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September 8, 2015

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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SECRETARY'S BUREAU

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

Dear Secretary Chiavetta:

On behalf of Blue Pilot Energy, LLC, enclosed for filing is the Answer of Blue Pilot Energy, LLC to Motion to Compel of Joint Complainants Relating to Set XI – Public Version, in the above-captioned matter.

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

Very truly yours,



Karen O. Moury

KOM/bb
Enclosure
cc: Certificate of Service

Joint Complainants filed the present Motion to Compel on August 31, 2015. On page 12 of the Motion, in a footnote, Joint Complainants acknowledge 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.” Joint Complainants fail to explain why they never addressed any alleged deficiency. Joint Complainants further fail to explain why they never simply followed up with Blue Pilot regarding any perceived deficiency, rather than serving the same set of discovery again, or why they failed to notify Blue Pilot that they believed Blue Pilot’s previous responses were in any way deficient such that they believed Blue Pilot should provide any responses different from those previously provided to Joint Complainants. Instead, Joint Complainants filed a Motion to Compel, necessitating yet another expensive round of briefing from Blue Pilot.

As stated, most of the information sought in Set XI has been previously provided without objection from Joint Complainants.¹ For the most part, Blue Pilot does not keep records in the form sought by Joint Complainants. However, Blue Pilot previously provided Joint Complainants with the documents that it does have such that Joint Complainants could obtain the information. With Set XI and their Motion to Compel, Joint Complainants seek to force Blue Pilot to conduct its own costly study of the material. Because Joint Complainants are equally capable of obtaining the information as Blue Pilot, Joint Complainants’ Motion to Compel should be denied.

Further, the information sought in Set XI as it relates to every other Pennsylvania customer of BPE other than those that submitted statements in this proceeding is further only relevant if the Commission grants Joint Complainants’ unprecedented request to extrapolate the

¹ The one exception is Set XI-2, for which Blue Pilot informed Joint Complainants that it does not have any responsive documents.

complaints of 97 individuals into a finding that BPE engaged in a “pattern and practice” of conduct in violation of the Commission’s regulations. Because such a finding has not been made (and should not be made) and because the burden on BPE to collect and produce this information far outweighs its probative value, the Motion should be denied.

ARGUMENT AND AUTHORITY

I. Legal Standards

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

The Commission’s regulations further provide that:

Within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. The motion to compel must include the interrogatory objected to and the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.

52 Pa. Code § 5.342(g).

II. The Information Sought in the Motion Is Not Relevant

Joint Complainants argue that information relating to all of BPE’s customers in Pennsylvania is relevant because “[t]he allegations in the Joint Complaint are not specific to individual customers.” (Mot. at 8, 16.) Joint Complainants’ Complaint, however, does not even

contain the words “pattern” of “practice,”² nor does it contain any allegations that BPE engaged in a “pattern of practice” of misconduct, or anything similar. This so-called “pattern of practice” was unveiled by Joint Complainants far into the life of this proceeding. Joint Complainants only presented the written statements of less than 100 of BPE’s Pennsylvania customers in this proceeding and an even smaller number at the hearing conducted from March 30, 2015 through April 1, 2015.

Joint Complainants fail to acknowledge that if there is a finding of liability in this proceeding, such a finding can only be based on the statements of those consumers who made a complaint. Accordingly, there is no relevance to the claims alleged in the Complaint regarding the generation prices charged by Blue Pilot to its Pennsylvania customers relating to customers other than those that provided statements from December 2013 through March 2014. This information certainly is not relevant to whether BPE charged prices that conformed to its Disclosure Statement as Joint Complainants argue. (Mot. at 8.) In fact, Joint Complainants offer no argument as to why this information is relevant at this stage of the proceeding. Instead, they simply conclude that it is so. (Mot. at 10.)

Only a very small percentage of Blue Pilot customers ever complained; yet, Joint Complainants allege that information as to every single Blue Pilot customer is relevant. Even if Blue Pilot violated a regulation as to a certain customer, the Commission cannot extrapolate from that one instance that Blue Pilot violated any regulation with respect to the majority of consumers that never complained about Blue Pilot’s services. Further, the consumer witnesses’ statements were idiosyncratic and in no way reflective of each other, much less every other Blue

² So-called “pattern and practice” evidence is used primarily in actions brought under Title VII of the Civil Rights Act of 1964 and relies almost exclusively on statistical evidence. Joint Complainants have provided no such evidence in this proceeding. Joint Complainants’ “pattern of practice” motion has dubious application to the present proceeding.

Pilot customer that never took issue with Blue Pilot's services or the rates that they were charged.³

The information sought in the Requests goes directly to Joint Complainants' motion that the Commission make the unprecedented finding that because 97 individuals submitted a statement complaining about BPE, the Commission should conclude that BPE engaged in a "pattern of practice" of wrongdoing. *See* BPE's Reply Memorandum of Law Regarding Admissibility of Pattern of Practice Evidence dated February 26, 2015. Joint Complainants' pattern of practice motion suggests that the Commission can find that BPE violated the Commission's regulations as to all of its customers in Pennsylvania based on a "misleading or deceptive pattern of practice" of conduct. (PoP Mot. at 1.) Regardless of what Joint Complainants ultimately seek in this proceeding, they were only able to muster 97 customer complaints and can now only rely on a subset of the original 97 because some of the 97 declined to attend the hearing or were withdrawn. As BPE argued in its reply to the pattern of practice motion, such a small percentage of BPE's historical customer base in Pennsylvania does not support a finding of a pattern of practice of conduct.

In their Motion, Joint Complainants blithely argue that objections relating to admissibility are not proper at the discovery stage. (Mot. at 7-8.) The information sought in Set XI, however, is extremely expansive because it seeks this information for every Pennsylvania customer for a four month period. Assuming that the Commission does not grant Joint Complainants' unprecedented request to find a pattern of practice of violative conduct for every one of BPE's Pennsylvania customers based on a statistically insignificant percentage of customers who did

³ The flip side of Joint Complainants' Pattern of Practice Motion is that because 98% of Blue Pilot's customers never complained about their rates or the matter in which they purchased Blue Pilot's services, there was no pattern of practice of violative behavior.

complain, then the burden placed on BPE to respond to Set XI makes no sense. Joint Complainants offer no reason, because there is none, why any information relating to more than the 97 individuals that they have identified is required at this stage of the proceeding. The burden on BPE far outweighs any probative value that this information has at this stage in the proceeding. 52 Pa. Code § 5.361(a).

III. BPE Does Not Have the Information Requested in Set XI-2

Set XI-2 requests “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).” As already explained in Blue Pilot’s objection to Set XI-2, “it has no documents or information in its possession, custody and/or control that are responsive to this Discovery Request No. 2.” Blue Pilot cannot be compelled to produce documents that it does not have.

IV. Blue Pilot Has Already Provided the Information Requested in Set XI-3

Set XI-3 requests “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 1014, February 2014, and March 2014. Blue Pilot has already responded to similar discovery requests several times.

On March 13, 2015, Blue Pilot provided Joint Complainants with a list of “the records compiled or maintained by [Blue Pilot] which concern, refer or relate to costs, expenses and billing for [Blue Pilot]’s Pennsylvania operations.” See Blue Pilot’s Response to Discovery Request VI-7, attached as **Exhibit 1**. On April 27, 2015, Blue Pilot provided Joint Complainants with those documents. See Blue Pilot’s Response to Discovery Request VIII-2, attached as **Exhibit 2**. Accordingly, this Request has already been fully responded to.

To the extent that Joint Complainants might allege that they want Blue Pilot to summarize this information for them, the Commission cannot force Blue Pilot to bear the burden of performing Joint Complainants' work. 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) (emphasis added). Here, Joint Complainants seek to force Blue Pilot to perform an analysis that Joint Complainants are equally able to perform. Joint Complainants fail to explain why they "cannot reasonably" conduct the analysis and why Blue Pilot should then be forced to perform this same analysis which they themselves cannot reasonably perform. As stated, Blue Pilot has already provided all documents regarding the "costs, expenses and billing for [Blue Pilot]'s Pennsylvania operations." Joint Complainants cannot now outsource their own duties through a Motion to Compel.

V. Blue Pilot Has Already Provided the Information Requested in Set XI-4

Set XI-4 requests Blue Pilot to "provide a sample calculation at monthly usage of 750kWh of a price charge to Blue Pilot's residential consumers that reflect a time period that includes at least 21 days in February 2014." Blue Pilot has already supplied this information.

In response to Set I-22, Blue Pilot already provided all prices charged to every customer for each month from January 2013 through March 2014.⁴ This information was used by Ashley E. Everette in Joint Complainants' Motion for Entry of Judgment. *See, e.g.*, Joint Complainants' Motion for Entry of Judgment at Exhibit H ¶ 2. Set XI-4 asks Blue Pilot to apply a "sample calculation at a monthly usage of a price charge to Blue Pilot's residential consumers that reflect

⁴ The information is contained in BPE-PALIT-000325-417.

a time period that includes at least 21 days in February 2014.” It should go without saying that Blue Pilot has no information responsive to such a hypothetical question. To the extent that Set XI-4 requests that Blue Pilot perform some sort of hypothetical analysis applying a usage of 750kWh in February 2014, Joint Complainants are equally capable of doing so with the monthly price information previously provided. *See* 52 Pa. Code § 5.361(b) (permitting the request of a study or analysis only “if the study or analysis cannot reasonably be conducted by the party making the request.”). To the extent that Joint Complainants “are requesting a sample of Blue Pilot’s actual price calculation during February 2014” (Motion at 28), Blue Pilot has responded that it has no “spreadsheets used or created to develop or calculate the residential generation prices.” *See* **Section III**, above. More to the point, Blue Pilot has further informed Joint Complainants that it has never developed a specific formula or calculation that it used in connection with the profits that it sought. *See* Blue Pilot’s Confidential Supplemental Objections and Responses to Complainants’ Interrogatories and Requests for Production (Set VIII), which are attached as **Confidential Exhibit 3 to the proprietary version**. Accordingly, such a calculation would be impossible to perform and Joint Complainants’ Motion to Compel should be denied.

VI. Joint Complainants Have Waived Their Right to Object

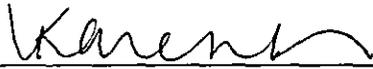
Pursuant to 52 Pa. Code § 5.342(g), Joint Complainants had 10 days to file a motion to compel. After they failed to do so, they simply resent the same discovery requests – with no explanation – and then filed a motion to compel when Blue Pilot referred Joint Complainants to its previous discovery objections and responses. The Commission should not allow Joint Complainants to render the Commission’s regulations meaningless.

CONCLUSION

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

September 8, 2015

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Attorneys for Blue Pilot Energy, LLC

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Exhibit 1

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March 13, 2015

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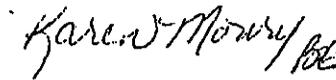
Re: Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC
Docket Nos. C-2014-2427655

Dear Counsel:

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

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

Very truly yours,



Karen O. Moury

KOM/bb
Enclosure

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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

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

Response: Pursuant to the Order, BPE is not required to respond to this Discovery Request.

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

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

Costs

- PJM Regional Transmission Organization invoices

Expenses

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

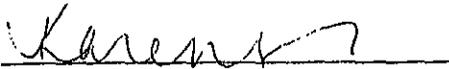
Billing

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

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

March 13, 2015

BUCHANAN INGERSOLL & ROONEY PC

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Attorneys for Blue Pilot Energy, LLC

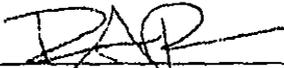
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

VERIFICATION

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

March 12, 2015



Raymond Perea, General Counsel

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**COMMONWEALTH OF
PENNSYLVANIA, ET AL.**

v.

BLUE PILOT ENERGY, LLC

Docket Nos. C-2014-2427655

CERTIFICATE OF SERVICE

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

Via Email and First Class Mail

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Sharon E. Webb
Office of Small Business Advocate
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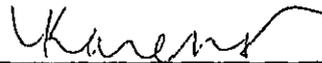
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Stephanic Wimer
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Bureau of Investigation & Enforcement
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Winthrop, Maine 04364

Dated this 13th day of March, 2015.



Karen O. Moury, Esq.

Exhibit 2

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April 27, 2015

VIA EMAIL AND FIRST-CLASS MAIL

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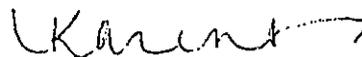
Re: Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC
Docket Nos. C-2014-2427655

Dear Complainants:

On behalf of Blue Pilot Energy, LLC, I am providing the Responses of Blue Pilot Energy, LLC to Complainants' Interrogatories and Requests for Production (Set VIII-2) in the above-captioned proceeding.

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

Very truly yours,



Karen O. Moury

KOM/bb
Enclosure

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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

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

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

April 27, 2015

BUCHANAN INGERSOLL & ROONEY PC

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Attorneys for Blue Pilot Energy, LLC

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

April 27, 2015



Raymond Perea, General Counsel

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

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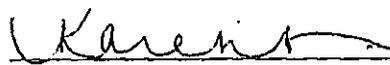
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Barbara R. Alexander
83 Wedgewood Drive
Winthrop, Maine 04364

Dated this 27th day of April, 2015.



Karen O. Moury, Esq.

CONFIDENTIAL

Exhibit 3

(Redacted)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

Via Email and First Class Mail

Elizabeth Barnes
Joel Cheskis
Administrative Law Judges
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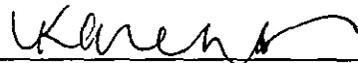
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Dated this 8th day of September, 2015.



Karen O. Moury, Esq.