

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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October 1, 2015

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

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

v.
Blue Pilot Energy, LLC

Respondent

Docket No. C-2014-2427655

Secretary Chiavetta:

Enclosed please find the Motion of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate to Compel Responses by Blue Pilot Energy, LLC to Set XII-26, in the above-referenced proceeding.

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

Respectfully Submitted,

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

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

Enclosure

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

*185199

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

MOTION OF JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA
AND THE OFFICE OF CONSUMER ADVOCATE
TO COMPEL RESPONSES BY BLUE PILOT ENERGY, LLC TO SET XII-26

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’ twelfth set of Interrogatories and Requests for Production of Documents (Joint Complainants’ Set XII), Question 26, 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, 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 September 11, 2015, Joint Complainants served Joint Complainants' Set XII upon Blue Pilot. On September 21, 2015, Blue Pilot filed Objections to Joint Complainants' Set XII, Question 26. For the reasons set forth below, Joint Complainants respectfully request that Your Honors overrule Blue Pilot's Objections, grant Joint Complainants' Motion to Compel a Response to Set XII-26 and direct Blue Pilot to provide the full and complete response 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 September 11, 2015, Joint Complainants served Joint Complainants' Set XII on Blue Pilot. A copy of Joint Complainants' Set XII is attached hereto as Exhibit A. Joint Complainants' Set XII consists of twenty-six Interrogatories/Requests for Production of Documents. Blue Pilot's responses are due on October 1, 2015 pursuant to 52 Pa. Code §§ 5.342(d) and 5.349(d). On September 21, 2015, Blue Pilot served Objections to Joint Complainants' Set XII, number 26, asserting that the requested information is not relevant to the allegations in the Joint Complaint. A copy of Blue Pilot's Objections to Joint Complainants' Set XII is attached hereto as Exhibit B. Blue Pilot did not contact Joint Complainants to attempt to informally resolve these objections prior to serving its objections.

Joint Complainants' Set XII-26 is relevant and within the permissible scope of discovery.

Joint Complainants' Set XII-26 provides:

Regarding the Company's confidential supplemental response to OAG/OCA Set VIII-1,¹ please provide the rate of return obtained by Blue Pilot for sales to

¹ Blue Pilot's confidential, supplemental response to Joint Complainants' Set VIII-1 provides, in pertinent part:

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL].

Pennsylvania customers on variable rate plans, by month, for the period March 2012 through December 2014.

Exhibit A at 11. (Emphasis in original). In its Objections, Blue Pilot asserts that its financial information is not relevant to the allegations filed in the Joint Complaint.² Exhibit B at 2. Joint

² In its Objections, Blue Pilot also asserts that the requested information in Set XII-26 is “commercially sensitive, confidential and proprietary.” Exhibit B at 2. To the extent that Blue Pilot intended to object to the request on these grounds, such an objection is improper. The ALJs have already rejected this argument made by Blue Pilot in this proceeding on three separate occasions by Orders dated March 3, 2015 (March 3 Order), May 1, 2015 (May 1 Order), and September 11, 2015 (September 11 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; see also September 11 Order at 3-4. As such, Joint Complainants submit that Blue Pilot’s assertion that the information is “privileged” is not recognized by the Commission as a valid objection.

Furthermore, 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

Complainants submit that it is not grounds for objection that the information sought will be inadmissible at hearings 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. The information requested in Joint Complainants' Set XII-26 is both relevant and reasonably calculated to lead to the discovery of admissible evidence.

The ALJs have already directed Blue Pilot to provide Joint Complainants with the rate of return information in ruling on a prior Blue Pilot objection. See May 1 Order at 3, 5-7, 9. Specifically, Joint Complainants requested Blue Pilot to provide the following information in Joint Complainants' eighth set of discovery, question 1:

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

See May 1 Order at 3-4. (Emphasis added). Blue Pilot served Objections to Joint Complainants' Set VIII, question 1, *inter alia*, on April 7, 2015, asserting, among other things, that the information requested in Joint Complainants' Set VII-1 is not relevant to the allegations filed in

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. In the September 11 Order, the ALJs again held that the Protective Order in this proceeding governs the protection of confidential information. See September 11 Order at 4.

the Joint Complaint. See May 1 Order at 5. By Order entered May 1, 2015, the ALJs stated, “We disagree and find the information sought appears reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the interrogatory seeks information directly relevant to the issue of whether Blue Pilot charged prices that conformed to the Company’s Disclosure Statement.” May 1 Order at 5. Accordingly, the ALJs overruled Blue Pilot’s objections and directed Blue Pilot to provide a full and complete response to Joint Complainants’ Set VIII-1. May 1 Order at 9-10.

Pursuant to the ALJs’ May 1 Order, on September 8, 2015, Blue Pilot provided a CONFIDENTIAL supplemental response to Joint Complainants’ Set VIII-1, as follows:

[BEGIN CONFIDENTIAL]



[END CONFIDENTIAL].

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

In its Response to Joint Complainants’ Set VIII-1, Blue Pilot provided Joint Complainants with its rate of return over the entire time period from March 31, 2012 through December 31, 2014, but not by month. Joint Complainants acknowledge that this was a fair reading of Set VIII-1. Joint Complainants, however, served Set XII-26 as a follow up request to obtain the monthly breakdown of the information to more thoroughly analyze and evaluate the information provided. Joint Complainants submit that they are seeking the same type of information in Joint Complainants’ Set XII-26 that the ALJs have already directed Blue Pilot to provide to Joint Complainants (*i.e.* the rate of return obtained by Blue Pilot from its Pennsylvania customers on

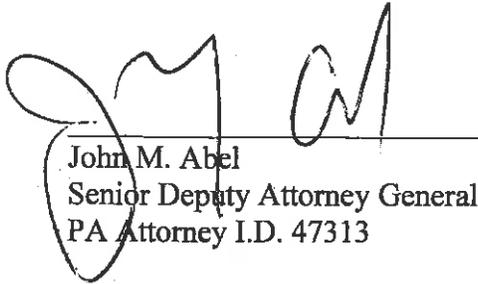
variable rate plans for March 31, 2012 until December 31, 2014), except that Joint Complainants specify in Set XII-26 that the information be provided by month.

Joint Complainants submit that they are entitled to information that supports Blue Pilot's overall rate of return from March 31, 2012 through December 31, 2014 as provided in their response to Joint Complainants Set VIII-1. This information is relevant in assessing Blue Pilot's prices that it charged its customers on variable rate plans and is likely to lead to admissible evidence regarding the issues 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). Therefore, Joint Complainants request that the ALJs enter an Order directing Blue Pilot to provide full and complete answers to Joint Complainants' Set XII-26 within five days.

IV. CONCLUSION

For the foregoing reasons, the information sought in Joint Complainants' Set XII-26 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 and is likely to lead to admissible evidence in this matter and is 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 to Joint Complainants' Set XII-26 within five days.

Respectfully submitted,



John M. Abel
Senior Deputy Attorney General
PA Attorney I.D. 47313

Margarita Tulman
Deputy Attorney General
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Bureau of Consumer Protection

Date: October 1, 2015

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Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate

EXHIBIT A

PUBLIC VERSION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF
JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA AND THE
OFFICE OF CONSUMER ADVOCATE DIRECTED TO BLUE PILOT ENERGY, LLC
SET XII**

The Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (Attorney General) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively referred to as Joint Complainants), pursuant to 52 Pa. Code § 5.349, hereby propound the following request for production of documents upon Blue Pilot Energy, LLC (Respondent or Blue Pilot). In accordance with 52 Pa. Code § 5.349(d), the documents are to be furnished and served in-hand upon the undersigned within the time period prescribed by the Commission for this docket.

INSTRUCTIONS

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

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

- a) notations of any sort concerning conversations, telephone calls, meetings or other communications;
- b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;
- c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.

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

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

DEFINITIONS

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

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

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

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

4. "You" or "Your" shall refer to Blue Pilot Energy, LLC and all other names under which Blue Pilot Energy, LLC does business or trades, any subsidiaries, agents, employees, representatives, attorneys and all other persons acting on their behalf.

5. "EDC" shall refer to Electric Distribution Companies.

INTERROGATORIES & REQUESTS FOR PRODUCTION SET XII

1. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In March 2014, approximately **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh. Please explain in detail how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to customers in March 2014). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers, and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to customers in March 2014.
2. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In March 2014, approximately **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**

- of customers were charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** or **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh. Please explain how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to customers in March 2014). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** or **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to customers in March 2014.
3. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In March 2014, approximately **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh. Please explain how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to customers in March 2014). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to customers in March 2014.
 4. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In March 2014, approximately **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh. Please explain how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to customers in March 2014). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to customers in March 2014.
 5. Regarding questions 1 through 4 above, to the extent not already provided in responses to questions 1 through 4, please provide any workpapers, emails, memoranda, correspondence or other documents which show, confirm or direct that a price of **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh was the price to be charged to any Pennsylvania customers in March 2014.
 6. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In February 2014, approximately **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**

- CONFIDENTIAL** cents per kWh. Please explain in detail how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to customers in February 2014). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers, and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to customers in February 2014.
7. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In February 2014, approximately **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** or **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh. Please explain how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to customers in February 2014). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** or **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to customers in February 2014.
8. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In February 2014, approximately **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh. Please explain how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to customers in February 2014). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to customers in February 2014.
9. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In February 2014, approximately **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh. Please explain how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** cents per kWh to customers in February 2014). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**

- CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to customers in February 2014.
10. Regarding questions 6 through 9 above, to the extent not already provided in responses to questions 6 through 9, please provide any workpapers, emails, memoranda, correspondence or other documents which show, confirm or direct that a price of **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh was to be charged to any customers in February 2014.
11. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In January 2014, approximately **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh. Please explain in detail how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to customers in January 2014). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers, and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to customers in January 2014.
12. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In January 2014, approximately **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh. Please explain how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to customers in January 2014). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to customers in January 2014.
13. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In January 2014, approximately **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh. Please explain how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to customers in January 2014). Include an explanation

- of who determined to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to customers in January 2014.
14. Regarding questions 11 through 13 above, to the extent not already provided in responses to questions 11 through 13, please provide any workpapers, emails, memoranda, correspondence or other documents which show, confirm or direct that a price of **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh was to be charged to any customers in January 2014.
 15. In January 2014, **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** commercial customers in West Penn Power's service territory were charged **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh by Blue Pilot, while **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** commercial customers in West Penn Power's service territory were charged **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh by Blue Pilot. Please explain the Company's basis for charging some commercial customers less than half of the amount charged to other commercial customers in January 2014. Please state whether this was based on cost or some other factor. If it was based on cost, provide a detail of what costs were different for the groups of customers.
 16. In January 2014, **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** residential customers in West Penn Power's service territory were charged **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh by Blue Pilot, while **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** commercial customers in West Penn Power's service territory were charged **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh by Blue Pilot. Please explain the Company's basis for charging some residential customers less than half of the amount charged to other residential customers in January 2014. Please state whether this was based on cost or some other factor. If it was based on cost, provide a detail of what costs were different for the groups of customers.
 17. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In December 2013, approximately **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh. Please explain in detail how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to customers in December 2013). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers, and if so, how. Provide copies of all

documents used in the decision to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to customers in December 2013.

18. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In December 2013, approximately **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh. Please explain how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to customers in December 2013). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to customers in December 2013.
19. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. In December 2013, approximately **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of customers were charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh. Please explain how this price was calculated (i.e., recreate exactly how the Company determined to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to customers in December 2013). Include an explanation of who determined to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to these customers, and state what cost elements were reflected in this price. Explain if the process was different for residential versus commercial customers and if so, how. Provide copies of all documents used in the decision to charge **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh to customers in December 2013.
20. Regarding questions 17 through 19 above, to the extent not already provided in responses to questions 17 through 19, please provide any workpapers, emails, memoranda, correspondence or other documents which show, confirm or direct that a price of **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh was to be charged to any customers in December 2013.
21. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. This spreadsheet shows the following information for March 2014:
 - a. The **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh price referenced in question 1 above was charged to Met-Ed, PPL, PECO and Penelec customers.
 - b. The **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh prices referenced in question 2 above was charged only to Duquesne and West Penn Power customers.

- c. The **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh price referenced in question 3 above was charged only to PECO and Penelec customers.
- d. The **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh price referenced in question 4 above was charged only to PPL customers.
22. Refer to question 21 above. Please list all costs incurred by Blue Pilot that differ by EDC territory, including the desired rate of return or any other factors which may have been different for customers of different EDCs.
23. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. Customer **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** was charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** kWh in March 2014 while Customer **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** was charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** kWh in March 2014. Both customers are West Penn Power residential customers, with Customer Type **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**. Please provide a detailed explanation of why these customers would be charged different rates, including a list of any factors such as billing cycle, cost incurred to serve, desired rate of return, or any other factors which may have been different for these two customers.
24. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. Customer **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** was charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** kWh in March 2014 while Customer **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** was charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** kWh in March 2014. Both customers are Penelec residential customers, with Customer Type **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**. Please provide a detailed explanation of why these customers would be charged different rates, including a list of any factors such as billing cycle, cost incurred to serve, desired rate of return, or any other factors which may have been different for these two customers.
25. Please refer to Blue Pilot's confidential supplemental response to OAG/OCA Set X-1. Customer **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** was charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** kWh in January 2014 while Customer **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** was charged **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** cents per kWh for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** kWh in January 2014. Both customers are Penelec residential customers, with Customer Type **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**. Please provide a detailed explanation of why these customers

would be charged different rates, including a list of any factors such as billing cycle, cost incurred to serve, desired rate of return, or any other factors which may have been different for these two customers.

26. Regarding the Company's confidential supplemental response to OAG/OCA Set VIII-1, please provide the rate of return obtained by Blue Pilot for sales to Pennsylvania customers on variable rate plans, by month, for the period March 2012 through December 2014.

212074

EXHIBIT B

**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 OBJECTION TO COMPLAINANTS'
INTERROGATORIES AND REQUESTS FOR PRODUCTION (SET XII)**

Pursuant to 66 Pa.C.S. § 333(d) and 52 Pa. Code § 5.342, Respondent Blue Pilot Energy, LLC ("BPE") hereby submits its objection to one of the Interrogatories and Requests for Production – Set XII ("Discovery Requests") propounded by the Complainants on September 11, 2015.

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).

Discovery Request No. 26: Regarding the Company's confidential supplemental response to OAG/OCA Set VIII-1, please provide the rate of return obtained by Blue Pilot for sales to Pennsylvania customers on variable rate plans, by month, for the period March 2012 through December 2014.

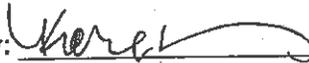
Objection: BPE objects to Discovery Request No. 26 on the grounds that its financial information is not relevant to the allegations in the Complaint filed by Complainants in this proceeding. This commercially sensitive, confidential and proprietary information has no probative value pertaining to any of the allegations contained in Complainants' Joint Complaint, and specifically that BPE allegedly 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. 26 seeks information unrelated to the legal and factual contentions regarding the claims in this case proceeding. *See* Order Granting in Part and Denying in Part Motion to Compel Responses to Joint Complainant Interrogatories VI-1 and VI-7, dated March 3, 2015, at 6 ("Joint Complainants' request for Blue Pilot's profits, losses and revenues are not likely to lead to the discovery of admissible evidence because profits, losses and revenue are not referenced in the Disclosure Statement or otherwise relevant to an issue raised in the Joint Complaint. Nowhere in Blue Pilot's Disclosure Statement, for example, is there a reference to the Company's profits, losses and revenues being used to determine the variable rate and, therefore, *Blue Pilot's profits, losses and revenues are not relevant to ensure that the billed prices conform to the Disclosure Statement.*") (Emphasis added).

BPE further states that the phrase “desired rate of return” referenced in BPE’s response to Joint Complainants Interrogatory Set I No. 9 refers to the general notion that BPE sought to seek a profit from the business that it conducted in Pennsylvania and does not specifically refer to a specific formula or calculation that it used in connection with any such rate of return.

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

September 21, 2015

BUCHANAN INGERSOLL & ROONEY PC

By:  _____

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Attorneys for Blue Pilot Energy, LLC

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 Motion of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate to Compel Responses by Blue Pilot Energy, LLC to Set XII-26 , in the manner and upon the persons listed below:

Dated this 1st day of October 2015.

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*Receiving Proprietary Information