

Penelec/West Penn Statement No. 1-SR

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RESPOND POWER, LLC

v.

PENNSYLVANIA ELECTRIC COMPANY

Docket No. C-2016-2576287

Docket No. C-2017-2631326

RESPOND POWER, LLC

v.

WEST PENN POWER COMPANY

Docket No. C-2016-2576292

Docket No. C-2017-2631331

**Surrebuttal Testimony
of
Kimberlie L. Bortz**

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Penelec/West Penn
St. 1-SR
C-2016-2576287, et al
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**SURREBUTTAL TESTIMONY
OF
KIMBERLIE L. BORTZ**

4 **I. INTRODUCTION AND BACKGROUND**

5 **Q. Please state your name and business address.**

6 A. My name is Kimberlie L. Bortz. I am employed by FirstEnergy Service Company
7 as a Rates Advisor – Rates and Regulatory Affairs – Pennsylvania. My business
8 address is 2800 Pottsville Pike, Reading, PA 19605.

9 **Q. Have you previously submitted testimony in this proceeding?**

10 A. Yes. I submitted direct testimony that is marked as Penelec/West Penn Statement
11 No. 1. My background and qualifications are set forth in that statement.

12 **Q. What is the purpose of your surrebuttal testimony?**

13 A. The purpose of my surrebuttal testimony is to respond to the rebuttal testimony of
14 Respond Power, LLC (“Respond Power”) witness Adam Small. My testimony is
15 divided into three parts. First, I will explain the flaws in Mr. Small’s claim that
16 Respond Power did not receive adequate “notice” of the Companies’ fourth
17 default service program (“DSP IV”) proceeding resulting in a final Pennsylvania
18 Public Utility Commission (“Commission”) Order approving the addition of a
19 “clawback” provision to the Companies’ existing purchase of receivables
20 (“POR”) programs.¹ Second, I will respond to Mr. Small’s contention that the

¹*Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of a Default Serv. Program for the Period Beginning June 1, 2017, through May 31, 2019, Docket Nos. P-2015-2511333, P-2015-2511351, P-2015-2511355 and P-2015-2511356 (Order adopting the April 15, 2016 Recommended Decision entered May 19, 2016) (“DSP IV Final Order”).*

1 change in the Companies' POR programs implemented by the Final DSP IV
2 Order is retroactive in nature. Finally, I will address Mr. Small's concerns
3 regarding the "structure" of the clawback provision, namely, the design of the
4 two-prong screening test employed to identify electric generation suppliers
5 ("EGSs") subject to a clawback charge during the applicable test period and to
6 determine the amount of any resulting charge.

7 **II. RESPOND POWER RECEIVED ACTUAL SERVICE OF THE**
8 **COMPANIES' FOURTH DEFAULT SERVICE PROGRAM FILING**
9 **THAT CLEARLY DELINEATES THE TERMS OF THE PROPOSED**
10 **CLAWBACK PROVISION, WHY IT WAS BEING PROPOSED AND**
11 **HOW IT WOULD BE CALCULATED**

12 **Q. Does Mr. Small dispute that the clawback provision proposal was discussed**
13 **in several areas of the DSP IV filing?**

14 **A.** No. Mr. Small admits the undisputed fact that he received service of the DSP IV
15 Joint Petition, as well as the accompanying testimony and exhibits, filed on
16 November 3, 2015 by the Companies and their Pennsylvania electric distribution
17 company ("EDC") affiliates, Metropolitan Edison Company ("Met-Ed") and
18 Pennsylvania Power Company ("Penn Power"). Mr. Small also concedes "being
19 aware" that the Companies were making proposals to modify their POR programs
20 in their DSP IV filing. Nonetheless, he contends that the Joint Petition, the
21 testimony and the supplements to the Companies' Electric Generation Supplier
22 Coordination Tariffs ("Supplier Coordination Tariffs") that accompanied the Joint
23 Petition were insufficient to put a reasonable POR-participating EGS on notice
24 that historical data would be used in applying the clawback provision's screening
25 test. According to Mr. Small, Respond Power could only have received adequate

1 “notice” of the clawback provision’s terms if the docket number of the
2 Companies’ prior default service program effective June 1, 2015 through May 31,
3 2017 (“DSP III”) had been placed in the caption of the DSP IV proceeding.

4 **Q. Do you agree with Mr. Small’s contention that actual service of the**
5 **Companies’ DSP IV filing was insufficient to put a reasonable POR-**
6 **participating EGS on notice that historical data would be relied upon in**
7 **applying the clawback provision?**

8 A. No. Paragraph No. 51, at pages 17-18 of the DSP IV Joint Petition, and page 17
9 of Met-Ed/Penelec/Penn Power/West Penn Statement No. 3 (the Direct Testimony
10 I submitted in the DSP IV case) explain that the proposed clawback provision
11 would be applied based on historical data and identified the date that the first
12 administrative charge would be assessed on EGSs that satisfy the two-part
13 screening test:

14 In order to be able to maintain the POR program for all
15 EGSs serving residential and small commercial customers,
16 the Companies propose the addition of a clawback clause to
17 their POR programs related to EGS write-offs. Under this
18 clause, *an annual charge would be assessed, beginning*
19 *September 2016*, to those EGSs that exceed 150% of the
20 average supplier write-offs as a percentage of revenue as
21 calculated separately for each of Met-Ed, Penelec, Penn
22 Power and West Penn *for each twelve-month period ending*
23 *August 31st.* (Emphasis added.)

24 The foregoing explanation makes it clear that the first charge would be assessed
25 in September 2016 on EGSs that triggered the clawback provision based on write-
26 off data for a twelve-month period ending August 31.

1 In his Rebuttal Testimony Mr. Small acknowledged that he reviewed the
2 Companies' DSP IV filing, including the language quoted above. As I previously
3 explained, that language is certainly sufficient to put a reasonable POR-
4 participating EGS on notice that historical data would be employed to apply the
5 proposed clawback provision. And even if, despite the clarity of my testimony, a
6 POR-participating EGS for some reason thought there was any ambiguity or
7 vagueness in my explanation of the terms of the clawback charge, such an EGS
8 would have had even greater incentive either to seek clarity by, for example,
9 calling one or both of the Companies for more information or to intervene in the
10 proceeding – even if only as a precautionary measure. Thus, although Mr. Small
11 repeatedly emphasizes the importance to Respond Power of participating in the
12 POR programs on a “non-recourse” basis, he also admits that he never considered
13 taking any action to obtain the clarity he suggests may have been lacking in the
14 DSP IV filing or to file a precautionary intervention in the DSP IV proceeding
15 simply to protect his client’s interests. Obviously, other POR-participating EGSs
16 – as well as the trade association for EGSs in Pennsylvania – intervened in the
17 DSP IV proceeding for the express purpose of pursuing issues surrounding the
18 application of the clawback charge.²

19 **Q. Mr. Small asserts that Respond Power did not have “notice” that the**
20 **clawback provision was based on historical data because the DSP IV filing**

²See, e.g., Prehearing Memorandum of the Retail Energy Supply Association (“RESA”), Paragraph 7: “In addition, the [Companies’] petitions address various issues directly related to the ability of EGSs to provide competitive alternatives to retail customers. These include proposed changes to the Companies’ purchase of receivables program which include assessing charges on specific EGSs . . .”

1 **did not explicitly request a change to their POR programs in effect during**
2 **the DSP III term. Do you agree?**

3 A. No. Although the Companies POR programs were initially adopted or revised in
4 the context of default service proceedings, those POR programs are not tied to the
5 DSP III term or any other specific elements of the Companies' default service
6 program. Thus, neither the duration nor the effective date of periodic revisions to
7 POR programs is co-terminus with the term of any particular default service
8 program. In any event, as I previously explained, the Joint Petition and my direct
9 testimony that accompanied it explicitly stated that the clawback charge would be
10 assessed in September 2016 based on historical data for a preceding twelve-month
11 period. Therefore, the date the clawback charge would first be assessed was
12 readily apparent to anyone who reviewed the DSP IV filing and discerned that it
13 included changes to the Companies' POR programs, as Mr. Small claims that he
14 did. In other words, the evidence – including Mr. Small's own testimony – shows
15 that Mr. Small had actual notice that the Companies were proposing to change
16 their POR programs by imposing a clawback charge to apply as early as
17 September 2016 and not some future date tied to the DSP IV effective period.
18 Nonetheless, and despite all the countervailing evidence, Mr. Small still claims
19 there was no reason to suspect that the clawback charge would apply prior to June
20 1, 2017. That claim is the sole basis for Mr. Small's argument that Respond
21 Power was not given adequate "notice" of the terms of the clawback charge
22 proposed in the Companies' DSP IV proceeding. It is also his alleged
23 justification for failing to advise his client to intervene in that case.

1 **III. THE CLAWBACK PROVISION IS NOT RETROACTIVE**

2 **Q. Mr. Small continues to contend that the clawback charge is “retroactive.”**
3 **Can you, once again, explain the errors in his argument?³**

4 A. Yes, I will. To reiterate, the clawback charge is a fee that is applied prospectively
5 to EGSs who, based on reasonable criteria, are shown to impose additional costs
6 on the Companies and their customers. In applying those criteria, it is not
7 unreasonable or “retroactive” to examine the historic performance of the
8 Companies’ entire EGS population to identify those EGSs whose performance
9 indicates are imposing costs well above the average for the entire EGS
10 population. That is exactly what the clawback charge does. It does not impose
11 any charge “retroactively” or modify the terms of the sale and purchase of EGS
12 accounts receivable under the Companies’ POR programs prior to the entry of the
13 DSP IV Final Order. Examining historical performance to identify those EGSs
14 who are most likely to be the ones imposing higher costs does not make the
15 clawback charge “retroactive.”

16 **IV. THE DESIGN OF THE CLAWBACK PROVISION IS REASONABLE**
17 **AND FAIRLY ASSESSES AN ADMINISTRATIVE FEE ONLY ON**
18 **THOSE EGSS THAT HISTORICAL EVIDENCE OF COST-CAUSATION**
19 **INDICATES ARE RESPONSIBLE FOR HIGHER UNCOLLECTIBLE**
20 **ACCOUNTS EXPENSE**

21 **Q. Mr. Small continues to assert that the addition of the clawback provision**
22 **converts the Companies POR program from “non-recourse” to “with**
23 **recourse.”⁴ Why is that assertion wrong?**

³See Respond Power, St. 1-R, pp. 6, 17-21.

1 A. The clawback provision does not compensate the Companies and their customers
2 for all write-offs in excess of the average, as would be the case if the POR
3 program were “with recourse.” In that regard, the clawback charge has no
4 resemblance to a “with recourse” program. The clawback charge is an
5 administrative fee that is charged to those EGSs that are imposing additional costs
6 on the Companies and their customers based on historical evidence showing that
7 they: (1) have levels of write-offs well above the average for the entire
8 population of EGSs; and (2) charge prices well above (150%) of the Companies’
9 average Price-to-Compare (“PTC”). Respond Power has not identified any valid
10 reason why imposing an administrative fee on EGSs that impose additional costs
11 is in any way improper. The Commission approved the clawback provision with
12 full knowledge of how it works. I do not believe that the Commission would have
13 done so if the clawback provision in fact made the Companies’ POR programs
14 “with recourse.”

15 **Q. Are there examples of other EDC POR programs that are “without**
16 **recourse” even though they employ a clawback provision that considers**
17 **historical data?**

18 A. Yes. As I discussed in my direct testimony, Duquesne Light Company (“DLC”)
19 may impose what it characterizes as a penalty in the form of an increased POR
20 discount rate on individual EGSs if their uncollectible percentage rate exceeds 5%

⁴Respond Power St. 1-R, pp. 5-9.

1 over a twelve-month look-back period.⁵ Notwithstanding such clawback
2 provision in its POR program, DLC's Supplier Coordination Tariff makes clear
3 that DLC will purchase EGS accounts receivable "without recourse."⁶

4 **Q. In your direct testimony, you explained that Mr. Small's criticisms of the**
5 **"structure" of the clawback provision lack merit because Mr. Small**
6 **overlooked, or ignored, the fact that the write-off test for applying the**
7 **clawback charge compares the performance of any individual EGS to 200%**
8 **of the average of all EGSs and that comparison is performed on the same**
9 **basis for all EGSs. In his rebuttal testimony (p. 21), Mr. Small attempts to**
10 **refute your statement by contending that his "concerns" about the structure**
11 **of the clawback provision "could be applied equally to other EGSs." Please**
12 **respond.**

13 **A. First, Mr. Small's argument, again, misses the point. The comparison is being**
14 **made among EGSs on a consistent basis and using comparable data. The test**
15 **relates the performance of any individual EGS to the average performance of all**
16 **EGSs. If any of the changes in the "structure" of the clawback charge were**
17 **adopted as Mr. Small proposes, they would apply equally to the data set for all**
18 **EGSs. As a result, the relationship of the performance of any one EGS, such as**
19 **Respond Power, to the average performance of all EGSs would remain largely the**

⁵DLC's clawback provision uses a single, unchanging point value of 5% as its benchmark. In contrast, the Companies' provision measures an individual EGS's performance relative to the average performance of all EGSs in the Companies' service territories and provides a "margin" of 200% before the individual EGS's performance could pass one of the tests for triggering the clawback charge.

⁶See Supplement No. 25 to Electric – Pa. P.U.C. No. 3S, Fourth Revised Page No. 30A, ¶ 12.1.7 (effective June 1, 2017).

1 same. To reiterate, the write-off screen is comparing an EGS's performance to
2 the average for all EGSs – and provides a margin of 200%. That comparison is
3 done the same way for all EGSs. Mr. Small seems to think that it is unfair to treat
4 all EGSs equally. In reality, his complaint is that Respond Power was, in fact,
5 treated the same as all other EGSs, and he would prefer if various exceptions
6 could be made for Respond Power to exempt it from being held to the same
7 standards as all other EGSs. Clearly, that is not a valid basis for criticizing the
8 clawback provision.

9 Second, the clawback provision is an administrative fee that is imposed
10 prospectively to partially compensate the Company and its customers for costs
11 that are imposed by EGSs whose write-offs exceed the average by more than
12 200% and who are charging prices substantially above the PTC. In short, the
13 clawback provision is a reasonable fee, designed to align with cost causation
14 principles, to reflect (at least in part) the additional costs that some EGSs are
15 imposing on the Companies and their customers. In short, the clawback provision
16 is fair and reasonable in its application to **all** EGSs, including Respond Power.

17 Third, Mr. Small's arguments simply divert attention from the fact that
18 Respond Power's performance does, in fact, depart significantly from the average
19 for the population of all EGSs in the Companies' service areas – and that
20 divergence occurred in **both** years that the clawback charge applied. In each year,
21 Respond Power was one of only three EGSs that met both parts of the test for
22 applying the clawback charge. In addition, only in Respond Power's case were

1 the clawback charges more than a relatively nominal amount. Contrary to the
2 inferences that Mr. Small attempts to create, that was neither an accident nor a
3 result of any “structural” problems with the clawback charge. It was entirely a
4 function of how Respond Power’s write-offs compared to the average for all
5 EGSs and Respond Power consistently charging prices that were 150% above the
6 average PTCs of the Companies for comparable periods. While Respond Power
7 questions the use of the PTC as a benchmark, it is noteworthy that Respond
8 Power’s prices were also consistently higher than the average prices charged by
9 other EGSs in the Companies’ service territory – a fact Mr. Small chose not to
10 discuss.

11 **Q. In your direct testimony, you explained that the clawback provision was**
12 **developed so that it would apply to those EGSs whose marketing and**
13 **business strategies were most likely to be the cause of high write-offs. Mr.**
14 **Small is, apparently, very sensitive about Respond Power’s marketing and**
15 **business strategies and contends that “Respond Power’s marketing strategies**
16 **are not in any way designed to target certain consumer demographics,**
17 **including non-paying customers or low-income customers, or to charge**
18 **prices that customers cannot afford to pay”.⁷ Please respond.**

19 **A.** I do not think it is reasonable to assume, as Mr. Small is asking us to assume, that
20 an EGS has no control over the segments of the electric customer population on
21 which it chooses to focus in marketing its product. That said, it is instructive to
22 point out what the evidence actually shows. As I previously noted, Respond

⁷ Respond Power St. 1-R, p. 9.

1 Power was one of only three EGSs that passed both prongs of the clawback
2 charge test in both of the years it was in effect. Thus, Respond Power had write-
3 offs that were 200% above the average for all EGSs and prices 150% above the
4 average PTC.

5 In addition, as shown by the data the Company provided in response to the
6 Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania's
7 interrogatories (Confidential Exhibit KLB-1SR), virtually all of the customers
8 whose accounts were written off were low-income customers. As shown by data
9 the Companies provided in response to Respond Power's interrogatories, virtually
10 all of the customers whose accounts were written off also had unpaid balances –
11 often very significant unpaid balances – that were owed to the Companies or to
12 EGSs other than Respond Power at the time Respond Power took them on as
13 customers.⁸ Finally, as Respond Power indicated in response to the Companies'
14 interrogatories, virtually all of those customers were on variable-price contracts.

15 All of the evidence summarized above, viewed in its totality, clearly
16 shows that the clawback charge appears to be working as it was designed by
17 applying a reasonable prospective administrative fee on those EGSs whose
18 performance indicates are responsible for driving increased costs that are more
19 properly imposed on such EGSs rather than being borne by the Companies and
20 their customers.

⁸As I will explain later, Mr. Small's suggestion that those unpaid balances factored into the calculations of the clawback charge for Respond Power is incorrect.

1 **Q. Mr. Small also continues to assert that Respond Power had no way of**
2 **knowing that its customers were not paying their bills. Is there any publicly**
3 **available information that refutes that claim?**

4 A. Yes, there is. The “Polar Vortex” litigation was initiated against Respond Power
5 by the Attorney General (“AG”) and the Office of the Consumer Advocate
6 (“OCA”) (jointly) and the Commission’s Bureau of Investigation and
7 Enforcement (“I&E”) in June 2014 and August 2014, respectively.⁹ The initiation
8 of those proceedings, as well as the numerous formal and informal complaints
9 against Respond Power that are referenced in the AG/OCA’s complaint, would
10 have been sufficient for a reasonable person in Respond Power’s position to know
11 that that there were significant numbers of customers who were not paying their
12 bills and, more importantly, could not afford the prices that Respond Power is
13 charging. Furthermore, having been tipped off to the payment problems created
14 by its high prices and variable price contracts, one would have expected Respond
15 Power to have been even more vigilant in tracking whether customers were
16 paying – or could afford to pay – the prices it was charging after the polar vortex
17 fall out had subsided.

18 Additionally, Respond Power – like any EGS – is free to request
19 information regarding its non-paying customers from the Companies’ Supplier
20 Services website, and requests are not limited to being made on an individual

⁹ The AG/OCA complaint filed at Docket No. C-2014-2427659 and I&E complaint filed at Docket No. C-2014-2438640 were consolidated in October 2014. Copies of the AG/OCA and I&E complaints initiating the Polar Vortex litigation are attached to my surrebuttal testimony as Exhibits KLB-2SR and KLB-3SR, respectively.

1 customer basis. Rather than explaining why Respond Power has not requested
2 any information regarding its non-paying customers or attempted to offer more
3 affordable contracts to those customers, Mr. Small asserts that the Companies
4 should automatically notify Respond Power when its customers do not pay their
5 bills through an electronic data interchange transaction to “have the intended
6 effect of incentivizing certain results.”¹⁰ Contrary to Mr. Small’s contention, the
7 clawback provision is not designed to create “incentives” for EGSs. It is a fee
8 applied prospectively to EGSs whose comparative data indicates they are
9 responsible for higher costs borne by the Companies and their customers.

10 **Q. In his rebuttal testimony, Mr. Small points out that many of Respond**
11 **Power’s customers whose accounts were written off during the 2016 and**
12 **2017 test periods had large unpaid balances at the time they became Respond**
13 **Power customers. Did those pre-existing unpaid balances play any part in**
14 **the application of the clawback provision?**

15 A. No, they did not. A customer’s pre-existing unpaid balance did not factor into the
16 screening test used to identify EGSs subject to a clawback charge or the
17 calculation of the charge itself. As I explained in my direct testimony and in
18 response to discovery, a supplier field code, which employs a unique identifier for
19 Respond Power in the Companies’ billing system, enables the Companies to
20 determine the billing periods that a customer was served by Respond Power. *See*
21 *RP Exhibit AS-18 (Companies Response to Respond Power LLC, Set V, No. 20).*
22 Accordingly, the Companies used the supplier code field to isolate write-off

¹⁰Respond Power St. No. 1-R, p. 22.

1 amounts accrued solely during the time period that a customer was served by
2 Respond Power.

3 **Q. In your direct testimony, you explained that Respond Power issued refund**
4 **checks to customers in settlement of the extensive Polar Vortex litigation**
5 **without regard to the payment status of the accounts to which refunds were**
6 **being made. In response, Mr. Small claims that no requirement for EGSs to**
7 **check the payment status of a customer's account before issuing a refund or**
8 **bill credit was memorialized in the Companies' Supplier Coordination**
9 **Tariffs at the time the refunds were paid. Please respond.**

10 **A. While Respond Power's decision not to follow what should be a best practice for**
11 **EGSs might be understandable for normal levels of refunds paid in the ordinary**
12 **course of business, its failure to check the payment status of accounts being paid**
13 **refunds under the circumstances of a comprehensive settlement of major**
14 **consumer protection litigation requiring the magnitude of refunds that Respond**
15 **Power itself claims were significant was not reasonable. Accordingly, the fact**
16 **that the Companies did not account for Polar Vortex refunds in determining**
17 **Respond Power's write-off percentage does not render the clawback charges**
18 **assessed in 2016 and 2017 unjust or unreasonable.**

19 **Q. Does the Polar Vortex provide an explanation for why Respond Power's**
20 **write-offs were higher than average during both the 2016 and 2017 test**
21 **periods, as Mr. Small suggests?**

1 A. No. While the service periods for Respond Power's write-off amounts include
2 some unpaid charges dating back to the time of the Polar Vortex in 2014, as Mr.
3 Small acknowledges in his rebuttal testimony, all EGSs experienced the same
4 market conditions that caused wholesale price spikes at that time.¹¹ Moreover, as
5 explained in my direct testimony, unpaid charges that began accruing in 2013
6 were included in the calculation of the write-off percentages for all EGSs
7 participating in the Companies' POR programs. The clawback provision's write-
8 off screening measure does not hold any EGS to an absolute standard, but,
9 instead, provides a consistent comparison across the entire population of the
10 Companies' EGSs where all data are derived and employed in the same way. As
11 a consequence, unpaid charges related to the Polar Vortex are not a unique driver
12 of Respond Power's higher than average write-off percentage.

13 **Q. Is an average EGS price higher than 150% of the average PTC an**
14 **appropriate benchmark to identify excessive EGS pricing leading to higher**
15 **than average write-offs?**

16 A. Yes. Mr. Small points out that the Companies' PTCs have fluctuated by more
17 than 150% over the last five years. However, such variation is irrelevant for two
18 primary reasons. First, the Companies used an average annual EGS price based
19 on annual revenues and customer usage (in kWh) and an average annual PTC in
20 applying the second prong of the screening test. Therefore, the variations of an
21 EGS's price from the average PTC are smoothed out over a twelve-month period.

¹¹One of the strengths of the design of the clawback provision is that it automatically adjusts for anomalies like the Polar Vortex that affect all EGSs because it compares any one EGS's performance to the average performance of all EGSs and, in addition, gives any individual EGS a "cushion" of 200%.

1 Second, Mr. Small selectively compares the highest and lowest PTC for each
2 Company over a five-year period to arrive at his conclusion that the Companies'
3 PTC experienced wide swings of more than 150%. During the applicable 2016
4 and 2017 test periods, the Companies experienced minimal fluctuations in the
5 PTC, with the maximum PTC only 15% over the average PTC for the two-year
6 time period.

7 **Q. Mr. Small also contends that comparison of EGS prices to the PTC is not**
8 **“meaningful” because the PTC is established in a “regulated environment”**
9 **and does not reflect current market conditions.¹² Do you agree?**

10 **A. No. Each Company’s PTC is derived from independently administered,**
11 **Commission-supervised auctions that solicit competitive bids from default service**
12 **suppliers. The prices bid by default service suppliers reflect the prevailing market**
13 **conditions at the time of bidding for the products being purchased and incorporate**
14 **the bidders’ view of market prices that will prevail when they supply power in the**
15 **future pursuant to the terms of the contracts being bid. Not surprisingly, Mr.**
16 **Small also fails to mention that during the 2016 and 2017 test periods, Respond**
17 **Power’s prices were not only more than 150% higher than the PTC but were also**
18 **some of the highest prices charged by any EGS serving residential and small**
19 **commercial customers in the Companies’ service areas.**

20 Notably, Mr. Small’s contention that the PTC is an inappropriate benchmark for
21 excessive EGS prices is contradicted by Respond Power’s own marketing

¹²Respond Power St. 1-R, pp. 11-12.

1 materials provided in discovery. Those marketing materials suggest to customers
2 that Respond Power is competing against and offering savings from the PTC. For
3 example, Respond Power's door-to-door marketing script for variable products
4 provides: **[BEGIN CONFIDENTIAL]**

5 Sir/Ma'am this is all part of State Deregulation. See
6 BEFORE, there was NO COMPETITION so you
7 may have PAID MORE. AFTER
8 DEREGULATION, WITH COMPETITION, you
9 MAY see better rates...we use various strategic
10 purchasing methods to try and bring down costs as
11 well as save our customers money.

12 **
13 We're going to give you a variable rate with
14 possible savings of up to 10%.

15 Similarly, Respond Power's door-to-door marketing script for fixed price
16 products references deregulation and utility prices:

17 Because of deregulation, you now have the ability
18 to choose a supplier. Respond Power is able to
19 purchase energy on the open market at competitive
20 rates, so we can provide you with price protection
21 on the supply portion of your bill.

22 **
23 You will have peace of mind knowing that your
24 rates will not change no matter what happens to the
25 utility's prices.

26 **[END CONFIDENTIAL]** See Confidential Exhibit KLB-4R (Excerpts from
27 Confidential Respond II-1, Attachment A) (emphasis in original).

1 **Q. Do you agree with Mr. Small's contention that Respond Power would have to**
2 **"constantly" monitor the PTC and maintain prices at certain levels for all**
3 **customers?¹³**

4 **A. No. Respond Power would only need to monitor the quarterly changes in the**
5 **PTC if it wishes to avoid triggering one of the two prongs of the test for assessing**
6 **a clawback charge. Moreover, Respond Power would not need to maintain**
7 **specific prices for all of its individual customers. Rather, Respond Power would**
8 **simply need to ascertain the average price it is charging in a Company's service**
9 **area (which it is reasonable to assume Respond Power, as a participant in the**
10 **competitive EGS market, is doing in any event) and then maintain an average**
11 **price that is less than 150% of the average PTC. Obviously, setting the price**
12 **screen at 150% of the average PTC leaves Respond Power a healthy margin**
13 **within which to operate without triggering the clawback charge.**

14 **V. CONCLUSION**

15 **Q. Does this complete your surrebuttal testimony?**

16 **A. Yes, it does.**

¹³See Respond Power St. 1-R, p. 30.

EXHIBIT KLB-2SR

COMMONWEALTH OF PENNSYLVANIA



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June 20, 2014

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

RE: Commonwealth of Pennsylvania, by Attorney General
KATHLEEN G. KANE. Through the Bureau of Consumer
Protection,
And
TANYA J. McCLOSKEY, Acting Consumer Advocate,
Complainants

v.

Respond Power, LLC,

Respondent

Docket No. C-2014-_____

Secretary Chiavetta:

Enclosed please find the Joint Complaint of the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate and the Public Statement of the Office of Consumer Advocate in the above-referenced proceeding.

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

Respectfully Submitted,

Candis A. Tunilo

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

Enclosures

cc: Office of Administrative Law Judge
Office of Special Assistants
Certificate of Service

*185196

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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-
v.	:	
	:	
RESPOND POWER, LLC,	:	
Respondent	:	

JOINT COMPLAINT

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (Attorney General) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively referred to as Joint Complainants), who bring this action pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Pennsylvania Public Utility 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.*

PRELIMINARY STATEMENT

1. This Joint Complaint is brought in the public’s interest to address multiple violations of Pennsylvania law and Pennsylvania Public Utility Commission (Commission)

orders and regulations, whereby consumers were misled and deceived as to the price they would pay for their electricity, all to their harm and detriment.

PARTIES

2. Tanya J. McCloskey is the Acting Consumer Advocate. The Office of Consumer Advocate (OCA) is the agency authorized by law to represent the interests of utility consumers before the Commission, as provided in 71 P.S. § 309-1. *et seq.* The names and address of the OCA's attorneys are as follows:

Candis A. Tunilo
Assistant Consumer Advocate
Christy M. Appleby
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, Pennsylvania 17101

3. The Attorney General is authorized by the Consumer Protection Law to bring an action in the name of the Commonwealth of Pennsylvania to restrain by temporary or permanent injunction unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as provided in 73 P.S. § 201-4.

4. The Consumer Protection Law further authorizes the Attorney General to take such action when she has reason to believe that any person is using or is about to use a method, act, or practice unlawful under the Consumer Protection Law and when she determines that proceedings would be in the public interest as provided in 73 P.S. § 201-4.

5. The Attorney General, as the chief law officer of the Commonwealth of Pennsylvania pursuant to Article IV § 4.1 of the Pennsylvania Constitution, is further authorized to initiate and maintain this action, and does so, pursuant to the Commonwealth Attorneys Act.

71 Pa. Stat. § 732-204. The names and address of the Attorney General's attorneys are as follows:

John M. Abel, Senior Deputy Attorney General
Nicole R. Beck, Deputy Attorney General
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

6. Respond Power, LLC (Respondent) 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 Respondent's license application by Order entered August 19, 2010 at Docket No. A-2010-2163898.

7. The Commission is responsible for regulating the service of electric generation suppliers, as it relates to their activities in the marketing and sale of electricity and electric services. See 66 Pa. C.S. § 2809(e).

8. Respondent provides electric generation supplier (EGS) services to residential customers, and as such, it must comply with applicable residential service regulations in Chapters 54 and 56 of the Commission's regulations. See 52 Pa. Code Ch. 54 and 56. See also License Application of Respond Power LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power, Docket No. A-2010-2163898, Order at 3 (Aug. 19, 2010) (Licensing Order).

9. Respondent must also comply with Chapter 111 of the Commission's regulations. See 52 Pa. Code § 111.1.

10. Additionally, Respondent must abide by all applicable federal and state laws and Commission regulations, procedures and orders and ensure that its employees, representatives, agents and independent contractors do so as well. See Licensing Order at 3.

11. Respondent offers variable rate electric generation supply to residential customers in the service territories designated in the Licensing Order.

12. Upon information and belief, Respondent uses a variety of marketing and advertising mediums to solicit residential customers for its variable rate plan including door-to-door, telephonic, internet, mass mail and print solicitations.

13. Respondent, by advertising, marketing, and selling variable rate electric generation service, is engaged in trade or commerce within the Commonwealth.

14. Among the consumers charged high variable prices by Respondent's actions are hundreds of citizens over the age of 60.

15. 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. The OCA has received approximately 3,000 contacts from consumers regarding variable rates.

16. As of May 5, 2014, the OCA had collected information from approximately 2,434 of its consumer contacts.

17. Of the referenced 2,434 contacts, 189 or 8% were from customers of Respond Power. Of the referenced 189 total contacts, approximately 162 were telephone calls and approximately 27 were written correspondence.

18. From February 27, 2014 to June 4, 2014, the Attorney General received approximately 39,607 telephone calls and 7,503 consumer complaints related to variable rates

charged by EGSs. Of the 7,503 consumer complaints, 520 or approximately 7% were against Respondent.

19. Upon information and belief, from January 1, 2014 to April 21, 2014, approximately 500 Formal Complaints were filed at the Commission by customers regarding variable rates charged by EGSs. Additionally, upon information and belief, approximately 6,500 informal complaints and nearly 10,000 inquiries were made by consumers to the Commission regarding variable rates charged by EGSs. Of the approximately 203 Formal Complaint reviewed by the OCA to date, approximately 20 or 10% were filed against Respondent.

**COUNT I – MISLEADING AND DECEPTIVE CLAIMS OF AFFILIATION WITH
ELECTRIC DISTRIBUTION COMPANIES**

20. The foregoing paragraphs are incorporated herein.

21. Of the referenced 27 customers that provided written correspondence and information to the OCA, 4 or approximately 15% stated that the Respondent's salesperson in the initial sales contact represented that he or she was from the consumer's electric distribution company (EDC) and used this misrepresentation to induce the consumer to switch to Respondent.

22. Of the referenced 520 consumer complaints received by the Attorney General, 13 complainants indicated that the Respondent's salesperson claimed to be from the complainant's EDC and used this misrepresentation to induce the complainant to switch to Respondent.

23. Of the referenced 20 Formal Complaints filed at the Commission against Respondent reviewed by the OCA to date, at least 4 or 20% of the complainants averred that the Respondent's door-to-door salesperson represented that he or she was from the complainant's EDC and used this misrepresentation to induce the complainant to switch to Respondent.

24. Sections 111.8 and 111.9 of the Commission's regulations, 52 Pa. Code §§ 111.8 and 111.9, require that door-to-door salespeople:

- Prominently display his or her identification badge issued by the EGS and
- Shall immediately identify himself or herself by name and the EGS he or she represents and state that he or she is not working for and is independent of the local distribution company.

25. The Commission's regulations state that a licensed EGS is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives. See 52 Pa. Code § 54.43(f).

26. The Commission's regulations require EGSs to train its agents on, *inter alia*:

- Responsible and ethical sales practices;
- The proper completion of transaction documents; and
- The EGS's disclosure statement.

See 52 Pa. Code § 111.5(a).

27. The Commission's regulations require EGSs to monitor telephonic and door-to-door marketing activities to ensure that their agents are providing accurate and complete information and complying with applicable rules and regulations. See 52 Pa. Code § 111.5(e).

28. The Commission's regulations require compliance with Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*, (Consumer Protection Law). See 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

29. The Consumer Protection Law defines "unfair or deceptive acts or practices" as, *inter alia*:

- Passing off goods or services as those of another;

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he does not have;
- Disparaging the goods, services or business of another by false or misleading representation of fact; and
- Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

See 73 P.S. § 201-2(4)(i), (ii), (iii), (v), (viii) and (xxi).

30. It is averred, upon information and belief, that Respondent's employees, agents and/or representatives have engaged in and continue to engage in activities that are fraudulent, deceptive and/or in violation of the Commission's regulations and orders and the Consumer Protection Law by:

- a. Salespeople failing to properly identify themselves as affiliated with Respond Power when engaging in door-to-door sales;
- b. Salespeople failing to clearly state that they are not affiliated with consumers' local distribution companies when engaging in door-to-door sales;
- c. Salespeople deceiving consumers by claiming to be affiliated with consumers' local distribution companies; and

d. Salespeople deceiving consumers in order to induce consumers to switch to Respondent.

31. It is averred, upon information and belief, that Respondent has failed to adequately train and monitor its agents, as required by the Commission's regulations. See 52 Pa. Code §§ 111.4 and 111.5.

COUNT II – MISLEADING AND DECEPTIVE PROMISES OF SAVINGS

32. The foregoing paragraphs are incorporated herein.

33. Of the referenced 520 consumer complaints against Respondent received by the Attorney General, 64 or approximately 12% of the complainants indicated that Respondent's salespeople stated that the consumers' rates with Respondent would be competitive with their EDCs' rates (also referred to as the Price to Compare (PTC)) or would always be lower than or equal to their EDCs' rates as inducement for the complainants to switch to Respondent. These complainants then received bills for Respondent's generation supply that were at least two or three times more than the PTC.

34. Of the referenced 520 consumer complaints against Respondent received by the Attorney General, 57 or nearly 11% of the complainants indicated that Respondent's salespeople promised guaranteed savings over the PTC as inducement for complainants to switch to Respondent. These complainants then received bills for Respondent's generation supply that were at least two or three times more than the PTC.

35. Of the referenced 27 customers that provided written correspondence and information to the OCA, 5 or approximately 18.5% stated that Respondent's salespeople promised guaranteed savings over the PTC as inducement for complainants to switch to

Respondent. These complainants then received bills for Respondent's generation supply that were at least two or three times more than the PTC.

36. Of the referenced 20 Formal Complaints filed at the Commission against Respondent and reviewed by the OCA to date, at least 5 or 25% of the complainants averred that Respondent's salespeople promised guaranteed savings over the PTC as inducement for complainants to switch to Respondent. These complainants then received bills for Respondent's generation supply that were at least two or three times more than the PTC.

37. The Commission's regulations state that a licensed EGS is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives. See 52 Pa. Code § 54.43(f).

38. The Commission's regulations require compliance with the Consumer Protection Law. See 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

39. The Consumer Protection Law defines "unfair or deceptive acts or practices" as, *inter alia*:

- Advertising goods or services with the intent not to sell them as advertised;
- Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and
- Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

See 73 P.S. § 201-2(4)(ix), (xi) and (xxi).

40. It is averred, upon information and belief, that Respondent's employees, agents and/or representatives have engaged in and continue to engage in activities that are fraudulent,

deceptive and/or in violation of the Commission's regulations and orders and the Consumer Protection Law by promising savings that may not, and for many customers did not, materialize.

41. Additionally, as averred above, upon information and belief, Respondent has failed to adequately train and monitor its agents, as required by the Commission's regulations. See 52 Pa. Code §§ 111.4 and 111.5.

COUNT III – FAILING TO DISCLOSE MATERIAL TERMS

42. The foregoing paragraphs are incorporated herein.

43. Of the referenced 20 Formal Complaints filed at the Commission against Respondent reviewed by the OCA to date, at least 5 or 25% of the complainants averred that they were not informed by the Respondent's salesperson that they had signed up for a variable rate. Respondent supplied some of these complainants with Terms and Conditions of Service that did not state whether the price was fixed or variable.

44. Of the referenced 520 consumer complaints against Respondent, received by the Attorney General, 61 or nearly 12% of the complainants indicated that they were not informed by the Respondent's salesperson that they had signed up for a variable rate. Further, 16 complainants provided sales agreements with their consumer complaints that failed to indicate whether they were for fixed or variable rate contracts.

45. Upon information and belief, many of Respondent's customers believed they were on a fixed rate plan, but Respondent charged these customers rates pursuant to a variable rate plan.

46. The Commission's regulations require that an EGS shall provide the customer with a copy of its disclosure statement. See 52 Pa. Code §§ 54.5(b) and 111.11.

47. Section 111.12 requires suppliers to provide accurate and timely information to customers about their services and products, including their rates. See 52 Pa. Code § 111.12(d)(4).

48. The Commission's regulations require that EGS prices billed must reflect the marketed prices and the agreed-upon prices in the disclosure statement. See 52 Pa. Code § 54.4(a).

49. If an EGS offers a variable price plan, its disclosure statement must include the conditions of variability and the limits on price variability. See 52 Pa. Code § 54.5(c)(2).

50. Additionally, the EGS's advertised prices must reflect the prices in its disclosure statements and billed prices. See 52 Pa. Code § 54.7(a).

51. Pennsylvania's Consumer Protection Law defines "unfair or deceptive acts or practices" as, *inter alia*, engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding. See 73 P.S. § 201-2(4)(xxi).

52. It is averred, upon information and belief, that Respondent has violated and continues to violate the Consumer Protection Law and the Commission's regulations and orders by failing to provide adequate price disclosures to customers and deceiving customers about the rate they would be charged by Respondent.

53. Additionally, as averred above, upon information and belief, Respondent has failed to adequately train and monitor its agents, as required by the Commission's regulations. See 52 Pa. Code §§ 111.4 and 111.5.

COUNT IV – DECEPTIVE AND MISLEADING WELCOME LETTER AND INSERTS

54. The foregoing paragraphs are incorporated herein.

55. In its Welcome Letters and Inserts to customers, Respondent warns to “BEWARE of FIXED PRICE offerings” and makes statements such as:

- “We keep our customers by offering real savings;”
- “Respond Power offers REAL savings – NOT GIMMICKS;”
- “Respond Power’s main focus is to provide you with great customer service and access to historically proven savings on your energy bills;”
- Respond Power is licensed and approved by the Public Utility Commission “AND by local utility’s [sic] to supply” electricity;
- Unlike other EGSs, Respond Power delivers “electricity at the best available rates;”
- The management of Respond Power is “proud of the record that’s been built and they remain committed to the core principles on which the company was founded: Lowering customers’ energy bills safely and reliably and providing superior customer service;”
- “[R]est assured knowing that you are now with an industry leader when it comes to credibility and reliability in energy choice;” and
- “Should another energy company knock on your door or reach you on the phone, proudly let them know that you are a Major Energy customer and to leave you alone.”

See Welcome Letter and Inserts attached hereto as Appendix A.

56. The Commission’s regulations require compliance with Pennsylvania’s Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*, (Consumer Protection Law). See 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

57. The Consumer Protection Law defines "unfair or deceptive acts or practices" as, *inter alia*:

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of good or services;
- Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he does not have;
- Disparaging the goods, services or business of another by false or misleading representation of fact;
- Advertising goods or services with intent not to sell them as advertised;
- Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and
- Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

See 73 P.S. § 201-2(4)(ii), (iii), (v), (viii), (ix), (xi) and (xxi).

58. The Joint Complainants aver that the Respondent's claims in its Welcome Letter and Inserts represent benefits of its services that Respondent did not provide to its customers and EDC sponsorship that it does not have in violation of the Consumer Protection Law.

59. The Joint Complainants aver that the Respondent's claims in its Welcome Letter and Inserts were and are deceptive, which created and continues to create a likelihood of

confusion and misunderstanding for the Respondent's customers in violation of the Consumer Protection Law.

60. The Joint Complainants aver that the Respondent's claims in its Welcome Letter and Inserts were and are disparaging of the offers of other EGSs in violation of the Consumer Protection Law.

COUNT V - SLAMMING

61. The foregoing paragraphs are incorporated herein.

62. Of the referenced 520 consumer complaints against Respondent received by the Attorney General, 41 or nearly 8% of the complainants indicated that they did not consent to switch to Respondent.

63. Of the referenced 27 customers that provided written correspondence and information to the OCA, 2 or approximately 7.4% stated that they did not consent to switch to Respondent.

64. Of the referenced 20 Formal Complaints filed at the Commission against Respondent reviewed by the OCA to date, 3 or 15% of the complainants averred that they did not consent to switch to Respondent.

65. The Public Utility Code and the Commission's regulations prohibit switching a customer's generation supplier without the customer's consent (*i.e.* slamming). See 66 Pa. C.S. § 2807(d)(1); 52 Pa. Code § 54.42(a)(9).

66. It is averred, upon information and belief, that Respondent has violated and continues to violate the Public Utility Code and the Commission's regulations and orders by switching customers to Respondent without the customers' consent.

COUNT VI – LACK OF GOOD FAITH HANDLING OF COMPLAINTS

67. The foregoing paragraphs are incorporated herein.

68. Of the referenced 27 customers that provided written correspondence and information to the OCA, 16 or approximately 59% stated that when they attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their emails to the Respondent went unanswered.

69. Of the referenced 27 customers that provided written correspondence and information to the OCA, 4 or nearly 15% stated that when they spoke to a Respondent representative about the inexplicably high generation charges on their bills, the Respondent's representative stated that a refund would only be provided if the customers entered into a one-year fixed price agreement with Respondent. If the customer had already switched suppliers, the Respondent representative refused to inquire further into the customer's complaint.

70. Of the referenced 20 Formal Complaints filed at the Commission against Respondent reviewed by the OCA to date, at least 11 or 55% of the complainants averred that when they attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their emails to the Respondent went unanswered.

71. Of the referenced 520 consumer complaints against Respondent received by the Attorney General, at least 76 or nearly 15% of the complainants indicated that when they attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their emails to the Respondent went unanswered.

72. The Commission's regulations require EGSs to utilize good faith, honesty and fair dealing with residential customers. See 52 Pa. Code § 56.1(a). See also Licensing Order at 3.

73. The Commission's regulations set forth the procedure for EGSs to use when they receive notice of a dispute, including a billing dispute, from a residential customer. Upon notice of such dispute, EGSs are required to investigate the matter, provide the customer with information necessary to make an informed judgment and issue a report to the customer within 30 days. See 52 Pa. Code §§ 56.141(a), 56.151 and 56.152.

74. It is averred, upon information and belief, that Respondent has violated and continues to violate the Commission's regulations and orders by failing to adequately staff its call center, failing to provide reasonable access to Company representatives for purposes of submitting complaints, failing to properly investigate customer disputes, failing to properly notify customers of the results of the Company's investigation into a dispute when such investigation was conducted, and failing to utilize good faith, honesty and fair dealing in its dealings with customers.

COUNT VII – FAILING TO PROVIDE ACCURATE PRICING INFORMATION

75. The foregoing paragraphs are incorporated herein.

76. Respondent's Disclosure Statement states as follows regarding variable pricing:

Electric

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

Commodity charges exclude Pennsylvania sales tax, if applicable. You may contact Respond Power for our current Variable Rate.

Respondent's Disclosure Statement is attached hereto as Appendix B.

77. The Commission's regulations require that variable pricing terms include the conditions of variability and the limits on price variability. See 52 Pa. Code § 54.5(c).

78. The variable pricing terms of Respondent fail to adequately state the conditions of variability and the limits on price variability in violation of the Commission's regulation.

79. The Commission's regulations require that EGSs "provide accurate information about their electric generation services using plain language and common terms in communications with consumers." See 52 Pa. Code § 54.43(1).

80. Additionally, EGSs must provide information to consumers "in a format that enables customers to compare the various electric generation services offered and the prices charged for each type of service." Id.

81. The Commission's regulations require compliance with the Consumer Protection Law. See 52 Pa. Code § 54.43(f) and 111.12(d)(1).

82. The Consumer Protection Law prohibits fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. See 73 P.S. § 201-2(4)(xxi).

83. It is believed and therefore, averred that the Respondent has violated and continues to violate the Commission's regulations and orders by failing to provide pricing information in plain language and using common terms that consumers understand.

84. Further, it is believed and therefore, averred that consumers could not determine from the Disclosure Statement the price that they would or could be charged by the Respondent or how the price would be calculated by Respondent.

85. It is believed and therefore, averred that Respondent violated and continues to violate the Commission's regulations and orders by failing to provide information to its customers in a manner that would allow them to compare offers.

COUNT VIII-PRICES NONCONFORMING TO DISCLOSURE STATEMENT

86. The foregoing paragraphs are incorporated herein.

87. Upon information and belief, Respondent charged its variable rate customers prices at least as high as \$0.40 per kWh for electricity.

88. It is averred, upon information and belief, that Respondent's prices charged to customers in early 2014 were not reflective of the cost to serve residential customers.

89. By way of example, the cost to serve the average residential heating customer in January 2014 should not have exceeded approximately \$0.23 per kWh. See Affidavit of Dr. Steven L. Estomin, attached hereto as Appendix C.

90. It is averred, upon information and belief, that the aforementioned prices do not conform to the variable rate pricing provision of Respondent's Disclosure Statement.

COUNT IX- FAILURE TO COMPLY WITH THE TELEMARKETER REGISTRATION ACT

91. The foregoing paragraphs are incorporated herein.

92. Of the 520 consumer complaints against Respondent received by the Attorney General, at least 54 or approximately 10% of the complainants received a telemarketing call from the Respondent, which initiated the complainants' switch to Respondent.

93. The Commission's regulations require EGSs to comply with the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* See 52 Pa. Code § 111.10(a)(1).

94. When Respondent sells its goods or services through the use of a telemarketing call, the Telemarketer Registration Act requires the Respondent to reduce any sale of goods or services made during such call to a written contract and obtain the consumer's signature on the written contract. See 73 P.S. § 2245(a)(7).

95. Additionally, the Telemarketer Registration Act requires the Respondent to provide consumers with a contract that contains, *inter alia*, the following:

- A detailed description of the consumer goods and services purchased which shall match the oral description given in the telemarketing solicitation;
- Any oral or written representations made during the telemarketing solicitation; and
- A statement that reads: "You are not obligated to pay any money unless you sign this contract and return it to the seller."

See 73 P.S. § 2245(c).

96. Respondent 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 Telemarketer Registration Act, 73 P.S. § 2245(a)(7) and (c), and has therefore, violated and continues to violate the Commission's regulations and orders and the Telemarketer Registration Act.

97. Under the Telemarketer Registration Act, any violation of 73 P.S. § 2241, *et seq.*, is also a violation of the Consumer Protection Law. See 73 P.S. § 2246(a).

98. The Commission's regulations require that EGSs comply with the Telemarketer Registration Act and the Consumer Protection Law. See 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

99. By failing to provide a contract that complies with the Telemarketer Registration Act, Respondent has also violated and continues to violate the Consumer Protection Law.

RELIEF

100. The foregoing paragraphs are incorporated herein.

101. Pursuant to Section 54.42 of the Commission's regulations, 52 Pa. Code § 54.42, the Commission may suspend or revoke an EGS's license and impose civil penalties for the following EGS conduct:

- Failure to follow the principles in 52 Pa. Code § 54.43;
- Violation of applicable provisions of the Public Utility Code, Commission regulations and Commission orders;
- Violation of the consumer protection law; and
- The transfer of a consumer without the consumer's consent.

102. Under the Consumer Protection Law, it is appropriate to impose a permanent injunction to restrain and prevent violations of the Consumer Protection Law and restore to any person in interest any moneys or property that may have been acquired by means of any violation of the Consumer Protection Law. See 73 P.S. § 201-4.1.

103. As outlined above, Respondent violated and continues to violate the Public Utility Code, Commission regulations and orders, the Consumer Protection Law, the Telemarketer Registration Act and its Licensing Order.

WHEREFORE, Joint Complainants Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate, respectfully request that the Commission take the following actions:

A. Consolidate all similar pending formal complaints against Respondent with this Joint Complaint:

B. Find that Respondent violated the Telemarketing Registration Act, the Consumer Protection Law, the Public Utility Code, and the Commission's regulations and orders, as specified in the foregoing Joint Complaint, and revoke or suspend Respondent's EGS license;

C. Find that Respondent violated the Telemarketing Registration Act, the Consumer Protection Law, the Public Utility Code, and the Commission's regulations and orders, as specified in the foregoing Joint Complaint, and impose a civil penalty;

D. Order Respondent to provide appropriate restitution, including without limitation to, refunding all charges to its consumers that were over and above the Price To Compare 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 Respondent's charges and customers leaving Respondent to obtain generation service elsewhere;

E. Order Respondent to prohibit its salespeople from stating or otherwise insinuating that they are employed by or in any way affiliated with consumers' local distribution companies;

F. Order Respondent to prohibit its salespeople from deceiving consumers about their choices relating to electric generation;

G. Order Respondent to prohibit its salespeople from making price guarantees to consumers that are deceiving and inaccurate;

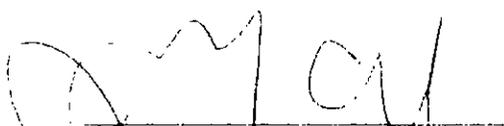
H. Order Respondent to cease and desist switching consumers to its generation service without their explicit consent;

I. Order Respondent to implement proper customer dispute procedures and adequately staff, train and monitor all employees and agents in such procedures:

J. Order Respondent to discontinue all other marketing practices that violate the Telemarketing Registration Act, the Consumer Protection Law, the Public Utility Code, and the Commission's regulations or orders; and

K. Impose any other such relief that the Commission deems appropriate in this matter.

Respectfully submitted.


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

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

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Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate

DATE: 6/20/14

Dear 

Welcome to Respond Power: The Official Energy Partner of Madison Square Garden and The New York Knicks.

We wanted to take a moment to let you know about some of the terrific benefits and advantages of being our customer. First and foremost, as the Official Energy Partner of Madison Square Garden and the New York Knicks, rest assured knowing that you are now with an industry leader when it comes to credibility and reliability in energy choice. Should another energy company knock on your door or reach you on the phone, proudly let them know that you are a Major Energy customer and to leave you alone. You'll be happy you did. Additionally, please keep in mind that you are not leaving your local utility company. They will still service and deliver your energy and continue to read your meter and send you bills. That will never change.

IMPROVEMENTS

- Competitive rates, historical annual savings
- Each customer supports our donation to the Alex's Lemonade Stand Foundation
- Earn \$25 for every referral
- Monthly sweepstakes, superior customer service, leaders in the energy industry

WHAT STAYS THE SAME

- Utility still delivers your energy safely
- Utility still maintains your lines
- Utility still responds to any emergencies
- Still only receive one bill

Enclosed is a diagram that clearly shows you what changes you can and can't expect to see on your next bill. So welcome again to the best of both worlds – competitive rates on your energy supply, incredible added-value benefits by being our customer and the security of knowing that – as the Official Energy Partner of Madison Square Garden and the New York Knicks – Major Energy is both credible and reliable.

If at any time you have any questions, please give us a call at 877-973-7763 or email us at service@respondpower.com and one of our Customer Service Specialists will be happy to assist you.

Thank you for your support and welcome!

Regards,



Christopher Johnson

Director of Customer Service and Quality Control

Respond Power



RESPOND  POWER



PLEASE SAVE THIS IMPORTANT INFO

Congratulations on registering with Respond Power! We hope you enjoy the savings on your future electric Bills. Be aware that **other supply companies may visit, call or mail you**. If they do, **please be aware of the following:**

1) **BEWARE** of **FIXED PRICE** offerings, also known as "Price Protection" plans. **IF** prices drop, as they often do, you may find yourself paying **MORE** than your neighbors because you are contractually **LOCKED** into a higher price.

- *For this reason Respond Power offers Variable Pricing that reflects true market conditions and provides potential savings of up to 10%.*

2) **BEWARE** of Contracts with Cancellation Fees

- *While Respond Power asks for a 12-month commitment, we have **NO Cancellation Fees**. We keep our customers by offering real savings **NOT** cancellation fees.*

3) **BEWARE** of "Special Gift" offerings such as Gift Cards. They are often tied to higher rates and contracts and high cancellation fees.

- *Respond Power offers **REAL** savings - **NOT GIMMICKS**.*

4) **MAKE SURE** that any supply company you consider is accredited by the Better Business Bureau. Look for the BBB logo on their order forms and ID badges.

- *Respond Power is an affiliate of Major Energy Services and is "**A Rated**" with the **Better Business Bureau**.*

5) **YOU WILL** receive a confirmation letter from PECO stating, "PECO may shut-off your service if you fail to pay either your EGS charges or your PECO delivery charges on time"

- *Do Not let this letter concern you. The fact is that PECO may shut-off your service for non-payment **REGARDLESS** if you choose to save with Respond Power or not.*

Any Questions?

Please Call 877-973-7763

RESPOND  POWER  majorenergy

IMPORTANT NOTICE!

Congratulations on registering with Respond Power and/or Major Energy!

YOU ARE NOT LEAVING YOUR LOCAL UTILITY.

Your Utility will ALWAYS maintain your lines, send your bill and respond to any emergencies. You are simply giving your local utility the "OK" to get your supply of energy from Respond Power and/or Major Energy, for a chance to save on the supply portion of your bill. There is NO COST to enroll. There are NO CANCELLATION Fees.

YOU WILL receive a standard confirmation letter from your local utility.

Don't let this standard letter concern you or keep you from your potential savings. Your Utility Company's main focus is to safely deliver your energy supply. Major Energy & Respond Power's main focus is to provide you with great customer service and access to historically proven savings on your energy bills.

KEEP IN MIND

that by supporting Respond Power and/or Major Energy you are also supporting the fight against childhood cancer. Thanks to our customers and company growth we now donate tens of thousands of dollars annually to Alex's Lemonade Stand (See Reverse).

Other supply companies may visit, call or mail you with offers.
Please be aware of the following:



Other supply companies' offers may include long term contracts and cancellation fees. Respond Power & Major Energy have NO long term contracts and NO Cancellation Fees. We work to keep our customers by offering competitive pricing and superior customer service.

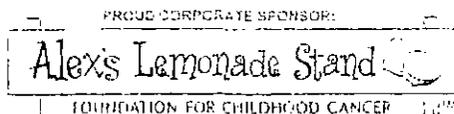


Other supply companies may offer gimmicks such as Airline Miles or are designed as Pyramid "get rich quick" plans. These offers are often tied to higher rates, long term contracts and high cancellation fees. At Major Energy & Respond Power we work to keep our customers by offering competitive pricing and superior customer service, NOT by offering gimmicks. Our savings expectations are based on historical annual savings.



MAKE SURE that any supply companies you consider are accredited by the Better Business Bureau. You should always be able to find the BBB logo on the applications of accredited companies.

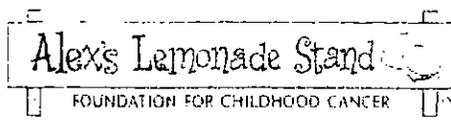
Respond Power is an affiliate of Major Energy Services, an "A Rated" supply company with the Better Business Bureau. This is evidenced by the logo on our applications.



CUSTOMER SERVICE:

Respond Power: (877) 973-7763

Major Energy: (888) 625-6760



Major Energy & Respond Power Reaffirm Commitment To Battling Childhood Cancer, Announce Continued Support For Alex's Lemonade Stand Foundation

Philadelphia, PA (August 13, 2012) - **Major Energy** and **Respond Power** are proud to announce the extension of their partnership with **Alex's Lemonade Stand Foundation**, a nonprofit dedicated to finding cures for all childhood cancers. Major Energy and Respond Power, which serve residential and commercial customers in New York, Maryland and Pennsylvania markets, will continue their support of the battle against childhood cancer after a successful campaign in 2011.

Kicking off in June of 2011, Major Energy and Respond Power has been on an awareness mission to introduce their customers, current and future, to Alex's story and ways in which individuals can join them in supporting Alex's Lemonade Stand Foundation. The companies have been working to spread the word about the Foundation and their support through any means possible including in newsletters and sales materials, through social media channels and on their respective websites. Currently there are links on the Major Energy and Respond Power websites connecting visitors directly to **AlexsLemonade.org** to learn more, how to host their own lemonade stands or make a donation. The companies are also hoping to plan additional fundraising initiatives in the coming year to further their support.

"Having the opportunity over the course of the last year to support Alex's Lemonade Stand has been extremely humbling, particularly because they are in our backyard and touch so many of our neighbors, friends and family," explains Elliott Wolbrom, Director of Marketing for Major Energy and Respond Power. "It is with that in mind that we are proud to announce a five-fold increase in contributions to Alex's Lemonade Stand Foundation this year. Having access to millions of people through various channels, Major Energy and Respond Power will use this multi-channeled exposure to disseminate Alex's message from all angles."

ABOUT MAJOR ENERGY AND RESPOND POWER

Founded in 2005 by energy industry veterans, Major Energy and Respond Power serve residential and commercial customers in the deregulated natural gas and electric markets of New York, Pennsylvania and Maryland. Additionally, they are licensed and approved by the respective State Public Service or Public Utility Commissions AND by local utility's to supply natural gas and electricity.

New York based, Major Energy and Respond Power are affiliated companies familiar with the energy needs of their customers. Their management team has combined decades of experience in the energy retail marketplace with dedication and passion to help residential and business customers reduce their energy costs. Unlike other ESCOs, Major Energy and Respond Power not only deliver gas and electricity at the best available rates, but also give consumers the tools to manage and monitor your energy consumption and control your costs, such as the groundbreaking Respond Power Rewards program.

The management of Major Energy and Respond Power understand that energy should revolve around the lifestyle of their customers and not the other way around. They are proud of the record that's been built and they remain committed to the core principles on which the company was founded: Lowering customers' energy bills safely and reliably and providing superior customer service.

About Alex's Lemonade Stand Foundation

Alex's Lemonade Stand Foundation (ALSF) emerged from the front yard lemonade stand of cancer patient Alexandra "Alex" Scott (1996-2004). In 2000, 4-year-old Alex announced that she wanted to hold a lemonade stand to raise money to help find a cure for all children with cancer. Since Alex held that first stand, the Foundation bearing her name has evolved into a national fundraising movement, complete with thousands of supporters across the country carrying on her legacy of hope. To date, Alex's Lemonade Stand Foundation, a registered 501(c)3 charity, has raised more than \$55 million toward fulfilling Alex's dream of finding a cure, funding over 250 pediatric cancer research projects nationally. For more information on Alex's Lemonade Stand Foundation, visit **AlexsLemonade.org**.

RESPOND  **POWER**

 **majorenergy**

APPENDIX B

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

Background

Respond Power is licensed by the Pennsylvania Public Utility Commission to offer and supply electricity in Pennsylvania. Our PUC license number is A-2010-2162698.

Major Energy is licensed by the Pennsylvania Public Utility Commission to offer and supply natural gas in Pennsylvania. Our PUC license number is A-2009-2118636.

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

Right of Rescission – You may cancel this agreement at any time before midnight of the third business day after receiving this disclosure by contacting: Respond Power for Electricity at 1-877-973-7765; Major Energy for Gas at 1-888-695-6760; or in writing at the address listed below.

Definitions

Basic Charges

Gas

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

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

Electric

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

Generation Charge – Charge for production of electricity.

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

Terms of Service

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

Gas

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

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

Electric

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

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

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

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

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

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

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

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

5. **Agreement Expiration/Change in Terms.** If you have a fixed term agreement with us and it is approaching the expiration date or whenever we propose to change our terms of service under this agreement, you will receive written notification from us at each of our 135 third bills for supply charges or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain our intention to you in these bills and mailings, with a date

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

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

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

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

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

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

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

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

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

15. **Emergency Service.** In the event of an electricity or natural gas emergency or service interruption, contact your local Electric Distribution Company ("EDC") or Natural Gas Distribution Company, ("NGDC") at one of the telephone numbers listed below. You should also contact your local emergency personnel, PECO Energy 1-800-841-4141, Columbia Gas of PA 1-800-460-4332, UGI Utilities 1-800-609-4844, National Fuel Gas of PA 1-800-444-3130, PPL 1-800-342-5775, Penelec/Met-Ed/WPP 1-888-544-4877, Duquesne Light 1-888-393-7000.

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

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

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

19. Contact Information.

Respond Power, LLC
100 Dutch Hill Rd., Suite 230
Orangeburg NY 10962
1-877-9-RESPND (1-877-973-7765)
www.respondpower.com

Major Energy, LLC
100 Dutch Hill Rd., Suite 230
Orangeburg NY 10962
1-888-MAJOR-60 (1-888-695-6760)
www.majorenergy.com

Electric Distribution Company (EDC) and
Provider of Last Resort
PECO ENERGY
2301 Market Street
P.O. Box 8599
Philadelphia, PA 19104
Phone: 1-800-494-4000

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

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

Met-Ed/Penelec
P.O. Box 988
State, OH 44569
Phone: 1-800-546-7341

West Penn Power
P.O. Box 3616
P.O. Box 44300
1-800-494-0011

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

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

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

National Fuel Gas Distribution
4363 Main Street
Williamsville, NY 14221
Phone: 1-800-265-3234

Public Utility Commission (PUC)
P.O. Box 3285
Harrisburg, PA 17105-3285
Electric Competition Hotline Number
1-800-690-7936

Utility Service Program - Your EDC has programs available to customers who are on a limited or fixed income to assist them with bill payment. Contact your EDC at the above number for more information.

APPENDIX C

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AFFIDAVIT
OF
STEVEN L. ESTOMIN, Ph.D.

JUNE 19, 2014

EXETER

ASSOCIATES, INC.
10480 Little Patuxent Parkway
Suite 300
Columbia, Maryland 21044

AFFIDAVIT

1. My name is Steven L. Estomin. I am a Senior Economist and Principal with Exeter Associates, Inc., an economics consulting firm. My business address is 10480 Little Patuxent Parkway, Suite 300, Columbia, Maryland 21044.
2. At the request of the Pennsylvania Office of Consumer Advocate (OCA), I performed an analysis addressing residential variable rate pricing in Pennsylvania during the winter of 2014. Specifically, I conducted an analysis regarding day-ahead and real-time market prices for electric energy during the winter of 2014.
3. Separate analyses were conducted for electric space heating and non-electric space heating residential customers.
4. Separate analyses were conducted for the residential customers in the following Electric Distribution Company (EDC) service territories:
 - Allegheny Power System (APS)
 - Duquesne Light Company (DLC)
 - Metropolitan Edison Company (Met-Ed)
 - PECO
 - Penelec
 - PPL Utilities (PPL)
5. The categories of generation costs included in the analyses are:
 - Energy cost (the cost of energy delivered to the relevant EDC zone) - both day-ahead and real-time prices were relied upon
 - Cost of Alternative Energy Portfolio Standard compliance

- Capacity cost
 - Cost of ancillary services, margin (i.e., profit) and risk.
6. Prices were calculated for four separate 4-week billing cycles:
- January 1 through January 30
 - January 8 through February 6
 - January 15 through February 13
 - January 22 through February 20
7. The APS and Duquesne zones exhibit the lowest total all-in, per-MWh generation costs, varying from approximately \$70 per MWh (based on real-time energy prices for the Duquesne zone over the January 8 through February 6 billing cycle) to approximately \$135 per MWh (based on day-ahead energy prices for the APS zone over the January 15 through February 13 billing cycle).
8. Costs for the remaining four zones are similar to each other and range from a total cost of approximately \$129 per MWh (based on real-time energy prices for the Penelec zone for non-space heat customers over the January 8 through February 6 billing cycle) to approximately \$228 per MWh (based on day-ahead energy prices for the PECO zone for space heating customers over the January 1 through February 30 billing cycle).
9. The results obtained from this analysis suggest that the cost to serve residential consumers covering any of the four billing cycles examined would be not more than \$0.23 per kWh in any of the six EDC zones examined, even under the assumption that all supply were procured on the PJM spot markets.

AFFIDAVIT

Steven L. Estomin, being first duly sworn, deposes and says that this affidavit was prepared by him; that he is familiar with the contents thereof; and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

Steven L. Estomin

Steven L. Estomin

Subscribed and sworn to before me on this 19 day of June 2014

Michael M. Adams

Notary Public

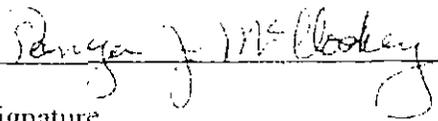
My Commission Expires: 6/30/15

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

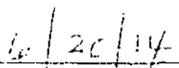
Commonwealth of Pennsylvania, by	:	
Attorney General KATHLEEN G. KANE,	:	
Through the Bureau of Consumer Protection,	:	
	:	
And	:	
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate,	:	
Complainants	:	
	:	Docket No. C-2014-
v.	:	
	:	
RESPOND POWER, LLC,	:	
Respondent	:	

VERIFICATION

I, Tanya J. McCloskey, Acting Consumer Advocate, hereby state that the facts set forth above in this Joint Complaint are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).



Signature

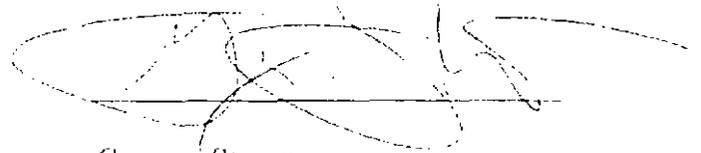


Date

VERIFICATION

I, Gregory Strupp, Consumer Protection Agent for the Office of Attorney General, Bureau of Consumer Protection, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that the Pennsylvania Office of Attorney General's Bureau of Consumer Protection expects to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 3/20/15



Gregory Strupp
Consumer Protection Agent
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

**PUBLIC STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. § 309-4(e)**

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161 and for the following reasons, Acting Consumer Advocate Tanya J. McCloskey has determined to file a Joint Complaint with the Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (OAG) and participate in proceedings before the Commission involving Respond Power, LLC (Respond Power). The Joint Complaint alleges violations of the Public Utility Code, Commission regulations and orders, the Unfair Trade Practices and Consumer Protection Law and the Telemarketer Registration Act.

Respond Power is licensed by the Commission to supply electric generation to residential and commercial customers throughout Pennsylvania. Early in 2014, the OAG and the OCA received thousands of consumer complaints and contacts about supplier variable rate charges on their electric bills. The OCA joined in the filing of this Complaint to address multiple identified violations of the Commission's regulations and Pennsylvania law and to seek protections for consumers. The OCA will represent the interests of consumers before the Commission and ensure that Respond Power follows the requirements of the law and Commission regulations and orders when it engages in marketing and sales of its electric supply in Pennsylvania.

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-
v. :
: :
RESPOND POWER, LLC, :
Respondent :

I hereby certify that I have this day served a true copy of the foregoing Joint Complaint of the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate and the Public Statement of the Office of Consumer Advocate, in the manner and upon the persons listed below:

Dated this 20th day of June 2014.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

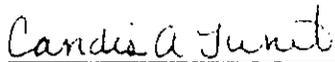
Johnnie Simms, Esq.
Michael Swindler, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Adam Small, Esq.
General Counsel
Major Energy Services
100 Dutch Hill Road – Suite 310
Orangeburg, NY 10962

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

John R. Evans
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EXHIBIT KLB-3SR



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

August 21, 2014

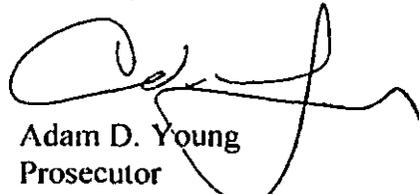
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing please find the original copy of the Formal Complaint in the above referenced case, on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,



Adam D. Young
Prosecutor
PA Attorney ID No. 91822

Counsel for the Bureau of
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility
Commission, Bureau of
Investigation and Enforcement**

Docket No. C-2014-_____

v.

Respond Power LLC

NOTICE

A. You must file an Answer within twenty (20) days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Cover Letter for this Complaint and Notice, 52 Pa. Code §1.56(a). An Answer is a written explanation of circumstances wished to be considered in determining the outcome. The Answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your Answer must be verified and the original shall be mailed to:

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

Or may be sent by overnight delivery to:
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Additionally, please serve a copy on:

Wayne T. Scott, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

B. If you fail to answer this complaint within twenty (20) days, the

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Bureau of Investigation and Enforcement will request that the Commission issue a Secretarial Letter imposing a penalty. The penalty could include a fine, the suspension or revocation of your certificate of public convenience or other remedy.

C. You may elect not to contest this complaint by paying the fine proposed in this Complaint by certified check or money order. Payment must be made to the **Commonwealth of Pennsylvania** and should be forwarded to:

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

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an Answer, which admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional fine set forth above.

F. If you have questions regarding this Complaint or if you would like an alternative format of this Complaint (for persons with disabilities), please contact the Compliance Office at (717) 787-1227.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility
Commission, Bureau of
Investigation and Enforcement**

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Docket No. C-2014-_____

v.

Respond Power LLC

FORMAL COMPLAINT

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NOW COMES the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (I&E), by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, and files this Formal Complaint against Respond Power LLC (Respond Power or Company or Respondent) alleging violations of the Pennsylvania Code and/or Public Utility Code. In support of its Formal Complaint, I&E respectfully represents the following:

I. Commission Jurisdiction and Authority

1. The Pennsylvania Public Utility Commission (Commission), with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate

public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*

2. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S.A. § 308.2(a)(11).

Complainant's attorneys are as follows:

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3. Respondent Respond Power, LLC is a New York limited liability company licensed to supply electric generation supplier services to residential, small commercial (25Kw and under) and large commercial (over 25Kw) 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.

4. Respond Power is a jurisdictional electric generation supplier (EGS), which maintains a principal place of business at 100 Dutch Mill Road, Suite 310, Orangeburg, New York 10962. Respondent was licensed by the Commission by Order dated August 19, 2010 at Docket No. A-2010-2163898. License Application of Respond Power LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electrical Generation Services as a Supplier of Retail Electric Power, Docket No. A-2010-2163898 (Licensing Order).

5. The Commission is responsible for regulating the service of electric generation suppliers, as it related to their activities in the marketing and sale of electricity and electric services. 66 Pa.C.S. § 2809(e); 52 Pa. Code Ch. 54, 56, and 111.

6. Respond Power, as an EGS in Pennsylvania, is a public utility as defined by Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, only for the

limited purposes as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-10.

7. Respond Power, as a provider of electric generation service for compensation, is subject to the power and authority of the Commission and must observe, obey and comply with the Commission's regulations and orders pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c).

8. Respond Power provides EGS services to residential customers, and as such, must comply with the applicable residential service regulations in Chapters 54 and 56 of the Commission's regulations. See 52 Pa. Code Ch. 54 and 56. See also Licensing Order at 3 (August 19, 2010).

9. Accordingly, pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Respond Power in its capacity as an EGS serving consumers in Pennsylvania.

10. Respond Power must also comply with Chapter 111 of the Commission's regulations. 52 Pa. Code § 111.1 *et seq.*

11. Under Commission regulations, a licensed EGS is responsible for any fraudulent, deceptive, or other unlawful marketing acts by its employees, agents, or representatives. See 52 Pa. Code § 54.43(f).

12. Commission regulations require EGSs to monitor telephonic and door-to-door marketing activities to ensure that their agents are providing accurate

and complete information and complying with applicable rules. See 52 Pa. Code § 111.5(e).

13. Commission regulations also require compliance with Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* See 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

14. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

15. Section 3301 of the Code, 66 Pa.C.S.A. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine for each violation and each day's continuance of such violation(s). Specifically with regard to standards for changing a customer's electric generation supplier, the Commission is empowered to assess fines under the aforementioned Section 3301, pursuant to 52 Pa. Code §§ 57.177(e) and 111.3(c)(2).

II. Background

16. I&E initiated an informal investigation of Respond Power on November 8, 2013, consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506 and 52 Pa. Code § 3.113. This investigation centered on allegations of "slamming" (enrolling customers to receive electric generation supply service without proper customer authorization) and related

unauthorized marketing practices as alleged in a telephone call to the Commission's Bureau of Consumer Services (BCS) on October 24, 2013.

a. Whistleblower Complaint

17. On October 24, 2013, the BCS complaint hotline received a call from an individual who identified himself as a senior door-to-door sales agent (on leave) of Respond Power. On October 25, 2013, a BCS representative called and talked to this individual who informed the BCS representative that he had been employed by Respond Power for the last four years.

18. This individual stated that he was a door-to-door sales agent associated with Respond Power's Philadelphia Office. Sales and marketing tactics described by this caller as allegedly being used by the door-to-door agents associated with Respond Power's Philadelphia operations included the use of false identities and associated identification materials, circumvention of the Commission's sales verification procedures by pretending to be the customer on verification calls, and the forging of customer signatures on sales contracts and/or other enrollment materials.

19. BCS requested that I&E review this matter. By letter dated November 8, 2013, I&E advised Respond Power that an informal investigation had been initiated and served multiple rounds of data requests related to Respond Power's marketing practices as an EGS in Pennsylvania.

20. In its responses to I&E's data requests, Respond Power confirmed that it does not have any employees or offices located in Pennsylvania as alleged by the caller. However, two of the Company's third party contractors have offices in Philadelphia.

21. Upon further investigation, it was determined that the caller's reference to "Respond's Philadelphia office" was, in fact, the office of a third party contractor/vendor which had a business arrangement with Respond Power to conduct door-to-door sales in the Philadelphia area on Respond Power's behalf. It was further determined that the caller had been employed by one of Respond Power's third party vendors in Philadelphia, and had not been a direct employee of Respond Power.

22. Concurrent with I&E's institution of an informal investigation, Respond Power initiated its own investigation after receiving a telephone call from an individual claiming to be a past employee of a third party vendor in Philadelphia. This individual alleged that he knew of instances of falsification of badges for agents that represent the Company. He also noted that "slamming" had occurred from some of the agents.

23. Respond Power noted that its third party contractors are required to have a "zero tolerance" policy with all of their employees in reference to any "slamming" violations.

24. According to Respond Power, it requires all of its third party contractors to follow all federal, state and local rules and regulations while acting

on behalf of the Company, but acknowledged that there may be rogue agents that do not adhere to these standards.

25. Respond Power stated that it takes full responsibility for any and all actions performed by its third party contractors.

26. Based on its own internal investigation, Respond Power concluded that its third party vendor had followed the proper protocol regarding its door-to-door sales agents.

27. Respond Power also determined that the individual who called Respond Power had been terminated from his position as a door-to-door sales agent with a third party vendor due to a customer slamming complaint that implicated the caller as the sales agent involved in the incident.

b. BCS Customer Complaints

28. From February 1, 2014 to July 31, 2014, BCS has received 1,050 informal complaints against Respond Power. Many of these informal complaints can be summarized as alleging one or more of the following illegal acts by Respond Power's employees, agents or representatives:

- A. Slamming (unauthorized transfer of a customer account)
- B. Misleading and Deceptive claims of Affiliation with Electric Distribution Companies
- C. Misleading and Deceptive Promises of Savings
- D. Failure to Disclose Material Pricing Terms in Respond Power's Disclosure Agreement/Prices not Conforming to Disclosure Agreement

- E. *Lack of Good Faith in Handling Customer Complaints/Cancellations*
- F. *Inaccurate/Incomplete/Fraudulent Sales Agreements*
- G. *Incorrect Billing*

BCS and I&E took a sample of eighty-six of the most egregious violations for the purposes of this Formal Complaint.

i. Slamming:

29. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power, its employees, agents, or representatives engaged in “slamming” practices against six (6) customers by switching customers without their consent. Such acts of “slamming” include forging customer signatures on sales agreements, obtaining signatures from persons not authorized on the account, and switching customers when the Third-Party Verification (TPV) and/or Sales Agreement indicate(s) confusion by the customer and/or explicit instructions not to switch.

ii. Misleading and Deceptive Claims of Affiliation with Electric Distribution Companies or “Government Programs”:

30. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power, its employees, agents, or representatives engaged in unfair, fraudulent or deceptive marketing acts by representing to three (3)

customers during door-to-door sales that the salesperson was from the customers' Electric Distribution Company (EDC) or a government program and/or failing to properly identify themselves as being with Respond Power. Respondent also failed to properly train and monitor its employees, agents or representatives on responsible and ethical sales practices.

iii. Misleading and Deceptive Promises of Savings:

31. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power, its employees, agents, or representatives engaged in unfair, fraudulent or deceptive marketing acts by representing to forty-seven (47) customers that Respondent's rates would be competitive or always be lower than or equal to the EDC's rates (Price to Compare (PTC)). Other tactics employed for the purposes of inducing a customer to switch to Respondent include guaranteeing savings over the PTC or guaranteeing a savings of up to 10%. All of these customers subsequently received bills for Respondent's generation supply anywhere from two to four times (or more) that of the PTC. Nor did the customers save the guaranteed 10%.

iv. Failure to Disclose Material Pricing Terms in Respond Power's Disclosure Agreement/Prices not Conforming to Disclosure Agreement

32. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was

determined that Respond Power, its employees, agents, or representatives engaged in unfair, fraudulent or deceptive marketing acts to eighty-six (86) customers by failing to disclose material terms and conditions of service. These acts include, failing to specify whether the customer is signing up for a fixed or variable rate, including vague conditions of variability in its disclosure statement, and having no limit on price variability in its disclosure statement.

v. Lack of Good Faith in Handling Customer Complaints/Cancellations:

33. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power did not utilize good faith, honesty and fair dealing with eleven (11) residential customers by failing to adequately staff its call centers, provide reasonable access to company representatives for the purposes of submitting complaints, failing to properly investigate customer disputes, failing to timely cancel accounts, and failing to notify customers of the results of the company's investigation into a dispute. These customers complained of being on hold for long periods of times, many exceeding an hour, being suddenly disconnected, and/or receiving messages that the call center was not open.

vi. Inaccurate/Incomplete/Fraudulent Sales Agreements:

34. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power, its employees, agents, or representatives engaged

in unfair, fraudulent or deceptive marketing acts to nine (9) customers by not disclosing to the customer whether the rate was fixed or variable. In some instances, neither “fixed” nor “variable” are checked on the sales agreement. Other instances include “altered” sales agreements where boxes are checked after the customer signs the sales agreement, and/or the sales agreements are filled out with ink for the customer information, and marker for the check boxes, sometimes both ink and marker are used.

vii. Incorrect Billing:

35. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power, its employees, agents, or representatives failed to comply with the Electricity Generation Customer Choice and Competition Act, 52 Pa. Code §§ 54.1 *et seq*, for fourteen (14) customer accounts, in that the Company or agent or agents of the Company billed a generation rate on the customer’s initial invoice that did not reflect the price agreed upon in the written enrollment materials.

III. Violations

Counts 1 - 6

36. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, engaged in unfair, fraudulent or deceptive marketing acts by “slamming” SIX (6) customer accounts in that the Respondent, its employees, agents

or representatives switched the customers' electric generation supplier without the customer's consent.

This is a violation of 66 Pa.C.S. § 2807(d)(1).

Counts 7 - 15

37. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, engaged in unfair, fraudulent, deceptive or otherwise unlawful marketing acts in that the Company's employees, agents or representatives through its door-to-door sales people misrepresented to THREE (3) customers an affiliation with a local EDC or a government program.

This is a violation of 52 Pa. Code § 54.43(f); 52 Pa. Code § 111.8 and 111.9 (misrepresentation); Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*, as incorporated through 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

Counts 16 - 62

38. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, engaged in unfair, fraudulent, deceptive or otherwise unlawful marketing acts in that the Company's employees, agents or representatives misrepresented to FORTY-SEVEN (47) customers that Respondent's rates would be competitive or always be lower than or equal to the PTC. Respondent also employed other unethical and/or fraudulent tactics for the purposes of inducing a customer to switch to respondent such as guaranteeing savings over the PTC, or guaranteeing a savings of up to 10%.

This is a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-2(4)(ix), (xi), and (xxi), as incorporated through 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

Counts 63 - 492

39. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, engaged in *unfair, fraudulent, deceptive or otherwise unlawful marketing acts* in that the Company, its employees, agents or representatives, failed to disclose material terms and conditions of service including the material terms and conditions of price variability, the limits on variability, and billing amounts inconsistent with advertised prices, marketed prices, or the agreed upon prices in the disclosure statement for EIGHTY-SIX (86) customers.

This is a violation of 52 Pa. Code § 54.4(a); 52 Pa. Code § 54.5(c)(2); 52 Pa. Code § 54.7(a); 52 Pa. Code § 111.12(d)(4); Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-2(4)(xxi), as incorporated through 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

Counts 492 - 524

40. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, did not utilize good faith, honesty and fair dealing with ELEVEN (11) residential customers in that the Company, its employees, agents or representatives, failed to adequately staff its call centers, provide reasonable access to company representatives for the purposes of submitting complaints, failed to properly investigate customer disputes, failed to timely cancel accounts, and failed to notify customers of the results of the Company's investigation into a dispute.

This is a violation of 52 Pa. Code §§ 56.141(a), 56.151 and 56.152 (incorporated through 66 Pa. C.S. § 2809(e)).

Counts 524 - 568

41. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, engaged in unfair, fraudulent, deceptive or otherwise unlawful marketing acts in that Respondent, its employees, agents or representatives, marketed the electric generation supplier services of Respondent to NINE (9) Pennsylvania consumers, including circumventing the Commission's sales verification procedures, by falsely pretending to be the customer on verification calls, forging customer signatures on sales contracts and/or other enrollment materials, not disclosing to the customer whether the rate was fixed or variable and/or checking the "variable" box on the sales agreement after the customer has signed.

This is a violation of 52 Pa. Code § 54.4(a); 52 Pa. Code § 54.5(c)(2); 52 Pa. Code § 54.7(a), 52 Pa. Code § 111.12(d)(4); Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-2(4)(xxi), as incorporated through 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

Counts 568 - 581

42. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, failed to comply with the Electricity Generation Customer Choice and Competition Act, 52 Pa. Code §§ 54.1 *et seq*, in that the Company or agent(s) or representative(s) of the Company billed a generation rate on FOURTEEN (14) customer invoices that did not reflect the price agreed upon in the written enrollment materials.

This is a violation of 52 Pa. Code § 54.4(a).

Counts 581 - 639

43. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

For the alleged violations in Paragraphs 37, 38, and 41 above, Respondent failed to properly train and monitor its employees, agents or representatives on responsible and ethical sales practices, in that the Company's employees, agents or representatives, committed the violations enumerated in Paragraphs 37, 38, and 41 above which demonstrated a lack of training, and/or monitoring.

This is a violation of 52 Pa. Code § 111.5(a) and (e).

IV. Requested Relief

44. I&E proposes that Respond Power pay a civil penalty of \$1,000 for each of the six hundred thirty nine (639) counts set forth in this Complaint for a total civil penalty of Six Hundred and Thirty-Nine Thousand Dollars (\$639,000.00).

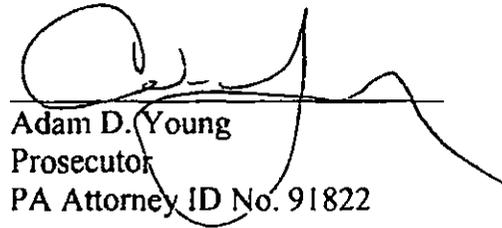
45. I&E proposes that Respond Power provide a refund to each of the affected customer accounts to which a refund has not already been provided, consisting of the difference between the amount each customer was billed and the customer's respective price to compare charged by their local EDC.

46. I&E proposes that Respondent's authority to do business as an EGS in Pennsylvania be rescinded.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement hereby requests that the Commission: (1) find Respondent to be in violation of the Public Utility Code, its regulations, and the Unfair trade Practices and Consumer Protection Law for each of the 639 Counts set forth herein; (2) impose a cumulative civil penalty upon Respondent in the amount of Six Hundred and Thirty-Nine Thousand Dollars (\$639,000.00); (3) rescind the authority of Respondent to do business as an EGS in Pennsylvania; (4) direct Respondent to provide a refund to each customer consisting of the

difference between the amount the customer was billed and the price to compare for the Customer's respective EDC; and (5) order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,



Adam D. Young
Prosecutor
PA Attorney ID No. 91822

Michael L. Swindler
Prosecutor
PA Attorney ID No. 43319

Wayne T. Scott
First Deputy Chief Prosecutor
PA Attorney ID No. 29133

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
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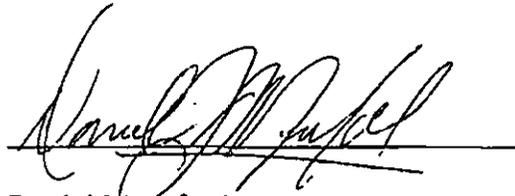
Dated: August 21, 2014

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VERIFICATION

I, Daniel Mumford, Manager – Informal Compliance and Competition Unit - Bureau of Consumer Services, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that Complainant will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 8/21/14



Daniel Mumford
Manager – Informal Compliance and
Competition Unit
Bureau of Consumer Services

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail and Email:

Karen O. Moury, Esq.
Buchanan Ingersoll & Rooney, PC
409 N. Second Street
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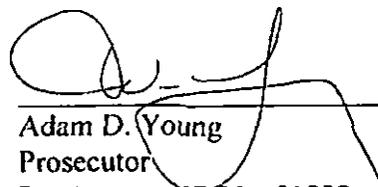
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Date: August 21, 2014

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