

COMMONWEALTH OF PENNSYLVANIA



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April 23, 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 Motion of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate to Compel Responses to Set VIII, in the above-referenced proceeding.

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

Respectfully Submitted,

A handwritten signature in cursive script that reads "Kristine E. Robinson".

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

Enclosure

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	:	

MOTION OF JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA
AND THE OFFICE OF CONSUMER ADVOCATE
TO COMPEL RESPONSES TO SET VIII

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 Elizabeth Barnes and Joel H. Cheskis (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' eighth Set of Interrogatories and Requests for Production of Documents (Joint Complainants' Set VIII), questions 1 and 2, 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. 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. See December 11 Order at 18-21.

Throughout the proceeding, the parties have actively engaged in discovery. On April 7, 2015, Joint Complainants served Joint Complainants' Set VIII upon Blue Pilot. On April 17, 2015, Blue Pilot filed Objections to Joint Complainants' Set VIII, numbers 1 and 2, asserting that the requested information is (1) privileged; (2) not relevant to the subject matter of this proceeding; and (3) would cause unreasonable annoyance and burden to Blue Pilot. A copy of Blue Pilot's Objections to Joint Complainants' Set VIII is attached hereto as Exhibit A. For the reasons set forth below, Joint Complainants respectfully request that Your Honors overrule the Objections, grant this Motion to Compel Responses to Set VIII-1 and VIII-2 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 Cmwlt. 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 April 7, 2015, Joint Complainants served Joint Complainants' Set VIII upon Blue Pilot. Joint Complainants' Set VIII consists of two Interrogatories/Requests for Production of Documents. Responses to Set VIII are due on April 27, 2015, pursuant to 52 Pa. Code §§ 5.342(d) and 5.349(d). On April 17, 2015, Blue Pilot filed Objections to Joint Complainants' Set VIII, numbers 1 and 2. Blue Pilot did not contact Joint Complainants to attempt to informally resolve these objections.

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

Joint Complainants' Set VIII-1 provides:

Regarding Blue Pilot's response to Joint Complainants Interrogatories Set I No. 9, describe in detail the "desired rate of return" Blue Pilot used in calculating rates for Pennsylvania customers on variable rate plans from March 31, 2012 until December 31, 2014. Please provide the rate of return obtained by Blue Pilot from

its Pennsylvania sales to customers on variable rate plans for March 31, 2012 until December 31, 2014.

1. JOINT COMPLAINANTS' SET VIII-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 VIII-1 is privileged, because if Blue Pilot's competitors obtained the information, it would place Blue Pilot at an economic disadvantage. Exhibit A at 2. The ALJs have already rejected this same argument made by Blue Pilot in this proceeding by Order dated March 3, 2015 (March 3 Order).

The ALJs held:

Blue Pilot's arguments are without merit and will be rejected. Blue Pilot has not demonstrated that the requested financial information is privileged simply because it may be proprietary. Evidence is privileged if it relates, for example, to relationships between a doctor and a patient, a husband and a wife, a priest and a penitent, among others. Privileged communications are those statements made by certain persons within a protected relationship which the law protects from forced disclosure. Black's Law Dictionary, West Publishing Company, 6th Edition at 1198. The law affords higher protections to certain relationships so, for example, a patient can be forthright with his or her doctor and the best medical treatment can in turn be provided. Sections 5.321 and 5.361 prohibit discovery of privileged matters to maintain these protected relationships. 52 Pa.Code §§ 5.321 and 5.361. Such a protected relationship does not exist, however, with regard to Blue Pilot's financial information.

Matter is not privileged and outside of the scope of discovery because it is proprietary. Proprietary information that is not privileged is discoverable and protected by the Protective Order governing this proceeding. Blue Pilot's concern that answering interrogatories VI-1 and VI-7 would place the Company at an economic disadvantage is sufficiently resolved by the Protective Order. ...

As a result, Blue Pilot's argument that the information sought in interrogatories VI-1 and VI-7 is not discoverable because the information is privileged or not covered by the Protective Order is without merit and will be rejected with regard to Blue Pilot's costs, expenses and billing.

March 3rd Order at 8-9. 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 Protective Order referenced by the ALJs in the March 3 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 in this proceeding. 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 VIII-1 fully within five days.

2. JOINT COMPLAINANTS' SET VIII-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 VIII-1 is not relevant to the allegations filed in the Joint Complaint. Exhibit A 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 submit that the information requested in Joint Complainants' Set VIII-1 is both relevant and reasonably calculated to lead to the discovery of admissible evidence.

Joint Complainants submit that their Set VIII-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); See also March 3 Order at 5-6.

In its Response to Joint Complainants' first set of Interrogatories, question 9 (Joint Complainants' Set I-9), Blue Pilot indicated that the rates that it has offered in the past in connection with its variable priced service agreements have been established by a variety of factors, including a desired rate of return. A copy of Blue Pilot's Responses to Joint Complainants' Set I-9 is attached hereto as Exhibit B. Specifically, Joint Complainants' Set I-9 provides as follows:

Please describe how Respondent establishes a "discount" or "introductory price" for new customers and **how the "discount" or "introductory price" differs from the price in the months after the introductory period.**

See Exhibit B at 10 (Emphasis added). Blue Pilot responded, in pertinent part, as follows:

[Blue Pilot] responds that it is not currently enrolling any new customers. In the past, [Blue Pilot] offered an initial rate, which was guaranteed for the first 60 to 90 days in connection with its variable priced service agreements, but never offered a discounted or introductory initial rate for new customers. **The rate offered in the past has been established by a variety of factors, including [Blue Pilot's] costs, a desired rate of return,** and the then existing and projected future market conditions for wholesale and retail power.

Id. (Emphasis added). It is not clear whether Blue Pilot is referring to its "initial rate" or to the price that it charged in the months thereafter when it states "[t]he rate offered." In either event, however, Joint Complainants submit that information regarding Blue Pilot's "desired rate of return" is relevant to the prices Blue Pilot charged its customers on variable rate plans, which is

directly 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: “[t]he 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 VIII-1 is relevant to the issue of 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 VIII-1 fully within five days.

3. JOINT COMPLAINANTS’ SET VIII-1 IS REASONABLE AND SOUGHT IN GOOD FAITH.

Finally, Respondent argues that Joint Complainants’ Set VIII-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 A at 3. Joint Complainants’ submit that Set VIII-1 is reasonable and sought in good faith. Set VIII-1 is narrow, as it requests Blue Pilot to identify only its desired rate of return 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 VIII-1 is not vague, overbroad,

sweeping, or harassing and request the ALJs to direct Blue Pilot to fully answer Joint Complainants' Set VIII-1 within five days.

B. JOINT COMPLAINANTS' SET VIII-2 IS RELEVANT, REASONABLE, SOUGHT IN GOOD FAITH, AND WITHIN THE PERMISSIBLE SCOPE OF DISCOVERY.

Joint Complainants' Set VIII-2 provides:

Please provide all documents and/or correspondence that are identified or referred to in Blue Pilot's response to Joint Complainants Discovery Request Set VI No. 7 for January 1, 2013 until December 31, 2014.

1. JOINT COMPLAINANTS' SET VIII-2 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 VIII-2 is privileged, because if Blue Pilot's competitors obtained the information, it would place Blue Pilot at an economic disadvantage. Exhibit A at 4. As explained above, the ALJs have already rejected this argument. See March 3 Order at 8-9. Blue Pilot has failed to demonstrate that the requested information is privileged simply because it may be proprietary. 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 VIII-2 within five days.

2. JOINT COMPLAINANTS' SET VIII-2 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 VIII-2 is not relevant to the allegations in the Joint Complaint. Exhibit A at 4. 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 VIII-2 is relevant and will lead to the discovery of admissible evidence.

Joint Complainants submit that the ALJs have already determined that the information requested in Set VIII-2 is relevant to the issue of whether Blue Pilot charged prices that conformed to the Company's Disclosure Statement. See March 3 Order at 5-6; See also Joint Complaint at Count II (prices nonconforming to disclosure statement). In Set VIII-2, Joint Complainants are seeking the records that are compiled or maintained by Blue Pilot which concern, refer or relate to costs, expenses and billing for Respondent's Pennsylvania operations. See Blue Pilot Supplemental Response to Set VI-7, attached hereto as Exhibit C. The ALJs have already determined that information regarding Blue Pilot's costs, expenses, and billing are relevant to this proceeding. See March 3 Order at 5-6. Specifically, the ALJs stated:

The Commission has previously noted that it has jurisdiction and authority to ensure that electric generation service providers billed price reflect its disclosure statement. Commonwealth of Pa., et al. v. IDT Energy, Inc., Docket No. C-2014-2427657, Opinion and Order (entered Dec. 18, 2014) (IDT Order) at 24; see also, 52 Pa.Code §§ 54.4(a) and 54.5(a). In their Complaint, the Joint Complainants averred that Blue Pilot failed to provide accurate pricing information consistent with their Disclosure Statement and that the prices did not conform to the Disclosure Statement. Blue Pilot's Disclosure Statement specifically provides with regard to pricing:

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

Of note, this paragraph specifically states that "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." (emphasis added).

As a result, information regarding Blue Pilot's costs is directly relevant to whether the Company has billed in accordance with its Disclosure Statement. Pursuant to the IDT Order, the Commission has authority to ensure that the prices charged by Blue Pilot conform to the Disclosure Statement and interrogatories VI-1 and VI-7 may lead to the admissibility of evidence regarding that issue with regard to Blue Pilot's costs because the Disclosure Statement specifically says that Blue Pilot may pass through to bills unusual costs. It is, therefore, within the scope of discovery to examine what Blue Pilot's costs have been to see if the prices Blue Pilot charged conforms with the Disclosure Statement. Similarly, the Joint Complainants' request for "expenses" is also likely to lead to admissible evidence to the extent that "expenses" equate with "costs." The Joint Complainants' request for "billing" information is also likely to lead to admissible evidence to the extent that the price Blue Pilot billed its customer conforms to the Disclosure Statement. Therefore, information regarding costs, expenses and billing are relevant to this proceeding.

Id. Thus, the information requested in Set VIII-2 regarding Blue Pilot's costs, expenses, and billing is relevant to this proceeding. As such, Joint Complainants request the ALJs to direct Blue Pilot to fully answer Joint Complainants Set VIII-2 within five days.

3. JOINT COMPLAINANTS' SET VIII-2 IS REASONABLE AND SOUGHT IN GOOD FAITH.

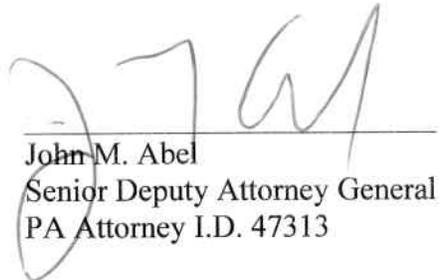
Finally, Respondent argues that Joint Complainants' Set VIII-2 is vague, overbroad, and/or sweeping, and harassing and would, therefore, cause unreasonable annoyance and burden and require Blue Pilot to make an unreasonable investigation. Exhibit A at 5. Joint Complainants' submit that Set VIII-2 is reasonable and sought in good faith.

Joint Complainants' Set VIII-2 is as narrow as possible without hindering Joint Complainants' ability to gather relevant information. Joint Complainants' are not sending Blue Pilot on a "fishing expedition." Rather, they are requesting five, very specific categories of documents that, as explained above, are relevant to this proceeding. Specifically, the five categories of documents are as follows: 1) PJM Regional Transmission Organization Invoices; 2) Vendor Invoices; 3) Professional Services Invoices; 4) Indirect Overhead Allocation Listing; and 5) EDI Records to and from EDC's from the following categories: 867, 810, 824, 820. See Exhibit C at 3. Thus, Joint Complainants submit that Joint Complainants' Set VI-7 is not vague, overbroad, sweeping, or harassing and request the ALJs to direct Blue Pilot to fully answer Joint Complainants Set VIII-2 within five days.

IV. CONCLUSION

For the foregoing reasons, the information sought in Joint Complainants' Set VIII, numbers 1 and 2, 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 VIII -1 and VIII-2 within five days.

Respectfully submitted,



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Kathleen G. Kane, Attorney General
Bureau of Consumer Protection

Date: April 23, 2015

205566



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Exhibit A

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April 17, 2015

VIA EMAIL AND FIRST-CLASS MAIL

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

Dear Complainants:

On behalf of Blue Pilot Energy, LLC, I am providing the Objections of Blue Pilot Energy, LLC to Complainants' Interrogatories and Requests for Production (Set VIII) in the above-captioned proceeding.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Karen O. Moury

KOM/tlg
Enclosure

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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 VIII (“Discovery Requests”) propounded by the Complainants on April 7, 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: Regarding Blue Pilot's response to Joint Complainants Interrogatories Set I No. 9, describe in detail the "desired rate of return" Blue Pilot used in calculating rates for Pennsylvania customers on variable rate plans from March 31, 2012 until December 31, 2014. Please provide the rate of return obtained by Blue Pilot from its Pennsylvania sales to customers on variable rate plans for March 31, 2012 until December 31, 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.

In addition, BPE objects to Discovery Request No. 1 on the grounds that its financial information constitutes commercially sensitive, confidential and proprietary information. This information is privileged because if BPE's competitors obtained 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).

In addition, BPE objects to Discovery Request No. 1 on the grounds that its 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 any of the allegations contained in Complainants' Joint Complaint, and specifically that BPE failed to provide accurate pricing information, charged prices not conforming with BPE's 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. *See* Order Granting in Part and Denying in Part Motion to Compel Responses to Joint

Complainant Interrogatories VI-1 and VI-7, dated March 3, 2015, at 6 (“Joint Complainants’ request for Blue Pilot’s profits, losses and revenues are not likely to lead to the discovery of admissible evidence because profits, losses and revenue are not referenced in the Disclosure Statement or otherwise relevant to an issue raised in the Joint Complaint. Nowhere in Blue Pilot’s Disclosure Statement, for example, is there a reference to the Company’s profits, losses and revenues being used to determine the variable rate and, therefore, Blue Pilot’s profits, losses and revenues are not relevant to ensure that the billed prices conform to the Disclosure Statement.”).

In addition, BPE objects to Discovery Request No. 1 on the grounds that it 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).

Subject to and without waiving the foregoing objections, BPE further states that the phrase “desired rate of return” referenced in BPE’s response to Joint Complainants Interrogatory Set I No. 9 refers to the general notion that BPE sought to seek a profit from the business that it conducted in Pennsylvania and does not specifically refer to a specific formula or calculation that it used in connection with such a rate of return.

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

Discovery Request No. 2: Please provide all documents and/or correspondence that are identified or referred to in Blue Pilot’s response to Joint Complainants Discovery Request Set VI No. 7 for January 1, 2013 until December 31, 2014.

Objection: BPE objects to Discovery Request No. 2 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.

In addition, BPE objects to Discovery Request No. 2 on the grounds that its 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).

In addition, BPE objects to Discovery Request No. 2 on the grounds that its 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. 2 seeks information unrelated to the legal and factual contentions regarding the claims in this case proceeding. *See* Order Granting in Part and Denying in Part Motion to Compel Responses to Joint Complainant Interrogatories VI-1 and VI-7, dated March 3, 2015, at 6 ("Joint Complainants' request for Blue Pilot's profits, losses and revenues are not likely to lead to the discovery of admissible evidence because profits, losses and revenue are not referenced in the Disclosure Statement or otherwise relevant to an issue raised in the Joint Complaint. Nowhere in Blue Pilot's Disclosure Statement, for example, is there a reference to the Company's profits, losses and revenues being used to determine the variable rate and, therefore, Blue Pilot's profits, losses and revenues are not relevant to ensure that the billed prices conform to the Disclosure Statement.").

In addition, BPE objects to Discovery Request No. 2 on the grounds that it 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. 2 exceeds the permissible bounds of discovery. *See* 52 Pa. Code § 5.361(a).

Subject to and without waiving the foregoing objections, BPE will produce the requested information.

April 17, 2015

BUCHANAN INGERSOLL & ROONEY PC

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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.	:

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
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Harrisburg, PA 17120

Sharon E. Webb
Office of Small Business Advocate
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Steve Estomin
Exeter Associates, Inc.
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Suite 300
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Candis A. Tunilo
Christy M. Appleby
Kristine E. Robinson
Office of Consumer Advocate
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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 17th day of April, 2015.

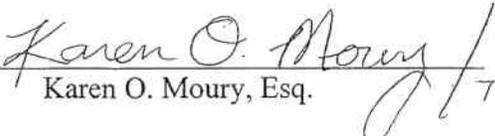

Karen O. Moury, Esq. TLG

Exhibit B

Karen O. Moury

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Karen.moury@bipc.com

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Harrisburg, PA 17101
T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

July 22, 2014

VIA E-MAIL AND FIRST-CLASS MAIL

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Harrisburg, PA 17120

Candis A. Tunilo, Esquire
Christy M. Appleby, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101

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

Dear Complainants:

On behalf of Blue Pilot Energy, LLC, I am providing the Responses of Blue Pilot Energy, LLC to Complainants' Interrogatories and Requests for Production in the above-captioned matter.

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

Very truly yours,



Karen O. Moury

KOM/tlg
Enclosure

cc: Rosemary Chiavetta, Secretary (*letter and certificate of service only*)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**RESPONDENT BLUE PILOT ENERGY, LLC’S CONFORMED RESPONSES TO
COMPLAINANTS’ INTERROGATORIES**

Respondent Blue Pilot Energy, LLC (“BPE”) hereby provides the following responses to the Interrogatories propounded by Complainants in accordance with Pa. Code § 5.342. While preserving all of its general and specific objections, BPE states that, to its knowledge, its responses to each Interrogatory are full and complete (unless otherwise stated). Ray Perea, BPE’s General Counsel and Manager, has verified the answer to each Interrogatory.

Interrogatory No. 9:

Please describe how Respondent establishes a “discount” or “introductory price” for new customers and how the “discount” or “introductory price” differs from the price in the months after the introductory period.

Response: BPE hereby incorporates by reference as if set forth fully herein all of the General Objections asserted in its July 21, 2014 Objections to Complainants’ Interrogatories and Requests for Production, and specific objections to this Interrogatory. Subject to and without waiving any of the foregoing objections, BPE responds that is not currently enrolling any new customers. In the past, BPE offered an initial rate, which was guaranteed for the first 60 or 90 days in connection with its variable priced service agreements, but has never offered a discounted or introductory initial rate for new customers. The rate offered in the past has been established by a variety of factors, including BPE’s costs, a desired rate of return, and the then existing and projected future market conditions for wholesale and retail power.

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**COMMONWEALTH OF
PENNSYLVANIA, ET AL.,**

Complainants,

v.

BLUE PILOT ENERGY, LLC,

Respondent.

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: **Docket No. C-2014-2427655**
:
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VERIFICATION

I, Raymond Perea, hereby state that the facts 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.

July 25, 2014
Date



Raymond Perea, General Counsel

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COMMONWEALTH OF	:	
PENNSYLVANIA, ET AL.	:	
	:	
Complainants,	:	
	:	Docket Nos. C-2014-2427655
v.	:	
	:	
BLUE PILOT ENERGY, LLC	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via E-Mail and First-Class Mail

Sharon E. Webb
Office of Small Business Advocate
300 N. Second Street, Suite 1102
Harrisburg, PA 17101

Dated this 22nd day of July, 2014.



Karen O. Moury, Esq.

Exhibit C

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March 13, 2015

VIA EMAIL AND FIRST CLASS MAIL

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Harrisburg, PA 17120

Candis A. Tunilo
Christy M. Appleby
Kristine E. Robinson
Office of Consumer Advocate
555 Walnut Street
5th 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 the Supplemental Answers and Responses 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**

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

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

Respondent Blue Pilot Energy, LLC ("BPE") hereby provides the following responses to the combined six set of Interrogatories and Requests for Production (together, "Discovery Requests") propounded by Complainants in accordance with 52 Pa. Code §§ 5.342 and 5.349 pursuant to the Order Granting in Part and Denying in Part Motion to Compel Responses to Joint Complainants Interrogatories VI-1 and VI-7 dated March 3, 2015 (the "Order").

Discovery Request 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.

Response: Pursuant to the Order, BPE states that the records compiled or maintained by Respondent which concern, refer or relate to costs, expenses and billing for Respondent's Pennsylvania operations are as follows:

Costs

- PJM Regional Transmission Organization invoices

Expenses

- Vendor Invoices
- Professional Services Invoices
- Indirect Overhead Allocation listing

Billing

- EDI Records to and from EDC's from the following categories: 867, 810, 824, and 820.

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

March 13, 2015

BUCHANAN INGERSOLL & ROONEY PC

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(*pro hac vice* application to be submitted)
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Attorneys for Blue Pilot Energy, LLC

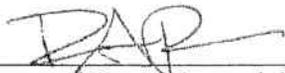
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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.

March 12, 2015



Raymond Perea, General Counsel

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**COMMONWEALTH OF
PENNSYLVANIA, ET AL.**

v.

BLUE PILOT ENERGY, LLC

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:

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

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Sharon E. Webb
Office of Small Business Advocate
300 N. Second Street, Suite 202
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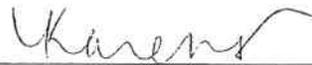
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Stephanie Wimer
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17105-3265

Barbara R. Alexander
83 Wedgewood Drive
Winthrop, Maine 04364

Dated this 13th day of March, 2015.



Karen O. Moury, Esq.

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 Motion of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate to Compel Responses to Set VIII, in the manner and upon the persons listed below:

Dated this 23rd day of April 2015.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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Wayne T. Scott, Esq.
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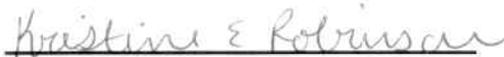
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