



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

August 21, 2014

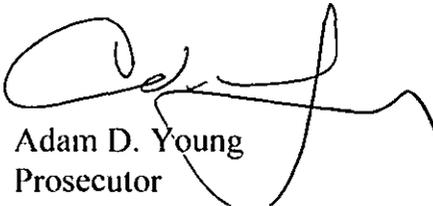
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

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

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).

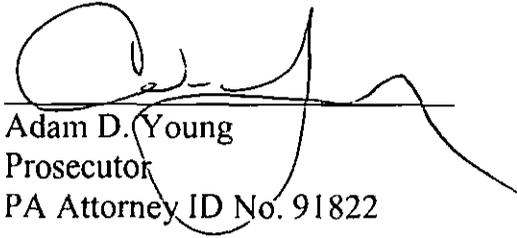
45. I&E proposes that Respond Power provide a refund to each of the affected customer accounts to which a refund has not already been provided, consisting of the difference between the amount each customer was billed and the customer's respective price to compare charged by their local EDC.

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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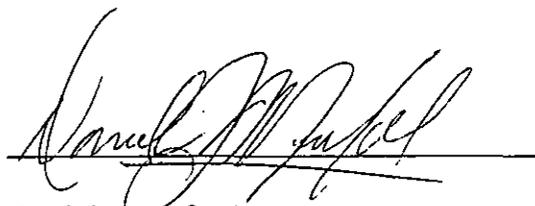
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VERIFICATION

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:

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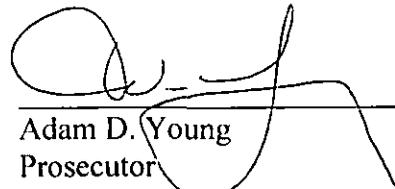
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PA Attorney ID No. 91822

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