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October 6, 2015

VIA E-FILING

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

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 XII-26, 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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF BLUE PILOT ENERGY, LLC, TO MOTION TO COMPEL OF JOINT
COMPLAINANTS RELATING TO SET XII-26**

TO: ADMINISTRATIVE LAW JUDGES BARNES AND CHESKIS

Pursuant to 52 Pa. Code § 5.342(g)(1), Blue Pilot Energy, LLC (“Blue Pilot” or the “Company”), by and through its counsel, files this Answer to the Motion to Compel filed by the Joint Complainants (the “Motion”), Commonwealth of Pennsylvania and the Office of Consumer Advocate, relating to the Interrogatories and Requests for Production of Documents – Set XII-26 (“DR XII-26”), and in support hereof, avers as follows:

INTRODUCTION

Joint Complainants’ Discovery Request XII-26 seeks information on Blue Pilot’s profits and losses that is not relevant to this proceeding. Joint Complainants served DR XII-26 on September 11, 2015, to which Blue Pilot timely objected on September 21, 2015. On October 1, 2015, Joint Complainants filed the present Motion to Compel¹ wherein they allege that information relating to Blue Pilot’s profits and losses is relevant to “whether Blue Pilot charged

¹ Despite Your Honors’ request during the telephonic conference on September 10, 2015 that the parties attempt to resolve any disputes prior to filing any further motions to compel, Joint Complainants did not attempt to meet and confer with Blue Pilot prior to filing the Motion to Compel.

prices that conformed to the Company's Disclosure Statement or was in accordance with the advertised price." Motion to Compel at 8.

Joint Complainants fail to offer any explanation as to how information relating to Blue Pilot's profits and losses is in any way relevant to "whether Blue Pilot charged prices that conformed to the Company's Disclosure Statement or was in accordance with the advertised price." Motion to Compel at 8. The reason for this omission is simple: information relating to Blue Pilot's profits is not relevant to any of the claims or defenses raised in this proceeding. Neither Blue Pilot's Disclosure Statement nor its advertisements reference the Company's profits or losses. Further, it is axiomatic that companies seek profits from their business operations, and Joint Complainants have never alleged, nor could they argue, that Blue Pilot was not permitted to attempt to seek a profit from selling electricity in Pennsylvania. Because Joint Complainants fail to articulate how Blue Pilot's profits and losses are relevant to Blue Pilot's Disclosure Statement or advertised price, which is the only relevant inquiry in this proceeding, the ALJs should deny the Joint Complainants' Motion to Compel.

ARGUMENT AND AUTHORITY

I. Legal Standards

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

oppression, burden, or expense to the party; relates to a matter which is privileged; or would require the making of an unreasonable investigation by the party. 52 Pa. Code § 5.361(a).

II. Blue Pilot's Profits and Losses Are Not Relevant to Whether Blue Pilot Charged Prices in Accordance with Its Disclosure Statement or Advertised Price

Joint Complainants argue that information relating to Blue Pilot's profits and losses is relevant as to "whether Blue Pilot charged prices that conformed to the Company's Disclosure Statement or was in accordance with the advertised price." Motion to Compel at 8. Notably absent from Joint Complainants' conclusory statement is *any explanation* as to how Blue Pilot's profits in any way relate to the Disclosure Statement or Blue Pilot's advertised price – neither one of which have anything to do with Blue Pilot's profits and losses. This proceeding is limited to Blue Pilot's Disclosure Statement and its interactions with prospective and later existing customers. Blue Pilot's profits are not relevant to that inquiry. Indeed, Joint Complainants *cannot* offer any explanation as to how Blue Pilot's profits relate to either its Disclosure Statement or Blue Pilot's advertised price because there simply is no relation between them. As the ALJs have previously recognized, Blue Pilot's Disclosure Statement does not even mention Blue Pilot's financial information. Similarly, there has never even been an allegation that Blue Pilot's advertisements had anything to do with Blue Pilot's profits and losses.

Significantly, Joint Complainants fail to quote any language from the Disclosure Statement relating or referring to profits, which is remarkably telling considering the fact that Joint Complainants allege that Blue Pilot's profits and losses are relevant to that very Disclosure Statement. ALJ Barnes and ALJ Cheskis have previously held that Blue Pilot's Disclosure Statement specifically provides the following with regard to pricing:

Price per Kilowatt Hour. You have a variable rate plan. Your price may vary on a month-to-month basis. This price includes Transmission Charges, but excludes applicable state and local Sales Taxes and the Distribution Charges from

your local EDC. At any time, but not more frequently than monthly, Blue Pilot may increase or decrease your rate based on several factors, including changes in wholesale energy market prices in the PJM Markets. Your variable rate will be based upon PJM wholesale market conditions. Sudden, atypical fluctuations in climate conditions, including but not limited to, extraordinary changes in weather patterns may be detrimental to Blue Pilot's electricity customer relationships. Such fluctuations or conditions may result in Blue Pilot incurring unusual costs when supplying electricity service, which may be passed through as a temporary assessment on your bill. Please log on to www.bluepilotenergy.com or call Customer Service at 877-513-0246 for additional information about our current pricing.

Order Granting in Part and Denying in Part Motion to Compel Responses, dated March 3, 2015, at 5. Because the Disclosure Statement does not reference Blue Pilot's profits and losses, ALJ Barnes and ALJ Cheskis found that discovery seeking that information is not relevant:

[T]he 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.***

Id. at 6 (emphasis added). To reiterate: the Disclosure Statement does not reference Blue Pilot's profits and losses, and Joint Complainants are unable to articulate how Blue Pilot's profits and losses are relevant to the Disclosure Statement or Blue Pilot's advertisements. Instead, they simply allege that the information is relevant and assume that the ALJs will take their word for it. A party's bare allegation that discovery is relevant does not make it so. The ALJs should not permit a party to harass defendants through irrelevant discovery by making baseless accusations, but who fail to offer any explanation as to how the discovery is relevant to the claims at issue in the proceeding.

Blue Pilot recognizes that the ALJs entered an Order on May 1, 2015, compelling the production of 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.” Order Granting Motion to Compel Responses, dated May 1, 2015, at 3-4. That Order was based on Joint Complainants’ representation that “Blue Pilot indicated that the rates that it has offered in the past in connection with its variable priced service agreements have been established by a variety of factors, including a desired rate of return.” *Id.* at 6. However, Joint Complainants based this argument on a misreading of a previous Blue Pilot discovery request. Joint Complainants failed to inform the ALJs that Blue Pilot addressed Joint Complainants’ confusion on this issue in its Objection to Set VIII and its Supplemental Response to Set VIII, wherein Blue Pilot clarified that it did not base its rates on a calculated “desired rate of return.” Rather, as Blue Pilot has explained numerous times in this proceeding, it simply referred to the general notion that Blue Pilot sought a profit from the business that it conducted in Pennsylvania and did not specifically refer to a specific formula or calculation in connection with such a rate of return. The May 1 Order did not address Blue Pilot’s correction of the Joint Complainants’ representation and did not overrule the ALJs’ previous March 3 Order. *Id.*

Joint Complainants have never alleged, and cannot credibly argue that Blue Pilot was not entitled to seek a profit from its operations, or that its profits (or lack thereof) were not permitted to exceed a certain amount. It is axiomatic that corporations seek to generate profits from their business operations. In short, Blue Pilot’s profits and losses have no relevance to the central issue alleged in this action, which is “whether Blue Pilot charged prices that conformed to the Company’s Disclosure Statement or was in accordance with the advertised price.” Motion to Compel at 8. Because Joint Complainants’ Motion to Compel fails to provide any explanation as

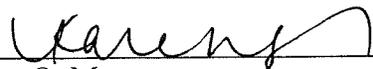
to how Blue Pilot's profits and losses bear any relevance to the Disclosure Statement or Blue Pilot's advertised price, the Motion to Compel should be denied.

CONCLUSION

Because Joint Complainants fail to offer any explanation as to how Blue Pilot's profits and losses relate to "whether Blue Pilot charged prices that conformed to the Company's Disclosure Statement or was in accordance with the advertised price," Blue Pilot respectfully requests that the ALJs deny Joint Complainants' Motion to Compel.

October 6, 2015

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**COMMONWEALTH OF
PENNSYLVANIA, ET AL.**

v.

BLUE PILOT ENERGY, LLC

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: **Docket Nos. 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).

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Dated this 6th day of October, 2015.



Karen O. Moury, Esq.