

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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February 13, 2015

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-2014-2427655

Secretary Chiavetta:

Enclosed please find the Joint Motion of Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate to Compel Responses to Set VI-1 and VI-7, in the above-referenced proceeding.

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

Respectfully Submitted,

A handwritten signature in black ink that reads "Kristine E. Robinson".

Kristine E. Robinson  
Assistant Consumer Advocate  
PA Attorney I.D. #316479

Enclosures

cc: Honorable Elizabeth Barnes, ALJ  
Honorable Joel Cheskis, ALJ  
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-2014-2427655
v.	:	
	:	
BLUE PILOT ENERGY, LLC,	:	
Respondent	:	

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MOTION OF JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA  
AND THE OFFICE OF CONSUMER ADVOCATE  
TO COMPEL RESPONSES TO SET VI-1 AND VI-7

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Pursuant to 52 Pa. Code § 5.342(g), the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (OAG) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively Joint Complainants) respectfully move the Administrative Law Judges (ALJs) to enter an Order compelling Blue Pilot Energy, LLC (Blue Pilot or the Company) to provide the full and complete answers/responses to Joint Complainants' Sixth Set of Interrogatories and Requests for Production of Documents (Joint Complainants' Set VI), questions 1 and 7, within five days of the date of the Order. In support of this Motion, Joint Complainants aver as follows:

## I. INTRODUCTION

On June 20, 2014, the OAG and the OCA filed a Joint Complaint with the Public Utility Commission (Commission) pursuant to, *inter alia*, the Public Utility Code, 66 Pa. C.S. Ch. 28 and the Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111. The Joint Complaint includes five separate counts and alleges that Blue Pilot violated Pennsylvania law and Commission orders and regulations. Specifically, the five counts in the Joint Complaint are: I) failing to provide accurate pricing information; II) prices nonconforming to disclosure statement; III) misleading and deceptive promises of saving; IV) lack of good faith handling of complaints; and V) failure to comply with the Telemarketer Registration Act (TRA). Specifically related to this Motion, in Count II, Joint Complainants allege that Blue Pilot's prices charged to its customers did not conform to its Disclosure Statement. With respect to relief, the Joint Complainants request that the Commission find, *inter alia*, that Respondent violated the Public Utility Code and the Commission's regulations and orders; provide restitution to Respondent's customers; impose a civil penalty; and order Respondent to make various modifications to its practices and procedures; and revoke or suspend Respondent's Electric Generation Supplier (EGS) license, if warranted.

On July 10, 2014, Blue Pilot filed Preliminary Objections to the Joint Complaint. In its Preliminary Objections, Blue Pilot asserted, *inter alia*, that Count II of the Joint Complaint should be dismissed, because the Commission lacks the jurisdiction to regulate the rates that Blue Pilot charged its customers. On July 21, 2014, the Joint Complainants filed an Answer to Preliminary Objections. By Order dated August 20, 2014, the ALJs found that the Commission lacks jurisdiction to determine if the prices charged to customers conformed to the disclosure statement provided to the customer. On September 8, 2014, Joint Complainants filed a Petition

for Interlocutory Review and Answer to Material Questions with the Commission.<sup>1</sup> Joint Complainants sought for the Commission to answer, *inter alia*, the following question: Does the Commission have the authority and jurisdiction to determine whether the prices charged to customers by an EGS conform to the EGS disclosure statement regarding pricing. On September 18, 2014, the Joint Complainants filed a Brief in Support of their Material Questions, and Blue Pilot filed a Brief in Opposition. On December 11, 2014, the Commission issued an Order (December 11 Order) in which it determined, *inter alia*, that it has the authority and jurisdiction to determine whether the prices charged to customers by an EGS conform to the EGS disclosure statement regarding pricing.

Throughout the proceeding, the parties have actively engaged in discovery. On January 28, 2015, Joint Complainants served Joint Complainants' Set VI upon Blue Pilot. Set VI was served as follow-up to Blue Pilot's vague and unresponsive answers to Joint Complainants' Set V. Joint Complainants' Set VI is attached hereto as Exhibit A. Blue Pilot filed Objections to Joint Complainants' Set VI, numbers 1 and 7, asserting that the requested information is (1) privileged; (2) not relevant to the subject matter of this proceeding; and (3) vague, overbroad, and/or sweeping, and harassing. A copy of Blue Pilot's Objections to Joint Complainants' Set VI is attached hereto as Exhibit B. For the reasons set forth below, Joint Complainants

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<sup>1</sup> On September 8, 2014, Joint Complainants also filed Petitions for Interlocutory Review and Answers to Material Questions in three other cases. See Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. IDT Energy, Inc., Docket No. C-2014-2427657; Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, Docket No. C-2014-2427656; Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. Respond Power, LLC, Docket No. C-2014-2427659.

respectfully request that Your Honors overrule the Objections, grant this Motion to Compel Responses to Set VI-1 and VI-7 and direct Blue Pilot to provide full responses within five days.

## II. LEGAL STANDARD

The Commonwealth Court of Pennsylvania has stated that “[d]iscovery itself is designed to promote free sharing of information so as to narrow the issues and limit unfair surprise. It is a tool which serves each litigant and promotes judicial economy.” See Pittsburgh Bd. of Public Educ. v. M.J.N. by N.J., 105 Pa Cmwlth. Ct. 397, 403, 524 A.2d 1385, 1388 (Pa. Commw. Ct. 1987).

Under the Commission’s regulations, the scope of discovery is broad. Section 5.321 outlines the scope of discovery as follows:

- (c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c).

## III. MOTION TO COMPEL

On January 28, 2015, Joint Complainants served Joint Complainants’ Set VI upon Blue Pilot. Joint Complainants’ Set VI consists of eight Interrogatories/Requests for Production of Documents. Responses to Set VI are due on February 17, 2015, pursuant to 52 Pa. Code Sections 5.342(d) and 5.349(d). On February 6, 2015, Blue Pilot filed Objections to Joint Complainants’ Set VI, numbers 1 and 7.

**A. JOINT COMPLAINANTS' SET VI-1 IS RELEVANT, REASONABLE, SOUGHT IN GOOD FAITH, AND WITHIN THE PERMISSIBLE SCOPE OF DISCOVERY.**

Joint Complainants' Set VI-1 provides:

Please provide Respondent's Pennsylvania profits and losses from June 1, 2013 to September 30, 2014.

**1. JOINT COMPLAINANTS' SET VI-1 IS NOT "PRIVILEGED" INFORMATION PURSUANT TO 52 PA. CODE § 5.321(C) AND 52 PA. CODE § 5.361(A).**

In its Objections, Blue Pilot first asserts that the information sought in Set VI-1 is privileged, because if Blue Pilot's competitors obtained the information, it would place Blue Pilot at an economic disadvantage. Exhibit B at 2. First, Joint Complainants note that Blue Pilot did not cite any authority to establish that it is customary for the Commission to recognize such confidential information as "privileged" pursuant to 52 Pa. Code § 5.321(c) and 52 Pa. Code § 5.361(a). Joint Complainants submit that the Commission does not, in fact, intend for such confidential information to be "privileged" and outside the permissible scope of discovery. Instead, it is customary for the Commission's ALJs, upon Motion of a party, to issue Protective Orders that address this specific concern. In fact, the ALJs in this proceeding issued a Protective Order on September 3, 2014, which specifically addresses the concern raised by Blue Pilot in its Objections. The Protective Order provides, in pertinent part:

That the parties may designate as "Confidential" those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public or which, if disclosed freely, would subject that party or others to risk of competitive disadvantage or other business injury ...

Proprietary Information shall not be made available to a "Restricted Person." For the purpose of this Protective Order, "Restricted Person" shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of a party to this Protective Order, or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of

a party to this Protective Order (including any association of competitors of a party), or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of a party to this Protective Order if the Proprietary Information concerns any specific, identifiable customer of a party; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of a party to this Protective Order if the Proprietary Information concerns a specific, identifiable customer of the party ...

Protective Order at ¶¶ 3, 5. Joint Complainants and their witnesses are bound by the Protective Order. As such, Joint Complainants submit that Blue Pilot's assertion that the information is "privileged" must fail, as such privilege is not recognized by the Commission. The Company may label the requested information "Confidential," if appropriate, and if appropriately labeled, it will be kept confidential pursuant to the Protective Order. Additionally, Joint Complainants submit that, as further discussed herein, the requested information is within the permissible scope of discovery. As such, Joint Complainants request the ALJs to direct Blue Pilot to answer Joint Complainants' Set VI-1 fully within five days.

**2. JOINT COMPLAINANTS' SET VI-1 IS BOTH RELEVANT AND REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE.**

Next, Blue Pilot asserts that the information requested in Joint Complainants' Set VI-1 is not relevant to the allegations filed in the Joint Complaint. Exhibit B at 2. Joint Complainants submit that it is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. See 52 Pa. Code § 5.321(c). Thus, permissible discovery includes both relevant information and information that appears reasonably calculated to lead to the discovery of admissible evidence. Joint Complainants assert that the information requested in Joint

Complainants' Set VI-1 is both relevant and reasonably calculated to lead to the discovery of admissible evidence.

First, the information requested in Joint Complainants' Set VI-1 is relevant to Joint Complainants' request for a civil penalty. The Public Utility Code allows for the imposition of a civil penalty. See 66 Pa. C.S. § 3301. In determining an appropriate civil penalty amount, the Commission will consider, *inter alia*, the following: "[t]he amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount." 52 Pa. Code § 69.1201(c)(1). Thus, any information regarding Blue Pilot's profits and losses for the requested time periods will help to determine the appropriate amount necessary to deter future violations and will assist Joint Complainants in determining a proper amount of civil penalty to request the ALJs and Commission to impose. Therefore, Set VI-1 is both relevant and would lead to admissible evidence in this matter.

Additionally, Joint Complainants submit that their Set VI-1 seeks information directly relevant to the issue of whether Blue Pilot charged prices that conformed to the Company's Disclosure Statement. See Joint Complaint at Count II (prices nonconforming to disclosure statement). In the December 11 Order, the Commission determined that it has the jurisdiction to determine whether an EGS has billed its customers in accordance with its disclosure statement. December 11 Order at 3. Specifically, in that Order, the Commission held:

The Commission ... [has] subject matter jurisdiction to regulate certain aspects of the services provided by EGSs. The Commission's subject matter jurisdiction over EGSs is set forth in Section 2807 and 2809 of the Public Utility Code, 66 Pa. C.S. §§ 2807, 2809.

Under Code Section 2809, 66 Pa. C. S. § 2809, EGSs are required to abide by the Commission's Regulations. For EGSs serving residential customers, this includes abiding by the Commission's Chapter 54 Regulations on bill format, disclosure statements, marketing and sales activities, and contract expiration notices. 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.

In this case, the OAG/OCA Formal Complaint alleges that the prices charged by Blue Pilot do not conform to the variable rate pricing provisions in Blue Pilot's Disclosure Statement. We conclude that the Commission has jurisdiction and authority over this issue under Section 54.4(a) and 54.5(a) of our Regulations, 52 Pa. Code §§ 54.4(a), 54.5(a). These Regulations require, *inter alia*, that an EGS's billed price reflect its disclosure statement. Therefore, the Commission can determine whether Blue Pilot has billed customers in accordance with its Disclosure Statement.

December 11 Order at 19-20. (Internal footnotes omitted). See also Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. IDT Energy, Inc., Docket No. C-2014-2427657, Opinion and Order at 24-25 (Dec. 18, 2014).

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](http://www.bluepilotenergy.com) or call Customer Service at 877-513-0246 for additional information about our current pricing.

See Joint Complaint at ¶ 20 and Appendix A. (Emphasis added). Blue Pilot, in its Disclosure Statement, identified that it would calculate the price that it would charge its customers on variable rate plans "based on several factors, including changes in wholesale energy market prices in the PJM Markets." Joint Complainants submit that "several factors" may include the Company's then-existing profit levels. As such, information relating to Blue Pilot's profits and

losses is relevant to the allegations in Count II of the Joint Complaint that Blue Pilot did not charge rates that conformed to its Disclosure Statement. Further, such information is likely to lead to admissible evidence in this matter, as the requests are tied directly to allegations in the Joint Complaint. As the ALJs have already stated on this issue: “The Joint Complainants merely seek to “check the math” by knowing the inputs articulated in the Disclosure Statement and the rates that were created by those inputs to make sure that the rates charged conform with Respond’s Disclosure Statement.” See Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. Respond Power, LLC, Docket No. C-2014-2427659, Order Granting Motion to Compel Responses to Joint Complainants’ Set V-4 through V-13 at 8 (Jan. 23, 2014).

Joint Complainants’ Set VI-1 is relevant to the issues of Joint Complainants’ request for a civil penalty and whether Blue Pilot charged prices that conformed to its Disclosure Statement. As such, Joint Complainants request that the ALJs direct Blue Pilot to answer Joint Complainants’ Set VI-1 fully within five days.

### **3. JOINT COMPLAINANTS’ SET VI-1 IS REASONABLE AND SOUGHT IN GOOD FAITH.**

Finally, Respondent argues that Joint Complainants’ Set VI-1 is vague, overbroad, and/or sweeping, and harassing and would, therefore, causes unreasonable annoyance and burden and would require Blue Pilot to make an unreasonable investigation. Exhibit B at 2. Joint Complainants’ submit that Set VI-1 is reasonable and sought in good faith. Set VI-1 is narrow, as it requests Blue Pilot to identify only its profits and losses over a very specific time period. Joint Complainants submit that they have made this request as narrow as possible without hindering their ability to gather relevant, admissible information, as explained above. Thus,

Joint Complainants submit that Joint Complainants' Set VI-1 is not vague, overbroad, sweeping, or harassing and request the ALJs to direct Blue Pilot to fully answer Joint Complainants' Set VI-1 within five days.

**B. JOINT COMPLAINANTS' SET VI-7 IS RELEVANT, REASONABLE, SOUGHT IN GOOD FAITH, AND WITHIN THE PERMISSIBLE SCOPE OF DISCOVERY.**

Joint Complainants' Set VI-7 provides:

Please describe in detail the records compiled or maintained by Respondent which concern, refer or relate to costs, expenses, profits, losses, revenues, and billing for Respondent's Pennsylvania operations.

**1. JOINT COMPLAINANTS' SET VI-7 IS NOT "PRIVILEGED" INFORMATION PURSUANT TO 52 PA. CODE § 5.321(C) AND 52 PA. CODE § 5.361(A).**

In its Objections, Blue Pilot first asserts that the information sought in VI-7 is privileged, because if Blue Pilot's competitors obtained the information, it would place Blue Pilot at an economic disadvantage. Exhibit B at 3. Joint Complainants note that Blue Pilot did not cite any authority to establish that it is customary for the Commission to recognize confidential information as "privileged" pursuant to 52 Pa. Code § 5.321(c) and 52 Pa. Code § 5.361(a). As explained above, Joint Complainants submit that the Commission does not, in fact, intend for confidential information to be "privileged" and outside the permissible scope of discovery. Instead, with regard to claims of the confidentiality of information, it is customary for the Commission's ALJs to issue Protective Orders upon Motion of a party. The ALJs in this proceeding issued a Protective Order on September 3, 2014, which specifically addresses the concern raised by Blue Pilot in its Objections. Joint Complainants and their witnesses are bound by the Protective Order. As such, Joint Complainants submit that Blue Pilot's assertion that the information is "privileged" must fail, as such privilege is not recognized by the Commission, and

if appropriately labeled as “Confidential,” the information is subject to the Protective Order. Additionally, Joint Complainants submit that, as further discussed herein, the requested information is within the permissible scope of discovery. As such, Joint Complainants request the ALJs to direct Blue Pilot to fully answer Joint Complainants Set VI-7 within five days.

**2. JOINT COMPLAINANTS’ SET VI-7 IS BOTH RELEVANT AND REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE.**

Next, Blue Pilot asserts that the information requested in Joint Complainants’ Set VI-7 is not relevant to the allegations in the Joint Complaint. Exhibit B at 3. Joint Complainants submit that it is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. See 52 Pa. Code § 5.321(c). Joint Complainants assert that the information requested in Joint Complainants’ Set VI-7 is relevant and will lead to the discovery of admissible evidence.

First, the information requested in Joint Complainants’ Set VI-7 is relevant to Joint Complainants’ request for a civil penalty. The Public Utility Code allows for the imposition of a civil penalty. See 66 Pa. C.S. § 3301. In determining an appropriate civil penalty amount, the Commission will consider, *inter alia*, the following: “[t]he amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.” 52 Pa. Code § 69.1201(c)(1). Thus, any information regarding Blue Pilot’s costs, expenses, profits, losses, revenues, and/or billing for its Pennsylvania operations for the requested time periods will help to determine the appropriate amount necessary to deter future violations and will assist Joint Complainants in determining a proper amount of civil penalty to request the ALJs and Commission to impose. Therefore, Set VI-7 is both relevant and would lead to admissible evidence in this matter.

Additionally, Joint Complainants submit that their Set VI-7 seeks information directly relevant to the issue of whether Blue Pilot charged prices that conformed to the Company's Disclosure Statement. See Joint Complaint at Count II (prices nonconforming to disclosure statement). As discussed above, in the December 11 Order, the Commission determined that it has the jurisdiction to determine whether an EGS has billed its customers in accordance with its disclosure statement. December 11 Order at 3. See also Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. IDT Energy, Inc., Docket No. C-2014-2427657, Opinion and Order at 24-25 (Dec. 18, 2014).

Blue Pilot, in its Disclosure Statement, identified that it would calculate the price that it would charge its customers "based on several factors, including changes in wholesale energy market prices in the PJM Markets." Joint Complainants submit that "several factors" may include Blue Pilot's then existing profits, losses, costs, expenses, revenues, and billing for its Pennsylvania operations. As such, information relating to Blue Pilot's profits, losses, costs, expenses, revenues and billing for Respondent's Pennsylvania operations is relevant to the allegations in Count II of the Joint Complaint that Blue Pilot did not charge rates that conformed to its Disclosure Statement. Further, such information will lead to admissible evidence in this matter, as the requests are tied directly to allegations in the Joint Complaint.

Additionally, Joint Complainants note that Set VI-7 was intended to be a follow-up to Blue Pilot's Response to Set V-9, which was served upon Blue Pilot on December 16, 2014.

Joint Complainants' Set V-9 provides:

Please provide Respondents' Pennsylvania prices and revenues, by month, from January 1, 2013 to present, broken down by EDC service territory and customer class.

See Exhibit C at 6, attached hereto.

Blue Pilot did not file Formal Objections to Set V-9. Instead, in its Response to Set V-9, served on January 16, 2015, Blue Pilot stated, in pertinent part:

... BPE does not maintain information in the ordinary course of business in the format requested. Thus, BPE is not required to organize the information and provide it in the manner requested by this Discovery Request. 52 Pa. Code § 5.362(b). Although BPE is not required to Respond to this Discovery Request in the manner requested by Complainants, BPE notes that much of the information requested in this Discovery Request already has been produced and/or may be derived from the documents previously produced to Complainants; the burden of finding the answer from those documents is substantially the same for both BPE and Complainants. *See* BPE-PALIT-000325 to -417; BPE's response to Complainants' Request for Production No. 22 (Set I) ...

See Exhibit D at 10, attached hereto.

On January 23, 2015, Deputy Attorney General Margarita Tulman sent an e-mail to Blue Pilot counsel Dan Blynn, which stated, in pertinent part:

[I]n response to Discovery request 9, BPE states the information was provided in BPE-PALIT-000325 to -417 and Request for Production No. 22 (Set 1). However, none of those documents include revenues of BPE. Please let us know how we can obtain the answer to the revenues part of our discovery request.

On January 26, 2015, Mr. Blynn responded as follows:

... As explained in its response to Discovery Request 9, BPE does not maintain price and revenue information by month broken down by EDC service territory and customer class. Because it does not maintain the requested information in the unique format requested by complainants, pursuant to 52 Pa. Code § 5.361(b) [sic], BPE is not required to create or compile that information in the manner requested by complainants.

See Exhibit E at 1, attached hereto.

As such, Joint Complainants requested in Set VI-7 for Blue Pilot to describe all documents compiled or maintained by Blue Pilot that concern or relate to costs, expenses, profits, losses, revenues, and billing for Respondent's Pennsylvania operations, in order to determine, in part, what documents responsive to Joint Complainants' Set V-9 Blue Pilot may

IV. CONCLUSION

For the foregoing reasons, the information sought in Joint Complainants' Set VI, numbers 1 and 7, is relevant, reasonable, sought in good faith, and within the permissible scope of discovery. The Joint Complainants respectfully request that the Administrative Law Judges enter an Order directing Blue Pilot to provide full and complete answers/responses to Joint Complainants' Set VI -4 and VI-7 within five days.

Respectfully submitted,

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

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

Bureau of Consumer Protection  
Office of Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
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T: (717) 787-9707  
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Counsel for:

Kathleen G. Kane, Attorney General  
Bureau of Consumer Protection

Date: February 13, 2015

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\_\_\_\_\_  
Candis A. Tunilo  
PA Attorney I.D. 89891

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PA Attorney I.D. 316479  
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F: (717) 783-7152  
ctunilo@paoca.org  
krobinson@paoca.org

Counsel for:

Tanya J. McCloskey  
Acting Consumer Advocate

**Exhibit A**



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

KATHLEEN G. KANE  
ATTORNEY GENERAL

Bureau of Consumer Protection  
Public Protection Division  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, Pennsylvania 17120  
Telephone: (717) 787-9707  
Fax: (717) 705-3795  
January 28, 2015

SENT VIA USPS FIRST CLASS MAIL & ELECTRONIC MAIL

Karen O. Moury, Esq.  
Buchanan Ingersoll & Rooney PC  
409 North Second Street, Suite 500  
Harrisburg, PA 17101

Mark R. Robeck, Esq.  
Daniel S. Blynn, Esq.  
Kelley Drye & Warren LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007

Re: Commonwealth of Pennsylvania and the Office of Consumer Advocate v. Blue Pilot Energy, LLC, Docket Nos. C-2014-2427655

Dear Ms. Moury, and Messrs. Robeck and Blynn:

Enclosed please find Request for Production of Documents of the Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate directed to Blue Pilot Energy, LLC Set VI. Kindly provide responses within 20 days pursuant to the Commission's rules.

Kindly produce your responses as they become available and provide copies of all responses to:

John M. Abel  
Senior Deputy Attorney General  
Bureau of Consumer Protection  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Candis A. Tunilo  
Assistant Consumer Advocate  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17101

Margarita Tulman  
Deputy Attorney General  
Bureau of Consumer Protection  
21 South 12<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Philadelphia, PA 19107

We also request that you send a copy of the answers directly to our consultant, as listed below:

Barbara R. Alexander  
83 Wedgewood Drive  
Winthrop, Maine 04364  
Telephone: 207-395-4143  
E-Mail: [barbalex@ctel.net](mailto:barbalex@ctel.net)

Sincerely,



Margarita Tulman  
Deputy Attorney General

Enclosures

cc: All parties of record  
Rosemary Chiavetta, Secretary (Certificate of Service)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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COMMONWEALTH OF PENNSYLVANIA, by  
Attorney General KATHLEEN G. KANE,  
Through the Bureau of Consumer Protection

And

Docket No. C-2014- 2427655

TANYA J. McCLOSKEY, Acting Consumer  
Advocate

Complainants

v.

BLUE PILOT ENERGY, LLC

Respondent

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**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF  
JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA AND THE  
OFFICE OF CONSUMER ADVOCATE DIRECTED TO BLUE PILOT ENERGY, LLC**

**SET VI**

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), pursuant to 52 Pa. Code § 5.349, hereby propound the following request for production of documents upon Blue Pilot Energy, LLC (Respondent or Blue Pilot). In accordance with 52 Pa. Code § 5.349(d), the documents are to be furnished and served in-hand upon the undersigned within the time period prescribed by the Commission for this docket.

**INSTRUCTIONS**

1. These data requests shall be construed as a continuing request. The Respondent is obliged to change, supplement and correct all answers to data requests to conform to available information; including such information as first becomes available to the Respondent after the answers hereto are filed.
2. If after exercising due diligence to secure the information requested by any one of the following data requests the Respondent cannot answer or provide the information requested, so state and answer to the extent possible specifying Respondent's inability to answer the remainder, providing whatever information or knowledge Respondent has concerning the unanswered portion and detailing what attempts Respondent made to secure the unknown information.
3. Restate the data request immediately preceding each response and begin each data request and response on a new page.
4. Identify the name, title, and business address of each person(s) providing each response.
5. Provide the date on which the response was created.
6. Divulge all information that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The term "Blue Pilot Energy, LLC" or "Blue Pilot," or "you," as used herein includes Blue Pilot Energy, LLC, its attorneys, agents, employees, contractors, or other representatives, to the extent that the Respondent has the right to compel the action requested herein.
7. Provide verification by the responsible witness that all facts contained in the response are true and correct to the best of the witness' knowledge, information and belief.

8. As used herein, but only to the extent not protected by 52 Pa. Code Section 5.323, the word "document" or "workpaper" includes, but is not limited to, the original and all copies in whatever form, stored or contained in or on whatever media or medium including computerized memory, magnetic, electronic, or optical media, regardless of origin and whether or not including additional writing thereon or attached thereto, and may consist of:

- a) notations of any sort concerning conversations, telephone calls, meetings or other communications;
- b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;
- c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.

9. If Respondent claims any information requested herein is protected pursuant to 52 Pa. Code Section 5.323 or pursuant to any other rule of discovery, provide a general description of the information sought to be protected and the exact nature of the protection claimed.

10. The singular of any word used here in shall be deemed to include the plural of such word, and the plural shall include the singular.

#### DEFINITIONS

1. In answering these data requests, assume that all words used have their ordinary meanings in normal English usage, except as provided below or where context requires other interpretation.

2. "Document" or "documents" means all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes,

diaries, statistics, letters, telegrams, minutes, contracts, reports, summaries, pamphlets, books, inter-office and intra-office communication, notation of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, fax, work sheets, all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, records) and any electronic, mechanical or electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, records, and computer memories) now in the possession, custody or control of the Respondent, his agents, employees, attorneys and all other persons acting on their behalf.

3. "Communication" means any transmission or exchange of information or meaning between two or more persons in any form.

4. "You" or "Your" shall refer to Blue Pilot Energy, LLC and all other names under which En Blue Pilot Energy, LLC does business or trades, any subsidiaries, agents, employees, representatives, attorneys and all other persons acting on their behalf.

#### **INTERROGATORIES & REQUESTS FOR PRODUCTION SET VI**

1. Please provide Respondent's Pennsylvania profits and losses from June 1, 2013 to September 30, 2014.

2. Please provide auto-recordings of all calls made or received by Duane R. Gonzales to Pennsylvania consumers during the period of December 15, 2013 to December 19, 2013.

3. Please provide a representative sampling of auto-recordings of calls made or received by Duane R. Gonzales to Pennsylvania consumers during the months of October 2013 to December 2013.

4. With regard to the documents provided in response to Joint Complainants' Request for Production of Documents Set V, Nos. 10 and 11, please provide the date each of the documents was prepared and the date and to whom the documents were issued with respect to Respondent's employees.

5. Please describe in detail Respondent's policy for recording sales and other calls with Pennsylvania consumers.

6. Please describe in detail Respondent's policy for maintaining and retaining sales and all other calls with Pennsylvania consumers.

7. Please describe in detail the records compiled or maintained by Respondent which concern, refer or relate to costs, expenses, profits, losses, revenues, and billing for Respondent's Pennsylvania operations.

8. Please describe in detail all filings Blue Pilot is obligated to make to government entities regarding its Pennsylvania operations.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COMMONWEALTH OF PENNSYLVANIA, by :  
Attorney General KATHLEEN G. KANE, :  
Through the Bureau of Consumer Protection :

And :

Docket No. C-2014- 2427655

TANYA J. McCLOSKEY, Acting Consumer :  
Advocate :

Complainants :

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, the Request for Production of Documents of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate directed to Responses to Blue Pilot Energy, LLC Set VI, in the manner and upon the persons listed below:

Michael Swindler, Esq.  
Stephanie M. Wimer, Esq.  
Wayne T. Scott, Esq.  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
mswindler@pa.gov  
stwimer@pa.gov  
wascott@pa.gov  
**(Electronic Mail & First-Class Mail)**

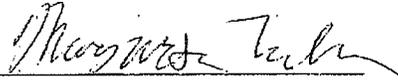
Sharon E. Webb, Esq.  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101  
swebb@pa.gov  
**(Electronic Mail & First-Class Mail)**

Karen O. Moury, Esq.  
Buchanan Ingersoll & Rooney PC  
409 North Second Street, Suite 500  
Harrisburg, PA 17101  
**(Electronic Mail & First-Class Mail)**

Mark R. Robeck, Esq.  
Daniel S. Blynn, Esq.  
Catherine M. Wilmarth, Esq.  
Kelley Drye & Warren LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007  
**(Electronic Mail & First-Class Mail)**

Mark R. Robeck  
Blue Pilot Energy, LLC  
250 Pilot Road, Suite 300  
Las Vegas, Nevada 89119  
**(Electronic Mail & First-Class Mail)**

DATE: 1/28/15



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

Margarita Tulman  
Deputy Attorney General  
PA Attorney I.D. 313514  
Bureau of Consumer Protection  
Office of Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
T: (717) 787-9707  
F: (717) 787-1190  
jabel@attorneygeneral.gov  
nbeck@attorneygeneral.gov

# **Exhibit B**

# Buchanan Ingersoll & Rooney PC

Karen O. Moury

717 237 4820  
Karen.moury@bipc.com

409 North Second Street, Suite 500  
Harrisburg, PA 17101

T 717 237 4800  
F 717 233 0852

www.buchananingersoll.com

February 6, 2015

## VIA EMAIL AND FIRST CLASS MAIL

John M. Abel  
Margarita Tulman  
Office of Attorney General  
Bureau of Consumer Protection  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Candis A. Tunilo  
Christy M. Appleby  
Kristine E. Robinson  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101

Re: Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC  
Docket Nos. C-2014-2427655

Dear Counsel:

On behalf of Blue Pilot Energy, LLC, I am providing Objections to Complainants' Interrogatories and Requests For Production, Set VI, 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/bb  
Enclosure

cc: Rosemary Chiavetta, Secretary (*letter and Certificate of Service only via eFiling*)  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**RESPONDENT BLUE PILOT ENERGY, LLC’S OBJECTIONS TO  
COMPLAINANTS’ INTERROGATORIES AND REQUESTS FOR PRODUCTION  
(SET VI)**

Pursuant to 66 Pa.C.S. § 333(d) and 52 Pa. Code § 5.342, Respondent Blue Pilot Energy, LLC (“BPE”) hereby objects to two of the Interrogatories and Requests for Production – Set VI (“Discovery Requests”) propounded by the Complainants on January 28, 2015. The specific objections, along with a description of the facts and circumstances justifying the objections, are set forth below.

**Legal Standards**

The Commission’s regulations provide that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” 52 Pa. Code § 5.321(c). The regulations further state that while inadmissibility at the hearing is not a ground for objection, the information sought must be “reasonably calculated to lead to the discovery of admissible evidence.” *Id.* Further, discovery is not permitted which is sought in bad faith; would cause unreasonable annoyance, embarrassment, oppression, burden, or expense to the party; relates to a matter which is privileged; or would require the making of an unreasonable investigation by the party. 52 Pa. Code § 5.361(a).

### Specific Objections

**Discovery Request No. 1:** Please provide Respondent's Pennsylvania profits and losses from June 1, 2013 to September 30, 2014.

**Objection:** BPE objects to Discovery Request No. 1 on the grounds that it (i) seeks privileged material; (ii) calls for information that is not relevant to the subject matter of this action; and (iii) would cause unreasonable annoyance and burden to BPE.

BPE's financial information constitutes commercially sensitive, confidential and proprietary information. This information is privileged because if BPE's competitors obtained in this information, it would place BPE at an economic disadvantage. Accordingly, it is outside the bounds of permissible discovery because the Commission's regulations do not permit discovery relating to any matter that is privileged. See Pa. Code § 5.321(c); 52 Pa. Code § 5.361(a).

Moreover, BPE's financial information is not relevant to the allegations in the Complaint filed by Complainants in this proceeding. This commercially sensitive, confidential and proprietary information has no probative value pertaining to Complainants' allegations that BPE failed to provide accurate pricing information, charged prices not conforming with the disclosure statement, made misleading or deceptive promises of saving, lacked good faith in handling complaints, or failed to comply with the Telemarketer Registration Act. The Commission's regulations do not permit discovery of information that is not relevant to the subject matter of the action. See 52 Pa. Code § 5.321(c). Discovery Request No. 1 seeks information unrelated to the legal and factual contentions regarding the claims in this case proceeding.

In addition, Request No. 1 is vague, overbroad, and/or sweeping, and harassing. Therefore, furnishing a response to this request would cause unreasonable annoyance and burden to BPE and would require the making by BPE of an unreasonable investigation. As such,

Discovery Request No. 1 exceeds the permissible bounds of discovery. See 52 Pa. Code § 5.361(a).

BPE reserves the right to supplement its response to this request.

**Discovery Request No. 7:** Please describe in detail the records compiled or maintained by Respondent which concern, refer or relate to costs, expenses, profits, losses, revenues, and billing for Respondent's Pennsylvania operations.

**Objection:** BPE objects to Discovery Request No. 7 on the grounds that it (i) seeks privileged material; (ii) calls for information that is not relevant to the subject matter of this action; (iii) would cause unreasonable annoyance and burden to BPE; and (iv) is vague and ambiguous.

BPE's financial information constitutes commercially sensitive, confidential and proprietary information. This information is privileged because if BPE's competitors obtained in this information, it would place BPE at an economic disadvantage. Accordingly, it is outside the bounds of permissible discovery because the Commission's regulations do not permit discovery relating to any matter that is privileged. See Pa. Code § 5.321(c); 52 Pa. Code § 5.361(a).

Moreover, BPE's financial information is not relevant to the allegations in the Complaint filed by Complainants in this proceeding. This commercially sensitive, confidential and proprietary information has no probative value pertaining to Complainants' allegations that BPE failed to provide accurate pricing information, charged prices not conforming with the disclosure statement, made misleading or deceptive promises of saving, lacked good faith in handling complaints, or failed to comply with the Telemarketer Registration Act. The Commission's regulations do not permit discovery of information that is not relevant to the subject matter of the action. See 52 Pa. Code § 5.321(c). Discovery Request No. 7 seeks information unrelated to the legal and factual contentions regarding the claims in this case proceeding.

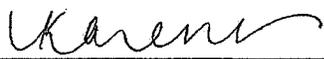
In addition, Request No. 7 is vague, overbroad, and/or sweeping, and harassing. Therefore, furnishing a response to this request would cause unreasonable annoyance and burden to BPE and would require the making by BPE of an unreasonable investigation. As such, Discovery Request No. 7 exceeds the permissible bounds of discovery. See 52 Pa. Code § 5.361(a).

Finally, this discovery request is vague and ambiguous as it is unclear what is meant by the request that BPE “describe” its documents.

BPE reserves the right to supplement its response to this request.

February 6, 2015

BUCHANAN INGERSOLL & ROONEY PC

By:   
Karen O. Moury  
409 North Second Street, Suite 500  
Harrisburg, PA 17101  
Telephone: (717) 237-4820  
Facsimile: (717) 233-0852

Geoffrey W. Castello (admitted *pro hac vice*)  
KELLEY DRYE & WARREN LLP  
One Jefferson Road  
Parsippany, New Jersey 07054  
Telephone: (973) 503-5900  
Facsimile: (973) 503-5950

Mark R. Robeck (admitted *pro hac vice*)  
Travis G. Cushman (*pro hac vice* motion pending)  
KELLEY DRYE & WARREN LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007  
Telephone: (202) 342-8400  
Facsimile: (202) 342-8451

*Attorneys for Blue Pilot Energy, LLC*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**COMMONWEALTH OF  
PENNSYLVANIA, ET AL.**

**v.**

**BLUE PILOT ENERGY, LLC**

:  
:  
: **Docket Nos. C-2014-2427655**  
:  
:  
:

**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).

**Via Email and First Class Mail**

John M. Abel  
Margarita Tulman  
Office of Attorney General  
Bureau of Consumer Protection  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Sharon E. Webb  
Office of Small Business Advocate  
300 N. Second Street, Suite 202  
Harrisburg, PA 17101

Steve Estomin  
Exeter Associates, Inc.  
10480 Little Patuxent Parkway  
Suite 300  
Columbia, Maryland 21044

Candis A. Tunilo  
Christy M. Appleby  
Kristine E. Robinson  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101

Michael L. Swindler  
Wayne T. Scott  
Stephanie Wimer  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
PO Box 3265  
Harrisburg, PA 17105-3265

Barbara R. Alexander  
83 Wedgewood Drive  
Winthrop, Maine 04364

Dated this 6<sup>th</sup> day of February, 2015.



---

Karen O. Moury, Esq.

# **Exhibit C**

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560

FAX (717) 783-7152  
consumer@paoca.org

December 16, 2014

Daniel S. Blynn, Esq.  
Washington Harbour, Suite 400  
3050 K Street, NW  
Washington, DC 20007-5108

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-2014-2427655

Dear Mr. Blynn:

Enclosed please find Interrogatories and Requests for Production of Documents of the Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate directed to Blue Pilot Energy, LLC, Set V. Kindly provide responses within 20 days pursuant to the Commission's rules.

Kindly produce your responses as they become available and provide copies of all responses to:

John M. Abel,  
Senior Deputy Attorney General  
Bureau of Consumer Protection  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Candis A. Tunilo  
Assistant Consumer Advocate  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17101

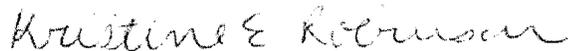
Page 2

We also request that you send a copy of the answers directly to our consultant, as listed below:

Steven L. Estomin  
Exeter Associates, Inc.  
Suite 300  
10480 Little Patuxent Parkway  
Columbia, MD. 21044  
Telephone: 410-992-7500  
E-mail: [sestomin@exeterassociates.com](mailto:sestomin@exeterassociates.com)

If you have any questions, please call us. By copy of this letter, copies of these interrogatories have been served upon all parties. A certificate of service showing service of these interrogatories on all parties has been filed with Secretary Chiavetta of the Pennsylvania Public Utility Commission as required by 52 Pa. Code §5.341(b).

Sincerely,



Kristine E. Robinson  
Assistant Consumer Advocate  
PA Attorney I.D. # 316479

Enclosures

cc: All parties of record  
Rosemary Chiavetta, Secretary (Certificate of Service)

190901



## INSTRUCTIONS

1. These data requests shall be construed as a continuing request. The Respondent is obliged to change, supplement and correct all answers to data requests to conform to available information; including such information as first becomes available to the Respondent after the answers hereto are filed.
2. If after exercising due diligence to secure the information requested by any one of the following data requests the Respondent cannot answer or provide the information requested, so state and answer to the extent possible specifying Respondent's inability to answer the remainder, providing whatever information or knowledge Respondent has concerning the unanswered portion and detailing what attempts Respondent made to secure the unknown information.
3. Restate the data request immediately preceding each response and begin each data request and response on a new page.
4. Identify the name, title, and business address of each person(s) providing each response.
5. Provide the date on which the response was created.
6. Divulge all information that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The term "Blue Pilot Energy, LLC" or "Blue Pilot," or "you," as used herein includes Blue Pilot Energy, LLC, its attorneys, agents, employees, contractors, or other representatives, to the extent that the Respondent has the right to compel the action requested herein.
7. Provide verification by the responsible witness that all facts contained in the response are true and correct to the best of the witness' knowledge, information and belief.

8. As used herein, but only to the extent not protected by 52 Pa. Code Section 5.323, the word "document" or "workpaper" includes, but is not limited to, the original and all copies in whatever form, stored or contained in or on whatever media or medium including computerized memory, magnetic, electronic, or optical media, regardless of origin and whether or not including additional writing thereon or attached thereto, and may consist of:

- a) notations of any sort concerning conversations, telephone calls, meetings or other communications;
- b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;
- c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.

9. If Respondent claims any information requested herein is protected pursuant to 52 Pa. Code Section 5.323 or pursuant to any other rule of discovery, provide a general description of the information sought to be protected and the exact nature of the protection claimed.

10. The singular of any word used here in shall be deemed to include the plural of such word, and the plural shall include the singular.

#### **DEFINITIONS**

1. In answering these data requests, assume that all words used have their ordinary meanings in normal English usage, except as provided below or where context requires other interpretation.

2. "Document" or "documents" means all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes,

diaries, statistics, letters, telegrams, minutes, contracts, reports, summaries, pamphlets, books, inter-office and intra-office communication, notation of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, fax, work sheets, all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, records) and any electronic, mechanical or electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, records, and computer memories) now in the possession, custody or control of the Respondent, his agents, employees, attorneys and all other persons action on their behalf.

3. "Communication" means any transmission or exchange of information or meaning between two or more persons in any form.

4. "You" or "Your" shall refer to Blue Pilot Energy, LLC and all other names under which En Blue Pilot Energy, LLC does business or trades, any subsidiaries, agents, employees, representatives, attorneys and all other persons acting on their behalf.

#### **INTERROGATORIES & REQUESTS FOR PRODUCTION SET V**

1. Please state all generation prices charged to Respondent's customers in December 2013, January 2014, February 2014, and March 2014.

2. If not included in your response to the question in paragraph 1 above, identify the billing cycles applicable to all prices stated.

3. Please produce any and all documents setting forth methods used to reflect electric power market information into the establishment of the price for Respondent's residential consumers for December 2013, January 2014, February 2014 and March 2014. Please include the following information:

- a) Any and all formula(s) used to calculate the price;
- b) The load profile(s) used for Respondent's residential consumers. If different load profiles are used for different months or seasons, different EDC service areas, or residential consumers of different size, provide all such load profiles used for the months of December 2013, January 2014 and February 2014;
- c) The specific type of market price information (*e.g.*, reported four-week forward contract prices for on-peak and off-peak at the PJM West hub) used to develop the residential generation price and the source(s) of that information;
- d) Any and all electronic spreadsheets used to develop the residential generation price applicable to Respondent's residential consumers;
- e) All on-peak and off-peak energy prices relied upon to develop the prices charged to Respondent's residential consumers for billing cycles that include at least seven (7) days in January 2014 and for all billing cycles in February 2014. This information should be disaggregated by billing cycle used for Respondent's residential consumers; and
- f) Respondent's total residential kWh sales for December 2013, January 2014, February 2014, and March 2014.

4. Please produce any and all documents indicating whether you develop different generation prices for each of the billing cycles within the month or whether the same price is applicable to multiple billing cycles. If the same price is applicable to multiple billing cycles, please indicate the frequency with which the generation price is changed.

5. Please produce any and all documents indicating all cost components used to develop the generation price (*e.g.*, AEPS credits, ancillary services) and Respondent's average cost of acquiring those components for December 2013, January 2014, February 2014, and March 2014.

6. Please provide a sample calculation of one of the prices charged to Respondent's residential consumers that reflects a time period that includes the last three (3) weeks in January 2014.

7. Please provide a sample calculation at monthly usage of 750 kWh of a price charged to Respondent's residential consumers that reflect a time period that includes at least 21 days in February 2014.

8. Please produce any and all documents setting forth all such notifications of Respondent's running charges with PJM for December 2013, January 2014, February 2014, and March 2014.

9. Please provide Respondent's Pennsylvania prices and revenues, by month, from January 1, 2013 to present, broken down by EDC service territory and customer class.

10. Please refer to Blue Pilot's Response to Joint Complainant's Request for Production of Documents Set III-17. Please produce any and all documents that reference, relate to, or establish the procedure that Duane Gonzalez was to follow when placing calls to then-current Blue Pilot customers near the end of their respective initial rate-guarantee periods or otherwise regarding a customer's current rate with Blue Pilot.

11. Please reference Blue Pilot's response to Joint Complainants' Interrogatory Set I-14.

Please provide any and all documents that reference, relate to, or establish Blue Pilot's procedure for training its salespeople, employees, agents and representatives to adhere to the Commission's Regulations prohibiting fraudulent, deceptive, and/or misleading conduct.

199079

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

I hereby certify that I have this day served a true copy of the foregoing document, the Interrogatories and Requests for Production of Documents of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate directed to Blue Pilot Energy, LLC, Set V, in the manner and upon the persons listed below:

Dated this 16th day of December 2014.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

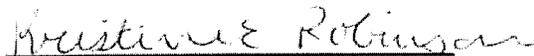
Michael Swindler, Esq.  
Stephanie M. Wimer, Esq.  
Wayne T. Scott, Esq.  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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

Daniel S. Blynn, Esq.  
Mark R. Robeck, Esq.  
Catherine Wilmarth, Esq.  
Kelley Drye & Warren LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007

Sharon Webb, Esq.  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101

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



Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D. # 89891  
E-Mail: [CTunilo@paoca.org](mailto:CTunilo@paoca.org)

Kristine E. Robinson  
Assistant Consumer Advocate  
PA Attorney I.D. # 316479  
E-Mail: [KRobinson@paoca.org](mailto:KRobinson@paoca.org)

Counsel for  
Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
185179

# **Exhibit D**

**Buchanan Ingersoll & Rooney PC**

**Karen O. Moury**

717 237 4820  
Karen.moury@bipc.com

409 North Second Street, Suite 500  
Harrisburg, PA 17101

T 717 237 4800  
F 717 233 0852

www.buchananingersoll.com

January 16, 2015

**VIA EMAIL AND FIRST CLASS MAIL**

John M. Abel  
Margarita Tulman  
Office of Attorney General  
Bureau of Consumer Protection  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Candis A. Tunilo  
Christy M. Appleby  
Kristine E. Robinson  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101

Re: Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC  
Docket Nos. C-2014-2427655

Dear Counsel:

On behalf of Blue Pilot Energy, LLC, I am providing Responses to Complainants' Interrogatories and Requests for Production (Set V), 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/tg  
Enclosure

cc: Rosemary Chiavetta, Secretary (*letter and Certificate of Service only via eFiling*)  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**RESPONDENT BLUE PILOT ENERGY, LLC'S RESPONSES TO  
COMPLAINANTS' INTERROGATORIES AND  
REQUESTS FOR PRODUCTION (SET V)**

Respondent Blue Pilot Energy, LLC ("BPE") hereby provides the following responses to the combined fifth set of Interrogatories and Requests for Production (together, "Discovery Requests") propounded by Complainants in accordance with 52 Pa. Code §§ 5.342 and 5.349.

**Discovery Request No. 1.**

Please state all generation prices charged to Respondent's customers in December 2013, January 2014, February 2014, and March 2014.

**Response:** BPE references its July 21, 2014 Objections to Complainants' Interrogatories and Requests for Production. BPE also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part BPE's Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite Complainants' attempts to transform Count II of their Joint Complaint into an allegation that BPE's prices do not conform to the variable rate pricing provision of its Disclosure Statement, "the gravamen of Count II is clearly the rate at which Blue Pilot charged its variable rate customers, not conformance of those rates with the variable rate pricing provisions in the Disclosure Statement." Aug. 8, 2014 Order, at 11. The Commission's December 11, 2014 Opinion and Order on Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Regardless, BPE notes that much of the information requested in this Discovery Request already has been produced and/or may be derived from documents previously produced to Complainants; the burden of finding the answer from those documents is substantially the same for both BPE and Complainants. *See* BPE-PALIT-000325 to -417; and BPE's Response to Complainants' Request for Production No. 22 (Set I).

BPE reserves the right to supplement its response to this Request.

**Discovery Request No. 2.**

If not included in your response to the question in paragraph 1 above, identify the billing cycles applicable to all prices stated.

**Response:** BPE references its July 21, 2014 Objections to Complainants' Interrogatories and Requests for Production. BPE also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part BPE's Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite Complainants' attempts to transform Count II of their Joint Complaint into an allegation that BPE's prices do not conform to the variable rate pricing provision of its Disclosure Statement, "the gravamen of Count II is clearly the rate at which Blue Pilot charged its variable rate customers, not conformance of those rates with the variable rate pricing provisions in the Disclosure Statement." Aug. 8, 2014 Order, at 11. The Commission's December 11, 2014 Opinion and Order on Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Regardless, BPE notes that much of the information requested in this Discovery Request already has been produced and/or may be derived from documents previously produced to Complainants; the burden of finding the answer from those documents is substantially the same for both BPE and Complainants. *See* BPE-PALIT-000325 to -417, and BPE's response to Complainants' Request for Production No. 22 (Set I).

BPE reserves the right to supplement its response to this Request.

### Discovery Request No. 3.

Please produce any and all documents setting forth methods used to reflect electric power market information into the establishment of the price for Respondent's residential consumers for December 2013, January 2014, February 2014 and March 2014. Please include the following information:

- a) Any and all formula(s) used to calculate the price;
- b) The load profile(s) used for Respondent's residential consumers. If different load profiles are used for different months or seasons, different EDC service areas, or residential consumers of different size, provide all such load profiles used for the months of December 2013, January 2014 and February 2014;
- c) The specific type of market price information (e.g., reported four-week forward contract prices for on-peak and off-peak at the PJM West hub) used to develop the residential generation price and the source(s) of that information;
- d) Any and all electronic spreadsheets used to develop the residential generation price applicable to Respondent's residential consumers;
- e) All on-peak and off-peak energy prices relied upon to develop the prices charged to Respondent's residential consumers for billing cycles that include at least seven (7) days in January 2014 and for all billing cycles in February 2014. This information should be disaggregated by billing cycle used for Respondent's residential consumers; and
- f) Respondent's total residential kWh sales for December 2013, January 2014, February 2014, and March 2014.

**Response:** BPE references its July 21, 2014 Objections to Complainants' Interrogatories and Requests for Production. BPE also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part BPE's Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite Complainants' attempts to transform Count II of their Joint Complaint into an allegation that BPE's prices do not conform to the variable rate pricing provision of its Disclosure Statement, "the gravamen of Count II is clearly the rate at which Blue Pilot charged its variable rate customers, not conformance of those rates with the variable rate pricing provisions in the Disclosure Statement." Aug. 8, 2014 Order, at 11. The Commission's December 11, 2014 Opinion and Order on Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Further, BPE does not maintain information in the ordinary course of its business in the format requested. Thus, BPE is not required to organize the information and provide it in the manner requested by this Discovery Request. 52 Pa. Code § 5.362(b). Although BPE is not required to Respond to this Discovery Request in the manner requested by Complainants, BPE notes that much of the information requested in this Discovery Request already has been produced and/or may be derived from documents previously produced to Complainants; the burden of finding the answer from those documents is substantially the same for both BPE and Complainants. *See* BPE's response to Complainants' Request for Production No. 22 (Set I).

BPE reserves the right to supplement its response to this Request.

#### **Discovery Request No. 4.**

Please produce any and all documents indicating whether you develop different generation prices for each of the billing cycles within the month or whether the same price is applicable to multiple billing cycles. If the same price is applicable to multiple billing cycles, please indicate the frequency with which the generation price is changed.

**Response:** BPE references its July 21, 2014 Objections to Complainants' Interrogatories and Requests for Production. BPE also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part BPE's Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite Complainants' attempts to transform Count II of their Joint Complaint into an allegation that BPE's prices do not conform to the variable rate pricing provision of its Disclosure Statement, "the gravamen of Count II is clearly the rate at which Blue Pilot charged its variable rate customers, not conformance of those rates with the variable rate pricing provisions in the Disclosure Statement." Aug. 8, 2014 Order, at 11. The Commission's December 11, 2014 Opinion and Order on Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Regardless, BPE notes that much of the information requested in this Discovery Request already has been produced and/or may be derived from documents previously produced to Complainants; the burden of finding the answer from those documents is substantially the same for both BPE and Complainants. *See* BPE's response to Complainants' Request for Production No. 22 (Set I).

BPE reserves the right to supplement its response to this Request.

### **Discovery Request No. 5.**

Please produce any and all documents indicating all cost components used to develop the generation price (*e.g.*, AEPS credits, ancillary services) and Respondent's average cost of acquiring those components for December 2013, January 2014, February 2014, and March 2014.

**Response:** BPE references its July 21, 2014 Objections to Complainants' Interrogatories and Requests for Production. BPE also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part BPE's Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite Complainants' attempts to transform Count II of their Joint Complaint into an allegation that BPE's prices do not conform to the variable rate pricing provision of its Disclosure Statement, "the gravamen of Count II is clearly the rate at which Blue Pilot charged its variable rate customers, not conformance of those rates with the variable rate pricing provisions in the Disclosure Statement." Aug. 8, 2014 Order, at 11. The Commission's December 11, 2014 Opinion and Order on Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Further, BPE does not maintain information in the ordinary course of its business in the format requested. Thus, BPE is not required to organize the information and provide it in the manner requested by this Discovery Request. 52 Pa. Code § 5.362(b). Although BPE is not required to Respond to this Discovery Request in the manner requested by Complainants, BPE notes that much of the information requested in this Discovery Request already has been produced and/or may be derived from documents previously produced to Complainants; the burden of finding the answer from those documents is substantially the same for both BPE and Complainants. *See* BPE's response to Complainants' Request for Production No. 22 (Set I).

BPE reserves the right to supplement its response to this Request.

**Discovery Request No. 6.**

Please provide a sample calculation of one of the prices charged to Respondent's residential consumers that reflects a time period that includes the last three (3) weeks in January 2014.

**Response:** BPE references its July 21, 2014 Objections to Complainants' Interrogatories and Requests for Production. BPE also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part BPE's Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite Complainants' attempts to transform Count II of their Joint Complaint into an allegation that BPE's prices do not conform to the variable rate pricing provision of its Disclosure Statement, "the gravamen of Count II is clearly the rate at which Blue Pilot charged its variable rate customers, not conformance of those rates with the variable rate pricing provisions in the Disclosure Statement." Aug. 8, 2014 Order, at 11. The Commission's December 11, 2014 Opinion and Order on Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Further, BPE does not maintain information in the ordinary course of its business in the format requested. Thus, BPE is not required to organize the information and provide it in the manner requested by this Discovery Request. 52 Pa. Code § 5.362(b). Although BPE is not required to Respond to this Discovery Request in the manner requested by Complainants, BPE notes that much of the information requested in this Discovery Request already has been produced and/or may be derived from documents previously produced to Complainants; the burden of finding the answer from those documents is substantially the same for both BPE and Complainants. *See* BPE's response to Complainants' Request for Production No. 22 (Set I).

BPE reserves the right to supplement its response to this Request.

**Discovery Request No. 7.**

Please provide a sample calculation at monthly usage of 750 kWh of a price charged to Respondent's residential consumers that reflect a time period that includes at least 21 days in February 2014.

**Response:** BPE references its July 21, 2014 Objections to Complainants' Interrogatories and Requests for Production. BPE also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part BPE's Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite Complainants' attempts to transform Count II of their Joint Complaint into an allegation that BPE's prices do not conform to the variable rate pricing provision of its Disclosure Statement, "the gravamen of Count II is clearly the rate at which Blue Pilot charged its variable rate customers, not conformance of those rates with the variable rate pricing provisions in the Disclosure Statement." Aug. 8, 2014 Order, at 11. The Commission's December 11, 2014 Opinion and Order on Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Further, BPE does not maintain information in the ordinary course of its business in the format requested. Thus, BPE is not required to organize the information and provide it in the manner requested by this Discovery Request. 52 Pa. Code § 5.362(b). Although BPE is not required to Respond to this Discovery Request in the manner requested by Complainants, BPE notes that much of the information requested in this Discovery Request already has been produced and/or may be derived from documents previously produced to Complainants; the burden of finding the answer from those documents is substantially the same for both BPE and Complainants. *See* BPE's response to Complainants' Request for Production No. 22 (Set I).

BPE reserves the right to supplement its response to this Request.

**Discovery Request No. 8.**

Please produce any and all documents setting forth all such notifications of Respondent's running charges with PJM for December 2013, January 2014, February 2014, and March 2014.

**Response:** BPE references its July 21, 2014 Objections to Complainants' Interrogatories and Requests for Production. BPE also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part BPE's Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite Complainants' attempts to transform Count II of their Joint Complaint into an allegation that BPE's prices do not conform to the variable rate pricing provision of its Disclosure Statement, "the gravamen of Count II is clearly the rate at which Blue Pilot charged its variable rate customers, not conformance of those rates with the variable rate pricing provisions in the Disclosure Statement." Aug. 8, 2014 Order, at 11. The Commission's December 11, 2014 Opinion and Order on Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Regardless, BPE notes that much of the information requested in this Discovery Request already has been produced previously to Complainants; the burden of finding the answer from those documents is substantially the same for both BPE and Complainants. *See* BPE's response to Complainants' Request for Production No. 22 (Set I).

BPE reserves the right to supplement its response to this Request.

**Discovery Request No. 9.**

Please provide Respondent's Pennsylvania prices and revenues, by month, from January 1, 2013 to present, broken down by EDC service territory and customer class.

**Response:** BPE references its July 21, 2014 Objections to Complainants' Interrogatories and Requests for Production. BPE also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part BPE's Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite Complainants' attempts to transform Count II of their Joint Complaint into an allegation that BPE's prices do not conform to the variable rate pricing provision of its Disclosure Statement, "the gravamen of Count II is clearly the rate at which Blue Pilot charged its variable rate customers, not conformance of those rates with the variable rate pricing provisions in the Disclosure Statement." Aug. 8, 2014 Order, at 11. The Commission's December 11, 2014 Opinion and Order on Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Further, BPE does not maintain information in the ordinary course of its business in the format requested. Thus, BPE is not required to organize the information and provide it in the manner requested by this Discovery Request. 52 Pa. Code § 5.362(b). Although BPE is not required to Respond to this Discovery Request in the manner requested by Complainants, BPE notes that much of the information requested in this Discovery Request already has been produced and/or may be derived from documents previously produced to Complainants; the burden of finding the answer from those documents is substantially the same for both BPE and Complainants. See BPE-PALIT-000325 to -417; BPE's response to Complainants' Request for Production No. 22 (Set I).

BPE reserves the right to supplement its response to this Request.

**Discovery Request No. 10.**

Please refer to Blue Pilot's Response to Joint Complainant's Request for Production of Documents Set III-17. Please produce any and all documents that reference, relate to, or establish the procedure that Duane Gonzalez was to follow when placing calls to then-current Blue Pilot customers near the end of their respective initial rate-guarantee periods or otherwise regarding a customer's current rate with Blue Pilot.

**Response:** See BPE-PALIT-002749 to -52, -2755, and -2759 to -60 for non-privileged, responsive documents within BPE's possession, custody, or control.

BPE reserves the right to supplement its response to this Request.

**Discovery Request No. 11.**

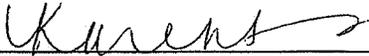
Please reference Blue Pilot's response to Joint Complainants' Interrogatory Set I-14. Please provide any and all documents that reference, relate to, or establish Blue Pilot's procedure for training its salespeople, employees, agents and representatives to adhere to the Commission's Regulations prohibiting fraudulent, deceptive, and/or misleading conduct.

**Response:** See BPE-PALIT-002746 to -48, -2753 to -54, -2756 to -58, and -2761 for non-privileged, responsive documents within BPE's possession, custody, or control. See also BPE-PALIT-000181 to -192.

BPE reserves the right to supplement its response to this Request.

January 16, 2015

BUCHANAN INGERSOLL & ROONEY PC

By: 

Karen O. Moury  
409 North Second Street, Suite 500  
Harrisburg, PA 17101  
Telephone: (717) 237-4820  
Facsimile: (717) 233-0852

Mark R. Robeck  
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3050 K Street, NW, Suite 400  
Washington, DC 20007  
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Facsimile: (202) 342-8451

*Attorneys for Blue Pilot Energy, LLC*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**VERIFICATION**

I, Raymond Perea, hereby state that the responses set forth above are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904.

Jan. 16, 2015

  
\_\_\_\_\_  
Raymond Perea, General Counsel

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**COMMONWEALTH OF  
PENNSYLVANIA, ET AL.**

**v.**

**BLUE PILOT ENERGY, LLC**

:  
:  
:  
:  
:  
:

**Docket Nos. C-2014-2427655**

**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).

**Via Email and First Class Mail**

Sharon E. Webb  
Office of Small Business Advocate  
300 N. Second Street, Suite 202  
Harrisburg, PA 17101

Steve Estomin  
Exeter Associates, Inc.  
10480 Little Patuxent Parkway  
Suite 300  
Columbia, Maryland 21044

Michael L. Swindler  
Wayne T. Scott  
Stephanie Wimer  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
PO Box 3265  
Harrisburg, PA 17105-3265

Barbara R. Alexander  
83 Wedgewood Drive  
Winthrop, Maine 04364

Dated this 16<sup>th</sup> day of January, 2015.



\_\_\_\_\_  
Karen O. Moury, Esq.

# **Exhibit E**

## Robinson, Kristine E.

---

**From:** Blynn, Daniel S. <DBlynn@KelleyDrye.com>  
**Sent:** Monday, January 26, 2015 5:17 PM  
**To:** 'Tulman, Margarita'  
**Cc:** Abel, John; Wilmarth, Catherine; Moury, Karen; Tunilo, Candis; Robinson, Kristine E.  
**Subject:** RE: BPE Discovery Responses

Rita,

Please see responses in red text to your questions below.

Best,  
Dan

---

**From:** Tulman, Margarita [<mailto:mtulman@attorneygeneral.gov>]  
**Sent:** Friday, January 23, 2015 8:53 AM  
**To:** Blynn, Daniel S.  
**Cc:** Abel, John; Robeck, Mark; Wilmarth, Catherine; Moury, Karen; Robinson, Kristine (OCA contact); Tunilo, Candis A. (OCA contact)  
**Subject:** BPE Discovery Responses

Dan – I have a couple questions regarding the BPE response to Set V Discovery Requests.

First, in response to Discovery request 9, BPE states the information was provided in BPE-PALIT-000325 to -417 and Request for Production No. 22 (Set I). However, none of those documents include revenues of BPE. Please let us know how we can obtain the answer to the revenues part of our discovery request. Complainants' Discovery Request No. 9 requested: ". . . Respondent's Pennsylvania prices and revenues, by month, from January 1, 2013 to present, broken down by EDC service territory and customer class." BPE responded, in part, ". . . BPE does not maintain information in the ordinary course of its business in the format requested. Thus, BPE is not required to organize the information and provide it in the manner requested by this Discovery Request. 52 Pa. Code § 5.362(b). [sic] Although BPE is not required to Respond to this Discovery Request in the manner requested by Complainants, BPE notes that much of the information requested in this Discovery Request already has been produced and/or may be derived from documents previously produced to Complainants; the burden of finding the answer from those documents is substantially the same for both BPE and Complainants. See BPE-PALIT-000325 to -417; BPE's response to Complainants' Request for Production No. 22 (Set I)." As explained in its response to Discovery Request 9, BPE does not maintain price and revenue information by month broken down by EDC service territory and customer class. Because it does not maintain the requested information in the unique format requested by complainants, pursuant to 52 Pa. Code § 5.361(b), BPE is not required to create or compile that information in the manner requested by complainants.

Second, in response to Discovery request 10, BPE provided a proactive sales script which states that all calls are monitored and recorded for quality assurance. I have been listening to the tapes BPE provided in Set IV and I have not heard anyone repeat this script for any of the consumer witnesses. In accordance with BPE's motion for continuance, full responses to discovery will be provided by January 23rd. Will you be providing anymore recordings today that will include calls made by Duane Gonzalez? BPE has provided a full response to the Discovery Request served upon it by complainants, which requested ". . . documents that reference, relate to, or establish *the procedure* that Duane Gonzalez [sic] was to follow when placing calls to then-current Blue Pilot customers near the end of their respective initial rate-guarantee periods or otherwise regarding a customer's current rate with Blue Pilot." (emphasis added). BPE

is required only to respond to the discovery request actually served. As you acknowledge, BPE produced its proactive sales script, which establishes the procedure – as requested by complainants – that Mr. Gonzales followed when placing proactive sales calls. Call recordings do not “establish” any of Mr. Gonzales’ “procedures.” Regardless, BPE is required only to produce documents within its possession, custody, or control that it is able to locate after a reasonable search. It has done so in response to each of complainants’ five sets of discovery requests.

Thanks,

Rita

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of any applicable attorney-client or any other applicable privilege. PA-OAG

The information contained in this E-mail message is privileged, confidential, and may be protected from disclosure; please be aware that any other use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this E-mail message in error, please reply to the sender.

This E-mail message and any attachments have been scanned for viruses and are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened. However, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Kelley Drye & Warren LLP for any loss or damage arising in any way from its use.

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 :  
 :  
v. :  
 :  
BLUE PILOT ENERGY, LLC :  
Respondent :

Docket No. C-2014-2427655

I hereby certify that I have this day served a true copy of the foregoing document, the Joint Motion of Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate to Compel Responses to Set VI-1 and VI-7, in the manner and upon the persons listed below:

Dated this 13th day of February 2015.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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Stephanie M. Wimer, Esq.  
Wayne T. Scott, Esq.  
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