**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, *et al.* :

:

v. : C-2014-2427659

:

Respond Power LLC :

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement : C-2014-2438640

:

v. :

:

Respond Power LLC :

**ORDER**

**GRANTING UNOPPOSED MOTION TO REOPEN THE RECORD**

On October 15, 2015, the final evidentiary hearings were concluded in the above-captioned consolidated proceedings involving a formal complaint filed jointly by the Commonwealth of Pennsylvania, Office of Attorney, and the Acting Consumer Advocate (“Joint Complainants”) against Respond Power LLC (Respond) and a formal complaint filed by the Public Utility Commission’s Bureau of Investigation and Enforcement (I&E) against Respond. A Briefing Order dated October 28, 2015 was issued memorializing the procedure for the submission of parties’ main briefs on December 3, 2015 and reply briefs on December 23, 2015 and setting forth various requirements for those briefs. Pursuant to the Briefing Order, the Joint Complainants, Respond and I&E each submitted main briefs and the Joint Complainants and Respond both submitted reply briefs. On February 5, 2016, an Interim Order Granting Motion to Strike and Closing the Hearing Record was issued striking a letter submitted by the Joint Complainants on January 11, 2016 and officially closing the record for decision writing.

On March 28, 2016, Respond filed an Unopposed Motion to Reopen the Record (Motion) for the purpose of permitting the parties to file a Global Settlement which would fully resolve all issues. In support of its Motion, Respond noted that Section 5.571(a) of the Commission’s regulations permits a party to file a petition seeking to reopen a proceeding at any time after the record is closed but before a final decision is issued. 52 Pa.Code § 5.571(a). Respond further noted that Section 5.571(d)(1) permits the presiding officer to reopen the record if the presiding officer has not issued a decision or has not certified the record to the Commission. 52 Pa.Code § 5.571(d)(1). Respond noted the Commission policy to promote settlement and that the results of a negotiated settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See*, 52 Pa. Code §§ 5.231, 69.401.

Respond added that, as of March 28, 2016, all parties have reached a Global Settlement in principle that would fully resolve all issues raised by the I&E complaint and the Joint Complainants’ complaint and that reopening the record to permit the parties to file a Global Settlement would allow for the opportunity to resolve this consolidated proceeding in a manner that provides certainty, is consistent with the public interest and will promptly deliver the benefits of the Global Settlement to consumers. Respond indicated that when filed, the Global Settlement would fully replace and supplant the prior non-unanimous settlement between the Bureau of Investigation and Enforcement and Respond. The Global Settlement would be filed with Supporting Statements and a Stipulation of Facts on or before April 22, 2016 and that the Motion is unopposed.

Respond also avers that the Global Settlement will address refunds to all of Respond’s customers on a variable rate plan in January – March, 2014 based upon their usage, price charged and refunds already received; the payment of a civil penalty; contributions to electric distribution companies’ hardship funds; a two-year moratorium on variable price plan marketing; and extensive modifications to Respond’s sales, marketing and business practices, including broad modifications to door-to-door sales training and compliance monitoring programs.

Respond’s Motion will be granted.

To begin, Section 5.571 of the Commission’s regulations provides:

**§ 5.571. Reopening prior to a final decision.**

1. At any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence.
2. A petition to reopen must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.
3. Within 10 days following the service of the petition, another party may file an answer thereto.
4. The record may be reopened upon notification to the parties in a proceeding for the reception of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.
5. The presiding officer may reopen the record if the presiding officer has not issued a decision or has not certified the record to the Commission.
6. The Commission may reopen the record after the presiding officer has issued a decision or certified the record to the Commission.

52 Pa.Code § 5.571; *see also*, Pa. P.U.C., *et al*. v. Pennsylvania Power Company, 63 Pa. PUC 317 (1987).

In addition, Commission policy promotes settlement. 52 Pa.Code § 5.231(a). The Commission’s regulations provide: “Nothing contained in this chapter or Chapter 1 or 3 (relating to rules of administrative practice and procedure; and special provisions) preclude a party in a proceeding from submitting, at any time, offers of settlement or proposals of adjustment, or from requesting conferences for that purpose.” 52 Pa.Code § 5.231(b). Similarly, Section 69.401 of the Commission’s regulations, pertaining to settlement of major rate cases, provides: “In the Commission’s judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.” 52 Pa. Code § 69.401.

Respond has demonstrated in its Motion that there are reasons to believe that conditions of fact or law have “so changed as to require, or that the public interest requires, the reopening of the proceeding,” as is required by Section 5.571. Although this proceeding has been fully litigated and there is no request to open the record for the receipt of new factual evidence, we recognize that since briefs were filed in December, 2015, the Commission has issued some final decisions regarding other complaints against not only Respond Power, but other electric generation suppliers as well, which provide the parties with guidance and may impact the outcome of this case. As this motion is unopposed, the record will be reopened for consideration of a full settlement petition.

The parties will have until April 22, 2016 to submit the Global Settlement resolving all contested issues. We remind the parties that Statements in Support of the settlement, proposed Findings of Fact, proposed Conclusions of Law and proposed Ordering Paragraphs should be included with the submission. Additionally, we continue to encourage the parties to reduce or eliminate the use of any proprietary material in its submission given the public importance of this proceeding. We reserve the right to call a conference after the global settlement is filed to clarify any questions we may have with the parties. If we have no questions, we will close the record after the petition is filed for decision writing.

As a result, Respond’s Unopposed Motion to Reopen the Record will be granted.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Unopposed Motion to Reopen the Record submitted by Respond Power, LLC on March 28, 2016 in the above-captioned consolidated dockets is hereby granted.
2. That the parties shall have until April 22, 2016 to submit a Global Settlement resolving all issues amongst all the parties in this consolidated proceeding with Statements in Support of the settlement, proposed Findings of Fact, proposed Conclusions of Law and proposed Ordering Paragraphs attached.
3. That the parties are reminded to reduce or eliminate the use of any proprietary material given the public importance of this proceeding.

Date: April 1, 2016

Elizabeth Barnes

Administrative Law Judge

Joel H. Cheskis

Administrative Law Judge

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

***REVISED 2/5/16***

JOHN M ABEL ESQUIRE

NICOLE R BECK ESQUIRE

PA OFFICE OF ATTORNEY GENERAL

BUREAU OF CONSUMER PROTECTION

15TH FL STRAWBERRY SQUARE

HARRISBURG PA 17120

CANDIS A TUNILO ESQUIRE

\*\*CHRISTY APPLEBY ESQUIRE\*

KRISTINE E ROBINSON ESQUIRE

OFFICE OF CONSUMER ADVOCATE

5TH FLOOR FORUM PLACE

555 WALNUT STREET

HARRISBURG PA 17101-1923

\*\****Accepts eService***

SHARON WEBB ESQUIRE

OFFICE OF SMALL BUSINESS ADVOCATE

SUITE 202

300 NORTH SECOND STREET

HARRISBURG PA 17101

ADAM YOUNG ESQUIRE

MICHAEL L SWINDLER ESQUIRE

PA PUC BUREAU OF I&E

PO BOX 3265

HARRISBURG PA 17105-3265

***Accepts eService***

KAREN MOURY ESQUIRE

JOHN F POVILAITIS ESQUIRE

BUCHANAN INGERSOLL ROONEY PC

409 NORTH SECOND STREET

SUITE 500

HARRISBURG PA 17101

***Accepts eService***

DAVID P ZAMBITO ESQUIRE

D TROY SELLARS ESQUIRE

COZEN O'CONNOR

17 NORTH 2ND STREET SUITE 1410

HARRISBURG, PA 17101

***Accepts e-Service***