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October 22, 2014

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC
Docket No. C-2014-2427655

Dear Secretary Chiavetta:

On behalf of Blue Pilot Energy, LLC, I have enclosed for electronic filing the Motion for Continuance of November 13 and 14, 2014 Evidentiary Hearing in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



Karen O. Moury

KOM/tlg
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COMMONWEALTH OF PENNSYLVANIA, ET AL.,	:
	:
	:
Complainants,	:
	:
v.	: Docket No. C-2014-2427655
	:
BLUE PILOT ENERGY, LLC,	:
	:
Respondent.	:

**MOTION FOR CONTINUANCE OF
NOVEMBER 13 AND 14, 2014 EVIDENTIARY HEARING**

TO ADMINISTRATIVE LAW JUDGES CHESKIS AND BARNES:

Respondent Blue Pilot Energy, LLC (“BPE”), by and through its undersigned counsel, files this Motion for Continuance, pursuant to Section 1.15(b) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 1.15(b), and in connection therewith avers as follows.

BACKGROUND

1. BPE is an electric generation supplier (“EGS”) licensed by the Commission since June 10, 2011, *see* Docket No. A-2011-2223888, to supply electricity or electric generation services to residential, small commercial, large commercial and industrial customers in electric distribution company service territories throughout the Commonwealth of Pennsylvania.

2. On June 20, 2014 Complainants, Commonwealth of Pennsylvania (“OAG”) and Pennsylvania Office of Consumer Advocate (“OCA”) (together, “Complainants”), filed their Joint Complaint in this case, asserting five causes of action against BPE: (1) Count I – Failing to Provide Accurate Pricing Information; (2) Count II – Prices Nonconforming to Disclosure

Statement; (3) Misleading and Deceptive Promises of Savings; (4) Count IV – Lack of Good Faith Handling of Complaints; and (5) Count V – Failure to Comply With the Telemarketer Registration Act.

3. On July 10, 2014, BPE filed Preliminary Objections seeking dismissal of Counts I, II, and V. BPE’s Preliminary Objections were granted with respect to Count II, and partially granted with respect to Counts I and V. *See* Aug. 20, 2014 Order Granting in Part and Denying in Part Prel. Objections.

4. On August 19, 2014, Complainants filed their Prehearing Memorandum in this action. In that Memorandum, Complainants stated that:

[H]earings may be scheduled for consumer fact witnesses before written testimony is due. Joint Complainants recommend that consumer witness hearings be targeted for November 2014 so that presentation of such testimony may be completed before the holidays and winter weather make scheduling difficult. . . . Joint Complainants have identified approximately 40 potential consumer fact witnesses to present testimony in person, by affidavit, and telephonically. . . .

. . . Joint Complainants have identified approximately 40 consumer fact witnesses. Joint Complainants will identify the consumer fact witnesses they intend to call for the ALJs and parties as soon as possible. Joint Complainants specifically reserve the right to call additional witnesses, as necessary.

Complainants’ Prehearing Mem. at 8, 10.

5. At Your Honor’s direction, following the August 25, 2014 prehearing conference, the parties met-and-conferred to develop a proposed schedule setting forth dates (1) by when Complainants would serve written direct testimony or affidavits of their consumer witnesses; (2) for an evidentiary hearing wherein written testimony or affidavits from the consumers will be admitted into the record subject to cross examination and/or objections (the “Cross-Examination Hearing”); and (3) for a further prehearing conference to schedule remaining deadlines and evidentiary hearings. *See* Sept. 3, 2014 Procedural Order #2, at 1.

6. Based on Complainants' representation that they had identified only "approximately 40 potential consumer fact witnesses" – and, based upon an in-person meet-and-confer following the August 25, 2014 prehearing conference, more likely a subset of 15 or 20 consumer fact witnesses – the parties jointly proposed that Complainants would identify its consumer witnesses by October 17, 2014 and the Cross-Examination Hearing would take place four weeks later on November 13 and 14. A procedural order documenting those dates on was entered on September 3, 2014. *Id.* at 2.

7. In late August, BPE served interrogatories on Complainants requesting that they "[i]dentify each of the 'approximately 40 potential consumer fact witnesses to present testimony in person, by affidavit, and telephonically,' as stated on Page 8 of Joint Complainants' Prehearing Memorandum. . . ." BPE sought those identities so that it could begin to prepare for the Cross-Examination Hearing as soon as possible.

8. Complainants each objected to that interrogatory and, as a result of an early September 2014 telephonic discovery dispute meet-and-confer, the parties agreed that Complainants would identify their consumer witnesses before October 17 but not before October 8. *See* Sept. 25, 2014 BPE Mot. to Compel Office of Consumer Advocate's Responses to Certain Interrogatories, at Exh. 2, p.4 (September 5, 2014 document memorializing parties' agreement).

9. On October 9, 2014, Complainants served on BPE a spreadsheet containing the names of consumer fact witnesses for whom Complainants would be serving written direct testimony. A similar witness list also was provided by Complainants to Your Honors by letter dated October 14, 2014. Those lists, however, contain the names of approximately 100 individual consumers for whom Complainants will be submitting written testimony – two-and-

one-half times the “approximately 40” consumers they generally identified in mid-August in their prehearing memorandum (and about five-to-six times they number that they orally represented to BPE following the August 25 prehearing conference). Complainants have explained to BPE that they did not expect to receive that volume of written testimony back from the consumers they solicited.

10. On October 9, 2014, Complainants also served a request for production on BPE seeking all documents and call recordings that concern, refer, or relate to Complainants’ nearly 100 consumer witnesses. As BPE has explained to Complainants, searching for, identifying, downloading, and producing the call recordings for these 100 consumers alone likely will take more than 100 hours for BPE’s lone employee who is responsible for collecting such recordings (*i.e.*, two and one half full work weeks if that employee only works on responding to Complainants’ request for production and completely sets aside all of her normal-course business responsibilities).¹ While the parties have agreed that BPE may produce non-privileged, responsive documents and call recordings for these consumer witnesses to Complainants on a rolling basis beginning on October 29, 2014, it is highly unlikely that that production will even be completed by November 13, 2014.

11. On the afternoon of October 9, 2014, after receiving Complainants’ 100 consumer witness list, counsel for BPE called and spoke to counsel for OAG about the unexpected number of consumers appearing on the list and the possibility of continuing the Cross-Examination Hearing, as BPE cannot effectively cross-examine all 100 consumers in just two days. Counsel for OAG agreed that it would not be realistic for BPE to cross-examine all of Complainants’

¹ That time expenditure does not take into account the search for, collection, and production of responsive documents, which constitute additional substantial administrative, time, and cost burdens.

consumer witnesses on November 13 and 14, and suggested that the parties have a conference call to discuss. Counsel for BPE requested that that conference call take place two business days later, on October 14, 2014. Oct. 9, 2014 Email from D. Blynn to J. Abel, M. Tulman, C. Tunilo, and K. Robinson. Due to scheduling conflicts, however, the parties were unable to meet-and-confer until October 16, 2014.

12. On October 16, 2014, counsel for BPE raised the issue of seeking a joint continuance of the Cross-Examination Hearing. BPE's counsel explained that a continuance would allow more time for BPE to fully respond to Complainant's request for the production of all documents and recordings related to the 100 consumer witnesses, and give the parties an opportunity to focus on settlement negotiations. Complainants responded that they might oppose a motion for continuance. The parties agreed to discuss the matter further on October 21, 2014.

13. During a telephonic meet-and-confer on October 21, 2014, Complainants stated that they had further discussed BPE's request to jointly move for a continuance internally and would not oppose this Motion provided that the parties use any additional time to focus on settlement negotiations.

ARGUMENT

14. Requests for continuance may be granted by the presiding officer "for good cause" pursuant to Section 1.15 of the Commission's regulations, 52 Pa. Code §1.15.

15. The Commission has held that good cause exists where the movant has acted diligently in preparing its case but requires additional time to prepare and present its case adequately. *See, e.g., Pa. P.U.C., Bureau of Transportation and Safety v. USA Express Moving & storage, Inc.*, No. A-00117215C0701, 2010 WL 1458129 (Pa. P.U.C. Apr. 8, 2010); *Petition*

of UGI Utilities, Inc. – Gas Div. for an Extension of Time, No. P-00072269, 2007 WL 1307904 (Pa. P.U.C. Apr. 24, 2007).

16. Given that Complainants intend to submit affidavits or written testimony for about 60 more consumers than the approximately 40 that they identified previously, BPE requires additional time both to prepare to cross-examine the consumers and to conduct such cross-examination itself.

17. Extending the date of the Cross-Examination Hearing also would allow the parties additional time to further pursue settlement discussions in a meaningful manner, which, in turn, would conserve the Commission's and the parties' time and resources.

18. Good cause exists to justify a continuance of the November 13 and 14, 2014 Cross-Examination Hearing.

19. Accordingly, BPE propose that Cross-Examination Hearing be rescheduled for four (4) or five (5) consecutive court days in mid-to-late January or early February 2015, dependent on Your Honors' schedules. A further prehearing conference could be scheduled thereafter.

20. BPE has consulted with Complainants, and Intervenors Office of Small Business Advocate and the Commission's Bureau of Investigation and Enforcement regarding their positions on this Motion for Continuance. Neither Complainants nor Intervenors oppose this Motion.

WHEREFORE, BPE respectfully requests that the Commission grant this Motion for Continuance.

October 22, 2014

BUCHANAN INGERSOLL & ROONEY PC

By: 

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	Docket Nos. C-2014-2427655
v.	:	
	:	
BLUE PILOT ENERGY, LLC	:	
	:	
Respondent.	:	

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 § 1.54 (relating to service by a party).

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Dated this 22nd day of October, 2014.

A handwritten signature in cursive script, appearing to read "Karen", written in black ink above a horizontal line.

Karen O. Moury, Esq.