dated: July 10, 2014

Karen O. Moury
Buchanan Ingersoll & Rooney PC
409 North Second Street
Suite 500
Harrisburg, PA 17101
(717) 237-4820

Attorneys for Respond Power LLC

Exhibit A

Attachment A
Appendix B
Disclosure Statement of
Respond Power LLC

This is an agreement for natural gas services, between Respond Power, LLC ("Respond Power") and _____.

Background

We at Respond Power are licensed by the Pennsylvania Public Utility Commission to offer and supply electricity in Pennsylvania. Our PUC license number is A-125XXX. (This is pending – will be inserted)

- We set the commodity prices and charges that you pay. The Public Utility Commission regulates distribution prices and services.
- Right of Recision - You may cancel this agreement at any time before midnight of the third business day after receiving this disclosure by contacting ^{Respond} ~~Major~~ at 1.877.625.6760 or in writing.

Definitions

Basic Charges

- Commodity Charges - The charges for the electricity which is sold which will be billed in Kilowatt Hours (kWh).
- Generation Charge – Charge for production of electricity.
- Transmission Charge – Charge for moving high voltage electricity from a generation facility to the distribution lines of an electric distribution company.

Terms of Service

1. Basic Service Prices

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

Fixed Rate. This is a rate that does not change over a fixed period of time. Respond Power offers various lengths of time for Fixed Rates. Typically, most terms are either for 6, 12 or 18 months Respond Power will bill you a unit price using the same units as your current Electric Distribution Company (kWh). The Fixed Rate includes estimated total state taxes but excludes Pennsylvania sales tax, if applicable.

2. Length of Agreement

You will buy your electricity for the above street address from Respond Power beginning on a date set by your electric distribution company and will continue for 12 months (unless stated otherwise on a Fixed Price deal).

Attachment A
Appendix B

3. Penalties, Fees and Exceptions

If your agreement is for a Fixed Rate, you may not cancel during the duration of the Fixed Rate agreement. If customer cancels Fixed Rate agreement during the Fixed Rate term, then Respond Power will assess a penalty of 2¢ per kWh multiplied by the amount of kWh remaining for the duration under the Fixed Rate agreement.

4. Cancellation Provisions

If Customer cancels this agreement, then Customer is liable for all Respond Power electric charges until Customer returns to the Local Utility Company or goes to another supplier. There are no cancellation fees for Variable Rate customers.

If Customer's electric service is terminated by the local utility company for reasons of non-payment or for any other reason, this will automatically void the contract between Customer and Respond Power, and Respond Power will also cancel the contract. In this event, if customer was being served by Respond Power under a Fixed Rate plan, customer will still be liable for the Fixed Rate penalty as explained above in Number 3.

If, due to significant changes in the structure of the deregulated Pennsylvania electric market or for any other reason relevant to Respond Power's ability to supply electricity in Pennsylvania, it becomes no longer feasible or practical for Respond Power to supply electricity in Pennsylvania and must leave the market as an electric supplier, then Respond Power will notify you of this fact in writing and will advise you of your available choices. No penalty under Number 3 above will be assessed in this event.

If customer moves from one location to another, even if the move is within your current local utility company's service territory, this agreement is cancelled and there are no penalties or early cancellation fees.

5. Agreement Expiration/Change in Terms

If you have a fixed term agreement with us and it is approaching the expiration date or if we propose to change our terms of service, we will send you written notice or contact you by telephone before either the expiration date or the effective date of the changes.

6. Dispute Procedures

Contact us with any questions concerning our terms of service. You may call the PUC if you are not satisfied after discussing your terms with us.

7. Contact Information

Respond Power, LLC

16 Squadron Blvd

New City, NY 10956

1-888-MAJOR-60

www.majorenergy.com

Distribution Company Name: WILL FILL IN

Provider of Last Resort Name: WILL FILL IN

Address:

Attachment A
Appendix B

Phone Number

Public Utility Commission (PUC)

Address: P.O. Box 3265 Harrisburg, PA 17105-3265

Natural Gas Competition Hotline Number: 1-800-692-7380

Universal Service Program Name:

Phone Number:

(Note: You must contact the Electric Distribution Company to get the Universal Service Program information).

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**COMMONWEALTH OF
PENNSYLVANIA, ET AL.,**

v.

RESPOND POWER, LLC,

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DOCKET NO. C-2014-2427659

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 First-Class Mail

John M. Abel
Nicole R. Beck
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120

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

Dated this 10th day of July, 2014.



Karen O. Moury, Esq.