

COMMONWEALTH OF PENNSYLVANIA



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August 21, 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 the Commonwealth of Pennsylvania, Bureau of Consumer Protection and the Office of Consumer Advocate to Compel Responses to Set X in the above-referenced proceeding.

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

Respectfully Submitted,

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

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

Enclosure

cc: Honorable Elizabeth Barnes, ALJ  
Honorable Joel Cheskis, ALJ  
Certificate of Service

\*211518

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by	:	
Attorney General KATHLEEN G. KANE,	:	
Through the Bureau of Consumer Protection,	:	
	:	
And	:	
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate,	:	
Complainants	:	
	:	Docket No. C-2014-2427655
v.	:	
	:	
BLUE PILOT ENERGY, LLC,	:	
Respondent	:	

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MOTION OF JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA  
AND THE OFFICE OF CONSUMER ADVOCATE  
TO COMPEL RESPONSES TO JOINT COMPLAINANTS' INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS SET X

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Pursuant to 52 Pa. Code §§ 5.342(g) and 5.349(d), the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (BCP or OAG) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively Joint Complainants) respectfully move the Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) to enter an Order compelling Blue Pilot Energy, LLC (Blue Pilot or the Company) to provide the full and complete answers/responses to Joint Complainants' tenth Set of Interrogatories and Requests for Production of Documents (Joint Complainants' Set X), questions 1 and 2, within five days of the date of the Order. In support of this Motion, Joint Complainants aver as follows:

## I. INTRODUCTION

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

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

for Interlocutory Review and Answer to Material Questions with the Commission. Joint Complainants sought for the Commission to answer, *inter alia*, the following question: Does the Commission have the authority and jurisdiction to determine whether the prices charged to customers by an EGS conform to the EGS disclosure statement regarding pricing? On September 18, 2014, the Joint Complainants filed a Brief in Support of their Material Questions, and Blue Pilot filed a Brief in Opposition. On December 11, 2014, the Commission issued an Order (December 11 Order) in which it determined, *inter alia*, that it has the authority and jurisdiction to determine whether the prices charged to customers by an EGS conform to the EGS disclosure statement regarding pricing. See Dec. 11, 2014 Order at 18-21.

Throughout the proceeding, the parties have actively engaged in discovery. On August 5, 2015, Joint Complainants served Joint Complainants' Set X upon Blue Pilot. On August 14, 2015, Blue Pilot filed Objections to Joint Complainants' Set X, numbers 1 and 2, asserting that the requested information is (1) privileged; (2) not relevant to the subject matter of this proceeding; and (3) would cause unreasonable annoyance and burden to Blue Pilot. Additionally, Blue Pilot asserted that it had already produced the information requested in Joint Complainants' Set X-1. A copy of Blue Pilot's Objections to Joint Complainants' Set X is attached hereto as Exhibit A. For the reasons set forth below, Joint Complainants respectfully request that Your Honors overrule the Objections, grant this Motion to Compel Responses to Set X-1 and X-2 and direct Blue Pilot to provide full responses within five days.

## **II. LEGAL STANDARD**

The Commonwealth Court of Pennsylvania has stated that “[d]iscovery itself is designed to promote free sharing of information so as to narrow the issues and limit unfair surprise. It is a tool which serves each litigant and promotes judicial economy.” See Pittsburgh Bd. of Public

Educ. v. M.J.N. by N.J., 105 Pa 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 August 5, 2015, Joint Complainants served Joint Complainants' Set X upon Blue Pilot. Joint Complainants' Set X consists of two Interrogatories/Requests for Production of Documents. Responses to Set X are due on August 25, 2015, pursuant to 52 Pa. Code §§ 5.342(d) and 5.349(d). On August 14, 2015, Blue Pilot served Objections to Joint Complainants' Set X, numbers 1 and 2, asserting that the requested information is (1) privileged; (2) not relevant to the subject matter of this proceeding; and (3) would cause unreasonable annoyance and burden to Blue Pilot. Additionally, Blue Pilot asserted that it had already produced the information requested in Joint Complainants' Set X-1. Blue Pilot did not contact Joint Complainants to attempt to informally resolve these objections.

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

Joint Complainants' Set X-1 provides:

Please provide, in native electronic format (i.e. excel), all generation prices charged to Blue Pilot's Pennsylvania customers in December 2013, January 2014, February 2014, and March 2014. For each such price charged, please provide the customer's usage associated with the price, provide the customer's EDC, and identify whether the customer is residential or commercial.

**1. JOINT COMPLAINANTS' SET X-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 X-1 is not discoverable on the grounds that it is privileged information, because Blue Pilot's financial information is commercially sensitive, confidential, and proprietary. Exhibit A at 2. The ALJs have already rejected this same argument made by Blue Pilot in this proceeding on two separate occasions by Orders dated March 3, 2015 (March 3 Order) and May 1, 2015 (May 1 Order).

Specifically, in the March 3 Order, the ALJs held:

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

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

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

to Blue Pilot's costs, expenses and billing.

March 3 Order at 8-9; see also May 1 Order at 4-5. As such, Joint Complainants submit that Blue Pilot's assertion that the information is "privileged" must fail, as such privilege is not recognized by the Commission. The Protective Order referenced by the ALJs in the March 3 Order provides, in pertinent part:

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

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

Protective Order at ¶¶ 3, 5. As recognized by the ALJs in the May 1 Order:

Joint Complainants and their witnesses are bound by the Protective Order in this proceeding. The Company may label the requested information "Confidential," if appropriate, and if appropriately labeled, it will be kept confidential pursuant to the Protective Order.

May 1 Order at 5. 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 X-1 fully within five days.

**2. JOINT COMPLAINANTS' SET X-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 X-1 is not relevant to the allegations filed in the Joint Complaint. Exhibit A at 2. Specifically, Blue Pilot asserts that information relating to any consumer who has not submitted a complaint or witness statement in this proceeding is not relevant. Id.

Joint Complainants submit that it is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. See 52 Pa. Code § 5.321(c). Thus, permissible discovery includes both relevant information and information that appears reasonably calculated to lead to the discovery of admissible evidence. Joint Complainants submit that the information requested in Joint Complainants' Set X-1 is both relevant and reasonably calculated to lead to the discovery of admissible evidence.

Joint Complainants have alleged in their Joint Complaint that Blue Pilot's pattern and practice of behavior was misleading and deceptive, *inter alia*, and enabled Blue Pilot to charge prices that did not conform to its disclosure statement. See gen'ly Joint Complaint at Counts I-V. The allegations in the Joint Complaint are not specific to individual customers. The ALJs have already acknowledged Joint Complainants' role in similar proceedings to act on behalf of the public interest as a whole. See 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, Order at 6 (December 1, 2014) (PaG&E Order). Specifically, in the PaG&E Order, the ALJs held:

. . . in this case, the OCA and OAG are acting in their representative capacities as government agencies on behalf of the public interest as a whole, not on behalf of the specific individual consumers whose prior complaints may be referenced in the record of this case. As we noted in the August 20, 2014 Order Granting In Part And Denying In Part Preliminary Objections, and as the Joint Complainants argued in their Answer to ESP's Motion, both the OCA and the OAG are authorized to represent consumer interests before the Commission. *See*, 71 P.S. § 309-4(a) and (b); 73 P.S. § 201-4. Neither the OCA nor the OAG act as a private attorney for any given customer and are not seeking to do that in this case. Rather, the Joint Complainants are proceeding in this matter on behalf of the public interest ... The Joint Complainants are able to bring complaints based on the public interest that an individual consumer alone would not be able to bring. This is the opportunity to do that.

PaG&E Order at 6. As the allegations in the Joint Complaint are not specific to individual customers and Joint Complainants are acting on behalf of the public interest, Joint Complainants submit that relevant information can include information related to a consumer who has not submitted a complaint to the Commission or the OAG or testified in this proceeding.

Joint Complainants submit that their Set X-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). The Commission has already determined that it has the jurisdiction to determine whether an EGS has billed its customers in accordance with its disclosure statement. See 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); 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. Respond Power LLC, Docket No. C-2014-2427659, Order at 26-28 (April 9, 2015); see also

March 3 Order at 5-6; see also May 1 Order at 5-7. Specifically, in the December 11 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).

As such, information relating to the prices that Blue Pilot charged its customers on variable rate plans in December 2013 through March 2014, including customers usage, 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.

In fact, Blue Pilot has already admitted that the information sought is relevant and admissible in this proceeding. In Blue Pilot's Opposition to Joint Complainants' Motion for Entry of Judgment (BP Opposition), dated July 20, 2015, regarding Joint Complainant witness Ms. Ashley Everette's use of PPL usage as a proxy for her calculations, Blue Pilot asserted, "Ms. Everette never analyzed the actual usage information for [Blue Pilot's] customers. Instead, she assumes without factual support that all Blue Pilot customers consumed the same amount of

electricity as PPL's average customer ... Ms. Everette's analysis is not based on a review of actual data and lacks any indicial of a carefully considered and thoughtful review of actual facts." BP Opposition at 15-16. Thus, Blue Pilot has recognized the relevance of the Blue Pilot specific information in this proceeding.

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. Therefore, Joint Complainants request that the ALJs direct Blue Pilot to answer Joint Complainants' Set X-1 fully within five days.

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

Blue Pilot also argues that Joint Complainants' Set X-1 is vague, overbroad, and/or sweeping, and harassing and would, therefore, cause unreasonable annoyance and burden and would require Blue Pilot to make an unreasonable investigation. Exhibit A at 3. Joint Complainants' submit that Joint Complainants' Set X-1 is reasonable and sought in good faith. Set X-1 is narrow, as it requests Blue Pilot to provide specific information regarding the prices charged and usage amounts of its Pennsylvania customers during a specific, narrow four-month 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. Joint Complainants further submit that this information should be readily accessible to Blue Pilot, since the information pertains to the billing history of Blue Pilot's current and/or former customers. Joint Complainants also note that Blue Pilot asserts that it has already produced much of the requested information. See Exh. A at 3. While Joint Complainants will discuss this assertion further in Section 4, below, Joint Complainants submit that such an assertion evidences the fact that this information is accessible to Blue Pilot. Thus, Joint Complainants submit that

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

**4. BLUE PILOT HAS NOT FULLY PRODUCED THE INFORMATION SOUGHT IN JOINT COMPLAINANTS' SET X-1.**

Finally, Blue Pilot asserts that it has already produced information sought in this discovery request and states that it will produce usage information for the customers who have provided witness statements in this proceeding. See Exh. A at 3. Blue Pilot has not, in fact, produced all of the information requested in Joint Complainants' Set X-1. The documents referenced in Blue Pilot's Objections, BPE-PALIT-000325-417, do not provide full and complete responses to Joint Complainants' request, as they do not provide any usage information.

Even the production of usage information for the customers who have provided witness statements in this proceeding would not serve as a full and complete response to this request, as Joint Complainants have requested information for all of Blue Pilot's Pennsylvania customers from December 2013 through March 2014. As explained above, the requested information for all of Blue Pilot's customers from December 2013 through March 2014 is relevant in this proceeding.

Accordingly, Joint Complainants request the ALJs enter an Order directing Blue Pilot to provide full and complete answers/responses to Joint Complainants' Set X-1 within five days.

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

Joint Complainants' Set X-2 provides:

a. For each month December 2013 through March 2014, please provide the total monthly usage for Blue Pilot's Pennsylvania residential customers for each EDC's territory.

b. For each month December 2013 through March 2014, please provide the total monthly usage for Blue Pilot's Pennsylvania commercial customers for each EDC's territory.

**1. JOINT COMPLAINANTS' SET X-2 IS NOT "PRIVILEGED" INFORMATION PURSUANT TO 52 PA. CODE § 5.321(C) AND 52 PA. CODE § 5.361(A).**

In its Objections, Blue Pilot first asserts that the information sought in Set X-1 is not discoverable on the grounds that it is privileged information, because Blue Pilot's financial information is commercially sensitive, confidential, and proprietary. Exhibit A at 4. As explained above, the ALJs have already rejected this same argument made by Blue Pilot in this proceeding on two separate occasions. See March 3 Order at 8-9; see also May 1 Order at 4-5. Blue Pilot has failed to demonstrate that the requested information is privileged simply because it may be proprietary. The ALJs in this proceeding issued a Protective Order on September 3, 2014, which specifically addresses the concern raised by Blue Pilot in its Objections. Joint Complainants and their witnesses are bound by the Protective Order. As such, Joint Complainants submit that Blue Pilot's assertion that the information is "privileged" must fail, as such privilege is not recognized by the Commission, and if appropriately labeled as "Confidential," the information is subject to the Protective Order. Additionally, Joint Complainants submit that, as further discussed herein, the requested information is within the permissible scope of discovery. As such, Joint Complainants request the ALJs to direct Blue Pilot to fully answer Joint Complainants Set X-2 within five days.

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

Next, Blue Pilot asserts that the information requested in Joint Complainants' Set X-2 is not relevant to the allegations filed in the Joint Complaint. Exhibit A at 4. Specifically, Blue Pilot asserts that information relating to any consumer who has not submitted a complaint or witness statement in this proceeding is not relevant. *Id.* Joint Complainants submit that it is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *See* 52 Pa. Code § 5.321(c). Thus, permissible discovery includes both relevant information and information that appears reasonably calculated to lead to the discovery of admissible evidence. Joint Complainants submit that the information requested in Joint Complainants' Set X-2 is both relevant and reasonably calculated to lead to the discovery of admissible evidence.

As explained above, Joint Complainants have alleged in their Joint Complaint that Blue Pilot's pattern and practice of behavior was misleading and deceptive, *inter alia*, and enabled Blue Pilot to charge prices that did not conform to its disclosure statement. *See gen'ly* Joint Complaint at Counts I-V. The allegations in the Joint Complaint are not specific to individual customers. The ALJs have already acknowledged Joint Complainants' role in similar proceedings to act on behalf of the public interest as a whole. *See 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, Order at 6 (December 1, 2014) (PaG&E Order).* As the allegations in the Joint Complaint are not specific

to individual customers and Joint Complainants are acting on behalf of the public interest, Joint Complainants submit that relevant information can include information related to a consumer who has not submitted a complaint or witness statement in this proceeding.

Additionally, Joint Complainants submit that their Set X-2 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, the Commission has already determined that it has the jurisdiction to determine whether an EGS has billed its customers in accordance with its disclosure statement. See 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); 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. Respond Power LLC, Docket No. C-2014-2427659, Order at 26-28 (April 9, 2015); see also March 3 Order at 5-6; see also May 1 Order at 5-7.

As such, information relating to the prices that Blue Pilot charged its customers on variable rate plans in December 2013 through March 2014, including customers usage, 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 such, Joint Complainants request that the ALJs direct Blue Pilot to answer Joint Complainants' Set X-2 fully within five days.

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

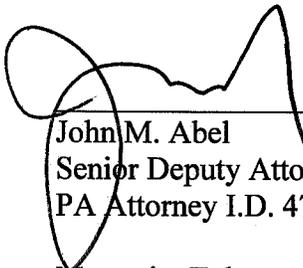
Finally, Respondent argues that Joint Complainants' Set X-2 is vague, overbroad, and/or sweeping, and harassing and would, therefore, cause unreasonable annoyance and burden and require Blue Pilot to make an-unreasonable investigation. Exhibit A at 5. Joint Complainants' submit that Set X-2 is reasonable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

Joint Complainants' Set X-2 is narrow, as it requests the total monthly usage for Blue Pilot's residential and commercial customers during a specific, four-month 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. Joint Complainants further submit that this information should be readily accessible to Blue Pilot, since the information pertains to the billing history of Blue Pilot's current and/or former customers. Thus, Joint Complainants submit that Joint Complainants' Set X-2 is not vague, overbroad, sweeping, or harassing and request the ALJs to direct Blue Pilot to fully answer Joint Complainants Set X-2 within five days.

#### IV. CONCLUSION

For the foregoing reasons, the information sought in Joint Complainants' Set X, numbers 1 and 2, is relevant, reasonable, sought in good faith, and within the permissible scope of discovery. The Joint Complainants respectfully request that the Administrative Law Judges enter an Order directing Blue Pilot to provide full and complete answers/responses to Joint Complainants' Set X -1 and X-2 within five days.

Respectfully submitted,



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Kathleen G. Kane, Attorney General  
Bureau of Consumer Protection

Date: August 21, 2015

211436



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Counsel for:

Tanya J. McCloskey  
Acting Consumer Advocate

# Exhibit A

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 the Commonwealth of Pennsylvania, Bureau of Consumer Protection and the Office of Consumer Advocate to Compel Responses to Set X in the manner and upon the persons listed below:

Dated this 21<sup>st</sup> day of August 2015.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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Stephanie M. Wimer, Esq.  
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