

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**Marion Werle  
v.  
Respond Power LLC**

**Public Meeting January 15, 2015  
2429158-ALJ  
Docket No. C-2014-2429158**

**MOTION OF  
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before us is a Formal Complaint filed by Marion Werle against Respond Power, LLC, (Respond), a licensed electric generation supplier (EGS) in Pennsylvania. In her Complaint, Ms. Werle alleges incorrect charges from her supplier on her electric bill stating that “[t]hese charges are absurd.”

Respond filed an Answer and Preliminary Objections to the Complaint. Respond contends that the Complaint should be dismissed because the Commission has no jurisdiction over the rates charged by Respond for electric generation supply. Respond also contends that the Complaint should be dismissed for legal insufficiency for failing to allege any violation of the supply contract with the customer, the Public Utility Code, the Commission’s regulations, or a Commission order.

The presiding Administrative Law Judge (ALJ) granted the Preliminary Objections, finding that the Commission lacked jurisdiction to regulate rates charged for electric generation supply service and finding that the complaint was legally insufficient. I agree with these findings of the ALJ and the decision to dismiss the Complaint.

However, I do not agree with one statement made in the decision dismissing the Complaint. The ALJ states that because the Commission lacks the authority to regulate rates charged for electric generation supply service, it also lacks the authority to order a refund or credit to the Complainant. I do not agree with this characterization of our authority to order refunds or credits from EGSs.

As we noted in *Nadav v. Respond Power LLC*,<sup>1</sup> the Commission has interpreted Section 2807(d)(1) of the Public Utility Code, 66 Pa.C.S. § 2807(d)(1), to find that a refund is an appropriate remedy when a customer’s supplier has been changed without the customer’s affirmative consent. The Commission’s regulations require an EGS to provide a full refund to customers of all generation charges resulting from an unauthorized switch.<sup>2</sup> This regulation was approved by the Independent Regulatory Review Commission, has been in effect since 1998, and enjoys the presumption of reasonableness.

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<sup>1</sup> *Nadav v. Respond Power, LLC*, Docket No. C-2014-2429159 (Order entered December 19, 2014).

<sup>2</sup> 52 Pa. Code § 57.178.

Moreover, the Commission found in *Commonwealth of Pa. v. IDT Energy, Inc.*<sup>3</sup> that it has plenary authority under Section 501 of the Code, 66 Pa. C.S. § 501, to carry out the consumer protections in the Electric Competition Act and direct an EGS to issue a credit or refund for an over bill in appropriate circumstances. As noted in the *IDT Order*, the appropriate circumstances include when an EGS fails to bill a customer in accordance with its disclosure statement, in violation of the Commission's Chapter 54 Regulations<sup>4</sup> and the Electric Competition Act.<sup>5</sup>

Accordingly, although the Commission lacks jurisdiction to regulate EGS rates, EGSs may be required to provide refunds to retail customers in appropriate circumstances.

**THEREFORE, I MOVE THAT:**

1. The Commission adopt the Initial Decision, as modified by this Motion.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

**Date: January 15, 2015**



**JOHN F. COLEMAN, JR.**  
**VICE CHAIRMAN**

<sup>3</sup> *Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Order entered December 18, 2014) (*IDT Order*).

<sup>4</sup> See 52 Pa. Code §§ 54.4(a) and 54.5(a), both of which are applicable to residential and small commercial customers.

<sup>5</sup> The consumer protections in the Electric Competition Act applicable competitive electricity generation supply service include the Section 2809(b) requirement that EGSs comply with the Commission's regulations, including the Chapter 54 regulations.