

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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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.
Blue Pilot Energy, 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,

Handwritten signature of Candis A. Tunilo in cursive.

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

*185199

**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.	:	
	:	
BLUE PILOT ENERGY, 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 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 17101-1923

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 attorneys are as follows:

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

6. Blue Pilot Energy, LLC (Respondent) is a Nevada limited liability company licensed as an aggregator and broker/marketer of retail electricity to residential, small commercial (25 kw and under demand), large commercial (over 25 kw demand), and industrial customers throughout the Commonwealth. The Commission approved Respondent's license application by Order entered June 10, 2011 at Docket No. A-2011-2223888.

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 Blue Pilot Energy, LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as an Aggregator and Broker/Marketer of Retail Electric Power, Docket No. A-2011-2223888, Order at 3 (June 10, 2011) (Licensing Order). Respondent must also comply with Chapter 111 of the Commission's regulations. See 52 Pa. Code § 111.1.

9. 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 3-4.

10. Respondent offers variable rate electric generation service to residential customers throughout Pennsylvania.

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

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

13. Nearly one-third of the consumers charged high variable prices by Respondent's actions are citizens over the age of 60.

14. 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.

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

16. Of the referenced 2,434 contacts, 83 or 3.4% were from customers of Respondent. Of the referenced 83 total contacts, the OCA collected written information from approximately 10 customers.

17. 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, 232 or approximately 3.1% were against Respondent.

18. 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 Complaints reviewed by the OCA to date, approximately 11 or 5.4% were filed against Respondent.

COUNT I – FAILING TO PROVIDE ACCURATE PRICING INFORMATION

19. The foregoing paragraphs are incorporated herein.

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

Price per Kilowatt Hour. You have a variable rate plan. Your price may vary on a month-to-month basis. This price includes Transmission Charges, but excludes applicable state and local Sales Taxes and the Distribution Charges from your local EDC. At any time, but not more frequently than monthly, Blue Pilot may increase or decrease your rate based on several factors, including changes in wholesale energy market prices in the PJM Markets. Your variable rate will be based upon PJM wholesale market conditions. Sudden, atypical fluctuations in climate conditions, including but not limited to, extraordinary changes in weather patterns may be detrimental to Blue Pilot's electricity customer relationships. Such fluctuations or conditions may result in Blue Pilot incurring unusual costs when supplying electricity service, which may be passed through as a temporary assessment on your bill. Please log on to www.bluepilotenergy.com or call Customer Service at 877-513-0246 for additional information about our current pricing.

The Disclosure Statement is attached hereto as Appendix A.

21. 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). 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.

22. 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). 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.

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

24. 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).

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

26. 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.

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

COUNT II – PRICES NONCONFORMING TO DISCLOSURE STATEMENT

28. The foregoing paragraphs are incorporated herein.

29. Upon information and belief, Respondent charged its variable rate customers prices that were at least as high as \$0.50 per kWh for electricity.

30. 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.

31. 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 B.

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

COUNT III – MISLEADING AND DECEPTIVE PROMISES OF SAVINGS

33. The foregoing paragraphs are incorporated herein.

34. Of the referenced 232 consumer complaints against Respondent received by the Attorney General, 5 of the complainants indicated that they believed Respondent would always save them money over the Price to Compare (PTC), based upon Respondent salespeople's promises. These complainants then received bills for Respondent's generation service that were at least two or three times more than the PTC and in some cases, over six times more than the PTC.

35. Of the referenced 232 consumer complaints against Respondent received by the Attorney General, 17 or approximately 7.3% of the complainants indicated that they believed Respondent would always be "lower than or equal to" the PTC and/or that Respondent price would be competitive with the PTC. The complainants' understanding was based upon Respondent salespeople's promises. These complainants then received bills for Respondent's generation service that were at least two or three times more than the PTC and in some cases, over six times more than the PTC.

36. Of the referenced 10 customers that provided written correspondence and information to the OCA, 3 or 30% stated that Respondent's salespeople promised guaranteed savings over the PTC and/or promised a price "competitive" with the PTC as inducement for complainants to switch to Respondent. These complainants then received bills for Respondent's generation service that were at least two or three times more than the PTC and in some cases, over six times more than the PTC.

37. Of the referenced 11 Formal Complaints filed at the Commission against Respondent and reviewed by the OCA to date, at least 3 complainants averred that Respondent's salespeople promised guaranteed savings over the PTC and/or promised a price "competitive" with the PTC as inducement for complainants to switch to Respondent. These complainants then received bills for Respondent's generation service that were at least two or three times more than the PTC and in some cases, over six times more than the PTC.

38. 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).

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

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

- 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;

- 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)(v), (xi) and (xxi).

41. 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.

42. 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- LACK OF GOOD FAITH HANDLING OF COMPLAINTS

43. The foregoing paragraphs are incorporated herein.

44. Of the referenced 11 Formal Complaints filed at the Commission against Respondent reviewed by the OCA to date, at least 3 or approximately 27% 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 Company on the telephone and/or their emails to the Company went unanswered.

45. Of the referenced 10 customers that provided written correspondence and information to the OCA, 3 or 30% stated that when they contacted Respondent about the variable rate charges on their bills, the Company refused to address the customers' complaints and disputes about their rates.

46. 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.

47. 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.

48. 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 V – FAILURE TO COMPLY WITH THE TELEMARKETER REGISTRATION ACT

49. The foregoing paragraphs are incorporated herein.

50. Of the referenced 232 consumer complaints against Respondent received by the Attorney General, at least 36 or approximately 16% of the complainants indicated that their service with Respondent was initiated by a telemarketing call from Respondent.

51. 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).

52. 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).

53. 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).

54. 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.

55. 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).

56. 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 111.10(a).

57. 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).

58. 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

59. The foregoing paragraphs are incorporated herein.

60. 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; and
- Violation of the consumer protection law.

61. 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.

62. As outlined above, Respondent violated and continues to violate the Public Utility Code, Commission's regulations and orders, the Consumer Protection Law, the Telemarketer Registration Act and the 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 Pennsylvania Public Utility Commission take the following actions:

A. Find that Respondent violated the Telemarketer 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 the Respondent's EGS license;

B. Find that Respondent violated the Telemarketer 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;

C. Order Respondent to provide appropriate restitution including without limitation refunding all charges to its customers 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 consumers as a result of the Respondent's charges and consumers leaving Respondent to obtain generation service elsewhere;

D. Order Respondent to prohibit its salespeople from making pricing promises to consumers that are deceptive and inaccurate;

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

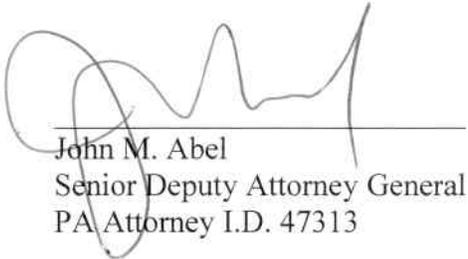
F. Order Respondent to discontinue all other practices that violate the Consumer Protection Law and/or Telemarketer Registration Act and/or the Public Utility Code and/or Commission's regulations or orders;

G. Order that the Respondent, its agents and employees, be permanently enjoined from engaging in any practice that violates the Consumer Protection Law and the Telemarketer Registration Act;

H. Consolidate all similar pending formal complaints against Respondent with this Joint Complaint; and

I. 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

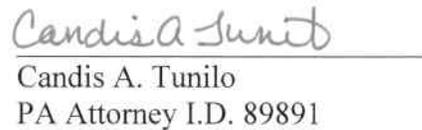
Margarita Tulman
Deputy Attorney General
PA Attorney I.D. 313514

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Kathleen G. Kane, Attorney General
Bureau of Consumer Protection

DATE: 6-20-14



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Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate

APPENDIX A

Blue Pilot Energy, LLC
Disclosure Statement and Agreement for Electric Service

This Disclosure Statement and Agreement (the "Agreement") sets forth the terms and conditions that apply to your purchase of electric services from Blue Pilot Energy, LLC ("Blue Pilot" or the "Company"). In this Agreement, the terms "you," "our" and "Customer" shall mean: (a) for residential service, the account holder and/or the person whose name appears on the invoice for service under this Agreement; (b) for small business/commercial service, the account holder and/or the person and/or entity whose name appears on the bill for service under this Agreement, or an authorized agent thereof.

Right of Rescission. You may rescind your election of service from Blue Pilot, this Agreement, and any related agreements without penalty at any time before midnight Eastern Time of the 3rd business day after receiving this Agreement. Please provide Blue Pilot with the following information when requesting rescission: Customer name, address and phone number(s); and account/ meter number(s). To rescind, you must contact Blue Pilot by midnight Eastern Time of the 3rd business day: by Phone at 1- 877-513-0246, or by email at are@bluepilotenergy.com.

Background: Blue Pilot is licensed by the Pennsylvania Public Utility Commission ("PA PUC") to offer and supply electric generation and related services in Pennsylvania. Blue Pilot's PA PUC license number is A-2011-2223888. Blue Pilot sets the generation rates and charges that you pay. The PA PUC regulates distribution prices and services. The Federal Energy Regulatory Commission regulates transmission prices and services. You will receive a single bill from your Electric Distribution Company (hereinafter, "EDC") that will contain the EDC's charges and Blue Pilot's charges.

Definitions:

- Generation Charge – Charge for production of electricity.
- Transmission Charge(s) – Charge(s) for moving high voltage electricity from a generation facility to the distribution lines of an Electric Distribution Company.
- Distribution Charge(s) – Charge(s) for delivering electricity over a distribution system to your home or business from the transmission system.

1. CONTACT INFORMATION

Blue Pilot Energy, LLC
250 Pilot Rd., Ste. 300
Las Vegas, NV 89119
1-800-451-6956 Corporate Office
1-877-513-0246 Customer Service
www.BluePilotEnergy.com

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Choice Hotline Number: 1-800-692-7380

West Penn Power:
West Penn Power d/b/a Allegheny
Power
800 Cabin Hill Drive
Greensburg, PA 15601-1689
1-800-255-3443

Duquesne Light:
411 Seventh Street, MD 16-4
Pittsburgh, PA 15219
(412) 393-7100

PPL:
Two North Ninth Street
Allentown, PA 18108-1179
1-800-342-5775

Universal Service Program
LIURP:1-800-207-1250

Universal Service Program
Customer Assistance Program:
1-888-393-7600

Universal Service Program
Low Income Home Energy
Assistance Program
1-800-342-5775

PECO:
2301 Market Street
Philadelphia, PA 19101-8699
1-800-494-4000

Met-Ed, Penelec, and Penn Power:
First Energy
2800 Pottsville Pike
Reading PA, 19612

Universal Service Program
Customer Assistance Program:
1-800-744-7040

Universal Service Program
Low Income Home Energy
Assistance Program:
1-800-720-3600

Any formal notices to Blue Pilot shall be sent to the address stated above (the "Notice Address"). Customer has the right to additionally receive this Agreement or any notices related to this Agreement or the services provided hereunder via electronic communications at Customer's request.

2. **Price per Kilowatt Hour.** You have a variable rate plan. Your price may vary on a month-to-month basis. This price includes Transmission Charges, but excludes applicable state and local Sales Taxes and the Distribution Charges from your local EDC. At any time, but not more frequently than monthly, Blue Pilot may increase or decrease your rate based on several factors, including changes in wholesale energy market prices in the PJM Markets. Your variable rate will be based upon PJM wholesale

market conditions. Sudden, atypical fluctuations in climate conditions, including but not limited to, extraordinary changes in weather patterns may be detrimental to Blue Pilot's electricity customer relationships. Such fluctuations or conditions may result in Blue Pilot incurring unusual costs when supplying electricity service, which may be passed through as a temporary assessment on your bill. Please log on to www.bluepilotenergy.com or call Customer Service at 877-513-0246 for additional information about our current pricing..

Cancellation Provisions. Customer may cancel service at any time and for any reason without penalty. The cancellation will become effective on a date determined by the EDC. If the EDC cancels your electric service, then this agreement shall be cancelled on the date that your electric service is terminated. Cancellation will not relieve the Customer of any payment obligations for service. In the event of a Customer bankruptcy, late payment or nonpayment, fraud or misrepresentation, Blue Pilot has the right to cancel Customer's account, this Agreement and/or any related agreements. If Customer moves from the meter address Blue Pilot is servicing, Blue Pilot shall cancel service to that meter. If Blue Pilot cancels Customer's account, this Agreement or any related agreements for any reason other than for Customer non-payment, Blue Pilot will follow applicable rules in providing notice to you.

Billing. Customer will receive one monthly electric bill processed and provided by Customer's local EDC. Customer consents to the EDC disclosing basic account information to Blue Pilot. Payment is due to Customer's local EDC in accordance with the EDC's standard billing practices. Billing cycles may change from time to time without notice. Customers may contact their EDC for information about Universal Service Programs that may be available to them. Allegheny/West Penn at 800-207-1250, Duquesne Light at 888-393-7600, Met-Ed/Penelec 800.962.4848, or PPL at 800-342-5775. In the event there is a change (including a change in interpretation) in law, regulation, rule, ordinance, order, directive, filed tariff, decision, writ, judgment or decree by a governmental authority (including a regulatory agency or PJM); including, without limitation, changes affecting fees, costs, or charges imposed by PJM or a regulatory agency, changes in market rules, changes in load profiles or changes in nodal and zonal definitions; or upon the occurrence of any event that materially changes the obligations of Blue Pilot or the cost or expense of Blue Pilot performing its obligations under this agreement, these costs or expenses are your responsibility. These costs or expenses, including reasonable margin related thereto, will be assessed on your monthly bill or separate invoice.

Purchase of Electric Service from Blue Pilot. Customer agrees to purchase electric generation and related services from Blue Pilot for the service address(es) identified by Customer (the "Service Address"). Service from Blue Pilot will begin on the next regularly scheduled meter read date after your EDC has switched your account to Blue Pilot and will continue on a month to month basis until either you or Blue Pilot cancels service as provided in Section 3 above. The Blue Pilot per kWh rate does not include EGS Reconciliation Assessment, which is applied by the Company to recover costs associated with acquisition of required renewable energy credits and related administrative charges. This charge currently is set at 4.89% of total Blue Pilot Energy charges. Customer shall not resell electricity to any third party. If your electric service is terminated by your EDC, then your account, this Agreement and any related agreements with Blue Pilot shall be cancelled on the date that your electric service is terminated. You will owe Blue Pilot for amounts unpaid for its charges of electric generation service up to the date of termination. If you move from one address to another, your service may be cancelled.

Security Deposit. Blue Pilot does not require a security deposit from its Customers. If the Customer has paid a deposit to his/her current supplier, it is the Customer's responsibility to request a refund from his/her/its current supplier.

Discrimination. Blue Pilot does not discriminate, deny service, or require prepayment or a deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, sexual orientation, disability, familial status, location of customer in an economically distressed geographic area or qualification for low income or energy efficiency services.

3. Renewal Provision/ Agreement Expiration/ Change in Terms: If Customer has a fixed term agreement with Blue Pilot and it is approaching the expiration date or if we propose to change our terms of service, we will send you two (2) advance notices either in your bill or in separate mailings between 45 and 90 days before either the expiration date or the effective date of the changes. Your options will be explained in these two (2) advance notices. For Customers under variable rate pricing plans, a change to the variable price per kWh does not constitute a change in terms of service as outlined in this section.

9. EMERGENCY: In the event of an emergency, such as a power failure or a downed power line, Customers should contact their EDC. Allegheny/West Penn at 800-255-3443, Duquesne Light at 888-393-7000, Met-Ed at 888-544-4877, Penelec at 888-544-4877, PECO at 800-841-4141, or PPL at 800-342-5775.

10. Dispute Resolution and Mandatory Agreement to Arbitrate On An Individual Basis. Blue Pilot will work with you to answer/resolve any questions or concerns that you may have regarding the terms of this Agreement, the service you receive from Blue Pilot, or any other aspect of your relationship with Blue Pilot. If you are not satisfied after discussing any issue with Blue Pilot, you are welcome to contact the PA PUC at 1-800-692-7380.

You and Blue Pilot both agree to resolve Disputes (as defined below) only by arbitration or in small claims court (for qualifying claims), subject to specific exceptions listed herein. There is no judge or jury in arbitration, the procedures may be different, and is subject to very limited review by court, but an arbitrator can award you the same damages and relief, and must honor the same terms in this Agreement, as a court would. If the law allows for an award of attorneys' fees, an arbitrator can award them too. In addition, you and Blue Pilot also both agree that:

- (a) "Disputes" are any claims or controversies against each other related in any way to, or arising from Blue Pilot's services, this Agreement, or any related agreements, including but not limited to, billing, services and practices, policies, contract practices (including enforceability), service claims, privacy, or advertising, even if it arises after your services with Blue Pilot have terminated. Disputes include any claims that: (a) you bring against Blue Pilot or any of its employees, agents, affiliates, or other representatives; (b) you bring against a third party that are based on, relate to, or arise from Blue Pilot's services, this Agreement or any related agreements; or (c) that Blue Pilot brings against you. It also includes, but is not limited to, claims related in any way to, or arising from any aspect of the relationship between Customer and Blue Pilot, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory.
- (b) The Federal Arbitration Act ("FAA") applies to this agreement to arbitrate, and this agreement to arbitrate is intended to be broadly interpreted. The arbitrator's decision and award is final and binding, with some exceptions under the FAA, and judgment on the award may be entered in any court with jurisdiction.
- (c) A party who intends to seek arbitration must first send to the other, by certified mail, a written notice of dispute ("Dispute Notice"). The Dispute Notice to Blue Pilot should be addressed to the Notice Address listed in Paragraph 1 above. The Dispute Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If Blue Pilot and you do not reach an agreement to resolve the claim within 30 days after the Dispute Notice is received, you or Blue Pilot may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Blue Pilot or you shall not be disclosed to the arbitrator.
- (d) Unless we each agree otherwise, the arbitration will be conducted by a single neutral arbitrator and will take place in the county (or parish) of the Service Address.
- (e) The arbitration will be conducted by: (a) a neutral third party arbitrator mutually agreed upon by Customer and Blue Pilot; or (b) the American Arbitration Association (the "AAA"). The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the AAA, as modified by this Agreement. Where the terms of this agreement to arbitrate conflict with the AAA Rules, the terms of this agreement to arbitrate shall override and govern. The AAA Rules are available online at adr.org, by calling the AAA at 1-800-778-7879, or by writing to the Notice Address for Blue Pilot. The arbitrator is bound by the terms of this agreement to arbitrate. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, Blue Pilot will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with this agreement to arbitrate. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. However, nothing in this paragraph will require or allow you or Blue Pilot to arbitrate on a class-wide, representative or consolidated basis.

You and Blue Pilot each agree that arbitration will only be pursued on an individual basis, and will not be pursued on a classwide, representative or consolidated basis. This Agreement does not allow class, representative or collective arbitrations even if the AAA procedures or rules would. If for any reason any court or arbitrator holds that this restriction is unconscionable or unenforceable, then this agreement to arbitrate **doesn't apply and the dispute must be brought in court.**

- (f) You and Blue Pilot agree that notwithstanding this agreement to arbitrate, either party may bring qualifying claims in a small claims court located in Pennsylvania. In addition, this arbitration provision does not prevent you from bringing your dispute to the attention of federal, state, or local government agencies (including the PA PUC), and if the law allows, they can seek relief against Blue Pilot on your behalf.
- (g) If for any reason a claim proceeds in court rather than through arbitration, you and Blue Pilot agree that there will not be a jury trial. You and Blue Pilot unconditionally waive any right to trial by jury in any action, proceeding or counterclaim arising out of or relating in any way to this Agreement or the services provided by Blue Pilot. In the event of litigation, this paragraph may be filed to show a written consent to a trial by the court.

1. **Force Majeure.** Except for your obligation to make payments when due, neither party shall be liable to the other for any delay or failure to perform caused by an occurrence of *Force Majeure*. *Force Majeure* means occurrences beyond a party's reasonable control, including, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of terrorism, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, civil disturbances, explosions, breakage, shortage or unavailability of transmission facilities, and actions of any governmental authority or your EDC that result in conditions, limitations, rules, or regulations that materially impair either party's ability to perform hereunder. The affected party shall give to the other, reasonably prompt and detailed notice of the occurrence of any Force

Majeure relied upon. If either party is unable, wholly or in part, by Force Majeure to perform or comply with any obligations or conditions of this Agreement, such party shall give immediate written notice, to the maximum extent practicable, to the other party. Such obligations or conditions, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused, and such party shall be relieved of liability and shall suffer no prejudice for failure to perform the same during the period. The party claiming suspension of obligations must in good faith attempt to mitigate and/or terminate the Force Majeure.

12. **Limitation Of Liability.** Blue Pilot will endeavor to provide service in a commercially reasonable manner, however, the Company does not guaranty a continuous supply of electrical energy. Blue Pilot does not generate or transport electricity and the Company does not provide services in connection with Customers' meters. Customer agrees that Blue Pilot is not responsible for actions of (or inaction by) regional transmission organization(s), independent system operator(s), or other third parties involved in the production and delivery of Customer's electrical supply. In addition, Blue Pilot's liability in connection with this Agreement or the services that it provides to Customer is limited to direct actual damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR REVENUE), INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES FOR CLAIMS ARISING UNDER THIS AGREEMENT.
13. **Representations and Warranties.** Blue Pilot makes no other representations or warranties, express or implied, except as expressly stated in this Agreement and expressly disclaims all other warranties, express or implied, including warranties of merchantability and fitness for a particular purpose. Electricity sold by Blue Pilot will be obtained from a number of generating sources, at the discretion of the Company. Blue Pilot does not commit to deliver electricity to Customer from any particular source, unless expressly agreed in writing between Customer and the Company.
14. **Assignment.** Customer may not assign any agreements or accounts with Blue Pilot, in whole or in part, or any of Customer's rights or obligations hereunder, without the prior written consent of Blue Pilot. Blue Pilot may, without Customer's consent: (i) transfer, sell, pledge, encumber or assign any agreement or the accounts, revenues or proceeds thereof in connection with any financing or other financial arrangement; (ii) transfer or assign agreements or accounts to an affiliate of Blue Pilot; (iii) transfer or assign agreements or accounts to any person or entity succeeding to all or substantially all of the assets of Blue Pilot; and/or (iv) transfer or assign agreements or accounts to a certified retail electric provider. In the case of (ii), (iii) or (iv), any such assignee shall agree in writing to be bound by the terms and conditions hereof. Blue Pilot shall provide customer with thirty (30) day's notice prior to Assignment. Customer agrees that, upon such assignment, Blue Pilot shall have no further obligations to Customer.
15. **Title, Risk of Loss and Indemnity.** Customer acknowledges that Blue Pilot does not have care, control or custody of Customer's property or premises, or of any electrical facilities, including, but not limited to, lines, wires, or the meter, located on or near Customer's property or premises. Customer further acknowledges that Customer is in exclusive control of (and responsible for any damages or injury caused by) electricity at and/or from the lines, wires, or the meter, located on or near Customer's property or premises. Title to electricity and risk of loss related to electricity shall transfer from Blue Pilot to Customer at the respective meter or the Service Address. **CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD BLUE PILOT HARMLESS FROM ANY CLAIMS, INCLUDING CLAIMS FOR PERSONAL INJURY, DEATH, PROPERTY DAMAGE AND ATTORNEYS' FEES, ARISING FROM ANY ACT OR INCIDENT OCCURRING WHEN TITLE TO ELECTRIC SERVICE IS DEEMED TO BE IN THE EXCLUSIVE CONTROL OF THE CUSTOMER, DESPITE THE COMPANY'S NEGLIGENCE OR STRICT LIABILITY.**
16. **Waiver.** No waiver of any provision contained in this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure of the Company to exercise any right hereunder shall not constitute a waiver hereunder and shall not impair the exercise of such rights at any later time.
17. **Governing Law.** With the exception of Paragraph 8 hereof, which is governed by the FAA, the terms of service under this Agreement are made under, and shall be governed by and construed in accordance with the laws of the State of Pennsylvania, exclusive of any conflict of laws provisions thereof that would apply the laws of another jurisdiction. Except as otherwise expressly provided herein, the Pennsylvania Uniform Commercial Code ("UCC") shall apply to the terms of service and electricity shall be considered a "good" (and not a "service") for purposes of the UCC.
18. **Complete Agreement.** This Agreement contains the complete understanding between Blue Pilot and the Customer and supersedes all other written or oral communications and representations.
19. **Customer Information Release Authorization:** You agree that your EDC may release to Blue Pilot certain information that it needs to provide service to you, including your address, telephone number, account numbers, historical usage information and peak electricity demand. Blue Pilot will not give or sell your personal information to any unaffiliated party without your consent unless we are required to do so by law or except as necessary to enforce this Agreement.

APPENDIX B

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 Estomin
Steven L. Estomin

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

Rebecca M Adams
Notary Public

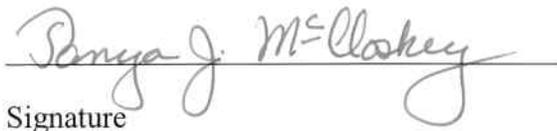
My Commission Expires: 2/2015

**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.	:	
	:	
BLUE PILOT ENERGY, 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

6/20/14
Date

VERIFICATION

I, Heather M. Weaver, 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: 6-20-14



Heather M. Weaver
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 Blue Pilot Energy, LLC (Blue Pilot). 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.

Blue Pilot 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 Blue Pilot 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.	:	
	:	
BLUE PILOT ENERGY, 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

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

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Harrisburg, PA 17101

Candis A Tunilo

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