

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, <i>et al.</i>	:	
	:	
v.	:	C-2014-2427659
	:	
Respond Power LLC	:	
Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	C-2014-2438640
	:	
v.	:	
	:	
Respond Power LLC	:	

**INITIAL DECISION**

Before  
Elizabeth H. Barnes  
Administrative Law Judge

Joel H. Cheskis  
Administrative Law Judge

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. HISTORY OF THE PROCEEDING ..... 1

III. FINDINGS OF FACT ..... 12

IV. DISCUSSION ..... 16

    A. Legal Standard..... 16

    B. Terms of Settlement ..... 19

    C. Public Interest ..... 37

        1. Position of the parties..... 37

            a. Joint Complainants ..... 37

            b. I&E..... 39

            c. Respond ..... 40

            d. OSBA..... 41

    D. Disposition..... 41

        a. Refund Pool ..... 42

        b. Penalty and Contribution..... 48

        c. Business modifications ..... 51

    E. Application of the Rosi factors..... 54

        a. First Rosi factor – whether the conduct was of a serious nature..... 54

        b. Second Rosi factor - whether the resulting consequences were of a serious nature ..... 55

        c. Third Rosi factor – whether the conduct was intentional or negligent ..... 57

        d. Fourth Rosi factor – efforts to modify internal practices and procedures..... 57

        e. Fifth Rosi factor – Number of customers affected and duration of violation ..... 58

        f. Sixth Rosi factor – compliance history ..... 59

        g. Seventh Rosi factor – cooperation with the Commission investigation ..... 61

	h.	Eighth Rosi factor – amount of penalty necessary to deter future violations.....	62
	i.	Ninth Rosi factor – past Commission decisions in similar cases.....	63
	j.	Tenth Rosi factor – other relevant factors .....	64
V.		CONCLUSION.....	65
VI.		CONCLUSIONS OF LAW .....	66
VI.		ORDER .....	69

## I. INTRODUCTION

This Decision approves a Joint Petition for Approval of Settlement (Settlement) filed on April 22, 2016 resolving a formal complaint filed by the Commonwealth of Pennsylvania and the Office of Consumer Advocate against Respond Power LLC (Respond) as well as a formal complaint filed by the Bureau of Investigation and Enforcement against Respond Power LLC. The complaints averred that Respond, among other things, engaged in misleading and deceptive practices, switched customers without their consent and failed to provide accurate pricing information. The Settlement requires Respond to 1) pay \$4,122,224.91 in refunds in addition to \$971,279.45 already provided by the Company, 2) pay \$125,000 in a civil penalty, 3) contribute \$50,000 to electric distribution companies' hardship funds and 4) make numerous modifications to its business practices. The Settlement is adopted in its entirety because it is in the public interest and supported by substantial evidence.

## II. HISTORY OF THE PROCEEDING

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

On July 10, 2014, Respond filed an Answer and New Matter in response to the Complaint. In its Answer, Respond admitted or denied the various averments made by the Joint Complainants. In particular, Respond specifically denied that multiple violations of Pennsylvania law have occurred and that consumers were misled or deceived as to the price they would pay for electricity. Respond averred that, on the contrary, consumers knowingly entered into agreements with Respond to purchase electric generation service through variable rate plans under which prices would vary month to month on the basis of wholesale market conditions.

In its New Matter, Respond averred, among other things, that the Complaint ignores the market conditions that started in January 2014 that precipitated the variable price increases to which many consumers were exposed resulting in a spike in the volume of informal and formal complaints filed by consumers with the Commission. Respond further noted the polar vortex<sup>1</sup> weather crisis that occurred that increased Respond's costs. Respond averred that various issues raised by the Joint Complainants are beyond the Commission's jurisdiction. Respond requested that the Complaint be dismissed with prejudice.

Also on July 10, 2014, Respond filed Preliminary Objections in response to the Complaint. In its Preliminary Objections, Respond averred that five of the nine counts in the Complaint should be dismissed for lack of Commission jurisdiction, insufficient specificity of a pleading and/or legal insufficiency of a pleading.

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<sup>1</sup> A polar vortex is a system of upper-level winds that circle around one of the poles. In the northern hemisphere, the arctic polar vortex interacts extensively with the polar jet stream and may affect weather patterns at mid-latitudes. When the arctic polar vortex is strong, it acts to contain the coldest air masses in the polar regions favoring periods of milder winter temperatures in northern North America, Europe and Asia. When the winds of the polar vortex weaken, however, or interact with high-amplitude wave patterns in the jet stream, the shape of the vortex may become distorted. The circulation pattern around the pole may become increasingly asymmetrical, elongated and, in more extreme cases, may even split into two or more patterns. When this happens large incursions of arctic air may follow southward pointing lobes of the jet stream into mid-latitudes causing a period of colder than normal winter temperatures. <http://climatechange.cornell.edu/what-is-a-polar-vortex>.

Also on July 10, 2014, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement formally intervening into this proceeding.

On July 21, 2014, the Joint Complainants filed an Answer to Respond's Preliminary Objections. In their Answer, the Joint Complainants asserted that Respond's Preliminary Objections are unsupported and should be overruled. The Joint Complainants argued that it is clear and free from doubt that the Complaint is sufficiently pleaded and seeks that the Commission make determinations pursuant to the Commission's powers and jurisdiction. More specifically, the Joint Complainants averred that the Commission has jurisdiction to hear cases brought pursuant to the Unfair Trade Practices/Consumer Protection Law (UTP/CPL) and the Telemarketer Registration Act (TRA).

On July 30, 2014, the Joint Complainants filed an Answer to Respond's New Matter. In their Answer, the Joint Complainants denied that they have ignored market conditions and noted the affidavit attached to the Complaint regarding the cost to serve the average residential heating customer in the period in question. The Joint Complainants also denied that Respond adjusted its variable prices consistent with the terms and conditions of its Disclosure Statement in early 2014. The Joint Complainants further responded to each of the averments made by Respond in its New Matter.

Also on July 30, 2014, the Commission issued a Prehearing Conference Notice establishing an Initial Prehearing Conference for this matter for Monday, August 25, 2014 at 10:00 a.m. in Hearing Room 1 of the Commonwealth Keystone Building in Harrisburg and assigning us as Presiding Officers.

On August 1, 2014, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Intervention formally intervening in the proceeding.

On August 8, 2014, a Prehearing Conference Order was issued setting forth various procedural rules that would govern the Initial Prehearing Conference set for August 25, 2014.

On August 20, 2014, an Order Granting in Part and Denying in Part Preliminary Objections was issued. In the Order, one Count in the Complaint, regarding Respond's Disclosure Statement, was stricken. Additionally, three other Counts in the Complaint, regarding the UTP/CPL and the TRA were stricken in part. All other Counts raised in the Complaint were allowed to proceed to a hearing.

On August 21, 2014, I&E filed with the Commission a formal Complaint against Respond, Docket Number C-2014-2438640.<sup>2</sup> In its Complaint, I&E averred that it instituted an investigation of Respond centered on allegations of slamming and related unauthorized marketing practices as alleged in a telephone call to the Commission's Bureau of Consumer Services (BCS) on October 24, 2013. I&E further averred that the phone call was from an individual who identified himself as a senior door-to-door sales agent of Respond and that the sales and marketing tactics being used by agents of Respond included the use of false identities and associated identification materials, circumvention of the Commission's sales verification procedures by pretending to be the customer on verification calls and the forging of customer signatures on sales contracts and/or other enrollment materials. Additionally, I&E averred that BCS had received 1,050 informal complaints against Respond between February 1, 2014 and July 31, 2014 regarding various issues, including slamming and false and deceptive practices. I&E's Complaint averred six hundred and thirty nine (639) counts against Respond and sought a civil penalty of \$1,000 for each count for a total civil penalty of \$639,000. I&E also sought refunds for affected customers and the rescission of Respond's authority to operate in Pennsylvania.

On August 25, 2014, an Initial Prehearing Conference was held as scheduled for the proceeding involving the Complaint filed by the Joint Complainants. Various procedural issues were discussed during the Initial Prehearing Conference. Those issues were memorialized by two Procedural Orders dated August 25, 2014 and September 3, 2014, respectively. In particular, Procedural Order #2 established a process for the submission of written direct testimony from

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<sup>2</sup> The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Investigation and Enforcement (I&E) and other bureaus with enforcement responsibilities. 66 Pa. C.S. § 308; 52 Pa. Code §§ 1.8 *et seq.* Pursuant to that delegated authority and Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, I&E filed the instant formal complaint against Respond.

consumer witnesses subject to cross-examination and timely motions on November 10-12, 2014 and a Further Prehearing Conference to be held on November 25, 2014.

On September 2, 2014 and September 3, 2014, the OAG and OCA respectively filed separate Notices of Intervention, formally intervening into the proceeding involving I&E's Complaint against Respond. The OCA also filed a Public Statement.

Also on September 3, 2014, Respond filed a Motion for a Protective Order to govern the proceeding involving the Complaint filed by the Joint Complainants. That Motion was not opposed and was granted via Order dated September 3, 2014.

On September 8, 2014, the Joint Complainants filed a Petition for Interlocutory Review and Answer to Material Questions in response to the Order dated August 20, 2014 Granting in Part and Denying in Part Preliminary Objections filed by Respond. The Joint Complainants specifically sought review of the decision regarding the Commission's jurisdiction to hear claims brought under the UTP/CPL and TRA, as well as whether the Commission has jurisdiction to determine whether the prices charged by an electric generation supplier (EGS) conform to the EGS's Disclosure Statement. On September 18, 2014, the Joint Complainants filed a Brief in support of their Petition. On September 30, 2014, the Commission issued a Secretarial Letter waiving the 30-day period for review pursuant to 52 Pa. Code § 5.303 and extended its deadline for consideration beyond thirty days.

On September 30, 2014, Respond filed an Answer to I&E's Complaint. In its Answer, Respond admitted or denied the various averments made by I&E. In particular, Respond averred that the Commission does not have jurisdiction to enforce the UTP/CPL. Respond further averred that an employee of its third party contractor had recently been terminated for unauthorized switching (i.e., slamming) of a customer and that its third party contractors are required to implement a "zero tolerance" policy toward slamming. Respond further averred that during the time BCS received a large number of calls, the polar vortex of 2014 occurred. Respond added that I&E's Complaint overstates the number of informal complaints on which it is based and the number

of alleged violations. Respond concluded that I&E's Complaint should be dismissed with prejudice.

Also on September 30, 2014, Respond filed Preliminary Objections in response to I&E's Complaint. In its Preliminary Objections, Respond sought the dismissal of approximately 500 counts of the 639 count Complaint on the basis that the Commission lacks jurisdiction to enforce provisions of the UTP/CPL and lacks the statutory authority to regulate the prices of EGSs. Respond further argued that the Commission previously approved its Disclosure Statement and that I&E failed to state allegations that would result in the finding of a violation of Commission regulations. Respond also sought the dismissal of the request for relief that seeks the issuance of refunds.

On October 17, 2014, I&E filed an Answer to Respond's Preliminary Objections. In its Answer, I&E argued that Respond's Preliminary Objections should be dismissed because, among other things, the Commission does not lack jurisdiction to enforce its own regulations, some of which require a determination of whether the UTP/CPL has been violated. I&E further argued that it is authorized to file a formal complaint with the Commission alleging a violation of a statute that the Commission has jurisdiction to administer. I&E further admitted or denied the various averments made by Respond in its Preliminary Objections and concluded that Respond's Preliminary Objections should be dismissed and the I&E Complaint sustained.

The OCA also filed an Answer to Respond's Preliminary Objection on October 17, 2014 generally reiterating their positions raised in response to Respond's Preliminary Objections filed against their complaint and arguing that Respond's Preliminary Objections should be overruled.

On October 22, 2014, Respond filed a Motion for Continuance of the evidentiary hearing scheduled for November 10-12, 2014 for purposes of admitting the pre-served written direct testimony of consumer witnesses anticipated to be served by the Joint Complainants on October 24, 2014. There was no opposition to Respond's Motion and it was granted via Order dated October 28, 2014. The hearings were rescheduled to January 26-30, 2015.

On October 23, 2014, I&E filed a Petition to Consolidate the Formal Complaints against Respond Power, LLC seeking consolidation of the Complaint filed by the Joint Complainants with the Complaint filed by I&E. There was no opposition to I&E's Petition and it was granted via Order dated October 28, 2014.

On October 24, 2014, pursuant to Procedural Order #2, the Joint Complainants preserved the written direct testimony of approximately 200 consumer witnesses, comprising more than 1100 pages of testimony and exhibits. A list of the consumers who provided testimony in this proceeding is attached to the Joint Complainants' Main Brief at Appendix A.

On November 17, 2014, an Order Granting in Part and Denying in Part Preliminary Objections Filed Against the Formal Complaint of the Bureau of Investigation and Enforcement was issued. In this Order, claims raised in I&E's Complaint regarding UTP/CPL were stricken and all other counts were allowed to proceed to a hearing.

On December 19, 2014, Respond filed a second Motion for Continuance of the evidentiary hearings scheduled for January 26-30, 2015 for purposes of admitting the pre-served written direct testimony of consumer witnesses. There was no opposition to Respond's Motion and it was granted via Order dated December 29, 2014. The hearings were rescheduled to March 9-13, 2015 and a Further Prehearing Conference was established for January 27, 2015. Additionally, a Further Prehearing Conference Order dated January 9, 2015 was issued setting forth requirements for the January 27, 2015 hearing, including establishing a schedule for the submission of pre-served written expert testimony and hearings on that testimony.

The Further Prehearing Conference was held on January 27, 2015, as scheduled. Procedural Order #4 dated January 29, 2015 was issued memorializing the procedural issues discussed during the Further Prehearing Conference. In particular, procedures were detailed regarding the March 9-13, 2015 hearings held for the purpose of admitting the consumer testimony in to the record of this proceeding subject to cross-examination and timely objections and the

procedural schedule for expert testimony and conclusion of the hearing were memorialized, including Further Hearings to be held on August 10-12, 2015.

On March 9-13, 2015, the evidentiary hearings were held for the purpose of admitting into the record the pre-served written direct testimony of consumer witnesses, subject to cross examination and timely motions. Most of the 169 witnesses testifying appeared telephonically. Several appeared in person. Additionally, some witnesses did not appear because their pre-served written testimony was admitted into the record via stipulation of the parties. Numerous exhibits and cross-examination exhibits were also admitted into the record.

On April 9, 2015, the Commission issued an Opinion and Order disposing of the Petition for Interlocutory Review and Answer to Material Questions filed by the Joint Complainants on September 8, 2014. In its Order, the Commission determined that it does not have the authority to enforce the UTP/CPL and TRA but does have authority to enforce its own consumer protection and telemarketing regulations. Additionally, the Commission determined that it has the authority to determine whether an EGS charges customers prices that conform to the EGSs' Disclosure Statement. Thus, Count VIII was reinstated into the complaint and those claims remained part of the action going forward.

On May 1, 2015, Procedural Order #5 was issued modifying the schedule agreed upon during the Further Prehearing Conference for the submission of expert testimony and hearings. In particular, the evidentiary hearings regarding pre-served expert testimony were rescheduled to August 26-27, 2015. Pursuant to that Order, the following expert testimony was pre-served:

- On May 18, 2015, the Joint Complainants served the written direct testimonies of: Barbara R. Alexander, Steven L. Estomin, Ashley E. Everette and Gregory M. Strupp;
- Also on May 18, 2015, I&E served the written direct testimony of Daniel J. Mumford;
- On July 21, 2015, Respond served the written rebuttal testimony of Elliott Wolbrom, Adam Small, Saul Horowitz and James L. Crist; and,

- On August 19, 2015, the Joint Complainants served the written surrebuttal testimony of Barbara R. Alexander, Steven L. Estomin, Ashley E. Everette and Gregory M. Strupp.

Additionally, revised expert testimony was served by Respond for Mr. Horowitz on July 23, 2015 and Mr. Small on August 24, 2015, and by the Joint Complainants for Ms. Everette on August 27, 2015.

On August 26, 2015, the date the evidentiary hearings regarding expert witnesses began, Respond and I&E filed a Petition for Approval of Settlement. In the settlement, Respond and I&E proposed to resolve all of the issues in the Complaint filed by I&E against Respond, noting that the settlement includes customer refunds, a civil penalty and injunctive relief.<sup>3</sup>

Pursuant to Procedural Order #5, Further Hearings were held in this matter on August 26-27, 2015. At the beginning of the hearing, I&E and Respond moved into the record a settlement between the two parties that would resolve their dispute. The Joint Complainants raised several procedural and substantive objections to the settlement. The Joint Complainants argued, among other things, that the refund, civil penalty, contributions to electric distribution company's (EDCs) hardship funds were all too small, and the conditions placed upon the license going forward through injunctive relief/or corrective actions on the part of the company were insufficient to deter future misconduct. OSBA neither joined in the settlement nor opposed it.

After a lengthy discussion, it was determined that an additional hearing might be required solely for purposes of addressing the settlement between Respond and I&E. Hearings were held on August 26 and 27, 2015 wherein the pre-served written expert testimony previously provided by the parties was admitted into the record subject to cross-examination and timely motions. The Joint Complainants were given time to review the proposed settlement between

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<sup>3</sup> There was no indication in the Petition whether the Joint Complainants or OSBA were given an opportunity to enter into the settlement prior to its filing as required by Section 5.232 of the Commission's regulations. 52 Pa.Code § 5.232(b)(4). Also, the Petition did not have attached to it any statements in support from the signatory parties despite this directive in the first Procedural Order dated August 25, 2014.

Respond and I&E to determine whether they believed additional testimony and hearing was necessary because it was a non-unanimous settlement. Pursuant to the prior discussion, Respond and I&E filed an Amended Petition for Approval of Settlement on September 18, 2015 and the Joint Complainants articulated their objection to the settlement on September 28, 2015. Respond and I&E filed responses to the Joint Complainants' objections on October 5, 2015.

On October 7, 2015, Procedural Order #6 was issued establishing a Further Hearing for October 15, 2015 wherein additional pre-served supplemental testimony of Joint Complainant expert witnesses pertaining solely to the settlement was admitted into the record and Respond and I&E were given the opportunity during the hearing to provide oral responsive testimony to the supplemental testimony served by the Joint Complainants. The pre-served testimony of I&E witness Mumford was admitted in to the record during the August 26, 2015 hearing but he took the stand on October 15, 2015 to answer questions regarding the proposed settlement. Tr. 1256, 1411.

A Briefing Order dated October 28, 2015 was issued setting forth various requirements for briefing all issues, including those pertaining to the settlement and those that remain unsettled. Pursuant to that Order, the Joint Complainants, Respond and I&E each filed separate Main Briefs on December 3, 2015 setting forth their position on the various contested issues and the proposed settlement. On December 23, 2015, the Joint Complainants and Respond filed Reply Briefs in response to the issues raised by the other parties' in their respective Main Briefs.

On January 11, 2016, the Joint Complainants submitted a letter indicating that there was a typographical error in their Main Brief and a discrepancy between information provided in the text and a footnote. On January 14, 2016, Respond filed a Motion to Strike the letter because the letter went beyond correcting a typo. On January 28, 2016, the Joint Complainants filed an answer to Respond's Motion to Strike asserting that Respond has mischaracterized the January 11<sup>th</sup> letter and that the letter is appropriate and promotes judicial economy. On February 5, 2016, an Order Granting the Motion to Strike was issued at which time the record was closed.

On March 28, 2016, however, Respond filed an Unopposed Motion to Reopen the Record for the purpose of permitting the parties to file a Global Settlement which would fully resolve all issues raised by the I&E complaint and the Joint Complainants' complaint. Respond further argued 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. In support of its Motion, Respond noted, among other things, 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 indicated that when filed, the Global Settlement would fully replace and supplant the prior non-unanimous settlement between I&E and Respond. Respond's Motion was granted via Order dated April 1, 2016.

On April 22, 2016, the Joint Complainants, Respond, I&E and OSBA filed a Joint Petition for Approval of Settlement. Attached to the Settlement was a Stipulation of Facts in Support of Settlement, Conclusions of Law and Proposed Ordering Paragraphs. In addition, each party provided Statements in Support of the Settlement.

As a final procedural matter, we note that various issues arose during the course of this litigation that are not articulated above, including, among other things, the filing of numerous discovery motions and issuance of subsequent Orders disposing of the motions, as well as the filing of a Motion for Settlement Judge and the subsequent Order denying that Motion.

The record in this case closed on April 22, 2016, the date the Settlement was filed. This matter is ripe for a decision. For the reasons discussed below, we hereby approve the Settlement in its entirety because it is in the public interest and supported by substantial record evidence.

### III. FINDINGS OF FACT

1. Respond Power was founded in 2005 and operates as a retail electric and natural gas supplier. See OAG/OCA St.1 at 8.

2. Respond Power received an EGS license from the Commission pursuant to an Order dated August 10, 2010, which allows the Company to sell electric generation supply to residential customers throughout the Commonwealth. See OAG/OCA St.1 at 8.

3. Most of the consumer testimonies admitted into the record in this proceeding on behalf of Joint Complainants and I&E contain complaints about Respond Power's charges for electric generation service provided during the period January through March 2014. See gen'ly OAG/OCA Consumer Testimonies, Volumes 1-4; see also gen'ly I&E Consumer Direct Testimonies at 1-139.

4. Some of the consumer testimonies moved into the record included an averment that Respond Power's salespeople promoted an affiliation with an EDC or other entity, or led the consumer to believe that they were utility employees, or did not identify themselves as Respond Power salespeople. See OAG/OCA M.B. at App. C at FOF 67-71.

5. Some of the consumer testimonies moved into the record included an averment that Respond Power sales agents told them that they had to choose an electric supplier to keep their utility service or made incorrect statements about their EDC's Price to Compare. See OAG/OCA M.B. at App. C at FOF 72-73.

6. Approximately 114 of the consumer testimonies moved into the record included an averment that Respond Power salespeople in their oral presentations promised savings. See OAG/OCA M.B. at App. C at FOF 77.

7. Some of the consumer testimonies moved into the record included an averment that the Respond Power salesperson did not discuss whether the rate was fixed or variable

and/or Respond Power provided them with sales agreements that contained no indication of the product purchased and contained no price information. See OAG/OCA M.B. at App. C at FOF 83-84, 86.

8. Approximately 12 consumer testimonies moved into the record included an averment that Respond Power salespeople altered their sales agreements after they had signed up for service. See OAG/OCA M.B. at App. C at FOF 85.

9. Approximately 20 consumer testimonies moved into the record included an averment that they were “slammed” or enrolled without their approval as the person authorized on the account. See OAG/OCA M.B. at App. C at FOF 93-94.

10. Approximately 74 consumer testimonies moved into the record included an averment that they had trouble contacting Respond Power, were placed on hold for extended periods of time, or were sent to voice mail where the message was not returned or addressed. See OAG/OCA M.B. at App. C at FOF 100.

11. Approximately 30 consumer testimonies moved into the record included an averment that when they were offered a refund from Respond Power, they had to agree to remain a Respond Power customer and/or enter into a fixed rate contract with Respond Power. See OAG/OCA M.B. at App. C at FOF 106.

12. Approximately 89 consumer testimonies moved into the record included an averment that they were not offered any refund by Respond Power. See OAG/OCA M.B. at App. C at FOF 89.

13. Approximately 82 consumer testimonies moved into the record included an averment that they did not recall receiving a Welcome Letter or Disclosure Statement from the Company following a telemarketing enrollment. See OAG/OCA M.B. at App. C at FOF 124.

14. The expert and non-consumer direct testimonies provided by Joint Complainants and I&E in this proceeding allege unfair and deceptive marketing, enrollment, billing, and customer service practices and charges to customers in early 2014 by Respond Power that did not conform to the Company's promises of savings or variable pricing provisions in its Disclosure Statement, in violation of Pennsylvania law and Commission regulations and Orders. See gen'ly OAG/OCA St. 1, OAG/OCA St. 2, OAG/OCA St. 3, OAG/OCA St. 4, OAG/OCA St. 4-SR, and I&E St. 1.

15. Through the expert testimony of Ms. Barbara Alexander, Joint Complainants were prepared to show that Respond Power's marketing practices, its oversight and training of marketing agents, and its pricing disclosures and practices were unfair, deceptive and inadequate and did not comply with the Public Utility Code or the Commission's regulations that govern the retail energy market. See OAG/OCA St. 1 at 4. Further, Joint Complainants were prepared to show that Respond Power's actions in response to its high variable prices in early 2014 were insufficient and discriminatory with respect to rebates and credits issued to affected customers. Id. at 5.

16. Through the expert testimony of Dr. Steven L. Estomin, Joint Complainants were prepared to show that Respond Power's customers served under the variable rate plans were charged rates that were not determined by the factors specified in the Company's Disclosure Statement. See OAG/OCA St. 2 at 6.

17. Through the expert testimony of Ms. Ashley E. Everette, Joint Complainants were prepared to show that an analysis of the billing data provided by Respond Power in this proceeding shows that during each of the months from December 2013 through March 2014, Respond Power charged residential customers more than they would have paid had they been charged the respective Prices to Compare by their EDCs. See gen'ly OAG/OCA St. 3 at 1-11.

18. Through the testimony of Mr. Gregory M. Strupp, Joint Complainants were prepared to show that OAG received and reviewed approximately 514 individual consumer complaints against Respond Power from February 2014 until June 11, 2014 from consumers located in different geographic sections of the state. See OAG/OCA St. 4 at 2.

19. Through the testimony of Mr. Daniel J. Mumford, I&E was prepared to show that Respond Power engaged in misleading promises of savings and then charged customers more than the EDC's Price to Compare and that customers were often unable to get through to Respond Power representatives. See I&E St. 1 at 17-22.

20. The rebuttal testimonies and accompanying exhibits served on behalf of Respond Power responded to the assertions made by Joint Complainants' and I&E's witnesses and generally denied wrongdoing and rejected the conclusions of Joint Complainants' expert witnesses and I&E's witness. See gen'ly Respond Power St. 1, Respond Power St. 2-Rev, Respond Power St. 3-Rev, Respond Power St. 4-Rev.

21. Through the testimony of Mr. Elliott Wolbrom, Respond Power was prepared to show that Respond Power trains its sales representatives to provide accurate information to customers about Respond Power's prices, terms, and conditions and to refrain from making promises of savings. See Respond Power St. 1 at 2-10. Further, Respond Power was prepared to show that all customer complaints received by Respond Power are investigated by Respond Power representatives. Id. at 14.

22. Through the testimony of Mr. Saul Horowitz, Respond Power was prepared to show that the Company relied on the factors set forth in its Disclosure Statement in determining variable rates. See Respond Power St. 2-Rev at 2.

23. Through the testimony of Mr. Adam Small, Respond Power was prepared to show that the volume of informal and formal complaints filed against Respond Power spiked in early 2014 as a result of business decisions made amidst the polar vortex. See Respond Power St. 3-Rev at 1.

24. Through the testimony of Mr. James L. Crist, Respond Power was prepared to show that it is expected that customers of Respond Power paid more than they would have paid

with their utility during the months December 2013 through March 2014, in light of the increased market prices experienced during the polar vortex. See Respond Power St. 4-Rev at 16.

25. The surrebuttal testimonies and accompanying exhibits served on behalf of Joint Complainants responded to the assertions made by Respond Power’s witnesses and rejected the conclusions made by those witnesses. See gen’ly OAG/OCA St. 1-SR, OAG/OCA St. 2-SR, OAG/OCA St. 3-SR (Rev), OAG/OCA St. 3-SR (Supp), and OAG/OCA St. 4-SR.

26. Respond does not admit any wrongdoing or liability.

#### IV. DISCUSSION

##### A. Legal Standard

In this case, all the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n, et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.* (Opinion and Order entered July 14, 2011) (Lancaster). The Commission must review proposed settlements to determine whether the terms are in the public interest. Pa. Pub. Util. Comm’n LBPS v. PPL Utilities Corporation, M-2009-2058182 (Opinion and Order November 23, 2009); Pa. Pub. Util. Comm’n v. Philadelphia Gas Works, M-00031768 (Opinion and Order January 7, 2004); 52 Pa. Code § 69.1201; Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

The Commission has historically defined the public interest as including ratepayers, shareholders and the regulated community. Pa.P.U.C. v. Bell Atlantic-Pennsylvania, Inc., Docket No. R-00953409 (Order entered September 29, 1995). What is in the public interest is decided by examining the effect of the proposed settlement on these “stakeholder” entities. Id. The public interest is best served, however, by ensuring that the underlying transaction complies with applicable law. Dauphin County Indus. Dev. Auth. V. Pa. P.U.C., 123 A.3d 1124 (Pa. Cmwlth. 2015). Furthermore, as a general rule, the interpretations of the agency charged with a statute’s administration and execution are entitled to great weight and the Legislature is presumed to favor public interests over private interests. Chappell v. Pa. P.U.C., 425 A.2d 873 (Pa. Cmwlth. 1981); 1 Pa.C.S. §§ 1921(c)(8), 1922(5).

Decisions of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

Section 69.1201 of the Commission’s regulations provides a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201. The Policy Statement notes that “these factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.” 52 Pa.Code § 69.1201(a). The Policy Statement notes that “when applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa.Code § 69.1201(b). These factors and standards are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.

52 Pa.Code § 69.1201(c); *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409 (Final Order entered February 10, 2000) (“Rosi factors”).

B. Terms of Settlement

The parties have submitted a comprehensive Settlement. The Settlement proposes three forms of relief including: 1) refunds, 2) civil penalty and contributions to EDCs’ hardship funds, and 3) modifications to business practices. The Settlement terms in pertinent part, with the original paragraph numbers maintained, are as follows:

1. Refunds

66. Refund Pool - Upon the date of the Commission’s final order in this proceeding, Respond Power, LLC agrees to pay the sum of Four Million One Hundred Twelve Thousand Two Hundred Twenty-Four Dollars and 91/100 (\$4,112,224.91) in refunds (hereinafter “Refund Pool”). The settling parties also recognize that in February of 2014, Respond Power rebilled certain customers reducing the required payment of these customers by \$971,279.45 (hereinafter the “Rebilled Amounts”). The total of the Refund Pool and the Rebilled Amounts is Five Million Eighty-Three Thousand Five Hundred Four Dollars and 36/100 (\$5,083,504.36). The Rebilled Amounts are not considered part of the Refund Pool for purposes of this Global Settlement.

a. The Refund Pool includes prior cash refunds, in the amount of Two Hundred Forty-Eight Thousand Eight Hundred Seventy-Three Dollars and 58/100 (\$248,873.58), already voluntarily given to Pennsylvania customers and \$3,863,351.33 in additional cash refunds to be provided to customers as set forth in paragraphs 66(a)(i) and 66(a)(ii), below.

i. From the Refund Pool, Three Hundred Thirteen Thousand Three Hundred Fifty-One Dollars and 33/100 (\$313,351.33) will be made available for disbursement to the former or existing Respond Power residential and small business customers who filed an informal complaint with the Commission against Respond Power from February 1, 2014 to June 30, 2014. Refunds to these customers shall be issued no later than thirty (30) days from the date of the Order approving this Global Settlement, using a distribution method provided by I&E to Respond Power, which will be based on the individual customer’s usage, price charged and refund amounts already received directly from Respond Power. The refund determinations will be designed so as to fully utilize the refunds established by this paragraph. I&E shall have the ability to monitor and audit the disbursement of the refunds issued under this paragraph, processes and agreed upon actions of Respond Power to confirm compliance with the terms hereof.<sup>4</sup>

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<sup>4</sup> Joint Complainants do not join in this paragraph, but will not oppose it.

ii. The remaining Three Million Five Hundred Fifty Thousand Dollars and 00/100 (\$3,550,000.00) will be made available to Respond Power residential and small business customers who were served by Respond Power during the months of January, February, and March 2014. The OAG and OCA shall determine the amount of refund to offer to any individual residential or small business customer based on the individual customer's usage, price charged and refund amounts already received.

b. Additionally, Respond Power shall honor all commitments to eligible Pennsylvania customers, including but not limited to \$25 for each friend referred to the Company.

c. If any of the Refund Pool is needed to pay the costs of the Third Party Administrator, the amount specified in paragraph 66(a)(ii) above, will be reduced proportionally.

67. Administration of Refund Pool - OAG and OCA, shall retain a third-party Administrator of the Refund Pool described above in paragraph 66(a)(ii), above. Respond Power shall be responsible for the first \$55,000.00 of the costs and expenses of retaining the Administrator. If the costs and expenses of the Administrator exceed \$55,000.00, any such additional costs and expenses shall be paid out of the Refund Pool. As noted in paragraph 66(c) above, the refund amounts will be reduced proportionally to reflect the additional costs and expenses.

a. Respond Power shall deposit the full amount of the Refund Pool identified above in paragraph 66(a)(ii) above, with the third-party Administrator within five (5) days after the Commission has entered a final Order approving the Global Settlement Agreement.

b. Respond Power shall fully and timely cooperate with OAG, OCA, I&E and the Administrator by providing all customer information necessary to calculate each customer's refund amount. Such information shall include, but not be limited to, customer billing rates, usage and addresses.

c. The Settlement Administrator shall use best efforts to distribute funds from the Refund Pool identified above in paragraph 66(a)(ii) within one hundred and eighty (180) days of the Commission's final Order in this proceeding. The Settlement Administrator shall provide monthly reports to OCA, OAG, I&E, Respond Power and designated Commission staff, of funds distributed that include at a minimum, the customer's name and other available identifying information, the amount of funds disbursed to each customer and the period for which the funds were disbursed.

d. If any funds remain in the Refund Pool after issuance of the calculated refunds, the funds shall be provided to Electric Distribution Companies' (EDCs) hardship funds and allocated by the ratio of Respond Power customers in the EDC's territory to the total amount of Respond Power customers in Pennsylvania as of January 1, 2014.

e. Any unclaimed funds for refund checks issued remaining in the Refund Pool shall be forwarded to the Pennsylvania Department of the Treasury pursuant to unclaimed property requirements for the customer(s) entitled to the refund.

68. Additional Refund Method – Any residential or small business customer of the Company that does not receive or accept an offer of funds from the Refund Pool pursuant to Paragraph 66 above, shall be entitled to seek a refund as follows:

a. The customer may contact the Company directly with complaints and request for a refund.

b. The Company shall use its best efforts to investigate the customer's complaint.

c. The Company shall use its best efforts to negotiate an agreement with the customer directly.

d. If the customer is not satisfied with the Company's investigation and/or the Company's settlement offer, the customer may file a formal complaint with the Pennsylvania Public Utility Commission.

e. For one year after the Commission's final order in this proceeding, the Company shall provide quarterly reports to the OAG, OCA, I&E and designated Commission staff, setting forth the names of the complainants, the general nature of the complaints, and the disposition thereof.

69. Release - No customer shall be paid any funds from the Refund Pool without executing a "Release of Claims" pursuant to which the customer agrees, in exchange for payment of the funds, to release, acquit, and forever discharge the Company and all of its current and former officers, shareholders, and employees from any and all claims arising from or related to the conduct up to June 2014 that is alleged in the Joint Complaint and the I&E Formal Complaint. Further, as part of this Global Settlement, the OAG, OCA, OSBA and I&E release the Company and all of its current and former officers, shareholders, and employees from any and all claims arising from or related to the conduct alleged in the Joint Complaint and I&E Formal Complaint.

2. Penalty and Contribution.

70. Respond Power shall pay a civil penalty in the amount of \$125,000 to the General Fund within thirty (30) days after the Commission has entered a final Order approving the Global Settlement. Such payment shall be made by check payable to the "Commonwealth of Pennsylvania." In addition, Respond Power shall not claim a tax deduction for the \$125,000 civil penalty.

71. Respond Power shall make a contribution of \$50,000 to the EDCs' hardship funds within thirty (30) days after the Commission has entered a final Order approving the Global Settlement. The contribution shall be allocated by the ratio of Respond Power customers in the EDC's territory to the total amount of Respond Power customers in Pennsylvania for the months of January, February and March of 2014.

C. Business Modifications

In addition to complying with all Commission regulations, Orders and policies, Respond Power shall implement the following modifications to its business practices:

72. Product Offering:

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

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

73. Marketing:

a. Respond Power shall comply with all Pennsylvania laws, including the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, the Consumer Protection Law, 73 P.S. § 201-1, *et seq.*, and the TRA, 73 P.S. § 2241, *et seq.*, and other applicable laws, as well as Commission regulations, Orders and policies.

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

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

d. Respond Power, its agents, employees and representatives shall refrain from using terms in their marketing campaigns, whether for fixed or variable products (should the Company offer variable rates pursuant to paragraph 72 above), such as "risk free," "competitive," "guaranteed," or any other terminology that represents, explicitly or by implication, that the price offered will be lower than the EDC's PTC except when referencing an explicit, affirmative guaranteed savings program. An example of an explicit, affirmative guaranteed savings program is 10% off the applicable PTC each month for 12 months.

e. Respond Power, its agents, employees and representatives shall refrain from using terms in their variable rate marketing campaigns, such as "trial period" or "introductory rate,"

without a clear and conspicuous disclosure of the material terms and conditions thereof, including and without limitation to, a full description of the price that will be charged after the expiration of that introductory or trial period, the circumstances under which the consumer can cancel, and the consequences of cancellation.

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

g. Respond Power, its agents, employees and representatives shall not make representations, either directly or by implication, about the PTC increasing or the PTC being a variable rate. Further, Respond Power, its agents, employees and representatives shall not make any representations whatsoever about how a consumer’s utility purchases electricity. However, nothing herein shall prohibit Respond Power, its agents, employees and representatives from making truthful statements about the current level of the EDC’s PTC or future PTC, if that information is publicly available. If a Respond Power agent, employee or representative identifies the current PTC or a published future PTC, the Respond Power agent, employee or representative shall also provide the term that the referenced PTC will be in effect.

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

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

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

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

k. If Respond Power offers variable rate products to consumers in the Commonwealth after the time period set forth in paragraph 72 above, Respond Power salespeople must state the following during all variable rate sales contacts:

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

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

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

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

o. Regarding online enrollments, within 180 days after approval of the Global Settlement, Respond Power shall revise its website to clearly and conspicuously display its Disclosure Statement and all contract terms and conditions as one or multiple unavoidable separate screens, which require the consumer to scroll to the end of the document and click a button indicating he or she has reviewed the documents and agrees to the terms and conditions, during the electronic customer enrollment process. Respond Power shall require new customers to click a screen button acknowledging that they have reviewed the terms and conditions, and Respond Power shall also make a live chat feature available for customers to ask questions about the terms and conditions. Respond Power shall offer a screen prompt enabling the consumer to print the terms and conditions.

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

q. If the Company offers variable rate products pursuant to paragraph 72 above, in all advertising of variable rate products to consumers and in any Welcome documents to consumers that have enrolled in variable rate products with Respond Power, the Company shall provide a statement of the average price per kWh, as required by 52 Pa. Code § 54.7(b)(2). The

Company shall use 24 months of price data to calculate the average price per kWh. The Company shall also provide a statement of the total impact of the Company’s average price under the program for the levels of monthly usage of 500 kWh, 1,000 kWh and 2,000 kWh. The information would be organized as follows:

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

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

74. Third Party Verifications:

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

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

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

- What is your name? (when using a live agent only)
- What is your address? (when using a live agent only)
- Do you understand that Respond Power is not your electric utility?
- Do you understand that you are not required to switch to Respond Power in order to continue receiving electric service?
- Does your name appear on the electric bill?

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

d. If the consumer is the customer of record or authorized by the customer of record to consent to changes in electric generation service and the sales solicitation is for a variable rate product pursuant to paragraph 72 above, Respond Power shall also add the following questions to the TPV:

- Do you understand that you are agreeing to a variable rate that changes on a monthly basis?
- Do you understand that there is no limit on how high the price can go?
- Do you feel comfortable with your selection to switch to a Respond Power variable rate product?

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

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

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

a. Respond Power shall provide to OCA, OAG, I&E, and designated Commission staff any subsequently amended Disclosure Statements for use in the Commonwealth for the period of five years.

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

i. If Respond Power offers variable rate products to consumers in the Commonwealth after the time period set forth in paragraph 72 above, Respond Power must state the following in its Disclosure Statement provided to customers:

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

ii. Respond Power shall provide to all current customers on variable rate products an updated disclosure statement as provided in the immediately preceding sub-paragraph.

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

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

c. Should the Company offer variable rate products pursuant to paragraph 72 above, in its variable pricing Disclosure Statement, Respond Power shall describe the basis of the Company’s charges and set forth the attributes that comprise the product and the percentage of each attribute that makes up the price. For example, Respond Power could state, if demonstrably true for a program with such attributes, that XX% of the price in a given month is based on projected wholesale costs and adjustments to “true up” the prior month’s projected wholesale costs and X% of the price is based on overhead such as the cost of sales, uncollectibles, and the Company’s profit. Respond Power shall not state or represent to customers in the Company’s variable rate programs that the price Respond Power will charge will be “market-based” or set on “market conditions” unless the Company also includes either:

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

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

d. The parties agree that the Disclosure Statement language stated in paragraph 75(b) above, is not a change in contract terms pursuant to 52 Pa. Code § 54.10. Respond Power, however, shall notify all of its customers enrolled in variable rate programs, as of the date of execution of this Global Settlement, of the Company’s fixed rate product offer identified in paragraph 72 above, and direct customers to review the updated Disclosure Statement online or via hard copy. Respond Power shall provide the website to view the Disclosure Statement online and a telephone number that customers may call to request a hard copy. These notifications may be provided to customers using on-bill messages and shall begin on the first billing cycle following the execution of the Global Settlement for which the EDCs will permit such messaging.

76. Non-Door-to-Door Training: Respond Power shall ensure that its training program for internal and external sales representatives meets the requirements of this section.

a. Respond Power has provided to OAG, OCA, and I&E a detailed description of the training the company will implement.

b. On March 31, 2016, the Company received from OAG, OCA, and I&E any final comments or concerns related to the training.

c. Respond Power specifically commits to implement the provisions of this Global Settlement in a timely manner. Additionally, until the provisions in the Global Settlement are fully implemented, Respond Power commits to abiding by the spirit of the Global Settlement in its marketing and billing practices in the Commonwealth. Further, between March 21, 2016 and March 31, 2016, Respond Power provided to the OAG, OCA, and I&E a written assurance detailing all of the measures that the Company has taken to correct its marketing practices and provided weekly reports related to the progression of implementing its new training program.

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

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

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

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

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

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

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

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

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

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

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

g. Individual marketers retained by Respond Power shall be required to successfully complete Respond Power's training program before marketing to and enrolling customers on behalf of Respond Power. Each trainee shall be required to sign a form acknowledging that he or she has received and understands the information provided in Respond Power's training materials.

h. Between April 1, 2016 and April 10, 2016, Respond Power shall fully implement, in all material respects and consistent with any comments from OAG, OCA and I&E that have been accepted by Respond Power, the training program and complete the initial training described in this Global Settlement for all of the Company's current agents, employees, or representatives. Respond Power shall provide written notice to OAG, OCA, and I&E that such initial training has occurred. Beginning April 1, 2016 and until such notice is provided, Respond Power shall not engage in any telemarketer sales solicitations of Pennsylvania consumers. After the close of business on April 1, 2016, Respond Power provided written notice to OAG, OCA, and I&E that such initial training had occurred.

i. If during a one-year period following the execution of this Global Settlement, Respond Power receives a complaint from the OAG, OCA, I&E or OSBA alleging that the marketing practices of Respond Power materially violated the terms of this Global Settlement, Commission regulations, or applicable law, Respond Power will address the complaint and provide a written report within five business days of all actions taken, or actions to be taken, to OAG, OCA, I&E and OSBA. If a second complaint regarding the same vendor and conduct of a substantially similar nature is received from OAG, OCA, I&E or OSBA during the remaining period, Respond Power will immediately cease all marketing activity by that vendor and fully retrain the vendor and its agents. Respond Power may immediately resume marketing activity by that vendor following the retraining of the vendor and its agents. Nothing contained herein precludes any signatory party or any consumer from bringing a formal or informal complaint related to such activity.

77. Door-to-Door Training and Marketing: Respond Power shall ensure that its training program for internal and external door-to-door sales representatives meets the requirements of this section.

a. Respond Power has provided to OAG, OCA, and I&E a detailed description of the door-to-door sales training the Company will implement.

b. By March 31, 2016, the Company received from OAG, OCA, and I&E any final comments or concerns related to the door-to-door sales training Respond Power plans to implement.

c. Respond Power specifically commits to implement the provisions of this Global Settlement in a timely manner. Additionally, until the provisions in the Global Settlement are fully implemented, Respond Power commits to abiding by the spirit of the Global Settlement in its marketing and billing practices in the Commonwealth. Further, between March 21, 2016 and March 31, 2016, Respond Power provided to the OAG, OCA, and I&E a written assurance detailing all of the measures that the Company has taken to correct its door-to-door marketing practices and

provided weekly reports related to the progression of implementing its new door-to-door training program.

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

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

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

1. As soon as possible and prior to describing any products or services offered for sale by Respond Power, an in-person sales representative shall:
  - a. Produce identification, to be visible at all times thereafter, which prominently displays the full name of the marketing representative, displays a photograph of the marketing representative and depicts the legitimate trade name and logo of Respond Power; and provides Respond Power's telephone number for inquires, verification and complaints.
  - b. Identify the reason for the visit and state that Respond Power is an independent energy marketer, and identify himself or herself as a representative of Respond Power; explain that he or she does not represent the distribution utility; and explain the purpose of the solicitation.
  - c. Offer a business card or other material that lists the agent's name, identification number and title, and Respond Power's name and contact information, including telephone number.
2. During the sales presentation, the marketing representative must also state that if customer purchases electricity from Respond Power, that the customer's utility will continue to deliver their electricity and will respond to any outages or emergencies.
3. The representative will provide the customer with written information regarding Respond Power's products and services immediately upon request, which shall include Respond Power's name and telephone number for inquiries,

verification and complaints. Any written materials, including contracts, sales agreements, and marketing materials, must be provided to the customer in the same language utilized to solicit the customer.

4. Where it is apparent that the customer's language skills are insufficient to allow the customer to understand and respond to the information conveyed by the marketing representative or where the customer or another third party informs the marketing representative of this circumstance, the marketing representative shall terminate contact with the customer in accordance with 52 Pa. Code § 111.9.
5. The marketing representative shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

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

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

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

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

i. Initial training and subsequent refresher training on at least a quarterly basis for all Respond Power door-to-door salespeople in the modifications listed in this Global Settlement and the implementation thereof;

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

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

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

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

h. Respond Power agrees to explicitly train its door-to-door salespeople that they are prohibited from being present for TPVs under any circumstances.

i. Between April 1, 2016 and April 10, 2016, Respond Power shall fully implement, in all material respects and consistent with any comments from OAG, OCA and I&E that have been accepted by Respond Power, the training program and complete the initial training described in this Global Settlement for all of the Company's current agents, employees, or representatives. Respond Power shall provide written notice to OAG, OCA, and I&E that such initial training has occurred. Beginning April 1, 2016 and until such notice is provided, Respond Power shall not engage in any door-to-door sales solicitations of Pennsylvania consumers. After the close of business on April 1, 2016, Respond Power provided written notice to OAG, OCA, and I&E that such initial training had occurred.

j. If during a one-year period following the execution of this Global Settlement, Respond Power receives a complaint from the OAG, OCA, I&E or OSBA alleging that the door-to-door marketing practices of Respond Power materially violated the terms of this Global Settlement, Commission regulations or applicable law, Respond Power will address the complaint and provide a written report within five business days of all actions taken, or actions to be taken, to OAG, OCA, I&E and OSBA. If a second complaint regarding the same vendor and conduct of a substantially similar nature is received from OAG, OCA, I&E or OSBA during the remaining period, Respond Power will immediately cease all marketing activity by that vendor and fully retrain the vendor and its agents. Respond Power may immediately resume marketing activity by that vendor following the retraining of the vendor and its agents. Nothing contained herein precludes any signatory party or any consumer from bringing a formal or informal complaint related to such activity.

78. Compliance Monitoring:

a. Throughout the next three years, Respond Power will implement the training programs described in paragraphs 76 and 77 above, and will also create an in-house Compliance Department and a dedicated Door-to-Door Management Team.

i. The Compliance Department will be staffed with a full-time Chief Compliance Officer, who will be a direct liaison to OAG, OCA, I&E, OSBA, and designated Commission Staff.

ii. The Chief Compliance Officer will be responsible for the planning, implementation, and subsequent training of all sales representatives and door-to-door marketers as

described in paragraphs 76 and 77 above; compliance monitoring and reporting as described in paragraphs 78(b) and 79 below; and direct oversight of the Door-to-Door Management Team.

iii. The Chief Compliance Office will meet once a year with OAG, OCA, I&E, OSBA and designated Commission staff to discuss compliance issues and best practices in consumer protection.

iv. The Door-to-Door Management Team will be responsible for managing door-to-door contractors and shall maintain complete written records of all contacts with the vendors regarding or in any way related to training, oversight, and discipline.

v. By December 31st of 2016, 2017, and 2018, Respond Power shall provide a report to OAG, OCA, I&E, and designated Commission staff of the activities of the Compliance Department and the Door-to-Door Management Team.

vi. The Compliance Department and Door-to-Door Management Team will continue in existence through at least December 31, 2018.

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

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

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

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

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

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

1. The sample shall include no fewer than three sales for each sales representative conducting sales solicitations for Respond Power.

2. Whenever such sample reveals one or more non-compliant sales calls by an agent, third-party contractor or sales representative, Respond Power shall investigate whether any of the customers enrolled by the agent, third-party contractor or sales

representative were subjected to sales practices that violated this Global Settlement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies.

3. Such investigation, at a minimum, shall include a review of the sales calls and call notes for the ten consumers enrolled before the call in question and the ten consumers enrolled after the call in question. If Respond Power identifies additional non-compliant sales calls, Respond Power shall implement remedial steps as described in paragraph 78(b)(vii) below.

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

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

vii. In the event Respond Power determines that a sales representative has violated any terms of this Global Settlement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies or otherwise engaged in improper sales practices, Respond Power shall take prompt remedial actions, which at a minimum shall include:

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

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

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

4. The Respond Power marketing contractor which employs the sales representative shall forfeit an amount equal to twice the total marketing contractor's sales commissions applicable to the non-compliant sales. All sales commissions claimed by the

marketing contractor shall be subject to forfeiture for a period of six months in the event violations are found by Respond Power.

79. Reporting: Within thirty days of implementation of the training and compliance monitoring described above and quarterly thereafter for a period of five years, Respond Power shall provide to designated Commission staff, OCA and I&E:

a. An explanation of all internal audits and investigations performed during the reporting period, including a detailed description of the amount of calls reviewed pursuant to paragraphs 78(v) and 78(vi) of this Global Settlement and a description of the audit(s) or investigation(s) performed as well as the results thereof; and

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

80. Customer Service:

a. Respond Power shall employ a Chief Compliance Officer, as described in paragraph 78(a) above, whose customer service duties include, at a minimum:

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

ii. Resolution of customer complaints fairly and expeditiously; and

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

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

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

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

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

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

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

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

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

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

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

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

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

Settlement at 17-45.

The Settlement is conditioned upon additional terms and conditions typically found in most Settlements presented to the Commission for approval. For example, the Settlement is conditioned upon the Commission's approval of the terms and conditions without modification and the parties reserve the right to withdraw from the Settlement if any of its terms are modified. Id. at 46. The parties also reserved their right to continue litigation if the Commission does not approve the Settlement and note that the Settlement is made without any admission against, or prejudice to, any position which any settling party may adopt in subsequent

litigation. Id. at 46-47. The Settlement also does not preclude the parties from taking other positions in other proceedings involving EGS marketing and billing practices. Id. at 47. Finally, the parties waive their right to file exceptions if the Settlement is adopted without modification. Id.

C. Public Interest

In the Settlement, the settling parties averred that the Settlement is in the public interest and should be approved without modification because it was reached after an extensive investigation into Respond's marketing and billing practices, including formal and informal discovery, as well as the admission of the direct testimony of 169 consumers and the testimonies of the expert witnesses. Id. at 45-46. The Settlement further states that the Settlement is in the public interest because the agreed-upon provisions regarding refunds and modifications to business practices contained in the Settlement will provide reasonable relief for Respond's current and former customers who were affected as alleged in the complaints. Id. at 46. The parties also discussed in their respective Statements in Support of the Settlement why they believe the Settlement is in the public interest.

1. Position of the parties

a. Joint Complainants

In their Statement in Support of the Settlement, the Joint Complainants provided extensive discussion of the various provisions of the Settlement in support of their position that the Settlement should be approved as filed. The Joint Complainants noted that the Settlement is a product of compromise between all parties to this consolidated proceeding and that the benefits to amicably resolving the disputed issues through Settlement can often outweigh the risks and expenditures of continued litigation. The Joint Complainants noted that, in general, the Settlement addresses the issues raised in the Joint Complaint and is comprehensive, appropriate and reasonable under the circumstances and in the public interest and should, therefore, be approved without modification. The Joint Complainants summarized the various issues raised in the Joint Complaint

and the expert and non-expert consumer testimonies the Joint Complainants believed supported their positions and the relief they requested. The Joint Complainants stated that the Settlement addresses the issues identified in the testimony of the Joint Complainants' witnesses.

More specifically, the Joint Complainants noted in their Statement in Support of the Settlement that the Settlement is in the public interest and should be approved without modification because of the Refund Pool and rebilled amounts totaling \$5,083,504.36 (\$4,112,224.91 representing the Refund Pool or cash refunds and \$971,279.45 representing the amount Respond rebilled customers in February, 2014). From the Refund Pool, \$313,351.33 will be made available for disbursement by I&E to former or existing Respond customers who filed an informal complaint with the Commission between February 1, 2014 and June 30, 2014 and the remaining \$3,550,000 will be made available to Respond customers who were served by Respond during the months of January, February or March, 2014. The amount of refund provided will be based on the customer's usage, price charged and any refund already received. The Joint Complainants also noted that a third-party administrator will be retained for the distribution of the Refund Pool and Respond will be responsible for the first \$55,000 of the costs and expenses of the administrator. The Joint Complainants noted that Respond will fully and timely cooperate in providing customer information necessary to calculate each customer's refund. The Joint Complainants also specifically noted in their Statement in Support of the Settlement that the Settlement should be adopted in its entirety without modification because Respond will pay a civil penalty of \$125,000 to the General Fund and make a total contribution of \$50,000 to the EDCs' hardship funds.

The Joint Complainants addressed the ten Rosi factors in support of their position that the Settlement should be adopted without modification, noting, among other things, that Respond's conduct was serious and resulted in harm to Pennsylvania's consumers and retail electric market. The Joint Complainants also noted that the monetary elements of the Settlement are in the public interest because Respond previously provided refunds to some customers and has agreed to work in good faith to effectuate the Refund Pool. The Joint Complainants also noted that the number of customers affected, duration of the violations and Respond's compliance history all support adopting the Settlement in its entirety without modification.

Finally, the Joint Complainants also argued in their Statement in Support of the Settlement that the Settlement should be adopted in its entirety without modification because of the extensive modifications to its business practices Respond agreed to implement. The Joint Complainants specifically identified modifications to product offering, marketing, third party verifications, non-door-to-door training, door-to-door training, compliance monitoring, reporting and customer service. The Joint Complainants noted that Respond's agreement to refrain from selling variable rate products in Pennsylvania for a period of two years is appropriate because it will give Respond an opportunity to implement these modifications to its business practices. Additionally, the Joint Complainants noted that these modifications address the consumer and expert testimonies in this proceeding which particularly raised issues regarding, among other things, Respond's door-to-door sales practices.

b. I&E

In its Statement in Support of the Settlement, I&E referenced the Statement in Support of the Settlement it submitted on September 18, 2015 in support of the initial settlement entered into between I&E and Respond and noted that the same rationale noted there applies in support of the instant settlement. I&E added that the additional terms in the instant settlement "only serve to bolster the argument that the [prior] settlement is in the public interest," noting that the total Refund Pool and the added contribution to EDC hardship funds are in the public interest. I&E further noted that the instant Settlement retains the allocation of \$313,000 in refunds to customers that filed informal complaints with the Commission, as well as the \$125,000 civil penalty to be paid to the General Fund, that are also in the public interest. I&E concluded that the additional provisions included in the instant Settlement, such as increasing Respond's share of the administrator's fees, disallowing any unclaimed funds in the Refund Pool to revert to Respond and requiring Respond to create an in-house door-to-door compliance department, are likewise in the public interest and support adopting the Settlement without modification.

c. Respond

In its Statement in Support of the Settlement, Respond stated that “the unanimous Global Settlement comprehensively addresses and resolves numerous complex and contentious issues that were raised in this consolidated proceeding, and provides for a fair and reasonable resolution of those issues, it is in the public interest and should be approved without modification by the Commission.” Respond noted that its total refund to customers will be over \$5 million, including proactive bill reductions in February 2014 and previously issued refunds. Respond noted that the Refund Pool established in the Settlement includes more than \$3.8 million that will be disbursed to customers served by Respond in January, February and March, 2014 and that Respond will contribute \$55,000 toward the costs and expenses of retaining a third-party administrator for the Refund Pool. Respond also referenced the \$125,000 civil penalty and \$50,000 contribution to EDC’s hardship funds that are included in the Settlement as reasons why the Settlement is in the public interest and should be adopted in its entirety without modification.

With regard to the non-financial provisions contained in the Settlement, Respond noted the provision prohibiting the Company from offering variable price products to new customers for two years and the implementation of extensive modifications to its sales, marketing and business practices as additional support for adopting the Settlement in its entirety without modification. Respond specifically cited the enhancements to the quality of the information that is provided to consumers about the Company’s products through its disclosure statement, sales scripts and third party verification scripts; the implementation of improved training programs for its sales agents and third-party contractors; increased internal quality control and compliance monitoring efforts; staffing of its call center to answer calls within specified timeframes and developing an action plan for handling periods of high call volumes; and providing quarterly reports to the Commission and the parties regarding complaints and disputes as additional reasons why the Settlement is in the public interest.

Respond noted that it has already implemented some of these enhancements, including creating an in-house compliance department and a dedicated door-to-door management team. Respond added that the Settlement, in general, “mirrors or exceeds” the settlements that have

been approved in other similar cases. Respond also discussed in its Statement in Support of the Settlement the impact of the polar vortex on this case, stating that new records for winter electricity use in the northeastern part of the country, and other factors, forced abnormally high costs that required Respond to make the business decision to increase customers' prices to recover a portion of those costs. Respond discussed in detail each of the provisions of the Settlement and asserted that the Settlement fully and comprehensively resolves all issues arising from the variable price increases that were charged to retail customers during the polar vortex. Finally, Respond noted that approval of the Settlement would eliminate uncertainties of litigation and argued that the Settlement is consistent with the factors and standards in the policy statement (i.e., Rosi factors).

#### d. OSBA

In its Statement in Support of the Settlement, the OSBA noted that the refunds and the injunctive relief provided by the Settlement are of particular significance to the OSBA when it concluded that the Settlement was in the best interest of the Company's small business customers. The OSBA noted that the 169 consumer witnesses' testimony included small business customers who also suffered financial difficulties after receiving Respond's charges. The OSBA noted that the refund amounts will be based on the customer's usage, price charged and any refund amount already received directly from Respond. The OSBA also identified the provisions in the Settlement that require Respond to pay \$55,000 toward the cost of the Refund Pool and that any funds remaining after the issuance of the calculated refunds will be given to the EDC hardship funds and unclaimed funds will be forwarded to the Pennsylvania Treasury Unclaimed Property Division. The OSBA also noted the civil penalty amount of \$125,000, the \$50,000 contribution to EDC hardship funds and Respond's agreement to offer only fixed price contracts in Pennsylvania for a period of 24 months beginning September 1, 2015 as reasons why the Settlement should be adopted in its entirety without modification.

#### D. Disposition

As an initial matter, we note that, as the Settlement substantially resembles the settlements issued in prior cases involving similar issues and similar parties, Commonwealth of

Pennsylvania, et al. v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas and Electric, Docket Number C-2014-2427656, Tentative Form Opinion and Order (March 9, 2016) (deemed final as of March 16, 2016 via Secretarial Letter dated March 18, 2016) (PaG&E Order), Commonwealth of Pennsylvania, et al. v. HIKO Energy, LLC, Docket Number C-2014-2427652, Order (December 3, 2015) (HIKO Order), and Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc., Docket Number C-2014-2427657, Tentative Opinion and Order (June 30, 2016) (deemed final as of July 8, 2016 via Secretarial Letter dated July 14, 2016) (IDT Order), so too does our disposition of the Settlement resemble our prior decisions in those similar cases.

a. Refund Pool

With regard to the first aspect of the Settlement, the Refund Pool, we find these provisions in the Settlement to be in the public interest and support adopting the Settlement in its entirety. The Settlement provides that, upon the date of the Commission's final order in this proceeding, Respond agrees to pay \$4,112,224.91 in refunds into a Refund Pool. This amount is in addition to the \$971,279.45 that Respond rebilled certain customers in February, 2014. The \$4,112,224.91 includes prior cash refunds in the amount of \$248,873.58 already given to Pennsylvania customers and \$3,863,351.33 in additional cash refunds to be provided to customers. Furthermore, \$313,351.33 of the Refund Pool will be made available for disbursement to the former or existing Respond residential and small business customers who filed an informal complaint with the Commission against Respond between February 1, 2014 and June 30, 2014 based on the customer's individual usage, price charged and any refund amounts already received. The remaining \$3,550,000.00 will be made available to Respond Power residential and small business customers who were served by Respond during the months of January, February and March, 2014 based on an amount determined by the Joint Complainants for any individual residential or small customer, again based on the customer's usage, price charged and any refund amounts received. Respond will also honor all commitments to eligible customers, including \$25 for each friend referred to the Company.

The Settlement further provides that the Joint Complainants shall retain a third-party administrator of the Refund Pool and that Respond will be responsible for the first \$55,000 of the

costs and expenses of retaining the administrator, with any additional costs being paid out of the Refund Pool and with any such additional amounts being recovered proportionately from the refund amounts. Respond agreed to fully and timely cooperate with the parties and the administrator by providing all customer information necessary to calculate each customer's refund amount, including bill rates, usage and address. The Settlement provides that the administrator will use best efforts to distribute funds from the Refund Pool within 180 days of the Commission's final order in this proceeding and provide monthly reports to the parties and designated Commission staff of the distribution amounts. Any funds that remain in the Refund Pool after issuance of the refunds shall be provided to EDC's hardship funds allocated by the ratio of Respond customers in the EDC's territory to the total amount of Respond customers in Pennsylvania as of January, 2014. Any unclaimed refunds remaining in the Refund Pool will be forwarded to the Pennsylvania Department of Treasury pursuant to unclaimed property requirements.

Finally, the Settlement provides an additional refund method whereby any residential or small business customer that does not receive a refund from the Refund Pool may contact Respond directly with complaints and request a refund and Respond shall use its best efforts to investigate the customer's claim and negotiate an agreement with the customer directly. Any customer not satisfied with Respond's investigation or settlement offer can file a formal complaint with the Commission. The Settlement also requires customers to execute a "Release of Claims" in exchange for payment of funds to release, acquit and forever discharge Respond from any and all claims arising from the conduct up to June, 2014 that is alleged in the Joint Complainants' and I&E's complaints.

We find the refund provisions of the Settlement to be in the public interest and adopt them in their entirety. The refund provisions are consistent with Commission precedent.

For example, in Commonwealth of Pa. et al. v. IDT Energy, Inc., Docket No. C-2014-2427657 (Opinion and Order entered Dec. 18, 2014) (IDT Interlocutory Review Order), the Commission relied on its plenary authority under Section 501 of the Public Utility Code to direct an EGS to issue a credit or refund for an over bill. December 18<sup>th</sup> Order at 17, *citing*, 66 Pa.C.S. § 501 ("in addition to any powers expressly enumerated in this part, the commission shall have full power

and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof”). The Commission noted that its “powers have been interpreted broadly to include both the express powers conferred by the Code and those implied powers necessarily implicit in the Code” and stated:

Directing a billing adjustment for an EGS over bill of supply charges is within the Commission’s Section 501 powers to carry out the consumer protections in the Electric Competition Act that are applicable to competitive electricity generation supply service. These consumer protections include the Section 2809(b) requirement that EGSs comply with the Commission’s regulations, including the Chapter 54 billing and disclosure regulations.

Id. The Commission concluded that “ordering EGS billing adjustments for an over bill of supply charges is fully consistent with the policy objectives of the Electric Competition Act as well.” Id. at 18.

Additionally, in Kiback v. IDT Energy, Inc., Docket No. C-2014-2409676 (Opinion and Order entered Aug. 20, 2015) (Kiback), the Commission held that its plenary authority under Section 501(a) of the Public Utility Code includes directing an EGS to issue a credit or refund for an overbill in violation of 52 Pa.Code § 54.4(a) and a violation of the Commission’s Interim Guidelines, Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers, Docket No. M-2010-2185981 (Order entered November 5, 2010). The Commission found substantial evidence supported a decision that Section 54.4(a) and the Interim Guidelines had been violated; accordingly, a civil penalty in the amount of \$2,000 and refunds in the amount of the difference between the price billed and the EDC’s Price to Compare (PTC) in effect for the months of January through February, 2014, were warranted. Id. at 35.

Finding the refund provisions in the Settlement to be in the public interest and within the Commission’s authority is also consistent with Herp v. Respond Power, LLC, Docket No. C-2014-2413756 (Opinion and Order entered January 28, 2016) (Herp). In Herp, the Commission directed issuance of a refund or a rebill if the complainant had not yet paid the amount in dispute, in

the amount of the difference between the amount he actually paid Respond for the months of November, 2013 through March, 2014 less the amount he would have paid his EDC during those months as had been promised him verbally by a door to door sales agent in late October, 2013. The Commission exerted its authority to issue this refund under the plenary authority powers of Section 501 of the Public Utility Code, 66 Pa.C.S. § 501, as being an appropriate relief to protect a consumer because Respond had violated four regulations under Chapter 54 of the Commission's regulations over this period of time, including Sections 54.4(a), 54.7(a), 54.43(f) and 54.122(3). *See*, 52 Pa.Code §§ 54.4(a), 54.7(a), 54.43(f) and 54.122(3).

We find the Refund Pool established in the Settlement to be consistent with the IDT Interlocutory Review Order, Kiback and Herp. This is particularly true given the substantial record evidence from consumers and expert witnesses admitted in this proceeding, most of which includes complaints about Respond's charges for electric generation service during the period of January through March, 2014. *See e.g.*, Finding of Fact 3. In addition, record evidence demonstrates that many customers were promised savings or were unaware of whether the rate was fixed or variable. Finding of Fact 6 and 7. Many customers also testified that they were not offered any refund from Respond. Finding of Fact 12. Furthermore, the Refund Pool is consistent with the refund pools that were approved in the PaG&E Order, HIKO Order and IDT Order. In the PaG&E Order, for example, the EGS agreed to pay approximately \$6 million into a refund pool to be administered by a third-party administer selected by the Joint Complainants but paid for by the Company up to a cap amount of \$100,000 in administrative fees. PaG&E Order, *supra*.

The Refund Pool is also in the public interest and should be adopted in its entirety because many customers of Respond who complained about the Company's service during January, February and March, 2014 will be afforded some financial relief from Respond in the form of refunds. As the Joint Complainants noted in their complaint, on or about February 10, 2014, the OCA began receiving a high volume of calls and written correspondence from residential customers on variable rate plans with EGSs regarding the level of electric generation charges on their electric bills. As of May 5, 2014, the OCA had collected information from approximately 2,434 of its consumer contacts, and approximately 189, or 8%, were from customers of Respond. From February 27, 2014 to June 4, 2014, OAG received approximately 39,607 telephone calls and 7,503

consumer complaints related to variable prices charged by EGSs, and of the 7,503 consumer complaints received, 520, or approximately 7% were against Respond. The Joint Complainants and I&E averred that many consumers were guaranteed a rate or were promised savings over the EDC's PTC. By way of relief, the Joint Complainants requested that the Commission direct Respond to provide appropriate restitution, including refunding all charges to its customers that were over and above the PTC in the customers' respective service territory beginning on January 1, 2014. The refund provisions in the Settlement address these averments.

Furthermore, we note that the Commission, as a governmental agency, has issued requests for proposals (RFPs) and requests for qualifications (RFQs) to hire third-party administrators pursuant to various regulatory provisions in the past. *See, Implementation of the Alternative Energy Portfolio Standards Act of 2004, Docket No. M-00051865, Request for Qualifications For Alternative Energy Credit Program Administrator, April 12, 2006. Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1-1648.8; *see also*, Establishment of a Pennsylvania Universal Service Fund, M-00001337 (Order entered April 18, 2000); 52 Pa.Code §§ 63.161, *et seq.** Thus, in the interest of assisting the Joint Complainants to obtain relief on behalf of consumers who it is alleged were financially distressed by violations of various Commission regulations, we find this term of the Settlement to be in the public interest as it appears to be mutually advantageous to the Commission and the Joint Complainants to expedite the issuance of refunds and other relief to customers in Pennsylvania.

Finally, we note the Commission's recent actions in the PaG&E Order and the IDT Order with regard to the release of claims that is contained in both the settlements between the Joint Complainants and those EGSs as well as the settlement in this case between the Joint Complainants, I&E and Respond. In the PaG&E Order, for example, the Commission denied an exception filed by a consumer who argued that the Administrative Law Judges erred by permitting the parties to include in that settlement a provision requiring customers' to sign general releases to receive refunds from the refund pool because it is beyond the jurisdiction and practice of the Commission to adjudicate and/or interfere with private causes of action such as breach of contract. *Id.* at 43. In denying the exception, the Commission noted that "the settlement is in the public interest as it creates overall benefits to the various stakeholders, represents a reasonable compromise of the

litigated positions of the parties and will promote the goals of the General Assembly to establish a robust competitive market for electric generation supply to Pennsylvania retail customers.” Id. at 48.

The Commission disagreed that adopting a settlement that requires a customer who elects to receive a refund to sign a release as a condition of obtaining payment is an impediment to the authority of the Commission to approve the settlement because “parties before a Commission proceeding may resolve their disputes according to the terms and conditions that are mutually agreeable as between them.” Id. at 49. The Commission further held that nothing in the settlement suggests or requires the Commission to adjudicate and/or interfere with private causes of action such as breach of contract and because the settlement does not compromise any customer’s rights to pursue a claim against the EGS outside of the Commission proceeding. Id. at 50. The Commission, however, required as an express condition of approval of the settlement, that the Joint Complainants certify to the Commission that the following notice has been provided to each consumer who voluntarily elects to receive payment from the refund pool and sign a release of claims:

Signing the Release of Claims and receipt of payment from the Refund Pool may affect your right to recover amounts for the same conduct of Pennsylvania Gas & Electric Company that could result from legal proceedings against this supplier in a court of law.

Id. at 51. The Tentative Form Opinion and Order became final when no adverse comments or objections were filed in response to the condition requiring this notice. *See*, Docket No. C-2014-2427656, Secretarial Letter (dated March 18, 2016).

Given the substantial similarity between the settlements approved in the PaG&E Order and the IDT Order and the settlement in this case, we find that the release of claims contained in the Settlement does not prohibit us from finding that the settlement is in the public interest and should be adopted in its entirety, subject to the same express condition raised in the PaG&E Order and the IDT Order. The release of claims in this case should mirror the release of claims noted above.

In conclusion, we find the Refund Pool is in the public interest because those consumers who paid more than they believed that they would be required to pay for electric generation service based on their interactions with Respond will be remunerated for the additional amount they paid above their EDC's PTC and many will receive the savings they expected. It may not be an amount punitive in nature or compensatory for damage claims resulting from the misconduct, but it financially reimburses the customers a reasonable amount of money. As we have previously stated, in order for the market for the competitive provision of electric generation service to flourish in Pennsylvania, consumers must have confidence that the price they are paying is the price they were told they would be paying. While Respond does not expressly admit to any wrongdoing or violations of the Public Utility Code, Commission regulations or orders, and the settlement does not provide that the averments in the complaints are true, the Settlement compensates numerous consumers for amounts they believe they were overcharged and provides a level of assurance to the marketplace that EGSs' actions will be watched and any inappropriate actions will be raised with the Commission. The Commission takes seriously its role in the development of the competitive provision of electric generation service and this Settlement is in the public interest because the refund provisions aid in that development.

As such, we find that the refund provisions contained in the Settlement agreement are in the public interest and support adopting the Settlement in its entirety.

b. Penalty and Contribution

With regard to the second aspect of the Settlement, the civil penalty and contribution to EDC hardship funds, we also find these provisions in the Settlement to be in the public interest and support adopting the Settlement in its entirety. The Settlement provides that Respond will pay a civil penalty of \$125,000 to the General Fund within thirty days after the Commission has entered a final Order approving the Settlement and that Respond cannot claim the penalty as a tax deduction. The Settlement further provides that Respond shall make a contribution of \$50,000 to EDC's hardship funds within thirty days after the Commission has entered a final Order approving the Settlement and that the contribution shall be allocated by the ratio of Respond customers in the EDC's territory to the total amount of Respond customers in Pennsylvania for the months of

January, February and March, 2014. We find the penalty and contribution provisions of the Settlement to be in the public interest and adopt them without modification.

With regard to the civil penalty, Section 3301 of the Public Utility Code grants the Commission authority to impose civil penalties. This section provides in pertinent part:

**§ 3301. Civil penalties for violation.**

(a) General rule. – If any public utility or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, such public utility, person or corporation . . . shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000 to be recovered by an action of assumpsit instituted in the name of the Commonwealth.

66 Pa.C.S. § 3301(a). We find that the provision of the Settlement imposing a civil penalty of \$125,000 that Respond cannot claim as a tax deduction is consistent with Section 3301 as well as applicable Commission precedent and is in the public interest.

For example, in the PaG&E Order, the Commission approved a settlement wherein the EGS agreed to a civil penalty in the amount of \$25,000 which it will not be entitled to claim as a tax deduction, as well as a contribution of \$100,000 to EDC's hardship funds, again allocated based on the ratio of its customers in the EDC's service territory to the total number of its customers in Pennsylvania as of January 1, 2014. PaG&E Order at 21. In the IDT Order, the EGS agreed to a civil penalty in the amount of \$25,000 and a contribution to EDC's hardship funds of \$75,000, again under the same conditions. IDT Order at 17. In the HIKO Order, the EGS agreed to a \$25,000 contribution to EDCs' hardship funds, again on a pro rata share.<sup>5</sup> HIKO Order. The

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<sup>5</sup> A civil penalty of \$1.8 million was imposed on the EGS in a separate companion case that was fully litigated and currently on appeal. Bureau of Investigation and Enforcement v. HIKO Energy, LLC, Docket No. C-2014-2431410 (Order entered Dec. 3, 2015) (I&E/HIKO Order).

Settlement in this case is consistent with those prior agreements involving substantially the same issues and circumstances.

With regard to the provision in the Settlement that Respond will make a \$50,000 contribution to the EDCs' hardship funds with the contribution allocated by the ratio of Respond's customers in the EDC's territory to the total amount of Respond customers in Pennsylvania as of January 1, 2014, we find this provision of the Settlement is also in the public interest and supports adopting the Settlement because of the strain placed on hardship funds and low-income consumers as a result of the increased bills consumers paid during the months at issue in this case. That is, as more consumers' utility bills increased as the extreme cold weather persisted, more consumers sought assistance from the hardship funds. With the instant Settlement, it is appropriate to replenish those funds for future use. The hardship funds benefit all low-income consumers in the EDCs' territories, not solely the customers of Respond. Furthermore, it is likely that a consequence of the actions of Respond as averred in the consumer witness testimonies caused undue strain on EDC's hardship funds as the demand for financial support increased when the variable rate increased. The \$50,000 provision in the Settlement will redress these consequences of Respond's alleged actions.

We also find that it is reasonable, as proposed in the Settlement, that the total contribution of \$50,000 be allocated by the ratio of Respond customers in the EDC's territory to the total amount of Respond customers in Pennsylvania to ensure that those EDC hardship funds that were affected the most receive the most benefit from this provision of the settlement. Doing so will best distribute the \$50,000 to the hardship funds in the manner they were impacted the most by Respond's actions as alleged in the complaints.

As a result, we find the \$125,000 civil penalty and the \$50,000 contribution to EDCs' hardship funds to be reasonable and a pragmatic compromise between the parties. These provisions of the Settlement are in the public interest because the Joint Complainants and I&E averred in their respective complaints numerous violations of Commission regulations that, if proven true, would warrant the imposition of a civil penalty. As such, the Joint Complainants and I&E requested in their complaints that the Commission impose a civil penalty on Respond. In light of the magnitude of the violations averred, a \$125,000 civil penalty, coupled with a \$50,000

contribution to EDC's hardship funds, is reasonable and in the public interest. As discussed further below, the Commission's Policy Statement on factors regarding civil penalties supports the \$125,000 civil penalty. When applying those various factors to the specifics of this Settlement, it is clear that a \$125,000 civil penalty is reasonable and in the public interest. For the same reasons as why the Settlement overall complies with the factors in the Commission's Policy Statement, so too do the factors in the Commission's Policy Statement support finding that the imposition of the \$125,000 civil penalty is reasonable.

These provisions in the Settlement are responsive to the issues raised in the complaints filed by the Joint Complainants and I&E and constitute a reasonable resolution of those issues. The provisions of the Settlement regarding the civil penalty and contribution to EDCs hardship funds are consistent with Commission precedent and will aid in the development of a competitive market for the provision of electric generation service while aiding low income customers. As such, we find that the provisions contained in the Settlement agreement requiring Respond to pay a \$125,000 civil penalty to the General Fund and contribute \$50,000 to EDC hardship funds are in the public interest and support adopting the Settlement in its entirety.

c. Business modifications

With regard to the third aspect of the Settlement, business modifications, we find that these provisions of the Settlement are in the public interest and support adopting the Settlement in its entirety. Similar to the settlements approved in the PaG&E Order, HIKO Order and IDT Order, the Settlement provides extensive modifications to Respond's business practices, including changes to Respond's product offering, marketing, third-party verifications, disclosure statement, non-door-to-door training, door-to-door training and marketing, compliance monitoring, reporting and customer service. Notably, the Settlement requires Respond to offer only fixed price contracts for a period of two years beginning September 1, 2015.

Some of the consumer testimonies admitted into the record in this proceeding contain an averment that Respond's salespeople promoted an affiliation with an EDC or led the consumer to believe they were employees of the utility. Finding of Fact 4. Some of the consumer

testimonies moved into the record contain averments that Respond's salespeople did not identify themselves as Respond salespeople or were told that they had to choose an electric supplier to keep their utility service. Finding of Fact 5. Approximately 114 of the consumer testimonies moved into the record included an averment that Respond salespeople promised savings in their oral presentations and other consumers testified that the Respond salespeople did not discuss whether the rate was fixed or variable. Finding of Fact 7. In response, the Settlement, among other things, prohibits Respond, its agents, employees or representatives from making misrepresentations to consumers. The Settlement also prohibits the Company from using certain terms in their marketing materials, such as "risk free," "competitive" or "guaranteed." The Settlement includes additional restrictions and requirements on the Company's marketing efforts in an attempt to ensure that consumers better understand the service they are enrolling in and extensive provisions regarding marketing, disclosure statement, door-to-door sales and non-door-to-door sales. These provisions of the Settlement will also help ensure that Respond is in compliance with the Commission's regulations that prohibit an EGS from engaging in any fraudulent, deceptive or unlawful marketing acts. *See e.g.*, 52 Pa.Code § 54.43(f).

Similarly, approximately 20 consumer testimonies moved into the record included an averment that they were "slammed" – i.e., that their electric generation service was switched to another provider without their authorization. Finding of Fact 9. In response, the Settlement provides extensive modifications to Respond's third-party verification process. This includes requiring Respond representatives to provide certain explanations in a slow and audible manner to consumers prior to beginning the verification process. The Settlement also requires that Respond add specific questions to the verification process and requires that Respond request that the consumer produce the person whose name is on the electric bill to verify authorization to switch. The Settlement also requires that the verification process will be performed outside the presence of the Respond sales representative and that the Respond sales representative will not prompt consumers' response to the verification questions, instruct the consumers as to the manner in which to respond to the verification questions or otherwise participate in the verification of any sale. These provisions of the Settlement will help ensure that Respond complies with the restriction in the Public Utility Code to "ensure that an EDC does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's

consent to a change of supplier.” 66 Pa.C.S. § 2807(d)(1); *see also*, 52 Pa.Code § 54.42(a)(9) (prohibiting the unauthorized switching of a customer’s generation supplier without the customer’s consent).

As a final example, approximately 74 consumer testimonies moved into the record included an averment that the customer had trouble contacting Respond, were placed on hold for extended periods of time, or were sent to voice mail where the message was not returned or addressed. Finding of Fact 10. In response, the Settlement requires Respond to employ a Chief Compliance Officer whose customer service duties will include, at a minimum, to ensure Respond’s compliance with Chapter 56 of the Commission’s regulations include prompt investigation of all customer complaints, providing the customer with the necessary information to make an informed judgment and issue a report to the customer within thirty days. The Settlement also requires that Respond will maintain a staff of customer service representatives necessary to at least provide consumers with reasonably timely access to a live customer service representative during normal business hours and that hold times for consumers calling the Company to be no more than ten minutes and consumer emails to be answered generally within 24 hours. The Settlement also requires that Respond develop and implement an action plan for handling periods of high call volumes, including providing for the answering of overflow calls to Respond’s system by additional customer service staff or temp services. These provisions in the Settlement will help ensure that Respond will be in compliance with the Commission’s regulations that require EGSs to investigate a dispute, provide the customer with information necessary to make an informed judgment and issue a report to the customer within 30 days after receiving notice of the dispute. 52 Pa.Code §§ 56.141(a), 56.151 and 56.152.

All of the modifications to business practices provided in the Settlement incorporate various changes to Respond’s business practices that address the various issues raised in the complaints filed by the Joint Complainants and I&E and demonstrated by the consumer testimonies admitted into the record. These modifications, therefore, support adopting the Settlement as being in the public interest. The Settlement contains various other provisions regarding disclosure statements, compliance, reporting, etc. that are not discussed herein but that also warrant finding that the Settlement is in the public interest and should be adopted in its entirety. The Settlement is

in the public interest because it implements significant business modifications that will allow Respond to be a viable competitor for the provision of electric generation service in Pennsylvania while ensuring numerous protections for consumers. Overall, the settlement incorporates substantial actions that further the policy of the Commonwealth to “permit retail customers to obtain direct access to a competitive generation market,” 66 Pa.C.S. § 2802(3), and should be adopted.

As such, we find that the modifications to business practices contained in the Settlement agreement are in the public interest and support adopting the Settlement in its entirety.

#### E. Application of the Rosi factors

As noted above, the Commission has promulgated a Policy Statement that sets forth ten factors (“Rosi factors”) that the Commission will consider in evaluating litigated and settled proceedings and determining whether a fine for violating a Commission order, regulation or statute is appropriate, as well as whether a proposed settlement for violations is reasonable and approval of the settlement agreement is in the public interest. 52 Pa.Code § 69.1201(a). When applied in settled cases, the factors will not be applied in as strict a fashion as in a litigated proceeding. 52 Pa.Code § 69.1201(b). The parties in settled cases will be afforded flexibility in reaching amicable resolutions so long as the settlement is in the public interest. *Id.* The factors in the Policy Statement are applied to both the settlement in general and the civil penalty specifically. A review of the factors articulated in the Policy Statement, as applied to both the settlement and the civil penalty, as well as the various positions of the parties with regard to each of the factors, supports finding that the settlement should be adopted as being in the public interest.

##### a. First Rosi factor – whether the conduct was of a serious nature

With regard to the first Rosi factor, Section 69.1201(c)(1) states:

Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When

the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

52 Pa.Code § 69.1201(c)(1). In their respective Statements in Support of the Settlement, the Joint Complainants and I&E contend that the violations alleged in their respective complaints were of a serious nature. Respond agrees that the allegations in the complaints are serious but notes, among other things, that no allegations have been made to suggest that its training and oversight of its sales representatives promised savings or made other guarantees.

We agree that the conduct at issue in this consolidated proceeding was of a serious nature. The averments in the complaints include misleading and deceptive promises of savings, misleading and deceptive welcome letters and advertisements, slamming, lack of good faith handling of complaints and failing to provide accurate pricing information, among other things. These are allegations of a serious nature. Additionally, many consumer witnesses provided testimony in support of these averments. It has long been the policy of the Commonwealth to promote the competitive provision of electric generation service and various parties, including the General Assembly, the Commission, the public advocates, EDCs, EGSs and others, have expended a substantial amount of resources in making the marketplace successful. Such success requires that no misleading and deceptive promises of savings, among other things, be made that may undermine competition. Record evidence demonstrates that Respond's actions may have jeopardized this success. Certainly, the allegations made in the complaints do not comprise less egregious conduct, such as an administrative filing or technical errors, which would warrant a lower civil penalty. Rather, the conduct at issue was of a serious nature and warrants adopting the Settlement in its entirety, along with the civil penalty included therein, as being in the public interest.

- b. Second Rosi factor - whether the resulting consequences were of a serious nature

With regard to the second Rosi factor, whether the resulting consequences of the conduct at issue were of a serious nature, Section 69.1201(c)(2) states:

Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved,

such as personal injury or property damage, the consequences may warrant a higher penalty.

52 Pa.Code § 69.1201(c)(2). In their Statement in Support of the Settlement, the Joint Complainants contend that the consequences of Respond's alleged conduct resulted in harm to Pennsylvania's consumers and the retail electric market in Pennsylvania. The Joint Complainants also noted that many consumer witnesses detailed their hardships in their testimony on the record, including receiving shut off notices or seeking payment arrangements to pay off charges over time. Similarly, I&E noted that, even though there was no personal injury or property damage, the resulting consequences of the conduct averred in the complaint are of a serious nature as many consumers experienced service termination or monthly bills three to five times the normal amount straining family budgets and low-income assistance programs. I&E also noted the adverse impact to electric choice competition as a serious consequence. Respond notes that no allegations have been raised regarding personal injury or property damage and that the financial harm has already been reduced by nearly \$1 million in bill reductions and \$250,000 in refunds. Respond further notes the \$3.8 million Refund Pool established in the Settlement that is comparable to other similar settlements.

We agree that the resulting consequences were of a serious nature. As noted above, most of the consumer testimonies admitted into the record in this proceeding on behalf of the Joint Complainants and I&E contain complaints about Respond's charges for electric generation service provided during the period January through March, 2014 and approximately 114 of the consumer testimonies moved into the record included an averment that Respond salespeople promised savings in their oral presentations. Many consumers testified that they faced termination from their EDCs after receiving Respond's charges, entered into a payment arrangement to pay off outstanding charges or suffered general financial hardship due to the rates charged by Respond. Such consequences strained family budgets and low-income customer assistance programs during a time of prolonged extreme cold weather as consumers could not pay their electric bills without assistance. These consequences are serious.

The resulting consequences were serious because the dollar values, both individually and collectively, are substantial. Record evidence demonstrates that some consumers experienced

increases in their monthly bills of four or five times the normal amount. Additionally, the total size of the Refund Pool supports finding that the resulting consequences were of a serious nature. As noted above, the violations averred in the complaints should be deemed serious because the alleged conduct could adversely impact the integrity of electric competition and potentially deter participation in the retail electric market. The effective development of the competitive provision of electric generation service requires eliminating misleading and deceptive promises, among other things. Given the serious nature of the alleged violations and the resulting consequences, refunds to customers and a contribution to the EDCs' hardship funds are appropriate, reasonable and in the public interest. The Refund Pool will assist these affected customers in restoring some portion of their financial losses incurred as a result of the alleged conduct. The \$50,000 contribution that will be allocated to the EDCs' hardship funds will assist consumers who have experienced difficulties as a result of high electric bills. As such, we find that the resulting consequences of the conduct at issue were of a serious nature and warrant adopting the Settlement in its entirety, along with the civil penalty included therein, as being in the public interest.

c. Third Rosi factor – whether the conduct was intentional or negligent

With regard to the third factor, whether the conduct at issue was deemed intentional or negligent, this factor is not relevant here because this factor is only evaluated in litigated proceedings. 52 Pa.Code § 69.1201(c)(3).

d. Fourth Rosi factor – efforts to modify internal practices and procedures

With regard to the fourth Rosi factor, efforts to modify internal practices and procedures, Section 69.1201(c)(4) states:

Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

52 Pa.Code § 69.1201(c)(4). In their Statement in Support of the Settlement, the Joint Complainants, most notably, identify the voluntary cash refunds Respond provided prior to the Settlement and that Respond has already taken action to implement some of the provisions of the settlement. I&E also points to the numerous provisions Respond agreed to in the Settlement when analyzing this factor, including agreeing not to offer variable rate products for a period of 24 months beginning September 1, 2015. Similarly, Respond noted the numerous provisions it agreed to in the Settlement, including a stay-out from offering variable price contracts to new customers for two years beginning September 1, 2015 and implementing an enhanced training program. Respond also stated that the stay-out provision is longer, and the business modifications are greater, than those the Commission has approved in other similar cases.

We find that Respond made minimal efforts to modify its internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. Although Respond provided nearly \$1 million in bill reductions and \$250,000 in refunds during the January to March, 2014 time period, there is no record evidence demonstrating that Respond took other efforts such as training and improving company techniques and supervision to address the conduct at issue. Respond's efforts to implement certain provisions of the Settlement, including no longer offering variable rate products as of September 1, 2015 and implementing a compliance officer, prior to the approval of the Settlement, were more than a year and a half after the conduct at issue arose. Furthermore, these actions were taken as part of the Settlement reached between the parties and not as a result of Respond's own volition. This factor considers the amount of time it took to correct the conduct once it was discovered. Nonetheless, when considering the Settlement as a whole, including the size of the Refund Pool and the substantial modifications to business practices, this factor supports adopting the Settlement in its entirety.

e. Fifth Rosi factor – Number of customers affected and duration of violation

The fifth Rosi factor considers the number of customers affected and the duration of the violation. 52 Pa.Code § 69.1201(c)(5).

In their Statement in Support of the Settlement, the Joint Complainants noted that the OCA received approximately 189 contacts and the OAG received 520 contacts from Respond's customers regarding variable rates and argued that, where there is one complaint made to the Commission, there are likely substantially more of the same nature that have not been formally made. As a result, the Joint Complainants argued that the number of customers who were impacted by the Company's conduct as alleged in the Joint Complaint was substantial. I&E noted in its Statement in Support of the Settlement that it received 1206 informal complaints regarding Respond Power. I&E noted that, while some of these contacts may be duplicative of the contacts made with the Joint Complainants, the number of customers likely impacted by Respond's conduct is substantial. Respond noted that these numbers of customers, even if there was no duplication, would be less than 2,000 and therefore is a very small percentage of customers served by Respond. Respond added that only 169 customers provided testimony in this proceeding.

We believe that the number of customers affected is substantial and supports adopting the Settlement in its entirety as being in the public interest. Substantial record evidence demonstrates that, at a minimum, 169 customers were affected. This is a substantial number of customers, even assuming that no other customer has been affected. It is reasonable that additional customers beyond those 169 who testified were affected because of the record evidence demonstrating the difficulties experienced in reaching Respond's customer service representative or having those contacts properly responded to. That is, some consumers may have tried to complain to Respond but were unable to do so and gave up. As such, there is sufficient reason to believe that a substantial number of customers were affected, including many for multiple months during the winter of 2014. Furthermore, record evidence demonstrates that the violations occurred over several months throughout the winter of 2014. As a result, the duration of the violations was long. This factor also supports adopting the Settlement in its entirety as being in the public interest.

f. Sixth Rosi factor – compliance history

With regard to the sixth Rosi factor, Respond's compliance history, Section 69.1201(c)(6) provides that, "an isolated incident from an otherwise compliant utility may result in a

lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” 52 Pa.Code § 69.1201(c)(6).

In their Statement in Support of the Settlement, the Joint Complainants noted that the Commission has imposed conditions on the natural gas supplier license of Respond’s affiliate in 2012 and that Respond and its affiliates were investigated in Maryland and Illinois. The Joint Complainants noted, however, that Respond’s compliance history does not pose a barrier to approval of the settlement as the business modifications will help ensure compliance with regulatory standards. I&E noted that Respond has no prior history of non-compliance. I&E added that, although there are some formal complaints pending before the Commission, those do not constitute “prior” compliance history since they involved the same allegations and time period at issue in this proceeding. I&E also noted that the business modifications will help ensure Respond’s regulatory compliance going forward. In its Statement in Support of the Settlement, Respond noted that two formal complaints had been filed with the Commission that were resolved through settlements and one formal complaint was fully litigated but that does not constitute “prior” compliance history. Respond noted other formal complaints that were dismissed during this proceeding.

We agree that there is minimal if any prior compliance history to consider. As Respond noted, there were only two formal complaints filed against the Company prior to January, 2014, the time at which the events that lead to the filing of the complaints occurred. However, although the Company admits no wrongdoing, the size of the Refund Pool indicates widespread overbilling involving more consumers than just those 169 that testified. This is not an “isolated incident,” another issue to be considered when analyzing this factor. Nonetheless, we believe that this fact should not be a barrier to the approval of the settlement in this case. As this factor recognizes that frequent and recurrent violations may result in a higher penalty, we believe that the total Refund Pool size of \$5,083,504.36, coupled with the civil penalty of \$125,000, contributions to EDC hardship funds of \$50,000 and extensive modifications to Respond’s business practices, is reasonable and in the public interest based on the record developed in this proceeding. Respond is advised, however, that further violations of the Public Utility Code or a Commission Order or regulation will likely warrant increasingly higher penalties up to and including license revocation.

At this time, however, we believe the Settlement is in the public interest and should be adopted in its entirety.

g. Seventh Rosi factor – cooperation with the Commission investigation

With regard to the seventh Rosi factor, Section 69.1201(c)(7) analyzes “whether the regulated entity cooperated with the Commission’s investigation. Facts establishing bad faith, active concealment of violations or attempts to interfere with Commission investigations may result in a higher penalty.” 52 Pa.Code § 69.1201(c)(7).

The Joint Complainants stated in their Statement in Support of the Settlement that Respond’s level of cooperation in this matter is demonstrated by the ability of the parties to comprehensively resolve the consolidated proceedings. The Joint Complainants also noted Respond’s willingness to perform certain requirements in the Settlement prior to its approval. I&E stated in its Statement in Support of the Settlement that Respond cooperated with the investigation, including cooperating in formal and informal discovery and settlement negotiations. Respond noted that it has cooperated in this proceeding by furnishing extensive discovery responses and that it has also worked extensively with customers to resolve individual complaints. Respond added that “the ability of the parties to comprehensively resolve a matter of this magnitude demonstrates cooperation.”

As an initial matter, we note that this proceeding was initiated by formal complaints and is not a formal Commission investigation. Nonetheless, the Joint Complainants and I&E noted that Respond cooperated in this proceeding in the form of discovery responses and settlement negotiations. As this proceeding is not a Commission investigation, however, this factor is not relevant in determining whether the Settlement or civil penalty should be adopted. We agree that the ability of the parties to comprehensively resolve this matter demonstrates a high level of cooperation amongst all the parties.

h. Eighth Rosi factor – amount of penalty necessary to deter future violations

With regard to the eighth Rosi factor, Section 69.1201(c)(8) analyzes “the amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.” 52 Pa.Code § 69.1201(c)(8).

Furthermore, the Commission has recently stated that “though we may more often craft penalties specific to the individual case and circumstances at hand, we have leeway to consider the impact of our actions as a deterrent to the industry as a whole.” HIKO Order, at 44, n13. The Commission added: “Doing so is an effective means of assuring the industry understands the importance of compliance with our Regulations to the development of a fair and reliable competitive market.” Id.

The Joint Complainants, I&E and Respond each reference in their respective Statements in Support of the Settlement the totality of the Settlement as a deterrent to future violations. The Joint Complainants stated that the Settlement comprehensively addresses the allegations in both complaints and that the civil penalty along with the contributions to EDCs’ hardship funds, the refunds to customers and the extensive business modifications are sufficient to deter similar conduct in the future. Similarly, I&E noted in its Statement in Support of the Settlement the various aspects of the settlement noting that they are “significant and appropriate enough to deter future misconduct.” I&E further notes that this is true given the number of customers who provided testimony in this proceeding and who contacted I&E and the Joint Complainants with complaints. Respond noted the “extensive oversight” that the Commission and the parties will have on Respond’s operations over the next five years and the Commission’s recent actions approving similar settlements as reasons why the Settlement should be adopted.

Although these Settlement provisions are substantial in part because of the number of the alleged violations, financial penalties of this magnitude, accompanied by significant modifications to business practices, are sufficient to deter future violations. Although the civil penalty constitutes a small fraction of the amount provided in the Refund Pool, we believe that the provisions of the Settlement must be considered as a whole, not piecemeal. When doing so, the Settlement as a whole deters future violation, is in the public interest and warrants being adopted. We believe it is appropriate for a majority of the monetary provisions in the Settlement to be used

for refunds to customers, instead of as a civil penalty that is remitted to the General Fund. The distribution of the monetary provisions of the settlement is appropriately disbursed in a manner that is in the public interest.

As a result, we believe the Settlement is in the public interest and should be adopted in its entirety.

i. Ninth Rosi factor – past Commission decisions in similar cases

The ninth Rosi factor addresses past Commission decisions in similar cases. 52 Pa.Code § 69.1201(c)(9).

The Joint Complainants, I&E and Respond each reference in their respective Statements in Support of the Settlement the settlements recently approved by the Commission in the PaG&E Order and HIKO Order, as well as the IDT Order. The Joint Complainants recognize that the scope of the conduct complained of in this proceeding is unique and unlike other complaint proceedings against EGSs that this Commission has decided but that the Commission has approved these settlements involving EGSs that include refunds, civil penalties and modifications to business practices. Similarly, I&E notes that “this case presents its own set of facts, involving a number of affected customers unique to this case, wherein violations attributable to each customer are based on the unique facts of each customer’s interaction with Respond and/or its third-party sales agent.” I&E added that these cases are illustrative of the fact that the terms of the Settlement reached in the instant case are just, reasonable and in the public interest. Respond added that, “by providing for refunds, a civil penalty, contributions to EDC hardship funds and injunctive relief, the settlement substantially resembles the settlements previously approved by the Commission and the ALJs involving similar allegations, timeframes and parties.”

Although the decisions in the PaG&E Order, the HIKO Order and the IDT Order are settlements and therefore not precedent, we agree that the Commission’s Orders in the PaG&E Order, HIKO Order and the IDT Order, are substantially similar. In addition, the Commission’s Orders in Kiback and Herp, *supra*, which were fully litigated, are also substantially similar, albeit

on a smaller scale. While specific details may be different amongst these various cases, the issues are generally the same and we have been guided by these past Commission decisions when evaluating the settlement proposed in this case. We note in the PaG&E Order, HIKO Order and the IDT Order, the EGSs agreed to total refund pools, respectively, of \$6,836,563, \$2,025,383.85 and \$6,577,000. The total amount of the Refund Pool in this settlement of \$5,083,504.36 is comparable.

Likewise, a review of the other provisions of the respective settlements also supports adopting the settlement in this case as being in the public interest. For example, the extensive modifications to the respective EGS's business practices are also substantially similar. With regard to the civil penalty, in the PaG&E Order and the IDT Order, the EGS agreed to total civil penalties of \$25,000 and \$25,000. In this settlement, Respond has agreed to a civil penalty of \$125,000. No civil penalty was imposed in the HIKO Order because the civil penalty was imposed in a separate Order issued concurrently in I&E/HIKO Order, *supra* (imposing a civil penalty of \$1,836,125). Finally, with regard to contributions to EDC's hardship funds, in the PaG&E Order, HIKO Order and the IDT Order, the EGS agreed to total contributions respectively of \$100,000, \$25,000 and \$75,000. In this Settlement, Respond has agreed to contribute \$50,000 to EDC hardship funds.

As a result, we find that past Commission decisions in similar cases support finding that the Settlement in this case is in the public interest and should be approved in its entirety.

j. Tenth Rosi factor – other relevant factors

The tenth factor analyzes other relevant factors. 52 Pa.Code § 69.1201(c)(10).

In their Statement in Support of the Settlement, the Joint Complainants noted as other relevant factors that there is inherent uncertainty in the outcomes of fully litigated proceedings and that the Settlement will ensure that Respond's affected customers will receive refunds and that the conduct complained of will be addressed. The Joint Complainants also noted that the Settlement will save costs and resources of the parties and the Commission. I&E stated that there are no additional relevant factors. Respond reiterated the various aspects of the settlement, including the civil penalty, the Refund Pool, the two year variable product prohibition, modifications to business

practices, enhanced compliance efforts and extensive reporting obligations, among other things, and cited to the PaG&E Order, HIKO Order and IDT Order in support of its position that an evaluation of the Settlement warrants its adoption without modification.

We agree that an additional relevant factor that supports finding the Settlement to be in the public interest and approved in its entirety is that consumers will receive refunds sooner than if the case were fully litigated. The events which gave rise to the complaints filed in this case occurred more than two years ago. Fully litigating these consolidated cases would delay any resolution several months or more and any Commission decision would potentially be subject to appellate review. The Settlement, on the other hand, helps to expedite or eliminate these delays. Additionally, although the parties and the Commission have already expended substantial resources in litigating this case, up to and including multiple hearings and the submission of briefs, adopting the settlement in its entirety will eliminate or reduce costs associated with filing exceptions and a Commission Order, including the possibility of an appeal. Avoiding these expenses is in the public interest. Finally, the multiple benefits provided in the settlement support adopting the Settlement in its entirety. This includes the Refund Pool, contributions to EDC hardship funds and substantial modifications to Respond's business practices. Adopting the Settlement will help ensure that all of these provisions are implemented.

As a result, other relevant factors support adopting the Settlement in its entirety as being in the public interest.

## V. CONCLUSION

In conclusion, this Decision adopts the Joint Petition for Approval of Settlement in its entirety as being in the public interest. The Settlement is a comprehensive settlement of all of the issues amongst all of the parties and resolves both the formal complaint filed by the Joint Complainants and the formal complaint filed by I&E. Adopting the Settlement is also supported by substantial evidence. Based on the forgoing Rosi analysis as applied to this case, we find that the Refund Pool, civil penalty and contribution to EDC's hardship funds provisions are reasonable and in the public interest. The refunds Respond previously provided directly to consumers combined

with the additional Refund Pool monies will help restore the financial losses incurred by Respond's customers, and others, that were alleged to have been charged extraordinarily high prices in early 2014. The Settlement will provide refunds to customers and do so sooner than a fully litigated proceeding. The contribution to EDCs' hardship funds will assist customers in need with payment of their electric bills. Furthermore, the extensive modifications to business practices articulated in the Settlement also satisfy the Rosi factors because they will help protect Respond's current and possible future customers and will better inform customers of the products and services provided by Respond.

Commission policy promotes settlement and settlements will be approved if they are in the public interest. *See, Lancaster, Warner, supra.* While various provisions of the Settlement provide greater public benefits than other provisions, we recognize that the Settlement is a compromise among the parties regarding many varied and complex issues associated with a matter that caused significant public outcry during the winter of 2014. When viewed as a whole, adopting this Settlement in its entirety satisfies the standards and factors the Commission considers when evaluating settlements and will promote the continued development of the competitive market for the provision of electric generation service.

## VI. CONCLUSIONS OF LAW

1. Commission policy promotes settlements. 52 Pa.Code § 5.231.
2. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.
3. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for contested matters. Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.* (Opinion and Order entered July 14, 2011).

4. The Commission must review proposed settlements to determine whether the terms are in the public interest. Pa. Pub. Util. Comm'n LBPS v. PPL Utilities Corporation, M-2009-2058182 (Opinion and Order November 23, 2009); Pa. Pub. Util. Comm'n v. Philadelphia Gas Works, M-00031768 (Opinion and Order January 7, 2004); 52 Pa. Code § 69.1201; Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996); Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

5. The Commission has historically defined the public interest as including ratepayers, shareholders and the regulated community. What is in the public interest is decided by examining the effect of the proposed settlement on these “stakeholder” entities. Pa.P.U.C. v. Bell Atlantic-Pennsylvania, Inc., Docket No. R-00953409 (Order entered September 29, 1995).

6. The public interest is best served by ensuring that the underlying transaction complies with applicable law. Dauphin County Indus. Dev. Auth. V. Pa. P.U.C., 123 A.3d 1124 (Pa. Cmwlth. 2015).

7. As a general rule, the interpretations of the agency charged with a statute’s administration and execution are entitled to great weight and the Legislature is presumed to favor public interests over private interests. Chappell v. Pa. P.U.C., 425 A.2d 873 (Pa. Cmwlth. 1981); 1 Pa.C.S. §§ 1921(c)(8), 1922(5).

8. The Commission’s regulations provide a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201; *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409 (Final Order entered February 10, 2000).

9. The Policy Statement factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. 52 Pa.Code § 69.1201(a).

10. When applied in settled cases, the Policy Statement factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest. 52 Pa.Code § 69.1201(b).

11. Decisions of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

12. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

13. The Commission has plenary authority under Section 501 of the Public Utility Code to direct an electric generation supplier to issue a credit or refund for an over bill. Commonwealth of Pa, et al. v. IDT Energy, Inc., Docket No. C-2014-2427657 (Opinion and Order entered Dec. 18, 2014).

14. In addition to any powers expressly enumerated in this part, the Commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof. 66 Pa.C.S. § 501.

15. The Commission's plenary authority under Section 501(a) of the Code includes directing an EGS to issue a credit or refund for an overbill in violation of 52 Pa. Code § 54.4(a) and a violation of the Commission's Interim Guidelines. Stephen Kiback, Jr. v. IDT Energy, Inc., Docket No. C-2014-2409676, (Opinion and Order entered August 20, 2015); *see also*, Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural

Gas Suppliers, Docket No. M-2010-2185981 (Order entered November 5, 2010) and Herp v. Respond Power, LLC, Docket No. C-2014-2413756 (Opinion and Order entered January 28, 2016).

16. The Commission, as a governmental agency, has issued requests for proposals and request for qualifications to hire third-party administrators pursuant to various regulatory provisions in the past. Implementation of the Alternative Energy Portfolio Standards Act of 2004, Docket No. M-00051865, Request for Qualifications For Alternative Energy Credit Program Administrator, April 12, 2006; Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1-1648.8; *see also*, Establishment of a Pennsylvania Universal Service Fund, M-00001337 (Order entered April 18, 2000); 52 Pa.Code §§ 63.161, *et seq.*

17. It is the policy of the Commonwealth to “permit retail customers to obtain direct access to a competitive generation market.” 66 Pa.C.S. § 2802(3).

18. The Joint Petition for Approval of Settlement submitted in this proceeding on April 22, 2016 should be adopted in its entirety because it is in the public interest and supported by substantial evidence.

## VI. ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement filed in this proceeding on April 22, 2016 by Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate, Bureau of Investigation and Enforcement, Respond Power, LLC and the Office of Small Business Advocate is hereby adopted in its entirety.

2. That the Stipulation of Facts in Support of Settlement submitted on April 22, 2016 as Exhibit A to the Joint Petition for Approval of Settlement is admitted into the record of this proceeding.

3. That the formal Complaint filed by the Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane and Tanya J. McCloskey, Acting Consumer Advocate, against Respond Power, LLC on June 20, 2014 at Docket Number C-2014-2427659 is hereby sustained.

4. That the formal Complaint filed by the Bureau of Investigation and Enforcement against Respond Power, LLC on August 21, 2014 at Docket Number C-2014-2438640 is hereby sustained.

5. That Respond Power LLC shall pay a civil penalty of \$125,000 by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

6. That Respond Power LLC shall file a sworn certification with the Commission showing its compliance with the term of the settlement regarding the \$50,000 contribution to Electric Distribution Companies' hardship funds within ninety (90) days of the date of the entry of the Final Order in this proceeding.

7. That this proceeding shall remain open for the purpose of enforcing the terms of the settlement requiring Respond Power, LLC to pay \$4,112,224.91 of additional monies into a Refund Pool consistent with the settlement.

8. That upon receipt of Respond Power, LLC's certificate of compliance and the Refund Pool administrator filing of a report showing Respond Power, LLC's payment to the

Refund Pool, the Secretary's Bureau shall marked closed Docket Numbers C-2014-2427659 and C-2014-2438640.

9. That Respond Power, LLC shall cease and desist from any and all violations of the Public Utility Code and the orders and regulations of the Public Utility Commission.

Date: May 17, 2016

\_\_\_\_\_/s/  
Elizabeth H. Barnes  
Administrative Law Judge

\_\_\_\_\_/s/  
Joel H. Cheskis  
Administrative Law Judge