

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Commonwealth of Pennsylvania, *et al.*

v.

Blue Pilot Energy, LLC

Public Meeting November 13, 2014

2427655-OSA

Docket No. C-2014-2427655

**MOTION OF
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before the Commission for consideration and disposition is a Joint Petition for Interlocutory Review and Answer to Material Questions filed by the Pennsylvania Office of Attorney General (OAG) and the Pennsylvania Office of Consumer Advocate (OCA). The Joint Petition seeks review of an Order Granting in Part and Denying in Part Preliminary Objections filed in response to a Formal Complaint filed by the OAG/OCA against Blue Pilot Energy, LLC (Blue Pilot). The Formal Complaint arose out of numerous customer contacts and complaints that were received related to the variable rates for electric supply service charged by Blue Pilot.

The Joint Petition asks the Commission to answer the following material questions:

- 1) Does the Commission have authority and jurisdiction to determine whether a violation of the Unfair Trade Practices and Consumer Protection Law and Telemarketer Registration Act has occurred when considering whether the Commission's regulations – which require compliance with these laws – have been violated?
- 2) Does the Commission have the authority and jurisdiction to determine whether the prices charged to customers by an electric generation supplier (EGS) conform to the EGS disclosure statement regarding pricing?

Interlocutory Review

The legal standards governing interlocutory review are governed by 52 Pa. Code § 5.302(a) and by Commission precedent. Section 5.302(a) of our regulations requires that the petitioning party “state . . . the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.”¹ Moreover, the Commission has determined that granting interlocutory review is appropriate when it would prevent substantial prejudice or expedite the proceeding.² Upon review, I believe the Commission should grant the Joint Petition for Interlocutory Review and Answer to Material Questions filed by the OAG/OCA in this matter.

¹ 52 Pa. Code § 5.302(a).

² *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket Nos. P-2009-2097639, *et al.* (Order entered April 15, 2010).

There are compelling reasons to grant interlocutory review and answer the material questions. Granting interlocutory review expedites the conduct of multiple formal complaint proceedings initiated by the OAG/OCA against EGSs relating to variable rates by ensuring that the material questions raised in the cases are decided consistently.³ As noted by the OAG and OCA, orders addressing preliminary objections were issued in three other complaint proceedings contemporaneous to the Blue Pilot Preliminary Objections Order. As further noted by the OAJ and OCA, the three other orders dispose of the same or similar issues, but not in the same way as with the Blue Pilot Order. Granting interlocutory review also expedites the conduct of this proceeding by clarifying the scope of the Commission's subject matter jurisdiction and authority here and by ensuring the development of a full and complete factual record in this case that is consistent with the Commission's jurisdiction and authority.

Commission Authority and Jurisdiction under the UTP/CPL and TRA

The OAG/OCA Material Question No. 1 asks whether the Commission has authority and jurisdiction to determine violations of the Unfair Trade Practices and Consumer Protection Law (UTP/CPL) and Telemarketer Registration Act (TRA) when considering whether the Commission's regulations – which require compliance with these laws – have been violated. Upon review and consideration, this question should be answered in the negative for the same reasons as set forth at pages 5-8 and 13-15 of the Blue Pilot Preliminary Objections Order.

Nevertheless, I also agree with the conclusion in the Order that the Commission has jurisdiction over alleged violations of its own regulations. This jurisdiction includes determining whether the Commission's regulations prohibiting deceptive or misleading conduct⁴ and/or the Commission's telemarketing regulations,⁵ have been violated by an EGS. Therefore, I believe the Commission can hear claims alleging fraudulent, deceptive, and/or misleading conduct brought against Blue Pilot under the Commission's regulations. I also believe that the Commission can hear claims alleging improper verification of enrollment of residential customers brought against Blue Pilot under the Commission's telemarketing regulations.

Commission Authority and Jurisdiction over EGS Prices

OAG/OCA Material Question No. 2 asks whether the Commission has the authority and jurisdiction to determine whether the prices charged by an EGS conform to the EGS disclosure statement. Upon review and consideration, this question should be answered in the affirmative.

At the outset, I note that the Commission does not have traditional ratemaking authority over competitive suppliers and does not regulate competitive supply rates. The Commission also does not have subject matter jurisdiction to interpret the terms and conditions of a contract between an EGS and a customer to determine whether a breach of the contract has occurred.⁶

The Commission, however, does have subject matter jurisdiction to regulate certain aspects of the services provided by EGSs. The Commission's subject matter jurisdiction over

³ The three other formal complaints filed by the OAG/OCA were against Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (Docket No. C-2014-2427656), IDT Energy, Inc. (Docket No. C-2014-2427657), and Respond Power, LLC (Docket No. C-2014-2427659).

⁴ The relevant regulations include 52 Pa. Code § 54.43(f) and 52 Pa. Code § 111.12(d)(1).

⁵ The relevant regulation is 52 Pa. Code § 111.10, which is applicable to residential customers only. This regulation requires EGSs to comply with the TRA, except for the registration requirement. Thus, as one example, EGSs are required under the Commission's telemarketing regulations to comply with the TRA provisions governing state/federal "Do Not Call" lists.

⁶ See, e.g. *Allport Water Auth. V. Winburne Water Co.*, 393 A.2d 673 (Pa. 1978).

EGSs is set forth in Sections 2807 and 2809 of the Public Utility Code.⁷ Under Code Section 2809, EGSs are required to abide by the Commission's regulations, including its Chapter 54 regulations on bill format,⁸ disclosure statements,⁹ marketing and sales activities,¹⁰ and contract expiration notices.¹¹ In addition, EGSs serving residential customers also are required to comply with the standards and billing practices in Chapter 56 of the Commission's regulations.¹²

In this case, the OAG/OCA Formal Complaint alleges that the prices charged by Blue Pilot do not conform to the variable rate pricing provision in Blue Pilot's Disclosure Statement. I believe the Commission has jurisdiction and authority over this issue under Sections 54.4(a) and 54.5(a) of our regulations, which require that an EGS' billed price reflect its disclosure statement. Therefore, I believe Commission can determine whether Blue Pilot billed customers in accordance with its Disclosure Statement.

THEREFORE, I MOVE THAT:

1. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion;
2. This matter be returned to the Office of Administrative Law Judge for such further proceedings as may be necessary.

DATE: November 13, 2014



JOHN F. COLEMAN, JR.
VICE CHAIRMAN

⁷ 66 Pa. C.S. §§ 2807, 2809.

⁸ 52 Pa. Code § 54.4.

⁹ 52 Pa. Code § 54.5.

¹⁰ 52 Pa. Code §§ 54.3, 54.6, and 54.7; 52 Pa. Code §§ 54.43(1) and 54.43(f); 52 Pa. Code §§ 54.122(3). The Commission also has marketing and sales rules at 52 Pa. Code §§ 111.1-111.14 applicable to residential customers only.

¹¹ 52 Pa. Code § 54.10 (effective June 2014).

¹² As a condition of receiving its EGS license, Blue Pilot is required to comply with the Commission's Chapter 56 billing regulations. *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 entered June 10, 2011), p. 3.