

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

April 28, 2015

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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 Answer of Blue Pilot Energy, LLC to Motion of Joint Complainants to Compel Responses to 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/bb

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF BLUE PILOT ENERGY, LLC, TO MOTION OF
JOINT COMPLAINANTS TO COMPEL RESPONSES TO SET VIII**

TO: ADMINISTRATIVE LAW JUDGES BARNES AND CHESKIS

Pursuant to 52 Pa. Code § 5.342(g)(1), Blue Pilot Energy, LLC (“BPE”), by and through its counsel, files this Answer to the Motion to Compel Responses to Set VIII (“Motion to Compel”) filed by the Joint Complainants, Commonwealth of Pennsylvania and the Office of Consumer Advocate, relating to Joint Complainants’ Eighth Set of Interrogatories and Requests for Production of Documents (“Set VIII”), questions 1 (“VIII-1”) and 2 (“VIII-2”), and in support hereof, avers as follows:

INTRODUCTION

Joint Complainants’ Set VIII seeks confidential financial information related to BPE’s profits and losses, *see* VIII-1, and BPE’s costs and expenses, *see* VIII-2. On April 17, 2015, BPE objected to VIII-1 because, as this Commission has already held, BPE’s profits and losses are not relevant to the subject matter of the action. *See* BPE’s Objections to Set VIII at 2, attached as **Exhibit 1**. While BPE objected to VIII-2, BPE also provided that “BPE will produce the requested information.” *Id.* at 5.

On April 23, 2015, Joint Complainants served their Motion to Compel, which rehashes the same arguments that the Commission has already considered and rejected. Specifically, Joint

Complainants allege that BPE's confidential financial information is relevant to determining whether Blue Pilot's charged prices conformed with Blue Pilot's Disclosure Statement. The Motion to Compel also seeks to compel a response to VIII-2, which BPE has stated it would respond to – and has in fact done.

For some reason, Joint Complainants fail to include BPE's actual responses to the requests in the body of their Motion to Compel. Had Joint Complainants addressed BPE's Objections – or the Commission's prior order on discovery related to BPE's profits and losses – the Motion to Compel and this Answer would likely have been entirely unnecessary. As the Commission has previously held, "profits, losses and revenue are not referenced in the Disclosure Statement or otherwise relevant to an issue raised in the Joint Complaint." Order at 6, attached as **Exhibit 2**. Further, BPE has already responded to VIII-2, making the Motion to Compel moot. Because BPE's sensitive information is not relevant to this proceeding and BPE has otherwise already responded to Set VIII, BPE respectfully requests that the Commission deny Joint Complainants' Motion to Compel.

ARGUMENT AND AUTHORITY

I. 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 the inadmissibility of evidence at a hearing may not be 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).

II. BPE's Profits, Losses, and Revenue Are Not Relevant to This Proceeding

A. The Motion to Compel Misapprehends BPE's Pricing Practices

The Motion to Compel asserts that BPE's rates were "established by ... a desired rate of return." Motion to Compel at 8. Joint Complainants base this assertion on a misreading of BPE's response to a previous discovery request. *Id.* The Motion to Compel fails to inform the Commission that BPE addressed Joint Complainants' confusion regarding this issue in its Objection to Set VIII, wherein BPE clarified that it did not base its rates on a calculated "desired rate of return." Because BPE's rates were not "established by ... a desired rate of return," the Motion to Compel should be denied.

Joint Complainants' VIII-1 provides:

Regarding Blue Pilot's response to Joint Complainants [sic] 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.

See BPE's Objections to set VIII at 2, **Ex. 1**. Joint Complainants' Interrogatory I-9 requested 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 BPE's Responses to Complainants' Interrogatories at 7, attached as **Exhibit 3**. BPE responded to I-9, in relevant part, as follows:

BPE responds that it 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.

Id. BPE objected to VIII-1 on several grounds, including privilege, relevance, and the request being overbroad. Critically, BPE clarified what it meant by “desired rate of return,” a fact Joint Complainants’ Motion to Compel entirely fails to address:

Subject to and without waiving the foregoing objections, BPE 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.

See BPE’s Objections to Set VIII at 3, **Ex. 1.**

Joint Complainants’ Motion to Compel completely fails to inform the Commission that BPE clarified to Joint Complainants that “desired rate of return” merely refers to the notion that BPE sought to make a profit, and that “desired rate of return” does not refer to any specific formula or calculation.¹ Instead, the Motion to Compel alleges that “Blue Pilot indicated that the rates that is 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.” *See* Motion to Compel at 8. BPE assumed it resolved any misunderstanding Joint Complainants had regarding this issue in BPE’s initial Objection. To the extent that Joint Complainants failed to actually review BPE’s Objection, BPE again states that there is no specific formula or calculation that BPE used to determine a desired rate of return; rather, BPE was simply referring to the general notion that it sought a profit from the business that it conducted in Pennsylvania. As the Commission has already held that “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,” the Motion to Compel must be denied. *See* Order at 6, **Ex. 2.**

¹ 52 Pa. Code § 5.342(g) provides that “The motion to compel must include the interrogatory objected to and the objection.” While Joint Complainants do attach BPE’s Objections as an Exhibit, they entirely fail to include the substance of the Objections in the Motion to Compel.

B. The Information Sought Is Not Relevant to Whether BPE's Prices Conformed with Its Disclosure Statement

Joint Complainants argue that BPE's profit margins are relevant "to the issue of whether Blue Pilot charged prices that conformed to the Company's Disclosure Statement." Motion to Compel at 7. This is a complete rehashing of the same argument Joint Complainants previously made in a Motion to Compel which the Commission already rejected. *See* Joint Complainants' Motion to Compel Responses to Set VI-1 and VI-7 at 7 and 12, attached as **Exhibit 4**. Notably absent from Joint Complainants' Motion to Compel is any discussion of BPE's actual Disclosure Statement, which in no way supports Joint Complainants' contention. In fact, the Commission has previously held that such information *is not relevant* to BPE's Disclosure Statement:

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.

Order at 6, **Ex. 2**.

Rather than reference the actual Disclosure Statement, Joint Complainants rely entirely on a misreading to a discovery response – which BPE has since clarified for Joint Complainants' benefit. *See* Motion to Compel at 8-9. Because "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," the Commission should deny the Motion to Compel. Order at 6, **Ex. 2**.

C. The Commission Lacks Ratemaking Authority

Even assuming that the financial information is a factor in determining the rates, the Commission does not have traditional ratemaking authority over EGSs and cannot regulate

competitive supply rates. *See Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 at 18-19 (Order adopted November 13, 2014) (“[T]he Commission does not have traditional ratemaking authority over competitive suppliers and does not regulate competitive supply rates. The Commission also does not have subject matter jurisdiction to interpret the terms and conditions of a contract between an EGS and a customer to determine whether a breach of the contract has occurred.”). As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq* (“Code”). *See Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *Roberts v. Martorano*, 235 A.2d 602, 604 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390, 393 (Pa. Commw. Ct. 1992), appeal denied, 637 A.2d 293 (Pa. 1993).

Nothing in the Code authorizes the Commission to regulate or establish EGS prices. To the contrary, Code Section 2806(a) provides that the “generation of electricity shall no longer be regulated as a public utility service or function except as otherwise provided for in this chapter.” In enacting Chapter 28 of the Code, the General Assembly made it clear that the price of generation supply is exempt from regulation, noting that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2802(5).

In considering whether an EGS has billed its customer in accordance with its disclosure statement, the Commission is limited by statute to determinations that do not require it to engage in ratemaking or place limitations on prices charged by EGSs. For instance, the review could entail a consideration of whether the disclosure statement permitted variable prices, or whether

the initial prices that were charged matched any initial prices included in the disclosure statement. While the Commission's statutory authority might also extend to considering whether an EGS's prices complied with any ceiling or specific index contained in the disclosure statement, there is no factual dispute in this case that the Disclosure Statement cited in the Joint Complaint does not contain a specific index or a ceiling price. Moreover, those inquiries tread into the area of contract interpretation, for which the Commission has no jurisdiction. *See Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. 1978) ("It is equally well-settled ... that the PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and a utility.").

The Commission's statutory authority does not extend to reviewing wholesale market conditions, considering expenses incurred by an EGS to purchase electricity, determining a reasonable profit margin for the EGS to recover, or performing any of the other traditional ratemaking functions that are applicable to rates charged by public utilities. Therefore, it is inappropriate for BPE to be compelled to provide the financial information sought by the Motion to Compel.

III. BPE Has Already Responded to VIII-2

Joint Complainants' Motion to Compel also seeks a response to VIII-2. However, just as with its arguments on VIII-1, Joint Complainants entirely fail to actually include the content of BPE's objection in the body of the Motion to Compel. In its Objection to VIII-2, BPE provided that "BPE will produce the requested information." *See* BPE's Objections to Set VIII at 5, **Ex. 1**. On April 27, 2015, BPE did in fact provide responses. *See* BPE's Responses to VIII-2, attached as **Exhibit 5**. This was within the twenty day time period for responding to interrogatories provided in 52 Pa. Code § 5.342. Because BPE has responded to VIII-2, the Commission should

deny the Motion to Compel. Therefore, it is entirely unclear why Joint Complainants brought their Motion to Compel.

CONCLUSION

Based on the foregoing, BPE respectfully requests that the Commission deny Joint Complainants' Motion to Compel.

April 28, 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
KELLEY DRYE & WARREN LLP
One Jefferson Road
Parsippany, New Jersey 07054
Telephone: (973) 503-5900
Facsimile: (973) 503-5950

Mark R. Robeck
Travis G. Cushman
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

EXHIBIT 1

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

April 17, 2015

VIA EMAIL AND FIRST-CLASS MAIL

John M. Abel
Margarita Tulman
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
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 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.

BLUE PILOT ENERGY, LLC,

Respondent.

:
:
:
:
:
:
:
:
:
:
:

: Docket No. C-2014-2427655

**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

By: Karen O. Moury / TLG
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.,	:
	:
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
Office of Attorney General
Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, PA 17120

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

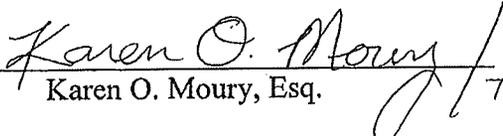
Steve Estomin
Exeter Associates, Inc.
10480 Little Patuxent Parkway
Suite 300
Columbia, Maryland 21044

Candis A. Tunilo
Christy M. Appleby
Kristine E. Robinson
Office of Consumer Advocate
555 Walnut Street
5th 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 17th day of April, 2015.



Karen O. Moury, Esq. / TLG

EXHIBIT 2

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, <i>et al.</i>	:	
	:	
v.	:	C-2014-2427655
	:	
Blue Pilot Energy, LLC	:	

ORDER
GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL
RESPONSES TO JOINT COMPLAINANT INTERROGATORIES VI-1 AND VI-7

On June 20, 2014, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (OAG), and Tanya J. McCloskey, Acting Consumer Advocate (OCA) (collectively referred to as “the Joint Complainants”) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against Blue Pilot Energy, LLC (“Blue Pilot” or “the Company”), Docket Number C-2014-2427655. In their Complaint, the Joint Complainants averred that they had received numerous contacts and complaints from consumers related to variable rates charged by Blue Pilot, including eleven formal complaints filed by consumers at the Commission. The Joint Complainants further averred that Blue Pilot used a variety of marketing and advertising mediums to solicit residential customers for its variable rate plan. As a result, the Joint Complainants averred five separate counts against Blue Pilot, including, but not limited to, failing to provide accurate pricing information, making misleading and deceptive promises of savings and lack of good faith handling of complaints. The Joint Complainants made several requests for relief, including providing restitution and prohibiting deceptive practices in the future.

On July 10, 2014, Blue Pilot filed an Answer in response to the Complaint. In its Answer, Blue Pilot admitted or denied the various averments made by the Joint Complainants. In particular, Blue Pilot specifically denied that any consumers

were charged high variable rates by Blue Pilot and denied that it failed to state the conditions of variability and the limits on price variability adequately. Blue Pilot averred that it has complied with all Commission regulations and orders and has clearly, conspicuously and accurately disclosed to consumers all the material terms of their rate plans.

Subsequently, the procedural history of this Complaint has been quite extensive. Various pleadings have been filed, including Preliminary Objections and Answers to Preliminary Objections. On August 20, 2014, an Order Granting in Part and Denying in Part Preliminary Objections was issued striking one Count in its entirety and two Counts in part. Additionally, a Petition for Interlocutory Review of Material Question was filed with the Commission and answered via Order entered December 11, 2014.

On February 13, 2015, the Joint Complainants filed a Motion to Compel Responses to interrogatories VI-1 and VI-7. On February 23, 2015, Blue Pilot filed an Answer to the Joint Complainants' Motion to Compel. The Joint Complainants' Motion is now ready to for disposition. For the reasons discussed below, the Motion will be granted in part and denied in part.

Standard And Evidence

The standard for permissible discovery is set forth in Section 5.321 of the Commission's regulations:

§ 5.321. Scope.

(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). Section 5.361 of the Commission's regulations, however, provides various limitations on the scope of discovery:

§ 5.361. Limitation of scope of discovery and deposition.

(a) Discovery or deposition is not permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

52 Pa. Code § 5.361(a).

In this case, the Joint Complainants seek an Order compelling Blue Pilot to answer interrogatories VI-1 and VI-7. These interrogatories provide:

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

In its Objections, Blue Pilot objected to both of these interrogatories because they seek privileged material, are not relevant and cause unreasonable annoyance and burden. Blue Pilot also argued that VI-7 is vague and ambiguous. More specifically,

Blue Pilot claimed that its financial information is commercially sensitive, proprietary material and that the information has no probative value pertaining to the allegations in the Complaint. Blue Pilot added that furnishing responses to these interrogatories would require Blue Pilot to make an unreasonable investigation. With regard to interrogatory VI-7, Blue Pilot claims that the interrogatory is vague and ambiguous because it is unclear what is meant by the request that Blue Pilot “describe” its documents.

In its Motion, the Joint Complainants’ argued that a Protective Order was issued in this proceeding on September 3, 2014 and, therefore, any “privileged” material would be protected by that Order. The Joint Complainants also argued that the information sought in these interrogatories is relevant because it pertains to the determination of civil penalties and whether the Company charged prices that conform to its Disclosure Statement. The Joint Complainants added that the information sought in these interrogatories would not cause Blue Pilot to conduct an unreasonable investigation because they only seek information for a specific period of time. The Joint Complainants argued that the information sought in interrogatories VI-1 and VI-7 is reasonable and sought in good faith.

In its Answer to the Joint Complainants’ Motion, Blue Pilot argued that the Joint Complainants’ Motion should be denied because the information sought in interrogatories VI-1 and VI-7 is not protected by the Protective Order governing this proceeding because the information is irrelevant. Blue Pilot also argued that the Motion should be denied because financial information is not relevant at this stage of proceeding and is only relevant if a determination is made that a civil penalty is appropriate. Blue Pilot added that the information is not relevant because the Commission lacks ratemaking authority over electric generation suppliers and cannot regulate competitive supply rates. Finally, Blue Pilot argued that the information sought in interrogatories VI-1 and VI-7 are overbroad because “the interrogatories in no way seek to limit the information to factors in Blue Pilot’s ratemaking.”

As discussed below, the Joint Complainants’ Motion will be granted in

part and denied in part. Interrogatories VI-1 and VI-7 will be discussed together because they both include requests for similar information.

Blue Pilot's Costs, Expenses And Billing Are Relevant

With regard to Blue Pilot's argument that interrogatories VI-1 and VI-7 are irrelevant, this argument will be granted in part and denied in part. Blue Pilot's costs, expenses and billing are relevant to this proceeding but its profits, losses and revenues are not.

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.

In contrast, however, the 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.

The Joint Complainants’ also argued that the information sought in interrogatories VI-1 and VI-7 is relevant because the size of the utility may be considered in determining an appropriate penalty amount. Information regarding Blue Pilot’s profits, losses and revenues is not necessary when determining an appropriate amount of

civil penalty, if any, because other relevant information is available that could be examined when determining a civil penalty, such as number of customers. This is particularly true in light of the \$1,000 limitation per occurrence on civil penalties. 66 Pa.C.S. § 3301(a).

Additionally, Blue Pilot's argument that the information sought in interrogatories VI-1 and VI-7 is not relevant because Blue Pilot's financial information is not relevant at this stage of the proceeding will be rejected. Blue Pilot argued that "at this point in the proceeding, the inquiry is whether there has been any violative conduct in the first place – not what type of a civil penalty should be imposed" and that the Motion should be denied because it assumes that Blue Pilot will be civilly liable. Yet, Blue Pilot's bifurcation is unreasonable. The Commission frequently, if not always, addresses both liability and penalty, if appropriate, in the same proceeding. Furthermore, Blue Pilot cites to no Commission regulation or case that supports its proposition that liability should be determined before a civil penalty amount is determined. In fact, such a process would be inefficient and require the Commission to litigate proceedings twice. Rather, it is reasonable that a civil penalty be imposed at the same time if it is also determined that a civil penalty is appropriate. Blue Pilot's argument will be rejected.

With regard to Blue Pilot's argument that the information sought in interrogatories VI-1 and VI-7 is not relevant because the Commission lacks ratemaking authority, this argument will be also rejected because the Joint Complainants do not seek this information in these interrogatories in an attempt to determine the specific price Blue Pilot should be charging or to argue that its formula for determining prices should be changed. Nor are the Joint Complainants seeking to impose traditional ratemaking authority over the rates charged by Blue Pilot. The Joint Complainants seek the information in interrogatories VI-1 and VI-7 to ensure that Blue Pilot is charging prices that conform to the Disclosure Statement. Doing so is permitted by the Commission in the IDT Order, *supra*. It is reasonable for the Joint Complainants to know Blue Pilot's costs, expenses and billing as part of this proceeding.

As such, the information sought in interrogatories VI-1 and VI-7 regarding Blue Pilot's costs, expenses and billing is relevant to the averments in the Complaint but information regarding Blue Pilot's profits, losses and revenues is irrelevant.

Blue Pilot's Financial Information Is Not Privileged

With regard to Blue Pilot's argument that interrogatories VI-1 and VI-7 are privileged and therefore beyond the scope of discovery, this argument will be rejected.

In its objection, Blue Pilot argued that its financial information constitutes commercially sensitive, confidential and proprietary information and that "this information is privileged because if Blue Pilot's competitors obtained this information, it would place Blue Pilot at an economic disadvantage." The Joint Complainants argued in their Motion that such information is neither "privileged" nor outside the scope of permissible discovery and that, in any event, disclosure of such information is protected by the Protective Order that governs this proceeding. In its Answer to the Joint Complainants' Motion, Blue Pilot argued that the information sought is not covered by the Protective Order because it is not relevant to this proceeding.

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. Furthermore, Blue Pilot's argument that the Protective Order is not sufficient to safeguard the Company's commercially sensitive information because that information is not relevant will be rejected because, as noted above, information regarding Blue Pilot's costs, expenses and billing are relevant to this proceeding and therefore discoverable and covered by the Protective Order. It is not critical that Blue Pilot's profit, losses and revenues are covered by the Protective Order because they are not relevant and therefore not discoverable.

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.

The Joint Complainants' Discovery Is Reasonable And Sought In Good Faith

Blue Pilot's concerns that interrogatories VI-1 and VI-7 are unreasonably annoying or burdensome, vague and ambiguous and therefore beyond the scope of discovery are also without merit with regard to Blue Pilot's costs, expenses and billing and will be rejected.

In its objection, Blue Pilot argued that interrogatories VI-1 and VI-7 would require the Company to undertake an unreasonable investigation and therefore exceed the bounds of discovery. In its Motion, the Joint Complainants argued that interrogatories VI-1 and VI-7 are as narrow as possible without hindering their ability to gather relevant information. In response, Blue Pilot argued that the interrogatories are

overly broad and cause unreasonable annoyance because they are not limited to factors used in determining the variable rate.

As noted above, Blue Pilot's Disclosure Statement indicates that one factor upon which its variable rates are based are "unusual costs when supplying electricity service" and that such costs may be passed through as a temporary assessment on bills. It is impossible to determine what costs may be "unusual" without knowing which costs are "usual." Furthermore, as the Joint Complainants' argued in their Motion, interrogatory VI-7 is a follow-up question to a prior interrogatory in which Blue Pilot did not provide the information requested because the information was not requested in the specific format that Blue Pilot maintains the information. In interrogatory VI-7, the Joint Complainants merely seek a description of how the records are compiled or maintained in an effort to obtain information sought in previous discovery that Blue Pilot did not answer. This request is not overbroad and does not cause an unreasonable burden to Blue Pilot. Nor is the request vague or ambiguous.

As a result, Blue Pilot's argument that the information sought in interrogatories VI-1 and VI-7 is not discoverable because the request is overbroad and would cause unreasonable burden is without merit and will be rejected with regard to Blue Pilot's costs, expenses and billing.

Conclusion

As such, the Joint Complainants' Motion to Compel will be granted in part and denied in part. The Joint Complainants' Motion to Compel will be granted with regard to Blue Pilot's costs, expenses and billing but will be denied with regard to Blue Pilot's profits, losses and revenues. Blue Pilot's costs, expenses and billing are relevant to the Company's Disclosure Statement. Such information is not beyond the scope of permissible discovery because it is privileged or not sought in good faith. Blue Pilot's profit, losses and revenues, however, are not relevant to issues regarding the Disclosure Statement, or anything else raised in the Joint Complaint, and therefore it is moot whether

such information is also privileged or sought in bad in faith. Blue Pilot will be directed to answer interrogatory VI-7 with regard to Blue Pilot's costs, expenses and billing within ten (10) days of the date of this Order.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Motion of Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate to Compel Responses to Set VI-1 and VI-7 filed at Docket No. C-2014-2427655 and dated February 13, 2015 is hereby granted in part and denied in part.
2. That Blue Pilot Energy, LLC is hereby directed to provide answers to interrogatory VI-7 regarding costs, expenses and billing within ten (10) days of the date of this Order.
3. That the objection of Blue Pilot Energy, LLC to interrogatories VI-1 and VI-7, as they pertain to profits, losses and revenues, is sustained.

Date: March 3, 2015

Elizabeth Barnes
Administrative Law Judge

Joel H. Cheskis
Administrative Law Judge

C-2014-2427655 - ATTORNEY GENERAL PA & OFFICE OF CONSUMER
ADVOCATE v. BLUE PILOT ENERGY LLC

REVISED 01/07/15

JOHN M ABEL ESQUIRE
MARGARITA TULMAN ESQUIRE
PA OFFICE OF ATTORNEY GENERAL
BUREAU OF CONSUMER PROTECTION
15TH FL STRAWBERRY SQUARE
HARRISBURG PA 17120

CANDIS A TUNILO ESQUIRE
CHRISTY APPLEBY ESQUIRE
KRISTINE E ROBINSON ESQUIRE
OFFICE OF CONSUMER ADVOCATE
5TH FLOOR FORUM PLACE
555 WALNUT STREET
HARRISBURG PA 17101-1923

SHARON WEBB ESQUIRE
OFFICE OF SMALL BUSINESS ADVOCATE
SUITE 1102
300 NORTH SECOND STREET
HARRISBURG PA 17101
717.783.2525

STEPHANIE WIMER ESQUIRE
WAYNE T SCOTT ESQUIRE
PA PUC LAW BUREAU
PO BOX 3265
HARRISBURG PA 17105-3265
Accepts eService

MICHAEL L SWINDLER
PA PUC LAW BIE
PO BOX 3265
HARRISBURG PA 17105-3265
Accepts eService

KAREN MOURY ESQUIRE
BUCHANAN INGERSOLL ROONEY PC
409 NORTH SECOND STREET
SUITE 500
HARRISBURG PA 17101
Accepts eService

EXHIBIT 3

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 it neither tracks nor is it able to identify the number of Pennsylvania residential customers on a monthly basis by municipality, whether such customers receive low income energy assistance, or whether such customers have medical no shut-off certificates.

BPE reserves the right to supplement its response to this 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.

EXHIBIT 4

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

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 cursive script 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	:	

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

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.¹ 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

¹ 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 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

have in its possession. Joint Complainants submit the interrogatory was necessary to determine the format in which the Company maintains the information. Once known, Joint Complainants can determine if Blue Pilot accurately and fully answered Joint Complainants' Set V. Further, Joint Complainants can then draft discovery specifically designed to elicit the information and avoid multiple rounds of fruitless discovery. The ALJs have already determined that the precise language in Set V-9 requests information that is relevant to the issue of whether an EGS charged prices that conformed to its 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). Thus, Joint Complainants' attempt in Set VI-7 to identify documents that would allow them to obtain the same information as that requested in in Set V-9 is relevant to the issue of whether Blue Pilot charged prices that conformed to its Disclosure Statement. As such, Joint Complainants request the ALJs to direct Blue Pilot to fully answer Joint Complainants Set VI-7 within five days.

3. JOINT COMPLAINANTS' SET VI-7 IS REASONABLE AND SOUGHT IN GOOD FAITH.

Finally, Respondent argues that Joint Complainants' Set VI-7 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 B at 4. Joint Complainants' submit that Set VI-7 is reasonable and sought in good faith.

Joint Complainants' Set VI-7 is as narrow as possible without hindering Joint Complainants' ability to gather relevant information. As explained above, when Joint Complainants asked Blue Pilot to provide Respondent's Pennsylvania prices and revenues, by

month, from January 1, 2013 to present, broken down by EDC service territory and customer class in Set V-9, Blue Pilot responded that it did not have that information in the unique format requested by Joint Complainants. Exhibit D at 10; Exhibit E at 1. Accordingly, Blue Pilot did not send Joint Complainants any information regarding its revenues and only indicated that much of, as opposed to all of, the requested information had already been produced or could be derived from information already produced. See Id. Yet, Joint Complainants have not located the information sought in Set V-9 from the information already produced. In Set VI-7, Joint Complainants seek the information and additional documents that are responsive to this request. Additionally, Joint Complainants note that Blue Pilot responded to several other questions from Joint Complainants' Set V in a similar manner. See Exhibit D at 4,6,7,8. Since Blue Pilot will not provide information unless Joint Complainants request information in the specific format that Blue Pilot maintains it, Joint Complainants submit that questions aimed at determining how Blue Pilot maintains relevant information is within the permissible scope of discovery and necessary to obtain full and complete responses to discovery from the Company. Thus, Joint Complaints served Set VI-7, in part, in an attempt to determine what documents Blue Pilot has in its possession that may be responsive to Set V-9 and, in part, in an attempt to identify the format in which Blue Pilot maintains additional relevant information that Joint Complainants may seek in the future. 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 VI-7 within five days.

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
15th Floor, Strawberry Square
Harrisburg, PA 17120
T: (717) 787-9707
F: (717) 787-1190
jabel@attorneygeneral.gov
mtulman@attorneygeneral.gov

Counsel for:

Kathleen G. Kane, Attorney General
Bureau of Consumer Protection

Date: February 13, 2015

201926


Candis A. Tunilo
PA Attorney I.D. 89891

Kristine E. Robinson
PA Attorney I.D. 316479
Assistant Consumer Advocates

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
T: (717) 783-5048
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
15th 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
15th Floor, Strawberry Square
Harrisburg, PA 17120

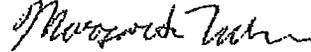
Candis A. Tunilo
Assistant Consumer Advocate
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101

Margarita Tulman
Deputy Attorney General
Bureau of Consumer Protection
21 South 12th Street, 2nd 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

Sincerely,



Margarita Tulman
Deputy Attorney General

Enclosures

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

**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

**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 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)

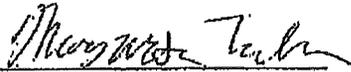
Sharon E. Webb, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
swebb@pa.gov
(Electronic Mail & First-Class Mail)

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
15th 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
15th Floor, Strawberry Square
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 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**

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 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.

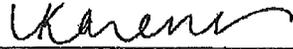
In addition, Request No. 7 is vague, overbroad, and/or sweeping, and harassing. Therefore, furnishing a response to this request would cause unreasonable annoyance and burden to BPE and would require the making by BPE of an unreasonable investigation. As such, Discovery Request No. 7 exceeds the permissible 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.	:	
	:	Docket Nos. C-2014-2427655
v.	:	
	:	
BLUE PILOT ENERGY, LLC	:	

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
15th 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
5th 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 6th 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 17101-1823
(717) 783-5048
800-684-6500

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
15th Floor, Strawberry Square
Harrisburg, PA 17120

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

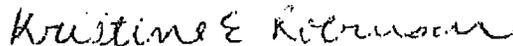
Page 2

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

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

**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	:	

**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**

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 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

Kristine E. Robinson
Assistant Consumer Advocate
PA Attorney I.D. # 316479
E-Mail: 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
15th Floor, Strawberry Square
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 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**

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

**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 D).

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
Daniel S. Blynn
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.,	:
	:
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 16th 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 :
: 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 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

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

Geoffrey W. Castello, Esq.
Travis G. Cushman, Esq.
Mark R. Robeck, 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

Kristine E. Robinson
Assistant Consumer Advocate
PA Attorney I.D. # 316479
E-Mail: 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 5

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

April 27, 2015

VIA EMAIL AND FIRST-CLASS MAIL

John M. Abel
Margarita Tulman
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
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 (Set VIII-2) 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/bb

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.

BLUE PILOT ENERGY, LLC,

Respondent.

:
:
:
:
:
:
:
:
:
:
:

: Docket No. C-2014-2427655

**RESPONDENT BLUE PILOT ENERGY, LLC'S RESPONSES TO
COMPLAINANTS' INTERROGATORIES AND REQUESTS FOR PRODUCTION
(SET VIII-2)**

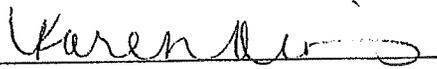
Respondent Blue Pilot Energy, LLC ("BPE") hereby provides the following response to the Interrogatories and Requests for Production (Set VIII-2) propounded by Complainants in accordance with 52 Pa. Code §§ 5.342 and 5.349. This response is verified by Raymond Perea, General Counsel and Manager of BPE.

Interrogatory and Request for Production 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.

Subject to and without waiving the objections filed on April 17, 2015, *see* BPE-PALIT-002890-3201, which are contained on the enclosed CD.

April 27, 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 (admitted *pro hac vice*)
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.,**

Complainants,

v.

BLUE PILOT ENERGY, LLC,

Respondent.

:
:
:
:
:
: **Docket No. 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
15th 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
5th 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 27th day of April, 2015.



Karen O. Moury, Esq.

**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

Elizabeth Barnes
Joel Cheskis
Administrative Law Judges
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

John M. Abel
Margarita Tulman
Office of Attorney General
Bureau of Consumer Protection
15th 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
5th 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 28th day of April, 2015.



Karen O. Moury, Esq.