

COMMONWEALTH OF PENNSYLVANIA



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August 31, 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 XI 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	:	

MOTION OF JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA
AND THE OFFICE OF CONSUMER ADVOCATE
TO COMPEL RESPONSES BY BLUE PILOT ENERGY, LLC TO SET XI

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 (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' eleventh Set of Interrogatories and Requests for Production of Documents (Joint Complainants' Set XI), questions 1 through 4 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 the Company violated the Public Utility Code and the Commission's regulations and orders; provide restitution to the Company's customers; impose a civil penalty; and order Blue Pilot to make various modifications to its practices and procedures; and revoke or suspend Blue Pilot'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 (Aug. 20, 2014 Order), 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.

On August 11, 2015, Joint Complainants served Joint Complainants' Set XI upon Blue Pilot. On August 21, 2015, Blue Pilot filed Objections to Joint Complainants' Set XI, questions 1 through 4. For the reasons set forth below, Joint Complainants respectfully request that Your Honors overrule Blue Pilot's Objections, grant Joint Complainants' Motion to Compel Responses to Set XI-1 through XI-4 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 11, 2015, Joint Complainants served Joint Complainants' Set XI upon Blue Pilot. A copy of Joint Complainants' Set XI is attached hereto as Exhibit A. Joint Complainants' Set XI consists of four Interrogatories/Requests for Production of Documents. Blue Pilot's responses are due on August 31, 2015 pursuant to 52 Pa. Code §§ 5.342(d) and 5.349(d). On August 21, 2015, Blue Pilot served Objections to Joint Complainants' Set XI, numbers 1 through 4, 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.¹ Additionally, Blue Pilot asserted that it had already produced the information requested in Joint Complainants' Set XI-1, XI-3, and XI-4 and that Joint Complainants' Set XI-2 calls for documents and/or information that does not exist. Finally, Blue Pilot objected to Joint Complainants' Set XI-4 on the grounds that it would require Blue Pilot to create a document or information solely to respond to the request. A copy of Blue Pilot's CONFIDENTIAL

¹ Joint Complainants note that Blue Pilot made these same or very similar objections to Joint Complainants' Interrogatories and Requests for Production of Documents Sets VI, VIII and X as well. The ALJs overruled the Company's objections to Set VI by Order dated March 3, 2015 and Set VIII by Order entered May 1, 2015. Joint Complainants filed a Motion to Compel Blue Pilot's responses to Set X, which is pending.

Objections to Joint Complainants' Set XI is attached hereto as Exhibit B.² Blue Pilot did not contact Joint Complainants to attempt to informally resolve these objections prior to serving its objections.

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

Joint Complainants' Set XI-1 provides:

Please identify the billing cycles applicable to all prices charged by Blue Pilot to customers in December 2013, January 2014, February 2014, and March 2014.

1. JOINT COMPLAINANTS' SET XI-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 XI-1 is not discoverable on the grounds that it seeks privileged information. Exhibit B at 2. Joint Complainants note that while Blue Pilot raises this objection, it offers no further facts or authority to support this position. See Exhibit B at 2. Furthermore, the ALJs have already rejected this same argument made by Blue Pilot in this proceeding on two separate occasions by

² Joint Complainants note that Blue Pilot has labeled every page of its Objections to Set XI confidential, including the signature page. As such, it is unclear what specific information is intended to be confidential. The Protective Order limits confidential information to "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." Joint Complainants submit that Blue Pilot's Objections do not meet this standard, as they do not contain any information that is specific to Blue Pilot or pertains to Blue Pilot's business practices. Furthermore, Blue Pilot has already served this same information in its Objections to Joint Complainants' Sets VI and VIII, which were not labeled confidential.

Joint Complainants have notified Blue Pilot of their position and have requested Blue Pilot to remove the confidential label. Joint Complainants, however, did not hear back from Blue Pilot in time to provide the Company's position on the matter in this Motion. Therefore, Joint Complainants will attach Blue Pilot's Objections as a CONFIDENTIAL exhibit hereto, but continue with their request that the confidential label be removed from these Objections.

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, 6th Edition at 1198. The law affords higher protections to certain relationships so, for example, a patient can be forthright with his or her doctor and the best medical treatment can in turn be provided. Sections 5.321 and 5.361 prohibit discovery of privileged matters to maintain these protected relationships. 52 Pa.Code §§ 5.321 and 5.361. Such a protected relationship does not exist, however, with regard to Blue Pilot's financial information.

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

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

March 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 XI-1 fully within five days.

2. JOINT COMPLAINANTS' SET XI-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 XI-1 is not relevant to the allegations filed in the Joint Complaint. Exhibit B 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 XI-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 that Blue Pilot charged 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 [PaG&E]'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 XI-1 seeks information directly relevant to the issue of whether Blue Pilot charged prices that conformed to the Company's Disclosure Statement or was in accordance with the advertised price. See Joint Complaint at Count I (failing to provide accurate pricing information), Count II (prices nonconforming to disclosure statement) and Count III (misleading and deceptive promises of savings). 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 or the advertised price. 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 billing cycles applicable to those prices, is relevant to the allegations in Count I of the Joint Complaint that Blue Pilot failed to provide accurate price information, Count II that Blue Pilot did not charge rates that conformed to its Disclosure Statement and Count III that Blue Pilot made misleading and deceptive promises of savings. Moreover, by Order dated March 3, 2015, (March 3 Order) the ALJs have already held that information relating to Blue Pilot's billing is relevant to this proceeding. See March 3 Order at 5-8.

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 XI-1 fully within five days.

3. JOINT COMPLAINANTS' SET XI-1 IS REASONABLE AND SOUGHT IN GOOD FAITH.

Blue Pilot also argues that Joint Complainants' Set XI-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 B at 2. Joint Complainants' submit that Joint Complainants' Set XI-1 is reasonable and sought in good faith.

Set XI-1 is narrow, as it requests Blue Pilot to provide solely the billing cycles applicable to the prices Blue Pilot charged 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.

Blue Pilot also objects to Joint Complainants' Set XI-1 on the grounds that it is not comprehensible to Blue Pilot. Exhibit B at 3. Joint Complainants first note that Blue Pilot fails to cite any authority to support this objection. Furthermore, Joint Complainants submit that the request is straightforward, and as explained above, makes a specific request for the billing cycles applicable to the prices Blue Pilot charged its Pennsylvania customers during a specific, narrow four-month period. Joint Complainants further note that this request is not hypothetical in nature, as suggested by Blue Pilot in its Objections, as it is a request for actual, past billing cycles utilized by the Company to bill its own customers. See Exhibit B at 3.

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

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

Finally, Blue Pilot asserts that it has already produced information sought in this discovery request and cites its Responses to Joint Complainants' Set V-2 and V-4. See Exhibit B at 3. Blue Pilot has not, in fact, produced all of the information requested in Joint Complainants'

Set XI-1. Specifically, Blue Pilot's Responses to Joint Complainants' Set V-2 and V-4 do not provide full and complete responses to Joint Complainants' request in Set XI-1, as they do not provide any information about the billing cycles applicable to Blue Pilot's charges from December 2013 through March 2014.

Specifically, Joint Complainants' Set V-2 provides:

If not included in your response to the question in paragraph 1 above, identify the billing cycles applicable to all prices stated.³

Blue Pilot's Response to Joint Complainants' Set V-2 provides as follows:

[Blue Pilot] references its July 21, 2014 Objections to [Joint] Complainants' Interrogatories and Requests for Production.⁴ [Blue Pilot] also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part [Blue Pilot's] Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite [Joint] Complainants' attempts to transform Count II of their Joint Complaint into an allegation that [Blue Pilot'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 [Joint] Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Regardless, [Blue Pilot] 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 [Joint] Complainants; the burden of finding the answer from those documents is substantially the same for both [Blue Pilot] and

³ Joint Complainants note that their Set V discovery requests contain questions that are almost identical to Set XI. Joint Complainants' Set XI was intended to be a follow-up to Blue Pilot's incomplete responses to Set V.

⁴ Joint Complainants note that Blue Pilot's July 21, 2014 Objections were to Joint Complainants' first sets of discovery to Blue Pilot (Joint Complainants' Interrogatories Set I and Requests for Production of Documents Set I), not to Joint Complainants' fifth set of discovery. Further, Joint Complainants and Blue Pilot informally resolved the Company's Objections to Joint Complainants' Sets I.

[Joint] Complainants. See BPE-PALITT-00325 to -417, and [Blue Pilot's] response to [Joint] Complainants' Request for Production No. 22 (Set I).⁵

[Blue Pilot] reserves the right to supplement its response to this Request.

A copy of Blue Pilot's Responses to Joint Complainants' Set V (without attachments) is attached hereto as Exhibit C.

Additionally, Joint Complainants' Set V-4 provides:

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.

Blue Pilot's Response to Joint Complainants' Set V-4 was almost identical to its Response to Joint Complainants' Set V-2 and provides as follows:

[Blue Pilot] references its July 21, 2014 Objections to [Joint] Complainants' Interrogatories and Requests for Production. [Blue Pilot] also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part [Blue Pilot's] Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite [Joint] Complainants' attempts to transform Count II of their Joint Complaint into an allegation that [Blue Pilot'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 [Joint] Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Regardless, [Blue Pilot] 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 [Joint] Complainants; the burden of finding the answer from those documents is substantially the same for both [Blue Pilot] and [Joint] Complainants. See [Blue Pilot's] response to [Joint] Complainants' Request for Production No. 22 (Set I).

⁵ Blue Pilot's Response to Joint Complainants' Request for Production Set I-22 includes over 720 pages of documents that are not organized in any particular manner.

Joint Complainants again note that Blue Pilot's Response to Joint Complainants' RPD Set I-22 contains over 720 pages of documents, in which Joint Complainants had to search to look for this specific information. The referenced documents in Blue Pilot's Response to Joint Complainants' Set V-2 and V-4 (BPE-PALITT-00325 to -417 and Blue Pilot's response to Joint Complainants' Request for Production of Documents (RPD) Set I-22) also do not provide billing cycles, as requested by Joint Complainants in Set XI-1. A copy of Blue Pilot's response to Joint Complainants' RPD Set I-22 (without attachments) is attached hereto as Exhibit D.

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

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

Joint Complainants' Set XI-2 provides:

Please produce any and all spreadsheets used or created to develop or calculate the residential generation prices charged to Blue Pilot's residential consumers in December 2013, January 2014, February 2014 and March 2014. Please provide the spreadsheets in native format (*i.e.* excel).

1. JOINT COMPLAINANTS' SET XI-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 asserts that the information sought in Set XI-1 is not discoverable on the grounds that its financial information is commercially sensitive, confidential, and proprietary and therefore, Blue Pilot asserts that the information is privileged. Exhibit B 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 entered in this matter. 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 XI-2 within five days.

2. JOINT COMPLAINANTS' SET XI-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 XI-2 is not relevant to the allegations filed in the Joint Complaint. Exhibit B 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 XI-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 that Blue

Pilot charged 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 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 or witness statement in this proceeding.

Additionally, Joint Complainants submit that their Set XI-2 seeks information directly relevant to the issue of whether Blue Pilot charged prices that conformed to the Company's Disclosure Statement or was in accordance with the advertised price. See Joint Complaint at Count II (prices nonconforming to disclosure statement) and Count III (misleading and deceptive promises of savings). 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 or its advertised price. 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.

Blue Pilot's Disclosure Statement states as follows regarding variable 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 Exhibit A. (Emphasis added). Blue Pilot, in its Disclosure Statement, identified that the price that it would charge its customers on variable rates would increase or decrease based on several factors, including changes in wholesale energy market prices in the PJM Markets. As such, information relating to the prices that Blue Pilot charged its customers on variable rate plans and information relating to the factors identified in Blue Pilot's Disclosure Statement that the Company would use to calculate customers' variable prices are 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. Accordingly, Joint Complainants request the ALJs enter an Order directing Blue Pilot to provide full and complete answers/responses to Joint Complainants' Set XI-2 within five days.

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

Blue Pilot also argues that Joint Complainants' Set XI-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 B at 5. Joint Complainants' submit that Set XI-2 is reasonable and sought in good faith.

Joint Complainants' Set XI-2 is narrow, as it specifically requests spreadsheets used or created to develop or calculate the residential generation prices charged to Blue Pilot's residential consumers 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 past prices that Blue Pilot charged its customers. Thus, Joint Complainants submit that Joint Complainants' Set XI-2 is not vague, overbroad, sweeping, or harassing and request the ALJs to direct Blue Pilot to fully answer Joint Complainants Set XI-2 within five days.

4. BLUE PILOT SHOULD BE REQUIRED TO RESPOND TO JOINT COMPLAINANTS' SET XI-2, REGARDLESS OF WHETHER IT HAS THE REQUESTED INFORMATION IN ITS POSSESSION, CUSTODY AND/OR CONTROL.

Blue Pilot also asserts that it does not have the information requested in Joint Complainants' Set XI-2 in its possession, custody, or control. See Exhibit B at 5. As stated above, Joint Complainants submit that this information should be readily accessible to Blue Pilot, since the information pertains to past prices that Blue Pilot charged its own customers. If, however, Blue Pilot does not, in fact, have any information in its possession responsive to this request, Blue Pilot should be required to provide Joint Complainants with a verified response that informs them of such and be prevented from subsequently introducing into evidence any information that should have been produced in response to this request.

C. JOINT COMPLAINANTS' SET XI-3 IS RELEVANT, REASONABLE, SOUGHT IN GOOD FAITH, AND WITHIN THE PERMISSIBLE SCOPE OF DISCOVERY.

Joint Complainants' Set XI-3 provides:

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

1. JOINT COMPLAINANTS' SET XI-3 IS NOT "PRIVILEGED" INFORMATION PURSUANT TO 52 PA. CODE § 5.321(C) AND 52 PA. CODE § 5.361(A).

In its Objections, Blue Pilot asserts that the information sought in Set XI-3 is not discoverable on the grounds that its financial information is commercially sensitive, confidential, and proprietary, and therefore, Blue Pilot asserts that the information is privileged. Exhibit B at 6. As explained above, the ALJs have already rejected this same argument. 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 XI-3 within five days.

2. JOINT COMPLAINANTS' SET XI-3 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 XI-3 is not relevant to the allegations filed in the Joint Complaint. Exhibit B at 6. 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 XI-3 is both relevant and reasonably calculated to lead to the discovery of admissible evidence.

Joint Complainants' Set XI-3 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.

Blue Pilot, in its Disclosure Statement, identified that the price that it would charge its customers on variable rates would increase or decrease based on several factors, including changes in wholesale energy market prices in the PJM Markets. See Joint Complaint at ¶ 20 and Exhibit A. (Emphasis added). As such, information relating to the prices that Blue Pilot charged its customers on variable rate plans and information relating to the factors identified in Blue Pilot's Disclosure Statement that the Company would use to calculate customers' variable prices are relevant to the allegations in Count II of the Joint Complaint that Blue Pilot did not charge rates that conformed to its Disclosure Statement. Moreover, by Order dated March 3, 2015, (March 3 Order) the ALJs have already held that Blue Pilot's costs are relevant to this proceeding. See March 3 Order at 5-8. 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. Accordingly, Joint Complainants request the ALJs enter an Order directing Blue Pilot to provide full and complete answers/responses to Joint Complainants' Set XI-3 within five days.

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

Blue Pilot also argues that Joint Complainants' Set XI-3 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 5. Joint Complainants' submit that Set XI-3 is reasonable and sought in good faith.

Joint Complainants' Set XI-3 is narrow, as it specifically requests documents indicating cost components used to develop the Company's generation price and Blue Pilot's average cost of acquiring the identified components for 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 Blue Pilot's past costs. Thus, Joint Complainants submit that Joint Complainants' Set XI-3 is not vague, overbroad, sweeping, or harassing and request the ALJs to direct Blue Pilot to fully answer Joint Complainants Set XI-3 within five days.

5. BLUE PILOT HAS NOT FULLY PRODUCED THE INFORMATION SOUGHT IN JOINT COMPLAINANTS' SET XI-3.

Finally, Blue Pilot asserts that it has already produced information sought in this discovery request and cites its Responses to Joint Complainants' Set V-3 and V-5. See Exhibit B at 7. Blue Pilot has not, in fact, produced all of the information requested in Joint Complainants' Set XI-3. Specifically, Blue Pilot's Responses to Joint Complainants' Set V-3 and V-5 do not contain information regarding Blue Pilot's cost components used to develop the generation price (*e.g.*, AEPS credits, ancillary services) or the Company's average cost of acquiring these components for March 2014, as requested by Joint Complainants in Set XI-3.

Joint Complainants' Set V-3 provides:

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.

Additionally, Joint Complainants' Set V-5 provides:

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.

While the requests seek different information, Blue Pilot's Responses to Joint Complainants' Set V-3 and Set V-5 were identical and provide as follows:

[Blue Pilot] references its July 21, 2014 Objections to [Joint] Complainants' Interrogatories and Requests for Production.⁶ [Blue Pilot] also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part [Blue Pilot's] Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite [Joint] Complainants' attempts to transform Count II of their Joint Complaint into an allegation that [Blue Pilot'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 [Joint] Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Further, [Blue Pilot] does not maintain information in the ordinary course of its business in the format requested. Thus, [Blue Pilot] is not required to organize

⁶ Joint Complainants again note that Blue Pilot's July 21, 2014 Objections were to Joint Complainants' first sets of discovery to Blue Pilot, not to Joint Complainants' fifth set of discovery. Further, Joint Complainants and Blue Pilot informally resolved the Company's Objections to Joint Complainants' Sets I.

the information and provide it in the manner requested by this Discovery Request. 52 Pa. Code § 5.362(b). (sic) Although [Blue Pilot] is not required to Respond to this Discovery Request in the manner requested by [Joint] Complainants, [Blue Pilot] 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 [Joint] Complainants; the burden of finding the answer from those documents is substantially the same for both [Blue Pilot] and [Joint] Complainants.⁷ See [Blue Pilot's] response to [Joint] Complainants' Request for Production No. 22 (Set I).

[Blue Pilot] reserves the right to supplement its response to this Request.

The documents referenced in Blue Pilot's Response to Joint Complainants' Set V-3 and V-5 (Joint Complainants RPD Set I-22) also do not contain information regarding Blue Pilot's cost components used to develop the generation price (e.g., AEPS credits, ancillary services) or the Company's average cost of acquiring those components for March 2014, as requested by Joint Complainants in Set XI-3.

Accordingly, Joint Complainants request the ALJs to direct Blue Pilot to fully answer Joint Complainants' Set XI-3 within five days.

D. JOINT COMPLAINANTS' SET XI-4 IS RELEVANT, REASONABLE, SOUGHT IN GOOD FAITH, AND WITHIN THE PERMISSIBLE SCOPE OF DISCOVERY.

Joint Complainants' Set XI-4 provides:

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

1. JOINT COMPLAINANTS' SET XI-4 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 XI-4 is not discoverable on the grounds that its financial information is commercially sensitive, confidential,

⁷ Joint Complainants submit that this response is not a permissible answer to discovery.

and proprietary and therefore, Blue Pilot asserts that the information is privileged. Exhibit B at 8. Again, the ALJs have already rejected this same argument. 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 XI-4 within five days.

2. JOINT COMPLAINANTS' SET XI-4 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 XI-4 is not relevant to the allegations filed in the Joint Complaint. Exhibit B at 6. 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 XI-4 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 that Blue Pilot charged 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 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 consumers who have not submitted a complaint or testimony in this proceeding.

Additionally, Joint Complainants submit that their Set XI-4 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.

Blue Pilot, in its Disclosure Statement, identified that the price that it would charge its customers on variable rates would increase or decrease based on several factors, including changes in wholesale energy market prices in the PJM Markets. See Joint Complaint at ¶ 20 and Exhibit A. As such, information relating to the prices that Blue Pilot charged its customers on variable rate plans and information relating to the factors identified in Blue Pilot's Disclosure Statement that the Company would use to calculate customers' variable prices are 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. Accordingly, Joint Complainants request the ALJs enter an Order directing Blue Pilot to provide full and complete answers/responses to Joint Complainants' Set XI-4 within five days.

3. JOINT COMPLAINANTS' SET XI-4 IS REASONABLE AND SOUGHT IN GOOD FAITH.

Blue Pilot also argues that Joint Complainants' Set XI-4 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 9. Joint Complainants' submit that Set XI-3 is reasonable and sought in good faith.

Joint Complainants' Set XI-4 is narrow, as it requests one sample calculation using very specific factors. 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 Blue Pilot's past costs.

Blue Pilot also objects to Joint Complainants' Set XI-4 on the grounds that it is not comprehensible to Blue Pilot. Exhibit B at 9. Joint Complainants first note that Blue Pilot fails to cite any authority to support this objection. Furthermore, Joint Complainants submit that the request is straightforward, and, as explained above, makes a specific request for a sample calculation using specific factors.

Blue Pilot also objects to Joint Complainants' Set XI-4 to the extent that it is hypothetical in nature. Exhibit B at 9. Joint Complainants note that they are requesting a sample of Blue Pilot's actual price calculation during February 2014. Joint Complainants merely articulate specific factors (i.e. usage amount and time period) in order to narrow their request and make it less burdensome for Blue Pilot. For example, Joint Complainants could have requested Blue Pilot to provide the monthly price calculation for all of its Pennsylvania customers on variable rate plans during December 2013 through March 2014. Such a request would not be hypothetical in any manner. Joint Complainants, however, limited this request for the convenience of Blue Pilot. Furthermore, Joint Complainants note that the Commission's regulations do not prohibit hypothetical discovery requests, so long as the discovery is relevant and within the permissible bounds of discovery, as is the case with Joint Complainants' Set XI-4.

Thus, Joint Complainants submit that Joint Complainants' Set XI-4 is not vague, overbroad, sweeping, or harassing and request the ALJs to direct Blue Pilot to fully answer Joint Complainants Set XI-4 within five days.

4. JOINT COMPLAINANTS' SET XI-4 IS PERMISSIBLE, REGARDLESS OF WHETHER IT REQUIRES BLUE PILOT TO CREATE A DOCUMENT OR INFORMATION.

Additionally, Blue Pilot objects to Joint Complainants' Set XI-4 on the grounds that it requires Blue Pilot to create a document or information solely to respond to this request. Exhibit B at 9. The Commission's regulations do not limit discovery in this manner. Joint Complainants submit that the Commission's regulations expressly state that discovery is not limited in this manner in rate proceedings. See 52 Pa. Code § 5.361(b). Specifically, Section 5.361(b) provides:

In rate proceedings, discovery is not limited under subsection (a) solely because the discovery request requires the compilation of data or information which the answering party does not maintain in the format requested, in the normal course of business, or because the discovery request requires that the answering party make a special study or analysis, if the study or analysis cannot reasonably be conducted by the party making the request.

52 Pa. Code § 5.361(b). Joint Complainants, however, note that while this regulation expressly ensures that discovery in rate proceedings will not be limited under certain circumstances, it does not limit discovery under those same circumstances in other proceedings. In fact, the scope of discovery is broad under the Commission's regulations. See 52 Pa. Code § 5.321(c). Moreover, Joint Complainants submit that Joint Complainants' Set XI-4 would not require Blue Pilot to conduct an unreasonable analysis. Thus, Joint Complainants request the ALJs enter an Order directing Blue Pilot to provide full and complete answers/responses to Joint Complainants' Set XI-4 within five days.

5. BLUE PILOT HAS NOT FULLY PRODUCED THE INFORMATION SOUGHT IN JOINT COMPLAINANTS' SET XI-4.

Finally, Blue Pilot asserts that it has already produced information sought in this discovery request and cites its Responses to Joint Complainants' Set V-6 and V-7. See Exhibit B

at 9. Blue Pilot has not, in fact, produced all of the information requested in Joint Complainants' Set XI-4. Blue Pilot's responses to Joint Complainants' Set V-6 and Set V-7 do not contain a sample calculation at a monthly usage at 750 kWh as requested in Joint Complainants' Set XI-4.

Joint Complainants' Set V-6 provides:

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.

Additionally, Joint Complainants' Set V-7 provides:

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.

While the requests seek different information, Blue Pilot's Responses to Joint Complainants' Set V-6 and Set V-7 were identical, as follows:

[Blue Pilot] references its July 21, 2014 Objections to [Joint] Complainants' Interrogatories and Requests for Production. [Blue Pilot] also references Judges Cheskis's and Barnes' August 8, 2014 Order Granting in Part and Denying in Part [Blue Pilot's] Preliminary Objections, which held that (i) the Commission does not have jurisdiction to regulate an EGS's rates and, (ii) despite [Joint] Complainants' attempts to transform Count II of their Joint Complaint into an allegation that [Blue Pilot'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 [Joint] Complainants' Petition for Interlocutory Review and Answer to Material Questions did not disturb Judges Cheskis's and Barnes' conclusions. Further, [Blue Pilot] does not maintain information in the ordinary course of its business in the format requested. Thus, [Blue Pilot] 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 [Blue Pilot] is not required to Respond to this Discovery Request in the manner requested by [Joint] Complainants, [Blue Pilot] 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 [Joint] Complainants; the burden of finding the answer from those

documents is substantially the same for both [Blue Pilot] and [Joint] Complainants.⁸ See [Blue Pilot's] response to [Joint] Complainants' Request for Production No. 22 (Set I).

[Blue Pilot] reserves the right to supplement its response to this Request.

The documents referenced in Blue Pilot's Response to Joint Complainants' Set V-6 and V-7 (Joint Complainants RPD Set I-22) also do not contain a sample calculation at a monthly usage at 750 kWh as requested in Joint Complainants' Set XI-4.

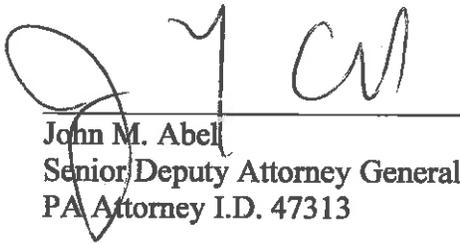
Accordingly, Joint Complainants request the ALJs to direct Blue Pilot to fully answer Joint Complainants' Set XI-4 within five days.

⁸ Joint Complainants again submit that this response is not a permissible answer to discovery.

IV. CONCLUSION

For the foregoing reasons, the information sought in Joint Complainants' Set XI-1 through XI-4 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 XI-1 through XI-4 within five days.

Respectfully submitted,



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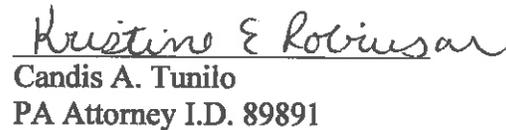
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EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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August 11, 2015

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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. Castello & Ms. Moury:

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 XI. 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
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,



Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891

Enclosures

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

190901

INSTRUCTIONS

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

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

a) notations of any sort concerning conversations, telephone calls, meetings or other communications;

b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;

c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.

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

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

DEFINITIONS

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

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

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

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

4. "You" or "Your" shall refer to Blue Pilot Energy, LLC and all other names under which 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 XI

1. Please identify the billing cycles applicable to the prices charged by Blue Pilot to customers in December 2013, January 2014, February 2014, and March 2014.

2. Please produce any and all spreadsheets used or created to develop or calculate the residential generation prices charged to Blue Pilot's residential consumers in December 2013, January 2014, February 2014 and March 2014. Please provide the spreadsheets in native format (*i.e.* excel).

3. Please produce any and all documents indicating all cost components used to develop the Company's generation price (*e.g.*, AEPS credits, ancillary services) and Blue Pilot's average cost

of acquiring the identified components for December 2013, January 2014, February 2014, and March 2014.

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

211232

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185179

EXHIBIT B

Buchanan Ingersoll & Rooney PC

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Karen.moury@blpc.com

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RECEIVED

August 21, 2015

AUG 24 2015

VIA EMAIL AND FIRST-CLASS MAIL

OFFICE OF
CONSUMER ADVOCATE

John M. Abel
Margarita Tulman
Bureau of Consumer Protection
Office of Attorney General
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Harrisburg, PA 17120

Candis A. Tunilo, Esquire
Christy M. Appleby, Esquire
Office of Consumer Advocate
555 Walnut Street
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Harrisburg, PA 17101

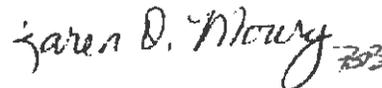
Re: Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC
Docket Nos. C-2014-2427655

Dear Complainants:

On behalf of Blue Pilot Energy, LLC, I am providing the Confidential Objections to Complainants' Interrogatories and Requests for Production (Set XI) 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.

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: **Docket No. C-2014-2427655**
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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
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Harrisburg, PA 17120

Sharon E. Webb
Office of Small Business Advocate
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Harrisburg, PA 17101

Steve Estomin
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Columbia, Maryland 21044

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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 21st day of August, 2015.



Karen O. Moury, Esq. *BB*

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COMMONWEALTH OF
PENNSYLVANIA, ET AL.,

Complainants,

v.

BLUE PILOT ENERGY, LLC,

Respondent.

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: Docket No. C-2014-2427655
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RESPONDENT BLUE PILOT ENERGY, LLC'S CONFIDENTIAL
OBJECTIONS TO COMPLAINANTS' INTERROGATORIES AND REQUESTS FOR
PRODUCTION (SET XI)

Pursuant to 66 Pa.C.S. § 333(d) and 52 Pa. Code § 5.342, Respondent Blue Pilot Energy, LLC ("BPE") hereby objects to the Interrogatories and Requests for Production – Set XI ("Discovery Requests") propounded by the Complainants on August 11, 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 identify the billing cycles applicable to the prices charged by Blue Pilot to customers in December 2013, January 2014, February 2014, and March 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; (iii) would cause unreasonable annoyance and burden to BPE; and (iv) the information sought in this Discovery Request has already been produced.

BPE objects to Discovery Request No. 1 on the grounds that information relating to any consumer who has not submitted a complaint or witness statement in this proceeding is not relevant. 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.

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).

In addition, BPE objects to Discovery Request No. 1 on the grounds that it is not comprehensible to BPE. To the extent that Discovery Request No. 1 requires BPE to respond to a hypothetical scenario, such a request is not appropriate.

Subject to and without waiving the foregoing objections, BPE states that on several occasions it has already produced information sought in this Discovery Request. *See* BPE's Responses to Discovery Request Set V-2 and Discovery Request Set V-4.

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

Discovery Request No. 2: Please produce any and all spreadsheets used or created to develop or calculate the residential generation prices charged to Blue Pilot's residential consumers in December 2013, January 2014, February 2014 and March 2014. Please provide the spreadsheets in native format (i.e. excel).

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; (iii) would cause unreasonable annoyance and burden to BPE; and (iv) it calls for documents and/or information that do not exist.

BPE objects to Discovery Request No. 2 on the grounds that its financial information constitutes commercially sensitive, confidential and proprietary information. 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 information relating to any consumer who has not submitted a complaint or witness statement in this proceeding is not relevant. 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. 2 seeks information unrelated to the legal and factual contentions regarding the claims in this case proceeding.

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, states that it has no documents or information in its possession, custody and/or control that are responsive to this Discovery Request No. 2.

Discovery Request No. 3: Please produce any and all documents indicating all cost components used to develop the Company's generation price (e.g., AEPS credits, ancillary services) and Blue Pilot's average cost of acquiring the identified components for December 2013, January 2014, February 2014, and March 2014.

Objection: BPE objects to Discovery Request No. 3 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) the information sought in this Discovery Request has already been produced.

BPE objects to Discovery Request No. 3 on the grounds that its financial information constitutes commercially sensitive, confidential and proprietary information. 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. 3 on the grounds that information relating to any consumer who has not submitted a complaint or witness statement in this proceeding is not relevant. 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. 3 seeks information unrelated to the legal and factual contentions regarding the claims in this case proceeding.

In addition, BPE objects to Discovery Request No. 3 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. 3 exceeds the permissible bounds of discovery. *See* 52 Pa. Code § 5.361(a).

Subject to and without waiving the foregoing objections, BPE states that on several occasions it has already produced information sought in this Discovery Request. *See* BPE's Responses to Discovery Request Set V-3 and Discovery Request Set V-5.

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

Discovery Request No. 4: Please provide a sample calculation at monthly usage of 750 kWh of a price charged to Blue Pilot's residential consumers that reflect a time period that includes at least 21 days in February 2014.

Objection: BPE objects to Discovery Request No. 4 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) the information sought in this Discovery Request has already been produced.

BPE objects to Discovery Request No. 4 on the grounds that its financial information constitutes commercially sensitive, confidential and proprietary information. 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. 4 on the grounds that information relating to any consumer who has not submitted a complaint or witness statement in this proceeding is not relevant. 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. 4 seeks information unrelated to the legal and factual contentions regarding the claims in this case proceeding.

In addition, BPE objects to Discovery Request No. 4 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. 4 exceeds the permissible bounds of discovery. *See* 52 Pa. Code § 5.361(a).

In addition, BPE objects to Discovery Request No. 4 on the grounds that it is not comprehensible to BPE. To the extent that Discovery Request No. 4 requires BPE to respond to a hypothetical scenario, such a request is not appropriate.

In addition, BPE objects to Discovery Request No. 4, as it requires BPE to create a document or information solely to respond to Discovery Request No. 4. Such a request is not appropriate.

Subject to and without waiving the foregoing objections, BPE states that on several occasions it has already produced information sought in this Discovery Request. *See* BPE's Responses to Discovery Request Set V-6 and Discovery Request V-7.

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

August 21, 2015

BUCHANAN INGERSOLL & ROONEY PC

By: Karen O. Moury BB

Karen O. Moury
409 North Second Street, Suite 500
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Telephone: (717) 237-4820
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Washington, DC 20007
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Attorneys for Blue Pilot Energy, LLC

EXHIBIT C

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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

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

December 16, 2014

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

RE: Commonwealth of Pennsylvania, by Attorney General
KATHLEEN G. KANE, Through the Bureau of Consumer
Protection,
And
TANYA J. McCLOSKEY, Acting Consumer Advocate,
Complainants

v.
Blue Pilot Energy, LLC

Respondent

Docket No. C-2014-2427655

Dear Mr. Blynn:

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

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

John M. Abel,
Senior Deputy Attorney General
Bureau of Consumer Protection
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

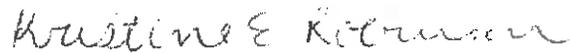
Page 2

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

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

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Phone: (717) 783-5048
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185179

EXHIBIT D

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Complainants,

v.

BLUE PILOT ENERGY, LLC,

Respondent.

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: **Docket No. C-2014-2427655**
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**RESPONDENT BLUE PILOT ENERGY, LLC'S CONFORMED RESPONSES TO
COMPLAINANTS' REQUESTS FOR PRODUCTION**

Respondent Blue Pilot Energy, LLC ("BPE") hereby provides the following responses to the Requests for Production propounded by Complainants in accordance with 52 Pa. Code § 5.349. While preserving all of its general and specific objections, BPE states that, to its knowledge, its responses to each Request for Production are full and complete (unless otherwise stated).

Request for Production No. 22.

Please produce any and all documents setting forth information, including, but not limited to, the name of the investigating agency or named plaintiff for any informal or formal investigation or legal action, if any, against Respondent from January 1, 2013, to present.

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 Request for Production. Subject to and without waiving any of the foregoing objections, BPE states that non-privileged document(s) within its possession, custody, or control responsive to this Request for Production are attached hereto and bear Bates number BPE-PALIT-000240 to -272; -274 to -568; -610 to -800; and -802 to -1005.

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Complainants,

v.

BLUE PILOT ENERGY, LLC,

Respondent.

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

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

July 25, 2014
Date



Raymond Perea, General Counsel

CERTIFICATE OF SERVICE

Commonwealth of Pennsylvania, by
Attorney General KATHLEEN G. KANE,
Through the Bureau of Consumer Protection,

And

TANYA J. McCLOSKEY, Acting Consumer
Advocate,

Complainants

v.

BLUE PILOT ENERGY, LLC
Respondent

Docket No. C-2014-2427655

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

Dated this 31st day of August 2015.

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