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December 12, 2014

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Anthony Gonzalez v. Respond Power LLC
Docket No. F-2014-2439898

Dear Secretary Chiavetta:

On behalf of Respond Power LLC, I have enclosed for electronic filing the Motion of Respond Power LLC for Summary Judgment, in the above-captioned matter.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Karen O. Moury

KOM/tlg
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANTHONY GONZALEZ

v.

RESPOND POWER LLC

:
:
:
:
:

Docket No. F-2014-2439898

NOTICE TO PLEAD

TO: Anthony Gonzalez
5 N. 18th Street
Allentown, PA 18104

Pursuant to 52 Pa. Code § 5.102(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion for Summary Judgment of Respond Power LLC within **twenty (20) days** from service of this Notice, the facts set forth by Respond Power LLC in the Motion for Summary Judgment may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Respond Power LLC, and where applicable, the Administrative Law Judge presiding over the case.

File with:

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

With a copy to:

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

Dated: December 12, 2014



Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANTHONY GONZALEZ	:	
	:	
v.	:	Docket No. F-2014-2439898
	:	
RESPOND POWER LLC	:	

MOTION OF RESPOND POWER LLC FOR SUMMARY JUDGMENT

TO THE HONORABLE JOEL H. CHESKIS:

Respond Power LLC (“Respond Power”), by and through its counsel, Karen O. Moury, and Buchanan Ingersoll & Rooney PC, files this Motion for Summary Judgment (“Motion”), pursuant to Section 5.102(a) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.102(a), and in connection therewith avers as follows:

I. Introduction and Background

1. Respond Power is an electric generation supplier (“EGS”) licensed by the Commission since August 18, 2010 at Docket No. A-2010-2163898 to supply electricity or electric generation services to the public within the Commonwealth of Pennsylvania.

2. On July 28, 2014, Anthony Gonzalez (“Complainant”) filed a Formal Complaint (“Complaint”) requesting an affordable payment plan and that Respond Power “stop charging 3x the amount per” kilowatt-hour. The Complaint was served on Respond Power on August 28, 2014.

3. On September 17, 2014, Respond Power filed a timely Answer to the Complaint and also filed Preliminary Objections, contending that the Complaint should be dismissed in its entirety due to the Commission’s lack of jurisdiction over EGS prices and because the Complainant failed to state a claim upon which relief may be granted.

4. By Order dated November 19, 2014, Administrative Law Judge (“ALJ”) Joel H. Cheskis denied Respond Power’s Preliminary Objections. ALJ Cheskis found that it was reasonable to infer from the averments of the Complaint that the Complainant was not aware that his rate could increase.

5. By Telephonic Hearing Notice dated November 21, 2014, the Commission scheduled an Initial Telephonic Hearing for January 7, 2015 at 10:00 a.m.

6. Respond Power is filing this Motion for Summary Judgment to request dismissal of the Complaint on the basis that the Complainant signed a variable rate contract with Respond Power, his price was lawfully increased pursuant to that contract and that the Commission does not regulate EGS prices.

7. The attached Affidavit of Scott Foreman-Murray, In-House Counsel for Respond Power,¹ demonstrates that the Complainant signed a Sales Agreement on August 21, 2011 and received a Disclosure Statement, which provided that the Complainant was enrolling in a variable rate plan and this his rate could vary on a monthly basis to reflect various factors, including wholesale market conditions

8. Because the pleadings, as well as the attached Affidavit, demonstrate that there is no genuine issue of fact, and the Commission does not have jurisdiction over EGS prices, Respond Power requests that this Motion be granted and that the Complaint be dismissed.

II. Argument

A. Summary Judgment Standard

9. The Commission’s Rules of Administrative Practice and Procedure permit parties to file preliminary motions. 52 Pa. Code §§ 5.101-103. Specifically, the Commission’s

¹ The Foreman-Murray Affidavit is attached hereto and expressly incorporated herein, along with Respondent Exhibit A attached to the Affidavit, which is the Sales Agreement signed by the Complainant August 22, 2011 and includes the Disclosure Statement.

regulations at 52 Pa. Code § 5.102(a) permit any party to move for summary judgment after the pleadings are closed, but within such time as not to delay a hearing. A motion for summary judgment must be based on the pleadings, depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa. Code § 5.102(c). The presiding officer must 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).

10. Summary judgment is properly granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Pennsylvania State Univ. v. County Of Centre*, 532 Pa. 142, 144 - 145, 615 A.2d 303, 304 (1992).

11. In the case of a motion for summary judgment, 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. Cmwlth. 1978). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Company v. Pike Coal Company*, 412 A.2d 466 (Pa. 1979). Summary judgment will be granted only where the right is clear and free from doubt.

12. The non-moving party in a motion for summary judgment must allege facts showing that an issue for trial exists. *Stover v. The UGI PennTelephone Co. of Pennsylvania*,

Docket No. C-00923833 (Order entered July 21, 1992). The Commission has interpreted 52 Pa. Code Section 5.102(c) in conformity with Rule 1035 (now Rule 1035.1) of the Pennsylvania Rules of Civil Procedure. *South River Power Partners, L.P. v. West Penn Power Company*, Docket No. C-00935287 (Order entered November 6, 1996). In civil practice, 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. *Nicastro v. Cuyler*, 467 A.2d 1218 (Pa. Cmwlth. 1983); *Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc.*, 467 A.2d 330 (Pa. Super. 1983); *Geriot v. Council of Borough of Darby*, 457 A.2d 202 (Pa. Cmwlth. 1983); *see also*, Pa. R.C.P. 1035.3, providing that “[s]ummary judgment may be entered against the non-moving party who does not respond.” Pa. R.C.P. 1035.3(d).

13. The provision at 52 Pa. Code § 5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. P.U.C.*, 563 A.2d 557 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. P.U.C.*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. P.U.C.*, 103 A.2d 502 (Pa. Super. 1954).

B. No Genuine Issue Of Material Fact Exists

14. A review of the pleadings, as supplemented by the Affidavit accompanying this Motion, demonstrates that no genuine issue of material fact exists. The Complainant enrolled in a variable rate plan with Respond Power over three years ago. He signed the Sales Agreement on August 22, 2011, verifying that he had reviewed the Disclosure Statement, which was provided as part of the Sales Agreement. Foreman-Murray Affidavit ¶ 6.

15. A review of the Disclosure Statement reveals that the price could vary on a monthly basis to reflect various factors, including wholesale market conditions. Foreman-Murray Affidavit ¶ 6, Respondent Exhibit A.

16. The Complainant was billed at a variable rate for the entire thirty-four billing cycles of his enrollment with Respond Power. Foreman-Murray Affidavit ¶ 7.

17. As the Complainant enrolled in a variable rate plan and the rate changed during the three year period consist with the terms and conditions of his contract, no factual dispute exists as to whether Respond Power was permitted to increase his rates.

C. No Jurisdiction Over EGS Prices

18. As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967) (“*Roberts*”). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), alloc. denied, 637 A.2d 293 (Pa. 1993).

19. Nothing in the Code authorizes the Commission to regulate the prices of EGSs or to consider whether rates charged by EGSs are unjust, unreasonable or illegal or to direct the issuance of a refund. To the contrary, Code Section 2806(a) provides that the “generation of electricity shall no longer be regulated as a public utility service or function except as otherwise provided for in this chapter.” 66 Pa. C.S. § 2806(a).

20. The Pennsylvania Supreme Court has found that the definition of “public utility” in Code Section 102 does not include EGSs except for the limited purposes set forth in Code Sections 2809 and 2810, 66 Pa. C.S. §§ 2809 and 2810. *Delmarva Power & Light Co. v. Pa. Pub. Util. Comm’n*, 870 A.2d 901 (Pa. 2005). Those sections have no bearing on prices charged by EGSs. Code Section 2809 establishes the requirement for EGSs to be licensed, 66 Pa. C.S. § 2809(e), and Code Section 2810 requires EGSs to pay state taxes so as to ensure revenue neutrality to the Commonwealth of Pennsylvania. 66 Pa.C.S. § 2810.

21. Indeed, the Commission has recognized its lack of jurisdiction to limit prices charged by EGSs. *See Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Order entered December 11, 2014) (Commission does not have traditional ratemaking authority over competitive suppliers and does not regulate competitive supply rates); *Nadav v. Respond Power LLC (“Nadav”)*, Docket No. C-2014-2429159 (Order entered December 12, 2014) (Commission dismissed a complaint on preliminary objections that claimed excessive variable rates due to its lack of jurisdiction over EGS prices). *See also Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (March 6, 2014) (“*PECO Default Service Plan Order*”).² In the *PECO Default Service Plan Order*, the Commission heard from numerous parties with competing interests in the context of whether the Commission may cap the prices that low-income customers pay to EGSs, and concluded that “we have not found any arguments that convince us that we have statutory authority to limit prices charged by EGSs.” *Id.* at 11.

22. In an Order adopted on February 20, 2014, responding to significant variable price increases in the retail market, the Commission sought comments from interested parties on

² Order is currently on appeal to the Commonwealth Court of Pennsylvania, *CAUSE-PA v. Pa. Pub. Util. Comm’n*, 445 C.D. 2014 and *McCloskey v. Pa. Pub. Util. Comm’n*, 596 C.D. 2014.

the adequacy of disclosure and notice requirements, as well as the speed with which a consumer may switch to a different EGS. See *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (February 20, 2014) (“*Variable Rate Order*”). In the *Variable Rate Order*, the Commission noted that the rates consumers pay in the retail electric market are governed by the terms of their contract with their EGS and that some variable price contracts have no ceiling on the rate that could be charged. The Commission further observed that while a variable rate may offer substantial savings when wholesale market prices are low, customers may experience very high bills during periods of market volatility such as occurred in early 2014. For that reason, the Commission emphasized the importance of consumers on variable rates “to carefully review the terms and conditions of their contracts to determine if they are at risk for large rate increases at any given time.” *Variable Rate Order* at 3.

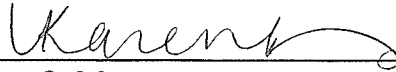
23. Because Complainant has not stated a claim upon which relief can be granted by the Commission and has requested relief that is beyond the Commission’s statutory authority to award, Respond Power is entitled to judgment in its favor as a matter of law and the Complaint should be dismissed.

III. Conclusion

WHEREFORE, for the foregoing reasons, Respond Power LLC respectfully requests that the Commission grant its Motion for Summary Judgment, dismiss the Formal Complaint of Anthony Gonzalez and grant Respond Power such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: December 12, 2014



Karen O. Moury
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street
Suite 500
Harrisburg, PA 17101
(717) 237-4820

Attorneys for Respond Power LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANTHONY GONZALEZ

v.

RESPOND POWER LCC

:
:
: **Docket No. F-2014-2439898**
:
:

**AFFIDAVIT OF SCOTT FOREMAN-MURRAY IN SUPPORT OF
RESPOND POWER LLC'S MOTION FOR SUMMARY JUDGMENT**

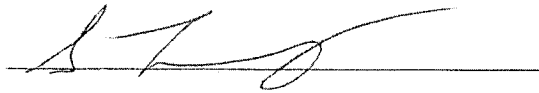
I, Scott Foreman-Murray, being duly sworn according to law, depose and say the following:

1. My name is Scott Foreman-Murray and my business address is 100 Dutch Hill Rd., Ste. 310, Orangeburg, NY 10962.
2. I am In-House Counsel for Respond Power LLC ("Respond Power").
3. As In-House Counsel for Respond Power, I am responsible for regulatory compliance, which includes addressing and responding to formal complaints.
4. As part of my job responsibilities, I am familiar with the Disclosure Statements issued by Respond Power and with the third party verification process that Respond Power uses to ensure that consumers understand that they are being switched to an electric generation supplier ("EGS") for electric generation services, as well as the terms and conditions under which they will receive that service.
5. On July 28, 2014, Anthony Gonzalez ("Complainant") filed a Formal Complaint ("Complaint") alleging he had received incorrect charges on his bill. By way of relief, the Complainant sought an adjustment to his electric generation services rate.
6. On August 22, 2011, Complainant signed a Sales Agreement to take service from Respond Power under a variable rate plan. At that time, he was provided with a copy of the Sales Agreement and the Disclosure Statement. The Sales Agreement and Disclosure Statement, which were on one double-sided page, are attached as Respondent Exhibit A.

7. Consistent with the terms of service of the contract, the Complainant was billed at a variable rate for the entire thirty-four billing cycles of his enrollment with Respond Power.

8. Upon request, the Complainant was returned to PPL Energy Company for default generation service on June 16, 2014.

9. I am authorized to submit this Affidavit for and on behalf of Respond Power and represent that the facts set forth herein are true and correct to the best of my knowledge, information and belief.



Scott Foreman-Murray

Sworn and subscribed before me this 11th
day of December 2014.

ADAM SMALL
Notary Public, State of New York
No. 02SM6211734
Qualified in Queens County
Commission Expires September 21, 2017



Notary Public

My Commission expires on:

**RESPONDENT
EXHIBIT A**

RESPOND POWER

No 166519

UNIVERSAL APPLICATION

www.respondpower.com

RESPOND POWER, LLC • 955 Coney Island Ave, Brooklyn, NY 11230 • 1-877-973-7763 • fax: (718) 228-2552

Agent Name: Brandon

Agent Code: AZ10626

Residential Commercial

Service Type: Electricity

Best Time to Call: Any

Electric Account Number: 9111011029

First Name: Anthony

Last Name: Gonzalez

Business Name (Commercial):

Title:

Customer Address: 5 W 181st St apt 2A

City: Brooklyn

State: NY

Zip: 11204

Telephone: 718-228-2552

Work Phone:

E-mail:

Language: English

The initial term of this agreement is VARIABLE FIXED RATE

The price for electricity is _____ per kwh fixed rate.

The fixed rate term for this agreement is: 6 months 12 months

- I understand that the Energy Consultant is representing Respond Power, LLC and is not from my local utility company.
- My local utility company is: PPL Electric Utilities PECO Energy
- I understand that by choosing Respond Power as my energy supplier, my local utility will continue to deliver my energy, read my meter, bill me and respond to gas leaks and/or electric outages or any other emergency.
- I am over 18 and the account holder, spouse of the account holder, or authorized to make account decisions.
- I will continue to receive one bill from my local utility company.
- I have received a copy of the Terms and Conditions.

Customer Signature: [Signature]

Date: 8/22/11

You, the Buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction.

TPV

Confirmation #: MM

RESPOND POWER LLC AND MAJOR ENERGY SERVICES LLC, AFFILIATES DISCLOSURE STATEMENT

Background

Respond Power is licensed by the Pennsylvania Public Utility Commission to offer and supply electricity in Pennsylvania. Our PUC license number is A-2010-2163898

Major Energy is licensed by the Pennsylvania Public Utility Commission to offer and supply natural gas in Pennsylvania. Our PUC license number is A-2009-2118836

We set the commodity prices and charges that you pay. The Public Utility Commission regulates distribution prices and services.

Right of Rescission — You may cancel this agreement at any time before midnight of the third business day after receiving this disclosure by contacting: Respond Power for Electricity at 1-877-973-7763; Major Energy for Gas at 1-888-625-6760; or in writing at the address listed below.

Definitions

Basic Charges

Gas

Commodity Charges — The charges for the natural gas product which is sold either in cubic feet or dekatherms.

Distribution Charges — The charges for the delivery of natural gas from the city gate to the consumer.

Electric

Commodity Charges - The charges for the electricity which is sold which will be billed in Kilowatt Hours (kWh).

Generation Charge — Charge for production of electricity.

Transmission Charge — Charge for moving high voltage electricity from a generation facility to the distribution lines of an electric distribution company.

Terms of Service

1. **Basic Service Prices.** Itemize Basic Services you are billing for and their prices.

Gas

Variable Rate. Your price may vary from month to month. This rate is set by Major Energy and reflects their commodity cost of gas as reflected by the NYMEX last day settle or an average of the last 3 days prior to settle, pipeline transportation from the production area (usually the Gulf of Mexico), natural gas lost on the interstate and local distribution pipelines ("losses"), estimated state taxes, and any other costs that Major Energy incurs to deliver your natural gas to your Natural Gas Utility's "City Gate" (where they receive the gas). For their services, Major Energy adds a profit margin to the gas and Major Energy's goal each and every month is to deliver your gas at a price that is less than what you would have paid had you purchased your gas from your local utility company, however, due to market fluctuations and conditions, Major Energy can not always guarantee that every month you will see savings. Commodity charges exclude Pennsylvania sales tax, if applicable. You may contact Major Energy for our current Variable Rate.

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

Electric

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

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

2. **Length of Agreement and Renewal Terms.** You will buy your electricity and/or gas for the above street address from Respond Power and/or Major Energy (collectively and/or individually as the case may be hereinafter "Affiliates") beginning on a date set by your Local Distribution Company, (hereinafter "LDC") and will continue for 12 months (unless stated otherwise on a Fixed Price deal). If this Agreement is for a fixed rate and no new fixed rate is set, then this Agreement will re-new for successive 12 month periods under a Variable Rate unless it is cancelled pursuant to Section 4 below or customer notifies Respond Power and/or Major Energy by mail or phone at least 45 days prior to the 12 month anniversary of the contract date. If this Agreement is for a Variable Rate, then this Agreement will also re-new for successive 12 month periods under a Variable Rate unless it is cancelled pursuant to Section 4 below or customer notifies Respond Power and/or Major Energy by mail or phone at least 45 days prior to the 12 month anniversary of the contract date.

3. **Penalties, Fees and Exceptions.** If your agreement is for a Fixed Rate, you may not cancel during the duration of the Fixed Rate agreement. If customer cancels Fixed Rate agreement during the Fixed Rate term, then Respond Power will assess a penalty of 2¢ per kWh multiplied by the amount of kWh remaining for the duration under the Fixed Rate agreement and/or Major Energy will assess a penalty of 20¢ per therm multiplied by the amount of therms remaining for the duration under the Fixed Rate agreement. This Fee will be due 30 days after cancellation of contract.

4. **Cancellation Provisions.** If Customer cancels this agreement, then Customer is liable for all Respond Power electric or Major Energy gas charges until Customer returns to the LDC or goes to another supplier. There are no cancellation fees for Variable Rate customers.

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

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

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

5. **Agreement Expiration/Change in Terms.** If you have a fixed term agreement with us and it is approaching the expiration date or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us in each of your last three bills for

supply charges or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain your options to you in these three advance notifications.

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

7. **Assignment.** Customer may not assign its interests in and delegate its obligations under this Agreement without the express written consent of Respond Power and/or Major Energy. Affiliates may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financing agreement and may assign this Agreement to another energy supplier, energy services company or other entity as authorized by the Pennsylvania PUC.

8. **Refund Policy.** As the commodity supplied under this Agreement is immediately used and consumed by Customer upon delivery, it is not practical to return the product subject this Agreement, and therefore refunds with respect to the commodity are not provided.

9. **Title.** Customer and Respond Power and/or Major Energy agree that title to, control of, and risk of loss to the electricity and gas supplied by Affiliates under this Agreement will transfer from Affiliates to Customer at the Sales Point(s). Affiliates will indemnify and hold harmless Customer from all taxes, royalties, fees or other charges incurred before title passes with respect to the electricity provided hereunder.

10. **Warranty.** This Agreement, including any enrollment form and applicable attachments, as written makes up the entire Agreement between Customer and Respond Power and/or Major Energy. Affiliates make no representations or warranties other than those expressly set forth in this Agreement, and Affiliates expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.

11. **Force Majeure.** Affiliates will make commercially reasonable efforts to provide electricity and natural gas hereunder but do not guarantee a continuous supply of electricity and natural gas to Customer. Certain causes and events out of the control of Affiliates ("Force Majeure Events") may result in interruptions in service. Affiliates will not be liable for any such interruptions caused by a Force Majeure Event, and Affiliates are not and shall not be liable for damages caused by Force Majeure Events. Force Majeure Events shall include acts of God, fire, flood, storm, terrorism, war, civil disturbance, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution utility system, non-performance by the Electric or Gas Distribution Company (including, but not limited to, a facility outage on its electric distribution lines), changes in laws, rules, or regulations of any governmental authority or any other cause beyond Respond Power's and/or Major Energy's control.

12. **Liability.** The remedy in any claim or suit by Customer against Respond Power and/or Major Energy will be solely limited to direct actual damages. All other remedies at law or in equity are hereby waived. In no event will either Respond Power or Major Energy or Customer be liable for consequential, incidental, indirect, special or punitive damages. These limitations apply without regard to the cause of any liability or damages. There are no third-party beneficiaries to this Agreement.

13. **Choice of Laws.** Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of Pennsylvania. This Agreement shall be construed under and shall be governed by the laws of the State of Pennsylvania without regard to the application of its conflicts of law principles.

14. **Regulatory Changes.** If at some future date there is a change in any law, rule, regulation or pricing structure whereby Major is prevented, prohibited or frustrated from carrying out the terms of the Agreement, at its sole discretion Major shall have the right to cancel this Agreement on 15 days' notice to Customer.

15. **Emergency Service.** In the event of an electricity or natural gas emergency or service interruption, contact your local Electric Distribution Company ("EDC") or Natural Gas Distribution Company, ("NGDC") at one of the telephone numbers listed below. You should also contact your local emergency personnel. PECO Energy 1-800-841-4141, Columbia Gas of PA 1-800-460-4332, UGI Utilities 1-800-809-4844, National Fuel Gas of PA 1-800-444-3130, PPL 1-800-342-5775, Penelec/Met-Ed 1-888-544-4877, Duquesne Light 1-888-393-7000.

16. **Parties Bound.** This Agreement is binding upon the parties hereto and their respective successors and legal assigns.

17. **Billing and Payment.** You will receive one bill from your utility, which will include our charges as well as your utility charges. The rules of the utility will apply to the billing and collection of monies owed. You must make payment directly to and to the order of your utility, for both utility transportation charges and our energy charges. Past-due charges may incur a late fee of 1.5% per month or the interest rate posted in your utility's tariff. If you fail to remit payment when due or if you breach any of the other terms and conditions of the Agreement, then, in addition to any other remedies we may have, we have the right to terminate the Agreement, in whole or with respect to any particular account(s) covered by the Agreement, upon 45 days' written notice, provided that you do not make payment or correct the problem that caused the termination within the 45-day period. The Utility may request a security deposit for amounts which include Supplier charges.

18. **Email.** Providing email address constitutes acceptance of Customer's enrollment in the monthly e-newsletter.

19. Contact Information.

Respond Power, LLC
100 Dutch Hill Rd., Suite 230
Orangeburg NY 10962
1-877-9-RESPND (1-877-973-7763)
www.respondpower.com

Major Energy, LLC
100 Dutch Hill Rd., Suite 230
Orangeburg NY 10962
1-888-MAJOR-60 (1-888-625-6760)
www.majorenergy.com

Electric Distribution Company (EDC) and
Provider of Last Resort
PECO ENERGY
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101
Phone: 1-800-494-4000

Duquesne Light
411 Seventh Avenue (6-1)
Pittsburgh, PA 15219
Phone: 1-412-393-7100

PPL Electric Utilities
827 Hausman Road
Allentown, PA 18104
Phone: 1-800-342-5775

Met-Ed/Penelec
P.O. Box 3687
Akron, OH 44309
Phone: 1-800-545-7741

Gas Distribution Company (GDC) and
Provider of Last Resort
PECO ENERGY
2301 Market Street
Philadelphia, PA 19101
Phone: 1-800-494-4000

Columbia Gas of Pennsylvania
501 Technology Drive
Canonsburg, PA 15317
Phone: 1-888- 460-4332

UGI Gas
2525 North 12th Street
Suite 360
Reading, PA 19605
Phone: 1-800-609-4844

National Fuel Gas Distribution
6363 Main Street
Williamsville, NY 14221
Phone: 1-800-365-3234

Public Utility Commission (PUC)
P.O. Box 3265
Harrisburg, PA 17105-3265
Electric Competition Hotline Number:
1-800-692-7380

Universal Service Program: Your EDC has programs available to customers who are on a limited or fixed income to assist them with utility bills. Contact your EDC at the phone number listed above for your EDC.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANTHONY GONZALEZ

v.

RESPOND POWER LLC

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Docket No. F-2014-2439898

CERTIFICATE OF SERVICE

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

Via First-Class Mail

Administrative Law Judge Joel H. Cheskis
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Anthony Gonzalez
5 N. 18th Street
Allentown, PA 18104

Dated this 12th day of December, 2014.



Karen O. Moury, Esq.