

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

April 22, 2016

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

RE: Commonwealth of Pennsylvania, *et al.* v. Respond Power LLC
Docket No. C-2014-2427659

Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Respond Power LLC
Docket No. C-2014-2438640

Secretary Chiavetta:

Enclosed please find the Joint Petition for Approval of Settlement along with Exhibit A – Stipulation of Facts in Support of Settlement, Conclusions of Law, and Proposed Ordering Paragraphs. Also, attached are Appendices A-D – Statements in Support of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate, Bureau of Investigation & Enforcement, Respond Power LLC and the Office of Small Business Advocate, in the above-referenced proceeding.

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

Respectfully Submitted,

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. #89891

RECEIVED
2018 FEB 22 AM 10:32
PA PUC
SECRETARY'S BUREAU
FRONT DESK

Enclosures

cc: Honorable Elizabeth Barnes, ALJ
Honorable Joel Cheskis, ALJ
Certificate of Service

*196330

RP Exhibit AS-21
C-2016-2576287, et al.
2-1-18
Harrisburg JS

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by Attorney	:	
General KATHLEEN G. KANE, Through the	:	
Bureau of Consumer Protection,	:	
	:	
And	:	Docket No. C-2014-2427659
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate,	:	
Complainants,	:	
	:	
v.	:	
	:	
RESPOND POWER, LLC,	:	
Respondent	:	
	:	
	:	
PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	Docket No. C-2014-2438640
INVESTIGATION AND ENFORCEMENT,	:	
Complainant,	:	
	:	
v.	:	
	:	
RESPOND POWER, LLC,	:	
Respondent	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

The Commonwealth of Pennsylvania, Office of Attorney General, through the Bureau of Consumer Protection (BCP or OAG) and Tanya J. McCloskey, Acting Consumer Advocate (OCA) (together Joint Complainants), the Public Utility Commission's Bureau of Investigation and Enforcement (I&E), Respond Power, LLC (Respond Power or the Company), and the Office of Small Business Advocate (OSBA) (collectively, Joint Petitioners) hereby join in this Joint

Petition For Approval of Settlement (Settlement), which resolves all issues among the Joint Petitioners.

The Joint Petitioners respectfully request that Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) recommend and the Pennsylvania Public Utility Commission (Commission) approve all terms and conditions of the Settlement without modification. The Settlement provides for refunds and modifications to business practices in full satisfaction of the Joint Complaint filed with the Commission by Joint Complainants against Respond Power on June 20, 2014, and the Formal Complaint filed with the Commission by I&E against Respond Power on August 21, 2014.

In support of this Settlement, the Joint Petitioners state the following:

I. BACKGROUND

1. The Attorney General is the chief law officer of the Commonwealth of Pennsylvania pursuant to Article IV § 4.1 of the Pennsylvania Constitution and is authorized to initiate and maintain this action pursuant to the Commonwealth Attorneys Act, 71 P.S. § 732-204.

2. Tanya J. McCloskey is the Acting Consumer Advocate. The OCA is authorized by law to represent the interests of utility consumers before the Commission, as provided in 71 P.S. § 309-1 *et seq.*

3. I&E has the authority, delegated to it by the Commission, to initiate proceedings that are prosecutory in nature pursuant to 66 Pa. C.S. § 308.2 and the Final Procedural Order entered on August 11, 2011 at *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852.

4. Respond Power is a New York limited liability company licensed to supply electric generation supplier services to residential, small commercial (25 kw and under) and large commercial (over 25 kw) customers in the Allegheny Power, Duquesne Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, PECO Energy Company, PPL Electric Utilities Corporation and UGI Utilities, Inc. service territories in Pennsylvania. The Commission approved the Company's license application by Order entered August 19, 2010 at Docket No. A-2010-2163898.

A. Joint Complaint.

5. On June 20, 2014, the Joint Complainants filed a Joint Complaint with the Commission pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (Consumer Protection Law), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (TRA). The Joint Complaint includes nine separate counts as follows: (1) misleading and deceptive claims of affiliation with electric distribution companies; (2) misleading and deceptive promises of savings; (3) failing to disclose material terms; (4) deceptive and misleading welcome letter and inserts; (5) slamming; (6) lack of good faith handling of complaints; (7) failing to provide accurate pricing information; (8) prices nonconforming to disclosure statement; and (9) failing to comply with the TRA. With respect to relief, Joint Complainants requested that the Commission find that Respond Power violated the Public Utility Code, the Consumer Protection Law, the TRA, and the Commission's regulations and Orders; provide restitution to Respond Power's customers; impose a civil penalty; order the Company to make various modifications to its practices and procedures; and revoke or suspend Respond Power's Electric Generation Supplier (EGS) license, if warranted.

6. On July 10, 2014, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement in the Joint Complaint proceeding. The OSBA is the agency of the Commonwealth authorized by the Small Business Advocate Act to represent the interests of small business customers before the Commission. See 73 P.S. §§ 399.41 – 399.50.

7. On July 10, 2014, Respond Power filed Preliminary Objections to the Joint Complaint seeking dismissal with prejudice of Counts III, IV, VII, VIII and IX of the Joint Complaint for legal insufficiency, lack of jurisdiction and insufficient specificity of the pleading.

8. On July 21, 2014, the Joint Complainants filed an Answer to Preliminary Objections asserting Respond Power's Preliminary Objections should be overruled, as the Joint Complaint is legally sufficient and pled with adequate specificity. Further, Joint Complainants asserted that the allegations in the Joint Complaint were properly within the Commission's authority and jurisdiction to decide.

9. Also on July 10, 2014, Respond Power filed an Answer with New Matter to the Joint Complaint. In its Answer, Respond Power admitted or denied the various averments made by the Joint Complainants in the Joint Complaint. In its New Matter, Respond Power averred, *inter alia*, that the Commission lacks the authority and subject matter jurisdiction to hear and decide the case and that the OAG and OCA lacked standing to represent individual consumers before the Commission and seek restitution on their behalf. Further, Respond Power requested that the Commission dismiss the Joint Complaint with prejudice.

10. On July 30, 2014, Joint Complainants filed their Reply to New Matter specifically addressing, *inter alia*, their standing to bring the Joint Complaint and the Commission's authority and jurisdiction to hear and decide the matter.

11. By Order dated August 20, 2014, the ALJs granted in part and denied in part Respond Power's Preliminary Objections to the Joint Complaint. Specifically, the ALJs found: 1) that the Commission lacks jurisdiction to hear complaints under the Consumer Protection Law and the TRA even though compliance with these Acts is required by the Commission regulations and 2) that the Commission lacks jurisdiction to determine if the prices charged to customers conformed to the disclosure statement provided to the customer.

12. On September 8, 2014, Joint Complainants filed a Petition for Interlocutory Review and Answer to Material Questions with the Commission. Specifically, Joint Complainants sought for the Commission to answer the following questions: (1) Does the Commission have authority and jurisdiction to determine whether a violation of the Consumer Protection Law and TRA has occurred when considering whether the Commission's regulations—which require compliance with these laws—have been violated; and (2) Does the Commission have the authority and jurisdiction to determine whether the prices charged to customers by an EGS conform to the EGS disclosure statement regarding pricing. On September 18, 2014, the Joint Complainants filed a Brief in Support of their Material Questions, and Respond Power filed a Brief in Opposition.

13. The Commission issued an Order on Joint Complainants' Petition for Interlocutory Review and Answer to Material Questions on April 9, 2015, in which it determined that while it does not have the authority and jurisdiction to determine whether a violation of the Consumer Protection Law and TRA has occurred, it does have jurisdiction over alleged violations of the Commission's own regulations. This jurisdiction includes determining whether the Commission's regulations prohibiting deceptive and/or misleading conduct and/or the Commission's telemarketing regulations have been violated by an EGS. Therefore, the

Commission concluded that it can hear claims alleging fraudulent, deceptive, and/or misleading conduct brought against Respond Power under the Commission's regulations and claims alleging improper verification of enrollment of residential customers brought against Respond Power, improper association of Respond Power with an electric distribution company, and other allegations raised against Respond Power under the Commission's telemarketing Regulations. The Commission also determined that it does have the authority and jurisdiction to determine whether the prices charged to customers by an EGS conform to the EGS disclosure statement regarding pricing.

14. On August 25, 2014, a Prehearing Conference was convened and thereafter, at the direction of the ALJs, the parties proposed a partial litigation schedule, specifically for the submission of consumer testimony. In Procedural Order #2 dated September 3, 2014, the partial litigation schedule was adopted, which provided, *inter alia*, that Joint Complainants would serve the written direct testimony of their consumer witnesses on October 24, 2014, and hearings for cross-examination of the Joint Complainants' consumer witnesses would take place on November 10 and 12, 2014.

15. On September 3, 2014, Respond Power filed an unopposed Motion for Protective Order, which was granted by Order on the same day.

16. On October 24, 2014, pursuant to the partial litigation schedule, the Joint Complainants served the written direct testimony of approximately 200 consumer witnesses.

17. On October 22, 2014, Respond Power filed an unopposed Motion for Continuance of the November hearings. The Motion was granted by Order dated October 28, 2014, and hearings for cross-examination of consumer witnesses were re-scheduled for January 26 – 30, 2015. Additionally, in the Order dated October 28, 2014, the ALJs directed Respond

Power to (1) indicate to the ALJs and parties by December 22, 2014, which consumers the Company intended to cross-examine; (2) circulate the Company's cross-examination exhibits to the ALJs, parties and witnesses by January 12, 2015; and (3) file any motions to strike consumer direct testimony by January 19, 2015.

B. I&E's Formal Complaint.

18. On August 21, 2014, I&E filed a Formal Complaint with the Commission asserting counts as follows: (1) slamming; (2) misleading and deceptive claims of affiliation with electric distribution companies or government programs; (3) misleading and deceptive promises of savings; (4) failure to disclose material pricing terms in Respond Power's disclosure agreement/prices not conforming to disclosure agreement; (5) lack of good faith in handling customer complaints/cancellations; (6) inaccurate/incomplete/fraudulent sales agreements; and (7) incorrect billing. With respect to relief, I&E requested that the Commission find Respond Power in violation of the Public Utility Code, Commission regulations and the Consumer Protection Law; impose a civil penalty in the amount of \$639,000 (or \$1,000 per violation for 639 violations alleged in the Formal Complaint); refunds to affected customers of Respond Power of the difference between the amount billed and the customers' applicable Prices to Compare (PTCs); and rescission of the Company's authority to do business in Pennsylvania.

19. On September 2, 2014, the BCP filed a Notice of Intervention, and on September 3, 2014, the OCA filed a Notice of Intervention and Public Statement.

20. On September 30, 2014, Respond Power filed an Answer to the I&E Formal Complaint.

21. Also on September 30, 2014, Respond Power filed Preliminary Objections to the I&E Formal Complaint, wherein the Company sought the dismissal of various Counts for lack of Commission jurisdiction and legal insufficiency.

22. On October 17, 2014, I&E and OCA filed Answers to Respond Power's Preliminary Objections.

23. On November 17, 2014, ALJs Cheskis and Barnes issued an Order Granting in Part and Denying in Part the Preliminary Objections. Specifically, the ALJs found that the Commission has jurisdiction to determine whether prices charged by an EGS reflect marketed prices and prices agreed upon in the disclosure statement, as well as comply with other Commission regulations; the Commission has the authority to order EGSs to issue refunds in certain circumstances; and the Commission lacks jurisdiction to determine whether an EGS violated the Consumer Protection Law, but it has jurisdiction to determine whether an EGS violated the Commission's own consumer protection regulations.

C. Consolidated Proceeding.

24. On October 24, 2014, I&E filed a Petition to Consolidate the Joint Complainants' Joint Complaint proceeding with the I&E Formal Complaint proceeding. In its Petition, I&E asserted that consolidation was proper because the Complaints (1) allege violations of the same provisions of the Public Utility Code and Commission regulations; (2) contain similar factual allegations; (3) seek substantially the same remedies, including but not limited to, directing Respond Power to provide a refund to each customer. I&E further asserted that consolidation would expedite the administrative process, preserve judicial resources, prevent inconsistent outcomes and save Respond Power from having to defend two similar complaints

simultaneously. The Joint Complaint and Formal Complaint proceedings were consolidated by Order dated October 28, 2014.

25. Pursuant to the litigation schedule, I&E served the consumer direct testimonies of 21 consumer witnesses on November 14, 2014.

26. On December 19, 2014, Respond Power filed a second Motion for Continuance of the hearings for cross examination of the consumer witnesses.¹ The Motion was granted by Order dated December 29, 2014, and hearings for the cross examination of consumer witnesses was re-scheduled for March 9 - 13, 2015. Further, the ALJs directed Respond Power to (1) indicate to the ALJs and parties by February 2, 2015, which consumers the Company intended to cross-examine, with all other witness testimony being admitted into the record without cross-examination; (2) circulate the Company's cross-examination exhibits to the ALJs, parties and witnesses by February 17, 2015; and (3) file any motions to strike consumer direct testimony by February 23, 2015.

27. The ALJs scheduled a Further Prehearing Conference for January 27, 2015, for purposes of establishing the remainder of the litigation schedule.

28. On December 30, 2014, Respond Power filed a Motion for Scheduling of Settlement Conference and Assignment of Settlement Judge (Motion for Settlement Conference and Judge). By letter dated January 8, 2015, Respond Power requested that the ALJs hold the Motion in abeyance and that Respond Power would inform the ALJs by January 26, 2015, whether the Company would pursue the Motion, withdraw it or seek to have the Motion further held in abeyance.

¹ During the pendency of this Motion, on December 22, 2014, Respond Power advised the ALJs and parties that it intended to cross examine all of Joint Complainants' and I&E's consumer witnesses.

29. On January 27, 2015, the Further Prehearing Conference was convened, and the remainder of the litigation schedule was established. Specifically, Joint Complainants' and I&E's expert and other witness direct testimonies were to be served on May 8, 2015; Respond Power's rebuttal testimonies were to be served on July 1, 2015; Joint Complainants' and I&E's surrebuttal testimonies were to be served on July 31, 2015; and hearings for cross-examination were scheduled for August 10 – 12, 2015. Also, during the Further Prehearing Conference, Respond Power requested that the ALJs hold the Company's Motion for Settlement Conference and Judge be further held in abeyance until February 9, 2015.

30. Pursuant to the ALJs' direction at the Further Prehearing Conference, Joint Complainants filed a Memorandum of Law Regarding the Admission of Pattern of Practice Evidence on February 3, 2015. On February 13, 2015, Respond Power filed a Memorandum of Law Regarding the Admission of Pattern of Practice Evidence.

31. On January 30, 2015, Respond Power advised the ALJs and parties that it intended to cross examine all of Joint Complainants' and I&E's consumer witnesses. On February 17, 2015, Respond Power provided the names of thirty-three witnesses for whom it would waive cross-examination.

32. On February 23, 2015, Respond Power filed a Motion to Strike Pre-Served Consumer Direct Testimony. On March 2, 2015, I&E filed an Answer opposing the Company's Motion to Strike. On March 3, 2015, Joint Complainants filed an Answer opposing the Company's Motion to Strike. By Order dated March 6, 2015, Respond Power's Motion to Strike was granted in part and denied in part.

33. Hearings for cross examination of Joint Complainants' and I&E's consumer witnesses were held on March 9 through 13, 2015. During these hearings, the direct testimonies

and accompanying exhibits of 153 of Joint Complainants' consumer witnesses were admitted into the record, and the direct testimonies and accompanying exhibits of 19 of I&E's consumer witnesses were admitted into the record. Three consumers (Susan Deiter, Jeanne McCloe, and Mickie Shreiber) were admitted for both plaintiffs, totaling 169 individual consumer witness testimonies in the record in this proceeding. Additionally, various cross and redirect exhibits were moved into the record.

34. By letter dated March 27, 2015, Respond Power requested that its Motion for Settlement Conference and Judge be renewed and that the ALJs establish a date for responses thereto and then rule on the Motion. The ALJs directed the parties to file responses to the Company's Motion for Settlement Conference and Judge by April 6, 2015. On April 6, 2015, the Joint Complainants filed an Answer asserting that they were willing to continue settlement discussions, although they had not yet received a reply from the Company to a Joint OAG/OCA/I&E settlement offer of February 9, 2015, and that the appointment of a Settlement Judge was not necessary and could unnecessarily delay the proceedings. I&E indicated it had no opposition to Respond Power's Motion. By Order dated April 14, 2015, the ALJs denied Respond Power's Motion for Settlement Conference and Judge without prejudice.

35. By letter dated April 30, 2015, Respond Power submitted an unopposed request to modify the remainder of the litigation schedule. The request was granted in Procedural Order #5 dated May 1, 2015.

36. Pursuant to the modified procedural schedule, on May 18, 2015, Joint Complainants served the direct testimonies of Barbara R. Alexander (OAG/OCA St. 1), Steven L. Estomin (OAG/OCA St. 2), Ashley E. Everette (OAG/OCA St. 3) and Gregory M. Strupp

(OAG/OCA St. 4). Also on May 18, 2015, I&E served the direct testimony of Daniel J. Mumford (I&E St. 1).

37. On July 21, 2015, Respond Power served the rebuttal testimonies of Elliott Wolbrom (Respond Power St. 1), Adam Small (Respond Power St. 2), Saul Horowitz (Respond Power St. 3), and James L. Crist (Respond Power St. 4). Thereafter, on July 22, 2015, Respond Power served the revised rebuttal testimony of Saul Horowitz (Respond Power St. 2-Rev). Additionally, on July 23, 2015, Respond Power served the revised rebuttal testimony of James L. Crist (Respond Power St. 4-Rev).

38. On August 21, 2015, Joint Complainants filed a Motion to Strike portions of the rebuttal testimonies of Respond Power witnesses Wolbrom, Small and Crist. On August 24, 2015, Respond Power filed an Answer in Opposition to Joint Complainants' Motion to Strike. The ALJs denied Joint Complainants' Motion to Strike portions of Respond Power's rebuttal testimonies from the bench during the hearings on August 26-27, 2015.

39. On August 19, 2015, Joint Complainants served the surrebuttal testimonies of Barbara R. Alexander (OAG/OCA St. 1-SR), Steven L. Estomin (OAG/OCA St. 2-SR), Ashley E. Everette (OAG/OCA St. 3-SR) and Gregory M. Strupp (OAG/OCA St. 4-SR).

40. On August 24, 2015, Respond Power served the revised rebuttal testimony of Adam Small (Respond Power St. 2-Rev).

41. In light of Mr. Small's revised rebuttal testimony, Joint Complainants served the revised surrebuttal testimony of Ashley E. Everette (OAG/OCA St. 3-SR (Rev)) and the supplemental surrebuttal testimony of Ashley E. Everette (OAG/OCA St. 3-SR (Supp)) on August 27, 2015.

42. Hearings for cross-examination of Joint Complainants', I&E's and Respond Power's expert and non-consumer witnesses occurred on August 26 and 27, 2015.

43. On July 23, 2015, I&E advised Joint Complainants and OSBA that I&E had reached a settlement in principle with Respond Power that fully satisfied the I&E Complaint.²

44. On August 25, 2015, I&E and Respond Power filed a Petition for Approval of Settlement. Later on August 25, 2015, additional emails were received from counsel for Respond Power providing changes to the Petition and the terms of settlement within the Petition.

45. Joint Complainants advised the parties and ALJs on August 26, 2015, that they would oppose the settlement, and on August 27, 2015, Joint Complainants reserved the opportunity to call witnesses and present evidence supporting their objections to the settlement. The ALJs set a hearing for October 15, 2015.

46. On September 18, 2015, I&E and Respond Power filed an Amended Petition for Approval of Settlement (Settlement) that further modified the terms of the settlement presented on August 25, 2015 along with a Stipulation of Facts and Statements in Support of Settlement.

47. The ALJs directed Joint Complainants and OSBA to provide initial objections in writing by September 28, 2015.

48. Joint Complainants submitted their Joint Initial Objections to the I&E/Respond Power Settlement on September 28, 2015, wherein they requested:

that the ALJs convene a hearing (currently scheduled for October 15, 2015) and permit Joint Complainants the opportunity to question witnesses regarding the Settlement and present evidence if necessary regarding objections to the Settlement. Joint Complainants respectfully request that the ALJs direct I&E and Respond Power to produce witnesses knowledgeable of the Settlement and able to answer questions about the Settlement at the hearing. Further, Joint Complainants respectfully request the opportunity to present their full legal analysis in written

² Joint Complainants were unaware that I&E and Respond Power had been engaging in separate negotiations regarding settlement in this consolidated matter, as prior to July 23, 2015. Joint Complainants and I&E had been engaging in joint settlement negotiations with Respond Power.

Objections to the Settlement at least 30 days after the close of the record in this matter.

49. On October 5, 2015, I&E and Respond Power submitted their respective Answers to Joint Complainants' Initial Objections, wherein both parties provided further changes to the Settlement and requested that Joint Complainants' request to provide evidence in support of their objections to the Settlement be denied.

50. In Procedural Order #6 dated October 7, 2015, the ALJs (1) permitted the Joint Complainants the opportunity to submit written testimony regarding the Settlement by October 13, 2015, which would be admitted into the record at the hearing on October 5, 2015 subject to cross-examination; (2) permitted I&E and Respond Power the opportunity to present oral responsive testimony to Joint Complainants' testimony regarding the Settlement at the hearing on October 15, 2015; and (3) directed I&E and Respond Power to have witnesses available for the October 15, 2015 hearing who are knowledgeable about and able to answer questions related to the Settlement.

51. On October 13, 2015, Joint Complainants served the supplemental surrebuttal testimony of Barbara R. Alexander (OAG/OCA St. 1-SR (Supp)) and the testimonies of Barbara R. Alexander (OAG/OCA St. 1-Objec) and Gregory M. Strupp (OAG/OCA St. 4-Objec) in support of Joint Complainants' objections the Settlement of I&E and Respond Power.

52. On October 14, 2015, Respond Power filed a Motion to Strike portions of OAG/OCA St. 4-Objec and several exhibits attached thereto. The Motion was denied at the hearing on October 15, 2015.

53. A hearing was convened on October 15, 2015, wherein Joint Complainants' testimonies served on October 13, 2015 were moved into the record, and cross-examination was

conducted. Further, I&E presented Daniel J. Mumford and Respond Power presented Adam Small at the hearing to answer questions related to the Settlement.

54. By Briefing Order dated October 28, 2015, the ALJs directed the parties file Main Briefs by December 3, 2015, Reply Briefs by December 23, 2015. In this Order, the ALJs also waived the 60-page limit for briefs.

55. On December 3, 2015, Joint Complainants, I&E and Respond Power submitted Main Briefs.

56. On December 23, 2015, Joint Complainants and Respond Power submitted Reply Briefs.

57. By letter dated January 11, 2016, Joint Complainants advised the ALJs and parties of a typographical error in Joint Complainants' Main Brief that potentially caused unnecessary confusion. On January 14, 2016, Respond Power filed a Motion to Strike Joint Complainants' letter of January 11, 2016. On January 28, 2016, Joint Complainants filed an Answer to the Motion to Strike. By Order dated February 5, 2016, the ALJs granted Respond Power's Motion to Strike.

58. Also in the Order dated February 5, 2016, the ALJs closed the record for decision writing.

59. During the period from August 2015 through March 2016, the parties continued to engage in settlement negotiations in an effort to reach a global settlement of the Joint Complaint and the I&E Formal Complaint.

60. During a conference call on March 22, 2016, the parties inquired with the ALJs if they would consider re-opening the record to receive a global settlement. The ALJs directed the parties to file a motion to re-open the record.

61. On March 28, 2016, Respond Power filed an Unopposed Motion to Reopen the Record to permit the parties to file a global settlement, supporting statements in support of the global settlement and a stipulation of facts in support of the global settlement on or before April 22, 2016.

62. By Order dated April 1, 2016, the ALJs granted Respond Power's Unopposed Motion to Reopen the Record and directed the parties to submit a Global Settlement, Statements in Support of the Global Settlement, proposed Findings of Fact, proposed Conclusions of Law and Proposed Ordering Paragraphs by April 22, 2016.

II. SETTLEMENT TERMS AND CONDITIONS

63. The parties all agree that this Global Settlement is controlling and fully replaces and supplants any prior Settlement Petition filed to date.

64. It is understood that this Global Settlement is the compromise of the allegations in the Joint Complaint and the I&E Formal Complaint, which the Joint Complainants and I&E intend to prove and that the Company disputes. Although the Joint Complainants, I&E and the Company may disagree with the allegations as to the Company's conduct, all acknowledge the importance to consumers and the retail market of full and accurate information and disclosures to consumers, as well as the assurance of fair and transparent marketing and billing practices. The Joint Complainants, I&E and the Company recognize that this is a disputed claim, and given the inherent unpredictability of the outcome of a contested proceeding, there are benefits to amicably resolving the disputed issues through settlement. The refunds, penalties, contributions and other injunctive measures described herein are not and should not be considered to be or construed as admissions of liability or wrongdoing on the part of the Company.

65. It is further understood that the Company specifically denies any wrongdoing or liability in this proceeding. It is the parties' intent that the terms and conditions of this Global Settlement are not to be used in any further proceeding, including but not limited to, the Commission, the Pennsylvania court system or the federal court system, relating to this or any other matter, as evidence of unlawful behavior, or as an admission of unlawful behavior by the Company.

A. 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.³

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

³ Joint Complainants do not join in this paragraph, but will not oppose it.

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.

c. 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.

B. 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 subparagraph.

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.
 - c. 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.

III. THIS SETTLEMENT IS IN THE PUBLIC INTEREST

81. This Global Settlement was achieved by the Joint Petitioners after extensive investigation into Respond Power's marketing and billing practices, including formal and informal discovery, 169 consumer testimonies⁴ and related exhibits of record in this matter, the expert testimonies and related exhibits of Joint Complainants' witnesses Ms. Alexander, Dr. Estomin and Ms. Everette of record in this matter, the testimony of OAG investigator Mr. Strupp of record in this matter, the testimony of I&E witness Mr. Mumford and related exhibits of record in this matter, the testimonies of Respond Power's witnesses Mr. Small, Mr. Wolbrom,

⁴ The direct testimonies and accompanying exhibits of 153 of Joint Complainants' consumer witnesses were admitted into the record, and the direct testimonies and accompanying exhibits of 19 of I&E's consumer witnesses were admitted into the record at hearings on March 9-13, 2015. Three consumers (Susan Deiter, Jeanne McCloe, and Mickie Shreiber) were admitted for both plaintiffs, totaling 169 individual consumer witness testimonies in the record in this proceeding.

Mr. Horowitz and Mr. Crist and related exhibits of record in this matter, and hearing exhibits of record in this matter.

82. The agreed-upon provisions regarding refunds and modifications to business practices in the Global Settlement will provide reasonable relief for Respond Power's current and former customers who were affected as alleged in the Joint Complaint and I&E's Formal Complaint.

83. Attached to this Settlement as Exhibit A is a Stipulation of Facts in Support of Settlement and Conclusions of Law.

84. Attached to this Settlement are the respective Statements in Support of the Joint Petitioners setting forth the basis upon which each considers the Global Settlement to be in the public interest. The Joint Petitioners' respective Statements in Support are attached hereto as Appendices "A" through "D."

IV. ADDITIONAL TERMS AND CONDITIONS

85. This Global Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Global Settlement, then any Joint Petitioner may elect to withdraw from this Global Settlement and may proceed with litigation and, in such event, this entire Global Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties and the ALJs within five business days after the entry of an Order modifying the Global Settlement.

86. This Global Settlement is proposed by the Joint Petitioners to settle all issues among them in the instant proceeding. If the Commission does not approve the Global Settlement, the Joint Petitioners reserve their respective rights to obtain an initial decision from

the ALJs based upon the record already established in this matter. This Global Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation of this proceeding or in any other proceeding.

87. This Global Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The Global Settlement is presented without prejudice to any position which any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the Global Settlement. This Global Settlement does not preclude the parties from taking other positions in other proceedings involving the marketing and billing practices of Electric Generation Suppliers or Natural Gas Suppliers or other aspects of the competitive market.

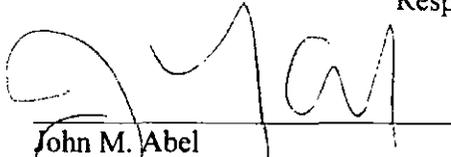
88. If the ALJs adopt this Global Settlement without modification in their Initial Decision, the Joint Petitioners waive their rights to file exceptions to the issues addressed by the Global Settlement.

WHEREFORE, the Joint Petitioners, by their respective counsel, respectfully request:

1. That the ALJs recommend that the Commission approve this Global Settlement, including all the terms and conditions thereof, without modification;
2. That the Commission approve the Global Settlement without modification; and

3. That the Joint Complaint of OAG and OCA and the Formal Complaint of I&E be marked satisfied.

Respectfully submitted,



John M. Abel
Senior Deputy Attorney General
PA Attorney I.D. 47313

Nicole R. DiTomo
Deputy Attorney General
PA Attorney I.D. 315325

Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
T: (717) 787-9707
F: (717) 787-1190
jabel@attorneygeneral.gov
nditomo@attorneygeneral.gov

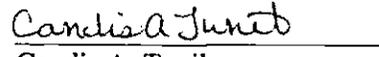
Counsel for:
Commonwealth of Pennsylvania
Office of Attorney General

Bruce L. Castor, Jr.
Solicitor General

Bruce R. Beemer
First Deputy Attorney General

James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division

Basil L. Merenda
Chief Deputy Attorney General
Bureau of Consumer Protection

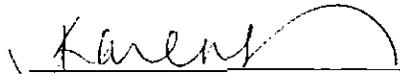


Candis A. Tunilo
PA Attorney I.D. 89891

Kristine E. Marsilio
PA Attorney I.D. 316479
Assistant Consumer Advocates

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
T: (717) 783-5048
F: (717) 783-7152
ctunilo@paoca.org
kmarsilio@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate



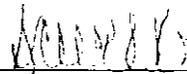
Karen O. Moury
PA Attorney I.D. 36879
John F. Povilaitis
PA Attorney I.D. 28944
Buchanan Ingersoll & Rooney, P.C.
409 North Second Street
Suite 500
Harrisburg, PA 17101-1503
T: (717) 237-4820
F: (717) 233-0852
karen.moury@bjpc.com
john.povilaitis@bjpc.com

David P. Zambito
PA Attorney I.D. 80017
D. Troy Sellars
PA Attorney I.D. 210302
Cozen O'Connor
17 North Second St., Suite 1410
Harrisburg, PA 17101
T: (717) 703-5892
F: (215) 989-4216
dzambito@cozen.com
tsellars@cozen.com

Counsel for:
Respond Power, LLC

DATE: April 22, 2016

219838



Sharon E. Webb
PA Attorney I.D. 73995
Assistant Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
T: (717) 783-2525
F: (717) 783-2831
swebb@pa.gov

Counsel for:
John R. Evans
Small Business Advocate



Adam D. Young
PA Attorney I.D. 91822
Prosecutor

Michael L. Swindler
PA Attorney I.D. 43319
Prosecutor

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
T: (717) 787-5000
F: (717) 783-3458
advoung@pa.gov
mwindler@pa.gov

Counsel for:
Bureau of Investigation and Enforcement

Joint Complainants, I&E, Respond Power, and OSBA have entered into the Settlement, which they recognize is a compromise of disputed claims. Joint Petitioners also recognize that the Settlement is entered into without admission of wrongdoing or liability by Respond Power.

PROCEDURAL HISTORY¹

1. On June 20, 2014, the Joint Complainants filed with the Commission a Formal Complaint against Respond Power at Docket Number C-2014-2427659 (Joint Complaint).
2. The Joint Complaint includes nine separate counts against Respond Power:
 - A. Count I - Misleading and Deceptive Claims of Affiliation with Electric Distribution Companies;
 - B. Count II – Misleading and Deceptive Promises of Savings;
 - C. Count III – Failing to Disclose Material Terms;
 - D. Count IV – Deceptive and Misleading Welcome Letter and Inserts;
 - E. Count V – Slamming;
 - F. Count VI – Lack of Good Faith Handling of Complaints;
 - G. Count VII – Failing to Provide Accurate Pricing Information;
 - H. Count VIII – Prices Nonconforming to Disclosure Statement; and
 - I. Count IX – Failing to Comply with the Telemarketer Registration Act.
3. In the Joint Complaint, the Joint Complainants made several requests for relief, including ordering Respond Power to pay a civil penalty and provide refunds to customers, prohibiting deceptive practices in the future, and revoking Respond Power’s Electric Generation Supplier (EGS) license.

¹ A full outline of the procedural history in this matter can be found in Section I of the Joint Petition for Approval of Settlement. A brief procedural history is provided herein.

4. On August 21, 2014, I&E filed with the Commission a Formal Complaint against Respond Power at Docket Number C-2014-2438640 (I&E Formal Complaint).
5. The I&E Complaint includes seven separate counts against Respond Power:
 - A. Count I - Slamming;
 - B. Count II – Misleading and Deceptive Claims of Affiliation with Electric Distribution Companies;
 - C. Count III – Misleading and Deceptive Promises of Savings;
 - D. Count IV – Failure to Disclose Material Terms in Respond Power’s Disclosure Agreement/Prices not Conforming to Disclosure Agreement;
 - E. Count V – Lack of Good Faith in Handling Customer Complaints/Cancellations;
 - F. Count VI – Inaccurate/Incomplete/Fraudulent Sales Agreements; and
 - G. Count VII – Incorrect Billing.
6. In the I&E Formal Complaint, I&E made several requests for relief, including ordering Respond Power to pay a civil penalty and provide refunds to customers and rescinding Respond Power’s EGS license.
7. On October 24, 2014, Joint Complainants served Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) and the parties with the consumer direct testimonies and accompanying exhibits of approximately 200 consumer witnesses. The testimonies relate to each consumer’s experience with Respond Power’s marketing, billing and customer service practices.
8. The Formal Complaint proceedings initiated by Joint Complainants and I&E were consolidated by Order dated October 28, 2014.

9. On November 14, 2014, I&E served the consumer direct testimonies and accompanying exhibits of 21 consumer witnesses. The testimonies relate to each consumer's experience with Respond Power's marketing, billing and customer service practices.

10. Hearings for cross-examination of Joint Complainants' and I&E's consumer witnesses were held on March 9 through 13, 2015. During these hearings, the direct testimonies and accompanying exhibits of 153 of Joint Complainants' consumer witnesses were admitted into the record, and the direct testimonies and accompanying exhibits of 19 of I&E's consumer witnesses were admitted into the record.² Additionally, various cross and redirect exhibits were moved into the record.

11. On May 18, 2015, Joint Complainants served the direct testimonies of Barbara R. Alexander (OAG/OCA St. 1), Steven L. Estomin (OAG/OCA St. 2), Ashley E. Everette (OAG/OCA St. 3) and Gregory M. Strupp, in which Joint Complainants provided evidence in support of the Joint Complaint, and I&E served the direct testimony of Daniel J. Mumford (I&E St. 1), in which I&E provided evidence in support of the I&E Formal Complaint.

12. On July 21, 2015, Respond Power served the rebuttal testimonies of Elliott Wolbrom (Respond Power St. 1), Saul Horowitz (Respond Power St. 2), Adam Small (Respond Power St. 3), and James L. Crist (Respond Power St. 4), in which Respond Power responded to assertions in the testimonies served by Joint Complainants and I&E.

13. On July 22, 2015, Respond Power served the revised rebuttal testimony of Saul Horowitz (Respond Power St. 2-Rev).

² Three consumer testimonies (Susan Deiter, Jeanne McCloe, and Mickie Shreiber) were admitted for both Joint Complainants and I&E, totaling 169 individual consumer witness testimonies in the record in this proceeding.

14. On July 23, 2015, Respond Power served the revised rebuttal testimony of James L. Crist (Respond Power St. 4-Rev).
15. On August 19, 2015, Joint Complainants served the surrebuttal testimonies of Barbara R. Alexander (OAG/OCA St. 1-SR), Steven L. Estomin (OAG/OCA St. 2-SR), Ashley E. Everette (OAG/OCA St. 3-SR) and Gregory M. Strupp (OAG/OCA St. 4-SR).
16. On August 24, 2015, Respond Power served the revised rebuttal testimony of Adam Small (Respond Power St. 3-Rev).
17. On August 27, 2015, Joint Complainants served the revised surrebuttal testimony of Ashley E. Everette (OAG/OCA St. 3-SR (Rev)) and the supplemental surrebuttal testimony of Ashley E. Everette (OAG/OCA St. 3-SR (Supp)).
18. Hearings for cross-examination of Joint Complainants', I&E's and Respond Power's witnesses occurred on August 26 and 27, 2015, at which time the parties' pre-served testimonies were admitted into the record.
19. Joint Petitioners agree that this Global Settlement is controlling and fully replaces and supplants any prior Settlement Petition filed to date.

STIPULATION OF FACTS

20. Respond Power was founded in 2005 and operates as a retail electric and natural gas supplier. See OAG/OCA St.1 at 8.
21. 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.
22. 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.

23. Some of the consumer testimonies moved into the record included an averment that Respond Power's salespeople promoted an affiliation with an Electric Distribution Company (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.

24. 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.

25. Approximately one-hundred and fourteen (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.

26. 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.

27. Approximately twelve (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.

28. Approximately twenty (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.

29. Approximately seventy-four (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.

30. Approximately thirty (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.

31. Approximately eighty-nine (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.

32. Approximately eighty-two (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.

33. 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.

34. 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.

35. 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.

36. Through the expert testimony of Ms. Ashely 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.

37. 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.

38. 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.

39. 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 generally Respond Power St. 1, Respond Power St. 2-Rev, Respond Power St. 3-Rev, Respond Power St. 4-Rev.

40. Through the testimony of 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.

41. Through the testimony of 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.

42. 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.

43. Through the testimony of 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.

44. 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.

45. This Stipulation of Facts is not an admission of wrongdoing or liability by Respond Power.

CONCLUSIONS OF LAW

1. It is well-established that the Commission encourages and promotes settlements. See 52 Pa. Code § 5.231.
2. The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. See e.g., Pa. PUC v. City of Lancaster – Bureau of Water, Docket No. R-2010-2179103, Order at 11 (July 14, 2011).
3. The Commission’s Policy Statement at 52 Pa. Code § 69.1201 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. The factors and standards that will be considered by the Commission include the following:

(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.

See 52 Pa. Code § 69.1201(b).

4. When applied in settled cases, the Rosi 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.

5. As discussed in the Joint Petitioners' Statements in Support of Settlement attached to the Joint Petition, the Joint Petition for Approval of Settlement is in the public interest.

PROPOSED ORDERING PARAGRAPHS

THEREFORE, IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement dated April 22, 2016 and submitted at Docket Numbers C-2014-2427659 and C-2014-2438640 by the Office of Attorney General, through the Bureau of Consumer Protection, Tanya J. McCloskey, Acting Consumer Advocate, the Public Utility Commission's Bureau of Investigation and Enforcement, Respond Power, LLC, and the Office of Small Business Advocate is hereby approved in its entirety without modification.
2. That the Joint Complaint filed by the Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane and Tanya J. McCloskey, Acting Consumer Advocate on June 20, 2014, and the Formal Complaint filed by the Public Utility Commission's Bureau of Investigation and Enforcement on August 21, 2014 are hereby marked satisfied.
3. That the Stipulation of Facts in Support of the 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.
4. That Docket Nos. C-2014-2427656 and C-2014-2438640 be marked closed.

BY THE COMMISSION

(SEAL)

ORDER ADOPTED:

ORDER ENTERED:

Date: _____

Respectfully submitted,



John M. Abel
Senior Deputy Attorney General
PA Attorney I.D. 47313

Nicole R. DiTomo
Deputy Attorney General
PA Attorney I.D. 315325

Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
T: (717) 787-9707
F: (717) 787-1190
jabel@attorneygeneral.gov
nditomo@attorneygeneral.gov

Counsel for:
Commonwealth of Pennsylvania
Office of Attorney General

Bruce L. Castor, Jr.
Solicitor General

Bruce R. Beemer
First Deputy Attorney General

James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division

Basil L. Merenda
Chief Deputy Attorney General
Bureau of Consumer Protection

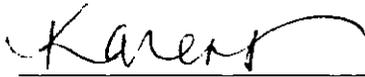


Candis A. Tunilo
PA Attorney I.D. 89891

Kristine E. Marsilio
PA Attorney I.D. 316479
Assistant Consumer Advocates

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
T: (717) 783-5048
F: (717) 783-7152
ctunilo@paoca.org
kmarsilio@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate



Karen O. Moury
PA Attorney I.D. 36879
John F. Povilaitis
PA Attorney I.D. 28944
Buchanan Ingersoll & Rooney, P.C.
409 North Second Street
Suite 500
Harrisburg, PA 17101-1503
T: (717) 237-4820
F: (717) 233-0852
karen.moury@bipc.com
john.povilaitis@bipc.com

David P. Zambito
PA Attorney I.D. 80017
D. Troy Sellars
PA Attorney I.D. 210302
Cozen O'Connor
17 North Second St., Suite 1410
Harrisburg, PA 17101
T: (717) 703-5892
F: (215) 989-4216
dzambito@cozen.com
tsellars@cozen.com

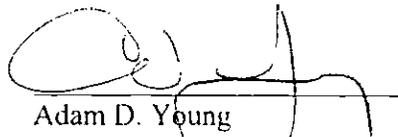
Counsel for:
Respond Power, LLC



Sharon E. Webb
PA Attorney I.D. 73995
Assistant Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
T: (717) 783-2525
F: (717) 783-2831
swebb@pa.gov

Counsel for:
John R. Evans
Small Business Advocate



Adam D. Young
PA Attorney I.D. 91822
Prosecutor

Michael L. Swindler
PA Attorney I.D. 43319
Prosecutor

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
T: (717) 787-5000
F: (717) 783-3458
advyoung@pa.gov
mwindler@pa.gov

Counsel for:
Bureau of Investigation and Enforcement

DATE: April 22, 2016

219886

I. BACKGROUND

On June 20, 2014, the Joint Complainants filed a Joint Complaint with the Public Utility Commission (Commission) against Respond Power, LLC (Respond Power or Company) pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (CPL), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (TRA).¹ The Joint Complaint includes nine separate counts, in which Joint Complainants allege that Respond Power violated Pennsylvania law and Commission Orders and regulations. Specifically, the nine counts in the Joint Complaint are: (1) misleading and deceptive claims of affiliation with electric distribution companies; (2) misleading and deceptive promises of savings; (3) failing to disclose material terms; (4) deceptive and misleading welcome letter and inserts; (5) slamming; (6) lack of good faith handling of complaints; (7) failing to provide accurate pricing information; (8) prices nonconforming to disclosure statement; and (9) failure to comply with the TRA. With respect to relief, the Joint Complainants requested that the Commission find, *inter alia*, that Respond Power violated the Public Utility Code and the Commission's regulations and Orders; provide refunds to the Company's customers; impose a civil penalty; order Respond Power to make various modifications to its practices and procedures; and revoke or suspend Respond Power's Electric Generation Supplier (EGS) license, if warranted.

On August 21, 2014, I&E filed a Formal Complaint against Respond Power alleging various violations of the Public Utility Code, the Commission's regulations and the CPL. Specifically, I&E alleged the following violations: (1) slamming; (2) misleading and deceptive

¹ For the sake of brevity, Joint Complainants are summarizing the procedural history in this Statement in Support. A fully detailed background and procedural history are set forth in Section I of the Joint Petition to which this Statement in Support is attached.

claims of affiliation with Electric Distribution Companies (EDCs) or Government Programs; (3) misleading and deceptive promises of savings; (4) failure to disclose material pricing terms in Respond Power's Disclosure Agreement/prices not conforming to Disclosure Agreement; (5) lack of good faith in handling customer complaints/cancellations; (6) inaccurate/incomplete/fraudulent sales agreements; and (7) incorrect billing.

Pursuant to the litigation schedule adopted at the August 25, 2014 Initial Prehearing Conference in the Joint Complaint proceeding, Joint Complainants timely served Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) and the parties on October 24, 2014 with consumer direct testimony of approximately 200 consumer witnesses. The testimony relates to each consumer's firsthand experience with Respond Power's marketing, billing and customer service practices.

The Formal Complaint proceedings initiated by Joint Complainants and I&E were consolidated by Order dated October 28, 2014. Thereafter, pursuant to the litigation schedule, I&E served the consumer direct testimonies of 21 consumer witnesses on November 14, 2014.

Hearings for cross-examination of Joint Complainants' and I&E's consumer witnesses were held on March 9 through 13, 2015. During these hearings, the direct testimonies and accompanying exhibits of 153 of Joint Complainants' consumer witnesses were admitted into the record, and the direct testimonies and accompanying exhibits of 19 of I&E's consumer witnesses were admitted into the record.² Additionally, various cross and redirect exhibits were moved into the record.

² Three consumer testimonies (Susan Deiter, Jeanne McCloe, and Mickie Shreiber) were admitted for both Joint Complainants and I&E, totaling 169 individual consumer witness testimonies in the record in this proceeding.

On May 18, 2015, in accordance with the modified Procedural Schedule for serving expert testimony, Joint Complainants served the direct testimonies of Barbara R. Alexander³ (OAG/OCA St. 1), Steven L. Estomin⁴ (OAG/OCA St. 2), Ashley E. Everette⁵ (OAG/OCA St. 3) and Gregory M. Strupp⁶ (OAG/OCA St. 4). Also on May 18, 2015, I&E served the direct testimony of Daniel J. Mumford (I&E St. 1).

On July 21, 2015, Respond Power served the rebuttal testimonies of Elliott Wolbrom (Respond Power St. 1), Adam Small (Respond Power St. 2), Saul Horowitz (Respond Power St. 3), and James L. Crist (Respond Power St. 4). Thereafter, on July 22, 2015, Respond Power served the revised rebuttal testimony of Saul Horowitz (Respond Power St. 2-Rev).

³ Ms. Alexander is a Consumer Affairs Consultant. She is a graduate of the University of Michigan and the University of Maine School of Law. She has appeared before over 20 U.S. and Canadian regulatory and legislative bodies, provided expert testimony in regulatory proceedings to adopt and enforce consumer protection policies for retail energy markets, and published papers and reports on consumer protection policies and programs that should govern regulated utility and competitive energy supply services for residential customers. She has appeared before the Commission on behalf of the OCA in numerous proceedings since 1998 relating to the implementation of retail electric and natural gas competition, consumer protection regulations applicable to retail electric suppliers, default service policies, retail market enhancement programs, and in utility rate cases relating to customer service and reliability of service performance.

⁴ Dr. Estomin is a Senior Economist and Principal with Exeter Associates, Inc. Dr. Estomin holds B.A., M.A., and Ph.D. degrees in economics from the University of Maryland. He has been employed in the area of energy, utility, and telecommunications consulting for over 34 years, working on a wide range of issues. Most of his work has focused on electric utility integrated planning, load forecasting, environmental issues, power supply procurement and market-related issues, and renewable energy issues. Dr. Estomin has provided expert witness testimony in more than 35 regulated proceedings in various jurisdictions. His testimony has addressed a variety of subjects including resource planning, load forecasting, competitive restructuring, rate design, weather normalization, statistical analysis, default service supply procurement, and other issues.

⁵ Ms. Everette is employed as a Regulatory Analyst by the Pennsylvania Office of Consumer Advocate. She has a Master's degree in Business Administration and a Bachelor's degree in Economics from the University of Illinois. At the OCA, Ms. Everette's responsibilities include, *inter alia*, reviewing utility company filings with the Pennsylvania Public Utility Commission and analyzing the financial, economic, rate of return, and policy issues that are relevant to the filings.

⁶ Mr. Strupp was a Consumer Protection Agent in the Pennsylvania Office of Attorney General's Bureau of Consumer Protection. Mr. Strupp received his Bachelor's Degree in Criminal Justice from Temple University. At the Office of Attorney General's Bureau of Consumer Protection, he was responsible for reviewing thousands of consumer complaints for potential violations of the consumer protection laws, engaging in mediations, conducting investigations under the supervision of an attorney, and assisting with litigation. OAG/OCA St. 4 at 1.

Additionally, on July 23, 2015, Respond Power served the revised rebuttal testimony of James L. Crist (Respond Power St. 4-Rev).

On August 19, 2015, Joint Complainants served the surrebuttal testimonies of Barbara R. Alexander (OAG/OCA St. 1-SR), Steven L. Estomin (OAG/OCA St. 2-SR), Ashley E. Everette (OAG/OCA St. 3-SR) and Gregory M. Strupp (OAG/OCA St. 4-SR).

On August 24, 2015, Respond Power served the revised rebuttal testimony of Adam Small (Respond Power St. 2-Rev). In light of Mr. Small's revised rebuttal testimony, Joint Complainants served the revised surrebuttal testimony of Ashley E. Everette (OAG/OCA St. 3-SR (Rev)) and the supplemental surrebuttal testimony of Ashley E. Everette (OAG/OCA St. 3-SR (Supp)) on August 27, 2015. Hearings for cross-examination of Joint Complainants', I&E's and Respond Power's expert and non-consumer witnesses occurred on August 26 and 27, 2015, at which time the expert and non-consumer testimonies were admitted into the record.

Regarding settlement, on August 25, 2015, I&E and Respond Power filed a Petition for Approval of Settlement. On August 26, 2015, Joint Complainants advised the parties and ALJs that they would oppose the settlement, and on August 27, 2015, Joint Complainants reserved the opportunity to call witnesses and present evidence supporting their objections to the settlement. On September 18, 2015, I&E and Respond Power filed an Amended Petition for Approval of Settlement (I&E/Respond Power Settlement) that further modified the terms of the settlement presented on August 25, 2015, along with a Stipulation of Facts and Statements in Support of Settlement. On September 28, 2015, Joint Complainants filed their Initial Objections to the I&E/Respond Power Settlement.

On October 13, 2015, Joint Complainants served the supplemental surrebuttal testimony of Barbara R. Alexander (OAG/OCA St. 1-SR (Supp)) and the testimonies of Barbara R.

Alexander (OAG/OCA St. 1-Objec) and Gregory M. Strupp (OAG/OCA St. 4-Objec) in support of Joint Complainants' objections to the I&E/Respond Power Settlement. A hearing was convened on October 15, 2015, wherein these testimonies were moved into the record, and cross-examination was conducted. Further, I&E presented Daniel J. Mumford and Respond Power presented Adam Small at the hearing to answer questions related to the I&E/Respond Power Settlement. See Tr. at 1401-1417.

Joint Complainants, Respond Power, and I&E filed Main Briefs in this proceeding on December 3, 2015. In their Main Brief, Joint Complainants addressed the merits of their Joint Complaint and further discussed their objections to the I&E/Respond Power Settlement, asserting, *inter alia*, that the I&E/Respond Power Settlement was not sufficient to remedy all the allegations in the Joint Complaint, provided insufficient refunds to customers, and was inadequate to ensure compliance with Commission regulations and orders. See OAG/OCA M.B. at 176. Joint Complainants and Respond Power filed Reply Briefs on December 23, 2015.

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Joint Petitioners continued to engage in settlement discussions following the filing of the I&E/Respond Power Settlement and following the filing of Briefs in an attempt to reach a global settlement. These discussions resulted in this Global Settlement, which addresses the numerous complex issues raised in this case and applies to residential and small business customers. The Joint Complainants submit that the terms and conditions of the Global Settlement satisfactorily address the broad range of issues raised in the Joint Complaint and the I&E Formal Complaint.⁷ This Global Settlement is supported by all parties to this

⁷ In this Statement in Support, Joint Complainants primarily discuss the Global Settlement in light of the issues raised in the Joint Complaint.

consolidated proceeding. Joint Complainants submit that the provisions of the Global Settlement, taken as a whole, constitute a reasonable compromise of the complex issues presented in this consolidated proceeding. In this Statement in Support, Joint Complainants address those areas of the Global Settlement that specifically relate to the most salient issues of the Joint Complaint. Joint Complainants submit that the Global Settlement is in the public interest and in the interests of past, present and future Respond Power customers. Additionally, the Global Settlement supports the continued development of the retail choice market in Pennsylvania. Joint Complainants request that Commission approve the Global Settlement without modification.

II. GLOBAL SETTLEMENT TERMS

A. Introduction.

This Global Settlement is a product of compromise between all parties to this consolidated proceeding. The Joint Complainants recognize that the benefits to amicably resolving the disputed issues through settlement can often outweigh the risks and expenditures of continued litigation. As discussed in detail below, Joint Complainants submit that the Global Settlement addresses the issues raised in the Joint Complaint and is comprehensive, appropriate and reasonable under the circumstances and in the public interest. As such, Joint Complainants respectfully request that the ALJs and the Commission approve the Global Settlement without modification.

As alleged in the Joint Complaint, on or about February 10, 2014, the OCA began receiving a high volume of calls and written correspondence from residential consumers on variable rate plans with EGSs regarding the level of electric generation charges on the consumers' electric bills. Joint Complaint at ¶ 15. 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 Power. Joint Complaint at ¶¶ 16-17. Further, 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 by BCP, 520 or approximately 7% were against Respond Power. Joint Complaint at ¶ 18.

In Count I of the Joint Complaint, Joint Complainants alleged that Respond Power's employees, agents and/or representatives engaged in and continue to engage in activities that are fraudulent and deceptive by failing to identify themselves as being affiliated with Respond Power when engaging in door-to-door sales, failing to clearly state that they are not affiliated with the consumers' local EDCs when engaging in door-to-door sales, claiming to be affiliated with the consumers' EDCs, and deceiving consumers in order to induce them to switch to Respond Power in violation of 52 Pa. Code §§ 54.43(f), 111.8, 111.9, and 112(d)(1). Also as alleged in the Joint Complaint, Respond Power is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives pursuant to 52 Pa. Code § 54.43(f). See Joint Complaint at ¶ 25. Further, the Joint Complaint alleged that Respond Power is required to train its agents on, *inter alia*, responsible ethical sales practices, the proper completion of transaction documents, and the Company's disclosure statement pursuant to 52 Pa. Code § 111.5(a). See Joint Complaint at ¶ 26. Also as alleged in the Joint Complaint, Respond Power is required to monitor marketing activities to ensure that its agents are providing accurate and complete information and complying with applicable rules and regulations pursuant to 52 Pa. Code § 111.5(e). See Joint Complaint at ¶ 27. As such, Joint Complainants also alleged that

Respond Power failed to adequately train and monitor its agents, as required by the Commission's regulations. See 52 Pa. Code §§ 111.4 and 111.5.

In Count II of the Joint Complaint, Joint Complainants alleged that Respond Power's salespeople provided misleading and deceptive promises of savings to consumers as inducement to switch to Respond Power that may not, and for many consumer did not, materialize in violation of 52 Pa. Code §§ 54.43(f) and 111.12(d)(1). See Joint Complaint at Count II. Specifically, Joint Complainants alleged that Respond Power's salespeople promised that the rate charged by Respond Power would be competitive with the consumers' EDCs' rates or would always be lower than or equal to their EDCs' rates. Joint Complaint at ¶ 33. Additionally, Joint Complainants alleged that Respond Power's salespeople promised guaranteed savings over the Price to Compare (PTC). Joint Complaint at ¶¶ 34-36. Joint Complainants alleged that Respond Power then charged customers prices in early 2014 that were at least two or three times more than the PTC and some as high at \$0.40 per kWh for electricity. Joint Complaint at ¶¶ 33-36, 87. As noted, Respond Power is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives pursuant to 52 Pa. Code § 54.43(f). See Joint Complaint at ¶ 37. Also, Joint Complainants alleged that Respond Power failed to adequately train and monitor its agents, as required by the Commission's regulations in violation of 52 Pa. Code §§ 111.4 and 111.5. See Joint Complaint at ¶ 41.

In Count III of the Joint Complaint, Joint Complainants alleged that Respond Power failed to provide accurate price disclosures to customers and deceived customers about the price Respond Power would charge them in violation of 52 Pa. Code §§ 54.4(a), 54.5(b), 54.5(c)(2), 54.7(a), 111.11, and 111.12(d)(4). See Joint Complaint at Count III. Specifically, Joint Complainants alleged that Respond Power's salespeople failed to inform customers that they had

signed up for a variable rate and/or provided the customers with Terms and Conditions of Service that did not state whether the rate was fixed or variable, and then Respond Power charged these customers variable rates. See Id. at ¶¶ 43-45. Also, Joint Complainants alleged that Respond Power failed to adequately train and monitor its agents, as required by the Commission's regulations in violation of 52 Pa. Code §§ 111.4 and 111.5. See Joint Complaint at ¶ 53.

In Count IV of the Joint Complaint, Joint Complainants alleged that Respond Power made claims in its Welcome Letter and Inserts that represent benefits of its services that Respond Power did not provide to its customers and EDC sponsorship that it does not have in violation of 52 Pa. Code §§ 54.43(f) and 111.12(d)(1). See Joint Complaint at Count IV.

In Count V of the Joint Complaint, Joint Complainants alleged that Respond Power switched customers to Respond Power without their consent in violation of 66 Pa. C.S. § 2807(d)(1) and 52 Pa. Code § 54.42(a)(9).

Joint Complainants also alleged in Count VII that Respond Power has failed to adequately staff its call center, failed to provide reasonable access to Company representatives for purposes of submitting complaints, failed to properly investigate customer disputes, failed to properly notify customers of the results of the Company's investigation into a dispute when such investigation was conducted, and failed to utilize good faith, honesty and fair dealing in its dealings with customers in violation of 52 Pa. Code §§ 56.1(a), 56.141(a), 56.151 and 56.152 and the Company's Licensing Order, 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 alleged in Count VII of the Joint Complaint, Respond Power failed to provide pricing information in plain language and using common terms that consumers understand and in a manner that would allow consumers to compare offers, and consumers could not determine from Respond Power's disclosure statement the price that they would or could be charged by Respond Power or how that price would be calculated. See Joint Complaint at Count VII. As such, Respond Power violated 52 Pa. Code §§ 54.43(1), 54.43(f), 54.5(c), and 111.12(d)(1).

Additionally, in Count VIII, Joint Complainants alleged that Respond Power's prices charged to consumers in early 2014 did not conform to the Company's Disclosure Statement, as Respond Power charged some of its variable rate customers prices at least as high as \$0.41 per kWh for electricity. Joint Complaint at Count VIII.

Finally, in Count IX of the Joint Complaint, Joint Complainants alleged that Respond Power failed to provide consumers with a contract that contained all of the required information set forth in Sections 2245(a)(7) and 2245(c) of the TRA, 73 P.S. § 2245(a)(7) and (c), and has therefore, violated and continues to violate 52 Pa. Code § 54.43(f), 111.10(a)(1) and 111.12(d)(1).

Through the testimonies and accompanying exhibits of Joint Complainants' expert witnesses, non-consumer witness, and consumer witnesses of record in this proceeding, Joint Complainants were prepared to support the allegations in the Joint Complaint. The expert and non-consumer direct testimonies provided by Joint Complainants in this proceeding relate to the marketing, enrollment, billing, and customer service practices and charges to customers in early 2014 by Respond Power. See Exhibit A SOF at ¶ 33. Specifically, through the expert and non-consumer testimonies, Joint Complainants were prepared to show the following:

- 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 Exhibit A SOF at ¶ 34. 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.
- 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 Exhibit A SOF at ¶ 35.
- Through the expert testimony of Ms. Ashely 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 Exhibit A SOF at ¶ 36.
- 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 Exhibit A SOF at ¶ 37.

Additionally, Joint Complainants were also prepared to rely on the 169 consumer testimonies on record in this proceeding to support the allegations in the Joint Complaint. For example, related to Count I, some of the consumer testimonies included an averment that Respond Power's salespeople promoted an affiliation with an Electric Distribution Company (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 Exhibit A SOF at ¶ 23. Additionally, some of the consumer testimonies 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 Exhibit A SOF at ¶ 24.

Related to Count II, approximately one-hundred and fourteen (114) consumer testimonies included an averment that Respond Power salespeople in their oral presentations promised savings. See Exhibit A SOF at ¶ 25.

In support of Count III, some consumer testimonies 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 Exhibit A SOF at ¶ 26. Additionally, approximately twelve (12) consumer testimonies included an averment that Respond Power salespeople altered their sales agreements after they had signed up for service. See Exhibit A SOF at ¶ 27.

In support of Count V, approximately twenty (20) consumer testimonies included an averment that the customers were "slammed" or enrolled without their approval as the person authorized on the account. See Exhibit A SOF at ¶ 28.

The consumer witnesses also provided evidence that Joint Complainants were prepared to rely upon in support of Count VI of the Joint Complaint. For example, approximately seventy-four (74) consumer testimonies included an averment that the customers 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 Exhibit A SOF at ¶ 29. Additionally, approximately thirty (30) consumer testimonies included an averment that when the customers 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 Exhibit A at SOF ¶ 30. Moreover, approximately eighty-nine (89) consumer testimonies included an averment that the customers were not offered any refund by Respond Power. See Exhibit A SOF at ¶ 32.

Consumer witnesses also provided evidence that Joint Complainants were prepared to rely upon in support of Count IX of the Joint Complaint. Specifically, approximately eighty-two (82) consumer testimonies included an averment that the customers did not receive or did not recall receiving a “Welcome Letter” and Disclosure Statement after a telemarketing enrollment. See Exhibit A SOF at ¶ 32.

By way of relief, Joint Complainants requested, *inter alia*, that the Commission impose a civil penalty and direct Respond Power to provide appropriate restitution, including without limitation, refunding all charges to its customers that were over and above the PTC in the customers’ respective service territories from January 1, 2014 through the date of resolution of this matter, as well as any late, cancellation and/or termination fees and/or other such penalties charged to customers as a result of the Company’s charges. Joint Complaint at 16, ¶¶ C, D. This Global Settlement addresses the issues identified in the testimonies of Joint Complainants’ expert, non-consumer, and consumer witnesses.

B. Refunds, Civil Penalty and Contribution to EDCs' Hardship Funds. (Joint Petition at ¶¶ 66-71)

In regard to refunds, this Global Settlement provides for refunds to all Respond Power variable rate customers who were served by Respond Power during the months of January, February, or March 2014. Joint Petition at ¶ 66(a)(ii). In addition, the Global Settlement provides for specific refunds by I&E to informal complainants from February 1, 2014 to June 30, 2014. Joint Petition at ¶ 66(a)(i). Specifically, the Global Settlement recognizes a Refund Pool and Rebilled Amounts of \$5,083,504.36 (\$4,112,224.91 representing the Refund Pool, or cash refunds, and \$971,279.45 representing the Rebilled Amount, or the amount that Respond Power rebilled certain customers in February 2014). *Id.* at ¶ 66. The Settlement also recognizes the \$248,873.58 in cash refunds voluntarily provided by Respond Power directly to customers, leaving a total of \$3,863,351.33 in additional cash refunds to be provided to customers. *Id.* at ¶ 66(a). From the Refund Pool, \$313,351.33 will be made available for disbursement by I&E to former or existing Respond Power residential and small business customers who filed an informal complaint against Respond Power at the Commission from February 1, 2014 to June 30, 2014.⁸ *Id.* at ¶ 66(a)(i). The remaining \$3,550,000 will be made available to Respond Power residential and small business customers who were served by Respond Power during the months January, February, or March 2014. *Id.* at ¶ 66(a)(ii) Additionally, Respond Power will honor all commitments to eligible Pennsylvania customers, including but not limited to, \$25 for each friend referred to the Company. *Id.* at ¶ 66(b).

Joint Complainants will determine the amount of refund to offer to individual customers (other than the informal complainants identified by I&E) based on the individual customer's

⁸ Joint Complainants do not join in this paragraph of the Global Settlement but do not oppose it.

usage, price charged, and refund amounts already received. Joint Petition at ¶ 66(a)(ii). This determination will be made for all Respond Power customers on variable rate plans and billed for usage in January, February, or March 2014. This plan is consistent with the expert, non-consumer, and consumer testimonies on record in this proceeding. Joint Complainants' refund determinations will be designed to fully utilize the Net Refund Pool with none of the Refund Pool reverting back to Respond Power. If funds remain in the refund pool after issuance of the calculated refunds or are refused by customers, the funds shall be provided to EDCs' hardship funds. Id. at ¶ 67(d).

Joint Complainants will retain a third-party Administrator for the distribution of the \$3,550,000 Refund Pool amount. Joint Petition at ¶ 67. Respond Power will be responsible for the first \$55,000 of the costs and expenses of retaining the Administrator. Id. Respond Power will also fully and timely cooperate with Joint Complainants, I&E and the Settlement Administrator by providing all customer information necessary to calculate each customer's refund amount. Id. at ¶ 67(b). The Settlement Administrator will use best efforts to distribute the \$3,550,000 Net Refund Pool amount within 180 days of the Commission's final order in this proceeding and will provide monthly reports of funds distributed to Joint Complainants, I&E, Respond Power and designated Commission staff. Id. at ¶ 67(c).

Respond Power will also provide an additional refund method to customers that do not receive or accept an offer of funds from the Refund Pool. Id. at ¶ 68. The Global Settlement provides that customers may contact the Company directly with complaints and requests for refunds, and Respond Power shall use its best efforts to negotiate an agreement with the customer directly. Id. at ¶¶ 68(a)-(b). Respond Power will provide quarterly reports to Joint Complainants, I&E and designated Commission staff for one year after the Commission's final

order setting forth the names of complainants, the general nature of the complaints, and the disposition thereof. Id. at ¶ 68(e)

Additionally, the Joint Petition provides that Respond Power shall pay a civil penalty in the amount of \$125,000 to the General Fund and make a total contribution of \$50,000 to the EDCs' hardship funds. Id. at ¶¶ 70-71. For the reasons discussed below, Joint Complainants submit that these amounts are appropriate, especially in light of the other terms and conditions outlined in the Joint Petition.

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 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 is reasonable and in the public interest. When applied in settled cases, the factors will not be applied in as strict a fashion as in litigated proceedings. 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 and standards that will be considered by the Commission include the following:

(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.

See 52 Pa. Code § 69.1201(b).

With regard to the first Rosi Factor, Joint Complainants submit that the allegations that Respond Power charged prices to its variable rate customers in early 2014 that did not conform to the Company's Disclosure Statement and made misleading and deceptive promises of savings to customers through representations made by Respond Power's salespeople and contained in Respond Power's Welcome Letter and Inserts are of a serious nature. See 52 Pa. Code § 69.1201(c)(1). This Commission has made it clear that it will not tolerate unlawful activity that threatens to harm Pennsylvania's consumers and thereby the burgeoning retail electricity market in Pennsylvania. See Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. MXenergy Electric Inc., Docket No. M-2012-2201861, Order at 5 (May 3, 2012). "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.” See 52 Pa. Code § 69.1201(c)(1).

With regard to the second Rosi Factor, Joint Complainants submit that the resulting consequences of Respond Power’s alleged conduct in early 2014 resulted in harm to Pennsylvania’s consumers and the retail electricity market in Pennsylvania. See 52 Pa. Code § 69.1201(c)(2). Many consumer witnesses detailed their hardships in the consumer testimony on the record in this proceeding, such as receiving shut off notices from their EDCs or seeking payment arrangements to pay off the charges over time. See e.g. OAG/OCA M.B. at 7-8.

Given the serious nature of the alleged violations and the resulting consequences, Joint Complainants submit that refunds to customers, a contribution to the EDCs’ hardship funds and a civil penalty are appropriate, reasonable and in the public interest. Joint Complainants submit that the disbursement of the Refund Pool to Respond Power’s eligible customers will assist these affected customers in restoring some portion of their financial losses incurred as a result of Respond Power’s alleged conduct. The \$50,000 contribution that will be allocated to the EDCs’ hardship funds based on the number of Respond Power customers in each EDC territory for the months of January 2014 through March 2014 will assist consumers who have experienced difficulties as a result of high electric bills. As further discussed in the analysis of the other Rosi factors below, Joint Complainants submit that \$125,000 is the appropriate civil penalty amount, in light of the other comprehensive relief provided in the Joint Petition.

The fourth Rosi Factor⁹ is 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. 52 Pa. Code § 69.1201(c)(4). Prior to the Global Settlement, Respond Power voluntarily

⁹ Joint Complainants submit that the third Rosi Factor pertains only to the evaluation of litigated cases, and therefore, it does not apply to this Settlement. See 69 Pa. Code § 1201(c)(3).

provided \$248,873.58 in cash refunds directly to customers. Joint Petition at ¶ 66(a). The Global Settlement provides for additional refunds to Respond Power's customers that were allegedly charged prices in early 2014 that did not conform to Respond Power's Disclosure Statement and were affected by Respond Power's salespeople allegedly making deceptive and misleading promises of savings, which were also allegedly contained in the Company's Welcome Letter and Inserts. Pursuant to the Global Settlement, Respond Power will also work in good faith with customers that were not offered or did not accept a refund from the Refund Pool and contact the Company directly with a complaint. Thus, Joint Complainants submit that the refunds, civil penalty and contributions to EDCs' hardship funds are reasonable, appropriate, and in the public interest. Additionally, as detailed *infra*, Respond Power has also agreed to extensive business modifications, and Joint Complainants submit that these modifications will help to prevent the conduct alleged in the Joint Complaint from occurring in the future. Joint Complainants also note that Respond Power has already taken action to implement the training and business modifications, as required in the Global Settlement. See Joint Petition at ¶¶ 72(a), 76(h), 77(i).

The fifth Rosi Factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Joint Complainants alleged that as of May 5, 2014, the OCA had received approximately 189 contacts from customers of Respond Power (8%) regarding variable rates, and as of June 4, 2014, OAG received approximately 520 contacts from Respond Power customers (7%) regarding variable rates. See Joint Complaint at ¶ 17-18. Further, of the approximately 203 Formal Complaints against EGSs that were filed by consumers with the Commission that OCA had reviewed by May 5, 2014, approximately 20 or 10% were filed against Respond Power. See Joint Complaint at ¶ 19. This Commission has recognized

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. See e.g. Arthur Rand v. GTE North, 1999 Pa. PUC LEXIS 55, *9-10 (March 19, 1999). Joint Complainants submit that the number of customers who were impacted by the Company's conduct as alleged in the Joint Complaint is significant. Accordingly, Joint Complainants submit that the refunds, civil penalty and the contributions to the EDCs' hardship funds are reasonable and in the public interest when considered along with the extensive business modifications outlined in the Joint Petition.

The sixth Rosi Factor is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). "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." Id. The Commission has imposed conditions on the natural gas supplier license of Respond Power's affiliate in 2012. See OAG/OCA M.B. at 163. Additionally, Respond Power and its affiliates were recently investigated in Maryland and Illinois. Id. at 163-66. Joint Complainants submit that although the Commission has imposed conditions on the supplier license of Respond Power's affiliate, Respond Power's compliance history does not pose a barrier to approval of the proposed Global Settlement, as the extensive business modifications in the Global Settlement will help to ensure compliance with regulatory standards.

The seventh Rosi Factor is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Joint Complainants submit that the ability of the parties to comprehensively resolve these consolidated proceedings demonstrates the level of the Company's cooperation in this matter. Additionally, the parties' willingness to perform certain requirements in the Global Settlement prior to its approval demonstrates the level of cooperation in this matter.

The eighth Rosi Factor is the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8). Joint Complainants submit that the Global Settlement comprehensively addresses the allegations in the Joint Complaint and the I&E Formal Complaint. The civil penalty along with the contributions to the EDCs' hardship funds, the refunds to customers and the extensive business modifications outlined in the Global Settlement are sufficient to deter similar future conduct.

The ninth Rosi Factor is past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). Joint Complainants submit 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. This Commission, however, has approved settlements involving EGSs that involve refunds, civil penalties and injunctive relief. See e.g. Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, Through The Bureau of Consumer Protection And Tanya J. McCloskey, Acting Consumer Advocate v. Energy Services Provider, Inc. d/b/a Pennsylvania Gas & Electric, Docket No. 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) (The Commission approved a settlement that required PaG&E to pay a civil penalty, refund PaG&E customers, pay a contribution to EDCs' hardship funds, and implement business modifications); see also Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, Through The Bureau of Consumer Protection And Tanya J. McCloskey, Acting Consumer Advocate v. HIKO Energy, LLC, Docket No. C-2014-2427652, Order (Dec. 3, 2015) (The Commission adopted the ALJs' Initial Decision approving a settlement that required HIKO to pay refunds to customers, make a contribution to EDCs' hardship funds, and make numerous corrective changes to its

business practices); see also Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Energy Services Provider, Inc. d/b/a Pennsylvania Gas & Electric And U.S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric, Docket No. M-2013-2325122, Order (Oct. 2, 2014) (The Commission approved a settlement that required PaG&E to pay a civil penalty, refunds to its customers affected by the conduct complained of, and implement revisions to its operating procedures). Joint Complainants submit that the Global Settlement is comprehensive *vis a vis* the allegations in the Joint Complaint and the I&E Formal Complaint and is therefore, reasonable and in the public interest.

The tenth Rosi Factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). Joint Complainants submit that there is inherent uncertainty in the outcomes of fully litigated proceedings. The Global Settlement will ensure that Respond Power’s affected customers will receive refunds and that the conduct complained of will be addressed. Additionally, the Global Settlement saves costs and resources of the parties and the Commission.

Joint Complainants submit that based on the foregoing Rosi Factor analysis, the refund, civil penalty, and contributions to EDCs’ hardship funds provisions in the Global Settlement are reasonable and in the public interest. The refunds that Respond Power provided directly to customers combined with the additional refund amount that Respond Power will provide pursuant to the Global Settlement will help restore some of the financial losses incurred by Respond Power’s customers that were alleged to have been charged extraordinarily high prices in early 2014. Additionally, Respond Power will provide an additional refund method for customers that are not offered or do not accept a refund from the Refund Pool. The civil penalty is appropriate to deter similar future conduct, and the contributions to EDCs’ hardship funds will assist customers in need with payment of their electric bills. Further, Joint Complainants submit

that the robust business modifications in the Global Settlement, discussed *infra*, will help protect Respond Power's current and future customers and will better inform customers of the products and services provided by Respond Power.

C. Business Modifications. (Joint Petition at ¶¶ 72-80)

As stated above, the Joint Complaint includes nine separate counts, as follows: (1) misleading and deceptive claims of affiliation with electric distribution companies; (2) misleading and deceptive promises of savings; (3) failing to disclose material terms; (4) deceptive and misleading welcome letter and inserts; (5) slamming; (6) lack of good faith handling of complaints; (7) failing to provide accurate pricing information; (8) prices nonconforming to disclosure statement; and (9) failure to comply with the TRA.

With respect to relief, Joint Complainants requested, *inter alia*, that the Commission: (1) order Respond Power to prohibit its salespeople from stating or otherwise insinuating that they are employed by or in any way affiliated with consumers' local distribution companies; (2) order Respond Power to prohibit its salespeople from deceiving consumers about their choices relating to electric generation; (3) order Respond Power to prohibit its salespeople from making price guarantees to consumers that are deceiving and inaccurate; (4) order Respond Power to cease and desist switching consumers to its generation service without their explicit consent; (5) order the Company to implement proper customer dispute procedures and adequately staff, train and monitor all employees and agents in such procedures; and (6) order Respond Power to discontinue all other marketing practices that violate the TRA, CPL, the Public Utility Code, and the Commission's regulations or Orders.

This Global Settlement is in the public interest, as it contains comprehensive business modifications, including extensive modifications to Respond Power's training, monitoring,

discipline, and enforcement of its door-to-door sales representatives. Joint Complainants submit that the door-to-door business modifications in the Global Settlement address the consumer and expert testimonies, which particularly raised issues regarding Respond Power's door-to-door sales practices. See Joint Petition at ¶ 77. Specifically, the required modifications to business practices are as follows:

- **Product Offering:** Respond Power will offer only fixed price plans for a period of two years, beginning September 1, 2015. Joint Petition at ¶ 72(a). Further, Respond Power will not charge Pennsylvania customers cancellation or termination fees for variable price products when such products are offered in accordance with the Product Offering provision of the Global Settlement. Joint Petition at ¶ 72(b).
- **Marketing:** Respond Power specifically commits to complying with all Pennsylvania laws and Commission regulations, Orders and policies. See Joint Petition at ¶ 73(a). Further, Respond Power commits that the Company and its agents, employees and representatives shall not make misrepresentations to consumers. Joint Petition at ¶ 73(b). To that end, the Global Settlement provides specific restrictions regarding representations to consumers about savings: use of the terms “risk free,” “competitive,” “guaranteed,” “trial period,” “introductory rate,” and “special programs;” and representations about the PTC increasing or being a variable rate or how an EDC purchases electricity. Joint Petition at ¶¶ 73(c)-(g). Additionally, Respond Power specifically commits to complying with 52 Pa. Code § 57.175 and not enter into a sales agreement that is not personally accepted by the EDC's Customer of Record or a person purporting to be authorized to act on behalf of the Customer of Record. Joint Petition at ¶ 73(h). The Global Settlement also imposes

requirements regarding Respond Power's salespeople's communications with consumers, including a specific statement that the salesperson does not work for or represent the consumer's electric utility; 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; and for variable rates, when permitted under the Global Settlement, that the price the customer will pay under the variable rate plan can change every month and there is no limit on how high the price can go; and if Respond Power makes a representation to a consumer that they may cancel their plan at any time, Respond Power must also state that it may take several days to switch suppliers. Joint Petition at ¶¶ 73(i)-(l). The Global Settlement also contains requirements for the contents of the Company's Disclosure Statement; the prompt provision thereof to customers, and maintenance of adequate records regarding the provision of documents to customers. Joint Petition at ¶¶ 73(m)-(o). Finally, the Global Settlement contains specific requirements regarding Respond Power's advertising to consumers. See Joint Petition at ¶¶ 73(p)-(q).

- Third Party Verifications (TPVs): The Global Settlement contains specific requirements for Respond Power's TPVs, including specific language to be used prior to beginning the TPV process and specific questions that must be asked during TPVs. Joint Petition at ¶¶ 74(a)-(d). Further, the Global Settlement requires that all TPVs be performed outside the presence of the Respond Power salesperson. Joint Petition at ¶ 74(e). Finally, the Global Settlement prohibits Respond Power's salespeople from prompting consumers' responses to TPV questions or instructing consumers in the manner in which to answer TPV questions. Joint Petition at ¶ 74(f).

- Disclosure Statement: Specifically with regard to Respond Power's Disclosure Statement, the Global Settlement requires that within sixty days of the Commission's final order, the Company provide to Joint Complainants, I&E and the Commission's Bureau of Consumer Services its current Disclosure Statement and Schumer Box drafted pursuant to the Commission's regulations at 52 Pa. Code § 54.5 and provide any subsequently amended Disclosure Statements to Joint Complainants, I&E and designated Commission staff for a period of five years. Joint Petition at ¶¶ 75-75(a). Further, should the Company offer variable products pursuant to the Global Settlement, the Company will include specific language in its Disclosure Statement regarding Respond Power's variable price products and cancellation/early termination fees and describe the basis of the Company's charges and set forth the percentage of each attribute that makes up the price. Joint Petition at ¶¶ 75(b)-(c). The Global Settlement also provides for specific restrictions if Respond Power represents to consumers in the Company's variable price programs that the price Respond Power will charge will be "market-based" or set on "market conditions." Joint Petition at ¶ 75(c). Finally, the Global Settlement requires Respond Power to notify its current customers on variable rate programs about the availability of a fixed rate with Respond Power and direct the customers to review Respond Power's updated Disclosure Statement. Joint Petition at ¶ 75(d).
- Non-Door-to-Door Training: Respond Power has provided to Joint Complainants and I&E a detailed description of a new training program for its sales and customer service representatives. See Joint Petition at ¶ 76(a). Pursuant to the Global Settlement, Joint Complainants provided extensive comments relating to Respond

Power's training program. See Joint Petition at ¶ 76(b). Respond Power has provided certification to the Joint Petitioners that the Company has implemented the new training program for its sales and customer service representatives and has provided written assurances to Joint Petitioners detailing all the measures the Company has taken to correct its marketing practices and the progression of implementing its new training program. Joint Petition at ¶¶ 76(c). The Global Settlement requires Respond Power's new training program to accurately and comprehensively cover the applicable requirements of the Public Utility Code, CPL, TRA and the Commission's regulations, Order and policies. Joint Petition at ¶¶ 76(d)(i)-(ii). The new training program must also warn Respond Power's sales and customer service representatives that deceptive sales practices will not be tolerated by Respond Power's management and describe the remedial steps that will be taken if the representatives violate any terms of the Global Settlement or otherwise engage in improper sales practices. Joint Petition at ¶¶ 76(d)(iii)-(iv). Respond Power is also required to provide initial and subsequent refresher training on at least a quarterly basis and require individual marketers to successfully complete the training program. Joint Petition at ¶¶ 76(e),(g). Additionally, pursuant to the Global Settlement, if OAG, OCA, I&E, or OSBA receives two complaints regarding the same vendor and conduct of a substantially similar nature, Respond Power is required to immediately cease all marketing activities by that vendor until the vendor and its agents are fully retrained. Joint Petition at ¶ 76(e).

- Door-to-Door Training: Respond Power has provided to Joint Complainants and I&E a detailed description of a new training program for its door-to-door sales

representatives. See Joint Petition at ¶ 77(a). Pursuant to the Global Settlement, Joint Complainants provided extensive comments relating to Respond Power's new training program. See Joint Petition at ¶ 77(b). Also pursuant to the Global Settlement, Respond Power was required to cease door-to-door sales solicitations of Pennsylvania consumers from April 1, 2016 until the Company provided notice to Joint Complainants and I&E that initial training of its door-to-door sales agents had occurred. See Joint Petition at ¶ 77(i). Respond Power has provided certification to the Joint Petitioners that the Company has implemented the new training program for its door-to-door sales representatives and has provided written assurances to Joint Petitioners detailing all the measures the Company has taken to correct its marketing practices and the progression of implementing its new training program. Joint Petition at ¶¶ 77(c),(i). The Global Settlement requires Respond Power's new training program to accurately and comprehensively cover the applicable requirements of the Public Utility Code, CPL, TRA and the Commission's regulations, Order and policies. Joint Petition at ¶ 77(d)(i)-(ii). Additionally, the Global Settlement requires that Respond Power's training for its door-to-door representatives place particular emphasis on producing identification, identifying the reason for the visit, and offering a business card or other material that lists contact information prior to describing any products or services. Joint Petition at ¶¶ 77(d)(ii)(1)(a)-(c). Furthermore, Respond Power's door-to-door salespeople must state that if the customer purchases electricity from Respond Power, the customer's utility will continue to deliver the customer's electricity. Joint Petition at ¶ 77(d)(ii)(2). The salesperson is also required to provide the customer with written

information regarding Respond Power's products and services immediately upon request, terminate contact with a customer where it is apparent that the customer's language skills are insufficient to allow the customer to understand the information conveyed, and leave the premises of a customer when requested to do so by the customer. Joint Petition at ¶¶ 77(d)(ii)(3)-(5). The new training program must also warn Respond Power's door-to-door representatives that deceptive or intimidating sales practices will not be tolerated by Respond Power's management and describe the remedial steps that will be taken if the representatives violate any terms of the Global Settlement or otherwise engage in improper sales practices. Joint Petition at ¶¶ 77(d)(iii)-(iv). Furthermore, Respond Power agrees to explicitly train its door-to-door sales representatives that they are prohibited from being present for TPVs under any circumstances. Joint Petition at ¶ 77(h). Respond Power is also required to provide initial and subsequent refresher training on at least a quarterly basis and require individual marketers to successfully complete the training program. Joint Petition at ¶¶ 77(e),(g). Additionally, pursuant to the Global Settlement, if OAG, OCA, I&E, or OSBA receives two complaints regarding the same vendor and conduct of a substantially similar nature, Respond Power is required to immediately cease all marketing activities by that vendor until the vendor and its agents are fully retrained. Joint Petition at ¶ 77(j).

- **Compliance Monitoring:** The Global Settlement requires Respond Power to create an in-house Compliance Department and a Door-to-Door Management Team. Joint Petition at ¶ 78(a). The Compliance Department will be responsible for the planning, implementation, and subsequent training of all sales representatives and door-to-door

marketers. Joint Petition at ¶ 78(a)(ii). The Door-to-Door Management Team will be responsible for managing door-to-door contractors and will maintain complete written records of all contacts with the vendors regarding training, oversight, and discipline. Joint Petition at ¶ 78(a)(iv). The Global Settlement also contains requirements regarding the recording and reviewing of communications with customers. See Joint Petition at ¶ 78(b). The Global Settlement also contains requirements regarding Respond Power's investigation into non-compliant sales calls or substantiated consumer complaints about Respond Power's sales representatives and Respond Power's remedial actions for identified non-compliant sales calls or violations of the Global Settlement, Pennsylvania laws or Commission regulations, Orders or policies. Joint Petition at ¶¶ 78(b)(v)-(vii). Notably, the Global Settlement provides that in the event Respond Power determines that a sales representative has violated any terms of the Global Settlement, the Public Utility Code, the CPL, the TRA, or Commission regulations, Orders, or policies, Respond Power shall provide additional training and retraining to that sales representative; for two violations, Respond Power shall suspend the sales representative for a period of no fewer than 30 days; for any violation in excess of two within a twelve-month period, Respond Power shall permanently disqualify the sales representative from marketing Respond Power's services to Pennsylvania consumers. Joint Petition at ¶ 78(b)(viii).

- Reporting: The Global Settlement requires that within 30 days of implementation of the training and compliance monitoring required in the Global Settlement and quarterly thereafter for five years, Respond Power provide to the OCA, I&E and designated Commission staff an explanation of all internal audits and investigations

performed and the results thereof and reports of all customer complaints and disputes received by the Company. Joint Petition at ¶ 79.

- Customer Service: The Global Settlement requires Respond Power to employ regulatory personnel, who will help to ensure compliance with Chapter 56 of the Commission's regulations, fair and timely resolutions of customer complaints, and the proper training of customer service representatives. Joint Petition at ¶ 80(a). Respond Power is also required to maintain a staff of customer service representatives, who will provide reasonable access to a "live" customer service representative and provide timely responses to any voicemail messages or inquiries made in writing. Joint Petition at ¶ 80(b). Additionally, the Global Settlement requires Respond Power to develop and implement an action plan for handling periods of high call volumes and lays out specific factors that must be included in the plan. Joint Petition at ¶ 80(c). If Respond Power experiences a period of high call volumes in which it does not comply with the provisions of the Joint Petition, Respond Power will provide a report to designated Commission staff, Joint Complainants and I&E. Joint Petition at ¶ 80(d).

Joint Complainants submit that Respond Power's agreement to refrain from selling variable rate products in Pennsylvania for a period of two years is appropriate, reasonable, and in the public interest. This provision of the Global Settlement will help to deter similar conduct as alleged in the Joint Complaint from occurring in the future. Additionally, this moratorium will give Respond Power the opportunity to implement the necessary modifications to its business practices, as well as the training, outlined in the Global Settlement, should the Company determine to resume selling variable rate products.

Joint Complainants also submit that the modifications to Respond Power's marketing practices and Disclosure Statement are designed to provide accurate information to customers in a clear, direct and understandable manner. For instance, modifications to Respond Power's marketing and Disclosure Statement are intended to reduce confusion for customers by, *inter alia*, specifically restricting the use of certain terms and representations by Respond Power's agents, employees, and representatives and in the Company's Disclosure Statement.

Joint Complainants also submit that the modifications to Respond Power's TPV process will help to further assure the customers' understanding and agreement to the product offered by requiring specific statements to be made to all customers during the TPV and specific questions to be asked to confirm the understanding of the agreement with the product offered. Additionally, all TPVs for door-to-door sales must be conducted outside the presence of the salesperson.

Further, the Global Settlement provides for initial and ongoing training for Respond Power's sales and customer service representatives, including extensive training for Respond Power's door-to-door sales representatives, that comprehensively covers the applicable requirements of Pennsylvania law and Commission regulations, Orders and policies. Joint Complainants submit that such training will increase the likelihood of compliance with these requirements and lead to clearer communications with customers about the products that Respond Power offers, which will lead to a better understanding by customers of the products that Respond Power offers. Further, the extensive door-to-door training will help to ensure that door-to-door marketing abuses, such as those alleged in the Joint Complaint and demonstrated by the evidence of record in this proceeding, do not occur in the future. Additionally, the Global Settlement provisions requiring Respond Power to immediately cease all marketing activities by

a vendor and retrain the vendor and its agents if the OAG, OCA, I&E, or OSBA receives two complaints regarding the same vendor and substantially similar conduct will help to ensure compliance with Pennsylvania law and Commission regulations and Orders.

The compliance monitoring requirements of the Global Settlement are designed to ensure that Respond Power comprehensively monitors its Pennsylvania sales agents and that Respond Power takes timely remedial steps if non-compliance is found. Additionally, the establishment of the Compliance Department and Door-to-Door Management Team as required by the Global Settlement will help to ensure that Respond Power's door-to-door sales representatives are being adequately trained and monitored and that Pennsylvania laws and Commission regulations, Orders, and policies are enforced. The Global Settlement provisions requiring suspension or permanent disqualification of a sales representative who engages in more than one violation of this Global Settlement or otherwise engages in improper sales practices will also help to ensure that Respond Power's door-to-door sales representatives are abiding by Pennsylvania law and the Commission's regulations and Orders. The reporting provisions in the Global Settlement are designed to provide Joint Petitioners and the Commission with ongoing information regarding Respond Power's compliance with the Global Settlement, Pennsylvania law and Commission regulations, Orders and policies.

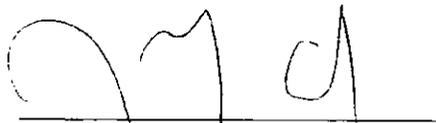
The customer service requirements in the Global Settlement are designed to ensure that Respond Power's customers receive prompt access to Respond Power's customer service representatives and prompt and accurate replies to inquiries. Further, the customer service requirements in the Global Settlement are designed to ensure Respond Power's compliance with Chapter 56 of the Commission's regulations.

Joint Complainants submit that these modifications address many of the concerns raised by consumers to the Joint Complainants and in the expert, non-consumer and consumer testimonies on record in this proceeding, as well as the allegations in the Joint Complaint. By agreeing to these specific modifications, Respond Power will be required to provide more accurate, full and clear information to customers during the Company's sales communications, from the initial sales contact through final enrollment and verification. These modified practices should lead to more fully informed consumers and, correspondingly, a better functioning retail choice market. Furthermore, the required modifications to Respond Power's training, monitoring, and discipline of its sales representatives will help to ensure compliance of Pennsylvania law and Commission regulations and Orders and prevent door-to-door marketing abuses in the future. As such, the business modifications set out in the Global Settlement are appropriate, reasonable and in the public interest. Joint Complainants respectfully request that the Commission approve the Global Settlement without modification.

III. CONCLUSION

For all of the foregoing reasons, Joint Petitioners respectfully request that the Public Utility Commission approve the Joint Petition for Approval of Settlement without modification.

Respectfully submitted,



John M. Abel
Senior Deputy Attorney General
PA Attorney I.D. 47313

Nicole R. DiTomo
Deputy Attorney General
PA Attorney I.D. 315325

Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
T: (717) 787-9707
F: (717) 787-1190
jabel@attorneygeneral.gov
nditomo@attorneygeneral.gov

Counsel for:
Commonwealth of Pennsylvania
Office of Attorney General

Bruce L. Castor, Jr.
Solicitor General

Bruce R. Beemer
First Deputy Attorney General

James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division

Basil L. Merenda
Chief Deputy Attorney General
Bureau of Consumer Protection
Date: April 22, 2016



Candis A. Tunilo
PA Attorney I.D. 89891

Kristine E. Marsilio
PA Attorney I.D. 316479
Assistant Consumer Advocates

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
T: (717) 783-5048
F: (717) 783-7152
ctunilo@paoca.org
kmarsilio@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and	:	
Enforcement	:	
v.	:	Docket No. C-2014-2438640
	:	
Respond Power, LLC	:	
	:	
Commonwealth of Pennsylvania, et al.	:	
v.	:	Docket No. C-2014-2427659
	:	
Respond Power, LLC	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT
OF JOINT PETITION FOR APPROVAL OF SETTLEMENT**

The Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement filed in the consolidated matters docketed above, submits that the terms and conditions in the Joint Settlement are reasonable and in the public interest for the following reasons:

I. BACKGROUND

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” or “OAG/OCA) filed with the Commission a Formal Complaint alleging 10 counts against Respond Power LLC (“Respond Power” or “the Company”), at Docket Number C-2014-2427659.

The Joint Complainants averred that on or about February 10, 2014, the OCA began receiving “a high volume of calls and written correspondence from residential consumers on variable rate plans with electric generation suppliers (“EGS”) regarding the level of electric generation charges on the consumers’ electric bills.”¹

On July 10, 2014, Respond Power filed an Answer to the Joint Formal Complaint, which admitted or denied the various averments made by OAG/OCA and specifically denied the violations of law and other wrongdoing alleged by OAG/OCA. In particular, Respond Power denied that any of its actions violated Pennsylvania law or the orders or regulations of the Commission.

On August 21, 2014, I&E filed a Formal Complaint against Respond Power containing 639 specific counts of 1) slamming, 2) misleading and deceptive claims of affiliation with electric distribution companies, 3) misleading and deceptive promises of savings, 4) failure to disclose material pricing terms in Respond Power’s Disclosure Agreement/Prices not conforming to Disclosure Agreement, 5) lack of good faith in handling customer complaints/cancellations, 6) inaccurate/incomplete/fraudulent sales

¹ Joint Complainants averred that as of May 4, 2014, the OCA had collected information from 2,434 of its consumer contacts, 189 (8%) of which were regarding Respond Power. Joint Complainants alleged that from February 27, 2014 through June 4, 2014, the Attorney General received 7,503 consumer complaints related to variable rates charged by EGSs. Of these 7,503 consumer complaints, 520 (7%) were regarding Respond Power.

agreements and 7) incorrect billing. The specific details of the allegations are more fully set forth in the Joint Stipulation of Facts filed commensurate with the Statement in Support.

The I&E complaint set forth several requests for relief, including providing refunds to customers, paying a civil penalty, and revocation of Respond Power's EGS license in Pennsylvania. On September 30, 2014, Respond Power filed an Answer to I&E's Formal Complaint and admitted or denied the various averments made by I&E and specifically denied the violations of law and other wrongdoing alleged in the complaint. In particular, Respond Power denied that any of its actions violated Pennsylvania law or the orders or regulations of the Commission.

A Prehearing Conference was held on Monday, August 25, 2014, at which the following matters were addressed: (1) the need for preliminary evidentiary hearing(s) regarding testimony of OCA and OAG witnesses (other than expert witnesses); (2) procedural schedule; (3) settlement conference; (4) service requirements and parties list; (5) discovery modifications; and (6) a protective order.²

On September 30, 2014, Respond Power also filed Preliminary Objections to I&E's Formal Complaint, alleging lack of Commission jurisdiction and/or legal insufficiency of various pleadings as they relate to Pennsylvania's Consumer Protection Law, 52 Pa. Code § 56.141, and/or as they purport to regulate the prices Respond Power charged.

² On October 23, 2014, I&E filed a Motion to Consolidate the two Formal Complaints referenced in Paragraphs 1 and 2, above, which was approved by Order on October 28, 2014.

On October 17, 2014, I&E filed a response to the Preliminary Objections denying the lack of Commission jurisdiction and/or legal insufficiency of the pleadings in the I&E Formal Complaint. On November 17, 2014, Administrative Law Judges Joel Cheskis and Elizabeth Barnes issued an Order granting in part and denying in part the Preliminary Objections.

On October 24, 2014, Joint Complainants filed written direct testimony with exhibits of two hundred (200) consumer witnesses. On November 14, 2014, I&E filed written direct testimony with exhibits of twenty-one (21) consumer witnesses. At the initial hearing held March 9-13, 2015, consumers provided telephonic/live testimony.

On August 25, 2015, a Petition for Approval of Settlement (“Settlement Agreement”) was filed resolving all issues between I&E and Respond Power. Additional hearings were held on August 26-27, 2015 for the admission of expert testimony in the joined actions. An Amended Petition for Approval of Settlement was filed on September 18, 2015 along with Statements in Support. Thereafter, a hearing was held on October 15, 2015 at the request of OAG/OCA in order to provide testimony in opposition to the Settlement reached between I&E and Respond Power.

Following briefing, the record in this matter was closed on or about February 4, 2016. On or about March 11, 2016, I&E was notified that Respond Power and Joint Complainants were close to reaching a settlement, but that it was the desire of Joint Complainants that any such settlement be presented as a Joint Petition for Approval of Settlement, meaning it would replace and supplant the previously filed Settlement between I&E and Respond Power.

On the morning of March 14, 2016, I&E received for the first time a draft copy of the Joint Petition for Approval of Settlement, and later that afternoon met with counsel for Respond Power to discuss the terms. While I&E always anticipated that OAG/OCA and Respond Power could eventually reach an amicable resolution of Joint Complainants' complaint with terms and conditions that went beyond the terms and conditions of the I&E settlement, logic dictated that any such subsequent OAG/OCA settlement would merely supplement the Settlement Agreement already executed and filed by Respond Power and I&E, not supplant it. Due to the timing of the proposed Global Settlement, I&E advised the remaining parties that in order to gain I&E's participation, I&E preferred to dispel any concerns regarding whether the ALJs would even entertain such a global settlement at this juncture in the proceeding by initiating a conference call with the ALJs on procedural grounds. Accordingly, on March 22, 2016, all the parties participated in a conference call with the ALJs to discuss procedure for re-opening the record and proceeding forward with a fully executed Joint Settlement Petition.

On Monday, March 28, 2016, an unopposed Motion to Reopen the Record was filed with the Commission, which the ALJs approved by Order dated April 4, 2016. On April 21, 2016, a fully executed Joint Petition for Approval of Settlement was filed with attached Statements in Support, Stipulations of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs. For the following reasons, I&E submits that the Joint Settlement should be approved without modification.

II. LEGAL STANDARD

52 Pa. Code § 69.1201. Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations -- statement of policy:

- (a) The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa.C.S. (relating to Public Utility Code) and this title. 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.
- (b) Many of the same factors and standards may be considered in the evaluation of both litigated and settled cases. 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. The parties to a settlement should include in the settlement agreement a statement in support of settlement explaining how and why the settlement is in the public interest. The statement may be filed jointly by the parties or separately by each individual party.
- (c) The factors and standards that will be considered by the Commission include the following:
 - (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.

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). Instead, the benchmark for

determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions 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).

III. PUBLIC INTEREST

In its September 18, 2015 Statement in Support of the Settlement between I&E and Respond Power, I&E outlined why that Settlement Agreement was in the public interest. I&E averred that the terms and conditions of that Settlement satisfactorily addressed the broad range of issues raised in I&E's Formal Complaint and that the Settlement, taken as a whole, constitutes a reasonable compromise of the complex issues presented.

I&E further alleged that the total settlement package allocated significant refunds to customers who filed an informal complaint with the Commission, which will be based upon the customer's usage, price charged, and refunds already given. The Settlement also allocated nearly \$1.5M of additional funds to be distributed to any potential "silent victims." I&E averred that these refunds, along with the \$125,000 civil penalty, and minimum of \$25,000 economic hardship fund contributions were significant enough to deter future violations of the Public Utility Code. The remedial

actions mandated by that Settlement would ensure, going forward, full and accurate information and disclosures to consumers, proper and adequate training to employees and third-party contractors, adequate call-center staffing, as well as fair and transparent marketing and billing practices. All of these are of paramount importance both to consumer protections and the continued development of a retail choice market.

IV. JOINT SETTLEMENT TERMS

The Joint Settlement Petition is, by and large, identical to the previously filed Settlement between I&E and Respond Power, but with a few key differences:

- It increases the amount of the refund pool (for consumers who did not complain) from (approximately) \$1.5 to \$3.5 million.
- It removes the requirement that a customer fill out a survey form to receive a refund from the general refund pool.
- It removes the reverter of monies to Respond Power if consumers do not claim a minimum amount of refunds (since the claim process is being eliminated).
- It includes a recognition that the (approximately) \$979,000 representing previous amounts rebilled to customers are not part of the total refund pool.
- It increases increase from \$50,000 to \$55,000 the third party administrator fees for the refund pool.
- It increases from \$25,000 to \$50,000 the EDC hardship fund contribution.
- It includes OAG/OCA in document reviews and reports.
- And it creates a Respond Power in-house Compliance Department/dedicated door-to-door management team.

V. DISCUSSION

For the reasons set forth in its September 18, 2015 Statement in Support of Settlement, which I&E fully incorporates herein, I&E believes that the Joint

Petition for approval of Settlement, due to the nature of its added terms, is likewise in the public interest and should be approved.

To determine whether a proposed settlement is in the public interest, the Commission must evaluate the proposed settlement subjecting it to the following factors and standards:

- (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.

I&E addressed each of these factors in its September 18, 2015 Statement in support of the Settlement between I&E and Respond Power, and avers that the same rationale applies to the instant Joint Petition for Settlement.

The additional terms outlined in Section IV above only serve to bolster the argument that the Joint Petition for Settlement is in the public interest.

Unquestionably, the additional money to the total refund pool, as well as the added contribution to EDC hardship funds, are in the public interest. The Joint Petition for Settlement retains the allocation of over \$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. These two provisions are of great importance to I&E. and certainly are in the public interest.

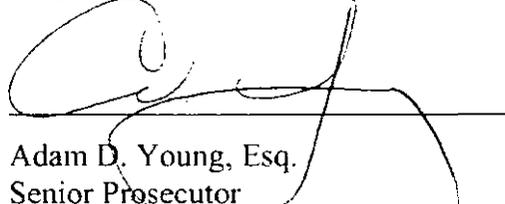
The remaining additional provisions of the Joint Petition for Settlement further sanction Respond Power financially by increasing the third party administrator fees, disallowing any remaining unclaimed funds in the refund pool to revert back to Respond Power, and requiring Respond Power to create an in-house door-to-door compliance department. One added provision includes OAG/OCA in the document review process, which was not in the previously filed Settlement, since OAG/OCA were not signatory parties to that Settlement.

Because this is a global Settlement by all parties, it goes without saying that this provision is necessary. Therefore, while I&E stands by its previously filed Settlement, it fully supports these added provisions incorporated into a Joint Settlement as, likewise, being in the public interest.

VI. CONCLUSION:

I&E respectfully submits that the Joint Petition for Settlement of the above-captioned matters is in the public interest and should be approved, and therefore respectfully requests that the ALJs and the Commission approve the Settlement without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Adam D. Young', is written over a horizontal line. The signature is fluid and cursive.

Adam D. Young, Esq.
Senior Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission

Dated: April 21, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by Attorney :
General KATHLEEN G. KANE, Through the :
Bureau of Consumer Protection, :

And : Docket No. C-2014-2427659

TANYA J. McCLOSKEY, Acting Consumer :
Advocate, :

Complainants, :

v. :

RESPOND POWER, LLC, :
Respondent :

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION, BUREAU OF :
INVESTIGATION AND ENFORCEMENT, :
Complainant, :

Docket No. C-2014-2438640

v. :

RESPOND POWER, LLC, :
Respondent :

**RESPOND POWER, LLC'S STATEMENT
IN SUPPORT OF JOINT PETITION FOR APPROVAL OF SETTLEMENT**

Pursuant to the regulations of the Pennsylvania Public Utility Commission ("Commission") at 52 Pa. Code §§ 5.231, 5.232 and 69.1201, Respond Power, LLC ("Respond Power" or "Company"), by and through its counsel, Karen O. Moury and John F. Povilaitis of Buchanan Ingersoll & Rooney PC and David P. Zambito and D. Troy Sellars of Cozen O'Connor, files this Statement in Support of Joint Petition for Approval of Settlement ("Global

Settlement”) filed in the above-captioned matter on April 22, 2016. This Global Settlement fully satisfies the Joint Complaint filed by the Commonwealth of Pennsylvania, Office of Attorney General, through the Bureau of Consumer Protection (“OAG”) and Tanya J. McCloskey, Acting Consumer Advocate (“OCA”) (together referred to as the “Joint Complainants”) at Docket No. C-2014-2427659 on June 20, 2014 and the Complaint filed by the Commission’s Bureau of Investigation and Enforcement (“I&E”) at Docket No. C-2014-2438640 on August 21, 2014. The Office of Small Business Advocate (“OSBA”) also joins this Global Settlement. As 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.

I. INTRODUCTION

The Global Settlement demonstrates Respond Power’s commitment to fully and comprehensively addressing and resolving the concerns raised by OAG, OCA and I&E about its variable rate increases resulting from unprecedented wholesale price volatility during the Polar Vortex of 2014 and the Company’s associated sales, marketing and business practices. Upon approval and implementation of the Global Settlement, Respond Power’s refunds to consumers, including proactive bill reductions in February 2014 and previously issued refunds, will total over \$5 million. Included in that total is a Refund Pool established by the Global Settlement in the amount of more than \$3.8 million that will be disbursed to customers served by Respond Power in January, February and March 2014. Respond Power will also contribute \$55,000 toward the costs and expenses of retaining a third-party administrator for the Refund Pool. In addition, Respond Power will pay a civil penalty to the Commonwealth of Pennsylvania in the

amount of \$125,000 and will make a contribution of \$50,000 to the electric distribution companies' ("EDCs") hardship funds.

In addition to these financial commitments, Respond Power will forego offering variable price products to new customers for two years and will implement extensive modifications to its sales, marketing and business practices. Such modifications include 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.

Notably, Respond Power has already implemented the enhanced training program in accordance with the terms of the Global Settlement, with a particular focus on the training of agents engaged in door-to-door marketing activities. Additionally, pursuant to the Global Settlement, the Company will create an in-house Compliance Department staffed with a full-time Chief Compliance Officer and a dedicated Door-to-Door Management Team. The Chief Compliance Officer will serve as a direct liaison to OAG, OCA, I&E and OSBA and will meet annually with the parties to discuss compliance issues and best practices in consumer protection.

The various forms of relief provided under the Global Settlement either mirror or exceed the terms and conditions of other settlement agreements that have been approved by the Commission or the Administrative Law Judges ("ALJs"). *See Commonwealth of Pennsylvania, et al. v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric*, Docket No. C-2014-

2427656 (Initial Decision served June 30, 2015) (“*PG&E Initial Decision*”) (Tentative Form Opinion and Order entered March 9, 2016 and deemed final by its terms on March 16, 2016) (“*PG&E Order*”);¹ *Commonwealth of Pennsylvania, et al. v. HIKO Energy, LLC*, Docket No. C-2014-2427652 (“*HIKO Initial Decision*”) (Order entered December 3, 2015) (“*HIKO Order*”);² *Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Initial Decision served November 19, 2015) (“*IDT Initial Decision*”). In approving the proposed settlement in the *IDT Initial Decision*, the ALJs expressly noted as an initial matter that it “substantially resembles the settlements issued in prior cases involving similar issues and similar parties.” *Id.* at 35. As further discussed below, this Global Settlement is in the public interest, and Respond Power respectfully requests approval of the Global Settlement without modification so that the benefits may be delivered to consumers without the need for continued litigation.

II. BACKGROUND

Respond Power is an electric generation supplier (“EGS”) licensed by the Commission to supply electricity or electric generation services to the public within the Commonwealth of Pennsylvania. *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 (August 19, 2010). Since receiving its EGS license in 2010, Respond Power has supplied electric generation services under variable price plans to tens of thousands of residential, small commercial and large commercial customers throughout Pennsylvania.³ In mid-February 2014, after customers began making inquiries about variable

¹ By the *PG&E Order*, the Commission adopted the *PG&E Initial Decision* in all material respects and expressly adopted the ALJs’ discussion and recommendations regarding the pertinent settlement factors as its own. *Id.* at 64. Therefore, Respond Power’s Statement in Support contains references to and quotations from both the *PG&E Order* and the *PG&E Initial Decision*.

² By the *HIKO Order*, the Commission adopted the *HIKO Initial Decision* without discussion. Therefore, Respond Power’s Statement in Support contains references to and quotations from the *HIKO Initial Decision*.

³ Respond Power’s Answer and New Matter to Joint Complainants’ Complaint ¶ 106.

2427656 (Initial Decision served June 30, 2015) (“*PG&E Initial Decision*”) (Tentative Form Opinion and Order entered March 9, 2016 and deemed final by its terms on March 16, 2016) (“*PG&E Order*”);¹ *Commonwealth of Pennsylvania, et al. v. HIKO Energy, LLC*, Docket No. C-2014-2427652 (“*HIKO Initial Decision*”) (Order entered December 3, 2015) (“*HIKO Order*”);² *Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Initial Decision served November 19, 2015) (“*IDT Initial Decision*”). In approving the proposed settlement in the *IDT Initial Decision*, the ALJs expressly noted as an initial matter that it “substantially resembles the settlements issued in prior cases involving similar issues and similar parties.” *Id.* at 35. As further discussed below, this Global Settlement is in the public interest, and Respond Power respectfully requests approval of the Global Settlement without modification so that the benefits may be delivered to consumers without the need for continued litigation.

II. BACKGROUND

Respond Power is an electric generation supplier (“EGS”) licensed by the Commission to supply electricity or electric generation services to the public within the Commonwealth of Pennsylvania. *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 (August 19, 2010). Since receiving its EGS license in 2010, Respond Power has supplied electric generation services under variable price plans to tens of thousands of residential, small commercial and large commercial customers throughout Pennsylvania.³ In mid-February 2014, after customers began making inquiries about variable

¹ By the *PG&E Order*, the Commission adopted the *PG&E Initial Decision* in all material respects and expressly adopted the ALJs’ discussion and recommendations regarding the pertinent settlement factors as its own. *Id.* at 64. Therefore, Respond Power’s Statement in Support contains references to and quotations from both the *PG&E Order* and the *PG&E Initial Decision*.

² By the *HIKO Order*, the Commission adopted the *HIKO Initial Decision* without discussion. Therefore, Respond Power’s Statement in Support contains references to and quotations from the *HIKO Initial Decision*.

³ Respond Power’s Answer and New Matter to Joint Complainants’ Complaint ¶ 106.

price increases, Respond Power proactively re-rated certain customers by cancelling their bills and re-billing them for a total reduction of nearly \$1 million.⁴ Additionally, Respond Power has issued voluntary refunds to customers in the amount of nearly \$250,000.⁵

Under its variable rate plan, Respond Power provided a Disclosure Statement to consumers explaining as follows: (i) the price may vary from month to month; (ii) the rate is set by Respond Power; (iii) the rate reflects Respond Power's generation charge based on the PJM Day-Ahead Market, Installed capacity, transmission system losses, estimated state taxes, other costs and a profit margin; and (iv) the consumer may contact Respond Power for its current variable rate. The Disclosure Statement further provided that Respond Power's goal was to charge a price that is less than what the customer would have paid to the local utility company, but that it could not guarantee savings due to wholesale market fluctuations and conditions.⁶

Prior to January 2014, no customers had filed formal complaints with the Commission against Respond Power concerning its variable rate contracts. From the time Respond Power received its license in 2010 until January 2014, only two customers had filed formal complaints and both were quickly resolved through settlement agreements.⁷

During the month of January 2014, wholesale prices for hourly energy supply in the day ahead and particularly the real time markets increased exponentially in response to sustained cold weather ("Polar Vortex"). New records were set for winter electricity use in Pennsylvania and throughout the service area of PJM Interconnection, LLC ("PJM"). High demand combined with particularly high forced outage rates for a number of generators to produce record high

⁴ Respond Power St. 3 at 9.

⁵ Respond Power St. 3 at 9.

⁶ Joint Complaint, Appendix B.

⁷ Respond Power St. 3 at 2. The complaints are docketed at Docket No. F-2012-2291997 (unauthorized switching) and Docket No. F-2014-2399569 (incorrect charges on the bill and misrepresentation as an electric distribution company); I&E St. 1 at 32.

costs in the PJM-administered energy markets. For instance, average wholesale day-ahead LMP prices for Pennsylvania in January 2014 were estimated at \$148/MWh compared to \$44/MWh in December 2013. Similarly, estimated energy uplift charges, which are energy charges billed to EGSs in addition to LMP costs, were estimated at \$631 million in the month of January 2014, which is equivalent to a full year of uplift charges for the period 2010-2012. *See Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (February 20, 2014) (“*Variable Price Order*”).

To serve its retail customers in Pennsylvania, Respond Power incurred costs, at various times during the winter months, which were in excess of ten times its typical costs.⁸ As a result of those abnormally high wholesale costs, Respond Power made a business decision to increase customers’ prices to recover a portion of those costs. The variable price contracts under which those customers were being served allowed Respond Power to adjust their prices to reflect its costs, as well as a profit margin. If Respond Power had added a profit margin of \$.02/kWh to all of its costs, it would have charged Pennsylvania customers more than it did.⁹

III. SPECIFIC SETTLEMENT TERMS

The Global Settlement fully and comprehensively resolves all issues arising from the variable price increases that were charged to retail customers during the 2014 Polar Vortex as a result of the record-breaking wholesale prices that were paid by Respond Power, including associated concerns with Respond Power’s marketing, sales and business practices. It addresses these issues by providing for significant refunds to consumers and the payment of a substantial civil penalty by Respond Power, as well as generous contributions to EDCs’ hardship funds. It further imposes extensive obligations on Respond Power to make major modifications to its

⁸ Respond Power’s Answer and New Matter to Joint Complainants’ Complaint ¶ 108.

⁹ Respond Power St. 2 at 4.

sales, marketing and business practices. Notably, Respond Power has already implemented an enhanced training program and has committed to improving its compliance monitoring efforts through the creation of an in-house Compliance Department and a dedicated Door-to-Door Management Team.

A. Refunds and Costs of Refund Pool Administrator

Respond Power is agreeing to issue refunds in the total amount of \$5,083,504.36 to customers served by the Company during January, February and March 2014, which includes the amount of \$971,279.45 in voluntary reductions of charges through rebillings proactively performed by Respond Power in February 2014 and voluntary refunds previously provided by Respond Power to customers in the amount of \$248,873.58.¹⁰ Of the Refund Pool totaling \$3,863,351.33 which is established by the Global Settlement, the amount of \$313,351.33 will be refunded to about 1,206 customers who informally complained to the Commission from February 1, 2014 through June 30, 2014.

The remaining amount in the Refund Pool, of \$3,550,000, will be made available to residential and small business customers who were served by Respond Power during the months of January, February and March 2014. As provided in the Global Settlement, OAG and OCA will determine the amount of the 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. To cover the costs and expenses of retaining a third-party Administrator of the Refund Pool, Respond Power will contribute the first \$55,000. If the costs and expenses of the Administrator exceed \$55,000, the Global Settlement provides that the refund amounts will be reduced proportionally to reflect those additional costs and expenses.

¹⁰ Respond Power St. 3 at 9.

Customers who are not offered or do not accept a refund under the Global Settlement are entitled to seek a refund by contacting the Company directly and making such a request. Respond Power is obligated to use its best efforts to investigate and negotiate the customer's complaint. If a customer is not satisfied with the Company's investigation and/or settlement offer, the customer may file a formal complaint with the Commission. For one year following the entry of a final order by the Commission, Respond Power will provide quarterly reports to 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.

B. Civil Penalty and Hardship Fund Contribution

Further, under the Global Settlement, Respond Power agrees to pay a civil penalty in the amount of \$125,000, for which it may not claim a tax deduction. Respond Power will also contribute \$50,000 to the EDCs' hardship funds. This contribution will be allocated by the ratio of Respond Power customers in each EDC's territory to the total number of Respond Power customers in Pennsylvania for the months of January, February and March 2014.

C. Business Modifications

1. Variable Price Contracts

By way of modifications to its current sales, marketing and business practices, Respond Power has agreed that it will forego offering variable price contracts to new customers for a period of two years commencing September 1, 2015.¹¹ In addition, if Respond Power resumes marketing variable price contracts after the two-year stay-out, it will provide specific information in all sales contacts explaining that: (i) the price can change every month; (ii) it is not a fixed

¹¹ Respond Power voluntarily ceased offering variable prices to new customers on September 1, 2015 pending review of the Petition for Approval of Settlement originally filed by Respond Power and I&E on August 26, 2015, which has since been replaced by the Amended Petition for Approval of Settlement on September 18, 2015 and which have both been fully supplanted by this Global Settlement.

price contract; (iii) the price can go up or down; and (iv) there is no limit on how high the price can go. Also, in third party verifications for variable price contracts, Respond Power will follow specific scripts set forth in the Global Settlement that are designed to ensure that a customer understands that they are agreeing to a variable rate that changes monthly and has no ceiling. Additionally, Respond Power has agreed to include specific language in its Disclosure Statement about variable prices and to provide detailed information to consumers about how variable prices will be calculated.

2. Marketing and Enrollment Practices

The Global Settlement also includes a series of obligations to which Respond Power will adhere in marketing electric generation services in Pennsylvania, including restrictions on the use of terms such as “risk free,” “competitive,” “guaranteed,” and “special programs,” as well as limitations on references to the EDC’s price to compare. In addition, the Global Settlement requires the use of a sales script emphasizing that the sales agent represents Respond Power and does not work for the EDC. It also mandates the inclusion of several questions in Respond Power’s third party verification script that are aimed at ensuring the customer’s full understanding of the sales transaction. Further, within 180 days of the entry of a final Commission order, Respond Power has agreed to make changes to its website to more conspicuously display its terms and conditions and provide greater assurances that consumers will review them.

Also, within 60 days following the entry of a final Commission order in this proceeding, Respond Power has agreed under the Global Settlement to provide to OAG, OCA and I&E (as well as the Commission’s Bureau of Consumer Services) a copy of its current Disclosure

Statement. In addition, Respond Power will provide the parties with any subsequently amended Disclosure Statements for a period of five years.

3. Enhanced Training Program

As to training, Respond Power has implemented -- as of April 1, 2016 -- an enhanced program that comprehensively addresses all rules applicable to sales and marketing practices and is specifically tailored to address Pennsylvania requirements. The training program includes initial training and subsequent refresher training on a quarterly basis for all Respond Power employees, agents and third-party contractors. A portion of the new training program is particularly geared toward door-to-door marketing and is designed to ensure that all sales representatives produce photo identification depicting Respond Power's trade name and logo, identify the reason for the visit and describe Respond Power as an independent energy marketer. The enhanced training program also highlights the fact that deceptive or intimidating sales practices will not be tolerated by Respond Power. For one year following execution of the Global Settlement, Respond Power has agreed to promptly address complaints received from OAG, OCA, I&E and OSBA regarding its marketing practices and to cease marketing activity by a vendor when a second complaint regarding the same vendor and conduct of a substantially similar nature is received, until such vendor and its agents are fully retrained.

4. Increased Compliance Monitoring Program

In addition, under the Global Settlement, Respond Power has agreed to increase its compliance monitoring program through the creation of an in-house Compliance Department and a dedicated Door-to-Door Management Team, which will continue in existence through at least December 31, 2018. The Compliance Department, which will be responsible for the improved training and compliance monitoring programs, will be staffed with a full-time Chief Compliance

Officer who will be a direct liaison to OAG, OCA, I&E and OSBA, as well as designated Commission staff. The Chief Compliance Officer will also meet annually with the parties to discuss compliance issues and best practices in consumer protection. The Door-to-Door Management Team will manage door-to-door contractors and maintain complete written records of all contacts with the vendors relating to training, oversight and discipline.

Other enhanced internal quality control efforts will include the recording of all communications between customers and Respond Power's customer service representatives and requiring its telemarketers to record and maintain all communications with consumers that result in a sale. The Company's monitoring program will also entail the weekly review of a statistically valid sample of recorded calls and follow-up investigations of additional calls if any non-compliant calls are identified.

Respond Power has further agreed to promptly provide refunds to consumers who are subjected to non-compliant sales practices and to take specific remedial actions against sales representatives and third-party contractors in the event of violations. In addition, Respond Power has committed to provide quarterly reports to OCA, I&E and designated Commission staff for a period of five years, describing all internal audits and investigations performed during the reporting period, as well as the results thereof. This report will list all customer complaints and disputes received by Respond Power during the reporting period.

5. Customer Service

With respect to customer service, Respond Power has agreed to maintain a staff of customer service representatives necessary to handle calls within timeframes specified in the Global Settlement and to develop and implement an action plan for handling periods of high call volumes. If Respond Power experiences a period of high call volumes during which it does not

comply with the timeframes set forth in the Global Settlement, it has committed to provide a report to the OCA, I&E and designated Commission staff of the occurrence, which contains an explanation of the reasons and a description of remedial measures implemented by the Company.

IV. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. Standard of Review

“It is the policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231. Settlements conserve valuable resources of the Commission and the parties. Importantly, the focus of inquiry for determining whether a proposed settlement should be approved is not a “burden of proof” standard, as is utilized for contested matters. *Pa. Public Utility Commission, et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011). Rather, the Commission reviews settlements to determine whether the terms are in the public interest. *See, e.g., Pa. Public Utility Commission, Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009).

The Commission’s Policy Statement at 52 Pa. Code § 69.1201, which sets forth specific factors and standards that are used in evaluating settled cases, is a codification of the Commission’s decision in *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-00092409 (Order entered February 10, 2000). These factors and standards are utilized by the Commission in determining if a proposed civil penalty is appropriate, as well as if an overall proposed settlement is reasonable and its approval is in the public interest. 52 Pa. Code § 69.1201(a). Although the same criteria are used in the evaluation of both litigated and settled cases, they are not applied in as strict a fashion to settled cases, and the parties in settled

cases are afforded flexibility in reaching amicable resolutions to complaints as long as the settlement is in the public interest. 52 Pa. Code § 69.1201(b).

B. Approval Of The Settlement Would Eliminate Uncertainties Of Litigation

Absent approval of the Global Settlement, Respond Power would take many litigation positions that would question the Commission's statutory authority, raise due process concerns and challenge the sufficiency of the evidence presented by the Joint Complainants. For example, Respond Power's litigation position would be that the Commission lacks statutory authority to direct the issuance of refunds by EGSs in any situation, and that any authority the Commission may have does not extend to directing Respond Power to issue refunds to consumers who are not complainants in matters pending before the Commission. Yet, under the Global Settlement, Respond Power is agreeing to issue significant refunds to customers who filed informal complaints with the Commission, as well as to other customers served by the Company in January, February and March 2014, consistent with determinations and calculations performed by the OAG and OCA.

Similarly, in litigation, Respond Power would contend that the Commission does not have jurisdiction to enforce the Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.* ("Consumer Protection Law") or Telemarketer Registration Act ("TRA"), 73 P.S. §§ 2241 *et seq.* However, by the Global Settlement, Respond Power voluntarily agrees to comply with the provisions of those state laws.

These are just examples of the certainties created by the Global Settlement that would not be possible through litigation. By achieving these non-litigated outcomes rather than having the Commission's jurisdiction and legality of its regulations challenged and then resolved by appellate courts, the Global Settlement delivers compelling benefits and is in the public interest.

C. The Refund Pool Established By The Settlement Is In The Public Interest

The ALJs should conclude that the Refund Pool established by the Global Settlement is in the public interest. Such a finding is supported by the same rationale that was employed in prior initial decisions and Commission Orders approving settlements among the Joint Complainants and other EGSs involving similar allegations.

The Global Settlement provides for total refunds exceeding \$5 million to customers served by Respond Power during January, February and March 2014, including nearly \$1 million in proactive bill reductions made by Respond Power in February 2014 and approximately \$250,000 in voluntary refunds previously provided by Respond Power. Of the over \$3.8 million in additional funds set aside for the Refund Pool, the Global Settlement provides that roughly \$313,000 will be refunded to residential and small business customers who filed informal complaints from February 1, 2014 through June 30, 2014 with the Commission, using a distribution method provided by I&E to Respond Power. This distribution method will be based on the individual customer's usage, price charged and refund amounts already received directly from Respond Power.

The remaining amount in the Refund Pool totaling \$3.55 million will be offered to other customers served by Respond Power during the first quarter of 2014. Consistent with the terms of the Global Settlement, the customers and refund amounts will be determined by OAG and OCA based on the individual customer's usage, price charged and refund amounts already received. The refunds of \$3.55 million will be administered and distributed by a third-party Administrator, with Respond Power paying the initial \$55,000 of the costs and expenses of the Administrator.

As the Commission has observed, a refund pool that gives numerous affected consumers financial relief, “provides a level of assurance to the marketplace that the EGSs’ actions will be watched,” and aids in the development of the retail competitive market. *PG&E Initial Decision* at 39 and 43; *HIKO Initial Decision* at 31. The Refund Pool also establishes a workable mechanism to expedite refunds to customers in Pennsylvania. *PG&E Initial Decision* at 38-39; *HIKO Initial Decision* at 31; *IDT Initial Decision* at 42. Further, the issuance of voluntary refunds by an EGS is consistent with past Commission precedent, and nothing precludes a party from agreeing to perform under a settlement that which the party may not necessarily be legally obliged to do under law. *PG&E Initial Decision* at 39 and 42; *HIKO Initial Decision* at 32, 34-45; *IDT Initial Decision* at 41-42.

The Global Settlement also establishes an additional refund method for any residential or small business customer of the Company who does not receive or accept an offer of funds from the Refund Pool. Specifically, such customers may contact Respond Power directly with complaints and request a refund. Under the Global Settlement, Respond Power has committed to using its best efforts to investigate the customer’s complaint and negotiate an agreement with the customer. The Commission has observed that the inclusion of an additional refund method for customers to pursue refunds if they are not satisfied with the offer arrived at by OAG and OCA is significant. *PG&E Order* at 20. Moreover, if the customer is not satisfied with the Company’s investigation and/or settlement offer, the customer is free to file a formal complaint with the Commission. For one year following entry of the Commission’s final order in this proceeding, the Global Settlement requires the Company to provide quarterly reports to 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.

D. The Civil Penalty And Contribution To EDC Hardship Funds Are In the Public Interest

The Settlement includes a civil penalty in the amount of \$125,000 and provides for a \$50,000 contribution to the EDCs' hardship funds. The ALJs should find that these provisions are in the public interest. In reviewing a settlement involving another EGS, the Commission concluded that a \$25,000 civil penalty and a \$100,000 contribution to the EDCs' hardship funds, when viewed together, were reasonable, appropriate and in the public interest. *PG&E Initial Decision* at 45-46. The Commission observed that these remedies 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." *Id.* at 46. Similarly, the ALJs have found in another case that a civil penalty in the amount of \$25,000, combined with a \$75,000 contribution to the EDC's hardship funds, is in the public interest and supports adoption of a proposed settlement without modification. *IDT Initial Decision* at 43. The ALJs specifically noted that the contributions to EDCs' hardship funds will aid low income customers. *Id.* at 46. Therefore, the same rationale previously employed by the Commission supports a finding that these provisions are in the public interest.

E. The Business Modifications Are In The Public Interest

The Global Settlement provides for extensive modifications to Respond Power's sales, marketing and business practices, which are nearly identical to and in some instances exceed those that were found to be in the public interest by the Commission in similar proceedings. *PG&E Order* at 21-24; *HIKO Initial Decision* at 37-44. See also *IDT Initial Decision* at 47-51. These provisions include a two-year moratorium on offering variable price contracts to new customers, and significant changes to Respond Power's marketing and sales practices, compliance monitoring efforts, training programs and complaint handling procedures. They also

include a series of obligations to which Respond Power will adhere in marketing electric generation services in Pennsylvania related to sales scripts; third party verification scripts; the use of terminology such as “savings,” “competitive,” and “guaranteed;” and its disclosure statement. Through reporting requirements established for the next five years, the Global Settlement subjects Respond Power to ongoing and substantial oversight by the Commission.

The Global Settlement’s creation of an in-house Compliance Department and a dedicated Door-to-Door Management Team provides a framework and accountability for the success of the improved quality control program. Also, the designation of a Chief Compliance Officer gives the parties and the Commission a direct liaison to which they may address concerns. Respond Power’s implementation of an enhanced training program while the Global Settlement is pending review by the ALJs and the Commission, demonstrates its commitment to these measures that are designed to ensure adequate consumer protections.

As the Commission has observed, these types of business modifications are appropriate and in the public interest because they address the various allegations raised in the Joint Complaint and the I&E Complaint. *PG&E Initial Decision* at 49. Moreover, these substantial actions “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 without modification.” *HIKO Initial Decision* at 44. Additionally, the ALJs have recognized that the implementation of extensive modifications to sales, marketing and businesses enables an EGS to be a “viable competitor for the provision of electric generation service in Pennsylvania while ensuring numerous protections for consumers.” *IDT Initial Decision* at 51.

Although Respond Power does not admit to any wrongdoing in connection with the Global Settlement or in making these significant modifications to its marketing, sales and

business practices, it does acknowledge having learned valuable lessons as a result of the customer complaints that were filed following the variable price increases in early 2014 and from the consumer witnesses who testified in this proceeding. Clearly, many consumers did not have a sufficient understanding of the workings of the retail competitive market, particularly as to variable pricing.

Indeed, this lack of consumer awareness was acknowledged by the Commission in the *Variable Price Order* when it observed that existing regulatory requirements may need to be changed to ensure that consumers understand how the prices can change. As a result, the Commission took several steps to increase consumer education efforts, including the posting of a consumer alert on PaPowerSwitch.com, developing a separate page on Pa.PowerSwitch.com and the addition of a Q&A for inclusion under “Frequently Asked Questions” on PaPowerSwitch.com to help ensure that consumers are better educated about variable rates. *See Variable Price Order* at 5. In addition, the Commission adopted an Order on April 3, 2014 revising its customer information disclosure regulations to enhance the information that is provided to consumers about variable prices, including a requirement to provide warning that there is no ceiling. *See Rulemaking to Amend Provisions of 52 Pa. Code § 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers*, Docket No. L-2014-2409385 (Order adopted April 3, 2014). With perfect hindsight, it is clear that this additional information will benefit consumers and the competitive market.

F. The Settlement Is Consistent With The Factors and Standards In The Policy Statement

The Global Settlement provides immediate, concrete benefits to current and former customers of Respond Power served by the Company in January, February and March 2014. In addition, it requires Respond Power to make numerous enhancements to its marketing and sales

practices, training program, compliance monitoring efforts, customer service and reporting requirements, which are all designed to improve the quality and content of information that is provided to consumers. Importantly, the Global Settlement is consistent with the factors and standards set forth in the Policy Statement and expeditious approval of the Global Settlement is in the public interest.

1. Whether Conduct Was Of Serious Nature

The first factor that is considered under the Policy Statement is whether the allegations were of a serious nature, such as willful fraud or misrepresentation, as opposed to administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). Allegations in the Joint Complaint and the I&E Complaint concerning misleading representations by Respond Power sales representatives and the use of misleading marketing materials are of a serious nature. *See, e.g., IDT Initial Decision* at 52. However, it is noteworthy that no allegations have been made to suggest that Respond Power directed or trained its sales representatives to promise savings or make any other guarantees. To the contrary, Respond Power has offered testimony to demonstrate that its training and oversight of sales representatives was designed to avoid any guarantees of savings.¹² Indeed, the scripts that have been included in the record show that Respond Power's sales representatives were trained to use qualifying language such as possible or potential when discussing savings with customers.¹³ Moreover, marketing materials contained the same qualifying language.¹⁴ The record also includes evidence showing that phrases such as

¹² Stipulation ¶ 40.

¹³ OAG/OCA Exhibit BRA-2, p. 93; I&E Exhibit 5.

¹⁴ Respond Power St. 1 at 9; Joint Complainants' Consumer Witness Testimony, Volume 1, page 28 (Exh. VW-1).

“historical savings” were true at various times prior to the Polar Vortex.¹⁵ Importantly, Respond Power’s Disclosure Statement expressly stated that the Company could not guarantee savings.¹⁶

The Commission has found that the remedies of a moratorium on variable rate sales and refunds to consumers address the seriousness of the allegations. *HIKO Initial Decision* at 46. The Commission has also pointed to the civil penalty as addressing similar allegations in a proceeding involving different EGSs. *PG&E Initial Decision* at 50; *IDT Initial Decision* at 52.

2. Whether Resulting Consequences Were Of A Serious Nature

The second factor that is evaluated under the Policy Statement is whether the resulting consequences of the alleged actions were of a serious nature, such as whether personal injury or property damage was involved. 52 Pa. Code § 69.1201(c)(2). Here, no allegations have been raised about personal injury or property damage. Rather, the allegations relate to financial harm to customers and an adverse impact on the competitive retail market. While some customers alleged that they had difficulty paying their bills when variable prices were increased, Respond Power submits that those increases were consistent with contracts into which they entered. Further, Respond Power proactively reduced the bills for many of those customers in the amount of nearly \$1 million and has already issued refunds in the amount of almost \$250,000.

In addition, the Global Settlement affords additional substantial financial relief to customers who complained to the Commission and offers a generous \$3.8 million Refund Pool. It also provides for contributions to EDCs’ hardship funds. The Commission has found that the financial difficulties experienced by consumers and the potential effect of the alleged conduct on the retail market warranted approval of these provisions and the overall settlement without modification. *PG&E Initial Decision* at 51. Similarly, the Commission has observed that the

¹⁵ Respond Power St. 1 at 11; Exhibit EW-1.

¹⁶ Joint Complainants’ Complaint, Appendix B.

disbursement of refunds and a contribution to the EDCs' hardship funds are appropriate remedies to address the consequences of the alleged conduct. *HIKO Initial Decision* at 46-47. The ALJs have also noted that contributions to EDCs' hardship funds "will assist consumers who have experienced difficulties as a result of high electric bills." *IDT Initial Decision* at 53.

3. Whether Conduct Was Intentional or Negligent

The third factor identified by the Policy Statement is whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Therefore, this factor is not relevant here. See *PG&E Initial Decision* at 51; *HIKO Initial Decision* at 47, footnote 10; *IDT Initial Decision* at 53.

4. Efforts To Modify Internal Practices and Procedures

The fourth factor that is considered under the Policy Statement is whether Respond Power has made efforts to modify internal practices and procedures to address the allegations at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. 52 Pa. Code § 69.1201(c)(4).

In addition to the measures noted above to help customers who were financially affected by the variable price increases, Respond Power has agreed as part of this Global Settlement to implement numerous modifications in its marketing practices, including a stay-out from offering variable price contracts to new customers for two years, which it has been honoring for over seven months. Notably, Respond Power has already implemented an enhanced training program and has committed to the creation of an in-house Compliance Department and dedicated Door-to-Door Management Team. The Global Settlement also includes specific provisions regarding

sales scripts, third party verification scripts, disclosure statements, marketing materials, compliance monitoring and reporting.

Noting that an EGS had agreed not to offer variable rate plans for 18 months, which is a shorter moratorium than agreed to by Respond Power, and that the settlement agreement provided for several modifications to its internal practices and procedures, which entail fewer commitments than are contained in the Global Settlement, the Commission concluded that approval of the settlement without modification was in the public interest. *PG&E Initial Decision* at 51-52. Likewise, in other similar proceedings, the Commission found that refunds, contributions to the EDCs' hardship funds and modifications to sales, marketing and business practices supported approval of the settlements. *HIKO Initial Decision* at 47; *IDT Initial Decision* at 53-55.

5. Number of Customers Affected

The fifth factor that is evaluated under the Policy Statement is the number of customers who were affected and the duration of the alleged violations. 52 Pa. Code § 69.1201(c)(5). The Joint Complaint identified 709 customers of Respond Power who contacted OAG and OCA. The I&E Complaint notes that 1,206 customers filed informal complaints with the Commission from February 1, 2014 through June 30, 2014. Even if there was no overlap between those two groups of customers, and in fact there was some overlap, the total number of customers who were affected would be less than 2,000, which is a very small percentage of the customers served by Respond Power. Moreover, only about 10% of those customers submitted written testimony as part of this proceeding, and the written testimony of an even smaller number of consumers (169) were admitted in the record either by stipulation or following cross-examination. The Global Settlement will result in refunds being issued to the 1,206 customers who filed informal

complaints with the Commission between February 1, 2014 and June 30, 2014, with additional refunds being issued to other customers who were served by the Company in January, February and March 2014. In addition, Respond Power will make contributions of \$50,000 to the EDCs' hardship funds.

The Commission has found that refunds and contributions to the EDCs' hardship funds are reasonable and in the public interest, especially considering the changes to business practices that were outlined in the settlement agreements. *HIKO Initial Decision* at 47; *PG&E Initial Decision* at 52-53. Further, the ALJs have concluded that it is not necessary to know the precise number of customers who were affected when, as here, the Refund Pool is substantial and large enough to remunerate those customers who have not yet received a refund from the Company. *IDT Initial Decision* at 56.

6. Compliance History

The sixth factor is the compliance history of Respond Power. 52 Pa. Code § 69.1201(c)(6). Respond Power has no prior compliance history with the Commission.¹⁷ Prior to January 2014, two formal complaints had been filed with the Commission and both were quickly resolved through settlements.¹⁸ Although one formal complaint has been sustained by the Commission while this proceeding was pending, it does not constitute a "prior compliance history" since it involved the same allegations and time period that are at issue here.¹⁹ In fact, several formal complaints filed with the Commission involving the same allegations and time period at issue here have been dismissed during the pendency of this proceeding.²⁰ Notably, in a

¹⁷ I&E St. 1 at 32.

¹⁸ Respond Power St. 3 at 2.

¹⁹ See *Herp v. Respond Power, LLC*, Docket No. C-2014-2413756 (Order entered January 28, 2016).

²⁰ See, e.g., *Werle v. Respond Power LLC*, Docket No. C-2014-2429158 (Initial Decision issued November 18, 2014; Final Order entered February 23, 2015); *Nadav v. Respond Power LLC*, Docket No. C-2014-2429159 (Order entered December 19, 2014); *Tran v. Respond Power LLC*, Docket No. C-2014-2417540 (Order entered July 30,

similar proceeding regarding a different EGS, the Commission concluded that a \$25,000 civil penalty was in the public interest, despite the EGS having a prior settlement agreement with I&E involving the slamming of 300 customers that resulted in a \$150,200 civil penalty and various corrective measures. *PG&E Initial Decision* at 53-54. *See also IDT Initial Decision* at 56-57 (EGS had prior compliance history that was not viewed as barrier to approval of proposed settlement).

7. Cooperation with Commission's Investigation

The seventh factor that is considered under the Policy Statement is whether Respond Power cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E has indicated that Respond Power was cooperative during the informal investigation that led to the filing of its Complaint.²¹ During this proceeding, Respond Power has furnished extensive discovery responses. Before and since the filing of the Joint Complaint and the I&E Complaint, the Company has worked to resolve issues with individual consumers. Numerous cases have been closed due to settlements resulting in the filing of certificates of satisfaction.²² In similar proceedings, the Commission has relied on the Joint Complainants' assertion that the company had cooperated in the investigation, including discovery and settlement negotiations, and concluded that the ability of the parties to comprehensively resolve this matter demonstrates cooperation. *HIKO Initial Decision* at 48. The Commission has also concluded that the ability of the parties to comprehensively resolve a matter of this magnitude demonstrates cooperation. *PG&E Initial Decision* at 54. *See also IDT Initial Decision* at 57-58.

2015); *Fritz v. Respond Power LLC*, Docket No. F-2014-2453884 (Initial Decision issued February 11, 2015; Final Order entered March 19, 2015).

²¹ I&E St. 1 at 32.

²² *See, e.g., Tustin v Respond Power LLC*, Docket No C-2014-2417552 (Certificate of Satisfaction filed December 5, 2014); *Russell v. Respond Power LLC*, Docket No. C-2014-2417551 (Certificate of Satisfaction filed September 29, 2014); *Slocum v. Respond Power LLC*, Docket No. C-2014-2429154 (Certificate of Satisfaction filed November 13, 2014); *Lewis v. Respond Power LLC*, Docket No. C-2014-2411127 (Certificate of Satisfaction filed November 19, 2014).

8. Amount Of Civil Penalty Necessary To Deter Future Violations

The eighth factor that is evaluated under the Policy Statement is the amount of civil penalty that is necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The civil penalty of \$125,000 included in the Global Settlement is significantly higher than the amounts of \$25,000 agreed to by other EGSs as part of their settlements with OAG and OCA, even though both EGSs have previously had penalties imposed upon them by the Commission, as a result of an I&E investigation. See *PG&E Initial Decision* at 53-54; *Pa. Public Utility Commission, Bureau of Investigation and Enforcement v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas and Electric*, Docket No. M-2013-2325122 (Order entered October 2, 2014). See also *IDT Initial Decision* at 58-59; *Pa. Public Utility Commission, Bureau of Investigation and Enforcement v. IDT Energy, Inc.*, Docket No. M-2013-2314312 (Order entered October 17, 2013).

In addition to the amount of the civil penalty, it is also appropriate to consider the totality of the payments that Respond Power has made or will make pursuant to the Global Settlement. With Respond Power's quantified costs exceeding \$5 million, together with other costs that will be incurred to implement the extensive modifications to sales, marketing and business practices, the total costs of the Global Settlement more than adequately serve as a deterrent to any future violations. This is particularly true given the extensive oversight that the Commission and the parties will have over Respond Power's operations over the next five years, as well as Respond Power's ongoing commitments to comply with the provisions of the Global Settlement.

The Commission has expressly recognized that the total refund pool as well as the additional amounts agreed to as part of a settlement agreement, including the civil penalty, costs for administering the refund pool and a contribution to the EDCs' hardship funds are substantial

and should deter future violations. *PG&E Initial Decision* at 54-55. *See also IDT Initial Decision* at 58. The same package of settlement terms exists here.

9. Past Commission Decisions

The ninth factor that is considered under the Policy Statement relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). By providing for refunds, a civil penalty, contributions to the EDCs hardship funds and injunctive relief, the Global Settlement substantially resembles the settlements previously approved by the Commission and the ALJs involving similar allegations, timeframe and parties. *PG&E Order; HIKO Energy Order; IDT Initial Decision* at 59-60. These consistencies warrant approval of the Global Settlement.

10. Other Relevant Factors

The tenth factor to consider is “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). The Global Settlement is in the public interest and should be approved because it: (i) provides for significant financial relief to current and former Respond Power customers; (ii) includes a substantial civil penalty and generous contributions to EDCs’ hardship funds; (iii) precludes Respond Power from offering a variable price for two years; (iv) modifies the Company’s marketing, sales and business practices to improve the quality of the information and customer services that are provided to prospective customers; (v) entails the implementation of a new training program for employees, agents and contractors that is designed to reinforce Pennsylvania’s requirements, with a particular focus on door-to-door marketing practices; (vi) enhances Respond Power’s compliance monitoring efforts; and (vii) imposes extensive reporting obligations and ongoing accountability on Respond Power for adherence to its terms and conditions.

The Commission has recognized that a comprehensive settlement avoids litigation, conserves resources and provides for expedited relief to affected customers. *HIKO Initial Decision* at 49. The Commission has further observed that a settlement is in the public interest because it alleviates the uncertainty associated with fully litigating a case. *PG&E Initial Decision* at 55-56. In addition, approval of the Global Settlement will bring relief in the form of refunds to customers sooner than if the case were fully litigated. *See IDT Initial Decision* at 60.

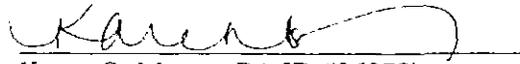
In summary, Respond Power respectfully submits that an evaluation of the Settlement under the factors and standards set forth in the Commission's Policy Statement warrants expeditious approval of the Settlement without modification. As the Global Settlement comprehensively addresses all of the allegations raised by the Joint Complaint and the I&E Complaint, its benefits should be delivered to consumers without further delay. Approval of the Global Settlement also permits an established EGS to remain in Pennsylvania's retail market during a time when other EGSs have made business decisions to exit this market, thereby reducing the competitive alternatives that are available to consumers.

V. CONCLUSION

Respond Power respectfully submits that the Global Settlement of the above-captioned matter is in the public interest and should be approved, and therefore respectfully requests that the Commission approve the Global Settlement without modification.

Respectfully submitted,

Dated: April 22, 2016



Karen O. Moury (PA ID #36879)
John F. Povilaitis (PA ID #28944)
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
Telephone: (717) 237-4820
Facsimile: (717) 233-0852
Email: karen.moury@bipc.com
john.povilaitis@bipc.com

David P. Zambito (PA ID #80017)
D. Troy Sellars (PA ID #210302)
COZEN O'CONNOR
17 North Second St., Suite 1410
Harrisburg, PA 17101
Telephone: (717) 703-5892
Facsimile: (215) 989-4216
E-mail: dzambito@cozen.com
tsellars@cozen.com

Counsel for Respond Power LLC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commonwealth of Pennsylvania, by :
Attorney General KATHLEEN G. KANE, :
Through the Bureau of Consumer :
Protection, :
: **Docket No. C-2014-2427659**

And :
: :
TANYA J. McCLOSKEY, Acting :
Consumer Advocate, :
Complainants, :

v. :

RESPOND POWER, LLC, :
Respondent :

PENNSYLVANIA PUBLIC UTILITY : **Docket No. C-2014-2438640**
COMMISSION, BUREAU OF :
INVESTIGATION AND ENFORCEMENT, :
Complainant, :

v. :

RESPOND POWER, LLC, :
Respondent :

**STATEMENT OF
THE OFFICE OF SMALL BUSINESS ADVOCATE
IN SUPPORT OF THE
JOINT PETITION FOR SETTLEMENT**

Introduction

The Small Business Advocate is authorized and directed to represent the interests of the small business consumers of utility services in the Commonwealth of Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. Pursuant to that statutory authority, the Office of Small Business Advocate ("OSBA") filed a

notice of intervention in the above-captioned proceeding which was initiated by the June 20, 2014, filing of a Joint Complaint by the Office of Consumer Advocate and the Office of Attorney General through the Bureau of Consumer Protection against Respond Power, LLC (“Respond Power” or the “Company”) alleging multiple violations of Pennsylvania law and Pennsylvania Public Utility Commission (“Commission”) orders and regulations.

The OSBA participated in the negotiations that led to the proposed Joint Petition for Settlement and is a signatory to the Joint Petition for Settlement (“*Settlement*”). The OSBA submits this statement in support of the *Settlement*.

The Settlement

The *Settlement* sets forth a comprehensive list of issues that were resolved through the negotiation process. The refunds and injunctive relief provided by the settlement were of particular significance to the OSBA when it concluded that the *Settlement* was in the best interests of Respond Power’s small business customers. During the evidentiary hearings held March 9, 2015 with the Administrative Law Judges, the consumer testimony and accompanying exhibits of 153 consumers sponsored by the Joint Complainant’s were moved into the record, along with that of 19 I&E witnesses. There were 3 consumers who testified for both Joint Complainants and I&E. The testimony and exhibits of those consumers were also entered into the record for a total of 169 individual consumer testimonies admitted into the record for this proceeding. While Respond Power has not admitted to any wrongdoing with the admission of the consumer testimony, the introduction of the testimony is critical for the purpose of providing substantial evidence in the record.

The consumer testimonies which were admitted into the record include averments that Respond Power’s customers, including small business customers, had been guaranteed savings which did not materialize, were misled by written communications with Respond Power such as

the Disclosure Statement and Welcome Letter, were switched without authorization, and were not informed about whether they would be paying fixed or variable rates. Further, customers testified that they experienced difficulties when they attempted the contact Respond Power to complain about their charges, that their complaints were mishandled by the Company, and that they suffered financial difficulties after receiving Respond Power's charges.

A. Refunds

As part of the Settlement, IDT has agreed to pay the sum of Four Million One Hundred Twelve Thousand Two Hundred Twenty-Four Dollars and Ninety-One Cents. (\$4,112,224.91) which will be designated as a Refund Pool. The Refund Pool will take into account prior cash refunds provided to customers by the Company. The Office of Attorney General ("OAG") and Office of Consumer Advocate ("OCA") will determine the amount of the refund for all eligible Respond Power customers, including small business customers, who filed informal complaints against the Respond Power between January 1, 2014 and June 30, 2014. Those refund amounts will be based on the customer's usage, price charged, and offset by any refund amounts already received directly from Respond Power.

A third-party Administrator to be retained by OAG and OCA oversee the Refund Pool but Respond Power will bear the burden of the costs and expenses relating to the Refund Pool up to \$55,000. Any funds remaining in the Refund Pool after the issuance of the calculated refunds will be provided to the EDC's hardship funds as allocated by the ratio of Respond Power's customers within the Commonwealth as of January 1, 2014. Further, any unclaimed refunds remaining in the Refund Pool will be forwarded to the Pennsylvania Treasury Department Unclaimed Property Division and thereby preserved for those customers entitled to a refund.¹

¹ Joint Petition for Settlement, pp 19.

B. Penalty and Contribution

Respond Power will 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. Additionally, the Company shall make a \$50,000 contribution to the EDC hardship funds within thirty (30) days after the Commission has entered a final Order approving the Global Settlement. The allocation of the contribution to the hardship fund will be based on the ratio of Respond Power customers in the service territories of the EDCs for the months of January through March of 2014.

C. Business Modifications

Limited Product Offerings for a period of 24 months

As part of the Settlement, Respond Power has agreed offer only fixed price contracts in Pennsylvania for a period of 24 months beginning September 1, 2015. Additionally, if after the expiration of the 24 month period, Respond Power offers variable rate products to consumers in the Commonwealth, the Company has agreed not to charge Pennsylvania consumers, including small business consumers, cancellation or termination fees for the Company's variable rate product offerings.²

² Joint Petition for Settlement, p. 21-22.

Conclusion

For the reasons set forth in the *Settlement*, as well as the additional factors that are enumerated in this statement, the OSBA supports the proposed *Settlement* and respectfully requests that the ALJs and the Commission approve the *Settlement* in its entirety.

Respectfully submitted,



Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Dated: April 21, 2015

CERTIFICATE OF SERVICE

Commonwealth of Pennsylvania, by :
Attorney General KATHLEEN G. KANE, :
Through the Bureau of Consumer Protection, :
 :
And :
 :
TANYA J. McCLOSKEY, Acting Consumer :
Advocate, :
Complainants :
 :
Docket No. C-2014-2427659 :
v. :
 :
RESPOND POWER, LLC, :
Respondent :
 :
PENNSYLVANIA PUBLIC UTILITY :
COMMISSION, BUREAU OF :
INVESTIGATION AND ENFORCEMENT, :
Complainant :
 :
Docket No. C-2014-2438640 :
v. :
 :
RESPOND POWER, LLC, :
Respondent :

I hereby certify that I have this day served a true copy of the foregoing document, the Joint Petition for Approval of Settlement along with Exhibit A and Appendices A-D – Statements in Support of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate, Bureau of Investigation & Enforcement, Respond Power LLC and the Office of Small Business Advocate, in the manner and upon the persons listed below:

Dated this 22nd day of April 2016.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Adam Young, Esq.
Michael Swindler, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL & FIRST CLASS MAIL. POSTAGE PREPAID

Karen O. Moury, Esq.
John F. Povilaitis, Esq.
Buchanan Ingersoll & Rooney PC
409 N. Second Street
Harrisburg, PA 17101-1357

Sharon Webb, Esq.
Office of Small Business Advocate
Commerce Building, Suite 202
300 North Second Street
Harrisburg, PA 17101

David P. Zambito, Esq.
D. Troy Sellars, Esq.
Cozen O'Connor
17 N. 2nd St., Suite 1410
Harrisburg, PA 17101



Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891
E-Mail: CTunilo@paoca.org

Kristine E. Marsilio
Assistant Consumer Advocate
PA Attorney I.D. # 316479
E-Mail: KMarsilio@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
211700