

COMMONWEALTH OF PENNSYLVANIA



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June 24, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Justin L. Herp v. Respond Power LLC
Docket No. C-2014-2413756

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Answer in Response to the Motion for Summary Judgment of Respond Power LLC, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barrett C. Sheridan".

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138

Enclosures

cc: Honorable Elizabeth H. Barnes, ALJ
Certificate of Service

185316

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Justin L. Herp

v.

Respond Power LLC

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Docket No. C-2014-2413756

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
IN RESPONSE TO THE
MOTION FOR SUMMARY JUDGMENT
OF RESPOND POWER LLC

I. INTRODUCTION

The Office of Consumer Advocate (OCA) files this Answer to the Motion for Summary Judgment (Motion) filed by Respond Power LLC (Respond or Company) pursuant to 52 Pa. Code Section 5.102(b). Respond Power filed its Motion on June 4, 2014 requesting that the Commission deny the Formal Complaint of Mr. Justin Herp without a hearing and further proceeding. In support of its Motion, Respond Power opines that, based on the pleadings and an affidavit, there is no factual dispute and that Mr. Herp is not entitled to relief as a matter of law. The OCA opposes the Motion of Respond Power.

The Commission should not grant Respond Power's Motion, where there are genuine issues as to material fact in dispute regarding Respond Power's conduct and compliance with the Commission's regulations and Respond Power's obligations as a licensed electric generation supplier (EGS). Mr. Herp's Formal Complaint states that Respond Power misrepresented information about its rates and pricing to induce him to switch to Respond Power

for electric generation service. Mr. Herp requests equitable relief and that the Commission recognize the need for changes in the protocols for customer switching.

The Commission's regulations categorically state that EGSs such as Respond Power "[m]ay not make false or misleading representations including misrepresenting rates or savings offered by the supplier." 52 Pa. Code § 111.12(d)(2). Yet, Respond Power asks the Commission to determine only whether its printed disclosure statement complies with the Commission's regulations. The OCA submits that the disclosure statement is only one part of the overall sales and marketing of electric supply endeavor. Respond Power is responsible for any representations made by a Respond Power agent – whether oral, electronic, or written – in the course of sales and marketing contacts with Mr. Herp. 52 Pa. Code § 111.3. This responsibility includes any communications by a Respond Power agent that may have induced Mr. Herp to switch to Respond Power, including statements regarding the limits on the variability of Respond Power's rates. Respond Power's Motion does not prove that Respond Power is entitled to summary judgment.

The OCA notes that Respond Power's Motion also challenges the legal sufficiency of Mr. Herp's Formal Complaint and the Commission's jurisdiction. These arguments should have been raised as preliminary objections, filed at the time of Respond Power's Answer. Respond Power's Motion is not the proper forum to raise these challenges.

For all the reasons that follow, the OCA submits that Respond Power's Motion for Summary Judgment must be denied.

II. ANSWER

A. The Legal Standard

The Commission's regulations set forth the standard for consideration of a motion for summary judgment, in relevant part as follows:

§ 5.102. Motions for summary judgment and judgment on the pleadings.

(d) Decisions on motions. ...

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) *Standard for grant or denial in part.* The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa. Code § 5.102(d)(1), (2). The presiding officer will grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

The Commission has interpreted 52 Pa. Code § 5.102(d)¹ in conformity with the Pennsylvania Rules of Civil Procedure (Pa. R.C.P.). South River Power Partners, L.P. v. West Penn Power Co., 86 Pa PUC 477, 483 (1996)(So. River Partners), *aff'd* 696 A.2d 926 (Pa. Cmwlth

¹ Formerly Sec. 5.102(c), through 2006 when the Commission last revised Section 5.102. Practice and Procedure before the Pa. P.U.C., Docket No. L-00020156, Final Rulemaking Order, 36 Pa.B. 2097 (2006).

1997), *app. den.* 705 A.2d 1313 (Pa. Supr. Ct. 1997); P.U.C., Bur. of Investigation and Enforcement v. Glacial Energy of Pa., Inc., Docket No. C-2012-2297092, Order at 8 (Pa. P.U.C. Mar. 26, 2014)(Glacial Energy). Under Pennsylvania law and Commission practice:

the moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlt. 1978). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thompson Coal Company v. Pike Coal Company*, 412 A.2d 466 (Pa. 1979).

Glacial Energy at 9. The Commission should accept as true all well-pleaded facts in the non-movant's pleadings and give the non-moving party the benefit of all reasonable inferences. Wright v. North American Life Assurance Co., 372 Pa. Super. Ct. 272, 275 (1988); Bobb v. Kraybill, 354 Pa. Super. Ct. 361, 364 (1986); So. River Partners, 86 Pa PUC at 482.

The party opposing a motion for summary judgment "must allege facts showing that an issue for trial exists." Glacial Energy at 9, citing First Mortgage Co. of Pa. v. McCall, 459 A.2d 406, 408 (Pa. Super. 1983); Commw. v. Diamond Shamrock Chemical Co., 391 A.2d 1333, 1336 (Pa. Cmwlt. 1978). Following civil practice, the Commission has explained that "a non-moving party may not rely solely upon denials in its pleadings, but must submit some materials to establish that a genuine issue of material fact exists." Glacial Energy at 9, citing Nicastro v. Cuyler, 467 A.2d 1218, 1220 (Pa. Cmwlt. 1983); Pa. Gas & Water Co. v. Nenna & Frain, Inc., 467 A.2d 330, 333 (Pa. Super. 1983); Geriot v. Council of the Borough of Darby, 457 A.2d 202, 204 (Pa. Cmwlt. 1983); *see also*, Pa. R.C.P. No. 1035.3.

In ruling on a motion for summary judgment, the presiding officer's role is not to decide issues of fact, but rather to determine whether such material issues of fact exist. Sanders v. Loomis Armored, 614 A.2d 320, 321 (1992); 52 Pa. Code § 5.102(d). Pursuant to Section 5.102(d), Respond Power must show both "that there is no genuine issue as to a material fact" and that Respond Power "is entitled to a judgment as a matter of law." Id. "Summary judgment will be granted only where the right is clear and free from doubt." Glacial Energy at 9.

Measured against these standards, the presiding officer must find that Respond Power's motion for summary judgment falls short and cannot be granted.

B. Genuine Issues of Material Fact Exist in this Matter

1. Mr. Herp's Formal Complaint Is Verified And Merits Deference

Pennsylvania law and Commission practice place the burden squarely on Respond Power to prove that no material facts exist in this matter. Respond Power has failed to meet its burden. On the contrary, the OCA submits that the Commission must grant Mr. Herp a full opportunity to be heard, where his complaint is directed at whether he was provided with adequate and accurate information to enable him to make an informed decision to select Respond Power when Respond Power marketed its licensed electric supply service to Mr. Herp.

Mr. Herp's Formal Complaint states "I was told that by switching to Respond Power my electric bill would always be lower than my distributor (west Penn power)s [sic] variable rate. That is not the case and I have seen a 150% increase to my electric supply cost since switching to respond power [sic] in January. They lied to get me to switch to their service." Mr. Herp's complaint includes a formal verification. In deciding Respond Power's Motion, the presiding officer should view the record in the light most favorable to Mr. Herp and give Mr. Herp the benefit of all reasonable inferences.

2. Respond Power's April 14, 2014 Answer with Attachments Is Deficient and Does Not Prove There Are No Material Facts in Dispute

Respond Power cites to its April 15, 2014 Answer (Answer) to Mr. Herp's complaint as support for its Motion. Motion, ¶ 3. However, Respond Power's Answer cannot support a determination that there are no material facts in dispute, where the Answer summarily denies all the claims made in Mr. Herp's Formal Complaint. Respond Power's Answer is a single page letter written by a Compliance Analyst for Major Energy/Respond Power. According to the Answer, Mr. Herp was validly enrolled in Respond Power's variable rate plan in October 2013, Respond Power's variable "rates are subject to change based on market conditions," and "no refund or adjustment is warranted." The Answer includes two attachments: a one page Sales Agreement, and a one page "Respond Power LLC and Major Energy Services LLC Affiliates Disclosure Statement." Respond Power's Motion relies on the various "averments" set forth in its Answer as support for granting the Motion. Motion, ¶ 3.

Respond Power's Answer lacks the formalities of a properly filed answer to a formal complaint. First, and most pertinent to the Motion, the statements of the Compliance Analyst in the Answer are unverified. Answers to a formal complaint "containing an averment of fact not appearing of record in the action or containing a denial of fact must be personally verified..." 52 Pa. Code § 1.36(a). Respond Power's Answer denies Mr. Herp's claim of misrepresentation and wrongful inducement but is not accompanied by a valid verification. "Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)." 52 Pa. Code § 1.36(a).

Second, although Mr. Herp's formal complaint is an adversarial proceeding, the Answer was not filed by counsel. As a corporate entity, Respond Power should be represented by counsel. 52 Pa. Code §§ 1.21(b), 1.22. Respond Power has in-house counsel, based in its New York office, but its Answer was filed by a Compliance Analyst. *See*, Motion, Affidavit ¶ 2.

For the purpose of deciding Respond Power's Motion, the presiding officer should rely on the facts presented by Mr. Herp's verified Formal Complaint. Mr. Herp contends that Respond Power made misrepresentations as to rates and the limits on the variability of Respond Power's pricing and thereby induced Mr. Herp to switch to Respond Power. The denials set forth in Respond Power's unverified Answer show on its face that there are material facts are in dispute.

Nor can the two attachments to Respond Power's Answer be relied upon for purposes of ruling on Respond Power's Motion. The Sales Agreement and Disclosure Statement are part of Respond Power's unverified Answer. Even if the Commission considered the Sales Agreement and Disclosure Statement, the OCA submits that the documents do not rule out the possibility that the Respond Power agent named on the Sales Agreement made verbal statements regarding the limits on the variability of Respond Power's pricing to Mr. Herp.

3. Respond Power's Affidavit Demonstrates That There Are Material Questions of Fact in Dispute.

Respond Power offers the affidavit of its in-house counsel, Mr. Scott Foreman-Murray as additional support for its Motion. The OCA submits that the Foreman-Murray Affidavit does not support the Motion.

The Foreman-Murray Affidavit actually illustrates that there are material facts in dispute. For example, Mr. Herp states that he "switched to Respond Power in January." Yet the

Foreman-Murray Affidavit states that Mr. Herp became a customer in October 2013. According to Mr. Foreman-Murray, he is “familiar with the Disclosures Statements issued by Respond Power to customers...” The OCA submits that Mr. Foreman-Murray refers to “disclosure statements” in the plural, creating uncertainty whether Respond Power has used more than one disclosure statement form and whether different disclosure statements were in use concurrently or sequentially.

Mr. Foreman-Murray states that “[a] review of the third-party verification recording also demonstrates that Complainant was aware of the fact that he was enrolling in a variable rate plan.” Motion, Affidavit ¶ 8. A third party verification process is used after the agent has completed the marketing and sales transaction, to confirm that the consumer has authorized the transfer of his or her account to the supplier. 52 Pa. Code § 111.7(b). Whether the agent provided accurate and adequate information to Mr. Herp regarding Respond Power’s pricing and limits on the variability of Respond Power’s rates is a question of fact that is in dispute and is not addressed by third party verification regarding enrollment.² Mr. Herp does not dispute that he agreed to switch to Respond Power. Rather, Mr. Herp’s verified Formal Complaint states that he was induced to switch based on misrepresentations by Respond Power that his price for electric supply would not be higher than that of West Penn Power.

C. Respond Power is Not Entitled To Judgment as a Matter of Law

To prevail, Respond Power must prove both that there are no material questions of fact in dispute and that Respond Power is entitled to summary judgment as a matter of law.

² If Respond Power believes that the third party verification tape provides evidence of more than Mr. Herp’s agreement to switch, then such factual content should be decided by the presiding officer. Young and Haros, LLC v. Metropolitan Edison Co., Docket No. C-2013-2355974, Opinion and Order at 7-8, 20 (May 22, 2014)(ALJ resolved claim of unreasonable customer service by listening to recording of the call between complainant and utility customer service representative.)

Respond Power states that it is entitled to summary judgment as a matter of law “on the basis that increasing a generation charge under a variable price plan in a manner that is consistent with the disclosure statement” does not violate the Public Utility Code or Commission regulations. Motion, ¶ 7. Respond Power suggests that if Mr. Herp had a misperception that “his generation charges would always be lower than West Penn’s generation rates, the written disclosure statement clearly provides otherwise....” *Id.*, ¶ 15. At its most basic, Respond Power says the Disclosure Statement provided no limitation on the amount by which its variable rates could change. *Id.*, ¶¶ 14, 23. Thus, Respond Power asks the Commission to work backwards from its billed price to its Disclosure Statement – and no further – to find that Respond Power is entitled to grant of its Motion as a matter of law. See, Motion, ¶¶ 7, 18, 20, 22, 23. The OCA submits that Respond Power’s argument does not support grant of Respond Power’s Motion.

Mr. Herp’s verified Formal Complaint raises the question of whether Respond Power provided him with accurate and adequate information to make an informed decision about whether to switch to Respond Power for service. This important consumer protection is set forth in the Electric Choice and Competition Act and is the foundation for the Commission’s regulations that govern the conduct of EGSs. 66 Pa.C.S. § 2807(d)(2). Mr. Herp’s complaint raises questions about not only the consistency of the content of Respond Power’s communications with Mr. Herp regarding the key issue of pricing but also the quality of how Respond Power communicated its pricing policy.

As a licensed EGS providing service to residential customers, Respond Power must comply with applicable residential service regulations in Chapters 54 and 56 of the

Commission's regulations.³ See 52 Pa. Code Ch. 54 and 56. Chapter 54 "Customer Information" requires the EGS to:

enable customers to make informed choices regarding the purchase of electricity services offered by providing adequate and accurate customer information. Information shall be provided to customers in an understandable format that enables customers to compare prices and services on a uniform basis.

52 Pa. Code § 54.1. The "adequate and accurate customer information" that Respond Power must provide includes all "[w]ritten, oral, and electronic communications" used by Respond Power "to communicate to consumers prices and terms of service." 52 Pa. Code §§ 54.1, 54.2. Chapter 54 requires that there be continuity and consistency between the marketed or advertised price for Respond Power's service, the agreed upon price in the disclosure statement, and the billed price. 52 Pa. Code §§ 54.4(a), 54.5(a), 54.7(a). Section 54.7(a) "Sales/Marketing" is particularly pertinent to Mr. Herp's Formal Complaint. Section 54.7(a) requires that Respond Power's "[a]dvertised prices shall reflect prices in disclosure statements and billed prices." 52 Pa. Code § 54.7(a). The premise of Respond Power's Motion – that the content, adequacy, and accuracy of those sales and marketing communications that induced Mr. Herp to switch are immaterial, so long as Respond Power's billed prices conform with the pricing description in its print Disclosure Statement – is legally incorrect. Chapter 54 imposes an obligation on Respond Power to assure that there is continuity and consistency in all communications, whether oral or print, regarding Respond Powers prices and terms of service. That continuum starts with the sales and marketing contacts – not the provision of a disclosure statement.

³ See also License Application of Respond Power LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power, Docket No. A-2010-2163898, Order at 3 (Aug. 19, 2010).

As an EGS, Respond Power must also comply with the Commission's Chapter 111 "Sales and Marketing" regulations. See 52 Pa. Code § 111.1. The Commission's Sales and Marketing regulations define "sales and marketing" as "[t]he extension of an offer to provide services or products communicated orally, electronically or in writing to a customer." 52 Pa. Code § 111.2. The Commission's regulations map out training standards which, if followed by an EGS, should promote the ethical and responsible sales and marketing of electric supply. See, 52 Pa. Code § 111.5(a)(2). Respond Power's agents should be trained on a variety of subjects, including Respond Power's rates and rate structures, "[t]he necessity of adhering to the script and knowledge of the contents of the script if one is used," and disclosure statements. 52 Pa. Code § 111.5(a)(4), (7), (9). Respond Power is "responsible for fraudulent, deceptive or other unlawful marketing acts performed by its agent." 52 Pa. Code §§ 54.43(f), 111.3(b). Respond Power may face suspension or loss of license or "fines for fraudulent acts or violations of Commission orders or regulations" for violations committed by Respond Power's agents. 52 Pa. Code § 111.3(c). The OCA submits that Respond Power's Motion is silent on whether and what its sales agent communicated to Mr. Herp as part of the marketing and sales contacts, information that Mr. Herp states induced him to switch to Respond Power.

The Commission's regulations require that EGSs communicate with consumers using plain language. Section 54.1 requires Respond Power to provide consumers with information to enable them to make informed decisions about the purchase of electric supply and requires that such "[i]nformation shall be provided to customers in an understandable format that enables customers to compare prices and services on a uniform basis." 52 Pa. Code § 54.1. Section 54.43(1) requires Respond Power to "provide accurate information about [its] electric generation services using plain language and common terms in communications with

consumers.” 52 Pa. Code § 54.43(1). Additionally, Respond Power must provide information to consumers “in a format that enables customers to compare the various electric generation services offered and the prices charged for each type of service.”

Mr. Herp’s Formal Complaint states that he understood that Respond Power would always price its electric supply below West Penn Power’s price to compare. Respond Power’s Disclosure Statement describes the variability of its pricing in several lines of fine print, with reference to PJM Day-Ahead Market, installed capacity, transmission losses, profit margin, as well as Respond Power’s “goal each and every month to provide savings” relative to the price to compare of the Electric Distribution Company, although “Respond Power cannot guarantee every month you will see savings....” Respond Power’s Motion claims that it has complied with Section 54.4(c) and disclosed that “the price would vary based upon the PJM market and contained no limits on price variability.” Motion, ¶ 23; 52 Pa. Code § 54.4(c). This is a question of material fact that must be decided by the trier of fact. Respond Power’s claim of compliance is also undercut by the very fact of Mr. Herp’s complaint that Respond Power made misrepresentation regarding the limits on the variability of its pricing that induced him to switch to Respond Power.

The OCA submits that Respond Power has not proven that it is entitled to grant of its Motion as a matter of law where Respond Power fails to address whether or how its sales and marketing of electric supply was conducted in compliance with the Commission’s relevant regulations.

D. Respond Power's Motion Raises Challenges That Should Have Been Raised As Preliminary Objections

According to Respond Power, Mr. Herp's Formal Complaint is legally insufficient, does not state a claim upon which relief can be granted, and does not cite legal authority for a claim for refund. Motion, ¶¶ 23, 24, 26. Respond Power also points to the lack or limits on the Commission's jurisdiction with regard to regulation of generation service and the pricing of EGS service. *Id.*, ¶¶ 21, 22, 25. Respond Power suggests that any or all of these flaws justify dismissal of Mr. Herp's Formal Complaint.

The OCA opposes Respond Power's arguments as untimely and improperly presented. Consideration of Respond Power's arguments as part of Respond Power's Motion would improperly deprive Mr. Herp of the opportunity to amend his formal complaint if needed. Consideration of Respond Power's arguments would also be unfair to Mr. Herp, given that Respond Power has not itself complied with the Commission's Rules of Practice and Procedure with the filing of an unverified Answer. This despite the Affidavit of Mr. Foreman-Murray who states that he is in-house counsel for Respond Power, with responsibility for regulatory compliance "which includes addressing and responding to formal complaints." Motion, Affidavit ¶ 3. As a pro se complainant, Mr. Herp should not be held to a stricter level of compliance with the Commission's Rules of Practice and Procedure than Respond Power. 52 Pa. Code § 1.2(d).

Respond Power's challenges should have been presented as timely filed preliminary objections, presented in a separate document from any other answer or motion. Section 5.101 of the Commission's regulations permit the filing of preliminary objections to formal complaints based on "(1) Lack of Commission jurisdiction..., (3) Insufficient specificity

of a pleading [and] (4) Legal insufficiency of a pleading” 52 Pa. Code § 5.101(a)(1), (3), (4). Preliminary objections are required to be raised all at one time, filed as a separate document, and filed within the 20 day period allowed for Respond Power’s answer to Mr. Herp’s Formal Complaint. 52 Pa. Code § 5.101(c)(d). If Respond Power had filed timely and properly presented preliminary objections, Mr. Herp could have filed an amended pleading in response to a claim of insufficient pleading. 52 Pa. Code § 5.101(e). If a presiding officer granted a preliminary objection on other grounds, “the party who submitted the stricken pleading has the right to file an amended pleading within 10 days of service of the order.” 52 Pa. Code § 5.101(h).

The OCA submits that the Commission must find that Respond Power has waived these legal challenges which Respond Power failed to present as preliminary objections, in a separate and timely filed document. Re Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations, Docket No. M-00001353, 2000 Pa. PUC LEXIS 56, Initial Decision (June 16, 2000)(Objection to standing waived, when not raised as preliminary objections). The OCA acknowledges that the jurisdiction of the Commission can be raised at any time. However, as set forth above, the Commission has jurisdiction to determine whether the sales and marketing activities of Respond Power and its agents comply with Section 2807(d)(2) of the Public Utility Code and related Commission regulations.

Even if the Commission considered the substance of Respond Power’s allegations, the Commission should deny Respond Power’s Motion. In Grmusa v. Dominion Retail, Inc., the complainant alleged that the EGS Dominion Retail enticed him to switch from Duquense Light to Dominion Retail with promises of 10% savings; the complainant asked for a refund and fines. Grmusa v. Dominion Retail, Inc., Docket No. C-2009-2124359, Initial Decision at 1 (Dec. 1, 2009)(Grmusa I.D.). The presiding officer granted the EGS’s preliminary

objections that challenged the Commission's jurisdiction over the EGS's pricing and private contract and the sufficiency of the complaint. *Id.* at 2-3, 7-9. The Commission reversed the presiding officer's initial decision, noting:

The Complaint alleged that the Complainant was charged a higher rate than what was represented to him by Dominion Retail. The Commission's jurisdiction over electric generation suppliers, such as Dominion Retail, is contained within the Competition Act. 66 Pa. C.S. §§ 2801 *et seq.* Furthermore, the Commission has promulgated rules for EGSs to follow as a condition of receiving a license to operate. 52 Pa. Code § 54.43. One of these conditions is that an EGS' advertised prices must match its billed prices, and that billed prices must reflect marketed prices. 52 Pa. Code §§ 54.4(a) and 54.7(a). This Commission has set forth rules that EGSs must follow and has the obligation, and, therefore, the jurisdiction, to enforce those rules.

Grmusa v. Dominion Retail, Inc., Docket No. C-2009-2124359, Order at 5 (Apr. 16, 2010)(Grmusa Order). The Commission remanded the formal complaint to the Office of Administrative Law Judge "so as to provide the Complainant with an opportunity to be heard and to determine whether or not Dominion Retail violated any Commission rule or order." *Id.*

The Commission should afford Mr. Herp the same opportunity to move forward to a hearing on the merits of his Formal Complaint, notwithstanding Respond Power's efforts to avoid Commission scrutiny of whether Respond Power complied with all relevant Commission regulations in the sales and marketing of Respond Power's electric supply service to Mr. Herp. Respond Power's untimely challenges to the subject and sufficiency of Mr. Herp's Formal Complaint do not support grant of its Motion.

IV. CONCLUSION

For the foregoing reasons, the Respond Power LLC's Motion for Summary Judgment should be denied. Genuine issues of material fact exist in this matter, and accordingly, a grant of summary judgment should not be sustained. Moreover, Petitioners are not entitled to judgment as a matter of law for all the reasons discussed herein. The Office of Consumer Advocate respectfully urges the Commission to deny this Motion.

Respectfully Submitted,



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June 24, 2014

00185294v3

CERTIFICATE OF SERVICE

Re: Justin L. Herp v. Respond Power LLC
Docket No. C-2014-2413756

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Answer in Response to the Motion for Summary Judgment of Respond Power LLC, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 24th day of June 2014.

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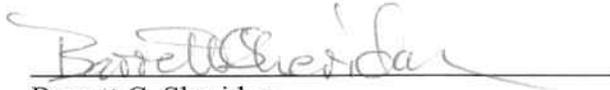
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